

court. Nor is that website an obvious port of call for those appealing to the High Court or a county court.

The Court Service delayed making any major changes to the guidance available until the completion of this report in order to avoid duplication of effort. But steps are currently being taken to improve the situation. In response to our previous recommendations on providing decision trees to identify the appropriate appeal court and step-by-step guides through the appeals procedure, plans are underway to publish a definitive guide to the routes of appeal on the Court Service website supported by improved leaflet guidance.⁶⁶

In paragraph 9.3 of our previous report, we made the following suggestion:

It would be helpful to consider re-designing the layout and content of court orders and introducing the new standard format throughout the civil justice system. In addition to space for the description of what is being ordered, tick-boxes to be completed by the judge could be included on the standard form. These would cover:

- the status of the judge (district judge, circuit judge etc.)
- the level of court (county court, district registry etc.)
- track assignment (small claims, fast track, multi-track) where appropriate
- whether or not the order is a final order
- whether there is a right of appeal against the order
- if so, whether permission to appeal is required
- if so and if the court has the power, whether permission to appeal is granted or refused
- if permission is refused or the lower court has no power to grant permission, the court to which any renewed application for permission should be made
- where the order is appealable, the court's decision on whether the cost of obtaining an official transcript of the judgment should be borne at public expense.

The previous problem of poorly drawn orders was just as evident this time in the case files we examined. Judges at all levels interviewed in this study were supportive of the proposal that appeal information should be included on orders. The Birmingham DCJ went so far as designing a flowchart, reproduced at Appendix 3, to assist first instance judges in determining the appropriate appellate route. The Court Service has responded to our

⁶⁶ Communication dated 16 February 2005.

proposal by embarking on an exercise which could result in the destination for appeals and, or, applications for permission being included on all court orders.⁶⁷

10.4 Resources available for appellate work

Resource problems were common but most acute at regional appeal centres dealing with the largest volumes of appellate work. DCJs at two of the three regional appeal centres in the study regarded appellate work as under-resourced. For these DCJs, appeals accounted for between 10 per cent and 35 per cent of their time each week.

Obtaining the time of a High Court judge for appellate work was also more problematic at larger centres. Other DCJs responding to our survey generally felt that resources were adequate, at least in the context of the meagre resources available to civil justice as a whole.

Much of the burden of appellate work fell on staff and the use of the BMS system to calculate effort led to a significant underestimate of the demands on staff time. In particular, BMS did not take full account of time spent dealing with appellants at the public counter or on the phone.

Staff dealing with appellate work need to be familiar with the complex rules and procedures that apply. At two of the three regional appeal centres in the study, a single member of staff, in one case a part-timer, had such detailed knowledge. This person had become known as the 'appeals specialist' to whom all procedural questions could be addressed. However, 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 High Court Appeals Office at the RCJ had more staff than regional appeal centres, but it also had the largest appellate caseload. In comparison with the Civil Appeals Office, it was under-resourced even taking into account that the appellate workload it had inherited related to less weighty cases. It was not possible, therefore, for the High Court Appeals Office to carry out the detailed scrutiny of documentation performed by the Civil Appeals Office before putting the papers before a judge. This meant that much High Court judge time was spent sorting through the file, particularly in cases where the appellant was unrepresented.

⁶⁷ Communication dated 16 February 2005.

Pressures on staff in the High Court Appeals Office were eased a year after its creation when it was provided with a modified version of the RECAP computer system used in the Civil Appeals Office. The system was specifically designed to track and manage appellate work and it has reduced to a minimum the need for staff to refer to paper records. The six staff in the High Court Appeals Office share the same network and database servers used by the Civil Appeals Office, which has over 80 RECAP users, but some features such as bar-coding (used by the Civil Appeals Office to track the movement of paper files) and automatic e-mailing are not available to them. The validation of data is also less rigorous in light of the more relaxed approach to documentation checking referred to earlier. This makes the High Court version of RECAP less demanding in terms of the support required.

RECAP is currently implemented on version 10g of the ORACLE database management system, which supports web access. There are plans to use this capability, probably next year, to provide Lords Justices and their clerks with read-only access to RECAP using the LINK network.

There is no comparable system to RECAP in regional appeal centres, which still rely to a large extent on spreadsheets, paper logs and case files to track progress and respond to questions from litigants. Regional implementation of RECAP presents various technical challenges, but the Head of Technology at the eDelivery Group within the DCA has suggested two possible approaches that could be used if the necessary funding became available. These involve:

- using web technology to connect regional PCs to the existing database server; or
- installing RECAP on smaller versions of the network and database servers in a regional site.

Each of these options has various advantages and drawbacks, particularly in terms of the cost of maintenance and support. A further complication arises because the Private Finance Initiative (PFI) contract for the provision and support of technology to the courts is due to be re-tendered in 2006. However, the LINK infrastructure should be available in all courts by that date and it seems sensible at least to investigate the feasibility of implementing RECAP regionally at that time using the strategies described above.

10.5 Unrepresented litigants

As in the Court of Appeal, litigants who appeal without the benefit of legal representation consume a disproportionate amount of resources in the High Court and regional appeal centres. Figures from RECAP suggest that about half of all applications lodged at the High Court Appeals Office are from unrepresented litigants. There are no corresponding statistics for the regions but our case sample suggests the average figure for appeal centres in the study may be around a third.

The potential to alleviate the demands made by unrepresented litigants through improved information on appeals was discussed above. A separate issue addressed in the study was the effectiveness of the requirement for permission to appeal introduced by the new rules as a filter to remove unmeritorious appeals at an early stage. DCJs in our survey generally felt that the permission requirement had had the desired effect although High Court judges we interviewed were less convinced. Only one judge was totally opposed to the permission requirement and wanted it abolished.

Some of those in favour of permission were nevertheless sceptical about the usefulness of making an initial paper decision where the appellant was unrepresented, given the possibility of renewing an application refused on paper at an oral hearing. Most DCJs wanted to retain the option of a paper decision but to consider whether to do so on a case-by-case basis.

Some time ago, the Court of Appeal conducted an exercise in which a paper decision on permission was made in respect of applications from unrepresented appellants. All those refused permission on paper renewed their application at an oral hearing. As a result, the Court of Appeal now lists all permission applications from unrepresented appellants for an oral hearing with consideration on the papers, unless the appellant explicitly requests otherwise. The same practice is followed in the High Court at the RCJ. The position at regional appeal centres differs widely according to the preference of the DCJ. Details can be found at paragraph 7.3 and in Appendix 1. In contrast to the Court of Appeal experience, unrepresented litigants in study cases were no more likely to renew a permission application refused on paper than those who were legally represented.

The concerns of some Lords Justices about a practice that discriminates between represented and unrepresented litigants were discussed in our report on the Court of

Appeal.⁶⁸ Even if these concerns are put to one side, it is surely unsatisfactory that the approach adopted should vary so widely between appeal centres. Litigants 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.

There remains a problem with a small group of litigants who abuse the system by issuing a series of appeals that are devoid of merit. The disruption and wasted effort caused by this group has resulted in the Court of Appeal revisiting the measures available to curtail their activities. Civil restraint orders introduced to combat this problem are described in paragraph 9.3. They are intended to be more flexible and less cumbersome to use than previous alternatives.

Most judges welcomed the new orders and had already made use of them, despite the fact they had only been available for a short time. However, some drawbacks had already emerged. DCJs complained of the time they had to spend in and out of court when issuing an order. Another concern was that the activity of litigants was only restrained in the courts specified in the order, leaving them free to continue their vexatious behaviour elsewhere.

The operation of the new orders needs to be monitored and evaluated during these early stages. The creation on a spreadsheet of a central database of civil restraint orders and claims devoid of merit made an important contribution to their usefulness, but it is vital that all judges are made aware that such a database exists. As yet, there has been no formal exercise to do this. In the meantime, a separate database has been established by a judge on FELIX. This could cause difficulties if the information it contains differs in any way from that held on the Court Service's database. Ideally, judges should have read-only access to the Court Service database to assist them in deciding whether to make a civil restraint order. If the costs involved are prohibitive, then judges should at least be made aware that they can request court staff to check the information held in relation to a particular litigant.

10.6 Judicial training and feedback

The JSB does not deal specifically with civil appellate work in its courses. There was some support for training on appeals, particularly for new recruits to the High Court bench. Existing seminar sessions on how to deal with unrepresented litigants could be expanded and put in the specific context of appeals.

⁶⁸ Para. 6.6.

The role of the DCJ in managing appellate work was also thought worthy of the JSB's attention. All the DCJs in our study kept a close watch on the appellate caseload through the reviewing process and had developed specific techniques and tools aimed at ensuring the speedy and effective processing of appeals. Electronic templates had been developed to assist in issuing directions and bringing specific issues to the attention of appellate judges. All three DCJs had developed close working relationships with court staff who handled appeals. A course dealing with strategies and techniques for appeals management would be of undoubted benefit to new recruits to the DCJ role.

Another aspect of the learning process is providing feedback to judges on the outcome of appeals against their orders. All the judges we spoke to acknowledged the importance of such feedback, but the system for providing it seemed hit-and-miss. Only the Court of Appeal provides feedback as a matter of course on both permission applications and substantive appeals. Even here, it is up to the lower court to ensure the information reaches the judge concerned. Two of the three DCJs in the study appeal centres used a special form to provide feedback to district judges on the result of appeals at which they presided. The third provided feedback by e-mail on a more informal basis. Ensuring that other appellate judges, including High Court judges, provided feedback had proved more difficult. Although one DCJ included a form requesting feedback in the case file, these were not always completed.

The provision of feedback 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.

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Appendix 1: Profile of appellate work at study courts

A1.1 Introduction

This Appendix describes in detail how the four courts visited during the study process their appellate caseload. For each court, the sequence of tasks from lodging the appellant's notice through to the hearing of the appeal is described and illustrated, where possible, with statistical information. The most detailed statistics were provided by the RECAP computer system used by the High Court Appeals Office in the RCJ. There is no comparable system to RECAP at regional appeal centres and no requirement to record and report statistics on appeals. The information available therefore varied between the three regional appeal centres in the study.

A1.2 The High Court at the RCJ

Staffing and workload

The High Court Appeals Office at the RCJ has six staff: the office manager, the section manager, three administrative officers and a paper-keeper. All appeals and ancillary applications lodged are entered on the RECAP computer system which is capable of producing a range of statistical reports. The number of appeals they dealt with in 2002 and 2003 was as follows:

Table 10: Number of appeals to the High Court at the RCJ set down and disposed of during 2002 and 2003

APPEALS FROM	SET DOWN		DISPOSED OF	
	2002	2003	2002	2003
Queens Bench	157	145	115	98
Chancery	163	114	111	85
County Courts	128	122	92	87
Tribunals	82	127	37	68
TOTAL	530	508	355	338

This office processes all appeals to the High Court in the South Eastern circuit, but it can receive appeals from any circuit. Volumes are around 40 per cent of those in the Court of Appeal (Civil Division) which has around 55 staff, including some who are legally qualified. However, unlike the Civil Appeals Office in the Court of Appeal, the High Court Appeals Office does not carry out detailed checks on bundles or list cases for hearing.

The above figures include only those applications for permission to appeal that proceeded as appeals. The figures for all permission to appeal applications are as follows:

Table 11: Number of permission to appeal applications to the High Court at the RCJ set down and disposed of (by outcome)

Year	SET DOWN	DISPOSED OF		
		Allowed	Dismissed or otherwise disposed of	Total
2002	669	207	328	535
2003	599	182	346	528

The office also processes various other types of applications relating to appeals, for instance applications for an extension of time in which to lodge an appeal or for obtaining a transcript at public expense. The number of such applications was as follows:

Table 12: Number of other ancillary applications to the High Court at the RCJ set down and disposed of (by outcome)

Year	SET DOWN	DISPOSED OF		
		Allowed	Dismissed or otherwise disposed of	Total
2002	782	253	132	385
2003	773	285	73	358

Around half the appeal-related applications to the High Court at the RCJ are from litigants in person. The position in respect of actual appeals (where permission has been granted or is not required) is as follows:

Table 13: Number and success rates of litigant in person appeals to the High Court at the RCJ

Year	Appeals disposed of		Number allowed		Success rate	
	Total	LiPs	Total	LiPs	Total	LiPs
2002	355	45 (12.7%)	123	12	34.6%	26.7%
2003	338	53 (15.7%)	119	12	35.2%	22.6%

Lodging an appeal

Appellants' notices are received by post or at the public counter.⁶⁹ They are checked and the appellant is sent a letter of issue, a certificate of service for completion by the appellant and a list of anything else that is needed before the appeal can proceed. Notices lodged

⁶⁹ The section manager estimates that around 80 per cent of appeals lodged at the RCJ are received at the public counter.

out of time must include an application for an extension of time, otherwise they are returned for amendment to the appellant.

The fee for lodging an appeal in the High Court is £100 irrespective of whether permission is being sought or permission has been granted or is not required.⁷⁰ The office will only issue an appeal if the correct fee is paid, or the correct fee remission/exemption certificate is filed. It will accept payment by cheque but a litigant wishing to make any other form of payment, and those requesting fee remission or exemption, must go to the fees office.

In most cases, some of the documents required are missing when the appellant's notice is lodged.⁷¹ The most problematic to obtain is the transcript of the judgment of the lower court. The office allows the appellant up to 28 days (an initial 14 days that can be extended by another 14 days) to obtain the transcript but any further extension must be granted by a judge. This generates a lot of work because it can often take three months to obtain a transcript from a county court. If an unrepresented litigant contacts the office to say they cannot get a copy of the transcript, they are told to obtain instead a copy of the other side's note of the judgment (provided the other side was represented).⁷²

The other key document required before the papers are put before a judge is the order of the lower court.⁷³ Most appellants provide a copy of the order with their appellant's notice but the office will accept an appellant's notice from an unrepresented litigant even without an order.⁷⁴

Represented appellants are required to lodge a skeleton argument⁷⁵ and those who are unrepresented are encouraged to do so.⁷⁶ The time allowed is 14 days from the appeal being lodged⁷⁷ and this cannot be extended without the permission of a judge.

Appellants are required to provide a bundle of documents in support of their appeal.⁷⁸ The court allows them 28 days from filing an appellant's notice in which to do so. Unlike the Court of Appeal (Civil Division), the content of bundles is not examined in detail⁷⁹ by staff in

⁷⁰ The rate differs from that charged by the Court of Appeal (Civil Division).

⁷¹ See chapter 4.

⁷² CPR PD 52, para. 5.12.

⁷³ A face-sheet used by the High Court Appeals Office lists the other documents to be included in the papers for the judge as the appellant's notice and a statement of case.

⁷⁴ RECAP suggests that around half the total applications received are lodged by unrepresented litigants.

⁷⁵ CPR PD 52, para. 5.9(1).

⁷⁶ CPR PD 52, para. 5.9(3).

⁷⁷ CPR PD 52, para. 5.9(2).

⁷⁸ CPR PD 52, paras 5.6(2), 5.6A.

⁷⁹ See Plotnikoff & Woolfson (2003), para. 4.3.

the High Court Appeals Office but it is checked to ensure that a transcript or note of the judgment of the lower court is included.

Staff in the High Court Appeals Office are not legally qualified and procedural questions that the office cannot resolve are referred to a High Court judge, usually the Chancery or Queen's Bench judge in charge of appeals. Any appeals where the jurisdiction is unclear are discussed with one of the lawyers in the Civil Appeals Office for verification.

Processing and listing appeals

Appeals from county court decisions, other than probate or anything that is clearly Chancery, are assigned to Queen's Bench. Certain appeals are assigned only to Chancery, including bankruptcy and VAT tribunal appeals. An appeal from the decision of a Queen's Bench master is assigned to Queen's Bench and that of a Chancery master to Chancery.

Due dates for documents are entered in a diary which is checked daily. If the documents have not been provided by the specified date, the section manager decides whether the case should be put in the dismissal list. A High Court judge is in charge of each list and presides at dismissal hearings. The appellant attends the hearing to explain the reasons for their failure to produce the required documents or have their appeal struck out.

Unrepresented litigants have five days after applying for permission to request that their application is considered first on the papers. Otherwise, once all the required documents are received it is listed immediately for an oral hearing.

When a permission to appeal application is ready for consideration on paper by a judge, the case file is logged out to the listing sections in either the Queen's Bench or Chancery Divisions.⁸⁰ However, urgent matters, for instance appeals against eviction orders in housing matters, are sent directly to a High Court judge in the Chancery Interim Applications Court or the interim applications court of the Queen's Bench Division.

Unlike the Court of Appeal, listing in the High Court is not computerised. Chancery uses a manual diary while the Queen's Bench Division uses T-cards. The listing offices log permission applications on receipt. High Court judges in the Queen's Bench Division are often out on circuit and listing sends a number of applications requiring a paper decision

⁸⁰ Section 9 judges are not used for decisions on permissions to appeal either on paper or at an oral hearing.

(permission to appeal, extension of time, a transcript at public expense etc) to whoever becomes available. In contrast, Chancery distributes such paperwork to all High Court judges in turn, including newly-appointed judges. Judges generally have two weeks in which to arrive at a decision. The High Court Appeals Office photocopies the listing office allocation lists so it knows which judge is considering each permission application.

If permission is refused on paper, appellants have seven days in which to notify the court that they wish to renew their application at an oral hearing. The High Court Appeals Office liaises with listing and tries to get a hearing before the same judge that made the paper decision. This is not always possible, particularly in the case of Queen’s Bench judges because of their circuit commitments. Unless the reviewing judge directs otherwise, the hearing is listed for permission only and respondents are told the date but are not required to attend. Listing is reluctant to list cases for permission with appeal to follow if granted as this results in wasted judicial time if permission is refused.

The statistics on renewed applications for permission are as follows:

Table 14: Cases refused permission on paper in which the application was renewed at an oral hearing

Year	Number of PTA applications renewed at an oral hearing	Number where permission was granted	Number where the same judge was involved
2002	127	31	46
2003	100	16	22

If permission to appeal is granted, the High Court Appeals Office puts the appeal hearing into a warned list and writes to the parties. They are told that the appeal will enter the list on a particular date, usually about six weeks in the future, and they should contact the relevant listing office to make an appointment before the listing officer to obtain a hearing period. Appeals against a decision of a district judge or a master of the High Court can be listed before a section 9 judge.

There is no specific policy to prioritise appeals when scheduling High Court work but listing staff say that a one-day appeal will usually be listed more quickly than a one-day trial. Sometimes a judge will mark an appeal as urgent and in such cases the parties are asked to come to the listing office immediately after the decision so that the appeal can be listed right away.

The procedure for fixing hearing dates is different in Queen's Bench and Chancery. For appeals assigned to the Queen's Bench, the High Court Appeals Office fills out a T-card with case details, including the time estimate for the hearing. If both sides are represented, counsel's clerks will come in to fix the date, usually the week before the warned list begins. They must offer two consecutive days during the week of the warned list and the case floats for these two days. Listing has a diary and the case number is entered on the first day, together with the estimated length of the hearing. Listing tries to accommodate counsel's preference as to which of the two days the hearing will start.

The approach is slightly different if one of the parties is unrepresented (it is rare for both parties to be unrepresented). The details depend on whether the unrepresented party is the appellant or respondent. Unrepresented appellants are asked to send their available dates from the date of the warned list onwards. These are then offered to the other side to choose the most suitable. The hearing is fixed for that date - appeals involving a litigant in person are not floated. If the respondent is unrepresented, the appellant is asked to let the respondent know in writing when the appellant is coming into the office to fix the date and to tell the respondent to inform the court of any dates to avoid.

In the case of appeals to be heard in the Chancery Division, the High Court Appeals Office provides a list of cases entered into the warned list to Chancery listing which informs the parties by letter (and enters the case on an Excel spreadsheet, used to track waiting times). Either party can then take out an appointment to fix and put the other side on notice. At the appointment, the listing officer will verify the time estimate and arrange the hearing either in a three day window or, if circumstances dictate, a fixed date.

Queen's Bench Appeal bundles are kept in the listing office and Chancery Appeal bundles are retained in the High Court Appeals Office. Queen's Bench appeal bundles are kept in the listing office and Chancery appeal bundles are retained in the High Court Appeals Office. The parties can make changes to their bundle up to the time it is sent to the judge on the afternoon of the day before the hearing. Otherwise, the bundle can be amended in court on the morning of the hearing.

Processing times

The High Court Monitor for January 2004 shows an average waiting time for appeals⁸¹ of 22.7 weeks from the set down date. Seventy-one per cent of cases had been waiting for

⁸¹ Permission hearings are not tracked in this way.

26 weeks or less (the target is 75 per cent) weeks and the oldest case had been in the system for 59 weeks.

RECAP figures for 2002 and 2003 show the following times for key stages in the appellate process:

Table 15: Average times for key stages in processing appeals at the High Court in the RCJ

KEY STAGE	YEAR			
	2002		2003	
	No of cases	Average time (days)	No of cases	Average time (days)
Set down to paper decision on application for permission to appeal	363	46.3	297	60.78
Set down to oral hearing on permission to appeal applications (excluding those refused on paper and then renewed)	244	117.36	221	87.68
Refusal of permission to appeal on paper to renewed application at oral hearing	120	74.34	85	67.88
Grant of permission by a HCJ at the RCJ to disposal	160	103.76	138	88.34
Grant of permission by a lower court to disposal	207	221.74	142	192.36

A1.3 Birmingham appeal centre

Staffing and workload

Birmingham County Court is one of the largest in the country. It has 180 staff (equivalent to 146 full-time staff) and is one of only two appeal centres in the Midland circuit (the other is at Nottingham).

Appeals work is carried out within the diary manager's office which has staff at span 4 and span 6 grades and a span 3 appeals clerk who is part-time and works 25 hours a week. Office staff acknowledge that only the appeals clerk has an in-depth understanding of the appeals process and that there are problems in covering for her in her absence.

Birmingham has a DCJ and a designated family judge. There is also a Chancery judge, a mercantile judge and a technology and construction court judge permanently based there. All are senior circuit judge positions.

A High Court civil judge sits for three to four weeks each term. There is also a permanent High Court family judge, sometimes supported by a second High Court judge, and visiting High Court judges in the Crown Court. High Court appellate work is mostly directed to this last group although cases can be held for a High Court judge visit or sent to Wolverhampton where a High Court judge also sits.

The following table draws on the information in a log of all appellate work maintained by the Birmingham DCJ:

Table 16: Number of appeals/applications for permission to appeal at Birmingham appeal centre

Year	To a circuit judge in the county court	To a High Court judge (or section 9 judge)
2002	165	48
2003	226	42

Forty-five of the 50 files we examined at Birmingham related to appeals against court orders: 26 were orders made at Birmingham, 13 at other courts and in the other six cases we could not determine the originating court. The other five appeals were from local authority housing decisions.

No statistics on representation are collected at regional appeal centres. In our sample, the appellant was unrepresented in 20 (40%) of Birmingham cases. It is not claimed that this figure, or those that follow for the other two appeal centres, accurately reflects the proportion of unrepresented appellants.

Lodging an appeal

Appellants' notices in all but Chancery cases⁸² are directed to the appeals clerk who decides whether or not to accept them. She reports that many litigants have problems in completing the notice correctly and estimates that about three or four out of 10 each week are wrong. She is often asked for advice at the public counter about how to complete the notice.

An appellant's notice lodged out of time is still accepted. Where possible, the litigant is asked to complete section 10 with an extension of time application. If the application is out

⁸² Chancery appeals are processed by one of the Chancery clerks but are handled in a similar fashion to other appeals.

of time and there is no application to extend the time, the DCJ will list the hearing for permission and to extend the time.

A notice will be accepted without a transcript of the judgment but the case will not generally be listed for an appeal, or permission with appeal to follow, until a transcript is obtained.

This court has not had problems in obtaining a copy of the order being appealed from the lower court. There can be a difficulty in determining the appropriate appellate court as orders do not identify the track to which the case is assigned or whether the order is final. Checking this is easy for Birmingham cases but otherwise the appeals clerk has to get the file or phone the originating court.

Each new appeal and application for permission to appeal case is entered into a manual appeal log. Fees are recorded in a fee-book along with the claim number, transaction number and list of documents filed.

Processing and listing appeals

Appeals against eviction orders are expedited and listed straight away. In other cases, the papers are sent to the DCJ for directions, even if the appeal lies to a High Court judge, as the DCJ can make directions as a section 9 judge. At this stage, there may be neither a transcript nor a bundle.

The DCJ produces an internal note on the inside of each file he reviews giving guidance and directions, for instance on how the case should be listed. He uses a computerised template which he has developed himself. If the case relates to an appeal lodged at another court, the DCJ will indicate whether he wants the file transferred. If so, the CASEMAN entry is also transferred and can be accessed by the appeals clerk (otherwise, only the court that created the CASEMAN entry can access or alter it).⁸³

The DCJ generally allows the appellant five weeks in which to obtain a transcript. The exception is appeals from a district judge which appear, on the face of it, to be without merit. These he may list straight away for an oral hearing without requiring a transcript. A district judge who refuses an application for permission to appeal in the lower court completes a form listing the reasons. This form may be sufficient for the DCJ to decide on

⁸³ The Court Service has indicated that CASEMAN records should not be transferred to appellate courts.

a permission application without the need for a transcript. If the transcript is not obtained in time, the appeals clerk checks with the court concerned to verify that an application has been made and, if so, the DCJ will extend the time allowed.

If the judgment has not been recorded, the DCJ tells the litigant to get the respondent's note of the judgment. The note should be agreed by both sides and approved by the judge. The DCJ will also decide on an application for the transcript to be provided at public expense.

The DCJ seldom makes a decision on an application for permission to appeal on the papers: he did so in only three of the 21 cases in our sample in which this option was available. It is equally rare at this court for a case to be referred to a High Court judge for a paper decision on permission: this happened in none of the cases in our sample. If permission is refused on paper, the appellant has seven days in which to apply for an oral hearing at which to renew the permission application.

If no paper decision is made, the DCJ will direct the case to be listed for an oral permission hearing before the appropriate level of judge. Respondents are always told the date of an oral hearing as a courtesy but they cannot claim the cost of attending a hearing that is listed only for permission to appeal.⁸⁴ The DCJ sometimes lists a hearing 'for permission with appeal to follow if granted' if there are reasonable grounds for an appeal; in such cases the respondent can claim the costs of attending if permission is refused.⁸⁵

If permission is not required or is granted, litigants have five weeks in which to lodge a bundle and cases are not listed until this has been received. At that point, the appeals clerk enters the details on CASEMAN, provided that she has the necessary access to the case record. On arrival, bundles are checked to ensure they contain the lower court order and a transcript of the judgment or suitable alternative. The appeals clerk keeps a diary of the dates when bundles are due. If they have not arrived, she goes back to the DCJ who issues an 'unless' order which allows the litigant seven to 14 days in which to file. There is no dismissal list of the kind operated at the RCJ.

A feedback document is completed by the judge hearing an appeal or application for permission to appeal and forwarded by the office to the district judge who made the order.

⁸⁴ CPR PD 52, para. 4.23.

⁸⁵ CPR PD 52, para. 4.24.

The work undertaken in relation to appeals is recorded on the Business Management System (BMS) used to monitor effort. Anything that is input to CASEMAN is also logged for entry on BMS. If a case from another court is not formally transferred so that the appeals clerk cannot access the CASEMAN record, she produces orders manually and these are also logged for BMS. This also applies to orders in appeals against local authority housing decisions.

Processing times

The average processing times for the 50 cases examined at Birmingham were as follows:

Table 17: Average times for key stages in processing appeals at Birmingham

KEY STAGE	No of cases	Average time (days)
Set down to paper decision on application for permission to appeal	3	19.0
Set down to review by DCJ (excluding those where a paper decision was made)	38	15.3
Set down to oral hearing on permission to appeal applications (excluding those refused on paper and then renewed)	29	60.5
Refusal of permission to appeal on paper to renewed application at oral hearing	1	35.0
Grant of permission by an appellate judge to disposal	11	23.9
Grant of permission by a lower court to disposal	3	61.3

An oral appeal hearing was held or the appeal settled by consent after permission had been granted or was not required in 24 Birmingham cases in our sample. The average time from set down to disposal in these cases was 82 days.

A1.4 Leeds appeal centre

Staffing and workload

Leeds is a combined court centre with 110 staff working on civil work. It is one of three appeal centres on the circuit, the others being at Newcastle and Sheffield. Appeals are processed by the diary manager's section which handles appeals for a number of county courts on the circuit where circuit judge availability is limited. County court listing staff comprise a span 4 and three span 3s, one of whom is part-time, and all deal with appeals.

In High Court listing there is one span 4 and two span 3s, including one part-timer, and again all deal with appellate work.

For appeals to either the county court or the High Court, appellants can lodge their appellant's notice at the court where the order was made or at Leeds. This does not accord with the requirement in CPR 52.4(2) that the notice should be lodged at the appeal court but the DCJ has adopted the practice on the grounds of improving customer service.

Appeals to a circuit judge are handled by the DCJ and three colleagues, one of whom is the DCJ at Bradford. Three circuit judges, including both DCJs, can sit as section 9 judges. Two Queen's Bench High Court judges visit Leeds for two weeks each term, known as the civil hearing period. Listing concentrates all High Court civil work, including appeals, during these two weeks.

Both the county court and High Court sections record all appeals received on spreadsheets from which the following figures are taken.

Table 18: Number of appeals/applications for permission to appeal at Leeds appeal centre

Year	To a circuit judge in the county court	To a High Court judge (or section 9 judge)
2002	98	27
2003	108	30

The source of these appeals was as follows:

Table 19: Source of appeals/applications for permission to appeal at Leeds appeal centre during 2002 and 2003

Source	To a circuit judge in the county court	To a High Court judge (or section 9 judge)
Leeds	92	24
Another court	114	32
Health Authority decision	0	1

Eighteen (36%) of our Leeds case sample involved an unrepresented appellant.

Lodging an appeal

On receipt of an appellant's notice, a member of staff checks that the relevant sections have been filled in, that the notice is signed and that the correct fee has been paid. At this point, there is never a transcript of the lower court's judgment available. In appeals to the county court, the notice is only accepted without a copy of the lower court order if it is a Leeds case (a copy of the order is then obtained from the files). If the appeal lies to the High Court, staff will accept the notice and ask the lower court for a copy of the order if the appellant has not been able to get it.

Appellants' notices lodged out of time or with mistakes or gaps are nevertheless accepted: 'we let the judge decide on how to deal with the issue'.

If the appellant's notice is lodged at the lower court, that court will check the notice and the fee and send out sealed copies of the notice to both parties and to Leeds, along with a copy of the order and the CASEMAN printout for the case. The CASEMAN record itself is not transferred as there may be other matters going on in the case. Leeds may copy the papers and serve on the respondent if the lower court has not done so. Even in a Leeds case where the CASEMAN entry can be accessed, the only information entered is that an appeal has been filed. Other details about the appeal are recorded on the spreadsheets referred to above. A manual weekly count of orders is carried out and combined with information extracted from the spreadsheets to provide data for entry to BMS.⁸⁶

Processing and listing appeals

The papers in both county court and High Court appeals are sent for review by the DCJ or his nominee. The DCJ lists the great majority for an oral permission hearing; he occasionally grants permission on the papers (in those cases where he has the power to do so) but he rarely refuses a permission application on paper. Some of his judicial colleagues make greater use of paper decisions, both to grant and refuse permission. A paper decision was taken in 22 (48%) of the 46 Leeds study cases where the issue was relevant.

In making directions the DCJ uses the civil directions template, an electronic tool which the DCJ has been involved in designing. His directions are then e-mailed to court staff. The

⁸⁶ Court staff point out that a section report produced from BMS gives a misleading picture of the amount of effort appellate work entails. It does not take account, for example, of time spent in calling people up to find out their availability for a hearing. Also Leeds deals with the Group's most time-consuming customers and this means spending much more time at the public counter.

appeals section of the template was being beta tested at the time of fieldwork and it is intended to make the template available to all judges who hear civil appeals.

A transcript is required in most cases although the DCJ dispenses with a transcript in small claims appeal where both sides are unrepresented. District judge judgments are taped and there are often audibility problems. However, the court has recently installed new equipment which gives better sound quality than previously. District judges announce each case and a list is provided to the transcriber to assist them in finding their way about the tape.

If the DCJ asks for the district judge's notes instead of a transcript, it is the court's responsibility to obtain them. That can be problematic if a deputy district judge presided. Even with appeals to the High Court, appellants often encounter problems with transcribers. For instance, it can prove difficult to get tapes released from the contractor who owns them. The easy route is to use the same contractor for transcription but sometimes solicitors want to use someone else. The diary manager has complained about this to the Court Service. On a few occasions, the judge has asked staff to write to chambers to get counsel's note. There can also be delays in getting judicial approval of the transcript (there is no target time for obtaining approval).

The DCJ gives a window of two to three weeks for hearings before a circuit judge to be listed. Where permission is required, the oral hearing is for permission only. In the case of appeals to the High Court, the oral hearing may be listed for permission with an appeal to follow if granted. If the appeal is against a district judge's order⁸⁷, a section 9 judge can hear the permission application and the appeal and the hearing is listed in the usual way. Hearings before a High Court judge are listed during the civil hearing period. At the time of our visit, the court's practice was to serve respondents with a copy of the appellant's notice but not to tell them the date of a hearing listed for permission only. However, new guidance⁸⁸ stipulates that respondents should be given notice of a permission hearing, although they are not required to attend unless the court so requests.

Where the appellant has difficulty in obtaining a transcript, the matter is referred to the DCJ who may give an extension of time and a new listing window.

⁸⁷ In Leeds a district judge can preside at a trial in a multi-track case with the consent of the parties or if the case has been released by the DCJ.

⁸⁸ CPR PD 52, para. 4.15.

Processing times

The average processing times for the 50 cases examined at Leeds were as follows:

Table 20: Average times for key stages in processing appeals at Leeds

KEY STAGE	No of cases	Average time (days)
Set down to paper decision on application for permission to appeal	22	38.2
Set down to review by DCJ (excluding those where a paper decision was made)	27	20.9
Set down to oral hearing on permission to appeal applications (excluding those refused on paper and then renewed)	20	46.1
Refusal of permission to appeal on paper to renewed application at oral hearing	2	115.5
Grant of permission by an appellate judge to disposal	21	57.3
Grant of permission by a lower court to disposal	2	189.5

An oral appeal hearing was held or the appeal settled by consent after permission had been granted or was not required in 24 Leeds cases in our sample. The average time from set down to disposal in these cases was 127 days.

A1.5 Manchester appeal centre

Staffing and workload

Manchester County Court has around 120 staff. As in the other two regional appeal centres in the study, the diary manager's office is responsible for processing appeals. Office staff comprise the manager who is span 6, a listing officer who is span 4 and three span 3s, one of whom is the appeals clerk who handles virtually all appellate work. She acknowledges that the work is procedurally complex and requires knowledge of CPR 52 and its associated Practice Direction. The listing officer deputises for her in her absence.

There are ten circuit judges hearing civil work at Manchester, including the DCJ. Some sit on civil cases only part of the time while others are full-time civil judges but cover other trial centres in the Manchester Group. Most appeals to a circuit judge are heard by the DCJ and in his absence, the work is mostly directed to his deputy.

The DCJ and three colleagues can sit as a section 9 judge to hear appeals from the order of a district judge in a High Court case. However, one of these is based at Salford and sits at Manchester only rarely. He would only take a High Court appeal from a district judge in an emergency.

There are two High Court judges sitting at Manchester at any time (and three if a family High Court judge is sitting). They are usually hearing crime and civil appeals work is channelled to them through the High Court listing officer who is a member of the Crown Court staff.

Statistics on appeals are not prepared on a regular basis. However, the following figures were supplied by the court:

Table 21: Number of appeals/applications for permission to appeal at Manchester appeal centre

Year	To a circuit judge in the county court	To a High Court judge (or section 9 judge)
2002	128	72
2003	114	51

In our examination of case files, 48 involved appeals against a court order: 37 of these orders were made at Manchester while 11 were made at another court in the circuit. Four of these were appeals to a circuit judge.

Lodging an appeal

Litigants in person often come to the public counter to collect an appellant’s notice and they are given advice about the appeals process. The court says it is content to assist appellants who bring back partially completed forms. This might include including an extension of time application for an appeal lodged out of time.

If the appeal is against a Manchester order, court staff obtain a copy of the order from the file, although there is often a delay because it takes five days to produce an order. If the appeal is against an order of another court, the appellant has to obtain a copy of the order from that court before the appeal can be lodged. This is to avoid the risk that the appeals are lodged in the wrong court.

The court accepts an appeal lodged without a transcript or lower court order. Appellants are given 28 days in which to obtain a transcript and are given dates by which other documents must be provided.

As elsewhere, new appeals are entered in a manual log. Progress is tracked not by an electronic spreadsheet but using the CASEMAN system. The appeals clerk creates a new case and appeal number on CASEMAN if the appeal is from the order of another court. She does not ask that court to transfer the CASEMAN record.

Eleven (22%) of the 50 cases we examined at Manchester involved an unrepresented litigant.

Processing and listing appeals

If the appeal is against eviction, the case is brought into court immediately. Otherwise, the papers are sent for review by a judge. The DCJ reviews all appeals to the county court. He will also look at appeals to the High Court if no High Court judge is available to review them. The DCJ has devised a number of proformas to assist the reviewing process for both county court and High Court appeals. These are completed by hand (although the DCJ also uses the electronic template referred to above) and attached to the front of the file. If the lower court has granted permission to appeal, or permission is not required, then the reviewing judge gives directions. If not, he reviews the application on paper and decides whether or not to grant permission to appeal. A decision was made on paper in 36 (84%) out of 43 study cases in which the permission of the appeal court was required.

If documents are not filed by the due date the case is brought to the attention of the judge who then issues an 'unless' order which, he says, concentrates the mind of the appellant. As in the other fieldwork areas, problems arise most frequently in obtaining a transcript of the judgment of the lower court. The process is not well understood: even solicitors do not realise they have to fill in a form to order a transcript, or else they think that all proceedings are automatically transcribed. Requests for transcripts are sent out by the court on the day they are received and the delays are considered to be mostly the fault of the firms that provide the transcription service, over which the court has no direct control. Complaints are received about individual firms but the court can only forward these to London. Some firms are considered to be better than others but the court cannot recommend a particular firm. Even when the transcription is completed, extra time is needed for the judge to approve it.

Other problems arise because the judgment may not have been taped or the taping equipment may have been faulty. If the parties were legally represented they can be directed to provide an agreed note of the judgment. If one of the parties is represented, they must supply a note free of charge. The biggest problems arise where neither party is

represented and there is no transcript.

The requirement for a transcript has been abandoned for small claims appeals because of the cost involved. The DCJ encourages district judges and deputies to keep a note throughout the hearing and this is usually sufficient for the purposes of an appeal.

The DCJ presides at most oral hearings for the renewal of a permission application that he has refused on paper: 'It helps that I have already set out a structure and the litigant can go away feeling that they have had their say'. However, no attempt is made to list a renewed application for permission before the High Court judge who refused on paper as the judge involved will probably no longer be available.

Oral hearings are mostly for permission only. Listings are only made for permission with appeal to follow if granted if there are implications for the overall timetable of the case and it is better to have the respondent there. As the DCJ points out, 'if you order the respondent to attend then it opens the door to an order for costs'. At the time of our visit, respondents were not notified by the court about a hearing for permission only, but this has now changed in light of the revised guidance in CPR PD 52.

If an appeal to a circuit judge is allowed, the district judge who made the order should get feedback about the reasons on a proforma. There is no feedback given if the appeal is dismissed. If a High Court judge hears an appeal, the judge below is supposed to receive a transcript but staff at Manchester say they have never seen it done. Although the Court Service has agreed that such feedback should be provided, there is no budget to cover the costs involved.

Processing times

The average processing times for the 50 cases examined at Manchester were as follows:

Table 22: Average times for key stages in processing appeals at Manchester

KEY STAGE	No of cases	Average time (days)
Set down to paper decision on application for permission to appeal	36	55.4
Set down to review by DCJ (excluding those where a paper decision was made)	6	34.3
Set down to oral hearing on permission to appeal applications (excluding those refused on paper and then renewed)	6	77.3
Refusal of permission to appeal on paper to renewed application at oral hearing	11	51.1
Grant of permission by an appellate judge to disposal	17	44.5
Grant of permission by a lower court to disposal	2	110.0

An oral appeal hearing was held or the appeal settled by consent after permission had been granted or was not required in 24 Manchester cases in our sample. The average time from set down to disposal in these cases was 95 days.

Appendix 2: List of topics used in judicial interviews

Questions for all High Court judge and Designated Civil Judge interviewees

1. The Bowman report set out the following objectives⁸⁹ for the reforms to appellate procedure:
 - e. reducing the time cases take to reach a hearing
 - f. reducing the length of the hearing
 - g. maintaining the quality of the decision-making
 - h. simplifying procedure
 - i. reducing cost
 - j. reducing the demand on the Court, the administration and the parties
 - k. producing a system which disposes of cases with no real prospect of success at the earliest possible stage
 - l. introducing greater certainty as to the cost and time.

What are your general views on whether the objectives have been achieved in respect of appeals now heard in the High Court / the county courts?

2. Has the introduction of a general requirement for permission to appeal been effective at filtering out unmeritorious appeals at an early stage in respect of High Court and county court appeals?
3. Do you have any comments on the quality of information available to litigants on the appeals process?
4. Some litigants in person are said to be subverting the intention of the rules by making a series of hopeless and specious applications relating to the same events. This is often done at public expense by litigants who qualify for fee exemption. Are civil restraint orders, as set out in the judgment in *Bhamjee v Forsdick and Others* [2003] EWCA Civ 1113, adequate to deal with the problem?
5. Would you like to see specific training for judges who hear appeals, particularly in relation to dealing with unrepresented litigants?

⁸⁹ Chapter 1, para. 37, 'Review of the Court of Appeal (Civil Division)' September 1997

6. Do you have any comments on the provision of feedback to judges on the outcome of appeals against their decisions?
7. Are there any other matters you would like us to explore during the course of the study?

Additional questions for DCJs

1. What proportion of your time is spent on appellate work? What has been the impact of accommodating appellate work within your overall workload?
2. What is your view about the resources (staff, IT, accommodation etc) made available to Appeals Centres for:
 - a. appeals to the High Court
 - b. appeals to a circuit judge from a district judge?
3. What information do you receive and what would you like to receive about the work of the Appeals Centre?
4. Do you have any concerns about the consistency of approach to appellate work across Appeals Centres?

Additional questions for all HCJs and LJs

1. Do you have any concerns about the consistency of approach to appellate work across Appeals Centres in respect of:
 - e. appeals to the High Court (including the High Court at the RCJ)
 - f. appeals to a circuit judge in the county court?
2. Is there a need to coordinate the approach to appellate matters across tiers of court (for instance, in respect of fees, enforcing deadlines, bundle preparation, transcripts at public expense, procedures for litigants in person)?

3. What is your view about the resources available for appellate work in the High Court and county courts?

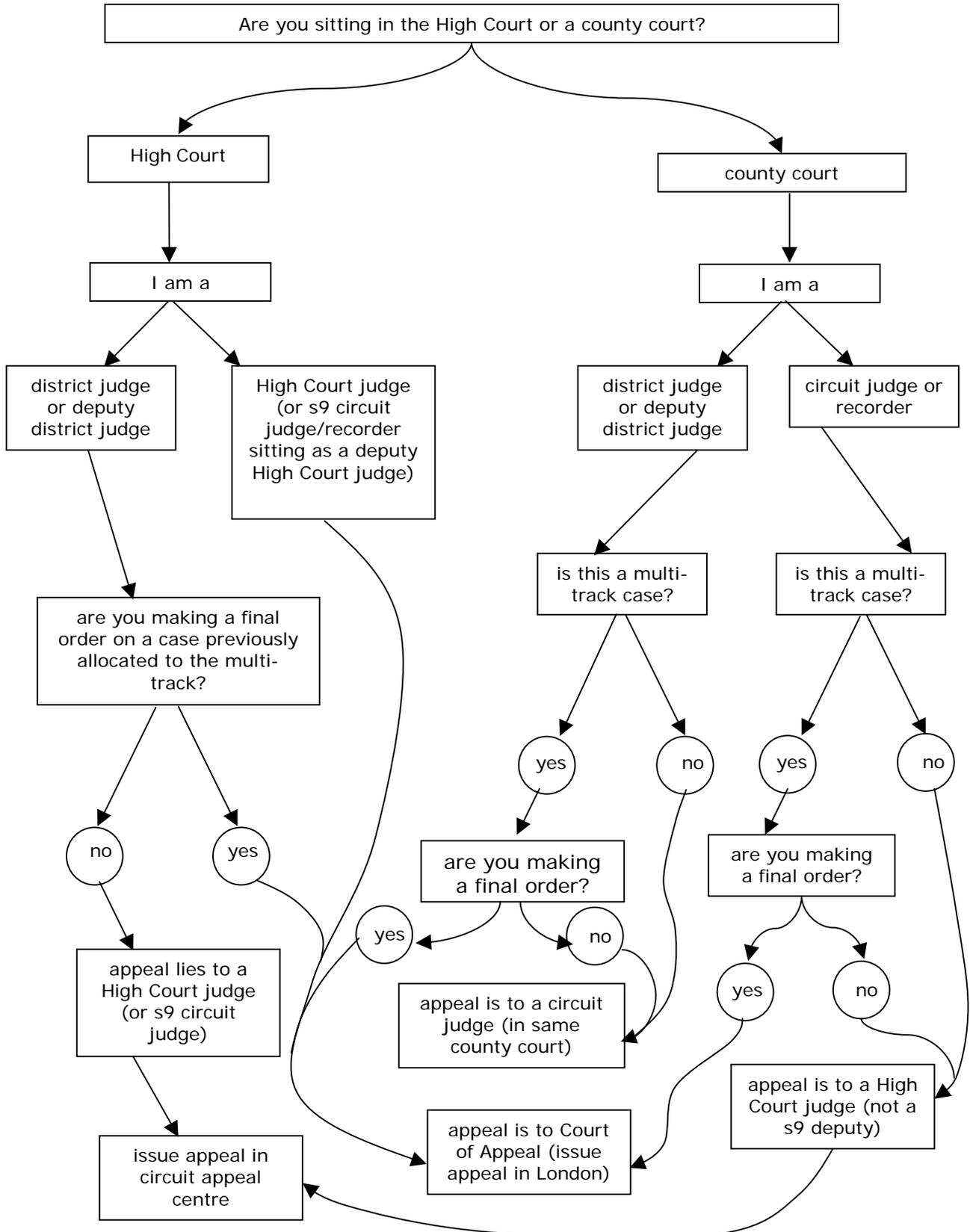
Additional questions for Presiding Judges and LJs

1. What information do you receive and what would you like to receive about the work of Appeals Centres?
2. What is your view about the resources available for appellate work in Appeals Centres?

Appendix 3: Destination of appeals flowchart

To assist judges including appeal information on their orders

(Reproduced by kind permission of HHJ Alistair MacDuff, Designated Civil Judge)



Appendix 4: The Appellant's Notice

Appellant's Notice

In the

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.



For Court use only	
Appeal Court Reference No.	
Date filed	

Section 1 Details of the claim or case

Name of court

Case or claim number

Names of claimants/ applicants/ petitioner

.....

.....

.....

Names of defendants/ respondents

.....

.....

.....

In the case or claim, were you the
(tick appropriate box)

- claimant applicant petitioner
 defendant respondent other (please specify) _____

Section 2 Your (appellant's) name and address

Your (appellant's) name _____

Your solicitor's name _____ (if you are legally represented)

Your (your solicitor's) address

reference or contact name

contact telephone number

DX number

Section 3 Respondent's name and address

Respondent's name _____

Solicitor's name _____ *(if the respondent is legally represented)*

Respondent's (solicitor's) contact address

reference or contact name

contact telephone number

DX number

Details of other respondents are attached Yes No

Section 4 Time estimate for appeal hearing

Do not complete if appealing to the Court of Appeal

Days Hours Minutes

How long do you estimate it will take to put your appeal to the appeal court at the hearing?

--	--	--

Who will represent you at the appeal hearing?

Yourself Solicitor Counsel

Section 5 Details of the order(s) or part(s) of order(s) you want to appeal

Was the order you are appealing made as the result of a previous appeal? Yes No

Name of Judge

Date of order(s)

If only part of an order is appealed, write out that part (or those parts)

Was the case allocated to a track? Yes No

If Yes, which track was the case allocated to? small claims track fast track multi-track

Is the order you are appealing a case management order? Yes No

Section 6

Permission to Appeal

Has permission to appeal been granted?

Yes complete box **A**

No complete box **B**
if you are asking for permission or it is not required

A

Date of order granting permission _____

Name of judge _____

Name of court _____

B

I do not need permission

I _____
appellant('s solicitor)seek permission to appeal the order(s) at **section 5** above.

Are you making any other applications? Yes No
If Yes, complete section 10

Is the appellant in receipt of legal aid certificate or a community legal service fund (CLSF) certificate? Yes No

Does your appeal include any issues arising from the Human Rights Act 1998? Yes No

Section 7

Grounds for appeal

I (the appellant) appeal(s) the order(s) at **section 5** because:

My skeleton argument is:-

set out below

attached

will follow within 14 days of filing this notice

I (the appellant) will rely on the following arguments at the hearing of the appeal:-

Section 9

What decision are you asking the appeal court to make?

I (the appellant) am (is) asking that:-

(tick appropriate box)

the order(s) at **section 5** be set aside

the order(s) at **section 5** be varied and the following order(s) substituted :-

a new trial be ordered

the appeal court makes the following additional orders :-

I wish to make an application for additional orders

in this section

in the Part 23 application form (N244) attached

Part A

I apply (the appellant applies) for an order (a draft of which is attached) that :-

because :-

Part B

I (we) wish to rely on :

evidence in Part C

witness statement (affidavit)

Part C

I (we) wish to rely on the following evidence in support of this application:-

Statement of truth

I believe (the appellant believes) that the facts stated in section 10 are true.

Full name _____

Name of appellant's solicitor's firm _____

signed _____ position or office held _____

Appellant ('s solicitor)

(if signing on behalf of firm or company)

Section 11**Supporting documents**

If you do not yet have a document that you intend to use to support your appeal, identify it, give the date when you expect it to be available and give the reasons why it is not currently available in the box below.

Please tick the papers you are filing with this notice and any you will be filing later.

- Your skeleton argument (*if separate*)
 - A copy of the order being appealed
 - A copy of any order giving or refusing permission to appeal together with a copy of the reasons for that decision
 - Any witness statements or affidavits in support of any application included in this appellant's notice
 - A copy of the legal aid or CLSF certificate (*if legally represented*)
 - A bundle of documents for the appeal hearing containing copies of your appellant's notice and all the papers listed above and the following:-
 - a suitable record of the reasons for the judgment of the lower court;
 - any statements of case;
 - any other affidavit or witness statement filed in support of your appeal;
 - any relevant transcript or note of evidence;
 - any relevant application notices or case management documents;
 - any skeleton arguments relied on by the lower court;
relevant affidavits, witness statements, summaries, experts' reports and exhibits;
 - any other documents ordered by the court; (give details)
-
- in a second appeal, the original order appealed, the reasons given for making that order and the appellant's notice appealing that original (first) order
 - if the appeal is from a decision of a Tribunal, the Tribunal's reasons for that decision, the original decision reviewed by the Tribunal and the reasons for that original decision

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed

Appellant ('s Solicitor)

DCA Research Series No. 7/05

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

Major changes to the system of civil appeals were introduced in May 2000 when Part 52 of the Civil Procedure Rules was implemented. Previous research by the authors looked at the impact of these changes on the Civil Division of the Court of Appeal. This study complements that work by examining how appellate work is handled in the High Court and the county courts. The research focuses on the High Court Appeals Office at the Royal Courts of Justice and three regional appeals centres. It draws on the views of judges, lawyers, litigants and court staff and on an examination of files relating to appeals. The findings should assist in developing systems that meet the needs of litigants and respond effectively to the demands of appellate work.

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