

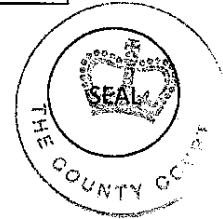
Appellant's notice
(Small Claims Track only)

For Court use only	
Appeal Reference no.	
Date filed	

I wish to appeal against an order made in the County Court

I was the Claimant Defendant

Note: In the appeal you will be known as the 'appellant'



Section 1 Details of the claim

Claim number Help with Fees – Ref no. (if applicable)

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Name(s) of claimant(s)

Name(s) of defendant(s)

Section 2 Details for the appeal

What is the name of the Judge who made the order(s) you are appealing?

On what date was the order(s) you are appealing made?

If only part of an order is appealed please say which numbered paragraphs of the order you wish to appeal against or if they are not numbered, set out the words of that part of the order.

Section 3**Permission to appeal**

Has permission to appeal been granted?

Yes No

If permission to appeal has **NOT** been granted please tick the box opposite.

I ask for permission to appeal

Section 4**Other information required**

Does your appeal include any issues arising from the Human Rights Act 1998?

Yes No

Are you asking for a stay of execution of any judgment against you? (If granted this means that no further action will be taken on the judgment until your appeal has been dealt with)

Yes No

If you answer 'Yes' you must complete Section 7 Part A

Will you be lodging this appellant's notice with the court within 21 days of the date on which the Judge made his decision?

Yes No

If you answer 'No' you must complete Section 7 Part B

Are you making any other applications?

Yes No

If you answer 'Yes' you must complete Section 7 Part C

Section 5**Grounds for appeal**

Please state in numbered paragraphs, why you say that the Judge who made the order you are appealing against was wrong.

1. The Judge held that whilst the Claimant had a reasonable prospect of success, they could not be considered to have acted promptly in relation to the Order dated 12/09/2017 in that the Solicitors sat on the order for 3 days before attending to it and that this was a serious breach.
2. It is, in part, irrelevant whether Gladstones Solicitors "sat" on the Court Order or not (although this is denied). I refer to rule 23.7 and Practice Direction 23A(4)(1) which states that a copy of the application notice must be served as soon as practicable after it is filed; and must be served at least 3 days before the court is to deal with the application (the hearing). The Order dated 12/09/2017 stated that "upon reading a letter/application from the Defendant dated 05/09/2017" and "the Defendant's 'application'". I respectfully submit:-
 - i) the Claimant did not receive a copy / was not served with a copy of that letter / application and therefore it could not have made representations;
 - ii) The order was made on 12/09/2017 but not typed to 13/09/2017. Under CPR 6.26 this Order would not have been deemed served until 15/09/2017

(which was a Friday). It is irrelevant when the Order actually arrived, it is when the document is legally treated as having arrived (F&M Bunkering Services Ltd v Bulgarian River Shipping & Ors (2012) EWHC B26 (Comm) (23 November 2012). The hearing was listed for the following Monday ~~18/09/2017~~. I refer to CPR 2.8 example (i) which relates to Notices of Applications. This states that Notice of an application must be served at least 3 days before the hearing. The example used states that a hearing was listed for Friday ~~20/10~~ and the last date of service is Monday ~~16/10~~. If you apply the above to this case, the last date for service was ~~18/10/2017~~ (the Order wasn't drawn until ~~13/09/2017~~) as this would have allowed 3 clear days before the hearing. Therefore the Order should have been typed on ~~08/09/2017~~ for the hearing to go ahead on ~~18/09/2017~~. As such, the hearing had not been listed in accordance with the Civil Procedure Rules as at least 3 days had not passed before the hearing was listed; it was listed prematurely. The hearing should have been listed for ~~21/09/2017~~ (allowing for the 2 business days deemed serve).

- iii) Had the hearing been listed correctly and there was no attendance from the Claimant then I would understand why the application may not have succeeded, but this is not the case in this Claim.
 - iv) The application is also in quotation marks on the Order which leads the Claimant to believe that an application was, in fact, not made and therefore no court fee for the application was deducted. An application fee should have been paid by the Defendant in order for his costs 'application' to be dealt with. No proof was provided to suggest this. If no application fee was paid then the hearing should not have been listed.
3. The Judge also went on to say that there was no proof that the hearing fee had, in fact, been paid on ~~17/07/2017~~. A copy of the email to the Court was provided. The email also requested the Court debit the Claimant's solicitors PBA account with the appropriate fee amount. My Firm issue on thousands of Claims and therefore it would be unreasonable, ridiculous and time consuming to suggest they double check that the PBA account had been debited for each hearing fee. Gladstones Solicitors Ltd requested the Court debit their PBA account for the application dated ~~24/07/2017~~ and as it was listed for a hearing, I assume the court debited the account accordingly. As such, I see no reason as to why they would not have debited the account with the hearing fee especially in light of the fact the emails were sent to the same email address.
 4. Gladstones Solicitors did not sit on the Order for 3 days. Gladstones Solicitors has processes in place which deal with incoming post. The Order typed ~~13/09/2017~~ was received on ~~14/09/2017~~ however was not scanned to the file and seen by a member of staff until ~~18/09/2017~~ (the date of the hearing).
 5. The court already admitted the Claimant had a reasonable prospect of success.

Section 6

What are you asking the Appeal Court to do?

I am asking the Appeal Court to:-
(tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

- order a new hearing

Section 7

Other applications

Complete this section **only** if you are asking for orders **in addition** to the order asked for in Section 6

PART A

I apply for a stay of execution because:

By way of Order dated 18/09/2017 the court ordered the Claimant pay the Defendant the sum of £1500.00, however, the Claimant has applied to have that order set aside (which was heard on 04/01/2018) which is the Order that is being appealed. If the appeal is successful the Defendant's costs will not need to be paid.

PART B (tick only one box)

I do not need an extension of time for filing my appellant's notice because it has been filed within the extended time granted by the District Judge

I apply for an extension of time for filing my appeal notice because *(Set out the reasons for the delay. You must also set out in Section 8 what steps you have taken since the District Judge's decision)*

PART C

I apply for an order that:

Because

Section 8

Evidence in support

In support of my applications in Section 7, I wish to rely upon the following evidence:

Statement of Truth

I believe (The appellant believes) that the facts stated in Section 8 are true.

Signed

Appellant ('s solicitor)

Position or office held : Solicitor

(if signing on behalf of firm or company)

Full name:

HELEN COOK

Name of appellant's solicitor's firm: Gladstones Solicitors Ltd

Section 9

Documents in support of your appeal

Note: You must send to the court with this appellant's notice a copy of the order being appealed and where permission to appeal has already been considered by the court, a copy of Form N460 containing the reasons for the decision allowing or refusing permission to appeal.

Please note that your appeal cannot be processed until the court has received the document(s)

I attach *(please tick)*

a copy of the Order being appealed

and

a copy of Form N460 *(see note above)*

Signed 
(Appellant/Appellant's Solicitor)

Dated : 