



CIVIL APPEALS OFFICE
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DLA Piper UK LLP
1 St Paul's Place
Sheffield S1 2JX

DATE: 31-10-2022

YOUR REF:PXB/366530/239

OUR REF: CA-2022-001066

Linked Case References: CA-2022-001105

THIS LETTER IS THE “LISTING WINDOW NOTIFICATION LETTER”

THIS LETTER CONTAINS IMPORTANT DIRECTIONS FOR THE PREPARATION OF THE APPEAL AND MUST BE READ CAREFULLY BY BOTH THE APPELLANT(S) AND RESPONDENT(S)

Dear Sir/Madam,

Re: National Highways Limited v Persons Unknown & Ors

The appellant's notice in respect of the order of Mr Justice Bennathan dated 09-05-2022, for which permission to appeal was granted by the Court of Appeal on 27-10-2022 will now proceed as an appeal.

What you must do next:

- 1. Where permission to appeal was granted by the Court of Appeal at an oral hearing, the transcript of judgment must be ordered from the transcribers within 14 days and confirmation that the judgment has been ordered must be sent to this Office.**
- 2. The appellant must complete the enclosed party details form and return it to this office within 4 days (see para 2);**
- 3. Respondent's Notice (if relied upon) must be filed (see para 3);**
- 4. The appellant must serve a proposed bundle index on every respondent (see para 8);**
- 5. The appellant must file and serve on every respondent the Appeal Questionnaire (see para 6);**
- 6. The respondent must agree the contents of the appeal bundle or serve a revised bundle index (see para 8);**
- 7. The appellant must file and serve an appeal skeleton argument (but see para 9 for guidance);**

8. The respondent must file a skeleton argument (see paras 3 or 4).

1. Sending Documents to the Civil Appeals Office (other than bundles): Documents must be filed using the E-filing service in accordance with paragraph 2.2J of Practice Direction 51O. Guidance on using the E-Filing service can be found at <https://www.gov.uk/guidance/hmcts-e-filing-service-for-citizens-and-professionals>.

2. Party Details Form: The enclosed Party Details form must be completed and returned to this Office within 4 days of receipt showing details of any changes or new information. You are reminded that you are required to inform the Court immediately of any change in address or in representation by advocate or alteration in the address, telephone number or reference of solicitors on record.

3. Respondent's Notice: A respondent's notice (Form N162) must be filed if:

- the respondent seeks to vary the lower court order, in which case permission to cross appeal is required; or
- the respondent wishes to argue that the lower court order should be upheld for different or additional reasons to those given by the lower court. Permission to cross appeal in such circumstances is not required.

There is very limited time in which to file a respondent's notice. CPR 52.13(4)-(6) sets out the time limits for filing and serving a respondent's notice. In the event that the respondent's notice is not filed within the relevant time limit, an application for an extension of time must be made in the respondent's notice itself and full reasons given.

If the respondent's skeleton argument is not included within or filed with the respondent's notice, it should be filed and served within 14 days of filing the notice. It should be labelled the "respondent's appeal skeleton argument". Please see paragraph 9 below regarding compliance with CPR PD 52A and 52C in relation to skeleton arguments.

4. Respondent's Notice is not relied upon: If the respondent wishes the Court of Appeal to uphold the lower court order for the same reasons relied upon by the lower court, a respondent's notice is not required.

A respondent who does not file a Respondent's Notice will not be able to rely on any additional arguments at the appeal hearing which were not raised in the lower court, unless the Court gives permission.

Even when a Respondent's Notice is not filed, a represented respondent must provide a skeleton argument for the Court in all cases where he proposes to address arguments to the Court. Respondents acting in person are not required to, but are strongly encouraged to prepare a skeleton argument which responds to any appellant's skeleton argument. Where a respondent does not file a Respondent's Notice, a skeleton argument should be filed and served on every other party to the appeal by 05 Dec 2022. It should be labelled the "respondent's appeal skeleton argument". Please see paragraph 9 below regarding compliance with CPR PD 52A and 52C in relation to skeleton arguments.

5. Review of the Case: Promptly after the grant of permission to appeal and before the appeal skeleton arguments are due to be filed, the parties must review the case with a view to resolution or refinement of the issues to be determined at the appeal hearing. A further review with the same purpose should be conducted by the parties after the appeal skeleton arguments have been served and by 19 Dec 2022. See CPR PD 52C, paragraph 27(6) and (10).

6. Appeal Questionnaire: The Appeal Questionnaire must be completed and returned to this Office

by 14 Nov 2022. Part 1 is to be completed, signed by you and endorsed with the relevant fee of £1292; Part 2 is to be completed by your advocate, a photocopy sent to the advocate(s) for the respondent(s), and the original returned to this Office by this deadline. Your advocate must be told to advise the Court immediately of any alteration needed to the time estimate in the future. If a Lord Justice has given a time estimate for the hearing of the appeal and your advocate disagrees with it, he must explain why in Part 2 of the Questionnaire. If the respondent disagrees with the time estimate provided by the appellant, the respondent must file at the Civil Appeals Office and serve on every other party his own time estimate no later than 7 days after the service of the appellant's Appeal Questionnaire.

7. Documents to be added to the Core Bundle: You should add the following documents to the core bundle relied upon at the permission to appeal stage. The documents should be lodged in the Civil Appeals Office with a revised index. The documents are:

- a copy of any orders made in the Court of Appeal;
- where the order was made at an oral hearing, the transcript of any judgment which was given;
- the respondent's notice (if any);
- the appellant's replacement skeleton argument;
- the respondent's replacement skeleton argument.

8. Agreeing Appeal Bundle: In accordance with CPR PD 52C paragraph 21, the appellant must serve a proposed bundle index for the core bundle and any supplementary bundle on every respondent by 14 Nov 2022. The index/indices should separately and precisely identify, by description and date (if applicable), every document to be included in the bundle(s).

By 19 Dec 2022 the respondent(s) must either agree the contents of the core appeal bundle and any supplementary appeal bundle or notify the appellant of the documents that the respondent considers should be included in, or removed from, the appeal bundle by sending a revised index to the appellant. If no agreement is reached in relation to the inclusion of a particular document, then it must be placed in an unagreed documents bundle prepared by the party who proposed its inclusion. The bundle must be indexed and paginated and must be clearly labelled as an unagreed documents bundle.

Please ensure that paper copy bundles show the name of the case (which can be abbreviated), the name of the bundle and the volume number (where relevant) on the spine in at least 14 point font. If there are multiple volumes please also show the tabs or pages numbers in each volume on the spine.

Supplementary Bundle: If any agreed supplementary bundle is over 350 pages an application for permission to rely on it must be made to the court (see CPR PD 52C paragraph 27(11)). An application for permission to rely on a supplementary bundle in excess of 350 pages should be made as soon as the contents of the supplementary bundle are agreed and not when the bundles are subsequently being filed and served 6 weeks prior to the appeal hearing. Such an application should be accompanied by the proposed agreed index for the supplementary bundle. It is not necessary to file the entire supplementary bundle in support of the application unless you are directed to do so by the court after the application is filed.

9. Appellant's appeal skeleton argument: In accordance with CPR PD 52C paragraph 21, the appellant must file and serve on every other party an appeal skeleton argument by 14 Nov 2022. An appellant who wishes to rely at the appeal on the skeleton argument filed in support of the application for permission to appeal, need not re-file the skeleton argument at this stage but must

confirm by 14 Nov 2022 to every other party to the appeal and the Civil Appeals Office that the appellant intends to rely on the permission to appeal skeleton argument at the appeal. It must be served on every other party to the appeal by the above date if it has not been served already.

Your attention is drawn to CPR PD 52C paragraph 31(1) which provides that a skeleton argument must not normally exceed 25 pages (excluding front and back sheets) and be printed on A4 paper in not less than 12 point font and 1.5 line spacing. It should be labelled as the “appellant’s appeal skeleton argument”. Further requirements as to the content of skeleton arguments can be found at CPR PD 52A paragraph 5. Please note that any skeleton argument which fails to comply with CPR 52C paragraph 31.1 will be returned by the Civil Appeals Office. If re-filed out of time it must be accompanied by a formal application under part 23 seeking permission to rely on it.

Documents must be filed electronically via the E-filing service.

10. Filing and Serving the Appeal Bundle: Six weeks before the appeal hearing and subject to any direction of the court, the appellant must file the appropriate number of core bundles and any supplementary bundles with the court and serve a copy on all other parties to the appeal. **Pursuant to paragraph 14.4 Practice Direction 51O the Court orders that electronic bundles be filed via the E-Filing Service in addition to paper format bundles.** Bundles filed electronically must be formatted as one PDF document with bookmarks as appropriate for each document and with section headings within the document, unless its size exceeds 50 megabytes, in which case it can be divided into up to 10 documents of that size, each bearing bookmarks as appropriate (see paragraphs 10.3 and 14.1 Practice Direction 51O). If the filing of electronic bundles causes difficulty you should write to the court and further directions will be given. Further notification regarding the filing and serving of appeal bundles will be given when the appeal is listed.

11. Default: If you do not comply with the requirements set out in this letter without good reason, the case is likely to be dismissed with costs.

12. Extensions of Time: For extension of time to file a respondent’s notice, see paragraph 3 above. If you are unable to comply with any other time limit and there are good reasons for requesting an extension of time, you should write, before the time limit has expired, to the Civil Appeals Office setting out the reasons and the length of the extension sought. Your request for an extension of time should be copied to the other parties to the appeal (see CPR 39.8(4)). You will then be informed whether or not an extension has been granted.

If an extension of time is granted, you must inform all other parties to the appeal of the extension obtained and the new time limit.

13. Listing: In order to ensure, so far as possible, that cases are heard in their proper place in the list, each appeal is given a target date known as its hear-by date. The hear-by date assigned to this case is 02-10-2023. We aim to list this appeal before 3 Lords Justices by 02-10-2023. Where the application for permission to appeal has been significantly delayed, the listing window may have passed. If this is the case, the appeal will be listed as soon as possible taking into account the constraints of the list and term dates. Where a hear-by date falls in or near the Long Vacation it may be abridged or extended of the Court’s own initiative, and no application for that purpose need be made. These dates are subject to any alternative directions given by the Court.

14. Video Conferencing: The court offers video-conferencing facilities and encourages parties to use them where appropriate. Video-conferencing provides greater access for those living or practising out of London and for those with disabilities. Details are available on the website at www.justice.gov.uk/courts/video-conferences. Those without access to the internet should contact the Civil Appeals Listing Office at Room E306, Royal Courts of Justice, telephone 020 7947 6195/6917.

15. Access to Practice Direction: Further information about procedures for appealing in the Court of Appeal (Civil Division) can be found in Practice Direction 52C which supplements Part 52 of the Civil Procedure Rules. The Practice Direction can be found at "www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_part52". It is also available for inspection at the Civil Appeals Office Registry counter in Room E307 of the Royal Courts of Justice.

16. Disposal of Bundles: Paper format bundles lodged with the Court will not be returned to the parties but will be destroyed in the confidential waste disposal system at the conclusion of the proceedings and without further notification.

All parties filing bundles with the Court must retain a copy of the bundle:

- a) for their own use in the proceedings; and
- b) as an essential back up should the court bundle(s) be accidentally misplaced, damaged or destroyed; and
- c) for the purposes of any onward appeal.

The parties should ensure that bundles filed with the Court do not contain original material such as original documents, photographs, recording media etc. If it is necessary to use original material, *copies* should still be included in the court bundles and the originals should be brought to the hearing. Parties must ensure they retrieve any original material handed up to the judge before leaving court. Any original material placed in the court bundle will be destroyed with the court bundle at the conclusion of proceedings (see paragraphs 27(14) and (15) of Practice Direction 52C). Electronic bundles will be retained for a period of two months following judgment after which they may be deleted (see paragraph 14.5 Practice Direction 51O).

17. Court of Appeal Mediation Scheme: The Court of Appeal is keen to encourage settlement of appeals and is able to provide access to means of alternative dispute resolution (ADR). You should read and consider the enclosed Form 56A and discuss the matter with your client.

If, by 30 Nov 2022, we have received written confirmation on behalf of all parties to the appeal that they agree to enter the Court of Appeal Mediation Scheme then mediation can proceed. Otherwise, after the expiry of that time limit, the appeal must be proceeded with in accordance with the timetable set out above.

Yours faithfully,

Manpreet Singh
(Case Progression Manager - Section A2)
civilappeals.cmsa@justice.gov.uk

Enc: Forms 235 237A 237B 56A 56C

In accordance with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 that came into effect from 25th May 2018 if you would like to know more about how HMCTS handles your personal data please visit our website at www.gov.uk/hmcts. If you require a hard copy of the privacy notice please contact the court.

With effect from 1st February 2018 the Case Progression Section will only answer the phones between the hours of 10am – 12pm and 2pm – 4pm.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE CIVIL APPEALS OFFICE REGISTRY
 BY POST OR DX WITHIN 4 DAYS OF RECEIPT
PLEASE DO NOT RETURN THIS FORM BY FAX OR EMAIL UNLESS REQUESTED TO DO SO BY THE COURT

Court of Appeal Reference: **CA-2022-001066**

Title: National Highways Limited v Persons Unknown & Ors

APPELLANT		RESPONDENT	
NAME		NAME	
Address <i>(if in person)</i>		Address <i>(if in person)</i>	
Tel.No. <i>(if in person)</i>		Tel.No. <i>(if in person)</i>	
e-mail address		e-mail address	
SOLICITORS		SOLICITORS	
DX		DX	
Address		Address	
Tel.No.	Fax No.	Tel.No.	Fax No.
e-mail address		e-mail address	
Reference		Reference	
LONDON AGENTS		LONDON AGENTS	
DX		DX	
Address		Address	
Tel.No.		Tel.No.	
e-mail address		e-mail address	
Reference		Reference	
ADVOCATE Junior		ADVOCATE Junior	
DX	Tel.No.	DX	Tel.No.
e-mail address		e-mail address	
Leading		Leading	
DX	Tel.No.	DX	Tel.No.
e-mail address		e-mail address	

Any Appellant's Legal Aid Certificate which is relevant and not already submitted must be attached to this Form

YOU MUST NOTIFY THIS OFFICE IMMEDIATELY IF ANY OF THESE DETAILS CHANGE

IF THERE ARE OTHER APPELLANTS/RESPONDENTS WHO WILL BE SEPARATELY REPRESENTED PLEASE PROVIDE FULL DETAILS ON ADDITIONAL SHEETS

APPEAL QUESTIONNAIRE PART 1

CIVIL APPEALS OFFICE
REGISTRY
Room E307
Royal Courts OF Justice
Strand, London WC2A 2LL

DX 44456 STRAND

Court of Appeal Reference: **CA-2022-001066**

National Highways Limited v Persons Unknown & Ors

THE COMPLETED QUESTIONNAIRE MUST BE SERVED ON ALL RESPONDENTS
AND THE ORIGINAL RETURNED TO THE CIVIL APPEALS OFFICE STAMPED WITH THE RELEVANT FEE
BY 14 Nov 2022

PLEASE DO NOT RETURN THIS FORM BY FAX UNLESS REQUESTED TO DO SO BY THE COURT

(1) I/We, solicitor(s)* for the appellant(s), HEREBY UNDERTAKE to provide 3 additional appeal bundle(s) for the use of the Court in accordance with CPR PD 52C para 21.

(2) I/We, solicitor(s)* for the appellant, HEREBY CERTIFY that a completed copy of Part 2 of this questionnaire was served on each of the respondents on _____
and a copy of the proposed bundle index was served on the respondent(s)
on _____

Statement of Truth: I believe that the facts stated in the certificate(s) of service contained within this document are true.

*This form should be signed personally by the Solicitor with the conduct of the case for the Appellant(s),
or by the Appellant if acting in person*

Signed

Date

Name

Telephone

(in block capitals)

Firm

DX

(in block capitals)

**If you are acting in person, please delete as appropriate*

APPEAL QUESTIONNAIRE PART 2

DX 44456 STRAND

CIVIL APPEALS OFFICE
LISTING OFFICE
Room E306
Royal Courts OF Justice
Strand, London WC2A 2LL

Court of Appeal Reference: **CA-2022-001066**

National Highways Limited v Persons Unknown & Ors

THE COMPLETED QUESTIONNAIRE MUST BE SERVED ON ALL RESPONDENTS
AND THE ORIGINAL RETURNED TO THE CIVIL APPEALS OFFICE
BY 14 Nov 2022

PLEASE DO NOT RETURN THIS FORM BY FAX UNLESS REQUESTED TO DO SO BY THE COURT

I/We, Advocate(s) for the Appellant(s), HEREBY CERTIFY that in my/our opinion the hearing of this case is likely to occupy the time of the Court for hours days.

All Advocates instructed for the Appellant(s) should sign

Signed	Signed
_____	_____
Name	Name
_____	_____
<i>(in block capitals)</i>	<i>(in block capitals)</i>
Date	Date
_____	_____
Telephone	Telephone
_____	_____
DX	DX
_____	_____

I/We, Advocate(s) for the Respondent(s), HEREBY CERTIFY that in my/our opinion the hearing of this case is likely to occupy the time of the Court for hours days.

All Advocates instructed for the Respondent(s) should sign

Signed	Signed
_____	_____
Name	Name
_____	_____
<i>(in block capitals)</i>	<i>(in block capitals)</i>
Date	Date
_____	_____
Telephone	Telephone
_____	_____
DX	DX
_____	_____

PLEASE NOTE

- (1) The Respondent(s)' Advocate(s) need not submit an estimate unless they disagree with the estimate given by the Advocate(s) for the Appellant(s). If a Respondent does not submit an estimate within 7 days of receipt the Civil Appeals Office will assume that the Appellant(s)' Advocate(s)' time estimate is agreed
- (2) Any change in the Advocate(s)' estimate of the length of hearing must be notified in writing to the Listing Office immediately.
- (3) A change or addition of Advocate must also be notified in writing to the Listing Office, including the additional or substitute Advocate's name, DX address and telephone number.
- (4) The time estimate must be that of the advocate who will argue the appeal. It should exclude the time required by the Court to give judgment