



## Litigation Group

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## COVER PAGE

To: Leigh Day & Co

From: Geraldine Haack

CC: [ ]

Your Ref: RS SB CWF

Our Ref: Q110934K/GEH/B5

Fax No: 020 7253 4433

Date: 17/11/2011

**SUBJECT: Cornwall Waste Forum v Secretary of State for  
Communities and Local Government  
CO/6088/2011 CO/6088/2011**

Total number of pages including this cover page: [ 26 ]

### MESSAGE:

Please find enclosed sealed Notice of Appeal

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DIVERSITY IN PEOPLE



## Litigation Group

**Treasury Solicitor's Department**  
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Please Quote: Q110934K/GEH/B5  
Your Reference: RS SB CWF

17 November 2011

Dear Sirs

**Cornwall Waste Forum v Secretary of State for Communities and Local Government**  
**CO/6088/2011**

I continue to act on behalf of the Secretary of State for Communities and Local Government.

Further to the grant of permission to appeal in the above matter by Mr Justice Collins on 13 October 2011, please find attached a sealed Appellant's notice on behalf of the Secretary of State as filed at Court this afternoon.

Please note that the appeal bundle will be provided by hard copy.

I would be grateful if you could acknowledge receipt.

Yours faithfully

A handwritten signature in black ink that reads 'pp P. Harvey'. The signature is written in a cursive style.

**Geraldine Haack**  
**For the Treasury Solicitor**

Lee John-Charles – Head of Division  
Neera Gajjar – Deputy Director, Team Leader  
Litigation B5



## Appellant's notice

(All appeals except small claims track appeals)

Appeal Court Ref. No.	2011/2572
Date filed	17-11

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



### Section 1 Details of the claim or case you are appealing against

Claim or Case no.

Name(s) of the  Claimant(s)  Applicant(s)  Petitioner(s)

Name(s) of the  Defendant(s)  Respondent(s)

#### Details of the party appealing ('The Appellant')

Name

Address (including postcode)

Tel No.

Fax

E-mail

#### Details of the Respondent to the appeal

Name

Address (including postcode)

Tel No.

Fax

E-mail

Details of additional parties (if any) are attached

Yes  No

**Section 2 Details of the appeal**

From which court is the appeal being brought?

The County Court at

High Court District Registry at

The Royal Courts of Justice

Other (please specify)

What is the name of the Judge whose decision you want to appeal?

What is the status of the Judge whose decision you want to appeal?

District Judge or Deputy

Circuit Judge or Recorder

Master or Deputy

High Court Judge or Deputy

What is the date of the decision you wish to appeal?

To which track, if any, was the claim or case allocated?

Fast track

Multi track

Not allocated to a track

Nature of the decision you wish to appeal

Case management decision

Grant or refusal of interim relief

Final decision

A previous appeal decision

**Section 3 Legal representation**

Are you legally represented?

 Yes  No

If 'Yes', please give details of your solicitor below

Your solicitor's name

Geraldine Haack

Your solicitor's address (including postcode)

Treasury Solicitor's Department  
1 Kemble Street  
London  
WC2B 4TS

Tel No.	02072103275
Fax	02072103001
E-mail	geraldine.haack@tsol.gsi.gov.uk
DX	123242 Kingsway 6
Ref.	Q110934K/GEH/BS

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLS F) certificate?

 Yes  No

Is the respondent legally represented?

 Yes  No

If 'Yes', please give details of the respondent's solicitor below

The respondent's solicitor's address (including postcode)

Leigh Day  
Priory House  
25 St John's Lane  
London  
EC1M 4LB

Tel No.	02076501200
Fax	02072534433
E-mail	rstein@leighday.co.uk
DX	53326 Clerkenwell
Ref.	RS SB CWF

**Section 4 Permission to appeal**

Do you need permission to appeal?

 Yes  No

Has permission to appeal been granted?

 Yes No

Date of order granting permission

13 October 2011

Name of Judge granting permission

Mr Justice Collins

I, \_\_\_\_\_  
the Appellant(s) solicitor) seek permission to appeal.

## Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal

The Secretary of State wishes to appeal against paragraph 3 of the Order of Mr Justice Collins, dated 13 October and sealed on the same date.

The said paragraph reads:

"It is ORDERED that this application be allowed and that the said decision of the First Defendant dated the 19th day of May 2011 be quashed."

The Secretary of State respectfully requests that the question of costs as ordered by paragraph 4 of the Order, be stayed until the outcome of this appeal is known.

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?

Yes  No  
If 'Yes' you must complete  
**Part A of Section 8**

Have you lodged this notice with the court within 21 days of the date on which the Judge made the decision you wish to appeal?

Yes  No  
If 'No' you must complete  
**Part B of Section 8**

Are you making any other applications?

Yes  No  
If 'Yes' you must complete  
**Part C of Section 8**

## Section 6 Grounds for appeal and arguments in support

Please state, in numbered paragraphs, on a separate sheet attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

The arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice

OR

The arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out on a separate sheet and attached to this notice.

**Section 7** What are you asking the Appeal Court to do?

I am asking the appeal court to:-  
(please 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 trial

**Section 8** Other applications

Complete this section only if you are asking for orders in addition to the order asked for in Section 7.

**Part A**

I apply for a stay of execution because:

**Part B**

I do not need an extension of time for filing my appeal notice because it has been filed within the extended time granted by the Judge whose decision I am appealing.

OR

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 9 what steps you have taken since the decision you are appealing).

**Part C**

I apply for an order that:

because

**Section 8 Evidence in support**

In support of my application(s) in Section 8, I wish to rely upon the following evidence:

Nil

**Statement of Truth**

~~XXXXX~~ (The appellant believes) that the facts stated in this section are true.

Full name

Name of appellant's solicitor's firm

signed   
Appellant ('s solicitor)

position or office held  
(if signing on behalf  
of firm or company)

## Section 15 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

- two additional copies of your appellant's notice for the appeal court;
- one copy of your appellant's notice for each of the respondents;
- one copy of your skeleton argument for each copy of the appellant's notice that is filed;
- a sealed (*stamped by the court*) copy of the order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- any witness statements or affidavits in support of any application included in the appellant's notice;
- a copy of the order allocating the case to a track (*if any*); and
- a copy of the legal aid or CLSF certificate (*if legally represented*).


A bundle of documents for the appeal hearing containing copies of all the papers listed below:-

- a sealed copy (*stamped by the court*) of your appellant's notice;
- a sealed copy (*stamped by the court*) of the order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- any affidavit or witness statement filed in support of any application included in the appellant's notice;
- a copy of the skeleton argument;
- a transcript or note of judgment, and in cases where permission to appeal was given by the lower court or is not required those parts of any transcript of evidence which are directly relevant to any question at issue on the appeal;
- the claim form and statements of case (where relevant to the subject of the appeal);
- any application notice (or case management documentation) relevant to the subject of the appeal;
- in cases where the decision appealed was itself made on appeal (eg from district judge to circuit judge), the first order, the reasons given and the appellant's notice used to appeal from that order;
- in the case of judicial review or a statutory appeal, the original decision which was the subject of the application to the lower court;
- in cases where the appeal is from a Tribunal, a copy of the Tribunal's reasons for the decision, a copy of the decision reviewed by the Tribunal and the reasons for the original decision and any document filed with the Tribunal setting out the grounds of appeal from that decision;
- any other documents which are necessary to enable the appeal court to reach a decision; and
- such other documents as the court may direct.

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

Title of document and reason not supplied	Date when it will be supplied
Sealed Appellant's Notice - to be provided once received	To be provided once received
Skeleton Argument of Secretary of State	1.12.2011

Signed



Appellant('s Solicitor)

**IN THE COURT OF APPEAL****CO/6088/2011****ON APPEAL FROM THE QUEEN'S BENCH DIVISION****ADMINISTRATIVE COURT (COLLINS J)****BETWEEN:****CORNWALL WASTE FORUM ST DENIS BRANCH****Respondent****-and-****THE SECRETARY OF STATE FOR COMMUNITIES****AND LOCAL GOVERNMENT****Appellant****GROUNDS OF APPEAL****Introduction**

1. This appeal is brought with the permission of the first Instance judge, Collins J. The Secretary of State for Communities and Local Government ("the Appellant") appeals against Collins J's order of 13 October 2011, whereby he granted an application brought under s.288 of the Town and Country Planning Act 1990 ("the 1990 Act") by the Cornwall Waste Forum ("the Respondent"), and thereby quashed the planning permission that the Appellant had granted ("the permission") in respect of an Energy Plant (incinerator) at Rostowrack Farm and associated locations in Cornwall ("the project"). The Appellant granted the permission in his decision letter of 19 May 2011 ("the DL"), having accepted a recommendation to do so from his appointed Inspector in his report ("the IR").
2. The Appellant submits that the learned judge was wrong to have found that the Appellant made a mistake of law in reaching his conclusion in DL paragraph 19 that the project would not give rise to harm to acknowledged nature conservation

interests. The respects in which the Appellant argues that the learned judge erred are identified in paragraph 19 below in accordance with CPR 52.11(3)(a).

3. The appeal raises a point of general public importance concerning the correct approach by the Appellant to Regulation 65(2) of the Habitats Regulations.

### **The decision under challenge before Collins J**

4. The potential effect of airborne emissions from the project on SACs was a main issue at the inquiry into the project held by the Appellant's Inspector between March and October 2010. The issue was governed by the provisions of regulation 61 of the Habitats Regulations:

"(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which –

- (a) is likely to have a significant effect on a European Site ... (alone or in combination with other plans or projects), and
- (b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications for that site in view of that site's conservation objectives."

...

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public importance), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site..."

5. There were thus two main judgments to be reached by the competent authority in this case – (1) whether the project would be likely to have a significant effect on the SACs, and (2) if so, whether the appropriate assessment enabled the competent authority to ascertain that the project would not adversely affect the integrity of the SACs.
6. As to the identity and role of the competent authority, regulation 65(2) of the Habitats Regulations provides as follows in relevant part:

"Nothing in regulation 61(1) ... requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority."

7. The ability to ensure that the objectives of the Habitats Directive (namely, the effective protection of protected habitats and species) can be met by more than one competent authority in relation to a single project is underlined by the UK national planning guidance in PPS10 (paragraph 26-27).
8. The objectors to the project (lead by Cornwall County Council, but including as main parties to the inquiry the three bodies which comprise the Respondent group) argued that the project would cause harm to two SACs (the Breney Common and Goss and Tregoss Moors SAC; and the St Austell Clay Pits SAC) through emissions from the stack, including when assessed in combination with other projects and with traffic emissions associated with the project. They alleged on that basis both (1) that the project would be likely to have a significant effect on the SACs, thereby requiring an appropriate assessment to be carried out, and (2) that the results of such an assessment would not enable the competent authority to ascertain that the project would not adversely affect the integrity of the SACs. They therefore submitted to the Inspector and Appellant that the project should be refused permission under Regulation 61 of the Habitats Regulations.
9. The inquiry procedure led to a narrowing of the issues in relation to the potential effects on the SACs. It was agreed at the inquiry by the County Council that no concerns remained as to the effects on water quality, hydrology, dust, or traffic emissions associated with the project. Therefore the sole issue was that of air quality, ie, the substances that would be emitted from the stack during the combustion process.
10. The acceptability of the project in relation to emissions from the stack and their effect on the environment, including SACs, was governed by the EA. That is because the project was required to be granted an Environmental Permit ("EP") by the EA before it could be operational. In this case, the negotiations, representations and final decision on the grant of the EP occurred in parallel with the planning inquiry.

11. The EA published a draft EP, with reasons, in August 2010 for consultation purposes. The objectors, including the Respondent group, made detailed comments on the issue at that stage. The EA issued its Final EP in December 2010. Its conclusions were based on consultation with all relevant parties including the members of the Respondent group and Natural England ("NE"), the government's lead expert consultee with regard to the protection of SACs. The EA concluded, in agreement with NE, that in this case the project's emissions would not be likely to have a significant effect on the SACs.
12. The Inspector received the Final EP, which contains detailed reasoning and an assessment of the EA's responses to technical criticisms of its approach by objectors; he then sought and received further comments from objectors in response to the EA's Final EP. The additional criticisms did not add materially to the points which had been made by the objectors after the draft EP was issued.
13. The Inspector concluded:
  - (1) The control of emissions to air in this case is not a matter for the planning system, but arise from a process which is wholly within the control of the EA through its EP system [IR 1974].
  - (2) As a result, in respect of assessing the impact of the project on the SACs, the EA through the EP system is the competent authority (he referred not just to Regulation 65 of the Habitats Regulations (at IR 1970) but to the guidance in the national planning policy on this point (in IR 1975)) [IR 1975].
  - (3) The EA had taken into account NE's comments as well as those of the objectors, and issued the EP having reached the view that the project would not be likely to have a significant effect on the SACs; it had concluded that no appropriate assessment was therefore necessary [IR 1977 and 1978].
  - (4) It was inconceivable that the EA as the competent body would have issued the permit if it could not conclude that significant effects were unlikely. Indeed, as competent authority it had concluded that there would be no such effects [IR 1979].

(5) It was therefore concluded that the project would not give rise to harm to acknowledged nature conservation interests [IR 1980].

14. The DL paragraph 19 states:

"The Secretary of State agrees with the Inspector's analysis at IR 1960-1980, with regard to the effect of the proposal upon nature conservation interests. He is satisfied that, in respect of assessing the impact of the appeal proposal on the Special Areas of Conservation in the vicinity of the site, the Environment Agency through the environmental permitting system is the competent authority (IR 1975). Given the conclusions reached by the competent authority in the permit as to the likelihood of the development having no significant effect on protected habitats or species, the Secretary of State agrees with the Inspector's conclusions that the proposal would not give rise to harm to acknowledged nature conservation interests."

#### **The basis for the challenge before Collins J**

15. The Respondent challenged the grant of the permission on the basis that it had suffered a breach of its legitimate expectation that the Appellant, rather than the Environment Agency ("EA"), would determine, as competent authority, whether the project would be likely to have a significant effect on two sites designated as Special Areas of Conservation ("SACs") under the Conservation (Natural Habitats, etc) Regulations 2010 ("the Habitats Regulations").
16. The Respondent alleged that in its application under s.288 of the 1990 Act that the Appellant's Inspector has "repeatedly and throughout the planning inquiry process ... stated that the Secretary of State would take the role of competent authority for the purposes of the Habitats Regulations." It was said in addition that the Respondent's members had criticised the approach of the EA to the question of the project's likely effect on the SACs, and had made those objections clear to the Appellant expecting him (acting on finding by his Inspector) to reach a conclusion on the issue as Competent Authority.

17. In its challenge, the Respondent alleged that it was only when the IR was published along with the DL, that its members realised that the Secretary of State was "contrary to what had been promised, now disavowing his role as competent authority ... nor had he even evaluated the criticisms made of the approach taken by the [EA]. But by then objectors ... were out of time to challenge the legality of the approach taken by the [EA]. The [Appellant's] decision to grant planning permission was thus in breach of the legitimate expectations above and unlawful."
18. The Appellant notes that it was not alleged by the Respondent in its pleaded case that the Appellant's decision in the DL was flawed because of an unlawful application of Regulation 65(2) of the Habitats Regulations, save in respect of the alleged breach of legitimate expectation.

#### **Collins J's reasoning**

19. Collins J granted the Respondent's application and quashed the permission for the project. He did so on the following grounds:
- (1) There was an expectation created in the minds of the Respondent's members that the Inspector would "consider and reach a view... on the basis that the Secretary of State would be the relevant competent authority" on the question of the project's likely significant effect on the SACs [Judgment at [47]-[50]]. Reaching such a view would have required the Inspector and Appellant to deal with the challenge that the Respondent and other objectors to the project had made to the EA's view on the issue [Judgment at [69]-[71]].
  - (2) The Inspector's conclusion in IR paragraph 1975 that he was satisfied that the EA was the competent authority through the environmental permitting system was wrong [Judgment at [57]].
  - (3) The Inspector (and therefore the Appellant) did not deal with or reach any decision on the evidence which had been produced to challenge the EA's view; and furthermore the Inspector was wrong to find it unnecessary to form a view on this because he thought it was not a matter for the planning process [Judgment at [59]-[61]].

**The errors in Collins J's approach (CPR 52.11(3)(a))**

20. Collins J's findings are wrong in law for three main reasons:

*The Appellant's decision is in accordance with Directive and Habitats Regulations*

(1) The DL and the IR show that the Appellant correctly applied Regulations 61 and 65 of the Habitats Regulations. The Appellant formed a rational view (a) that the sole potential implication of the project affecting the SACs was that of emissions from the stack, and (b) that was a matter fully assessed and controlled by the EA through its EP procedure. In such circumstances, it was open to the Appellant to decide in accordance with Regulation 65(2) and with the objectives of the Habitats Directive, that it was for the EA to assess that aspect of the project and therefore to rely on its findings in that regard.

*Legitimate Expectation*

- (2) There was no legitimate expectation created by any representation or practice which barred the Appellant, having considered all the evidence, from deciding that the EA was to be the competent authority for the single issue which affected the SACs, or required the Appellant to duplicate, or review, the work of the EA in that regard.
- (3) In any event, given the objectives of the Directive, the discretion in Regulation 65(2) of the Habitats Regulations, the Appellant was entitled to approach the matter as he did, and
- (4) It is clear from the EP and the objections that there was no main "issue" raised by the Respondent group that had not in substance been covered by the EA as part of the EP process. It was therefore open to the Appellant to conclude that it was "inconceivable" that such a permit would have been issued if the EA as competent authority considered that there would be no significant effects. In such circumstances, there was no unfairness to the Respondent group by the Appellant, or breach of any legitimate expectation to deal with the issue of likely

significant effect himself. It was also, in those circumstances, erroneous of the learned judge to find that the Appellant had not evaluated the findings of the competent authority.

- (5) Alternatively, if there was a legitimate expectation created, the decision taken in accordance with regulation 65(2) was rational, fair and proportionate such as to override such an expectation.

*Planning considerations*

- (6) The judge erred because he considered that the Inspector and Appellant were wrong to consider the EP and emissions issue as a matter for environmental control rather than planning. However, that was correct, since the only Habitats issue was entirely within the control of the EA in the EP process. The judge failed to give due regard to the fact that the Appellant adopted that reasoning from the EA when ensuring that the requirements of the Habitats Directive were duly discharge, but that he also in the light of that finding reached the conclusion for planning purposes that there was no harm to nature conservation interests (a general planning point, see DL 19).

21. For those reasons, the Appellant will ask the Court of Appeal to reverse the learned judge's order and to dismiss the Respondent's application under s.288 of the 1990 Act.

**RUPERT WARREN**

**Landmark Chambers**

**180 Fleet St, London EC4**



*Handwritten initials*



*GEH*

**CO/6088/2011**

**DATED the 13<sup>th</sup> day of October 2011**

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

**BEFORE THE HONOURABLE MR JUSTICE COLLINS**

**IN THE MATTER of The Town and Country Planning  
Act 1990 Section 288**

**B E T W E E N  
CORNWALL WASTE FORUM ST DENNIS BRANCH**

**Claimant**

**and**

- 1. SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT**
- 2. SITA CORNWALL LIMITED**
- 3. ENVIRONMENT AGENCY**
- 4. CORNWALL COUNTY COUNCIL**

**Defendants**

**UPON HEARING** Mr D. Wolfe of Counsel on behalf of the Claimant, Mr H. Phillipot of Counsel on behalf of the Defendant, Mr M. Westmoreland Smith of Counsel on behalf of the Second Defendant and the Third and Fourth Defendants not being represented on the claim form dated the 28<sup>th</sup> day of June 2011 for an order that the

decision of the Defendant dated the 19<sup>th</sup> day of May 2011 and the planning permission thus granted here be quashed

**AND UPON READING** the written evidence submitted on behalf of the Claimant and the Defendants

**IT IS ORDERED** that this application be allowed and that the said decision of the First Defendant dated the 19<sup>th</sup> day of May 2011 be quashed

**IT IS FURTHER ORDERED** that the costs of this application be subject to detailed assessment if not agreed and paid by the First Defendant to the Claimant's solicitors

**IT IS FURTHER ORDERED** that the application by the First Defendant for permission to appeal to the Court of Appeal be granted

**AND IT IS FURTHER ORDERED** that the time for the First Defendant to lodge an application to appeal to the Court of Appeal is to run 21 days from the receipt of the transcript of the judgment

*[This matter occupied the time of the Court from 10.35am to 1.00pm and from 2.00pm to 4.30pm on the 11<sup>th</sup> day of October 2011 and from 10.50am to 12:25pm on the 13<sup>th</sup> day of October 2011]*

***By the Court***

**IN THE COURT OF APPEAL**

**CO/6088/2011**

**ON APPEAL FROM THE QUEEN'S BENCH DIVISION**

**ADMINISTRATIVE COURT (COLLINS J)**

**BETWEEN:**

**CORNWALL WASTE FORUM ST DENIS BRANCH**

**Respondent**

**-and-**

**THE SECRETARY OF STATE FOR COMMUNITIES**

**AND LOCAL GOVERNMENT**

**Appellant**

**Details of further parties to High Court challenge**

**Second Defendant: SITA Cornwall Limited**

C/O Bond Pearce LLP

DX 200561 Bristol Temple Meads

Ref: SLD1/SJM6/369889.2

**Third Defendant: Environment Agency**

C/O Legal Services

DX 121225 Bristol 43

Ref: RS

**Fourth Defendant: Cornwall County Council**

C/O Hogan Lovells International LLP

DX LDE 57 London

Ref: CM2CD/2499486.1



DATE: 17 November 2011

**CIVIL APPEALS OFFICE**

Room E307, Royal Courts of Justice  
Strand, London WC2A 2LL

DX 44450 STRAND

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(Helplines for the deaf and hard of hearing)

<http://www.civilappeals.gov.uk>

**COURT OF APPEAL NUMBER: 2011/2972**

**TITLE: Cornwall Waste Forum St Dennis Branch v Secretary of State for Commutes and Local Government and Ors**

**ORDER APPEALED: 13 October 2011**

Receipt is acknowledged of the following documents relating to this case:

- Appellant's Notice
- 3 x Bundles (3 volumes)

The appellant's notice will be treated as filed in the Civil Appeals Office on 17 November 2011 and has been allocated the number above. This case number will form part of the full Court of Appeal reference when it has been entered in the Court's records.

The receipt of these documents does not necessarily signify that (a) the court accepts jurisdiction or (b) that they are necessarily in order for the Court. You will be informed of any defects found but it remains your responsibility and not that of the Civil Appeals Office, to ensure any documents lodged comply with the Court's requirements.

A sealed copy of your appellant's notice attached and the attached Form N161B (headed Important notes for respondents) together with a copy of this receipt document, must now be served on all respondents by **24 November 2011**. You must ensure that the case number is added to the appellant's notice before service. You are reminded that whenever you are required to serve documents you should either deliver them by hand or send them by First Class post or other similar delivery service. Service by First Class post is deemed to take place 2 working days after posting.

If the appellant's notice includes an application for permission to appeal, no other documents should be served at this stage and the respondent need not take any action until such time as notification is given that permission to appeal has been given.

If permission to appeal has already been given or is not required copies of any documents lodged must be sent to each respondent with the appellant's notice. You will be required to confirm to the Court of Appeal that this has been done.

If permission to appeal has already been given or is not required the Respondent may:

- ask for the order to be varied, for which permission to appeal will be required; or
- ask that the order be upheld for different or additional reasons than those given by the lower court; or
- ask that the order be upheld for the same reasons relied on by the lower court; or
- do nothing.

If the Respondent wishes to vary or to uphold the order being appealed for different or additional

CIVIL APPEALS OFFICE REGISTRY  
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Office Hours : Monday to Friday, 10.00am to 4.30pm

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**reasons, they need to complete a respondent's notice (Form N162) and send it to the Civil Appeals Office. There is very limited time to do this.**

**If the Respondent does not complete a respondent's notice or file a skeleton argument, they will not be able to rely on any additional arguments at the hearing of the appeal which were not raised in the lower court unless the Court gives permission.**

## Pwysig Nodiadau i atebyddion

Mae copi o rybudd apelydd (apêl) wedi'i gyflwyno i chi.

Os ydy'r rhybudd yn cynnwys cais am hawl i apelio, does dim rhaid i chi wneud unrhyw beth nes i chi dderbyn hysbysiad gan y llys bod caniatâd wedi'i roi.

Os rhoddir caniatâd, dim ond ychydig o amser fydd gennych i ymateb i'ro apêl. Rhaid i chi benderfynu beth i'w wneud ar frys.

Gallwch:

- ◆ hefyd apelio yn erbyn yr un gorchymyn; neu
- ◆ ofyn am amrywio'r gorchymyn; neu
- ◆ ofyn i'r llys apêl gadarnhau'r gorchymyn am resymau gwahanol neu ychwanegol i'r rheini a roddwyd gan y llys is (y llys a wnaeth y gorchymyn rydych chi'n apelio yn ei erbyn); neu
- ◆ ofyn i'r gorchymyn gael ei gadarnhau am yr un rhesymau ag yr oedd y llys is wedi dibynnu arnynt; neu
- ◆ wneud dim

Os ydych chi am apelio, amrywio neu gadarnhau'r gorchymyn rydych chi'n apelio yn ei erbyn am resymau gwahanol neu ychwanegol, bydd angen i chi lenwi **Rhybudd Atebydd** (Ffurflen N162) a'i anfon i'r llys. **Does gennych chi ddim llawer o amser i wneud hyn.** Mae'r ffurflen hon, y nodiadau cyfarwyddyd ar gyfer ei llenwi a thafien o'r enw *Rwyf am apelio* ar gael yn rhad ac am ddim o unrhyw swyddfa llys neu Swyddfa Ceisiadau Interim Barnwyr yn y Llysoedd Barn Brenhinol, Strand, Llundain, WC2A 2LL. Byddant yn egluro'r terfynau amser ac yn dweud wrthydych chi am y dogfennau bydd eu hangen arnoch i gefnogi'ch apêl.

Gallwch hefyd lenwi rhybudd atebydd os ydych chi am ofyn i'r llys apêl gadarnhau'r gorchymyn am yr un rhesymau a roddwyd yn y llys is ond bod gennych ddadleuon ychwanegol i'w rhoi gerbron y llys apêl. Fel arall, gallwch osod y dadleuon ychwanegol hyn mewn 'dadl fframwaith', h.y. dogfen sy'n nodi'r pwyntiau rydych chi am eu rhoi gerbron y llys apêl. Gallwch ddefnyddio Ffurflen N163 i osod eich dadl fframwaith. Mae'r ffurflen hon hefyd ar gael o unrhyw swyddfa llys neu'r Llysoedd Barn Brenhinol yn y cyfeiriad uchod.

Mae gwybodaeth am apelio gerbron y Llys Apêl ar gael gan Gofrestrfa'r Swyddfa Apeliadau Sifil, Ystafell E307, Y Llysoedd Barn Brenhinol, Strand, WC2A 2LL.

Os na fyddwch chi'n llenwi rhybudd atebydd nac yn ffeilio dadl fframwaith, chewch chi ddim dibynnu ar unrhyw ddadleuon ychwanegol yng ngwrandawriad yr apêl oni bai fod y rheini wedi'u codi yn y llys is, neu oni bai fod y llys yn caniatáu i chi wneud hynny.

## Important Notes for respondents

You have been served with a copy of an appellant's notice (an appeal).

If the notice includes an application for permission to appeal, you need do nothing unless and until you receive notice from the court that permission has been given.

If permission is given, you will only have a limited time in which to reply to the appeal. You must decide what to do quickly.

You can:

- ◆ also appeal against the same order; or
- ◆ ask for the order to be varied; or
- ◆ ask that the order be upheld by the appeal court for different or additional reasons than those given by the lower court (the court who made the order being appealed); or
- ◆ ask that the order be upheld for the same reasons relied on by the lower court; or
- ◆ do nothing

If you wish to appeal, vary or uphold the order being appealed for different or additional reasons, you will need to complete a **Respondent's Notice** (Form N162) and send it to the court. **You have a very limited time to do this.** This form, the notes for guidance for completing it and a leaflet *I want to appeal* can be obtained free from any court office or Judges' Interim Applications Office at the Royal Courts of Justice, Strand, London, WC2A 2LL. They will explain about time limits and tell you the documents you will need to support your appeal.

You may also complete a respondent's notice if you simply wish to ask the appeal court to uphold the order for the reasons given in the lower court but have additional arguments to make to the appeal court. Alternatively you may set these additional arguments out in a 'skeleton argument', i.e. a document which just sets out the points you wish to make to the appeal court. Form N163 can be used to set out your skeleton argument. This form can also be obtained from any court office or the Royal Courts of Justice at the above address.

Information about making an appeal to the Court of Appeal can be obtained from the Civil Appeals Office Registry, Room E307, Royal Courts of Justice, Strand, WC2A 2LL.

If you do not complete a respondent's notice or file a skeleton argument, you will not be able to rely on any additional arguments at the hearing of the appeal which were not raised in the lower court unless the court gives you permission.