

14 Appeals

14.1 Appeals from the district judge

Any party may appeal an order given by the district judge in a county court to a judge on notice. Any notice must be issued within 14 days of the order or decision appealed against and served not less than 14 days before the day fixed for hearing of the appeal.

The Family Proceedings Rules 8.1 and 4.22 provide for appeals from the district judge in the county court in family proceedings. 'Family Proceedings' are defined by section 52 of the Matrimonial and Family Proceedings Act 1984 and the enactments listed under section 8(4) of the Children Act 1989. These include:

- Part I, II and IV of the Children Act 1989.
- Matrimonial Causes Act 1973.
- Domestic Violence Matrimonial Proceedings Act 1976.
- Adoption Act 1976.

The Family Proceedings (Amendment) Rules 2003 at paragraph 14 put ancillary relief appeals on substantially the same basis as applies to appeals in non-family cases by CPR r 52.11. There is a new FPR 1991 rule 8.1(3), which applies to ancillary relief appeals. In these appeals:

- The appeal shall be limited to a review of the decision or order of the district judge unless the judge considers that in the circumstances of the case it would be in the interests of justice to hold a rehearing.
- Oral evidence or evidence which was not before the district judge may be admitted if in all the circumstances of the case it would be in the interests of justice to do so, irrespective of whether the appeal be by way of review or rehearing.

14.2 Committal applications

The position with regard to applications for committal is not clear. They are not mentioned in Rule 8 (1) A and are therefore appeals under FPR 8.1. The Department for Constitutional Affairs has advised that the position is covered by section 13(1) of the Administration of Justice Act 1960, and that the appeal is therefore direct to the Court of Appeal. However, in *Read & Slack v King* (unreported, 18 November 1996), the Court of Appeal held in respect of a district judge's power to commit under section 14 of the County Courts Act 1984, that there was an appeal to the circuit judge under CCR Ord 37 r 6 and only thereafter to the Court of Appeal.

14.3 Appeals from the circuit judge

These lie with leave to the Court of Appeal, except for appeals against committal orders, refusal to grant habeas corpus and accommodation orders, which do not require leave. As a matter of

practice, it is better to refuse leave, thereby encouraging the proposed appellant to seek leave from the Court of Appeal. If the case is an urgent one, and the Court of Appeal grants leave, a full hearing can then be arranged more speedily.

14.4 The Bowman Report

The issue of the route and form of family appeals has to be seen in the light of the Bowman Report, which sets out the following principles in respect of all appeals:

1. An appeal should not be seen as an automatic further stage in a case.
2. The High Court may release to a section 9 judge. If an ancillary relief case, the release must be to a judge designated for such work.
3. All appeals shall be determined upon G v G principles but with some relaxation of the rule in *Ladd v Marshall* [1954] 3 All ER 745 as has now been adopted for ancillary relief. See also on this point *Re W, Re A, Re B (Change of Name)* [1999] 2 FLR 930, 938B.
4. A minority strongly contended that ancillary relief appeals should continue to be dealt with upon *Marsh v Marsh* principles.
5. Appeals from the circuit judge would lie with leave to the Court of Appeal.
6. Any case which raised an important or special issue would with leave go straight to the Court of Appeal.