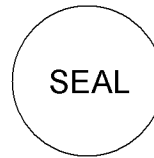


# Appellant's notice

(All appeals except small claims track appeals)

For Court use only	
Appeal Court Ref. No.	
Date filed	

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

Your solicitor's address (including postcode)

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLSF) 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)

BATES WELLS & BRAITHWAITE  
2-6 CANNON ST  
LONDON EC4M 6YH

Tel No.	0207 551 7777
Fax	0207 551 7800
E-mail	
DX	
Ref.	JMT/JL/203392/0009

### 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

Name of Judge granting permission

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

NOT RECEIVED - APPLICATION FOR PERMISSION REFUSED AT A RENEWAL HEARING

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:-

GRANT PERMISSION

- 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 9****Evidence in support**

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

NONE

**Statement of Truth**

I believe (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 10 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
SKELTON ARGUMENTS - NOT PREPARED YET (ORDER AND JUDGEMENT NOT RECEIVED)	22/3/2011
COPY OF ORDER - NOT RECEIVED	22/3/2011
BUNDLE - NOT PREPARED YET (ORDER AND JUDGMENT NOT RECEIVED)	22/3/2011

Signed

Appellant('s Solicitor)



**The Queen on the application of Senior-Milne**

**v**

**The Institute of Chartered Accountants in England & Wales**

**(CO/11766/2010)**

**Grounds of appeal and skeleton arguments**

Grounds of appeal ..... 3

A generalised complaint ..... 3

Without merit or malicious..... 4

Not a fair hearing ..... 5

Statement of truth ..... 6

## Grounds of appeal

1. My grounds of appeal are as follows;
  - 1.1. That the judge failed to consider, as he is required to do, my key argument in relation to the sole ground on which he dismissed my application; in other words that he dismissed my application on the basis that it was **a generalised complaint** not against individual accountants but failed to deal with my argument that I had given the ICAEW sufficient information to allow it to identify the relevant parties and that, as a matter of fact, this was all that I was required to do under the ICAEW's own rules.
  - 1.2. That the judge dismissed my application without finding that it was either without merit or malicious or otherwise illegitimate and that a judge is required (by a House of Lords ruling) to allow an application to proceed in the absence of such a finding; in other words an application should be allowed to proceed unless it is either **without merit or malicious or otherwise illegitimate**.
  - 1.3. That the judge refused to allow me to put forward arguments at the hearing to the effect that the ICAEW's refusal to respond to my complaint and its opposition to my application for judicial review was based on illegitimate motives while, at the same time, the judge confirmed, at the hearing, that he would have allowed the ICAEW to put forward such arguments (i.e. that I was acting from illegitimate motives) had they wished to do so; in other words, that the hearing was **not a fair hearing and was a breach of my article 6 ECHR right to a fair trial**.
2. I will deal with each of these grounds in turn.

## A generalised complaint

3. The only reason the judge gave for dismissing my application was that my complaint to the ICAEW was too generalised and did not identify the individual members concerned (although, as I pointed out, there can be no dispute that the parties concerned are members of the institute – we know this because if they were not members they could not have acted as auditors of the companies concerned).
4. In his judgment the judge stated *'To my mind this is the nub of this case. Even if it is right to treat the E-Mail of 26<sup>th</sup> July as a complaint, even though it is not made on the appropriate form, not signed by Mr. Senior-Milne [NB the ICAEW put forward no arguments to this effect], I agree with the third ground which is taken in the grounds of complaint [he means 'Summary grounds for contesting the claim'], that is to say it is a generalised complaint not against individual accountants, not even in relation to the audits of named companies. To my mind the institute were entitled to not to investigate based on those vague generalised allegations – and it seems to me that this is the answer to this application'*.
5. But the judge failed to respond to my key argument that I did give the ICAEW sufficient information to allow it to identify the parties concerned (the ICAEW has never disputed this point) and that this was all that I was required to do, bearing in mind that the ICAEW's regulations specifically state that a complainant member is not required to carry out an investigation but is required to report any facts or matters, above mere suspicion, that **indicate**

that a member **may** have become liable to disciplinary action and that the institute's own Ethical Advisory Service confirmed to me that, as a member, I was under a duty to report in the circumstances of this case.

6. **The question is, if I have a duty to report such facts, how can the institute not have a duty to even to assess whether such facts should be investigated? The institute's assertion has been flatly contradicted by their own Ethical Advisory Service.**
7. In *Vernon v Spoudeas & Anor* [2010] EWCA Civ 666 at 44 it states '*The appellant is plainly entitled in my judgment to a properly reasoned decision [my emphasis]... it cannot be inferred or assumed that the District Judge reached a considered judgment on the merits of the application by reference to the evidence before her and the criteria in CPR Rule 3.9*'. This makes it clear that if a judge does not give proper reasons for a decision it cannot be assumed that he has reached a considered judgement based on the arguments and evidence before him.
8. In *Bhamjee v Forsdick & Ors (No 2)* [2003] EWCA Civ 1113 at 4, and with reference to litigants in person, it states '*We must stress that in many, if not most, of these cases the litigant in question has been seriously hurt by something that has happened to him in the past. He feels that he has been unfairly treated, and he cannot understand it when the courts are unwilling to give him the redress he seeks. Judges must, as always [my emphasis], listen to his case carefully and be astute to see whether there is any point of legal merit in what he is saying to them. And if they are unable to help him, they must give their reasons clearly, in language he will understand [my emphasis]*.'
9. With regard to the adequacy of reasons I would refer to the words of Lord Brown in *South Bucks District Council and another v Porter* [2004] 4 All ER 775 at 36: '*The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved.*'
10. It is clear, on this basis, that the judge should have responded to my argument that I did give the institute sufficient information to allow it to identify the relevant parties (the ICAEW has never disputed this point) and that this was all that I was required to do by the ICAEW's own rules, as confirmed by the Ethics Advisory Service of the ICAEW (i.e. the ICAEW has been contradicted by its own Ethics Advisory Service).
11. In short, if the facts provided are **sufficient** for the purpose (to enable identification of the relevant parties) how can those facts also be described as **too generalised** for that same purpose? This is an absurd contradiction; facts cannot be sufficient and too generalised at the same time in respect of the same purpose.
12. I submit that the court is bound to allow my appeal under CPR 52.11(3) on the grounds that the decision of the lower court was wrong in this critical respect.

## **Without merit or malicious**

13. The purpose of requiring a person to seek permission to proceed with an application for judicial review is to weed out malicious or futile applications or applications without merit and it follows that permission should be granted **unless** the application is malicious or futile or without merit.
14. As stated in '*A Practical Approach to Civil Procedure*' (Sime, Stuart, '*A Practical Approach to Civil Procedure*', Oxford, 9<sup>th</sup> ed., 2006, p. 513) '*permission should be granted if, on the material*

*available and without going into the matter in depth, there is an arguable case for the relief claimed'.*

15. In R v Inland Revenue Commissioners, ex p. National Federation of Self Employed and Small Businesses Ltd [1981] UKHL 2, Lord Diplock said *'The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at that stage. **If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief.** The discretion that the court is exercising at this stage is not the same as that which it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.'*
16. If my application had been totally without merit then the judge would have been bound to say so. Since the judge did not say so it follows that my application had **some** merit (in other words that I did have what might be an arguable case) and he should have granted me permission to proceed on this basis; in fact, he was **bound** to grant me permission under the ruling quoted above in R v Inland Revenue Commissioners, ex p. National Federation of Self Employed and Small Businesses Ltd [1981] UKHL 2; the House of Lords ruling is binding on the judge.
17. What happened at the permission stage of this application was much more than the *'quick perusal'* referred to by Lord Diplock and, to this extent, the whole process was unlawful. This is grounds for appeal in itself. The judge effectively held a full application hearing when he should only have held a permission hearing – the point being that full arguments are not put at a permission hearing, which means that the judge denied both sides the opportunity to present their full arguments.
18. I submit that this is a serious procedural irregularity under CPR 52.11(3).

## **Not a fair hearing**

19. As stated above, one of the main purposes of the permission stage is to weed out malicious or otherwise illegitimate applications. It follows that a defendant must be allowed to put forward arguments and evidence to the effect that an application is malicious or otherwise illegitimate.
20. This point was put to the judge at the hearing and he accepted it.
21. If a defendant is allowed to put forward such arguments it follows that the applicant must also be allowed to put forward arguments and evidence to the effect that the defence is malicious or otherwise illegitimate.
22. Before the hearing I submitted arguments to this effect to the court; namely that the ICAEW's sole reason for refusing to respond to my complaint was their desire to shield the accounting/auditing profession, and indeed the 'Big 4' firms of accountants (who are certainly involved), from the potentially extremely damaging and embarrassing consequences of an investigation into financial misdemeanours (and possibly criminal offences – under s.19 Theft Act 1968 for instance) affecting millions of people and amounting to tens of billions of pounds; this is in spite of the fact that the ICAEW is the main regulator of the accounting/auditing profession.
23. The judge refused to allow me to put these arguments to the court.

24. Since the judge refused to allow me to put arguments to the court of a type which he acknowledged he would have allowed the defence to put to the court had they wished to do so, it follows that I was denied equal treatment and, to this extent, the hearing was unfair and, accordingly, a breach of my Article 6 ECHR right to a fair hearing.
25. I submit that this is a serious procedural irregularity under CPR 52.11(3).

### **Statement of truth**

26. I believe that the statements that I have made in this document are true.

Graham Senior-Milne