

# Snapshot: appealing civil judgments in Guernsey

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This snapshot outlines the process and grounds upon which an appeal can be made in respect of a civil judgment by the Royal Court of Guernsey. It also mentions recent developments in appealing judgments of the Guernsey Court of Appeal to the Judicial Committee of the Privy Council.

## Appeals from the Royal Court of Guernsey

Appeals from the Ordinary Court of Guernsey, a division of the Royal Court, proceed to the Court of Appeal pursuant to Section 13 of the Court of Appeal (Guernsey) Law, 1961. The Court of Appeal is, typically, presided over by three judges, but can be presided over by more, depending on the circumstances. The number of judges sitting in the Court of Appeal will, however, always be an uneven number, as the Court of Appeal determines issues by way of majority.

An appeal from the Ordinary Court to the Court of Appeal is by way of right when the decision is final and concerns a point of law, or the value of the matter in dispute exceeds two hundred pounds. However, leave to appeal is required when appealing an interlocutory order or judgment, and necessitates leave being granted by the Ordinary Court, or the Court of Appeal. Where leave is required, this should be sought in the first instance from the judge of the Ordinary Court, but if refused, it may be possible for the application to be brought before a single judge of the Court of Appeal. Leave to appeal the judgment will usually be granted unless the Ordinary Court or Court of Appeal determines that the appeal has no real prospect of success. However, even if the appeal does have no prospect of success, leave may still be granted if the appeal gives rise to an issue that is of public interest.

An appeal to the Court of Appeal usually takes place by way of a rehearing pursuant to the Court of Appeal (Civil Division) (Guernsey) Rules, 1964. The Court of Appeal has the power to make any judgment that it believes ought to have been given, and can request that additional evidence is provided if it believes this is necessary.

The appeal process requires a notice of appeal to be served on all parties, which are affected by the appeal, within a month of the date upon which the judgment or order of the lower court was pronounced (unless an extension of time is granted by the Court of Appeal or the presiding judge of the Court of Appeal).<sup>[1]</sup> The notice must set out the ground or grounds for appeal, and the relief that is being sought. Following the service of the notice and within seven days, the appellant is required to set down the appeal by providing the Registrar of the Court of Appeal with a copy of the notice and proof of service of the notice on the parties. Once the appellant has undertaken this step, the Registrar of the Court of Appeal will enter the appeal in the list of appeals. Within two days of the appeal being set down, the appellant is required to notify the parties that the Registrar of the Court of Appeal has set down this appeal.

The respondent can, if it so wishes, serve a respondent's notice on the appellant and affected parties if the respondent intends to argue in the appeal that the decision or grounds for the decision of the Ordinary Court should be varied. The respondent's notice is required to be served within fourteen days upon notice of the appellant's appeal.

Following the above, the appellant must provide the Registrar of the Court of Appeal, within four months of the date upon which the appeal was set down, with the following:

1. the appeal notice
2. the judgment that is the subject of the appeal
3. any pleadings from the lower court
4. the transcript of the lower court recording the decision and relevant evidence
5. any applicable affidavits or depositions; and
6. a skeleton argument and authorities

In addition, the appellant's skeleton argument and authorities must be served on the respondent within two days of providing the above to the Registrar of the Court of Appeal.

Lastly, before the date of the hearing of the appeal is given, the respondent has one month following service of the skeleton argument by the appellant to provide the Registrar of the Court of Appeal with their skeleton argument and authorities, and two days following this, to serve these documents on the appellant.

### **Grounds for appeal**

Under Guernsey law, the grounds for appeal of a civil judgment are of a similar nature to those of other common law jurisdictions. The potential grounds of appeal include the following:

- errors of law

- failure to take account of relevant matters; and
- taking into account irrelevant matters

## Appeals from the Court of Appeal

An appeal from the Court of Appeal proceeds to the Judicial Committee of the Privy Council, the ultimate appeal court in the Bailiwick of Guernsey.

However, an appeal to the Privy Council can only be made if the monetary value of the claim in dispute exceeds five hundred pounds or leave for appeal is granted by the Court of Appeal or by Her Majesty in Council pursuant to Section 16 of the Court of Appeal (Guernsey) Law, 1961.

Until recently, it was thought that appeals to the Privy Council could only be brought when an appeal raised an arguable point of law of general public importance, as was held by the Court of Appeal on two separate occasions in *Emerald Bay Worldwide Ltd v Barclays Wealth Directors (Guernsey) Ltd*<sup>[2]</sup> and *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd*.<sup>[3]</sup> However, the Privy Council held in *A v R*,<sup>[4]</sup> that the right to appeal a judgment did not require there to be an arguable point of law of general public importance, and concluded the decisions in *Emerald Bay* and *Investec* were wrongly decided, because they were inconsistent with Section 16 of the Court of Appeal (Guernsey) Law, 1961. This was most recently reiterated by the Privy Council in *Investec Trust (Guernsey) Limited v Glenalla Properties Limited*.<sup>[5]</sup> Therefore, as long as the monetary value of the dispute in question exceeds five hundred pounds, the right to appeal is by way of right. However, the Guernsey Court of Appeal and the Privy Council can still refuse such an appeal if it is an abuse of process or is wholly devoid of merit and bound to fail.

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[1] Section 17(1) of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964.

[2] (judgment 2/2014) (unreported).

[3] (judgment 55/2015) (unreported).

[4] [2018] UKPC 4.

[5] [2018] UKPC 7.

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