

Reasons for allowing or refusing permission to appeal (including referral to the Court of Appeal (Civil Division))



The judge must complete this form on allowing or refusing an application for permission to appeal at a hearing or trial

Title of case/claim

Case/claim no

Heard/tried before *(insert name of Judge)*

Date of trial

Nature of trial

Result of trial

Defendant's application for permission to appeal
 allowed in part with leapfrog direction to CA. refused

Brief reasons for decision to allow or refuse appeal
(to be completed by the Judge):

I allowed permission on the main issue, which is whether a charge of £85 for as little as half an hour's overstay in a car park is an unenforceable penalty clause.
I decided that, although it has the principal characteristic of a penalty, namely an intention to deter breach rather than simply compensate for loss occasioned by breach, nevertheless it was enforceable because it was commercially justifiable and not disproportionate or oppressive.
There are no clear decisions of the higher courts on this point in this or a similar context, but recent Court of Appeal decisions in commercial cases indicate varying approaches.
There is a real prospect that a higher court might conclude that this was an unenforceable penalty and/or unfair contract term. I refused permission on the other issues which only raise standard contract points. But this appeal I have leapfrogged to the CA.

Judge's signature
Patrick molom, e,

If permission is given the judge must also complete the reverse of this form

Note: The appellant must file a copy of this completed form at the appeal court with the appellants notice when issuing the appeal.

N460 Reasons for allowing or refusing permission to appeal and referral to the Court of Appeal (7.00)

Do you consider the appeal should be referred to the Court of Appeal (Civil Division)?

Yes No

If Yes, please indicate which of the following criteria apply:

- There appear to be conflicting authorities.
- There is a point of practice and procedure of significant importance.
- There is a point of general principle and importance in the development of the substantive law.
- A number of appeals on similar points suggest that a theme, or trend, is developing which the Court of Appeal needs to consider.

Additional reasons *(please set out below)*

1. At a practical level, there are numerous such cases pending in small claims courts, where litigants in person are taking these legal points (which they find on the internet) and busy DJs are asking for clear authoritative guidance so defences can be struck out and court time used efficiently.
2. Normally an appeal from me in a multi track trial would go to the CA not the High Ct. This case was nominally a small claim but was conducted like a multi track with leading counsel.
3. A High Ct Judge would be confronted with the same absence of clear CA authority as me and the case would probably end up in the CA anyway but after considerable delay.