NOTE OF THE UKSC/JCPC USER GROUP MEETING

HELD ON FRIDAY 22 JANUARY AT 11AM IN THE LAWYERS' SUITE AT THE UKSC

Present:	Lady Hale	}	
	Jenny Rowe (JR)	}	Supreme Court/JCPC
	Louise di Mambro (LdiM)	}	

Andrew Arden QC	Arden Chambers
David Miles	Glovers Solicitors LLP
Steven Durno	Law Society
Chris Barber	Gregory Rowcliffe Milners
William Rose	Sharp Pritchard
Lucy Barbet	11 King's Bench Walk
Ailsa Carmichael	Murray Stable
Justina Togher	Royds LLP
Jan Luba QC	Housing Law Practitioners' Association
Robin Tam QC	1 Temple Gardens
Ishbel Smith	McGrigors LLP
David Jackson	HMRC
Michael Fordham QC	Blackstone Chambers
Derry Moloney	Alan Taylor & Co
Lynsey Murning	Charles Russell LLP
Timothy Brennan QC	Devereux Chambers
Michael Todd QC	Chancery Bar Association
Malcolm Davis-White QC	Chancery Bar Association
Stephen Cobb QC	1 Garden Court
Daniel Waller	Matrix Chambers
David McMillen	Bar Council – Northern Ireland

An agenda had been circulated in advance. The meeting broadly followed the agenda; although, where appropriate, issues were brought forward to earlier items.

1. Building

In general legal users liked the building and found it easy to use. But the following points were made in discussion:

- A request was made for a hand dryer to be installed in the male toilets in the Lawyers' Suite.

- An issue was raised about the noise created when the doors to courtroom 1 were opened and closed. The individual expressing concern had attended one of the early cases in the Court. Since then, the UKSC had revised the instructions to security guards and hoped that this particular problem had been solved so far as possible.

- There were some problems about audibility in Court 1, particularly for those sitting in the back of the public seating. The UKSC had already started to address those issues and new speakers would be installed during the Easter recess.

- The door leading from the entrance hall towards Court 3 squeaked so loudly that it was audible in Court 3.

2. Casework

(a)

- The first issue discussed related to notification to parties of the outcome of applications for permissions to appeal. In one particular case, the order recording the Court's decision had been posted to all the parties at the same time, but had been held up in the Christmas post. As a consequence a third party, who telephoned the Court on the day the Order was posted became aware of the decision earlier than one of the parties. Whilst acknowledging that it would not be feasible for Court staff to take additional steps to update parties on the outcome of all permission applications, a request was made for us to consider email alerts. LdiM encouraged parties to phone the office on a daily basis and staff would be very willing to provide what information they could.

- A similar issue was raised over the JCPC and JR/LdiM agreed to talk to the staff. There was also a request that the JCPC Rules be looked at again in respect of the timing of delivery of bundles.

- A comment was made about a lack of knowledge of the new JCPC Rules by local lawyers in some countries, particularly Mauritius. JR/LdiM acknowledged that publicity for the new JCPC Rules might not have been as proactive as it should have been. But the JCPC would be sitting in Mauritius in April and this would give a further opportunity to publicise the Rules there. Some of the London agents had a concern that local lawyers would not adhere to time limits unless more proactive publicity took place.

(b) Permission Applications

- There was a suggestion that the Court should provide more information about when permission applications were lodged. It was important for public interest groups to have access to this kind of information so they knew whether to consider an intervention. Reference was made to the case tracking system on the website of the Court of Appeal in England and Wales. Questions were also raised about giving information on the dates when permission applications were likely to be decided. JR explained that there was a range of information which should automatically be transferred from the case management system to be available via the website. This would cover the applications point although not the date when a decision was expected. Unfortunately, the Court had experienced a number of IT-related difficulties during our first term, but the hope was that these were close to a resolution and that the information sought would be routinely available very shortly. JR/LdiM would consider whether it was feasible to give an expected target date for a permission

application to be decided. A comment was made that there was an impression of JCPC decisions taking longer than before. LdiM agreed to look and see if this was the case.

- A question was asked as whether there was any scope for judicial case management before a Panel considered a permission application. For example, it might be helpful to allow applicants to answer the respondent's notice of objection. LdiM pointed out that the Registry would never turn away any additional documents such as an Appellant's answer to a Respondent's objections despite what was said in the Rules or Practice Directions. Users asked that the UKSC take steps to publicise the flexibility we were offering: they needed clarity. We therefore agreed to look again at the Practice Directions.

- There was also a request that fuller reasons be given for refusing permission to appeal. The formula used did not provide much assistance and short case-related reasons would be very helpful. Some practitioners expressed a concern that, if no reasons were given, future cases might run the same points unnecessarily with the attendant costs often to the public purse.

  Lady Hale noted that this was an issue which had been raised in discussions leading up to the creation of the Court. She would raise it again with colleagues.

- It was noted that Scottish cases came to the Court as of right and therefore did not have to go through the permission to appeal to stage. However, such cases had to be certified by two Counsel and seeing the results of applications permissions to appeal in cases from England and Wales and Northern Ireland could often provide helpful guidance to Scottish Advocates on what the Court regarded as an issue of importance.

- A request had been made for cross-referencing between the Rules of Court and Practice Directions. JR/LdiM explained that it was not possible to add any more cross-references in the Rules themselves as this would not be acceptable to the Joint Committee on Statutory Instruments. However the UKSC would add such cross-references as we could in material which appeared on the website. There was a related request that we consider presenting the Practice Directions as one consolidated Practice Direction rather than 14 separate documents. We agreed to look into this. (The forms were now included as part of Practice Direction 7 on the website.)

- Lodging papers electronically – JR/LdiM explained that this should be feasible providing the papers were within a 10mb limit. If they exceeded that, they would have to be split up. But the Court would also require hard copies as provided for in the Rules. We were hoping to move to asking for bundles on memory sticks with effect from February and eventually to move to electronic bundles. But if this proved to be too expensive for parties they should consult the Registry.

<u>Content of Statements of Facts and Issues</u>

3. The person who had asked for this item to be put on the agenda had flagged up that a good deal of time was taken up in trying to agree the content: they wondered

how useful the Justices found the Statements. Lady Hale explained that the Justices were aware of the problems but the Statement of Facts was absolutely essential and was relied on all the time. The Statement of Issues was a little different and it would not necessarily be possible always to capture all the issues or to express them in agreed terms. More than one Counsel present said that agreeing the Statement of Issues was one of the most difficult tasks Counsel had to undertake; but once agreement was reached this was a really useful part of case preparation. DdiM pointed out that the Registry would accept a document which was partly agreed and the Practice Direction made it clear that areas of difference could be set out in the one statement. A number of those present felt that having a Statement of Issues would be particularly helpful for interveners. Some of those present would favour the Court moving to the Strasbourg model of sending out questions in advance. Others liked the current system and felt that prior attempts to narrow the issues would not be welcome. Lady Hale commented that this issue was linked to the issue of the balance between written and oral presentation of argument.

Electronic Presentation of Material

4. There was a good deal of concern about any moves the Court might make to require material to be presented electronically. JR reassured those present that it was not the case that this would be a requirement. Many of those present felt that advocacy needed to be reactive to questioning in Court and there was a limit to what could be prepared in advance. There was a lot of resistance to the prospect that one of the parties should provide the operator if material was to be presented electronically. Against all these concerns, some who had past experience of using electronically presented evidence felt it could be particularly helpful for plans and photographs. And others believed that there would be increasing pressure from clients to move towards electronic presentation which could perhaps be cheaper. But if this were to happen, it would be important for all courts throughout the United Kingdom to use the same system so that documents prepared for electronic presentation at first instance could also be used on appeal.

5. JR indicated that she was proposing to set up a separate discussion with interested parties about this whole set of issues. JR would like to identify a case in the JCPC and a case in the Supreme Court where it might be possible for us to try the EPE approach to see if it worked. The facilities had been tested and EPE could work in theory.

Publication of Written Cases

6. JR had put this on the agenda because a number of people had requested that the Court routinely make available to anyone with an interest in the case the full written cases submitted by both parties. Rule 39(1) states that all documents filed become the property of the Court, and justice being delivered in public is very important; but JR was aware that there were concerns about others taking the fruits of Counsel's labours and re-using material in similar cases, for example. There was also the issue which would quite often arise in Family cases of the need to protect the anonymity of children.

7. It was noted that the practice in the USA, and indeed other countries, was to make such material routinely available on request. There was a great deal of sympathy for those who were interested in a particular case having access to all the relevant

material for the hearing, in order for the hearing itself to make sense. And it would not be sufficient to make the material available simply on the hearing day as there might be quite a lot of reading involved.

8. After some debate, the general view of those present was that it would be acceptable to make the full written cases available one to two weeks before the hearing. It would be helpful to try and discourage public and academic debate in advance of the hearing; and it would be important for both cases to be available at the same time.

Court Dress

9. Lady Hale outlined that the UKSC had been flexible about court dress and in Family cases both sides had generally been very willing to proceed without wearing wigs or gowns. This had been appreciated by the Family Bar. Others present were keen to see the end of wigs and gowns for Supreme Court proceedings, and those in the JCPC also. It was agreed that both sides should adopt the same practice in each case.

10. There was a discussion as to how far this lay within the gift of the Court or whether the professions were in the lead. A number of people encouraged the Court to make a statement and make a break with the past. There was virtual unanimity among those present that the Court should adopt a no robes policy. However, some felt that ideally the issue should be considered in the context of the whole of the Court system not just the Supreme Court.

Date of next meeting

11. It was agreed that a further meeting should be held in July. Thereafter we could probably move to a pattern of two meetings each year, with email contact about issues in between those dates. Two issues were flagged up for the next meeting:

- Costs (the guideline figures and the Practice Direction and the assessment arrangements).

- Timetables for providing documents.

JENNY ROWE
Chief Executive
February 2010