



NOTE OF THE UKSC/JCPC USER GROUP MEETING
HELD ON FRIDAY 25 JUNE AT 11AM IN THE LAWYERS'
SUITE AT THE UKSC

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

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| Derry Moloney | Alan Taylor & Co. |
| Chris Barber | Gregory Rowcliffe Milners |
| Lucy Barbet | 11KBW |
| Patrick Allen | Hodge Jones & Allen LLP |
| David Miles | Blake Laphorn |
| John Almeida | Charles Russell |
| Jonathan Crow QC | Chancery Bar Association |
| Lucy Tangen | Royds LLP |
| Nigel Fisher | Norton Rose |
| Robert Latham | Housing Law Practitioners Association |
| Daniel Waller | Matrix Law |
| Ishbel Smith | McGrigors LLP |
| Mark Stephens | Finers Stephens Innocent LLP |
| David Jackson | HMRC |
| Robin Tam QC | TG Chambers |
| Simon Harker | TSols |
| Ailsa Carmichael QC | Murray Stable |

Apologies received from:

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| Steven Durno | Law Society |
| Rabinder Singh QC | Matrix Law |
| Ashley Underwood QC | Landmark Chambers |
| Andrew Arden QC | Arden Chambers |
| Saul Lehrfreund | Simons Muirhead & Burton |
| Parvais Jabbar | Simons Muirhead & Burton |
| David Pannick QC | Blackstone Chambers |
| Timothy Brennan QC | Devereux Chambers |
| Nigel Pleming QC | 39 Essex |
| Michael Fordham QC | Blackstone Chambers |

After the introductions, the following matters arising from the minutes of the previous meeting on 25 January were dealt with:

- Was it possible for a hand dryer to be installed in the gents lavatory in the Lawyers' Suite – this has been investigated and there is insufficient space to install a dryer but paper towels are provided and our in-house cleaner checks supplies at regular intervals during the day.
- Ensuring there is no unauthorised access to the Lawyers' Suite – following the last meeting the security guards were briefed to be especially observant. We have also added additional signage to make clear that the corridor alongside the Lawyers' Suite is a private corridor.
- Noise created by the door between the entrance hall and the entrance to Court Three – the offending squeak has been eliminated.
- JCPC Rules and the timing of the delivery of bundles – this will be considered as part of the next review of the Rules.
- Further consideration to be given to setting a target date for permission applications to be dealt with – we will be reviewing this during the second half of this calendar year with a view to having an internal discussion with the Justices.
- Fuller reasons for refusals of permission to appeal to be communicated to the parties – all panels of Justices considering permission applications consider what it might be useful to say to the parties when decisions are made. For example, there might be a steer that, whilst the point is a good one, this might not be the right case for it to be tested.
- A working group to be established to consider electronic presentation of material – separate item on the Agenda.
- Once written cases are being routinely provided on memory sticks, they are to be published one week before a hearing. Parties have been reluctant to comply with this requirement. Lady Hale emphasised how important it was to a number of the Justices to have material on memory stick. The Registry would be insisting on this for the future.
- Court dress – no further action has been taken on this point.

Electronic Presentation of Material

I updated those present on the meeting which had been held on 30 April.

The following points were made in discussion:

- There remained some scepticism about the value of using electronic presentation of material in the Supreme Court.
- Experience of Public Inquiries showed that electronic presentation was most valuable in document heavy cases.

- There could be issues if individuals wanted to be looking at a number of different documents simultaneously.
- There were some cases where visual images could be of considerable assistance, for example, in looking at border disputes.
- In considering the most suitable case for electronic presentation to be used it might be necessary to differentiate between evidence-heavy cases and “law-heavy” cases.
- There was considerable merit in considering screens which would enable the public to see documents to which reference was being made. But care would need to be taken if there was an anonymity order in place that individuals were not identified.
- It might be sensible to look at the Orders from the lower courts to try and pick out cases where documents could be presented electronically at little additional cost.
- Where counsel was reading aloud specific pieces of text it was helpful to know that everyone had the same page in front of them.

All of those present were asked to consider any cases which might be suitable for the use of electronic presentation. Once a case/cases had been identified we would wish to work with the parties and the panel of Justices who would be sitting.

Rules and Practice Directions

Louise di Mambro reported that we regarded the Rules and Practice Directions as documents which should be kept under regular review, and wished to use the User Group meetings to take views from practitioners. She pointed out that it was not possible to change either set of Rules too easily. The JCPC Rules, for example, required an Order in Council; and the UK Supreme Court Rules were required to be laid before Parliament.

John Almeida had submitted a paper on JCPC Rules and it was agreed that Louise would bring together a group of JCPC practitioners to discuss those issues in more detail and to make recommendations to Lord Hope and Lord Walker. (Meeting took place on 22 July.)

The following issues were raised in the subsequent discussion:

- The UKSC was asked to look at Rule 11 and the related Practice Direction for the handling of applications served out of time. The Rule said that applications had to be made within 28 days of the Order from the court below. An issue had arisen when the sealed Order had taken three weeks to reach counsel. Louise suggested that if similar circumstances were repeated there was a box on the form which could be used and which would trigger a reference to the Justices to consider whether the application could still be accepted. She emphasised that we tried to be as flexible as possible.
- Within the JCPC, historically there had been considerable flexibility and the office might need to be more rigorous in enforcing time limits.

- It was noted by JCPC users that they often had difficulty with delays in the Courts of Appeal in some countries. Their procedures and time limits were sometimes out of sync with those being used by the JCPC. A comment was made that there were at least three countries where the government had been known to lean on the court not to provide the record as required in the Rules.

Timetables

Robin Tam spoke to his paper which had been circulated to those attending the meeting. One of the main points was that the timetable could helpfully be extended by a week to enable more time to file bundles of authorities and core volumes after exchange of cases. This was endorsed.

Robin went on to ask if, for example, the core volumes were really necessary. He had noted that some Justices used the loose copies of documents, not volumes. If it was not necessary to provide a core volume that would save both cost and time pressure. Where there were interveners, they often served their case late in the process which loaded a good deal of work into one week. He questioned whether interveners should have to submit their case at the same time as the appellant.

The following points were made in discussion:

- There was support for the concern over a lot of work being concentrated into one week.
- The requirement to have a core volume was for the court to decide.
- Maximum flexibility should be followed in dealing with interveners. There was a feeling that it was not sensible to insist on the case being served at the same time as the appellants but that some “staggering” would be sensible.
- The availability of Silks could be a major issue in timetabling.
- Intervenors needed narrowly to tailor what they said so they needed to be aware of both sides’ cases.
- It might be possible for the Registry to invite parties to agree a timetable amongst themselves; but with the Court Registry suggesting a timetable if early listing was desirable. However, it would be preferable for the Registrar to set a timetable.
- There was, however, a concern that seeking consent might not deliver the desired benefits. The respondent would want to keep his/her powder dry for as long as possible.
- The relevant Practice Direction was flexible. The appendix should be filed with the statement of facts and issues at the beginning.
- There should be as much clarity as possible over timetabling. This was particularly important for those in Scotland and Northern Ireland who did not deal with Supreme Court cases that frequently.

Action – Louise di Mambro to come up with a proposal for further discussion.

Action – Justices and UKSC to consider the issue of authorities and bundles.

Costs

In the absence of Jan Luba QC Robert Latham spoke to his paper.

It was agreed that Sir John Dyson would be invited to consider this as part of the Review of Costs he had agreed to undertake.

In the discussion the following points were made:

- The Court had a statutory duty to be accessible and this applied to costs as much as to other aspects of procedure.
- There was some support for guidelines which were set in consultation with the Costs Judges, but also a need for counsel to set out a justification for the fees they were claiming.
- An issue was also raised about payments on account in the JCPC. But this was also a problem from time to time in the UKSC. The issue was whether applications for payments on account could be dealt with by the Registrar and without a hearing.

Action – UKSC/JCPC to investigate whether it was possible to have an interim certificate procedure. This issue now resolved.

Any Other Business

- Access to the cycle store. I explained that we had a cycle store on the secure side of the building. Lawyers appearing in the Court could have access to this by prior arrangement. If individuals alerted the Registry in advance we would do what was necessary.
- Annual Report. I explained that my first “Annual” Report would shortly be published and that I hoped it would make an interesting read.
- Thank yous. It was reported that court users found the staff very helpful and efficient.
- Multi-handled cases. Some concern was expressed that there was not always enough room for solicitors in court. We explained that the forms we asked lawyers to complete included a section letting us know how many seats would be required for Silks, juniors and solicitors. The Justices would normally be willing to consider moving from Court Two to Court One if the numbers justified that. It was also agreed that there was no reason why solicitors and juniors should not sit alongside each other on the second bench.
- Assistance to lawyers requiring urgent access to material identified in the course of a hearing. I explained that we had arrangements in place to enable the Librarian to be approached about this. We would re-issue the guidance.
- Printing facilities. Relating to the above enquiries were made as to printing of material required at court. I explained that the office was willing to assist in

emergencies and it was confirmed this had happened the previous week. It was noted, however, that we charged in those circumstances. Whilst users understood the need for us to charge a request was made for us to consider installing a Wi Fi printer in the Lawyers' Suite. **(ACTION: UKSC to consider.)**

Date of next meeting

Friday 21 January 2011 11am at the UK Supreme Court.

JENNY ROWE
Chief Executive
August 2010