Note of the UKSC/JCPC User Group Meeting

Held on Friday 1 July 2016 at 11AM in the Lawyers' Suite at the UKSC

Present:

Lord Kerr	}	
Mark Ormerod	}	
Louise di Mambro	}	UK Supreme Court
Paul Brigland	}	
Ian Sewell	}	

Simon Gardner	Matrix Law
Gemma Ospedale	Royds LLP
Nicole Curtis	Penningtons
Stefan Taylor	Alan Taylor & Co
Mark Stephens	Howard Kennedy
Merlene Harrison	Myers, Fletcher and Gordon Solicitors
David Miles	Blake Morgan LLP
James Turner QC	1 KBW
Lucy Barbet	11 KBW
Jennifer Cassidy	Harcus Sinclair
Robin Tam QC	Temple Garden Chambers
Robin Lloyds	MA Law (Solicitors) LLP
Amy Kuan	Simons Muirhead & Burton
Lee John-Charles	Government Legal Department
Louise Fisher	Ashurst LLP
Camilla Hart	Charles Russell Speechlys LLP
John Almeida	Charles Russell Speechlys LLP
Andrew Smith QC	Crown Office Chambers
Christopher Knight	11 KBW

Apologies

Valda Brooks	Myers, Fletcher and Gordon Solicitors
Andrew Carrington	Carrington Law
Ailsa Carmichael	Ampersand Advocates
Michael Fordham QC	Blackstone Chambers
Jonathan Crow QC	4 Stone Buildings
Theo Solley	Sheridans
Christopher Jeans QC	11 KBW
Mark West	Radcliffe Chambers
Karen Quinlivan QC	Bar Library NI

1. Welcome

Lord Kerr welcomed everyone to the meeting.

2. IT developments

Lord Kerr reported on a small group that he had chaired within the Court to promote the full use of the IT capability by the Justices. The recommendations made by the group had been accepted by Lord Neuberger and Lady Hale. The first step was training for judicial colleagues, so that they were more familiar with electronic bundles. The plan in the medium term was for parties to be required to file in hard copy only the core volume and the core volume of the authorities. Everything else would be filed electronically.

Paul Brigland reported on two further improvements currently being investigated. The first was the use of video links for hearings. These could potentially be useful for, for example, the JCPC, where long distances were involved. Issues such as how to record cases, how to livestream them etc. needed to be sorted out but there could be cases in which video link hearings were useful and more efficient.

Secondly there were two aspects of the case management system which were being developed. The first was linking the case management system to the websites to allow the automatic updating of information (e.g. hearing dates, case summaries, panel composition, posting of judgments). Secondly there was potential for on-line filing for those who wanted it. The court was looking at this as an option. It would not be compulsory. The Court was keen to hear views of users. The following points were made:

- Video links would be useful for appellants in custody, so that they were able to see the proceedings relating to them, though this should be possible already, with the livestreaming arrangement. However, access was in the hands of the relevant prison authorities.

- Time differences in video hearings would need to be considered.

    - Would on-line filing mean that the USB stick would not be needed in future? Could the work be submitted electronically and then placed on a stick? Paul Brigland replied that the proposals were not prescriptive on memory sticks. There was no suggestion that memory sticks should not be used. Lord Kerr commented that it was wasteful to have pen drives in each case. It might be possible to move away from that. He was very aware of the complaint that electronic bundles could go out of date and require to be updated. Unfortunately, this was a difficulty that could not be overcome at present but it would be kept under review.

Payment of fees by bank transfer was raised. Paul replied that the Court was looking at paying fees online. He would ask the Director of Finance whether it was or would be possible to use cards and bank transfers for payment of fees.

3. Appointments

Mark Ormerod alerted the meeting to the fact that there were a number of statutory age retirements coming up shortly in relation to the Court – six Justices were due to retire by the end of 2018, and nine by summer 2020. This was a product of the change in the statutory retirement age in 1995, with those judges appointed as judges before that date being able to continue until age 75, while more recent appointees had to retire at 70. Lord Toulson was to retire in the summer and would not be replaced immediately. However, since he was 70, he could join the Supplementary Panel and sit on an ad hoc basis until he was 75.

4. The costs of responding to unsuccessful applications for permission to appeal

Unlike the Court of Appeal, respondents were required to file a notice of objection in the Supreme Court if they wished to be involved in the permission process. A fee for this was also paid. Justices had been struck by the fact that some notices of objection were very long. Sometimes these were very useful, especially in JCPC cases, since it was quite often the case that it was not until the notice of objection was received that relevant detail about the case was made known. The views of users were sought on this issue, and also on the range of costs that were proposed in the draft Practice Direction.

Ian Sewell said that the vast majority of bills seen were in the range shown in the paper circulated. However, the UKSC costs team only saw bills of costs in around a third of appeals, since most were agreed. It was possible that the figures were skewed because we received so many bills from the Government Legal Department and GLD had significant economies of scale which resulted in generally lower rates for fee earners and counsel.

James Turner commented that, to some extent, the length of notice of objection would depend on the nature of the case but he noted that the arrangements proposed were not prescriptive, which he supported. It was sometimes harder work to be succinct than to write at length. The Practice Direction could be amended over time.

Robin Tam said he had looked back at some of the notices he had submitted and none of them were at the three-page level because they had been done in skeleton argument style. If they had to be reduced to three pages, then it would have to be in a bullet point style. If that was what was wanted, it would be helpful to say so in the Practice Direction. Louise di Mambro said that the ten-page limit for grounds of appeal was dealt with flexibly however it was pointed out that the current drafting did suggest that it would be mandatory. It was argued that the draft should be amended to say this 'should normally….'.

Mark Stephens commented that the quantum seemed out of range of what was reasonable and a range of £2,500 to £5,000 might be more realistic. It was agreed that the Justices should be advised that users considered the range proposed was on the low side. It might be helpful to look at the median value; or run a pilot for data covering on all cases to see what the quantum was of those not seen by the Court. This would be considered.

5. Practice Direction 6.5.1

Simon Gardner said that his suggestions were much in line with those put forward by Paul Brigland earlier in the meeting. It was encouraging that progress was being considered in this area.

6. Size and number of bundles

Simon Gardner said it would be helpful in the short-term if changes could be made. Lord Kerr commented there was an enormous amount of waste and he was very alive to this. He hoped to be able to do something soon on it. It was suggested that the respondents' authorities might just be sent to the appellant by PDF. Receiving hard copies was a waste of time and receiving them as a PDF would be better. However those not familiar with the Court would be keen to comply exactly with the letter of the Practice Direction.

It was also queried whether ten copies were really needed when everything was on the memory stick. Louise di Mambro said that at the moment the relevant JAs were provided with a hard copy. It might be possible to move them to electronic copies, which would reduce the numbers that were needed. Lord Kerr said it was useful for users to explain the logistical difficulties and the squandering of money in this area. These points would be helpful when he came to speak next to his colleagues about hard and electronic copies.

7. Amendment to Practice Directions 3 and 6

Subject to some punctuation amendments, there were no comments.

8. Statement of facts and issues and streaming of the PJS hearing

Robin Tam had set out a series of issues in his paper. Lord Kerr said it was not uncommon that SFIs came in on which each side did not agree. It was very unhelpful if the statement could not be agreed. Sometimes, as a way forward, the SFI simply listed the different arguments. Was this helpful to the court? Lord Kerr said it was better than having a bland document in which you had no idea what the issues were. It might be a good idea to put in the Practice Direction that the SFI was meant to be a neutral statement. Two SFIs would not be desirable. In many respects it was one of the most valuable documents in the bundle.

Robin Tam said that there might be scope to emphasise that the SFI was there to help the court, so there was a professional duty to produce this document rather than use it to advance a party's case. Lord Kerr said that it might be necessary to address this issue through costs. He would take this to the Justices' meeting, though it might be difficult to come up with a general rule.

Lord Kerr also questioned the need for the precis and he would examine whether it was indispensable.

MARK ORMEROD
Chief Executive
July 2016