



## Note of The UKSC/JCPC User Group Meeting

Held on Friday 10 June 2011 at 11am in the  
Lawyers' suite at The UKSC

**Present:**

Lady Hale }  
Jenny Rowe (JR) } Supreme Court  
Louise di Mambro (LdiM) }

Conrad McDonnell } Gray's Inn Tax Chambers  
Chris Barber } Gregory Rowcliffe Milners  
Daniel Waller } Matrix Law  
Lucy Barbet } 11 King's Bench Walk  
Lee John-Charles } TSols  
Derry Moloney } Alan Taylor and Co  
Mark Stephens } Finers Stephen Innocent  
Karen Quinlivan } Bar Council, NI  
Jan Luba QC } Housing Law Practitioners Association  
Hannah May } Royds LLP  
Andrew Arden QC } Arden Chambers  
Ishbel Smith } McGrigors  
John Almeida } Charles Russell LLP  
Simon Adamyk } New Square Chambers  
Nigel Fisher } Norton Rose  
David Jackson } HMRC  
Robin Tam QC } TG chambers  
Laura Robson } Blake Laphorn solicitors  
Michael Fordham QC } Blackstone Chambers

**Apologies:**

Rabinder Singh QC } Matrix Law  
Chris Jeans QC } 11 King's Bench Walk  
Nicole Curtis } Penningtons  
Jonathan Crow QC } 4 Stone Buildings

Steven Durno	Law Society
Ailsa Carmichael QC	Murray Stable
Nick Hanna	Bar Library, NI)
Merlene Harrison	} Myers, Fletcher & Gordon)
Michael Toohig	
Valda Brooks	
Richard Clayton QC	4-5 Gray's Inn Square
Ashley Underwood QC	Landmark Chambers
Edward Faulks	1 Chancery Lane
Malcolm Davis-White QC	4 Stone Buildings
John O'Hara	
Dean Tolman	Blackstone Chambers
Patrick Allen	Hodge Jones & Allen LLP
Lord Brennan QC	Matrix Law
Geoff Hudson	Penningtons
Stephen Cobb QC	1 Garden Court
Timothy Brennan QC	
David Pannick QC	Blackstone Chambers
David Miles	Blake Laphorn solicitors
William Rose	Sharpe Pritchard

After the welcome and introductions the following matters arising from the minutes of the previous meeting held on 21 January 2011 were dealt with:

- (a) Making printed cases available on the website. JR reported that there were still technical problems for the Supreme Court in automatically exporting relevant material to the website. Some helpful suggestions were made in discussion about how the UKSC might find other ways of dealing with this issue, perhaps through hyperlinks to the material via the websites of chambers/solicitors firms. It would not be possible for people outside the court to upload material on to the UKSC/JCPC websites.

JR explained that the UKSC were having an internal meeting the following week to discuss options for dealing with the problems and the helpful suggestions of the User Group would be considered at that time.

- (b) Review of costs. The UKSC was still awaiting the final outcome of the Jackson Review and the government's implementation plans before its own review could start.
- (c) Electronic presentation of material. The UKSC/JCPC remained keen to try this out in further cases and JR encouraged those present to try and identify cases where this might be used.
- (d) Authorities. This issue would be dealt with later on in the agenda.
- (e) Summary of reasons for grant/refusal of permission. JR had omitted to put this on the agenda for the Justices' meeting and this would have to be carried over. **(Action: JR)**

- (f) Equality and diversity strategy. JR gave a brief update, particularly in relation to the accessibility audit, and the audit of the website carried out by the RNIB. UKSC would be publishing on the website the key recommendations and responses.

Jan Luba welcomed the fact that the UKSC was now putting information about costs hearings on the website and asked if we could also put information about pending applications for permission to appeal. It was explained that doing this would require a lot of staff resource which was not currently available. But the UKSC agreed to look at ways in which this might be done in the most convenient way. It was suggested that the material produced and placed on its website by the Upper Tribunal might be a possible model.

### Practice Directions

- (a) Authorities – Volume 1. Robin Tam QC introduced this item. His experience as counsel in the case of Adams had suggested that a little more guidance might be desirable and the next time there was an opportunity to review Practice Direction 6 at paragraph 6.5.2 he suggested some alternative wording:

“Where there are a large number of volumes, all the authorities that are likely to be referred to frequently during the oral argument should be placed together in the first volume. These will not necessarily be the leading cases in the field or the central statutory provisions, which may be uncontroversial and capable of being “taken as read”. Rather, the aim is to ensure that the materials in the first volume are those that will actually be turned up and looked at most often during the hearing.”

In Adams whilst the volume worked reasonably well for counsel, some statutory provisions had gone into volume 1 that perhaps did not really need to go into that volume. But Lady Hale emphasised that if there were statutory provisions that needed to be construed it was important that they were readily available to the Justices. The following points were made in discussion:

- Was there likely to be any difference of emphasis in JCPC cases? The law was sometimes less well known for the JCPC and there was the possibility of a large number of authorities being required.
- The JCPC agents were often coming to the facts for the first time and points taken at the JCPC hearing might be different to those in the courts below.

- (b) Timetable for filling and service of core volumes and authorities (Practice Direction 6.4 and 6.5). This item was introduced by Conrad McDonnell who had previously sent an e-mail, the text of which is **attached** to these minutes. In discussion he raised particularly the timelines for the preparation of the authorities volumes and the core volumes. He suggested that the current time limits should be changed so that the court would receive copies of the authorities volumes two weeks before the hearing. This would mean that the appellant would need to

- Core volumes were needed two weeks in advance. Authorities could then come later if necessary. The core volumes had to have cross-references to the volumes of authorities.
- In the JCPC there was almost always agreement between the parties about relevant authorities and para 6.5.1 provided for this in the Practice Directions.
- Sometimes what used to be a co-operative process was affected by gamesmanship.
- The printed cases would be needed at least a week earlier than the authorities volumes.
- It should be possible for a respondent to give a provisional list of authorities when the printed case was signed off. For the printers it would be difficult to introduce a different time frame running alongside the work that normally took place.
- Others thought that whilst sometimes it would be appropriate and easy to produce the printed case and the list of authorities at the same time, in others it would be essential to deliver the case before all the authorities had been identified.
- For those preparing the bundles of authorities it would be helpful to have copies of the authorities and not just a list.
- Given that the UKSC was very willing to agree individual timescales for particular cases, the issues being raised could be incorporated into that process. It was currently possible to differ from the timetable set down in the Practice Directions if necessary and if the court agreed.
- Some present felt it would not be right to impose a six, four, two week timetable yet but to rely on the flexibility the court generally adopted.
- There was a question mark over whether the ten copies as set out in the Practice Direction 6 para 6.4.5 were required.

There was general agreement that a list of authorities should be served at the same time as the printed case, on the understanding that some extra authorities might be identified at a later stage; and that it was right to remove the need for ten copies of a respondent's case. From 6.4.5 there was also some support for a formal revision of the timescales in the Practice Directions. This would be discussed further within the UKSC (**Action: JR**) but it might be sensible to leave the Practice Directions as they were for the time being and to vary the timetables by agreement. It was always open to the parties to approach the Registrar for directions, preferably jointly.

A separate issue was identified with the JCPC Rules which Louise di Mambro would look at. **Action LdiM.**

- (c) Other issues with the Practice Directions. Whilst the new Practice Directions had only been in operation a short time the UKSC/JCPC were very willing to listen to any representations users wished to make.

Michael Fordham QC thought that there might be a need for more guidance on how to put together the volumes of authorities after volume 1 ie the second and third tier authorities. He suggested that the parties provide the Justices with an empty, clear and light ring binder with up to 20 tabs to which new authorities could be added if necessary at the hearing.

Lady Hale pointed out that some comb bound volumes were too heavy to lift and there should be a maximum page length. JCPC practice should be applied to the UKSC. **(ACTION: Users)**

Jan Luba asked that when revised Practice Directions were placed on the website there was a footnote to indicate the date of the last revision Simon Adamyk suggested that the date might be put next to each hyperlink on the page listing the Practice Directions. **(ACTION: UKSC).**

Robin Tam asked for greater publicity to be given when new Practice Directions were issued. It might be helpful to have a regular timeline for routine Practice Direction updates. **(ACTION: UKSC)**

Louise di Mambro reported that the devolution Practice Direction would have to be amended but this would probably not take place until October. **(Action: LDiM)**

Michael Fordham raised the issue of court dress. He was not sure if this was appropriate to the Practice Directions or not but asked if the court would consider allowing the parties to take the initiative, if they wished, in approaching the court to ask if normal court dress could be abandoned.

It was agreed that this would be put on the agenda for the next Justices' meeting. **(ACTION: UKSC)**

### **JCPC Administration**

JR reported the changes that had taken place with the transfer of JCPC administration to the UKSC. She emphasised that the JCPC would remain an entirely separate court, but that the staff would be multi-skilled so that the administration could be as efficient as possible.

LdiM had now formally been appointed as Registrar of the Privy Council.

There would be a separate meeting of the JCPC users on 14 July 2011.

## **Legal Aid Reform**

The UKSC was aware of proposals in the different parts of the United Kingdom for legal aid reform. In discussions between JR and the legal aid authorities in both Scotland and Northern Ireland, it appeared there was likely to be little impact on the number of cases which might come to the Supreme Court. The situation, however, might well be different in England and Wales. JR had been discussing this with officials in the MoJ working on legal aid issues and would welcome views of the user group on the likely impact on workload. It was acknowledged that the main impact was going to be on cases lower down the system, but that might in itself impact on the number of cases which came up to the Supreme Court.

Those present felt that there was likely to be quite a significant impact on cases involving housing and local government because general public sector spending cuts would affect those areas, as well as reform of legal aid. Some were already having experience of local authorities indicating it was cheaper to grant a tenancy in certain circumstances than to fight an issue of principle they might otherwise have done.

It was agreed that this would be on the agenda for the next meeting, by which time there would be greater certainty about the proposals in England and Wales.

## **Pro-bono costs**

This issue was introduced by Lady Hale and Louise di Mambro. The regime provided by Section 194 of the Legal Services Act 2007, to enable payment to be paid in respect of pro-bono representation, did not apply to proceedings in the Supreme Court. Pending any change in the legislation there was a way in which the Supreme Court could make similar provision for proceedings before the court. This could be done by giving permission to appeal on terms that, in an appropriate case, the appellant should fund the respondent's representation by making a payment to the Access to Justice Foundation.

This was generally welcomed by those present. One question raised was whether the Long Title of the Legal Aid, Sentencing and Punishment of Offenders Bill would be wide enough to embrace an amendment of Section 194.

A question was raised as to whether the risk of adverse costs in pro bono cases are treated in the same way as legal aid cases.

## **Any other business**

- Ishbel Smith asked if it would be possible to have some footage of Scottish cases for use for training purposes. JR said that she should feel free to approach us and we would, if possible, make a DVD available.
- There was praise from some members of the User Group for the two documentaries which had been screened earlier in the year about the work of the court.
- Members of the User Group were thanked for their interest in assisting the UKSC with our education work. Chris Barber was staying on to help with the group of students who were already in the court. Jan Luba reminded JR that he was very interested in assisting.

- Clocks in courtrooms – JR explained that a new clock would shortly be installed in Court Two and that we had managed to rescue one of the original clocks from being exported to Canada. We hoped that clock would shortly be with us and would be installed in Court One.

**JENNY ROWE**  
**Chief Executive**