Note of the UKSC/JCPC User Group Meeting

Held on Friday 13 July 2018 at 10:30am in the Lawyers' Suite at the UKSC

Present:

Lord Kerr	}	
Mark Ormerod	}	UK Supreme Court
Louise di Mambro	}	

David Miles	Blake Morgan
Simon Kemp	Clyde & Co
Julie Tripp	Clyde & Co
Theo Solley	Sheridans
Nicole Curtis	Penningtons
Robin Lloyds	Axiom Stone Solicitors
Robin Tam QC	Temple Garden Chambers
Liz Morley	Howard Kennedy
Nigel Fisher	Norton Rose Fulbright (accompanied by student Mariam Akintunde)
Dermot O'Donnell	HMRC
James Turner QC	1KBW
Lee-John Charles	Government Legal Department
Jennifer Cassidy	Harcus Sinclair
Henry Hickman	Harcus Sinclair
John Almeida	Charles Russell Speechlys
Parvais Jabbar	Simons Muirhead & Burton
Amy Kuan	Simons Muirhead & Burton

Apologies:

Mark Stephens	Howard Kennedy
Steffan Taylor	Alan Taylor & Co
Gemma Ospedale	Royds Withy King
Christopher Jeans QC	11KBW

Merlene Harrison	Myers, Fletcher & Gordon
Lord Brennan QC	Matrix Law
Camilla Hart	Charles Russell Speechlys
Karen Quinlivan	NI Bar Library
Nicola Gare	HFW
Emma Gammon	Legal Services Department, Welsh Government
Christopher Knight	11KBW

1. Minutes of the meeting held on 26 January 2018

The minutes were agreed.

2. Forms and Practice Direction Amendments

Louise di Mambro had circulated the revised Forms and Practice Directions. Comments were needed very soon. The plan was for the revised Forms and Practice Directions to come into force on 1 October and we would want the legal textbooks to be able to include the new versions in their supplements or new editions.

Those attending the meeting made some drafting comments. On the increase to the time before the hearing after which interveners could not apply to intervene, Robin Tam asked whether there was to be a transitional period. Louise di Mambro replied that a transitional period would not be necessary. If there were some interveners in the Michaelmas Term that were caught short by the change, they would not be turned away.

Lord Kerr said that interventions had been exercising the Justices. There was no unanimity of view but increasingly Justices were taking the view that the approach to interventions should be tightened up. If counsel were hoping to obtain permission to intervene, it would be helpful to show that there was a different or special slant that their intervention could bring. Interveners were there to help the Court rather than to support a particular party, though this might a consequence of their intervention. There had, however, to at least be the appearance of altruism.

Robin Tam suggested that an advocate to the court might be appointed. Lord Kerr thought this worth considering but there would be cost implications in providing these.

Guidance on when the Court would welcome interventions might be difficult to formulate. Reasons for declining an intervention were not given and it was doubtful that there would be support from Justices for a change of practice. However, Lord Kerr would keep this in mind and discuss it further. It might be helpful in some cases.

Theo Solley asked about the requirement to file a document which "sets out the history of the proceedings". This was requested in one of the standard letters issued by the Registry but seemed unnecessary, though it was in fact a requirement of the Practice Directions (3.2.1 (h)). It was agreed that this was otiose and should be removed.

3. Any other business

The practice seemed to be developing of the appellant and respondent getting the same amount of time at the hearing. Louise di Mambro confirmed this was not coming from the Court. It must be what parties were agreeing by way of allocation of time. Lord Kerr took the point that

the appellant should expect more time. It was really for the parties to agree. There was a risk if disagreement came to the Court that the time overall might be reduced. The Justices were repeatedly surprised how much time was needed by counsel.

The question of the guideline rates was raised; they had not been increased for many years, though the use of the uplift did mitigate the problem. Louise di Mambro was not aware of any review currently underway. The Court followed the practice in the Senior Courts Costs Office which the Costs Judges oversaw. Louise would speak to Ian Sewell to see if he knew anything. It was agreed that Ian Sewell should attend the next meeting of the User Group and explain the mechanics of costs.

Requests for more time for the submission of SFIs was raised. It was suggested that what had previously been a relatively informal process, had seemed to become more formal. Louise di Mambro said that the Registry was trying to be flexible: for an extension of a week or so just an e-mail would suffice. It was much easier for the Court if parties told them the timetable they had agreed and it could then be followed and adjusted without reference to the Registry. If parties had not agreed a timetable and wanted an extension for a number of weeks then that needed a formal application. Lord Kerr pointed out that as long as the actual hearing date was not disrupted the Court would very much try to accommodate changes.

There were sometimes occurrences when the Justices did not have the right material at the hearing, which caused embarrassment and delay. However hard parties might try, they could not control what the Board had in front of it. It was suggested that there might be a check list to say what the Justices should have; this would help hugely. Different versions of materials came in and so what was needed for the hearing was a list of what the Justices should have and which version should be used.

A particular point relating to litigants in person in the JCPC was raised. If litigants in person had filed their applications and were then referred to pro bono solicitors, the solicitors would have no instructions and so, if the case was hopeless, it could not be withdrawn. One solution might be to refer the case to pro bono solicitors but for the Court not formally to file it until instructions had been taken. It was agreed that Louise and Parvais should discuss this further.

Louise di Mambro said that the website was being redeveloped and consultants were researching user experience. She asked for permission to circulate user e-mail addresses and this was agreed.

In preparation for the new website, work would be needed on the IT in the Registry. It would therefore close at 2pm in August and September and close for the whole day in the week of the August Bank Holiday and the first full week of September. Louise could always be contacted if the matter was urgent.

The Access to Justice Foundation could now be the recipient of a pro bono costs order in the Supreme Court. The Foundation would be grateful if counsel appearing pro bono could consider whether to make an application for such an order which would then benefit the Foundation.

Mark Ormerod
19 July 2018