



# THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

## PRACTICE DIRECTIONS

November 2024

## Practice Direction P: The Case Management Portal

### General

P.1 This Practice Direction concerns the case management portal. The portal is the external facing online website established and operated by the Judicial Committee of the Privy Council. It enables the parties and their legal representatives to file applications, appeals and other documents with the Registry, to serve those documents on other parties involved in the appeal and to communicate with the Registry and with each other. Parties can also use the portal to pay any fees that are due before the party can commence or participate in the appeal (as to fees see the Guidance on the Judicial Committee's website and Practice Direction 2 paragraphs 2.28 onwards). The portal enables the parties to track the progress of their appeal whenever they wish.

### Introduction of the portal

P.2 The portal will be brought into operation on 2 December 2024 when the new Judicial Committee of the Privy Council Rules 2024 come into effect (SI 2024/997). Litigants are expected to make all applications to the Judicial Committee for permission to appeal and to file appeals where the permission of the Judicial Committee is not required via the portal if the application or appeal is commenced on or after the portal comes into operation.

### Some key concepts

P.3 The portal operates through litigants or their representatives becoming registered users by creating individual **accounts** on the portal and by a **case file** being created on the portal to which they have access.

P.4 **Portal accounts:** A portal account is created in the name of an individual. Any person working in a firm of solicitors or in a set of barristers' chambers and any litigant in person or a person helping them can open an account on the portal in his or her name. To create an account a user must provide a name, an email address and a password. Each person with an account becomes a **registered user** of the portal. There is no fee for creating an account on the portal.

P.5 A registered user can open a **case file** for a particular appeal or reference on the portal. Once opened, that case file is thereafter controlled by the Registry. Other parties to the case who are registered users can gain access to the case file from their own accounts. The case file is where all activities regarding an appeal take place, including uploading documents, making procedural applications and communicating with the other parties and with the Registry. There is no limit to the number of case files that can be opened by a registered user or which that registered user can access using their account.

P.6 The concept of **service** and **servicing** documents on parties is different in the portal from conventional service used up till now. "Service" via the portal does not require the serving party to send the document directly by email to the other parties as presently happens. Instead, the document which needs to be served is uploaded in electronic form by the serving party into the relevant case file on the portal and stays within the portal. Each time a new document is uploaded to the portal (such as a procedural application or a letter to the Registry) the portal will send out an alert by email to the nominated account holders for the parties. The other parties can then log on to the portal to see what new event has occurred and they will have access to any new document that has been filed. **Filing** and service have accordingly become functionally identical – service does not require any step beyond uploading to the portal (which itself constitutes filing). Because each registered user will have nominated the email addresses to which notifications from the portal are sent concerning that appeal, the use of the portal ensures that documents and messages will get through to the correct recipient for each party at each stage.

P.7 If a notification relating to an uploaded document is sent to a party in this way, the document is taken to be served on the party:

- a. If the document was uploaded during the office hours when the Registry is open and the email notification is sent during those office hours, it is taken to have been served on the party on the day the email was sent; or
- b. if the document was uploaded outside those hours and the email notification sent outside those hours, it is taken to have been served on the next business day after the email was sent.

The Registry closes at 5 pm London time on weekdays. Parties should file their documents by that time on the relevant day even if they are in a different time zone. If the parties are in a different time zone from the Registry or in different time zones from each other, they should liaise as to what the deadline will be for service between them and inform the Registry as to what they have agreed.

P.8 If the portal is undergoing planned or unplanned maintenance downtime, the period during which it is not functioning will be left out of account when calculating the time during which a step must be taken.

P.9 Any requirement in the Rules or these Practice Directions to file a declaration of service may be satisfied by service through the portal.

P.10 The portal is separate from the Judicial Committee's public website. There will be a link to the portal on the website but the information on a portal case file is only available to the account holders nominated by the parties to the case and to the Registry.

P.11 Users of the portal are required to check the email address they have provided to the portal regularly for administrative communications so that they can be alerted to case

updates. The Judicial Committee will not send additional updates or reminders to parties. It is recommended that parties ensure that the portal email address [noreply@supremecourt.uk](mailto:noreply@supremecourt.uk) is recognised by their system to ensure that notifications are not blocked by their spam filter.

P.12 Where reference is made in this Practice Direction to a party doing something, that includes a representative acting on the party's behalf.

P.13 Introductory videos on how to use the Portal are available on the Judicial Committee website.

### **Who should use the portal?**

P.14 Parties who are legally represented are required to use the portal if they want to bring an appeal or take part in an appeal (Rule 4). This applies whether the party is the appellant, respondent or an intervener. All firms of solicitors and all barristers are therefore expected to have the ability to file, serve, be served, communicate with the Judicial Committee and track appeals in which they are involved using the portal.

P.15 Litigants in person may participate in the appeal via more conventional means of communication. They should read the Judicial Committee's guidance for litigants in person <https://www.jcpc.uk/appeal-process/self-represented-parties>. However, all litigants are strongly encouraged to use the portal for their involvement in the proceedings. The portal is designed to be accessible and easy to use, guiding the litigant through the process and explaining at each stage what needs to be done. It can be accessed via any internet-enabled device using an ordinary internet connection and using any email address. It can be used by people overseas as well as those in the United Kingdom.

P.16 Litigants starting an appeal outside the portal, can join the portal at any stage. Once a litigant in person has signed up to the portal for a particular appeal, they must continue to use the portal until that appeal is finally completed. If there are good reasons why they are unable to do so, they should contact the Registry.

P.17 The advantages of using the portal are that it provides a secure and convenient way for the parties to progress their appeal so that all those involved can have access to the same documents. The intention is that use of the portal will not only replace the provision of hard copies of documents or bundles to the Judicial Committee and the other parties but also remove the duplication of electronic copies of the same document being emailed several times to the Registry or to different parties during the course of the appeal. Documents such as the grounds of appeal, or the judgments and orders of the courts below will be uploaded to the portal at the start of the appeal and will remain there to be viewed or downloaded by all those involved in the appeal without the need for them to be sent round at any later stage (except when they form an element in the key documents or main hearing bundles).

P.18 Where one party, for example, the appellant is a non-portal party and the respondent is a portal party, the Registry will usually create a portal case file and enter the necessary data on behalf of the appellant so that the portal party respondent can, so far as possible, manage the case via the portal receiving notifications and filing documents online. The Registry will ensure that the non-portal party receives any documents, orders or directions that arise in the case.

P.19 The Registry staff will provide guidance and assistance to litigants or their representatives who are using the portal for the first time.

### **Opening an account on the portal**

P.20 Once the portal becomes operational, users can sign up to the portal by opening an account. The home page of the UKSC website has a button called "PORTAL" which will take users to the account registration page.

P.21 A user only needs to set up a portal account once. They can manage all the appeals they are involved in through the same account. If a litigant or their representative is not already registered with the portal, then registering by opening an account will be the first step they take when they become involved in an appeal.

P.22 Every account has a single email address associated with it. That email address can either be an existing email address used by that person or a new address created especially for this purpose. For example, a firm may choose to register an account using a specially created email address for that case such as DonoghuevStevenson@bigfirm.com. It is important that the email address associated with the account is one which is regularly monitored so that information which relates to any particular case arriving at that address will be picked up and a response given promptly if required.

P.23 An account holder may wish to set up automatic forwarding from the account's email address so that when that account is nominated a particular case file a notification received from the portal in relation to that case will be forwarded to more people either inside or outside the firm who are involved in the case. It is the responsibility of the registered user to ensure the account remains secure and that no unauthorised person gains access to it.

### **Opening a case file on the portal**

P.24 In order to start an application on the portal, for example, seeking permission to appeal, the litigant or the person representing the litigant will need to become registered as a user on the portal by opening an account. That user can then log in to the account and click on the button for filing a case. The portal will then prompt the user to open a case file for a particular set of proceedings.

P.25 Each party can nominate three registered users to gain access to the case file. The registered user opening the case file does not have to be one of that party's three nominated account holders. For example, the opening of the case file may be delegated within the firm to an administrative assistant who will be a registered user but who will nominate three different accounts to be the accounts for that party to the case. These three nominated account users will receive any notifications which are generated in that case file. The Registry will check the nominated email addresses, notify those email addresses that they have been nominated and then add them to case file for that party.

P.26 If there is no existing portal account linked to the nominated email addresses, the user will be sent an email inviting the user to register on the portal. If the user has already created an account, the new case file will be listed on the home page. When the user logs in to the portal account and clicks on "My cases" the user will find the new case file available to them and can manage their involvement in the case from then on.

P.27 The nominated accounts and their associated email addresses can change during the course of the case so that they are the most relevant to the stage which the proceedings have reached. For example, at the start of the case, the appellant's legal representative may choose to have the account of the partner in the firm, the account of the associate solicitor and the account of the paralegal working with them on the case as the three nominated accounts for that party. Any notifications about the case will then be sent to the email address for each of those accounts. Once the case reaches the listing stage, they may choose temporarily to substitute a portal account held by the clerk for the barristers who are going to appear at the hearing instead of the paralegal's account. Then when listing has been completed and the hearing date approaches, the party may decide that the senior and junior barristers' email accounts should be nominated instead of the partner's and associate's accounts so that counsel receive notifications about the case.

P.28 If the party instructs a new firm of solicitors part way through the case, the outgoing representative will apply via the portal to come off the record and the new firm will come onto the record. The new firm should link their own accounts to the case file in substitution for the accounts of the outgoing firm.

P.29 The portal has two channels for communicating with the Registry. Most documents uploaded to the portal and most letters sent via the portal will use the public communication channel. This means that they will be available to be viewed and downloaded not only by the Registry but also by the other account holders linked with that case file. However, there is also a private or confidential channel for communicating with the Registry and documents uploaded via this channel will not be able available to the other parties. Rule 9(3) gives some examples of the kinds of documents that can be sent via the private channel. These include not only confidential matters such as financial information related to fee remission or requests for anonymity but also routine matters which will be of no interest to the other parties.

## **Making an application: providing information**

P.30 Once the case file is opened, the portal user can start the process of making an application. This process involves filling in the answers to questions presented in boxes on the screen and also uploading copies of specified electronic documents.

P.31 The user does not have to complete the application in a single session; the user can save the information already entered online and come back to complete the application later. The portal will also enable the user to download and save as a separate electronic document or print out the information provided so far and the boxes that remain to be completed. This means the users can draft their responses outside the portal or in hard copy and then paste that information into the portal boxes when they are ready to do so.

P.32 The first step is to choose whether the case is an appeal in the United Kingdom Supreme Court or the Judicial Committee of the Privy Council. The user then chooses the option “making an application for permission to appeal”. The screen will then display the four stages involved in making an application for permission: (a) completing the information about the application; (b) providing information about the parties; (c) uploading documents; and (d) making payment.

P.33 The user completes the boxes presented on screen with the information required. This is broadly the same information that was required to complete the different boxes on the Form 1 previously used by the Judicial Committee. It includes (a) the details of the party appealing including legal representatives’ names and contact details, (b) the details of the parties responding to the appeal and (c) a description of the decision being appealed. The portal will also ask questions which will assist the Registry to ascertain the Judicial Committee’s jurisdiction to determine the appeal.

P.34 The portal presents boxes asking the party to indicate whether that party is seeking an anonymity order. The party can provide information about an anonymity order made by the court below or, if no such order was made previously, the party can explain why the party is seeking such an order now. This stage will also enable the party to ask for the appeal to be expedited or for an extension of time.

P.35 The user must then complete boxes on screen which provide: (a) a summary of the case; (b) the keywords which will enable someone searching the website to find the case; and (c) a short chronology. The party should not include confidential information in these boxes. The information in these boxes will be used by the Registry staff to draft the information which will appear on the Judicial Committee’s public website about the case.

P.36 Stage 2 is for the user to enter information about the parties to the proposed appeal. This includes entering information about the appellant making the application itself as well as information about other appellants and information about the respondent(s).

P.37 There may be more than one appellant who wish to be treated as a single person so far as the portal is concerned. For example, a husband and wife or a company and its subsidiary maybe the First and Second Appellants. If they are represented by the same legal representative and there are no potential conflicts of interest between them, they can operate the case file as a single person with one set of three accounts (see paragraph 8.10 of Practice Direction 8). They will then only have to pay one issuance fee.

P.38 If there are other appellants who are represented by different law firms, those solicitors will need to open their own case file for the appeal on behalf of that party. They will pay a separate fee and have their own three nominated registered user accounts. The two case files will then be linked. There must be two linked case files, even if they are appealing against the same judgment of the court below, for example because that court heard appeals from two different first instance judgments.

P.39 The name of counsel acting for the appellant, if known, can also be provided at this stage (although counsel do not need to be added as one of the three nominated accounts).

P.40 An appellant must provide information about the respondents in so far as the appellant knows that information. Usually, the appellant will know which firm acted for the respondent in the court below and will be able to provide the contact email address for the respondent that was used to communicate with them during the earlier stages of the proceedings. That is the contact information that the Registry will use to check whether that email address is already associated with a registered user on the portal. If it is, then the Registry will contact the potential respondent via the portal to alert them to the opening of the case file. If that email address is not associated with a registered user, the Registry will email that person and invite them to open an account on the portal. Where there are multiple respondents but they are represented by the same solicitor and there is no potential for a conflict of interest between them an applicant should consult the guidance on the Judicial Committee's website as to when it is possible to input a single party on the case file and pay a single fee.

### **Making an application: uploading supporting documents**

P.41 The party making the application must also have electronic versions of the documents that the user will be asked by the portal to upload. These documents are listed in Rule 13(4) and are: (a) the order of the court below against which the appellant seeks permission to appeal, (b) the judgment of the court below to which the order gives effect, (c) the order of the court below refusing permission to appeal to the Judicial Committee, (d) the grounds of appeal for which the appellant seeks permission to appeal, (e) a precis of the factual background of the case and a chronology of proceedings, (f) the order of the first instance court (if different) which was challenged in the court below, and (g) the judgment of the first instance court (if different).



P.42 Please see Practice Direction 3 for further details regarding these documents.

P.43 Any document which is filed using the portal must comply with the Electronic Papers Guidance which is available on the JCPC website and updated regularly. It gives detailed guidance about the format, size and other requirements for documents for example that they must be bookmarked and capable of being highlighted.

P.44 The portal will invite the user, for example, to upload the Grounds of Appeal. The document uploaded in response to that request will be referred to within the portal as the Grounds of Appeal, whatever the name of the document uploaded. However, it will be helpful to those using the case file if the title given to the e-document by the party uploading it is informative about the nature of the document, so that it is called "CaseName-Grounds.pdf", "CaseName-CAjudgmt.pdf" etc, rather than "Doc1.pdf" "Doc2.pdf" etc.

### **Confidentiality**

P.45 For each document uploaded into the case file by a registered user, there will be a choice of three options. The upload can state that the document is confidential and that either a confidentiality order has been made or the party will be seeking such an order. Secondly, it can state that the version of the document uploaded has been redacted so that it does not contain any confidential information and thirdly it can state that the document is not confidential and has not been redacted. If either of the first two options apply, the party must explain in the box provided the reasons for restricting access to the document from one or more other parties. The Registry will usually ask the party to upload a non-redacted version in the confidential part of the portal and upload the redacted version in which the confidential material has been blocked out to be made available for all the parties to see. This exercise is separate from the consideration of what material should be published on the Judicial Committee's website under Rule 45.

P.46 Arrangements for the delivery and handling of **closed or sensitive material** are separate from the arrangements for confidential material. Such material should not be uploaded to the portal. Parties wishing to provide closed or sensitive material as part of their application should contact the Registry to make appropriate arrangements outside the portal.

### **Payment for the application and submission of application**

P.47 Once the information has been entered on the portal case file and the necessary documents uploaded, the applicant must pay the fee for the application.

P.48 The portal enables online payment of fees. Online payment can be made by credit card (Visa or Mastercard), debit card or bank transfer. The portal contains a facility for making electronic payment within the portal using a credit or debit card. Payment by bank

transfer must be made before finalising any filing via the portal. Payment by card may be made in the portal.

P.49 If paying via bank transfer, the party will enter an appropriate reference code when instructing the bank to make the payment. This reference then appears as the identifier on the Registry's bank statement next to the incoming payment when it arrives in the Registry's account. The party will then notify the Registry via the portal as to the transfer date, the amount of the payment and the reference used before submitting the application. The Registry will then be able to match up the payment reference with the case file. Applications cannot be filed until payment has been either made or confirmed. For payments that need to be made once the appeal is underway, the party should use the Case ID number as the reference.

P.50 Parties are also able to apply for Help with Fees via the portal. Guidance about this is contained in Practice Direction 2 paragraph 2.28 onwards. This will require evidence as to the party's means to be uploaded. This can be uploaded via the private channel: see Rule 9(3). Fee remission will be considered by the Registrar and the decision communicated via the portal.

P.51 Once payment has been received by the Registry the portal will enable the party to file the application. The party will be able to download and save or print out a hard copy of the application as filed. A party should do this promptly after filing.

### **Approval and issue of application**

P.52 Once an appellant has filed the application, the Registry will check that the filing is in order. The Registry may contact the party and ask for a revised document and for it to be uploaded again if the document has been scanned and saved upside down or is otherwise illegible or incomplete. The Registry will state the time within which this remedial action must be taken. If no action is taken within 30 days the filing will automatically lapse, the case will close and any fees paid will be refunded.

P.53 Once the portal pages have been completed satisfactorily, the correct documents uploaded and the fee paid, the Registry may issue the application for permission and direct the appellant to serve it: see Rule 13(8). The case will then be issued with a Case ID Number which will be the unique identifier for that case throughout its life. Case numbers will include the year of issue and then be numbered consecutively as they are issued from the start of the calendar year. If there is a linked case file, for example, opened by another appellant with separate legal representation or by a respondent cross-appealing, the Case ID will be the same as for the first case file opened with the suffix "A" so that it is clear from the Case ID numbers that they are linked appeals.

P.54 Once an application for permission has been issued by the Registry, the portal will send a notification to the three account users nominated by that party. That notification will state the date and time of the issue of the application, confirming that the application

has been issued. The appellant must then log into the case file and download the application as a pdf document and save it locally or print it out, depending on how they plan to serve the application on the other parties. They should do this promptly to ensure they have a record of the document as issued because documents on the portal are “live” and after an initial 72 hour period in which no changes can be made, the document might be amended.

P.55 The issue of the application does not mean that the Judicial Committee has jurisdiction to hear the appeal. The procedure for the Judicial Committee to determine whether it has jurisdiction to hear the appeal is explained in Rule 13.

### **Amendment of documents**

P.56 It is not possible to amend a document once filed electronically. Amendments must be made by filing an amended document and seeking permission: see Rule 33(5).

### **Service of an application for permission to appeal or a notice of appeal**

P.57 Generally, all service of documents will take place via the portal. However, Rule 14 stipulates that the service of the application for permission to appeal, once it has been issued by the Registry, must be served by non-portal service. The same applies to the service of a notice of appeal where there has been no application for permission: see Rule 21. The permitted methods of non-portal service are specified in Rule 8(3). These exceptions to portal service are necessary because the respondents to the appeal may not yet be registered users or if they are registered users, they may not be aware that the case file in this appeal has been opened.

P.58 Once non-portal service has been carried out, the appellant must make a declaration of service on the portal in that case file. This requires the appellant to access the case file through one of the nominated accounts, click on the option “lodging service” and complete the information about how each other party was served. By this stage, the appellant may be aware that the information about the contact person for the respondent entered at the earlier application stage is incorrect because, for example, that person has recently left the firm, or the respondent has changed its legal representation. In the declaration of service, the appellant will be able to enter the correct information and explain why this has changed.

P.59 The Registry will then be able to contact the new representative for the respondent and ensure that the account using that email address is added to the case file. If the email address entered by the appellant in the declaration of service as the appropriate address for the respondent is an address which is already associated with an account on the portal, the portal will send a notification to that email address inviting the account holder to log on to the portal. If the email address is not currently associated with a portal account, the Registry will send an email to that address inviting the person

to register as a portal user using that email address, or any other email address that is preferred.

P.60 Each party can see, but cannot change, the user accounts nominated by other parties to the appeal as the three accounts linked to each of the other parties.

### **Responding to an application for permission or to an appeal**

P.61 Once the respondent is served with the application for permission or with the notice of appeal via non-portal service, the respondent will need to be a registered user to respond to the appeal. The documents served on the respondent by the appellant will give the respondent the name of the appeal. When users log in to the relevant portal account and clicks on “My cases” they will find the new case file will be available to them and can be managed from then on. The respondent can identify it from the Case ID number and name given in the application which will have been served by non-portal means. The user can then nominate the three account users to receive notifications on behalf of the respondent for this case.

P.62 Even if the appellant is a non-portal party, the Registry will open a case file, enter the necessary information and upload copies of the relevant documents so that the respondent can manage the case via the portal so far as possible.

P.63 Once the respondent has gained access to the case file, the portal will allow as response to the application to be filed. A respondent who is served with an application for permission to appeal and who wishes to oppose the grant of permission must file a notice of objection via the portal in accordance with Rule 15. Similarly, a respondent who is served with a notice of appeal under Rule 21, must serve a notice of acknowledgement of service under Rule 22 if they wish to participate in the appeal.

P.64 Respondents served with an application who do not respond to the appeal, will not be notified of the progress of the appeal and this party will not be able to participate in the appeal. The application will proceed in the absence of this party and will be determined by the Judicial Committee.

P.65 Once the respondent has completed the relevant pages on the portal in the case file and paid any fee required, the appellant will be notified of the respondent’s action and will thereafter communicate with the respondent via the portal. Where the respondent does not become a portal party those documents must be filed by conventional, non-portal means. The appellant will therefore know how to communicate with each respondent as the appeal progresses.

### **Interveners and cross-appeals**

P.66 The process described above also applies in relation to interveners in the proceedings (see Rules 16 and 25). A third party who wishes to make submissions

supporting or opposing the grant of permission to appeal under Rule 16 must file an application to intervene using their own account on the portal. The information provided will enable the Registry to associate this application with the case file opened for the parties and to ensure that the parties have access to the submissions made. If permission to appeal is refused, the intervener's application file will no longer be needed and will be closed. If permission is granted and the intervener wishes to be involved in the case, they need to apply to be an intervener in the appeal under Rule 25. The intervener can then make a fresh application to intervene via the portal. If their application to intervene is successful, the intervener will be added as a party to the main case file and the intervention application will be closed.

P.67 A respondent who wishes to cross-appeal, should file a notice of acknowledgment and must also open a separate case file acting as an appellant. That case file will remain separate from the appellant's case file and a filing fee and all further applicable fees will be payable in this new case file. They will be managed as two cases but the Case ID number of the cross-appeal will show that they are linked. The two cases will be managed together but an action taken in one case file will not automatically be made in the other – the appellant and the cross-appealing respondent will need to ensure that the two case files remain up to date with the current stage of the proceedings and that applications made in one appeal which need also to apply to the cross-appeal are made in the cross-appeal as well.

### **Subsequent steps in the proceedings**

P.68 The Rules provide for many different stages of the appeal including the making of procedural applications (Rule 35). Such applications may request, for example, that the appeal be expedited, or may apply for security for costs or for an appeal to be withdrawn.

P.69 Parties can make all such applications via the portal. Parties can at any point in the appeal choose the relevant application from a menu of options on the portal. The party will then be taken by the portal to a series of boxes which will ask for the information needed to make that application and will ask also for any documents needed to be uploaded to the portal. If the application is filed via the portal then it will be automatically served on the other parties to the appeal via the notification process.

### **Hearing bundles**

P.70 Rules 27 — 31 of the Rules provide for the content and filing of the documents that the parties must prepare for the appeal hearing and for the bundles which will be used by the Justices and the parties to the appeal. Guidance on how these should be prepared is given in Practice Directions 5 and 7.

P.71 Where the party filing these documents is a portal party the documents should be uploaded as electronic files to the portal case file. Appellants are advised to consult the up to date "Electronic papers guidance" on the Board's website for information about how

to present documents such as the need for bookmarking, hyperlinks, maximum document upload etc.

P.72 Apart from the key documents bundle (see Rule 28) there is no requirement either to provide hard copies of the documents to the Registry or to the other parties or to email the documents to the Registry or other parties. The Justices and the other parties will access the documents and the bundles via the portal. A party who wishes to download or print out the documents or bundles will be able to do so.

### **Orders made in appeals managed via the portal**

P.73 The Rules specify when the Judicial Committee will issue orders, for example, orders granting or refusing permission to appeal (Rule 17(5)), orders disposing of the appeal (Rule 32) and orders as to costs (Rule 53).

P.74 An order made by the Judicial Committee will be uploaded to the portal, a notification will be placed on the portal case file and a notification will be sent by email to the portal parties to the appeal alerting them to this event. The orders themselves will not be emailed or sent to the parties. They can be downloaded as pdf files and printed out by the party.

### **Case Management Portal Maintenance**

P.75 The portal enables parties to issue proceeding and file documents online all year round, including weekends and bank holidays, except where there is planned "downtime": as with all electronic systems, there will be some planned periods for system maintenance and upgrades when the portal will not be available. If the portal is undergoing planned or unplanned maintenance downtime, the period during which it is not functioning will be left out of account when calculating the time during which a step must be taken.

# **Practice Direction 1: General Note and Jurisdiction of the Judicial Committee of the Privy Council**

## **General note**

1.1 The Judicial Committee of the Privy Council is the court of final appeal for the UK overseas territories and Crown dependencies, and for those Commonwealth countries that have retained the appeal to His Majesty in Council or, in the case of Republics, to the Judicial Committee. The Judicial Committee deals with about 55-65 Commonwealth appeals a year. It also has other domestic jurisdiction within the United Kingdom. For further details see paragraphs 1.10 and 1.11 below.

1.2 The procedure of the Judicial Committee is governed by The Judicial Committee (Appellate Jurisdiction) Rules Order 2024 (SI 2024/997). As from 2 December 2024, these new Rules replaced and revoked the earlier 2009 Rules. This was subject to transitional provision in Rule 63 which provides that the 2009 Rules continue to apply to appeals which were proceeding before the new Rules came into effect and to applications for permission to appeal and notices of appeal filed under the 2009 Rules before the new Rules came into effect. The new Rules are supplemented by Practice Directions issued by the Judicial Committee covering a range of topics and by guidance on the Judicial Committee's webpage. The new Practice Directions, published to coincide with the coming into effect of the 2024 Rules include the Portal Practice Direction. This describes the online case management portal that the Judicial Committee has established through which parties will interact with the Judicial Committee and with each other.

1.3 The membership of the Judicial Committee is generally made up of the Justices of the UK Supreme Court who do most of the judicial work of the Privy Council together with other Privy Counsellors (including former Justices of the UK Supreme Court) who have held high judicial office.

1.4 In September 2024 the Chairman of the Judicial Committee, Lord Reed of Allermuir announced that the Rt Hon Dame Janice Pereira DBE had accepted an invitation to sit on the Judicial Committee following her appointment to the Privy Council. As Lord Reed noted at the time of the announcement, Dame Janice, as a recently retired Chief Justice of the Eastern Caribbean Supreme Court and President of the Court of Appeal, will bring a wealth of experience and expertise to the Judicial Committee's work. She will strengthen its ability to serve the countries from which the Judicial Committee hears appeals. Other judges from Judicial Committee jurisdictions may similarly be invited in the future if appropriate arrangements can be made.

## **The Jurisdiction of the Judicial Committee**

### **I. Commonwealth Jurisdiction**

## *A. Appeals to His Majesty in Council*

1.5 An appeal lies from the countries listed at paragraph 1.6 of which The King is head of State and from UK overseas territories and Crown Dependencies as follows:

a. by leave of the local Court of Appeal. The circumstances in which leave can be granted will depend on the law of the country or territory concerned. Leave can usually be obtained as of right from final judgments in civil disputes where the value of the dispute is more than a specified amount and in cases which involve issues of constitutional interpretation. Most Courts of Appeal also have discretion to grant leave in other civil cases.

b. by leave of His Majesty in Council. The Judicial Committee has a discretion whether to grant leave. The procedure for applying to the Judicial Committee for leave to appeal is set out in Part 3 of the 2024 Rules and guidance on applying for permission to appeal is given in Practice Direction 3.

1.6 The countries referred to in paragraph 1.5 are as follows

Antigua and Barbuda,

The Bahamas

Cook Islands and Niue (Associated States of New Zealand) (note that legislation enacted in New Zealand in October 2003 abolished appeals from New Zealand to the Privy Council in respect of all cases heard by the Court of Appeal of New Zealand after the end of 2003. The New Zealand legislation does not affect rights of appeal from the Cook Islands and Niue).

Grenada

Jamaica

St. Christopher and Nevis

Saint Vincent and the Grenadines

Tuvalu

The Sovereign Base Areas of Akrotiri and Dhekelia (in Cyprus)

The United Kingdom Overseas Territories, which include Anguilla, Ascension, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St. Helena, Tristan da Cunha, Turks and Caicos Islands

The Crown Dependencies of Jersey, Guernsey and the Isle of Man

## *B. Appeal to Local Head of State*



1.7 Brunei. An appeal lies from the Court of Appeal of Brunei to the Sultan and Yang di-Pertuan, in civil cases only. By agreement between His Majesty and the Sultan these appeals are heard by the Judicial Committee who report their opinion to the Sultan instead of to His Majesty.

*C. Appeals to the Judicial Committee*

1.8 From the following independent republics within the Commonwealth, an appeal lies to the Judicial Committee itself. This applies to the following Republics:

The Republic of Trinidad and Tobago

The Commonwealth of Dominica

Kiribati

Mauritius

1.9 The circumstances in which appeals may be brought are similar to those in which appeals lie to His Majesty in Council (see A above), except that from Kiribati an appeal lies only in cases where it is alleged that certain constitutional rights of any Banaban or of the Rabi Council have been or are likely to be infringed.

*II. Domestic Jurisdiction*

1.10 The Board hears appeals to His Majesty in Council:

- a. from the Disciplinary Committee of the Royal College of Veterinary Surgeons;
- b. against certain Schemes of the Church Commissioners under the Mission and Pastoral Measure 2011.

1.11 The Board also has the following rarely used jurisdictions:

Appeals from the Arches Court of Canterbury and the Chancery Court of York in non-doctrinal faculty causes.

Appeals from Prize Courts.

Disputes under the House of Commons Disqualification Act 1975.

Appeals from the Court of Admiralty of the Cinque Ports.

Appeals from the Court of Chivalry.

1.12 His Majesty has the power to refer any matter to the Board for "consideration and report" under section 4 of the Judicial Committee Act 1833.

*III. United Kingdom Legislation*

1.13 The following is a list of the principal items of legislation made in the United Kingdom (statutes and Orders in Council) relating to the Judicial Committee and its proceedings. Appeals from outside the United Kingdom are in many cases also governed by laws made in the countries and territories concerned.

*A. General Legislation*

Judicial Committee Act 1833

Judicial Committee Act 1843

Judicial Committee Act 1844

Court of Chancery Act 1851, section 16

Privy Council Registrar Act 1853

Appellate Jurisdiction Act 1876, sections 6 and 25

Judicial Committee Act 1881

Appellate Jurisdiction Act 1887, sections 3 and 5

Judicial Committee Amendment Act 1895

Appellate Jurisdiction Act 1908

Judicial Committee Act 1915

References of appeals to Judicial Committee Order in Council 1909 (S.R. & O. 1909 No. 1228)

Judicial Committee (Appellate Jurisdiction) Rules Order 2009, (S.I. 2009/224)

Judicial Committee (Appellate Jurisdiction) Rules (Amendment) Order 2013 (SI 2013/246)

*B. Legislation governing particular proceedings*

Appeals from outside the United Kingdom

Note: Those Orders which were wholly or partially revoked and replaced by the Judicial Committee (Appellate Jurisdiction) Rules 2009 and now by the 2004 Rules are marked with an asterisk.

(i) Appeals from Independent Commonwealth countries to His Majesty in Council.

**Antigua and Barbuda:** Antigua and Barbuda Constitution Order 1981 (S.I.1981 No.1106), Schedule 1, section 122. Antigua and Barbuda Appeals to Privy Council

Order (S.I. 1967 No. 224, as modified and retitled by the Antigua and Barbuda Modification of Enactments Order 1981, S.I. 1981 No. 1105).

**Bahamas:** Bahamas Independence Order 1973 (S.I. 1973 No.1080), Schedule, Articles 104(2) and 105. \*Bahama Islands (Procedure in Appeals to Privy Council) Order 1964 (S.I. 1964 No. 2042), (as amended by the \*Bahamas (Procedure in Appeals to Privy Council) (Amendment) Order 1973, S.I. 1973 No.1081).

**Belize:** The Belize Independence Order 1981 (S.I. 1981 No. 1107), Schedule 1, section 104.

**Jamaica:** Jamaica (Constitution) Order 1962 (S.I. 1962 No. 1550), Schedule 2, section 110. \*Jamaica (Procedure in Appeals to Privy Council) Order 1962 (S.I. 1962 No. 1650).

**St. Christopher and Nevis:** St. Christopher and Nevis Constitution Order 1983 (S.I. 1983 No. 881), Schedule 1, section 99. \*St. Christopher and Nevis Appeals to Privy Council Order (S.I. 1967 No. 224, as modified and retitled by the St. Christopher and Nevis Modification of Enactments Order 1983, S.I. 1983 No. 882).

**St. Vincent and the Grenadines:** The St. Vincent Constitution Order 1979 (S.I. 1979 No. 916), Schedule 1, section 99. \*St. Vincent Appeals to Privy Council Order (S.I. 1967 No. 224, as modified and retitled by the St. Vincent Modification of Enactments Order 1979, S.I. 1979 No. 917).

**Tuvalu:** The Tuvalu Independence Order 1978, Schedule, section 84. \*The Tuvalu (Appeals to Privy Council) Order 1975 (S.I. 1975 No.1507).

(ii) Appeals from Commonwealth Republics to the Judicial Committee.

**Dominica:** Commonwealth of Dominica Constitution Order 1978 (S.I. 1978 No. 1027), Schedule 1, section 106 and Schedule 2, paragraphs 9 and 10. \*Dominica Appeals to Judicial Committee Order (S.I. 1967 No. 224, as amended and retitled by the Dominica Modification of Enactments Order 1978 (S.I. 1978 No. 1030), Schedule, paragraph 10).

**Kiribati:** Kiribati Independence Order 1979 (S.I. 1979 No. 719), Schedule, section 123. \*Kiribati Appeals to Judicial Committee Order 1979 (S.I. 1979 No. 720).

**Mauritius:** Mauritius Independence Order 1968, Schedule, section 81. Mauritius (Appeals to Privy Council) Order 1968 (S.I. 1968 No. 294). Mauritius Appeals to Judicial Committee Order 1992 (S.I. 1992 No. 1716).

**Trinidad and Tobago:** \*Trinidad and Tobago Appeals to Judicial Committee Order 1976 (S.I. 1976 No. 1915).

(iii) Appeals from the Supreme Court of **Brunei Darussalam** to His Majesty the Sultan and Yang Di-Pertuan. These appeals are referred to the Judicial Committee by virtue of an agreement made between His Majesty The King and His Majesty The Sultan. Brunei (Appeals) Act 1989 (1989 c.36). \*Brunei (Appeals) Order 1989 (S.I. 1989 No. 2396, as amended by Brunei (Appeals) (Amendment) Order 1998, S.I. 1998 No. 255).

(iv) Appeals from United Kingdom Overseas Territories.

**Anguilla:** Anguilla Constitution Order 1982 (S.I. 1982 No. 334), Schedule, section 72. \*Anguilla (Appeals to Privy Council) Order 1983 (S.I. 1983 No.1109).

**Bermuda:** There is no United Kingdom legislation specifically governing appeals from Bermuda.

**British Antarctic Territory** \*British Antarctic Territory Court of Appeal (Appeal to Privy Council) Order 1965 (S.I. 1965 No. 592).

**British Indian Ocean Territory:** \*British Indian Ocean Territory (Appeals to Privy Council) Order 1983 (S.I. 1983 No. 1888).

**British Virgin Islands:** \*Virgin Islands (Appeals to Privy Council Order) 1967 (S.I. 1967 No. 234, as amended by the Anguilla, Montserrat, and Virgin Islands (Supreme Court) Order 1983 (S.I. 1983 No. 1108), Article 3).

**Cayman Islands:** \*Cayman Islands (Appeals to Privy Council) Order 1984 (S.I. 1984 No. 1151).

**Falkland Islands:** \*Falkland Islands (Appeals to Privy Council) Order 1985 (S.I. 1985 No. 445).

**Gibraltar:** Gibraltar Constitution Order 2006, Chapter VI, Section 66. \*Gibraltar (Appeals to Privy Council) Order 1985 (S.I. 1985 No. 1199).

**Montserrat:** \*Montserrat (Appeals to Privy Council) Order 1967 (S.I. 1967 No. 233), as amended by Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983 (S.I. 1983 No. 1108), Article 3.

**Pitcairn:** Pitcairn Order 1970 (S.I. 1970 No.1434) as amended by S.I. 2000 No. 1340 and S.I. 2002 No. 2638.

**St. Helena:** \*St. Helena Court of Appeal (Appeal to Privy Council) Order 1964 (S.I. 1964 No. 1846), as amended by St. Helena Court of Appeal (Appeal to Privy Council) (Amendment) Order 1990 (S.I. 1990 No. 991).

**South Georgia and South Sandwich Islands:** \*The South Georgia and South Sandwich Islands (Appeals to Privy Council) Order 1985 (S.I.1985 No. 450).

**Turks and Caicos Islands:** \*Turks and Caicos Islands (Appeal to Privy Council) Order 1965 (S.I. 1965 No. 1863), as amended by the \*Turks and Caicos Islands (Appeal to Privy Council) (Amendment) Order 1973 (S.I. 1973 No. 1084).

**The Sovereign Base Areas of Akrotiri and Dhekelia (Cyprus):** \*The Sovereign Base Areas of Akrotiri and Dhekelia (Appeals to Privy Council) Order in Council 1961 (S.I. 1961 No. 59).

(v) Appeals from the Channel Islands and the Isle of Man.

**Channel Islands:** Order in Council of 19th May 1671 relating to appeals to His Majesty in Council from Jersey (S.R. & O. Rev 1948 XI p 341); Court of Appeal (Jersey) Law 1961, art.14. Order in Council regulating Appeals to His Majesty in Council from Guernsey (13th May 1823) (S.R. & O. Rev 1948 XI p 344). Order in Council regulating Appeals to His Majesty in Council from Jersey and Guernsey, 15th July 1835 (S.R. & O. Rev 1948 XI p 347).

**Isle of Man:** There is no United Kingdom legislation specifically governing appeals from the Isle of Man.

#### United Kingdom Appeals

(i) **Appeals from the Council of the Royal College of Veterinary Surgeons:** Veterinary Surgeons Act 1966, section 17.

(ii) **Appeals against Pastoral Schemes:** Mission and Pastoral Measure 2011, section 12, Schedule 2 (10).

#### **The exercise of the Judicial Committee's Jurisdiction**

1.14 Some of the powers of the Judicial Committee may be exercised by the Registrar. Rule 11 makes specific provision for procedural decisions.

1.15 The Registrar will normally make a decision without an oral hearing but may direct an oral hearing. The Registrar may also refer the matter to the Judicial Committee for decision.

1.16 A party who is dissatisfied with a decision of the Registrar may apply for that decision to be reviewed by a single member of the Judicial Committee. Any application must be made via the portal and must be filed within 14 days of the Registrar's decision: Rule 11(6). See Practice Direction 7 for applications and for the relevant fee see information about fees in the Appendix to the 2024 Rules and on the JCPC website.

## Practice Direction 2: The Registry of the Judicial Committee

### Introduction

2.1 The registry of the Judicial Committee of the Privy Council is situated on the ground floor of the building in Parliament Square which houses the Supreme Court of the United Kingdom. The staff of the Registry act under the guidance and supervision of the Registrar of the Privy Council.

2.2 The postal address of the Judicial Committee is:

The Judicial Committee of the Privy Council  
Parliament Square  
London  
SW1P 3BD

The telephone numbers are:

020 7960 1991  
020 7960 1992

2.3 The Registry public counter is open from 9am – 4.30pm (and 4.30 – 5pm by appointment\*) except on bank holidays and for the week between Christmas and the New Year. Registry staff are available to answer telephone and portal queries from 9am to 5pm except on bank holidays and for the week between Christmas and the New Year.

\*Appointments must be pre-booked and completed by 5pm.

2.4 The Registry is closed on:

- a. Saturdays and Sundays,
- b. during the Christmas vacation as advertised,
- c. Bank Holidays in England and Wales under the Banking and Financial Dealings Act 1971, and
- d. exceptionally, such other days as the Registrar may direct.

2.5 If you need to contact the Registry urgently at a time it is closed you should email [registrarsoutofhours@jcpc.uk](mailto:registrarsoutofhours@jcpc.uk) and the email will be forwarded to the Registrar. This email address should be used only in a case of real urgency; emails sent to this address that are not urgent will not be actioned. If possible, the party making an urgent application should have alerted the other parties to the appeal and the Registry in advance of the

possibility of an urgent application being needed. Where an application is considered out of hours, the same application must be filed via the portal and the application fee paid whether or not the application is granted.

2.6 Litigants should note that if an urgent stay of an order made by the court below is sought, the application should be made first to that court and the email to the Registrar should record that such an application has been made and refused and provide the reasons given by that court for refusing to grant a stay. The Judicial Committee will only grant a stay of the order of the court below in exceptional circumstances.

### **Filing documents in the Registry of the Judicial Committee**

2.7 A party who is legally represented must use the portal to file documents (Rule 4). The Portal Practice Direction explains how to use the portal. Litigants in person should also use the portal unless there is a specific reason why they are unable to do so. If a litigant in person cannot use the portal, for example if he or she is incarcerated, the litigant should contact the Registry to explain the position and the Registry will assist the litigant.

2.8 Where a court deadline would otherwise fall on a day on which the Registry is closed, the deadline is extended to the next day on which the Registry is open (see Rule 6(4) and the Portal Practice Direction, paragraph P.7). Where a document is received on a business day at a time when the Registry is closed, the document will be taken to have been filed in time and the Registrar may give whatever consequential directions appear appropriate. If the portal is undergoing planned or unplanned maintenance downtime, the period during which it is not functioning will be left out of account when calculating the time during which a step must be taken.

2.9 The Registry will not issue an application for permission to appeal or other document unless:

- a. all the required documents are supplied; and
- b. the prescribed fee is paid or remitted pursuant to the help with fees scheme (see paragraphs 2.28-2.29).

2.10 The Registrar may refuse to accept any document which is illegible or does not comply with any provision in the Rules or any relevant practice direction. On refusing to accept a document, the Registrar will give whatever directions appear appropriate (see Rule 10).

### **Time limits**

2.11 The Rules provide for the following time limits to apply:

a. An application for permission to appeal must be filed within 56 days from the date of the order or decision of the court below or (if later) from the date of the court below refusing permission (leave) to appeal: Rule 13(1). Where permission (or leave) to appeal is required, it should be sought first from the court below.

b. A notice of appeal where permission of the Judicial Committee is not required must be filed within 56 days of the date of the order or decision of the court below granting permission or final leave to appeal: Rule 20(2).

c. If an appellant has applied for help with fees (see Rule 42), the above periods may be extended by the Registrar in accordance with Rule 6.

2.12 The Registry may accept applications for permission to appeal or notices of appeal which are out of time but will do so only if the application or notice sets out the reason(s) why it was not filed within the time limit and it is in order in all other respects. See paragraphs 3.18-3.21 of Practice Direction 3 and paragraphs 4.10-4.14 of Practice Direction 4. The Registrar may reject an application for permission to appeal solely on the ground that it is out of time.

2.13 The Judicial Committee or the Registrar may extend or shorten any time limit set by the Rules unless to do so would be contrary to any statutory provision. They may do so either on an application by one or both parties or without an application being made. An application for an extension may be granted after the time limit has expired. The Registrar will notify the parties when a time limit is varied. (See Rule 6)

2.14 An application for an extension of time for filing the permission to appeal application cannot be made in advance of filing the application for permission, even if it becomes clear before the expiry of the 56 day time limit that it is not going to be possible to meet that deadline. The application for an extension of time to the date of filing should be made as part of the permission to appeal application. Respondents should bear in mind that under the Rules, unnecessary disputes over procedural matters are discouraged. Respondents should not therefore oppose reasonable applications for extensions of time where an explanation is given.

2.15 A different procedure applies where the reason for the delay is that the appellant is waiting for a decision on an application for legal aid or public funding in his or her local jurisdiction. An appellant who has applied for public funding should notify the Registry by logging on to the portal and clicking on the button "Ask a general question". This will enable the appellant to enter information about the case and the progress of the application for funding. This will in turn enable the Registry to monitor the position and granted extensions of time as appropriate. The Registrar will have regard in particular to the promptness with which the party has made and the manner in which the party has pursued that application (see Rule 6(3)). However, it is expected that it will only be in exceptional cases that time limits will not be extended where the delays are not



attributable to the party. The onus is on the party seeking the extension of time to keep the Registry regularly updated as to the progress of the application for legal aid.

### **Form of application for permission to appeal and notice of appeal**

2.16 The content of an application for permission to appeal is dealt with in Practice Direction 3. The content of a notice of appeal is dealt with in Practice Direction 4.

### **Case name**

2.17 Applications for permission to appeal and notices of appeal carry the same title as in the court below. For reference purposes, the names of parties to the original proceedings who are not parties to the appeal should nevertheless be included in the title: their names should be enclosed in square brackets. The names of all parties should be given in the same sequence as in the title used in the court below, even if their roles are now reversed. If the party seeking to appeal to the Judicial Committee was the unsuccessful respondent in the court below, the successful former appellant's (now proposed respondent's) name should still appear first in the case name with the description ("Respondent") after it and the proposed appellant should appear below that described as ("Appellant"). The Registry staff will insert the case title of new cases into the Portal, using the guidance in this Practice Direction.

2.18 Applications for permission to appeal and appeals in which trustees, executors etc. are parties are titled in the short form, for example Trustees of John Black's Charity (Respondents) v. White (Appellant).

2.19 In any application or appeal concerning children or where in the court below the title used has been such as to conceal the identity of one or more parties to the proceedings, this fact should be clearly drawn to the attention of the Registry at the time of filing, so that the title adopted in the Judicial Committee can take account of the need for anonymity. Applications involving children are normally given a title in the form B (A Child).

2.20 In case titles involving the Crown, the abbreviation "R" meaning "Rex" is used. "R" is always given first. Case titles using this abbreviation take the form R v Jones (Appellant) or R v Jones (Respondent) (as the case may be) or R (on the application of Jones) (Appellant) v The Attorney General (Respondent).

### **Service**

2.21 Rule 8 sets out the rules governing service. Portal parties must serve documents on other portal parties via the portal. The only exception to this is service of the application for permission to appeal and the notice of appeal, which must be served by non-portal service. The Portal Practice Direction explains how portal service works.

2.22 Non-portal parties must serve all other parties by way of non-portal service. Portal parties must also serve non-portal parties by way of non-portal service. Non-portal service can be carried out by any of the methods listed in Rule 8(3). Email can only be used as a method of non-portal service if the person to be served has agreed to accept service at that email address: Rule 8(3)(c). However, if the email address is one of those nominated on the portal by that party as one of the three accounts associated with that portal case file, then non-portal service can be effected where necessary by emailing a document to that email address. If a non-portal party is unable to use any of the specified methods for service, that party should contact the Registry for assistance.

2.23 For non-portal service, a party may only use a delivery service which provides for tracking and notifies the sender of the date on which the document is delivered to the addressee. A document served by a tracked delivery service is treated as served on the day on which it is delivered to the addressee, according to the notification provided by the service to the sender (Rule 8(7)).

2.24 Non-portal service must take place within 7 days of a party filing the document or of the document being issued by the Judicial Committee, whichever is the later (Rule 8(8)).

### **Supporting documents**

2.25 See Practice Direction 3 for the documents which must be filed with an application for permission to appeal.

2.26 See Practice Direction 4 for the documents which must be filed with a notice of appeal.

2.27 See Practice Direction 7 for guidance on the documents which may need to be filed with an application.

### **Fees and help with fees**

2.28 The fees which are payable are prescribed by Rule 46 and the Appendix to the Rules. Fees are payable at the time a document is filed or a step is taken, not at the conclusion of the proceedings and Rule 46 allows the Registrar to refuse to accept a document or to allow a party to take any step unless the relevant fee is paid.

2.29 In circumstances where an appellant has applied to be treated as a financially assisted person in accordance with Rule 42, the requirement to pay fees may be waived. Any application should be made to the Registrar supported by sworn or credible evidence as to the appellant's means (see Practice Direction 7). Where the application for permission to appeal is withdrawn before it is determined the fees paid are not refunded. Where an application is rejected as inadmissible the Registrar may authorise a refund of the fee paid.

## **Practice Direction 3: Applications for permission to appeal to the Judicial Committee**

### **General Information**

3.1 Applications to the Judicial Committee for permission to appeal must be commenced via the portal unless the applicant is a litigant in person. The Portal Practice Direction explains how to use the portal. Litigants in person are encouraged but not required to use the portal to commence their appeal. If litigants in person are not able to use the portal, they should contact the Registry which will assist them (see Practice Direction 2 for contact details).

3.2 Applications for permission are considered by an Appeal Panel of the Judicial Committee. Applications are generally decided without a hearing and it is essential that the application is filed correctly with the Registry and that the basis on which, and the relevant provision(s) under which, the Judicial Committee is said to have jurisdiction are set out.

3.3 An appellant seeking permission to appeal from the Judicial Committee must pay a fee when filing the application. Information about the level of fees is set out in an Appendix to the Rules and there is guidance on how to make payment in the Portal Practice Direction and on the Judicial Committee's website.

### **Filing**

3.4 The portal will guide the appellant through the process of completing the boxes which will provide the Judicial Committee with the relevant information. To comply with Rule 13, the appellant must upload the following documents via the portal at the time of making the application for permission to appeal:

- a. a certificate of value;
- b. the order of the court below against which the appellant seeks permission to appeal;
- c. the judgment of the court below to which the order gives effect;
- d. if available, the order of the court below refusing permission to appeal to the Judicial Committee or granting final permission to appeal as the case may be;
- e. the grounds of appeal for which the appellant seeks permission to appeal;
- f. a precis of the factual background of the case and a chronology of proceedings;

- g. the order of the first instance court (if different) which was challenged in the court below;
- h. the judgment of the first instance court (if different).

3.5 The certificate of value required is described in Rule 3 and must contain a statement by the appellant as to:

- a. the sum of money or the amount of damages the appellant is claiming;
- b. the sum of money or the amount of damages the appellant has been awarded;
- c. the value of the land or property which is the subject of the appeal; or
- d. whether the monetary value of the relief the appellant is seeking is—
  - i. (not more than GBP£100,000,
  - ii. more than GBP£100,000 but not more than GBP£500,000, or
  - iii. more than GBP£500,000.

Note that according to Rule 3, when calculating the amount or value to be specified in a certificate of value, an appellant must disregard any possibility that interest or costs may be recovered.

3.6 If the sealed version of the substantive order appealed against is not immediately available, the application should be filed within the required time limit with a draft of the order, and the sealed order uploaded as soon it is available. For the relevant time limits for filing an application for permission to appeal see Practice Direction 2.

3.7 The grounds of appeal should contain the appellant's formulation of the legal issue raised by each ground, a statement of the test that the appellant contends that the Judicial Committee should apply, (including, where applicable, the statutory source of that test) and summary of the reasons why each ground satisfies that test. If the appellant asserts that he or she has an appeal as of right to the Judicial Committee the appellant should similarly explain the source of that right and why it is said the appeal qualifies.

3.8 Where issues that were considered and determined in the judgment of the court below are not being pursued on appeal, this should be made clear at the start of the precis and in the grounds of appeal. Where the applicant seeks to rely on an argument which was not considered by the court below in support of one of the grounds of appeal, this should also be made clear at the start of the precis and the grounds should explain why the issue was not raised in the earlier proceeding and why the Judicial Committee should consider the issue.

3.9 No other papers are required, although it would be useful for the Judicial Committee if the parties also upload a copy of any unreported judgment cited in the

application or in the judgment of the court below. Additional documents may not be accepted unless requested by the Registry. An appellant who wishes to provide documents other than those described above must give a detailed explanation as to why they are needed.

3.10 An application for permission to appeal must be signed by the appellant or his or her legal representative. An electronic signature is acceptable. The application for permission to appeal should include subject matter catchwords for indexing (whether or not the case has been reported).

3.11 In some cases, the appellant has been granted permission to appeal by the court below but wishes to apply to the Judicial Committee for permission to appeal on additional grounds, either grounds for which permission was refused by the court below or new grounds that have not been raised before. In that situation, the appellant should file a notice of appeal under Rule 20 and in accordance with Practice Direction 4 in respect of the grounds for which permission was granted by the court below and also file a procedural application under Rule 35 for permission to amend the notice of appeal to include the additional grounds. The appellant should not file an application for permission to appeal under Rule 13. The procedure set out in Rule 35(1) – (5) will then apply and the Judicial Committee will determine whether permission to rely on the additional grounds should be granted.

3.12 The Board favours brevity and clarity. The grounds of appeal should not normally exceed 10 pages of A4, in size 12 font with 1.5 line spacing, and margins of at least 2.54cm top, bottom, right and left. Text on all pages must be in a format that will allow comments and highlighting to be imposed on the text. Applications which are not legible or which are not produced in the required form will not be accepted. Parties may consult the Registry at any stage of preparation of the application, and may submit applications in draft for approval. The Judicial Committee has published guidance on its website called “Electronic papers” explaining the formatting requirements for documents to be uploaded to the portal.

3.13 The Board deprecates the practice of providing a “long, discursive recital of facts and legal argument. Grounds of appeal should be succinctly stated. They should not rehearse facts nor should they contain legal argument”: *Lesage v Mauritius Commercial Bank Ltd* [2012] UKPC 41 at paragraph 20. The Registrar will reject any application where the grounds appear without adequate explanation from counsel to be excessive in length or where the application fails to identify the relevant issues.

3.14 Irrespective of the outcome of the appeal, the costs of preparing a permission application which is considered to be unnecessarily long will not be recoverable.

3.15 Amendments to applications are allowed where the Registrar is satisfied that this will assist the determination of the application and will not unfairly prejudice the

respondents or cause undue delay. Any application to amend must be served on the respondents.

3.16 The parties' attention is drawn to the judgment of the United Kingdom Supreme Court in *Willers v Joyce (Re: Gubay (deceased) (No 2)* [2016] UKSC 44 regarding the status of decisions of the Judicial Committee in the courts of England and Wales. That judgment noted that the then Practice Directions required an appellant to say whether an application for permission to appeal or an appeal involved inviting the Judicial Committee to depart from a decision of the House of Lords or the Supreme Court. The Court stated that this should be expanded to apply to decisions of the Court of Appeal of England and Wales. The judgment gave the following further guidance:

"21. ... The registrar of the JCPC will draw the attention of the President of the JCPC to the fact there may be such an invitation. The President can then take that fact into account when deciding on the constitution and size of the panel which is to hear the appeal, and, provided that the point at issue is one of English law, the members of that panel can, if they think it appropriate, not only decide that the earlier decision of the House of Lords or Supreme Court, or of the Court of Appeal, was wrong, but also can expressly direct that domestic courts should treat the decision of the JCPC as representing the law of England and Wales. ... However, it seems to me to be not only convenient but also sensible that the JCPC, which normally consists of the same judges as the Supreme Court, should, when applying English law, be capable of departing from an earlier decision of the Supreme Court or House of Lords to the same extent and with the same effect as the Supreme Court."

3.17 Following this guidance, if an application for permission to appeal invites the Judicial Committee to depart from one of its own decisions or from one made by the House of Lords, the UK Supreme Court or the Court of Appeal of England and Wales, this should be stated clearly in the application. For an analysis of the circumstances in the Judicial Committee will depart from an earlier decision, see *Chandler v The State (No 2)* [2022] UKPC 19 at paragraphs 57-65.

### **Extensions of time**

3.18 Where an appellant is unable to file his or her application within the time limit prescribed by the Rules, an application for an extension of time must be made as part of the application for permission to appeal. The respondent's views on the extension of time should be sought and, if possible, those views should be recorded in the application. A prospective application for an extension of time for filing the permission to appeal application cannot be made even if it becomes clear before the expiry of the 56 day time limit that it is not going to be possible to meet that deadline. The application for an extension of time to the date of filing should be made as part of the permission to appeal application. The application for an extension of time will be referred to the Appeal Panel to be considered at the same time as the application for permission to appeal.

3.19 The longer the delay in filing, the more convincing and weighty the explanation will need to be and the Board will need to be satisfied that, having regard to all the circumstances, it is in the interests of justice that the time limit should be extended: see *Carlos Hamilton and Jason Lewis v The Queen* [2012] UKPC 31. In criminal cases, the prosecuting authorities should be notified as soon as a prisoner has indicated an intention to apply for permission to appeal to the Judicial Committee and a copy of that notification should be produced to the Registrar of the Privy Council when the application is filed.

3.20 Respondents should bear in mind that under the Rules unnecessary disputes over procedural matters are discouraged. Respondents should not therefore oppose reasonable applications for extensions of time where an explanation is given.

3.21 For the position regarding litigants who have applied for public funding in their local jurisdiction, see Practice Direction 2, paragraph 2.15.

### **Issue of the application for permission**

3.22 Once filed, the Registrar will review an application for permission to appeal. According to Rule 13(5), The Registrar may refuse to issue an application on the ground that:

- a. the Judicial Committee does not have jurisdiction to issue it;
- b. it contains no reasonable grounds; or
- c. it is an abuse of process.

3.23 Where the Registrar forms the provisional view that the appeal does not contain any reasonable grounds of appeal or that it would be an abuse of process to allow the appeal to go forward, the Registrar will notify the appellant of this and ask for submissions as to why permission should be granted before coming to a decision either to issue the application for permission or refuse permission. The Registrar may also ask the other proposed parties for their views.

3.24 Where the Registrar forms the view that the Judicial Committee has no jurisdiction, she may ask for submissions from the Appellant or, if the position is clear, she may issue a decision refusing permission without asking for submissions.

### **Service**

3.25 Once the application for permission has been issued by the Registry, the appellant must serve a copy of the application on every respondent and on any person who was an intervener in the court below. In accordance with Rule 14(2), service of the application cannot be carried out through the portal and parties must use one of the non-portal methods specified in Rule 8(3). Appellants must bear in mind that according to Rule 8(8)

the application must be served on the respondent within 7 days of being issued by the Judicial Committee unless the Registrar has made a different direction. Further, the deemed date of service by first class post under Rule 6(3) of the 2009 Rules has been deleted so that the appellant must ensure that he or she uses a service method which enables him or her to prove when the application was served on the respondent. If the appellant uses a tracked delivery service, the appellant should consign the document to the courier promptly after it is issued to make sure that delivery to the respondent will take place within 7 days following the issue of the application by the Registry.

3.26 Once service has been carried out, the appellant must submit a declaration of service by completing the relevant pages on the portal. Alternatively, if the appellant is a non-portal party, he or she must file a certificate of service in accordance with Rule 8(5).

### **Objections by respondents**

3.27 Each respondent who wishes to object to the application must, within 28 days after service, file notice of objection (Rule 15(1)). This should be filed via the portal: see Portal Practice Direction. If a respondent is a litigant in person and is not able to use the portal, he or she should contact the Registry which will assist the respondent. For the relevant fee see the guidance on fees on the Judicial Committee's website.

3.28 A notice of objection should:

- a. set out briefly the reasons why permission to appeal should not be granted by reference to the test for the grant of permission;
- b. state any conditions which the respondent proposes should be attached to the grant of permission and whether permission should be limited to any specific issues;
- c. normally not exceed 5 pages of A4 size with size 12 font and 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left.

3.29 Once a notice of objection has been issued, the respondent must within 7 days serve the notice on the appellant, any other respondent and any person who was an intervener in the court below. For those parties to the appeal who are portal parties, this must be done through the portal: see the Portal Practice Direction. Where one of the parties is not a portal party, that party must be served by one of the methods specified in Rule 8(3). Parties should contact the Registry to confirm how they will serve non-portal parties. Respondents must bear in mind that according to Rule 8(8), the notice of objection must be served on the other parties within 7 days of being issued by the Judicial Committee unless the Registrar has made a different direction. Further, the deemed date of service by first class post under the 2009 Rules has been deleted so that the



respondent must ensure that he or she uses a service method which enables him or her to prove when the application was served on the other parties. If the respondent uses a tracked delivery service, the respondent should consign the notice to the courier promptly after it is issued to make sure that delivery will take place within 7 days following the issue of the application by the Registry.

3.30 A respondent who files notice will be permitted to participate in the application and will be given notice of its progress: Rule 13(3). An order for costs will not be made in favour of a respondent who has not given notice.

### **Anonymity and reporting restrictions**

3.31 When the appellant completes the application for permission to appeal on the portal, he or she will be able to indicate whether an anonymity order is sought either for the appellant or for the opposing party to prevent the identification of that party. If the request for an anonymity order is made as part of the application for permission, there is no need for the requesting party to apply separately for an anonymity order and no additional fee is payable. It is important that the Registry is alerted as early as possible that either or both of the parties requires anonymity since a summary of the case will be placed on the Judicial Committee's website promptly after the application is issued by the Registry. The request should also make clear whether the opposing party consents to the making of the order. If the opposing party objects to the making of the order, a summary of the reasons given for that objection should be included in the request. The parties should always inform the Registry if such an order has been made in the proceedings by a court below. In such cases the Registrar will then usually make a further order imposing reporting restrictions.

3.32 If an anonymity order is not requested as part of the application for permission, an application for such an order must be made to the Judicial Committee by the party seeking anonymity. Any objections to the making of such an order should be made via the portal as soon as possible after filing that application. In that situation, a separate application must be made by the person seeking anonymity and the appropriate fee must be paid.

### **Consideration on the documents**

3.33 The Appeal Panel of members of the Judicial Committee decides first whether an application for permission to appeal is admissible (that is, whether the Judicial Committee has jurisdiction to entertain an appeal). If the Appeal Panel determines that an application is inadmissible, it will refuse permission on that ground alone and not consider the content of the application. The Appeal Panel gives a reason for deciding that the application is inadmissible.

3.34 If the Appeal Panel decides that an application is admissible, Rule 17 provides that the Panel may then:

- a. grant permission (see paragraph 3.35);
- b. refuse permission (see paragraph 3.39);
- c. invite the parties to file written submissions as to the grant of permission on terms whether as to costs or otherwise (see paragraphs 3.41);
- d. direct an oral hearing (see paragraphs 3.42).

### **Permission to appeal is granted**

3.35 Permission to appeal is granted in civil cases for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Judicial Committee at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal; an application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground.

3.36 In criminal cases permission is granted where, in the opinion of the Appeal Panel, there is a risk that a serious miscarriage of justice may have occurred.

3.37 In cases in which the appellant had an appeal as of right but the court appealed from refused in error to grant leave as of right, permission will be granted unless in the opinion of the Appeal Panel the appeal is devoid of merit and has no prospect of success or is an abuse of process.

3.38 If the Appeal Panel decides that an appeal should be entertained without further proceedings, it grants permission outright and the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

### **Permission refused**

3.39 If the Appeal Panel decides that permission should be refused, the parties are notified that the application is refused and they are sent a copy of the order sealed by the Registrar which records the Panel's decision.

3.40 The Appeal Panel gives brief reasons for refusing permission to appeal. There is no procedure for seeking a review of that refusal.

### **Permission given on terms**

- 3.41 If the Appeal Panel is considering granting permission to appeal on terms:
- a. the Panel proposes the terms and the parties have the right to make submissions on the proposed terms within 14 days of the date of the Panel's proposal;

- b. the Panel will then decide whether to grant permission (unconditionally or on terms);
- c. prospective appellants who are granted permission to appeal subject to terms that they are unwilling to accept may decline to pursue the appeal.

### **Application referred for oral hearing**

3.42 The Appeal Panel may direct that an application for permission to appeal is referred for an oral hearing. The Panel may direct the parties to make written submissions in advance as appropriate and will specify the time within which any such submissions should be filed and served on the other parties.

3.43 When an application is referred for an oral hearing, the appellant and all respondents who have filed notice of objection under Rule 15 are notified of the date of the hearing before the Appeal Panel. Parties may be heard before the Panel by counsel, by solicitor, or in person. If counsel are briefed, solicitors should ensure that the Registry is notified of their names. Only a junior counsel's fee is allowed on assessment (see Practice Direction 9).

3.44 Oral permission hearings usually last for 30 minutes. The Appeal Panel will normally give its decision orally at the end of the hearing and an order recording the decision will be available to be downloaded by the parties from the portal.

### **Interventions in applications for permission to appeal**

3.45 Any person who was not a party in the proceedings below and in particular (i) any official body or non-governmental organisation who seeks to make submissions in the public interest or (ii) any person with an interest in proceedings by way of judicial review, may make written submissions asking the Judicial Committee to grant or dismiss an application for permission to appeal (see Rule 16). These submissions must be filed on the portal: see the Portal Practice Direction. Submissions should normally not exceed 5 pages of A4, with size 12 font and 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left.

3.46 Once the submissions are filed, a copy must be served on the appellant, every respondent and any person who was an intervener in the court below.

3.47 Any submissions which are made are referred to the Appeal Panel. Where the panel decides to take the submissions into account and grants permission to appeal, the person making them will be notified. If permission to appeal is granted, a formal application must be made under Rule 25 if the intervener wishes then to intervene in the appeal. See Practice Direction 4 (Appellants, respondents and interveners).

### **Orders**

3.48 The appellant, all respondents who have filed notice of objection under Rule 15 and any person who made intervener submissions under Rule 16 will be able to download from the portal a copy of the order sealed by the Registrar which records the Panel's decision on the application for permission.

3.49 The appellant must notify any person who was an intervener the court below and who did not make submissions under Rule 16 of the outcome of the permission to appeal decision (Rule 17(6)(b)).

### **Filing notice to proceed**

3.50 Where permission to appeal is granted, the application for permission to appeal will stand as the notice of appeal and the grounds of appeal are limited to those on which permission has been granted. The appellant must, within 14 days of the grant of permission to appeal, file notice under Rule 19 that he or she wishes to proceed with his or her appeal. When the notice is filed, the application for permission to appeal will be issued as a notice of appeal and, in order to comply with Rule 21, the appellant must then serve the notice on each respondent.

### **Expedition**

3.51 In cases involving the liberty or life of the subject, urgent medical intervention or the wellbeing of children, a request for expedition may be made in writing to the Registrar.

### **Costs**

3.52 For the costs associated with permission to appeal applications please see Practice Direction 9.

## **Practice Direction 4: Appellants, Respondents and Interveners**

### **General note**

4.1 The practice of the Judicial Committee is that where permission to appeal is granted, the application for permission to appeal will stand as the notice of appeal and the grounds of appeal are limited to those on which permission has been granted: Rule 19(1). The appellant must, within 14 days of the grant by the Judicial Committee of permission to appeal, file notice under Rule 19(1)(c) that he or she wishes to proceed with the appeal. Where the appellant is a portal party the appellant will be able to log in to the case file from his or her account and the portal will offer the appellant the option of filing this notice and enable the appellant to enter the necessary information. If the respondent is a portal party, service of the notice of intention to proceed for this purpose will take place automatically, see Rule 8(1) and the Portal Practice Direction.

4.2 If notice of intention to proceed is not given in time, an application for an extension of time must be made before proceeding with giving the notice of intention to proceed.

4.3 Where permission to appeal to the Judicial Committee has been granted by the court below or where there is an appeal as of right, an appellant must file a notice of appeal rather than a notice of intention to proceed.

4.4 In those cases in which an appellant had an appeal as of right but the court appealed from has refused to grant conditional and final leave, the appellant must seek special leave from the Judicial Committee: see Practice Direction 3 and, in particular, paragraph 3.37 (devoid of merit test).

### **The notice of appeal**

4.5 Where permission to appeal has been granted by the court below or where there is an appeal as of right to the Judicial Committee, a notice of appeal must be filed via the portal. For further information regarding the portal, see the Portal Practice Direction. A party who is not legally represented and who is not able to use the portal should contact the Registry for assistance. Parties may consult the Registry at any stage of preparation of the notice. Amendments to the grounds of appeal contained in the notice are allowed where the Registrar is satisfied that this will assist the determination of the appeal and will not unfairly prejudice the respondents or cause undue delay.

4.6 It is essential that the notice of appeal sets out the basis on which and the relevant provision(s) under which the Judicial Committee is said to have jurisdiction. Parties may consult the Registry at any stage of preparation of the notice and may submit notices in draft for approval.

4.7 Text on all pages must be in a format that will allow comments and highlighting to be imposed on the text. Notices which are not legible or which are not produced in the required form will not be accepted. The Judicial Committee has published guidance called “Electronic papers” available on the website. This explains the formatting requirements for documents to be uploaded to the portal.

4.8 The parties’ attention is drawn to the judgment of the United Kingdom Supreme Court in *Willers v Joyce & anor (Re: Gubay (deceased) (No 2)* [2016] UKSC 44 regarding the status of decisions of the Judicial Committee in the courts of England and Wales. That judgment noted that the then Practice Directions required an appellant to say whether an application for permission to appeal or an appeal involved inviting the Judicial Committee to depart from a decision of the House of Lords or the Supreme Court. They stated that this should be expanded to apply to decisions of the Court of Appeal of England and Wales. The judgment gave the following further guidance:

“21. ... The registrar of the JCPC will draw the attention of the President of the JCPC to the fact there may be such an invitation. The President can then take that fact into account when deciding on the constitution and size of the panel which is to hear the appeal, and, provided that the point at issue is one of English law, the members of that panel can, if they think it appropriate, not only decide that the earlier decision of the House of Lords or Supreme Court, or of the Court of Appeal, was wrong, but also can expressly direct that domestic courts should treat the decision of the JCPC as representing the law of England and Wales. ... However, it seems to me to be not only convenient but also sensible that the JCPC, which normally consists of the same judges as the Supreme Court, should, when applying English law, be capable of departing from an earlier decision of the Supreme Court or House of Lords to the same extent and with the same effect as the Supreme Court.”

4.9 Following this guidance, if an application for permission to appeal invites the Judicial Committee to depart from one of its own decisions or from one made by the House of Lords, the UK Supreme Court or the Court of Appeal of England and Wales, this should be stated clearly in the application. For an analysis of the circumstances in the Judicial Committee will depart from an earlier decision, see *Chandler v The State (No 2)* [2022] UKPC 19 at paragraphs 57-65.

### **Time for filing notice of appeal and extensions of time**

4.10 The time limit for filing a notice of appeal where the permission of the Judicial Committee is not needed is 56 days of the date of the order or decision of the court below granting permission or final leave to appeal, as the case may be: Rule 20(2).

4.11 Where an appellant is unable to file a notice of appeal within the relevant time limit, an application for an extension of time must be made as part of the notice of appeal in the portal. The respondent’s views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. A prospective application

for an extension of time for filing the permission to appeal application cannot be made in advance even if it becomes clear before the expiry of the 56 day time limit that it is not going to be possible to meet that deadline. The application for an extension of time to the date of filing should be made as part of the permission to appeal application. Respondents should bear in mind that under the Rules unnecessary disputes over procedural matters are discouraged. Respondents should not therefore oppose reasonable applications for extensions of time where an explanation is given.

4.12 The longer the delay in filing, the more convincing and weighty the explanation will need to be and the Judicial Committee will need to be satisfied that, having regard to all the circumstances, it is in the interests of justice that the time limit should be extended: see *Carlos Hamilton and Jason Lewis v The Queen* [2012] UKPC 31. In criminal cases, the prosecuting authorities should be notified as soon as a prisoner has indicated an intention to appeal to the Judicial Committee and a copy of that notification should be produced to the Registrar of the Privy Council when the appeal is filed.

4.13 A different procedure applies where the reason for the delay is that the appellant is waiting for a decision on an application for legal aid public funding. An appellant who has applied for public funding should notify the Judicial Committee by logging on to the portal and clicking on the button “Ask a general question”. This will enable the appellant to enter information about the case and the progress of the application for funding. This will in turn enable the Registry to monitor the position and granted extensions of time as appropriate: see Rule 6(3).

4.14 The application for an extension of time will be referred to the Registrar and, if it is granted, the appellant must comply with Rule 20 and the other requirements set out in this Practice Direction.

### **Case name**

4.15 See Practice Direction 2, paragraphs 2.17 – 2.20 for guidance about case titles.

### **Filing a notice of appeal**

4.16 The portal will guide the appellant through the process of completing the boxes which will provide the Judicial Committee with the relevant information. To comply with Rule 20, the appellant must upload the following documents via the portal at the time of making the application for permission to appeal:

- a. a certificate of value;
- b. the order of the court below against which the appellant is appealing;
- c. the judgment of the court below to which the order gives effect;

- d. if available, the order of the court below granting discretionary permission to appeal or final leave to appeal as the case may be;
- e. the grounds of appeal;
- f. a precis of the factual background of the case and a chronology of proceedings;
- g. the order of the first instance court (if different) which was challenged in the court below;
- h. the judgment of the first instance court (if different).

4.17 The certificate of value required is described in Rule 3 and must contain a statement by the appellant as to:

- a. the sum of money or the amount of damages the appellant is claiming;
- b. the sum of money or the amount of damages the appellant has been awarded;
- c. the value of the land or property which is the subject of the appeal; or
- d. whether the monetary value of the relief the appellant is seeking is—
  - i. not more than GBP£100,000,
  - ii. more than GBP£100,000 but not more than GBP£500,000, or
  - iii. more than GBP£500,000.

Note that according to Rule 3, when calculating the amount or value to be specified in a certificate of value, an appellant must disregard any possibility that interest or costs may be recovered.

4.18 If the substantive order appealed against is not immediately available, the application should be filed within the required time limit, and the order uploaded to the portal as soon it is available.

4.19 The grounds of appeal should contain the appellant's formulation of the legal issue raised by each ground, a statement of the test that the appellant contends that the Judicial Committee should apply, (including where applicable the statutory source of that test) and summary of the reasons why each ground satisfies that test.

4.20 Where issues that were considered and determined in the judgment of the court below are not being pursued on appeal, this should be made clear at the start of the precis and in the grounds of appeal. Where the applicant seeks to rely on an argument which was not considered by the court below in support of one of the grounds of appeal, this should also be made clear at the start of the precis and the grounds should explain



why the issue was not raised in the earlier proceedings and why the Judicial Committee should consider the issue.

4.21 No other papers are required, although it would be useful for the Judicial Committee if the parties also upload a copy of any unreported judgment cited in the application or in the judgment of the court below. Additional documents may not be accepted unless requested by the Registry. An appellant who wishes to provide documents other than those described above must give a detailed explanation as to why they are needed.

4.22 A notice of appeal must be signed by the appellant or his or her legal representative. An electronic signature is acceptable. The notice of appeal should include subject matter catchwords for indexing (whether or not the case has been reported).

4.23 In some cases, the appellant has been granted permission to appeal by the court below but wishes to apply to the Judicial Committee for permission to appeal on additional grounds, either grounds for which permission was refused by the court below or new grounds that have not been raised before. In that situation the appellant should file a notice of appeal under Rule 20 in respect of the grounds for which permission was granted by the court below and also file a procedural application under Rule 35 for permission to amend the notice of appeal to include the additional grounds. The procedure set out in Rule 35(1) – (5) will then apply and the Judicial Committee will determine whether permission to rely on the additional grounds should be granted.

4.24 The Board favours brevity and clarity. The grounds of appeal should not normally exceed 10 pages of A4, in size 12 font with 1.5 line spacing, and margins of at least 2.54cm top, bottom, right and left. The Board deprecates the practice of providing a “long, discursive recital of facts and legal argument. Grounds of appeal should be succinctly stated. They should not rehearse facts nor should they contain legal argument”: *Lesage v Mauritius Commercial Bank Ltd* [2012] UKPC 41 at para 20.

## **Service**

4.25 Once the notice of appeal has been issued by the Registry, the appellant must serve a copy of the notice on every respondent and on any person who was an intervener in the court below. In accordance with Rule 21(2), service of the application cannot be carried out through the portal and parties must use one of the non-portal methods specified in Rule 8(3). Appellants must bear in mind that according to Rule 8(8) the application must be served on the respondent within 7 days of being issued by the Judicial Committee unless the Registrar has made a different direction. Further, the deemed date of service by first class post under Rule 6(3) of the 2009 Rules has been removed from the new Rules so that the appellant must ensure that he or she uses a service method which enables the appellant to prove when the notice of appeal was served on the respondent. If the appellant uses a tracked delivery service, the appellant should consign

the notice to the courier promptly after it is issued to make sure that delivery to the respondent will take place within 7 days following the issue of the notice by the Registry.

4.26 Once service has been carried out, the appellant must submit a declaration of service by completing the relevant pages on the portal (Rule 21(4)(a)). Alternatively, if the appellant is a non-portal party, the appellant must file a certificate of service in accordance with Rule 8(5).

### **Fees**

4.27 For the fee payable on filing a notice of appeal under Rule 20 or a notice of intention to proceed under Rule 19 see the Appendix to the Rules and the guidance on fees on the Judicial Committee's website.

### **Acknowledgement by respondent**

4.28 Each respondent who intends to participate in the appeal must, within 21 days after service of a notice of intention to proceed under Rule 19(2) or a notice of appeal under Rule 21, file notice of intention to participate: Rule 22. The notice must be filed via the portal with the prescribed fee. Respondents who are litigants in person and who are not able to use the portal should contact the Registry which will assist them.

4.29 A respondent must within 7 days of filing the notice of intention to participate serve that notice on the appellant and any other respondent (Rule 23). If the respondent is a portal party, service for this purpose will take place automatically, see Rule 8(1) and the Portal Practice Direction. A respondent who does not give notice under Rule 23 will not be permitted to participate in the appeal and will not be given notice of its progress: Rule 23(2). An order for costs will not be made in favour of a respondent who has not given notice.

### **Review of appeals (where permission has not been granted by the Judicial Committee)**

4.30 On 10 October 2024, the Chairman of the Judicial Committee, Lord Reed of Allermuir issued a practice note explaining the procedure which is followed by the Judicial Committee to review appeals before they are listed for a full appeal hearing. Where a notice of appeal is filed under Rule 20 and permission has been granted by the court below, the papers will be referred to a single member. The single member will review the notice of appeal including the grounds of appeal, the order granting permission to appeal, transcripts of the judgments at first instance and on appeal, and the notice of acknowledgment filed by the respondent (if any).

4.31 The single member may do one of the following:

- a. direct that the appeal be listed for hearing before a panel of 3 members;

- b. direct that the appeal be listed for hearing before a panel of 5 members;
- c. (in the case of an appeal 'as of right' only) direct that the appeal be listed for a case management hearing to consider why the appeal should not be dismissed on the basis that it falls foul of the rule in *Devi v Roy* [1946] AC 508, because it seeks to overturn concurrent findings of fact made by the lower courts.

4.32 In the case of (c) above, parties will be invited to a short case management hearing before a Board comprising three members which is to be listed on notice to the respondent. The respondent will be invited to attend but is not required to attend or to make submissions. The appellant will be asked to make submissions as to why the appeal should not be dismissed for falling foul of the rule in *Devi v Roy*. The hearing will be listed for 30 minutes if the appellant alone appears, and for one hour if the respondent wishes to be heard.

4.33 The hearing will be offered as a remote hearing (although the parties may request a hearing in person before the Board). If, following the oral hearing, the members of the Board consider that the appeal should not proceed to any further argument, they may then dismiss the appeal. They may also choose to direct that a further hearing takes place.

### **Security for costs**

4.34 Where the Judicial Committee grants permission to appeal, the Committee or the Registrar may, on the application of a respondent, order an appellant to give security for the costs of the appeal and any order for security will determine the amount of that security and the manner in which, and the time within which, security must be given: Rule 41.

4.35 An application for security should be made in the portal as a procedural application. An order made under Rule 41 may require that payment of the judgment debt (and costs) in the court below is made instead of, or in addition to, the amount ordered by way of security for costs.

4.36 For payment of security for costs see paragraphs 8.14 and 8.15 of Practice Direction 8.

4.37 No security for costs is required in cross-appeals.

4.38 Where the court below grants permission to appeal, security for costs is usually a matter for that court. An order that security of costs be paid may be made by the Judicial Committee in exceptional circumstances where the appeal appears likely to amount to an abuse of process.

4.39 Failure to provide security as required will result in the appeal being struck out by the Registrar although the appellant may apply to reinstate the appeal.

### **Expedition**

4.40 For requests for expedition see paragraph 6.8 of Practice Direction 6.

### **Cross-appeals**

4.41 A respondent who wishes to argue that the order appealed from should be upheld on grounds different from those relied on by the court below, must state that clearly in his or her written case but need not cross-appeal: Rule 24(1). A respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal except in cases where an appeal lies as of right. Except in those cases, applications for permission to cross-appeal should be made by the respondents directly to the Judicial Committee.

4.42 Where permission to cross-appeal is required, an application for permission may only be filed after permission to appeal has been granted to the original applicant for permission to appeal. The application for permission to cross-appeal must be filed within 21 days of the respondent filing a notice of acknowledgement under Rule 22(2). The application for permission to cross-appeal must be made by opening a new case file in the portal; it cannot be made in the case file opened by the original appellant. See the Portal Practice Direction for more guidance.

4.43 Where permission to cross-appeal is granted by the Judicial Committee, the application for permission to cross-appeal will stand as the notice of appeal and the appellant must then give notice of intention to proceed and pay the prescribed fee and comply with Rule 20 and paragraph 4.5 above. If permission to cross-appeal is not required, the notice of cross-appeal must be filed with the prescribed fee within 56 days of the filing of the original appeal.

4.44 In a notice of cross-appeal, the original appellant is designated as original-appellant/cross-respondent and the original respondent is designated as original respondent/cross-appellant.

4.45 There must be a single statement of facts and issues, key documents bundle and main hearing bundle in respect of both the appeal and the cross-appeal. The original appellant remains responsible for their production and filing.

4.46 The parties should liaise with each other as to the best way to present arguments in the appeal and cross-appeal in their written cases. In many cases it will be possible and preferable for each side to file a single written case dealing with the grounds of the appeal and cross-appeal together. If, in order to do so, it is necessary for the written case to exceed the maximum page limit (as to which see Practice Direction 5.15), the parties

should apply to the Registrar for an extension of the page limit rather than file two written cases.

4.47 In a cross-appeal, the cases on the original appeal must be filed 8 weeks before the hearing. The cross-appellants' case for the cross-appeal must be filed 6 weeks before the hearing as part of their reply to the original appellants' case. The original appellants/cross-respondents may reply to the case for the cross-appeal in their supplemental case.

4.48 Fees are payable in cross-appeals see the Appendix to the Rules and the Judicial Committee's website.

### **Interventions**

4.49 A person who is not a party to an appeal may apply in accordance with Rule 25 for permission to intervene. This includes a person who made submissions at PTA stage under Rule 16; such persons are not automatically permitted to intervene in the appeal and must make an application if they wish to do so.

4.50 An application should be made on the portal and should state whether permission is sought for both oral and written submissions or for written intervention only. If the application seeks permission for oral submissions, the application should state whether the intervener intends to instruct a legal representative to appear at the hearing in person or by video link. The application is made in a separate case file from the portal case file used for by the principal parties to the appeal but the case files will be linked by the Registry: see the Portal Practice Direction for further guidance. Before making the application, the applicant must send the proposed application to the appellants and respondents in the appeal and ask them whether they consent to the intervention or not. The application when filed with the Registry must confirm that the other parties have been notified of the proposed intervention and must also record their response. The application should be filed with the prescribed fee. Where an application to intervene is made in several linked cases, one application and fee is sufficient and should be made in the portal against the lowest numerical case reference of the linked cases. Once the application is filed, it must then be served in its final form on the other parties to the appeal by non-portal service.

4.51 The application should explain the intervener's interest in the proceedings, and any prejudice which the intervener would suffer if the application were refused. It should summarise the submissions to be advanced if permission is given and explain why those submissions will be useful to the Board and how they will differ from those of the parties. Interventions will be allowed in writing only, unless compelling reasons are shown for the allowance of oral intervention. If permission is sought for an oral intervention, the application should explain why oral intervention is necessary in addition to written

intervention. If an intervener wishes to support the submissions to the Board with a witness statement and exhibits, permission to do so must be sought from the Board.

4.52 The applicant for intervention will not be given access to the portal case file at the time of drafting and filing an application to intervene. If necessary, the applicant for intervention should liaise with the parties if he or she needs to see documents which are not in the public domain to prepare the application.

4.53 Applications to intervene should be filed at the earliest opportunity after permission to appeal is granted by the Judicial Committee or after the notice of appeal has been issued by the Registry. Applications for permission to intervene should be filed at least 10 weeks before the date of hearing of the appeal. Failure to meet this deadline may increase the burden on the parties in preparing their cases, and may delay the hearing of the appeal. The Board will wish to consider all the applications to intervene at one time and the Registrar will group applications together and refer them to members of the Board as a group. Strict adherence to the time limit for filing is therefore necessary.

4.54 Permission is not given as a matter of course, even if no party objects. The fact that a person was allowed to intervene in the court below does not entitle a person to intervene before the Judicial Committee. Permission will be given only for interventions which will provide the members with significant assistance over and above the assistance it can expect to receive from the parties, and only where any cost to the parties or any delay consequent on the intervention is not disproportionate to the assistance that is expected.

4.55 If oral intervention is allowed, the time allocated to an intervener will normally come out of the time allowed to the party with whose case the intervener's submissions are aligned. In considering applications to intervene, the Judicial Committee will be mindful of the need to maintain a balance between the arguments before it, and the importance of the appearance, as well as the reality, of an equality of arms.

4.56 If permission is given, the intervener's separate portal file will be closed and the intervener will be added as a party to the case file for the appeal and, if necessary, the case file for the cross-appeal. Subject to any confidentiality restrictions in place, the intervener will at that stage have access to all the documents on the case file and to correspondence passing via the case communication channel on the portal.

4.57 The intervener's written submissions for the hearing of the appeal must be filed and served on the portal at least 6 weeks before the hearing. They should normally not exceed 20 pages of A4 size, in size 12 font with 1.5 line spacing and margins of at least 2.54cm top, bottom, right and left, inclusive of any supplementary documents, other than authorities. Permission should be sought if that limit is to be exceeded. The Judicial Committee has published guidance called "Electronic papers" available on the website. This explains the formatting requirements for documents to be uploaded to the portal.

4.58 Interveners' submissions, whether written or oral, should focus on advancing the intervener's argument on a legal issue before the Board. They should avoid repeating material that is in the parties' written cases. They should not challenge findings of fact. They should not ordinarily seek to introduce new evidence, especially where that would cause procedural unfairness to a party or undermine the basis on which the legal issues were considered by the courts below. They should not introduce new legal issues or seek to expand the case.

4.59 All counsel instructed on behalf of an intervener with permission to address the Board should attend the hearing unless specifically excused.

4.60 Subject to the discretion of the Judicial Committee, interveners bear their own costs and any additional costs to the appellants and respondents resulting from an intervention are costs in the appeal.

### **Specialist advisers to the Judicial Committee**

4.61 For a request for a specialist adviser or an advocate to the Judicial Committee to be appointed in an appeal see paragraph 8.22 of Practice Direction 8.

## Practice Direction 5: Documents for the appeal hearing

### General note

5.1 The Judicial Committee has moved to a system under which the vast majority of the documents filed are to be provided in electronic form only via the portal (see the Portal Practice Direction for further detail). The JCPC has published “Electronic papers guidance” on the Guidance section of the website. This gives litigants the up to date requirements for the presentation of documents for proceedings before the Judicial Committee. It is essential that duplication of material is avoided particularly where two or more appeals are heard together.

5.2 All documents which are not in English must be accompanied by a translation into English. Every translation must be accompanied by a statement by the person making it that it is a correct translation, and that statement must include the name, address and qualifications of the person making the translation.

### The Record

5.3 Rule 27 governs the provision of the record and this Practice Direction applies to records reproduced overseas as well to as those reproduced in England. All agents should draw this guidance to the attention of their professional clients overseas as necessary.

5.4 There is a distinction between the **certified** record i.e. that which is **certified** by the registrar overseas and the **reproduced** record which is extracted by the parties from the certified record for the purposes of the proceedings before the Judicial Committee. Not all the documents in the certified record will be needed for the proceedings before the Judicial Committee and the reproduced record should only contain the documents which are needed.

5.5 The parties should collaborate to reproduce a more limited and appropriately ordered and paginated record as the reproduced record. The reproduced record should include the relevant judgments and orders made by the courts below and such other documents as are necessary for the determination of the appeal. Witness statements and affidavits may be included in the reproduced record. Directions should be sought from the Registrar in the event of disagreement or other problems regarding the contents of the reproduced record: see Rule 28(3).

5.6 The reproduced record must be in electronic form and filed by being uploaded to the portal.

5.7 If the jurisdiction from which the appeal comes does not by law require the provision of the certified record in an appeal to the Judicial Committee, the parties may consider that the Judicial Committee will be better assisted by the preparation of an



agreed bundle of documents rather than by the provision of the certified record or the production of a reproduced record. In that case, they should seek a direction from the Registrar waiving the requirement in Rule 27(1) (for the certified record) and/or Rule 27(2) and 28(1)(b) (production and filing of reproduced record). Any request for directions should provide a detailed explanation of the reasons for the request and be signed by Counsel for the parties. The request must confirm that:

- a. Such a direction would be in conformity with the law of the jurisdiction from which the appeal comes; and
- b. the parties are able to provide an agreed bundle of the documents which will be necessary for the determination of the appeal.

5.8 If the date fixed for the hearing of the appeal means that the deadline for filing the record under Rule 28(1)(b) and the deadline for filing the main hearing bundle (including the record) under Rule 31(b) will be close together, the parties may ask the Registry for directions for a timetable which may omit the provision of the record under Rule 28(1)(b), provided this would comply with the law of the jurisdiction from which the appeal comes.

### **The statement of facts and issues and the précis**

5.9 The statement of facts and issues must be a single document in electronic form, drafted initially by the appellant but submitted to, and agreed by, every respondent before filing (see Rule 28). The statement of facts and issues is a neutral document and is not to be used to argue a party's case. It is the professional duty of the parties' legal representatives to co-operate to produce the statement. The statement must set out the relevant facts and, if the parties cannot agree as to any matter, the statement should make clear what items are disputed. It is usually helpful for it to contain a chronology with a list of the key dates, which should be set out in an annex. This should incorporate the dates that were included in the chronology of proceedings filed under Rule 13(4)(f) or Rule 20(5)(f). The statement should provide the citations in each law report in which the judgments of the courts below in the proceedings have been reported and should state the duration of the proceedings below. It should be signed by counsel for all parties. Electronic signature is acceptable.

5.10 The statement of facts and issues must be accompanied by a précis of the case. This must be on no more than 1 side of A4 paper (in font point 12), and should be drafted initially by the appellant but submitted to, and agreed by, every respondent before filing. The précis should be filed with the statement of facts and issues and an electronic copy of the précis should be e-mailed to the Registry.

### **Time limits**

5.11 The statement of facts and issues must be filed by the appellant within 20 weeks of the Registrar notifying the parties that the appeal is ready to list: Rule 28(1). If the appellant is unable to comply with the relevant time limit, an application for an extension of time must be made. For guidance on the listing of the appeal see Practice Direction 6.

5.12 Appellants who are unable to complete preparation of the statement within the time limit may apply to the Registrar for an extension of that time under Rule 6. Any application must be made via the portal and should explain the reason(s) why an extension is needed.

5.13 The Registrar may grant an application for an extension of time, provided that it does not prejudice the preparation for the hearing or its proposed date. The time limits provided by the Rules are, however, generous and applicants for an extension of time must set out in some detail why they are unable to comply with any relevant time limit.

5.14 Respondents are expected to consent to a reasonable application for an extension of time. Appellants are advised to communicate the views of respondents to the Registry since, if they raise no objection, the application may be dealt with on paper without a hearing.

### **Appellants', Respondents' and Interveners' cases**

5.15 The case is the statement of a party's argument in the appeal. The Judicial Committee favours brevity and a case should be a concise summary of the submissions to be developed. A case must be in electronic form and should not (without permission of the Judicial Committee) exceed 50 pages of A4 size and in most cases fewer than 50 pages will be sufficient. Cases in excess of 50 pages will not be accepted unless permission to file a longer case has been sought and obtained. Any such application should be made not less than 14 days before the case is due to be filed. The page limit includes footnotes, which should be brief and should not contain substantive argument. In addition to the page limit, the following formatting is required for written cases: font size 12; 1.5 line spacing; margins of at least 2.54 cm top, bottom, right and left, numbered paragraphs and signature and name of Counsel to appear at the end (an electronic signature will suffice). The Judicial Committee has published guidance called "Electronic papers" available on the website. This explains the formatting requirements for documents to be uploaded to the portal.

5.16 Where there is both an appeal and a cross-appeal, the parties should liaise with each other as to how best to present the arguments. It is preferable for a single written case to be provided by each side dealing with all arguments to be heard by the Judicial Committee.

5.17 The case should be confined to the heads of argument that counsel propose to submit at the hearing and should not repeat material contained in the statement of facts and issues.

5.18 If either party is abandoning any point taken in the courts below, this should be made plain in the party's case. If the appellant intends to apply in the course of the hearing for permission to introduce a point in support of one of the grounds of appeal for which the appellant has permission but which is a new point not argued below, this should be clearly indicated in the appellant's case and the Registrar informed. If such a point involves the introduction of fresh evidence, an application for permission must be made either in the case or by filing an application via the portal for permission to adduce the fresh evidence.

5.19 If a party intends to invite the Judicial Committee to depart from one of its own decisions or from a decision of the House of Lords, the UK Supreme Court, or the Court of Appeal of England & Wales, this intention must be clearly stated in a separate paragraph of the party's case, to which special attention must be drawn. The parties should consider the judgment of the United Kingdom Supreme Court in *Willers v Joyce & anor (Re: Gubay (deceased) (No 2))* [2016] UKSC 44 regarding the status of Judicial Committee decisions in the law of England & Wales and the need to notify the Registrar of this point when it arises.

5.20 A respondent who wishes to contend that a decision of the court below should be affirmed on grounds other than those relied on by that court must set out the grounds for that contention in his or her case.

5.21 An intervener's case must supplement rather than repeat the submissions of the party whose case it is supporting. Interveners must liaise with that party to ensure there is no duplication. The intervener's case must not invite the Judicial Committee to consider or determine issues which are not going to be raised by one of the parties at the hearing. If the relevant party wishes to abandon a point, it is not open to an intervener to keep that point within the appeal (see Practice Direction 4, paragraph 4.57 for additional requirements).

5.22 Transcripts of unreported judgments should only be cited when they contain an authoritative statement of a relevant principle of law not to be found in a reported case or when they are necessary for the understanding of some other authority.

5.23 All written cases must conclude with a numbered summary of the reasons upon which the argument is founded, and must bear the signature of at least one counsel for each party to the appeal who has appeared in the court below or who will be briefed for the hearing before the Judicial Committee. Electronic signatures are acceptable.

5.24 Parties whose interests in the appeal are passive (for example, stakeholders, trustees, executors, etc.) are not required to file a separate case but should ensure that their position is explained in one of the cases filed.

## **Filing and exchange of cases**

5.25 Rule 29 provides the time limits for the parties to file their cases. No later than eight weeks before the proposed date of the hearing, the appellants must upload their written case on the portal.

5.26 No later than six weeks before the proposed date of the hearing, the respondents must upload their written case on to the portal, as must any other party filing a case (for example, an intervener or advocate to the Judicial Committee).

5.27 Following the exchange of cases, further arguments by either side may not without permission be submitted in advance of the hearing. In particular, speaking notes should not be submitted either in advance of or at the hearing: attention is drawn to the observations by Lord Hodge in *Harold Chang (Appellant) v The Hospital Administrator and 2 others* [2023] UKPC 44, paragraph 26.

### **The key documents bundle**

5.28 The key documents bundle must be filed with the Registry no later than 28 days before the hearing: Rule 30(3). The key documents bundle must be uploaded to the portal and enough hard copies provided to the Registry to provide one copy to each member sitting and an additional copy for the Registry. Appellants are advised to consult the up to date “Electronic papers guidance” on the Board’s website for information about how to present documents such as the need for bookmarking, hyperlinks, maximum document upload etc.

5.29 The key documents bundle must contain in the following order:

- a. the agreed statement of facts and issues;
- b. the parties’ written cases, with cross-references (in a sidenote) to the main hearing bundle;
- c. the orders of the court below and the first instance court;
- d. the judgments of the court below and the first instance court.

5.30 The key documents bundle:

- a. should be bound, preferably with plastic comb binding and with card covers;
- b. should include tabs for each of the documents, preferably with the name of the document on the tab;
- c. should show on the front cover a list of the contents and the names and addresses of the agents or solicitors for all parties, the short title of the appeal and the ID case number of the appeal;

- d. must be paginated. Any pagination should accord with the pagination of the same document in the main hearing bundle, even if this means that the pagination through the key documents bundle is not consecutive;
- e. should be printed double sided.

### **The main hearing bundle**

5.31 The appellant must prepare the main hearing bundle (Rule 31). The appellant must upload the main hearing bundle to the portal not later than 28 days before the date of the hearing. The bundle must be a single electronic file containing:

- a. the documents included in the key documents bundle in the order set out above;
- b. the reproduced record prepared in accordance with Rule 27, or the alternative agreed bundle of documents referred to in paragraph 5.7 above;
- c. any other documents which any party participating in the appeal wishes to place before the Judicial Committee hearing the appeal;
- d. the authorities that may be referred to during the hearing including an index of those authorities;
- e. an index of the main hearing bundle.

### **Form and content of authorities**

5.32 A joint set of authorities, jointly produced, should be compiled for the appeal. The authorities must be filed electronically only as part of the Main Hearing Bundle. The following paragraphs give guidance on the arrangement and order of the authorities but where the parties consider that a different order or arrangement would be of greater assistance to the Board, that order or arrangement should be adopted.

5.33 The authorities should appear in alphabetical order and include an index. Authorities should (where appropriate) be divided into categories and put in alphabetical order within each categories.

5.34 Where an authority or other document extends to many pages, only the front page or headnote and those pages that are relevant to the appeal should be copied.

5.35 The Judicial Committee has on numerous occasions criticised the over-proliferation of authorities. It should be understood that not every authority that is mentioned in the parties' printed cases need be included in the volumes of authorities. They should include only those cases that are likely to be referred to during the oral argument or which are less accessible.

5.36 Where online versions of textbooks or academic authorities are used, the front sheet or first page must be included so that the date of the relevant edition and other such information is provided.

5.37 If it becomes apparent (for example, during the hearing) that an authority is needed that has not been filed in advance, parties must file the authority electronically. Hard copies will also be required for the assistance of the Judicial Committee if the authority is to be cited at once.

### **Respondents' and interveners' documents**

5.38 Respondents and Intervenors are discouraged from providing additional documents of their own; any documents which they wish to place before the Judicial Committee for the appeal should be included in the main hearing bundle. Where it is necessary for a respondent or an intervenor to place additional documents before the Board, they should be uploaded to the portal in advance of the hearing with an explanatory letter.

### **Availability of Documents on the Judicial Committee's website and to the public**

5.39 The statement of facts and issues and the parties' written cases will be published on the Judicial Committee's website for each appeal (Rule 45). This will usually occur no later than 7 days before the hearing of the appeal.

5.40 If a party objects to the publication of the document or wishes that only a redacted copy be published on the website, it must apply to the Registrar as soon as possible. This should ordinarily be done by completing the relevant information box at the point when the party uploads the document to the portal.

5.41 A party can only object on the grounds that publication would be contrary to commercial confidentiality, national security or other public interest. If publication of this material would be incompatible with the law of the jurisdiction from which the appeal comes, the Judicial Committee will regard its publication as contrary to the public interest for the purposes of Rule 45. If the local jurisdiction of one of the parties so provides, the parties should inform the Registry of this as early as possible and explain the position clearly when they upload the document.

5.42 The Registrar will inform the parties of the decision on the application.

5.43 In addition to those documents being published on the website, those documents and all other documents in the case are available to be inspected by the media and by members of the public on request. Where the Registrar has directed under Rule 45(4) that a published document should be withheld from publication on the website or should be published only in redacted form, the effect of that direction will be that the media or

members of the public will not be given access to that document or will be given access only to the redacted version.

5.44 Where a party objects to the media or members of the public being given access to a document in respect of which there is no direction in place under Rule 45(4), the party should notify the court of that objection and explain the reasons for it. Such an application must be made as soon as possible after the document is provided to the Judicial Committee. If giving access to the media to this material would be incompatible with the law of the jurisdiction from which the appeal comes, the Judicial Committee will regard the provision of access to the material as contrary to the public interest. If the local jurisdiction of one of the parties so provides, the parties should inform the Registry of this as early as possible and explain the position clearly when they upload the document. The Judicial Committee will not always notify the parties when the media or member of the public apply to see the document and such a request may be made some time after the conclusion of the appeal. There may therefore not be an opportunity to object at that time.

## **Practice Direction 6: Listing the appeal, the hearing and judgment**

### **Fixing the hearing date**

6.1 Following the service of the respondent's notice of acknowledgement, the Registry will contact the parties notifying them that the appeal is ready to list: Rule 26. The Registry will give the parties a range of dates within which the hearing is likely to take place and invite the parties to agree the date of the hearing.

6.2 The sittings of the Judicial Committee (or the 'law terms') are four in each year, that is to say:

- a. the Michaelmas sittings which begin on 1 October and end on 21 December;
- b. the Hilary sittings which begin on 11 January and end on the Wednesday before Easter Sunday;
- c. the Easter sittings which begin on the second Tuesday after Easter Sunday and end on the Friday before the spring holiday; and
- d. the Trinity sittings which begin on the second Tuesday after the spring holiday and end on 31 July.

The 'spring holiday' means the bank holiday falling on the last Monday in May or any day appointed instead of that day under section 1(2) of the Banking and Financial Dealings Act 1971.

6.3 The Registry will also tell the parties the number of members of the Judicial Committee who will be sitting to hear the appeal. This provides the information the appellant needs when providing the correct number of hard copies of the key documents bundle under Rule 30.

6.4 Once the parties have been notified by the Registry of the period in which the appeal will take place, they must liaise together to provide the information listed in Rule 26(3). This includes the dates within the period notified by the Registry on which all counsel instructed to appear at the appeal are available for the hearing. They should also provide a timetable for parties' oral submissions at the hearing to include submissions for the appellant, submissions for the respondent and a short reply by the appellant. Where there is more than one appellant or more than one respondent, they should indicate the division of time between them and ensure that there is no duplication of submissions. Where interveners have been granted permission to make oral submissions, the timetable should show when and for how long those submissions will be.



6.5 Time estimates must be as accurate as possible since, subject to the Judicial Committee's discretion, they are used as the basis for arranging the hearing. Subject to any directions by the Judicial Committee before or at the hearing, counsel are expected to confine their submissions to the time indicated in their estimates. The time allocations at the hearing are strictly enforced so counsel must prepare their submissions to fit within the time allocated, bearing in mind that the members of the Board may have questions for counsel during the hearing. The Registrar must be informed at once of any alteration to the original estimate.

6.6 Most hearings are listed to be completed within one day. Cases of greater complexity may extend to 1.5 days or a maximum of 2 days. Usually the length of the hearing will be set by the panel of members granting permission to appeal or by a single member where there is no permission stage. The Registrar will notify the parties of the proposed length of the hearing. If the parties consider that the time allocated is too short or too long, they must fully explain their reasons to the Registrar.

6.7 The Registrar will subsequently inform the parties of the date fixed for the hearing. Any hearing date given before the filing of the statement of facts and issues in accordance with Rule 28(1) is provisional and will be withdrawn if the statements are not filed by the deadline, unless an application for extension of time is made which gives good reasons and leaves sufficient time for the members to prepare for the hearing. Once the hearing date is fixed, the appellant and every respondent (and any intervener) must then sequentially exchange their respective written cases and file them in accordance with Rule 29 and Practice Direction 5.

### **Requests for expedition**

6.8 Any request for an expedited hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

### **Directions hearings**

6.9 Where it considers it to be appropriate, the Judicial Committee may decide that a directions hearing should be held. A directions hearing will normally be held before three members of the Board. Any request for a directions hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

### **The hearing**

6.10 Parties should inform the Registry as early as possible of the names of counsel they have briefed.

6.11 The Judicial Committee usually hears appeals on Mondays from 11am-1pm and from 2-4pm, and on Tuesdays to Thursdays from 10:30am-1pm and 2-4pm. Where the

legal representatives are appearing via video link from a location in a time zone which makes a hearing during those hours difficult, the Board may adapt sitting times. For example, the hearing of an appeal in which one or more counsel are making submissions from the Caribbean may be listed to take place between 1pm and 5pm London time, with a 10 minute break mid-afternoon.

6.12 Only in wholly exceptional circumstances will the Judicial Committee consider sitting in private. Any request for the Judicial Committee to sit in private should be addressed to the Registrar and sent via the communication channel on the portal which is available to all parties. The request should set out fully the reasons why it is made and the request together with any objections filed by the respondents will normally be referred to the Judicial Committee.

6.13 Generally, no more than two counsel will be heard on behalf of a party (or a single counsel on behalf of an intervener permitted to make oral submissions). Speaking notes should not be submitted either in advance of or at the hearing; attention is drawn to the observations by Lord Hodge in *Harold Chang (Appellant) v The Hospital Administrator and others* [2023] UKPC 44, para 26.

6.14 A party who wishes to have a stenographer present at the hearing or to obtain a full transcript of the hearing must notify the Registrar not less than 7 days before the hearing. Any costs of the stenographer or of transcription must be borne by the party making such a request. Any request for breaks for the stenographer must be clearly notified to the Registrar in good time and this will come out of parties' allotted time.

6.15 The Registrar will on request inform the parties of the intended constitution of the Judicial Committee for the hearing of a forthcoming appeal; this will be subject to possible alteration. Counsel should assume that the Judicial Committee will have read the printed cases and the judgment under appeal but not all the papers which have been filed. The members should be addressed as 'My Lord' or 'My Lady' and collectively as 'My Lords, my Lady/ies' as the case may be.

6.16 Provided that all counsel in the case agree, they may communicate to the Registrar their wish to dispense with part or all of court dress. The Board will normally agree to such a request.

6.17 All hearings before the Judicial Committee are live streamed on the website unless the Board has ordered that the hearing take place in private. The recording of the morning and afternoon sessions of the live stream are available to the public soon after the hearing and remain on the website to be viewed by anyone visiting the website. Counsel or those instructing them must ensure that their clients sitting in court are aware that they are visible to the public via the live stream and in the recording. Further, the Judicial Committee welcomes many visitors to the building as part of its outreach programme. During the course of a day's hearing, there may be several school groups

and groups of students as well as individual tourists coming into the public seating area of the court room either because they have a particular interest in the appeal or because they wish to see the Judicial Committee at work.

6.18 The President and the members of the Judicial Committee may give permission for video footage of proceedings before the Board to be broadcast where this does not affect the administration of justice and the recording and broadcasting is conducted in accordance with a protocol which has been drawn up by the Judicial Committee. Excerpts from the live stream may also be broadcast on television if there is news coverage of the appeal. The protocol ensures that certain types of proceedings and some aspects of proceedings such as private discussions between parties and their advisers are not recorded, televised or filmed. It also regulates the use of extracts of proceedings and prevents their use in certain types of programmes (such as party political broadcasts) and in any form of advertising or publicity. By attending the hearing, the parties and everyone attending on their behalf give their consent to being filmed and recorded.

6.19 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Board new circumstances which have arisen and which might affect the decision or order, application must be made without delay by filing a procedural application via the portal and paying the prescribed fee for permission to make new submissions. The application should indicate the circumstances and the submissions it is desired to make. This paragraph does not apply to submissions which were requested by a member during the hearing or which the Board, at the hearing, directed the parties to file after the hearing. In those circumstances the parties should upload the submissions via the new document upload button in the portal case file and confirm this has been done in portal correspondence.

### **Costs**

6.20 Rule 47 deals with orders for costs. For further guidance see Practice Direction 9. Costs are usually dealt with by the Board after the judgment has been promulgated and on the basis of written submissions only. If counsel seek an order other than that costs should be awarded to the successful party, they may make written submissions in accordance with Rule 48 if the Judicial Committee so directs. The Judicial Committee may give a direction for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment.

6.21 Written submissions on costs must be filed at the Registry and uploaded to the portal. In exceptional cases the Judicial Committee may convene a hearing for oral submissions after the filing of written submissions: Rule 48(2).

### **Judgment**

6.22 Judgments are given on a day notified in advance. One week's notice is normally given to the parties. In most cases the finalised judgment is promulgated by the Judicial Committee without a formal hand down in court.

6.23 The draft judgment of the Board may be made available to the parties' legal teams under embargo before judgment is promulgated. In releasing the judgment under embargo, the Board gives permission for the contents to be disclosed only to counsel, agents and solicitors and in-house legal advisers in a client company, Government department or other body. The contents of the judgment and the result of the appeal may be disclosed to the client parties themselves 24 hours before the judgment is to be given unless the Board or the Registrar directs otherwise. Beyond that, neither the result of the proceedings nor the terms of the judgment can be disclosed to any person. Where there is reason to suppose that disclosure to the parties would not be in the public interest, the Board may give a direction further restricting the people who can be shown the judgment or informed of the result of the appeal.

6.24 The purpose of disclosing the judgment is not to allow counsel to reargue the case and attention is drawn to the opinions of Lord Hoffmann and Lord Hope in *R (Edwards) v Environment Agency* [2008] UKHL 22, [2008] 1 WLR 1587. It is the duty of counsel and agents to check the draft judgment for typographical errors and minor inaccuracies. In the case of apparent error or ambiguity in the judgment, counsel are requested to inform the Board as soon as possible. This should be done by uploading a note to the portal listing the suggested corrections, in line with the deadline provided.

6.25 Accredited members of the media may, with the express permission of the Board, be given a copy of the judgment in advance. The contents of this document are subject to a strict embargo, and are not for publication or broadcast before judgment has been delivered. The documents are issued in advance on the strict understanding that no approach is made to any person or organisation about their contents before judgment is given.

6.26 The successful party must prepare a draft of the order giving effect to the Board's ruling and upload it to the portal. The Registrar and all the other parties who filed a case will receive notification and will be able to view and comment on the draft order in the case file. If parties have been able to agree the order for costs, the Registry should be informed. See Practice Direction 7 paragraphs 7.10 onwards for further guidance about draft and final orders.

## **Practice Direction 7: Applications and orders**

### **Procedural Applications**

7.1 Applications are governed by Rule 35. An application should be made as soon as it becomes apparent that an application is necessary or expedient.

7.2 An application must be made on the portal with the prescribed fee (unless the party is a litigant in person who has not signed up for the portal, in which case the party should complete and file the relevant form and pay the fee). For fees, see the Appendix to the Rules and guidance on the Judicial Committee's website.

7.3 An application must state what order the applicant is seeking and, briefly, why the applicant is seeking the order: Rule 35(2). Certain applications (e.g. for security for costs) should be supported by written evidence. Although there may be no requirement to provide evidence in support, it should be borne in mind that, as a practical matter, the Judicial Committee will often need to be satisfied by evidence of the facts that are relied on in support of or for opposing the application.

7.4 A party who wishes to oppose an application must, within 14 days after service, file notice of objection via the portal with the prescribed fee and serve that notice on the other parties.

7.5 The application must clearly indicate whether the other parties consent or refuse to consent to the application. The parties to an application for a consent order must ensure that they provide any material needed to satisfy the Judicial Committee that it is appropriate to make the order.

7.6 Applications will be dealt with without a hearing wherever possible. Unless the Registrar directs otherwise, contested procedural applications are referred to a panel of members and may be decided with or without an oral hearing.

7.7 If the panel of members directs an oral hearing, the parties may seek permission to adduce affidavits, witness statements and such other documents as they may wish. These documents must be uploaded to the portal. Authorities are not normally cited before the Panel.

### **Disposal of documents**

7.8 All forms and supporting documents which are filed become the property of the Judicial Committee. No documents submitted in connection with an application can be returned. For information about the publication of documents on the Judicial Committee's website and the availability of documents to the media and the public see Rule 45 and Practice Direction 5, paragraph 5.39 onwards.

## Forms

7.9 It is only non-portal parties that are required to complete forms. Portal parties instead complete the relevant pages on the portal (see the Portal Practice Direction). Rule 5 provides for the forms which are to be used in the Judicial Committee. A non-portal party should contact the Registry to request the appropriate form for the application he or she wishes to make.

## Orders

### *Draft order*

7.10 After the Judicial Committee has given judgment, the successful party should upload a draft order to the portal giving effect to the decision, so that the Registrar and all the other parties who filed a case will receive a notification and be able to view the draft order in the case file. The other parties must then, not later than 2 days after receipt of the portal notification, inform the Registry via the portal that they agree with the proposed draft or suggest amendments to it. The other parties will then be able to comment on those proposed amendments and make their own suggestions for amendment via the portal.

7.11 Where the appeal is from a jurisdiction where appeals lie to the Judicial Committee itself, the final order will be made and uploaded to the portal once its terms have been settled by the members sitting on the appeal.

7.12 Draft orders in appeals in jurisdictions where the appeal is to His Majesty in Council will be included on the agenda for a subsequent meeting of the Privy Council to be approved by His Majesty. The final making of the Order may therefore take place a few weeks or months after the terms of the order have been agreed, depending on the timetable for the Privy Council meetings.

7.13 Where an appeal against a criminal conviction is allowed by the Judicial Committee and the appellant is held in detention, the Judicial Committee has power to grant bail pending the finalisation of the order so that the appellant can be released immediately from custody. The appellant's legal representative should liaise with the Registrar to make the appropriate arrangements as soon as the result of the appeal is known. See *Julian Washington v The King* [2024] UKPC 34, para 12.

### *Final Order*

7.14 A copy of the sealed final order will be uploaded to the portal to be available to the parties.

## **Practice Direction 8: Miscellaneous matters**

### **Bankruptcy or winding up**

8.1 If a party to an appeal is adjudicated bankrupt or a corporate body is ordered to be wound up, his or her solicitor must give immediate notice to the other parties and to the Registrar. The party must also provide the Registrar with a certified copy of the bankruptcy or winding up order (Rule 39). Portal parties must give notice via the portal using the correspondence function and can upload the certified copy to the portal. The bankrupt party (or his or her trustee in bankruptcy) or the liquidator must file an application to pursue the appeal and the appeal cannot proceed until the application has been approved by the Judicial Committee. The application should confirm, with appropriate supporting documentation, that the trustee or liquidator has obtained any necessary approvals from the local jurisdiction from where the appeal comes and/or from the jurisdiction where the bankruptcy or winding up is taking place. The application must be filed within 42 days of the date of giving notice to the Registry.

### **Death of a party**

8.2 If a party to an appeal dies before the hearing, immediate notice of the death must be given via the correspondence function on the portal. The appeal cannot proceed until a new party has been appointed to represent the deceased person's interest.

8.3 An application to substitute the new party must be filed via the portal with the prescribed fee within 42 days of the date of notice of death. It should explain the circumstances in which it is being filed.

8.4 If the death occurs after the case for the deceased person has been filed but before the appeal has been heard, the appellants must file a supplemental case setting out the information about the newly-added parties.

8.5 If a party to an application for permission to appeal dies and that party has no personal representative, immediate notice of the death must be given to the Registrar and to the other parties via the correspondence function in the portal. The Registrar may direct that the application proceeds in the absence of a person representing the estate of the deceased or may appoint a person to represent the deceased person's interest. Any application to substitute the new party must be filed with the prescribed fee within 28 days of the date of notice of death. It should explain the circumstances in which it is being filed.

### **Settlement or other events depriving the appeal of practical significance**

8.6 If an event occurs which arguably disposes of the dispute between the parties, it is the duty of counsel and agents in any pending appeal either to ensure that the appeal

is withdrawn by consent or, if there is no agreement on that course, to bring the facts promptly to the attention of the Registrar and to seek directions.

### **Withdrawal of appeals and applications**

8.7 Attention is drawn to the provisions of Rule 37. An application for permission to appeal may be withdrawn by writing to the Registrar via the correspondence channel in the portal stating that the appellant wishes to withdraw the appeal and indicating whether the parties to the appeal have agreed about the appropriate order as to the costs of the application. The respondents should promptly notify the Registrar of their agreement to the withdrawal of the appeal and must confirm whether the costs have been agreed.

8.8 An appeal that has not been listed for hearing may be withdrawn by writing to the Registrar via the correspondence channel in the portal stating that the appellant wishes to withdraw the appeal and indicating whether the parties to the appeal have agreed about the appropriate order as to the costs of the application. Where appropriate, the letter should also indicate how any security for costs money lodged with the Registry should be disposed of. Written notification must also be given to the respondents who must notify the Registrar of their agreement to the withdrawal of the appeal and who must confirm whether the costs have been agreed.

8.9 An appeal that has been listed for hearing may only be withdrawn by order of the Judicial Committee on filing a procedural application via the portal and on payment of the prescribed fee. An application for such an order should include submissions on costs and, where appropriate, indicate how any security for costs money should be disposed of. The respondents should be approached for their agreement before the filing of the application and confirmation of their consent should be included with the application.

### **Grouping or linking of appeals**

8.10 Where there are multiple parties who wish to appeal the decision of the court below, they may make a single application for permission to appeal (or notice of appeal) where: (i) they wish to advance identical grounds of appeal; (ii) they are represented by the same lawyers; and (iii) there is no risk of conflict of interest between them.

8.11 In all other cases, each party must file its own application or notice. The Registrar or a panel of members may direct that appeals from the same judgment of the court below or appeals from different judgments which raise the same or similar issues are heard either together or consecutively by the Judicial Committee constituted by the same members. They may give any consequential directions that appear appropriate. Each separate appeal will have its own case file on the portal but the cases will be linked by the Registry.



8.12 The parties should consult the Register on whether grouping or linking is likely to be appropriate. A principal consideration will be to avoid separate representation by counsel and any duplication in the submissions made or in the documents produced for the hearing.

### **Exhibits**

8.13 Parties who require exhibits to be available for inspection at the hearing must apply to the Registrar for permission for the exhibits to be brought to the Judicial Committee before the hearing.

### **Fees and security for costs**

8.14 Fees are payable in the amounts set out in column 2 of the table in the Appendix to the Rules on the occasions described in column 1. Fees are payable on the taking of the step for which a fee is provided not at the conclusion of the proceedings. Payments of fees and deposits of security money may be made by credit or debit card via the portal. Please note that payment by either method is required before finalising an application or submission via the portal. Details of the bank account for electronic transfer are found in the portal.

8.15 Payment for security for costs money must be paid into the Judicial Committee's security fund account via electronic transfer. Details of the bank account can be given on request to the Registry. Normally the Judicial Committee will not make an order for security for costs in an appeal as of right where security has been provided below when the court below grants final leave. An order may be made by the Judicial Committee in exceptional circumstances where the appeal appears likely to amount to an abuse of process.

### **New submissions**

8.16 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Judicial Committee new circumstances which have arisen and which might affect the decision or order of the Judicial Committee, an application must be made without delay by filing a procedural application via the portal and paying the prescribed fee for permission to make new submissions. The application should indicate the circumstances and the submissions it is desired to make. This paragraph does not apply to submissions which were requested by the Board during the hearing or which the Board, at the hearing, directed the parties to file after the hearing. In those circumstances the parties should upload the submissions via the new document upload button in the portal case file and confirm this has been done in portal correspondence.

### **Financially assisted persons**

8.17 The Judicial Committee does not provide public funding or legal aid. Applications for public funding must be made in the jurisdiction from which the appeal comes. A litigant who receives public funding or legal aid will not need to apply to the Judicial Committee for help with fees if the Judicial Committee's fees will be paid by the public funding body.

8.18 Rule 42 enables an appellant whose means are such that payment of a prescribed fee would involve undue financial hardship, to file an application to be treated as a financially assisted person by the Judicial Committee. Any such application should be supported by sworn or credible evidence as to the applicant's means. The Registrar will certify, if the application is approved, that the appellant is to be treated as a financially assisted person.

8.19 Where a certificate has effect in relation to an appellant, the appellant will be entitled to remission or reduction of any liability for fees which are payable under the Rules.

8.20 Any certificate under Rule 42 has effect in relation to an appellant until it is withdrawn by the Registrar; and the Registrar may withdraw a certificate in relation to an appellant if—

- a. assistance from public funds is not granted or is withdrawn in the appellant's jurisdiction;
- b. it is discovered that the appellant's financial position was incorrectly stated; or
- c. there is a material change in the appellant's financial position.

8.21 Rule 42 and this guidance apply to respondents as they apply to appellants with such modifications as may be necessary.

### **Specialist advisers**

8.22 Rule 40 provides that the Judicial Committee may request the Attorney General of the jurisdiction from which an appeal comes to appoint an advocate to assist the Board. The Judicial Committee may also appoint a specialist adviser of its own motion. Any party to an appeal who considers that the Judicial Committee would be assisted by the appointment of a specialist adviser may apply in writing to the Registrar for a specialist adviser to attend the hearing. Such advisers provide assistance to the Judicial Committee and will remain strictly independent of the parties to the appeal.

### **Stay of execution**

8.23 The filing of a notice of appeal or an application for permission to appeal does not in itself place a stay of execution on any order appealed from. A party seeking such a stay must apply to the court appealed from, not to the Judicial Committee: Rule 43.

### **Transcription**

8.24 See paragraph 6.14 of Practice Direction 6 for transcriptions.

### **Application for order that a solicitor has ceased to act**

8.25 Where a party wishes to instruct a new solicitor in place of the current solicitor, the current solicitor should write to the Registry via the portal asking to come off the record. The party should upload a letter from the new solicitor confirming the handover. Using the “manage access” function on the portal the current solicitor should specify the new accounts to be nominated as the accounts associated with that case file for that party in substitution for any accounts held by the current firm. The correspondence should demonstrate that the party has consented to the change. If the Registry substitutes the new accounts for the former accounts, that has the effect that the former solicitor is no longer a solicitor on the record for that party. There is no need to make a formal application or pay a fee.

8.26 Where a solicitor wishes to come off the record but no new solicitor is being appointed to replace him or her at the same time, the solicitor must make an application to the Judicial Committee and pay the appropriate fee, explaining the reasons for the application. Where such an application is made:

- a. the application must be served on the party for whom the solicitor is acting, unless the Registrar directs otherwise; and
- b. the application must be supported by evidence as to whether the client consents to the solicitor coming off the record or, if the solicitor has lost contact with the client, explaining the attempts to contact the party, and the party’s most recent contact details.

8.27 Where the Registrar makes an order that a solicitor has ceased to act where no substitute solicitor is coming onto the record, a copy of the order must be served on every party to the proceedings and the order takes effect when it is served.

### **References under section 4 of the Judicial Committee Act 1833**

8.28 Rules 56 to 59 provide the procedure where a reference is made to the Judicial Committee under section 4 of the Judicial Committee Act 1833. In cases where a reference is made, the Registry will provide the appropriate form to be used on request.

## **Practice Direction 9: Costs**

### **Orders for costs**

9.1 This Practice Direction relates to the costs incurred in proceedings before the Judicial Committee. Detailed assessments of costs in the Judicial Committee may be conducted by the Registrar or a Costs Judge of the Senior Courts Costs Office. Under section 15 of the Judicial Committee Act 1833 the Judicial Committee may appoint a person or persons other than the Registrar to tax or assess costs and the Costs Judges have been appointed under this provision. A Costs Judge sits alone when assessing costs.

9.2 The assessment of costs is governed by the relevant provisions of the JCPC Rules supplemented by this and the other Practice Directions issued by the Judicial Committee. To the extent that Rules and Practice Directions do not cover the situation, the Rules and Practice Directions relating to Parts 44 to 47 of the Civil Procedure Rules are applied by analogy at the discretion of the Costs Officer, with appropriate modifications for appeals from foreign jurisdictions. The legal principles applied are those also applicable to assessments between parties in the High Court and Court of Appeal in England and Wales.

9.3 This Practice Direction assumes that:

- a. all parties are legally represented and are therefore using the portal. A party who is a litigant in person who has not signed up for the portal should contact the Registry to be provided with the relevant forms to be completed and filed if the party wishes to make a claim for costs.
- b. all parties to the proceedings are privately funded. Litigants in receipt of public funding or legal aid must consult their legal representatives for guidance. Similarly, a privately funded litigant whose opponent is publicly funded should consult his or her legal representative for guidance on the potential for recovery of his or her own costs from the relevant legal aid fund and for the litigant's liability to the relevant legal aid fund for the legally aided litigant's costs.

9.4 Costs are in the discretion of the Board and it may make such orders as it considers just in respect of the costs of any appeal, application for permission to appeal, or other application to or proceeding before the Judicial Committee. The general principle applied by the Judicial Committee is that the unsuccessful party will be ordered to pay the costs incurred by the successful party in conducting the appeal before the Board. Further, if the Judicial Committee allows the appeal, it may also reverse the costs order made by the court below if that costs order reflected the result in that court which has now been overturned by the decision of the Judicial Committee. The Judicial Committee may therefore order the unsuccessful party to pay the successful party's costs incurred

in the case at one or more courts below as well as the costs incurred in the proceedings before the Judicial Committee itself.

9.5 Following the hand down of the judgment, the parties should upload to the portal a draft of the order that they propose that Board should make, having regard to the outcome of the case. The same order may deal both with the outcome of the case and any consequential orders and also with the costs of the appeal and the costs incurred in the proceedings in the courts below. Costs payable by one party to the opposing party are ordered by the Judicial Committee to be assessed on the standard basis or on the indemnity basis in accordance with Rules 51 and 52.

9.6 The draft order uploaded should be agreed by all parties if possible. If the parties are not agreed as to who should pay the costs of which other party or as to whether the costs should be awarded on the standard or indemnity basis, the draft order should propose a timetable for the parties to file with the Judicial Committee and serve on the other parties their submissions as to the appropriate order to be made. If the receiving party seeks an order that the costs be paid on the indemnity basis, that must be made clear in the draft order and reasons provided. See further paragraphs 9.16 onwards below

9.7 The parties' submissions as to costs will be considered by the panel of members who determined the proceedings.

### **Costs capping orders and protective costs orders in public interest proceedings**

9.8 In the exercise of its discretion the Judicial Committee may, on application by a party, make an order at an early stage in the proceedings which will set a limit in advance on that party's potential liability to pay the costs of the other party if the applicant party is unsuccessful in the appeal in whole or in part and is ultimately ordered to pay the winning party's costs.

9.9 An appellant which wishes to limit its potential liability for the costs that one or more respondents incurs in the appeal before the Judicial Committee must apply for such an order at the time it applies for permission to appeal under Rule 13 or at the time it files its notice of appeal under Rule 20, as the case may be. A respondent which wishes to limit its potential liability to pay the costs of one or more appellants must apply for a costs limiting order no later than when serving notice of intention to participate under Rule 22.

9.10 The grant of an order limiting the liability for costs of one party to the appeal does not automatically limit the liability for costs of the opposing party; each party must make a separate application if the party wants to limit its potential liability to pay costs to the opposing party.

9.11 Where the Judicial Committee considers an application for a costs cap in respect of costs to be incurred in the appeal before the Board, the Judicial Committee will consider all the circumstances of the case in particular:

- a. the means of both parties including any financial support which any person has provided or is likely to provide to the party making the application,
- b. whether there is a substantial imbalance between the financial position of the parties,
- c. the need to facilitate access to justice,
- d. the importance of what is at stake for the parties and for the public interest, especially where appropriate for the environment.

9.12 Where the outcome of the appeal leads the Judicial Committee to revisit the costs orders made by the court or courts below, the Judicial Committee will have regard to any costs capping orders made by those courts and to the factors listed above.

### **Assessment of costs**

9.13 After the first stage in which the Judicial Committee decides which party will pay costs to the other and on what basis, the second stage is to determine any dispute between the parties as to the amount of those costs which the paying party must pay to the receiving party. This stage is referred to as the assessment of costs. In many cases the parties are able to agree both who should pay whose costs and what the amount payable will be. However, where the parties are not agreed, the receiving party can apply to the Judicial Committee for a detailed assessment of costs.

9.14 Detailed assessments of costs in the Judicial Committee are conducted by a Costs Officer: see Part 7 of the Rules. The Costs Officer will be a costs judge of the Senior Courts Costs Office.

#### *The bill of costs*

9.15 A bill of costs setting out each item of costs which the applicant considers the paying party should pay may be filed via the portal for assessment where costs are payable by a party under an order for costs made by the Judicial Committee.

### **Basis of Assessment**

9.16 The Judicial Committee will not allow costs which have been unreasonably incurred or which are unreasonable in amount. If the Board has awarded costs on the standard basis of assessment, the Board will only allow costs which are proportionate to the matters in issue and will resolve any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

- 9.17 Costs incurred are proportionate if they bear a reasonable relationship to:
- a. the sums in issue in the proceedings;
  - b. the value of any non-monetary relief in issue in the proceedings;
  - c. the complexity of the litigation;
  - d. any additional work generated by the conduct of the paying party;
  - e. any wider factors involved in the proceedings, such as reputation or public importance;
  - f. any additional work undertaken or expense incurred due to the vulnerability of a party or any witness.

Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably incurred or even if they were necessarily incurred.

9.18 On the indemnity basis the Judicial Committee will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party.

9.19 Detailed assessment hearings are conducted in public.

9.20 See paragraphs 9.43 — 9.45 for the Costs Officer's discretion as to what to allow.

### **Costs of Preparing Applications for Permission to Appeal or Notices of Objection**

9.21 Where an application for permission to appeal is refused, the Judicial Committee will not usually award the potential respondent its costs of considering the application for permission where:

- a. the respondent making the application for costs did not file a notice of objection to the application for permission; or
- b. the application for costs is made by one of two or more parties and it cannot be demonstrated that the person seeking costs had an interest in the application for permission to appeal that required separate representation.

9.22 Where the respondent has filed a notice of objection to the application for permission, and the application for permission is refused, the respondent may apply for an award of costs. Such an application must be filed via the portal. The costs that may be claimed include the reasonable costs of preparing and filing respondent's objections and attending the client, counsel or other parties.

9.23 If an application for permission to appeal is dismissed after an oral hearing, the costs of the hearing are allowable in addition to the costs at paragraph 9.22.

9.24 Where the application for permission to appeal is successful, all parties' costs become costs in the appeal unless the Court orders otherwise.

#### *Counsel's fees*

9.25 The general rule is that a fee for one junior counsel is allowed for preparing an application for permission to appeal or a notice of objection.

9.26 A fee will be allowed in respect of an application for permission to appeal for Senior Counsel or King's Counsel instead of or in addition to junior counsel (a) if this is held to be necessary because of the difficulty or complexity of the case or other good reason; or (b) if a legal aid provider has given the appropriate authorisation.

#### *Full appeal hearing*

9.27 Generally, where the appeal proceeds to a full hearing, the costs of one Senior Counsel or King's Counsel and one junior will be allowed. If the costs of more counsel are claimed, the party must provide a reasoned justification for the claim and the Judicial Committee will determine whether the additional costs should be awarded. The request and reasons must be provided no later than the date on which the receiving party files its bill of costs.

### **Filing claim for costs**

#### *Filing claim for costs and points of dispute*

9.28 Where a claim for costs is made, the bill of costs must be filed via the portal within three months of the date of the relevant costs order made by the Judicial Committee and must be served via the portal on the other parties.

9.29 All documents must be filed or uploaded via the portal as follows:

- a. the bill of costs which lists all the costs incurred with the final sum of which the applicant seeks payment;
- b. counsel's fee notes (which must be receipted except in the case of legal aid bills); and,
- c. receipts or other evidence for disbursements of £500 or more.

9.30 Other papers on which the parties intend to rely must be filed in consultation with the costs section of the Registry. If the assessment proceeds to a hearing, any further documents which the Costs Officer needs to pre-read must be filed electronically (via the portal) at least 7 days before the hearing.



9.31 Points of dispute under Rule 49 should be filed via the portal within 21 days of the filing of the bill of costs. The receiving party may within 14 days from the filing of the points of dispute respond to the points if the party thinks it appropriate to do so. Any request for an extension of time to file points of dispute or replies must be made within the relevant time period or via the portal: see similarly section 6 below on extensions of time.

#### *Default costs certificate*

9.32 Where the paying party does not file points of dispute within 21 days of being served with the claim for costs and bill of costs (or within such other period as may be fixed by the Registrar), the receiving party may apply for a default costs certificate. Such a certificate will normally certify all the costs claimed in the bill of costs.

9.33 The paying party may apply to set aside a default costs certificate. If the Costs Officer is satisfied that the receiving party was not entitled to the default costs certificate, the certificate will be set aside. In other circumstances, the Costs Officer may set aside the default costs certificate where the party seeking to set the certificate aside has acted promptly in making the application and where there is a good reason for the claim for costs to go forward to a detailed assessment.

9.34 The paying party applying to set aside a default costs certificate must upload to the portal a draft of the points of dispute that the party will file if the certificate is set aside.

#### *Fees*

9.35 The fee payable on filing a bill of costs is 2.5% of the amount claimed (including VAT). The fee payable on assessment of a bill of costs is 2.5% of the amount allowed (including the costs of assessment and VAT). The filing fee and the assessment fee are costs of the detailed assessment. Parties must not include the filing fee when calculating the assessment fee. Where a bill of costs is agreed less than 21 days prior to assessment the assessment fee is payable on the amount agreed between the parties. Agreement must be notified to the Registry via the portal as soon as possible.

### **Extension of Time and Filing Out of Time**

9.36 Any application for an extension of the three-month period for filing a claim for costs should be agreed with all parties, if possible. If such an extension is agreed by the parties that should be made clear in the application.

9.37 An application to file a claim for costs out of time made after the expiry of the three month period must be made via the portal. In deciding whether to grant an application the Registrar takes into account all the circumstances, including: (a) the interests of the administration of justice; (b) whether the failure to file in time was intentional; (c) whether there is a good explanation for the failure to file in time; (d) the

effect which the delay has had on each party; (e) the effect which the granting of an extension of time would have on each party; and (f) whether the paying party agrees to the extension.

9.38 See Practice Direction 7 for applications.

### **Provisional Assessment**

9.39 A provisional assessment (carried out without a hearing on the information provided by the parties) is conducted where one of the parties requests such an assessment (see Rule 50(3)) or where the costs claimed are £75,000 or less.

9.40 A provisional assessment is usually carried out by a single Costs Officer. The outcome of the provisional assessment will then be sent to the parties. If a party is dissatisfied with the result, representations must be filed within 14 days of receipt of the assessed bill. If points of disagreement cannot be resolved in correspondence, a detailed assessment will be carried out.

9.41 A detailed assessment in these circumstances proceeds on the basis of the original claim for costs and any points of dispute and replies, any of which may be amended in light of the provisional assessment.

### **Detailed Assessment**

9.42 The Registrar may, at the request of a party or if the circumstances justify it, direct that a detailed assessment be carried out without a hearing. If the detailed assessment requires an oral hearing, the Registrar will give 14 days' notice to the parties of the date and time of the detailed assessment. Parties may be represented by their legal representative (including but not limited to a solicitor, costs lawyer or costs draftsman, or counsel). The receiving party or that party's legal representative must attend the detailed assessment hearing.

### **Costs Officer's Discretion**

9.43 The Costs Officer has discretion as to the amount of costs to allow. In exercising this discretion, the Costs Officer bears in mind the terms "reasonably incurred" and "reasonable in amount" in Rule 52 of the Rules. The factors the Costs Officer considers include: (a) to what extent an item assisted the Judicial Committee in determining the appeal; (b) the length of a hearing; (c) the complexity of the issues as indicated by the judgments delivered by the Board; and (d) the general level of fees sought and allowed in the lower courts.

9.44 In respect of the costs of an application for permission to appeal, a major consideration is whether the application gave rise to a point of public importance.

9.45 The Costs Officer will reduce or disallow claims in respect of documents provided by a party where those documents were excessive, inadequate or proved unhelpful to the members.

### **Review of Costs Officer's Decision**

#### *Application for a review*

9.46 Any party to an assessment who is dissatisfied with all or part of a decision of the Costs Officer may apply in accordance with Rule 54 for that decision to be reviewed by a single member. The application must be made via the portal. For applications see Practice Direction 7.

9.47 An application may be made only on a question of principle and not in respect of the amount allowed on any item. Any application must be made within 14 days of the end of the detailed assessment or such longer period as may be fixed by the Judicial Committee. An application for a review must include written submissions stating concisely the grounds of the objections and must be filed via the portal. A party who objects to the application may, within 14 days of filing or such longer period as may be fixed by the Court, file a notice of objection in via the portal.

#### *Referral to a Single member*

9.48 The matter is then referred to a single member nominated by the presiding or senior member of the Board who heard the appeal or considered the application for permission to appeal.

9.49 The nominated member of the Board will decide whether the matter should be referred to the Judicial Committee and, before he or she makes a decision, he or she may consult the other members of the Board who heard the appeal or considered the application. If the nominated member is of the opinion that the matter should not be referred to a panel, the decision of the Costs Officer is affirmed.

#### *Referral to Panel of Members*

9.50 The Panel of Members decides the matter with or without an oral hearing; and may direct a further oral hearing by a full Board.

### **Assessment Certificates**

#### *Civil*

9.51 When the assessment fee has been paid, an assessment certificate for the costs allowed will be sent to the receiving party, except in the case of respondents whose costs can be wholly satisfied from money deposited as security for costs.

### **Interest**

9.52 Interest is payable on costs assessed between the parties and on costs in favour of successful unassisted parties. The rate of interest is in accordance with the provisions of the Judgments Act 1838, as amended, and interest accrues from the day on which the costs order of the Court is made or such other date as the Judicial Committee may specify unless the Costs Officer exercise his or her discretion to vary the period for which interest is allowed.

## **Guidelines on Fees Allowed**

### *Solicitors*

9.53 The Costs Officer will have regard to the hourly rates generally allowed in the relevant jurisdiction for the costs of attorneys/solicitors based outside the United Kingdom.

9.54 The Judicial Committee adopts the guideline rates issued by the Master of the Rolls in England and Wales. The rates are set out on the Gov.uk website under Solicitors' guideline hourly rates. Those rates will be the starting point for any summary assessment and may, at the Costs Officer's discretion, be used as the starting point for a detailed assessment. These are consolidated figures that include a mark-up for care and attention. An application must be completed via the portal using a consolidated figure for the hourly rate. If a rate is charged that exceeds the guideline rate an explanation must be given under the heading 'Fee earners and hourly rates' in the application.

9.55 Where solicitors have charge of producing large documents such as the main hearing bundle, it will not usually be appropriate for a higher grade rate to be applied. Time spent photocopying is not recoverable (although the cost of photocopying is).

9.56 Travel and waiting are allowed at the rate agreed with the client, unless this is more than the hourly rate allowed on assessment.

9.57 Short, routine letters, emails and telephone calls are allowed at one tenth of the hourly rate at the Costs Officer's discretion. An allowance of one tenth of the hourly rate for each document uploaded to the portal is also made at the Cost Officer's discretion.

### *Counsel*

9.58 The Senior Courts Costs Office has not offered any guideline fees for counsel since 2009. A working party authorised by the Civil Justice Council is currently considering whether such guidelines are feasible. We have removed the guideline counsel fees, in their entirety, from this Practice Direction and they will be updated if any new guideline rates are available. In the meantime, parties should note that the role performed by counsel in the Judicial Committee is a clearly defined one, and parties should be careful to control costs particularly at the stage of applying for permission to appeal.

9.59 Counsel's fees are assessed in respect of each item of work counsel has undertaken. It is essential that this approach is reflected by those completing a costs application. Whilst it may be helpful to know the hourly rate charged by counsel, it should be borne in mind that counsel's fees, and in particular counsel's brief fees, are not assessed only by reference to time allowed at an hourly rate. The Costs Officer will have regard to all the circumstances of the case including:

- a. the parties' conduct before, as well as during, the proceedings including the efforts made, if any, before and during the proceedings to try to resolve the dispute;
- b. the amount or value of any money or property involved;
- c. the importance of the matter to all the parties;
- d. the complexity of the matter or the difficulty or novelty of the questions raised;
- e. the skill, effort, specialised knowledge and responsibility involved;
- f. the time spent on the case.

9.60 Counsel for an appellant generally commands a higher fee than counsel for a respondent.

9.61 The brief fee includes all work on the brief, the written case, counsel-only conferences and the first day of attendance at the Judicial Committee.

9.62 The Costs Officer exercises discretion in instances where junior counsel has undertaken most of the work on a particular item. For settling a notice of appeal where the Board has granted permission, only one counsel's fee is permitted.

### **Conditional Fee Arrangements**

9.63 Notification should be given to the opposing parties and to the Registry as soon as practicable after a conditional fee agreement or funding arrangement has been entered into.

9.64 Judicial Committee costs practice does not allow for the recovery of after-the-event premiums or success fees under conditional fee agreements: *Seaga v Harper*, No 90 of 2006 [2009] UKPC 26.

### **Costs of Litigants in Person**

9.65 Where the Judicial Committee orders that the costs of a litigant in person are to be paid by another person, the litigant in person can claim for disbursements and for the work he or she has done. A disbursement can be claimed if:

- a. it would have been made by a legal representative on the litigant in person's behalf if the litigant had been legally represented;
- b. it is payment reasonably made by the litigant for legal services relating to the conduct of the proceedings;
- c. it is a payment for the costs of obtaining expert assistance in assessing the costs claim.

9.66 The litigant can also claim for time spent working on the case. If the litigant in person can show that he or she has suffered financial loss, for example, loss of pay because of time spent working on the case, the litigant can claim that loss. The litigant should send to the Registry any written evidence relied on to support that claim and serve a copy of that evidence on the paying any party as soon as possible after filing the claim for costs. If no financial loss has been suffered, the litigant can claim £19 per hour spent working on the case. A claim for work done is subject in all cases to a maximum for any particular item of work of two thirds of the sum which in the opinion of the Costs Officer would have been allowed for that item if the litigant had been represented by a solicitor.

#### **Fees for drafting costs claim**

9.67 By way of guidance for smaller claims for costs, particularly in relation to applications for permission to appeal, the following sums are usually justified for completing a costs application via the Portal:

<i><b>Amount of bill</b></i>	<i><b>Amount allowed</b></i>
Bills assessed at up to £2,000 (excluding VAT)	£300
Bills assessed at £2,001 to £5,000 (excluding VAT)	£500
Bills assessed at £5,001 to £10,000 (excluding VAT)	£700

9.68 For a larger bill the amount allowed for time reasonably spent in drafting the bill is calculated as a multiple of the relevant hourly rate for a Grade D fee-earner (unless a claim for a higher grade is justified).

9.69 The parties must prepare costs schedules for the consideration of the Costs Officer after detailed assessment.

9.70 Counsel may not claim a brief fee for attending detailed assessment on their own behalf but may do so if briefed in respect of the entire bill.