



Note of the UKSC/JCPC User Group Meeting

Held on Friday 25 January 2013 at 11am Lawyers' Suite at the UKSC

Present:

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

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| Jacqueline Harris | Pinsent Masons LLP |
| Karen Quinlivan | Bar Council, Northern Ireland |
| Julia Staines | Charles Russell LLP |
| Hannah May | Royds LLP |
| Andrew Arden QC | Arden Chambers |
| Nigel Fisher | Norton Rose |
| Robin Tam QC | Temple Garden Chambers |
| Henry Hickman | Harcus Sinclair |
| Mark West | Radcliffe Chambers |
| Derry Moloney | Alan Taylor & Co |
| James Turner QC | 1KBW |
| Steven Durno | Law Society |
| Daniel Waller | Matrix Law |
| Ailsa Carmichael QC | Murray Stable |
| Lee John-Charles | TSols |
| Nicole Curtis | Penningtons |
| Mark Stephens | Finers Stephens Innocent |

1. Welcome and apologies

Apologies had been received from:

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| Timothy Fancourt QC | Falcon Chambers |
| Michael Fordham QC | Blackstone Chambers |
| Nichola Gare | Baker & McKenzie LLP |
| Louise Fisher | Ashurst |
| Richard Todd QC | 1 Hare Court, Temple |
| Alexander Shirtcliff | Blake Laphorn |
| Lucy Barbet | 11KBW |
| Jan Luba QC | Garden Court Chambers |
| John Almeida | Charles Russell LLP |

2. IT issues

Two issues had been raised in advance of the meeting, one by Henry Hickman and one by Ailsa Carmichael.

Henry Hickman had e-mailed in relation to a particular issue which was likely to arise in a case in which both he and Camilla Hart were involved. He suggested that the parties' written cases were placed at the end of the electronic bundle. Then, when the parties had to put the electronic bundle references to their written cases, there would be no danger of pushing text further down the page so that it ran on to another page, and thus pushing out the references by one page number when the written case with electronic bundle references was reintroduced to the PDF. At the meeting he also raised the issue of adding additional items at the end of the electronic bundle, perhaps via the mechanism of having an extra blank page/pages.

Lady Hale noted the suggestion and said she would discuss this with the other Justices. She did, however, suggest that our easiest solution would be to add a blank page as the end of each written case. It was more convenient to have them at the beginning of the bundle and to add extra materials at the end. It was also important to have an accurate index at the front of the electronic bundles. This greatly assisted Justices in navigating their way through the material.

Ailsa Carmichael had raised a point highlighted by one of her colleagues. He had suggested that the appendices should start numbered at 1,000 when lodged with the SFI. Then when the core bundle was put together the initial material should be numbered from 1, but with no use of any spare numbers between the end of that bundle and 1,000. That would avoid everything having to be renumbered when the core bundles and memory sticks were put together.

JR explained that she had discussed this suggestion with IT colleagues. They had advised the only way this could be done would be by creating blank numbered pages, otherwise the numbering would run automatically and sequentially. This was supported by other members of the User Group who highlighted problems they had experienced, and commented that with different users using different systems this would be difficult to achieve. **(ACTION – Justices to discuss the suggestion by HH; JR to discuss pagination proposals with IT.)**

3. Supply of Core Volumes to Legal Libraries

JR updated the full User Group on the meeting which had taken place on 2 November 2012, along with subsequent informal discussions with the representative of the Information Commissioner's Office. JR explained that a paper was being prepared which would identify all the issues which needed to be resolved with a view to consulting the President and Deputy President, and possibly other Justices. JR explained that, amongst other things, the ICO representative had highlighted issues which they would consider when looking at our practice and procedure, for example, fairness to the parties; what parties might reasonably expect to happen to their data; if there was likely to be an adverse affect on any individual and breach of confidence. The ICO official had also pointed out that redaction was not necessarily a straightforward option: it was not simply a matter of redacting names, but of looking at what had been written to see if an individual could be identified from the material. JR went on to say that she was coming to the conclusion that the only way in which volumes could continue to be provided to the legal libraries would be if they came from the parties. That would put the burden on those most familiar with the case to

ensure that material sent to the legal libraries was appropriate. A possible alternative option might be for the UKSC to delegate to certain organisations or individuals, the role of preparing material to be sent to the legal libraries; but the UKSC could not escape the accountability and we would have to assure ourselves that the systems in place within that third party were rigorous and sufficient for purpose.

Andrew Arden said that if the parties were to do this it would have to be made mandatory: if it was voluntary it would never happen. He was also concerned at the quality of individuals who might be asked to do this work. He suggested a further option would be for the libraries to provide funds which would enable the Supreme Court to employ someone who could undertake this work. They would need to be an appropriately, but not necessarily legally, qualified person.

Mark Stephens also mentioned that Bloombergs were responsible for dealing with some High Court records.

JR also clarified for all users that a full set of case papers would be sent to the National Archives in every case, along with a film of the hearing. The National Archives would then apply the appropriate policy towards release of these records.

4. Size of Panels

Lady Hale explained that the President, Lord Neuberger, had asked for this item to be placed on the agenda. He was interested to know how users regarded the use of seven and nine Justice panels and, in particular, if they presented any particular difficulties. Lady Hale commented that the more frequent use of these panels was probably the biggest change which had taken place, other than greater public accessibility, since the Supreme Court's creation. The general criteria used to determine whether seven or nine should sit were on the website; and one of the key reasons for doing so would be if the Court was being asked to depart from a previous decision. Some commentators argued that, in circumstances where the outcome showed a three/two split, if the composition of the panel had been different, the result would have changed. And there was a perception that the more people who sat, the greater the authority of the decision. On the downside, however, larger panels sometimes took longer to produce a judgment.

The general feeling was neither obviously for or against larger panels. The following points were made in discussion:

- From the advocates' point of view, it could be particularly daunting to have seven or nine Justices questioning you as opposed to five.
- There were sometimes difficulties when multiple judgments were given and it was difficult to determine the ratio.
- The clarity of decision making was critical and even where there were differences in individual judgments it was important to avoid confusion.
- A question was raised about whether there was a difference when the Court was being invited to depart from a previous decision which had been taken pre-implementation of the Human Rights Act ie was that really a departure from a previous decision?

- In deciding how many Justices should sit it might be important to look at what had happened in the courts below, and the closeness of the decision in the Court of Appeal.
- It was probably preferable for the Court to take a little longer to produce a judgment if that minimised the number of individual judgments and reduced confusion.

5. Pro Bono Costs

LdiM reported on the change which had now been effected (thanks to Lord Pannick QC) in the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and on our subsequent discussions with the Access to Justice Foundation. She had not yet seen a Court of Appeal Order awarding costs to the designated charity. But our Practice Directions had been amended and it would be helpful for LdiM to be informed by those who had acted pro bono in the courts below.

6. JCPC Rules

LdiM again reported that the new Rules had been completed and, along with the new fee structure, were currently with the Privy Council Office. The Rules should be considered at the February Privy Council meeting with a view to their coming into force on 1 April. Information would be placed on the JCPC website as soon as possible.

7. Video Archive of Judgments

JR reported on the initiative which the UKSC had announced earlier in the week, and which had received a good deal of positive coverage. Judgments would be uploaded to YouTube the same morning as they were delivered, and steps would be taken to include all judgments delivered since 1 October 2012. This initiative had been particularly welcomed by educational institutions and we hoped others would find it helpful.

Nigel Fisher mentioned that Lord Neuberger's delivery of the judgment in the legal professional privilege (Prudential) case had been used by one of their trainers when delivering a briefing to them on the day the judgment was delivered. This had been very helpful to all those involved.

8. Review of Costs

JR explained that there was nothing substantive on which to brief the User Group but they ought to be aware of the current state of play. Before he went to be Master of the Rolls, Lord Dyson had approved a revised version of the Practice Direction 13 for the purpose of consultation with the Costs Judges. They had now come back with a numbers of questions and issues, some of which required further consideration. Lord Neuberger had expressed an interest in taking charge of this piece of work and we needed to brief him, and take his views, before it would be right to share anything with the User Group.

9. Summer Exhibition 2013

JR reported that the UKSC was planning an exhibition to mark the centenary of the opening of this building. An initial planning meeting had taken place where representatives of a range of Middlesex-related organisations and Westminster Abbey had attended. JR wanted to mention this to the User Group to see if they had any information or resources which might be of assistance. We were particularly interested to know about significant cases, or significant people who might have been tried at the Crown Court at the Middlesex Guildhall.

10. Any Other Business

The following issues were raised:

- Karen Quinlivan raised an issue about the Practice Directions, time limits, and the interaction with the Judicature Act (Northern Ireland) 1978. She undertook to send Louise an e-mail setting out the details for Louise to consider. **(DN – now dealt with.)**
- Availability of WiFi in the building. Ailsa Carmichael had raised this with JR in advance. JR explained that the British Telecom engineers were coming in the following week to see if there were any problems. Ailsa did point out that there was a possibility the fault might lie with the laptops supplied by the Faculty of Advocates. JR said that we would investigate this.
- NCCL Education Days – Daniel Waller reiterated how interesting and valuable these days were. JR explained the background to the User Group and said that other volunteers would be welcome.
- Camilla Hart highlighted some issues she thought would be encountered by the Justices with the electronic bundles being prepared for the case of New Falmouth the following week.
- Henry Hickman said that he thought there was a problem with the new version of the Rules on the website with inconsistencies between a couple of Practice Directions. **(DN: now dealt with.)**
- Robin Tam asked if the, six, four, two timetable in the Supreme Court was working. It was pointed out that it was early days yet but the UKSC had received no negative feedback so far.
- Nigel Fisher asked if regular users could receive passes for the building. JR explained that this would be difficult. This led other members of the User Group to commend the security guards in the building.
- Lady Hale suggested that for the next agenda we might include an item on interveners. She was particularly interested in the views from the User Group on our current policy towards allowing interventions, and issues such as time limits.

11. Date of the next meeting

Lady Hale reported that the most likely date for the next meeting was Friday 28 June.

JENNY ROWE
Chief Executive