



Note of the UKSC/JCPC User Group Meeting

Held on Friday 23 January 2015 at 11:15am in the
Lawyers' Suite at the UKSC

Present:

Lord Neuberger	}	
Jenny Rowe (JR)	}	UK Supreme Court
Louise di Mambro (LdiM)	}	

Camilla Hart	Charles Russell Speechlys LLP
Robin Tam QC	Temple Garden Chambers
Michael Fordham QC	Blackstone Chambers
Mark Stephens	Howard Kennedy LLP
Alan Taylor	Alan Taylor & Co
Steffan Taylor	Alan Taylor & Co
Gemma Ospedale	Royds LLP
Jan Luba QC	Garden Court Chambers
Theo Solley	Sheridans
Andrew Smith	Compass Chambers
Robin Lloyds	MA Law (Solicitors) LLP
Karen Quinlivan QC	Bar Library, NI)
Christopher Knight	11KBW
Lee John-Charles	TSols
Annette So	Simon Muirhead & Burton
Amy Kuan	Simon Muirhead & Burton
Djalila Bourmezbeur	Ashurst LLP
Steven Blane	Pinsent Masons LLP
John Almeida	Charles Russell Speechlys LLP
David Miles	Blake Morgan
Nicole Curtis	Penningtons
Lucy Barbet	11KBW
Daniel Waller	Matrix Law

1. Introduction and apologies

DEN explained why he was Chairing the meeting rather than Lord Kerr. He invited everyone to introduce themselves. The apologies were as shown below:

Christopher Jeans QC (11KBW)
Andrew Arden QC (Arden Chambers)
Raza Husain (Matrix Law)
Valda Brooks (Myers, Fletcher and Gordon)
James Turner QC (1KBW)
Nathalie Lieven QC (Landmark Chambers)
Nigel Pleming QC (39 Essex Chambers)
Mark West (Radcliffe Chambers)
Ailsa Carmichael QC (Ampersand)
David Mulholland (The Bar of Northern Ireland)
Henry Hickman (Harcus Sinclair)

2. Minutes of the meeting held on 27 June 2014 and matters arising

Attendees confirmed they had no additional comments on the minutes which had been circulated sometime ago. JR updated them briefly on the current position on core volumes and LdiM confirmed that we hoped the Practice Directions would be in force in early March or April.

3. Provision of papers electronically

A paper updating on various IT developments had been circulated in advance of the meeting. JR drew particular attention to two points from the paper:

- (i) the pilot of on-line filing of bundles and the current promising figures on take up and
- (ii) the possibility later in the year of conducting some short hearings by video link.

There followed a short discussion about the pros and cons of conducting some short hearings, particularly in the JCPC, by video link. There was only limited experience amongst Judges and lawyers of trying to conduct hearings in this way and some concerns that, for example, clients might not think they had received a “proper hearing”. It was agreed that a short directions hearing, for example, might be a good candidate for handling in this way. For a full hearing, it would be important that both sides were content, as well as the judiciary agreeing this was a suitable case.

DEN asked JCPC Users to consider whether it might be possible for some cases to be heard by three member Boards, or by three member Boards supplemented by two representatives from the Courts of Appeal/Court of Session. The general consensus was that it would very much depend on the case and that it was important that the jurisdictions which used the JCPC were comfortable with any change. John Almeida said that he, and the other side, in a forthcoming case there would be a Board of three and Theo Solley agreed that a Board of three had sat on in a recent ex parte appeal.

A point about IT was raised by Daniel Waller on whether a cloud based system led to potential problems if there was a large hearing bundle. **(Action JR and LdiM to check with IT colleagues).**

Jan Luba QC raised three issues:

- (i) It would be useful to have a case tracker system on the website; and related to that it was helpful when important PTA decisions were flagged.
- (ii) A number of users would welcome the ability to access footage of hearings after a case has been heard.
- (iii) Might it be possible to hear some contested PTA applications via video link if one or more of the parties were outside London.

On the first of these points LdiM explained the difficulties we had experienced with the transfer of information from the case management system. This would be resolved shortly and case information would upload automatically. JR updated on the second question, indicating that we hoped to start this service very soon. The delay had been caused by needing to resolve an issue over Crown Copyright with the Controller of HMSO. On the third question DEN pointed out that there were very few oral hearings on PTAs, but this was something which would be borne in mind.

Robin Tam QC asked if there were any issues about accessing the website using a tablet. He was particularly concerned about the font size. JR explained that we ensured our website complied with the standards necessary for those with a visual impairment but she would check the position with IT colleagues. **(Action JR)**

4. Presentation of papers for PTA applications

LdiM explained that the number of papers being submitted had generally been increasing. This created a number of practical challenges and the Court was reluctant to impose comb binding on parties. DEN amplified this by saying that the Registry was sometimes bombarded with letters and it might be necessary to consider some kind of control mechanism. He encouraged the parties to cut down papers where possible. In a subsequent discussion the following points were made:

- It was sometimes difficult to limit correspondence because of the demands of the client.
- Appellants sometimes found it necessary to reply to new points made by Respondents on applications.
- One suggestion was that rather than having a conceptual limit on the papers (for example, a statement that ordinarily a panel would look at the application materials only, with the exception of subsequent decisions of courts which were relevant; or changes in factual circumstances), there should be a very strict time limit.
- It might be helpful for Justices to give a clear signal by expressing a view on the recovery of the costs of some of the correspondence/material.
- The Court might also indicate that it regarded the lawyers as having responsibility for only submitting what was relevant necessary and proportionate.

- The Appellant should have the last word.

LdiM said she would look at the wording of the existing Practice Direction to see if any reinforcement might be necessary. DEN thought it might be possible for Justices to put something in the PTA decision document.

Action: UKSC to consider how best to send appropriate messages to parties, both generally, and in specific cases.

5. Catering

JR spoke briefly to the written update she had circulated. She also dealt with two questions raised in writing by David Miles:

- Cheques – she pointed out that a number of commercial enterprises no longer accepted cheques. The decision whether or not to accept cheques was a business decision for the caterers running the concession. There was some support from one or two other members of the User Group for this to be considered further and she agreed to do so **(Action: JR)**.
- Refunds for meeting room fees if a case lasted for fewer days than anticipated. JR explained that the caterers would happily provide a refund on application.

Though not strictly relating to catering, Jan Luba QC welcomed the decision by the Court to make the Lawyers' Suite available at no charge for legally aided parties and those acting pro bono. However, there was a tendency for some of the leading counsel in other cases to use the room from time to time for "thinking". JR explained that we were still looking into the issue raised by David Pannick QC and James Eadie QC and would report back in due course. **(Action: JR)**

6. Consultation on fees increases

JR thanked those who had responded to the draft circulated in September, particularly the Faculty of Advocates. All comments made would be taken into account in the next iteration of the document. JR reminded those present that the formal consultation on fees increases will be undertaken by the Ministry of Justice on behalf of the Lord Chancellor in order to comply with the statutory requirements.

The purpose of putting the item on this agenda was to see if there were any further comments people wanted to make. There were none.

7. Judicial shareholdings and recusal

DEN introduced the short paper and explained the background. He said that subsequent to this issue being considered by the Justices a further issue had arisen which he thought should be reflected in the wording: a Justice would not declare an interest if they were a council tax payer for a local authority involved in litigation.

There was general agreement that this addition should be made. There was also general agreement to the overall approach although questions were asked about what constituted a small shareholding and there was a discussion as to how this might be presented, for example, as a percentage of the overall value of the company. There were, however, arguments expressed against this. Another issue raised was how to deal with a Justice who might have played an active role as a shareholder, for example, attendance at an AGM.

DEN said he would take the points raised back to the Justices and a revised draft would be agreed to be placed on the website. **(Action: DEN/JR)**

Mark Stephens alerted those present to a CJEU case relating to German Judges and requirements to disclose interests. The case would be heard by the Grand Chamber.

8. Equality and diversity update

The group noted the current position and had no comments.

9. Any other business

- (i) John Almeida had raised a point in writing about JCPC Rule 20 and some potential confusion over the different usage of the term “record”. There was a difference between the certified record and the reproduced record. He thought this was more of a practical issue now there was a greater reliance on electronic bundles.
- (ii) LdiM circulated a possible re-draft of the Practice Direction in relation to this point and would look at this again in the light of the comments raised. It was thought it would be helpful for the Registry to explain the position to non-regular users of the JCPC **(Action: LdiM and Registry)**. In the subsequent discussion issues were raised as to how far the Court really needed the record from the courts below or whether a core bundle would be sufficient. If more radical changes were suggested these would require a consultation with the JCPC jurisdictions. If parties insisted on producing large quantities of documents which were not required by the Board then this again could be a costs issue.
- (iii) Robin Tam QC raised an issue about Supreme Court form 3 which has a box that allows for objections against a permission application. Clients will generally want to include something substantive here at this stage of the procedure. When the form has to be re-submitted after permission is granted, the form becomes a formal step, but some clients are not sure what should be put in the same box, which appears to ask at that stage for the grounds on which the appeal is resisted. It seemed to him that it should only be necessary to include substantive grounds if a “Respondent’s Notice” point is being raised. **(Action: LdiM to look at the Practice Direction and Form to see if any changes were required).**

- (iv) JR reminded members of the User Group about our forthcoming summer exhibition on Magna Carta and the e-mail she had sent asking if people had any artefacts connected with the Magna Carta which they might be prepared to lend us. She thanked the Faculty of Advocates for their willingness to lend a book from the Library of Sir Walter Scott.
- (v) JR reminded the User Group that we were still interested in donations of old wigs and gowns to help with our educational work.

JENNY ROWE
Chief Executive
January 2015