



Note of the UKSC/JCPC User Group Meeting

Held on Friday 26 June 2015 at 11:00 in the Lawyers' Suite at the UKSC

Present:

Lord Kerr	}	
Jenny Rowe (JR)	}	UK Supreme Court
Louise di Mambro (LdiM)	}	
Mark Omerod	}	

Emma Gammon (Constitution Team, Welsh Government)
Nicole Curtis (Penningtons)
Camilla Hart (Charles Russell Speechlys LLP)
Gemma Ospedale (Royds)
Andrew Smith QC (Compass Chambers)
Daniel Waller (Matrix Chambers)
Alan Taylor (Alan Taylor & Co)
Valda Brooks (Myers, Fletcher & Gordon)
Merlene Harrison (Myers, Fletcher & Gordon)
David Miles (Blake Morgan)
Robin Tam QC (Temple Garden Chambers)
Theo Solley (Sheridans)
Susanna McGibbon (Government Legal Department)
Henry Hickman (Harcus Sinclair)
Jan Luba QC (Garden Court Chambers)
Annette So (Simons Muirhead & Burton)
John Almeida (Charles Russell Speechlys LLP)
Robin Lloyds (MA Law (Solicitors) LLP)

Apologies received from:

Andrew Arden QC (Arden Chambers)
Richard Todd QC (1 Hare Court)
Mark West (Radcliffe Chambers)
Christopher Knight (11KBW)
Lucy Barbet (11KBW)
Ian Wimpres (Solicitor to the A/G NI)
Shona Barrie (Lord Advocate's office)
Shirley Ferguson (Lord Advocate's office)
Nigel Fisher (Norton Rose Fulbright LLP)
Mark Stephens (Howard Kennedy LLP)
Karen Quinlivan (Bar Library)
Michael Fordham QC (Blackstone Chambers)
Nigel Pleming QC (39 Essex Chambers)

1. Welcome

Lord Kerr (BK) welcomed everyone to the meeting. He introduced Mark Ormerod who would be succeeding Jenny Rowe (JR) in September and paid a warm tribute to JR whose last meeting it was. He said that she had become synonymous with the court and that he and all the members of the group (he was sure) would greatly miss her wise counsel. The singular success of the court over the past 6 years stood, BK said, as a monument to JR's magnificent achievements.

2. Matters arising from the meeting held on 23 January

Louise di Mambro (LdiM) updated the meeting on two issues:

- (a) The revised Practice Directions have been brought into force. Further discussion would be needed about records in the JCPC and the Practice Direction's provisions would be considered further.
- (b) Presentation of papers for PTA applications – there had been some improvements since the discussion in January. LdiM was not sure that any further changes to the Practice Directions would be worthwhile. Registry staff were now double checking the bundles.

Jan Luba QC said that it had been very helpful to have a notice posted on the website indicating that the revised Practice Directions had been published. He went on to draw attention to the fact that the UKSC had been keeping a list of potential rule changes and wondered if there was any possibility of the rule changes being agreed during the duration of this Parliament. LdiM said that we were currently waiting to see what changes were to be made to the devolution settlements, and possibly to the Human Rights Act, as either or both of these might impact on the rules.

BK suggested that if Users had rule changes they thought were necessary they should be given a deadline for drawing them to the Court's attention. **(Action – Users to bring forward proposals for any rule changes by the end of January 2016.)**

3. IT update

- (a) Pilot of electronic filing – BK mentioned the issue raised in writing by Nigel Fleming QC.

“I was recently before the Court in *Pendragon*, and thought that the electronic numbering system was an additional burden, not justified in terms of improvement of effective and efficient access to justice.

My short complaint based on that experience is that I had marked up the Appendix bundles, but then they had to be renumbered (by hand, to keep the marking/comments etc) with the MS numbers. The reason for the renumbering (or additional numbering) was that the Appendix was physically numbered page 1-1244, but page 1 became “MS 219”, as “MS 1” was in the Core Volume – which included the printed Cases (which, in turn, had been prepared by reference to the Appendix!). For someone who continues to use the printed page, it was somewhat frustrating. I realise that some members of the Court prefer to use laptops in Court, and accept that usb sticks and electronic bundles have their advantages – it is the different numbering that irritates.”

BK also emphasised the importance of sequential numbering for electronic bundles.

In the discussion which followed it became clear that the issue which was concerning Nigel Fleming might be a consequence of the way the caseline system was set up.

(Action: UKSC IT staff to investigate further.)

A number of those present, however, said they were not aware that a pilot had been running. Robin Tam QC suggested that the constraints of the available IT system such as caselines might mean deeper thinking was required about how bundles were built. Whilst noting that the UKSC would probably not require the use of any particular electronic tool for putting bundles together, Jan Luba QC was concerned as to how individual counsel might know what to recommend to their clients. Daniel Waller also said that the size of some bundles were likely to be too much for Cloud based systems and his chambers certainly preferred to use memory sticks.

- (b) Both Daniel Waller and Robin Lloyds asked if it would be possible to cut back on the number of hard copies, particularly bundles of authorities provided to the Court. Jan Luba QC asked for an update on progress in having an automatic linkage between the internal case management system and material which appeared on the website. LdiM explained that it had taken longer to move from the old CMS to the new CMS than had been anticipated, but that we hoped to make progress over the new few months.

In summing up BK said that the IT staff from the Court would be invited to come to the next User Group meeting, both to update on new developments, and to take questions.

(Action – UKSC to arrange.)

4. Draft judgments and related issues

The User Group had before them a paper which BK introduced and set out the background.

The following points were made in the discussion:

Emma Gammon from the Welsh Government indicated that having the draft judgment was very helpful. When there were references about Acts of devolved Assemblies the UKSC was the Court of first and last resort. There were occasions when further submissions might be necessary but they were generally very happy with the status quo.

Susanna McGibbon agreed. The integrity of the final judgment was extremely important and any further submissions should be exceptional. She recognised that sometimes there could be a difficulty over seeking instructions from a client who had not been able to see the draft judgment. She thought it would be particularly important for the Justices specifically to agree the points on which further submissions could be made so that those points could then be shared with both the client, and the other parties. Such agreement should be sought from the Court before any further submissions were made.

Alan Taylor mentioned an example of a JCPC case from New Zealand where the lawyers in New Zealand had not been aware as they should have been of their obligations and they had issued a press notice before the judgment had been handed-down. The practice in the JCPC had been different from that in the UKSC and draft judgments were generally sent to Agents. John Almeida made clear that he did not give draft judgments to clients except, occasionally, to the legal officer of the government involved.

Robin Tam QC took the meeting back to the original point of circulating draft judgments which was to enable counsel to assist the Court in not making obvious mistakes. He wondered if that could be the basis of a principle of when further submissions might be allowed because the Advocate had a duty to the Court to stop the Court making a preventable mistake.

Jan Luba QC pointed out that there were logistical issues about legally aided parties seeking to make further submissions if that would require an amendment to their legal aid certificate. This would involve some disclosure of the issues.

Susanna McGibbon did not disagree with the points raised and acknowledged that the issues would have to be considered on a case by case basis. It would be particularly important for parties to know the clients' view without getting further instructions.

All those present were clear that a draft judgment was a draft judgment and should not be disclosed after a final judgment had been handed-down.

The meeting then went on to discuss briefly the third issue in the paper about circumstances in which the Court might be asked to extend the number of individuals to whom a draft judgment could be shown. Susanna McGibbon made clear that the Government Legal Department took the rules about confidentiality very seriously and in most instances the current procedure worked well. In some cases, however, the named Secretary of State in the litigation was not necessarily the person who would be providing the immediate response to the judgment. And in some circumstances it was extremely difficult not to be able to tell the Prime Minister, for example, the outcome of a case. BK acknowledged it was difficult to set hard and fast rules.

Susanna also made the point about the challenges posed by the 24hr news agenda and that there were circumstances where the Court briefed the media so that they could respond almost immediately a judgment was handed down, but which then left their client in a difficult position. **(Action – UKSC to consider further.)**

5. Video on demand

An update paper had been circulated which set out the early statistics about use of the archive and our concerns about resourcing it into the future.

The archive was generally welcomed by those present. JCPC countries in particular found it very helpful.

Andrew Smith QC said that given that the amount which might be required to keep the service going was relatively small, he had flagged up the potential issue with the Dean of the Faculty of Advocates to see if they might be able to provide a financial contribution. He had also mentioned it to the Head of his Chambers. BK and JR indicated how grateful they were for this.

Jan Luba QC said he was also pleased with the service but was not sure that the Bar Council of England and Wales would be willing to contribute to the cost. He did, however, suggest that the private educational institutions, who were using the output from the service, might be willing to make a contribution.

6. Three issues

Robin Tam QC had three issues to raise. He made available to the meeting two papers, one covering items 1 and 2 and the other covering item 3. (Copies of Robin's notes are **attached** to these minutes.)

- (i) and (ii) After some discussion it was agreed that the Court's judgment should make clear if interventions had been written only.
- (iii) RT pointed out that the Practice Directions were silent on what papers would be required for an Oral PTA hearing. LdiM said that a panel which ordered an oral PTA hearing would usually give an indication of the material they required. After some discussion it was suggested that Practice Direction 3.3.13 should be amended to suggest that, in those circumstances, parties should contact the Registry before preparing any further papers. This would enable the Registrar to take the views of the Justices and advise the parties accordingly.

7. Any other business

- a. New Zealand World War I Commemoration Committee – Alan Taylor said that the function which he had hoped to draw to people's attention was having to be rearranged. He would contact Users when the way forward was clearer.

- b. Statistics on PTAs – a paper had been circulated for information. The Users noted the information.
- c. Permission for interveners – this was an issue raised by Daniel Waller. It related to a particular case where further evidence was submitted and replied to and there had been some delay in the Court indicating that permission to intervene had been agreed. Counsel, who were acting pro bono, had been concerned about the delay.

At the conclusion of the meeting Robin Tam QC expressed, on behalf of all the members of the group, their gratitude to JR for all that she had done to make the Court such a pleasant place in which to appear and for her enthusiastic support of the Users Group and her kindness to individual members of it. She will be greatly missed.

JENNY ROWE
Chief Executive
August 2015