



Note of the UKSC/JCPC User Group Meeting

Held on Wednesday 30 January at 4:30pm in the Lawyers' Suite at the UKSC

Present

Lord Kerr
Mark Ormerod
Sam Clark
Louise di Mambro
Paul Brigidland
Ian Sewell

UK Supreme Court
UK Supreme Court
UK Supreme Court
UK Supreme Court
UK Supreme Court
UK Supreme Court

Gemma Ospedale
Robin Tam QC
Lucy Barbet
Steffan Taylor
James Turner QC
Robin Lloyds
Dermot O'Donnell
Henry Hickman
Kitty Colthurst
Nicola Gare
Iain Reid
John Almeida
Camilla Hart
Lee-John Charles
Conrad McDonnell
Elizabeth Morley
Andrew Carrington

Royds Withy King
Temple Garden Chambers
11KBW
Alan Taylor & Co
1KBW
Axiom Stone Solicitors
HMRC Solicitor's Office
Harcus Sinclair LLP
Harcus Sinclair LLP
HFW
Facility of Advocates
Charles Russell Speechlys LLP
Charles Russell Speechlys LLP
Government Legal Department
Gray's Inn Tax Chambers
Howard Kennedy LLP
Carrington & Associates

Apologies

Asal Nath	Forest & Co Solicitors
Jonathan Crow QC	4 Stone Buildings
Raza Hussain QC	Matrix Law
Chris Jeans QC	11KBW
Hannah Sladen	Simons Muirhead & Burton LLP
Chris Knight	11KBW
Clare Montgomery	Matrix Law
Valda Brooks	Myers, Fletcher & Gordon
Merlene Harrison	Myers, Fletcher & Gordon
David Miles	Blake Morgan
Simon Kemp	Clyde & Co
Bea Hockton	Clyde & Co
Nigel Fisher	Norton Rose Fullbright
Michael Fordham QC	Blackstone Chambers
Karen Quinlivan	Bar Library
Jennifer Cassidy	Harcus Sinclair LLP
Theo Solley	Sheridans
Mark Stephens	Howard Kennedy LLP
Parvais Jabbar	Simons Muirhead

Agenda item 1 - Welcome and Apologies

1. Lord Kerr welcomed all to the meeting including those new to the group.

Agenda item 2 - Note of the meeting held on 13th July 2018

2. The notes from the previous meeting were agreed.

Agenda item 3 - Applications by agents to cease to act.

3. Louise di Mambro highlighted two recent incidents where newly instructed agents had approached the Registry requesting papers filed by the previous agent. They were advised to contact the original agent and did not contact the Registry again. Louise sought the views of the group on this and in particular whether in the Caribbean it was the case that solicitors have a lien on papers until costs are paid.
4. All noted that there is no formal procedure in JCPC rules for this. However, in the Royal Courts of Justice parties could obtain copies of documents a solicitor on the court file but could not have access to others.
5. Lord Kerr raised the general matter of access to court files and the aspirational intention to enable the printed cases to be on line so the case as it progresses through court can be followed. The UKSC had published cases for the Article 50 case. It was noted that Supreme Courts in other jurisdictions have such a facility, but there were a number of considerations for the court, including ensuring compliance with GDPR legislation and

capability of the existing system. In addition, the roles of the court and the parties needed to be considered to ensure the appropriate redaction, if needed, is in place. There was some discussion of the other documents which could be made available such as the Statement of Facts and Issues.

6. Steffan Taylor explained that the electronic files in the Rolls Building had in place a drop-down list so a party could indicate whether the papers contained confidential information, therefore highlighting it from the outset. He also stated that the system enabled you to search for documents and only when the required documents were identified would you be charged for them.
7. There was a general discussion regarding the legitimacy of the recent requests and whether there was any verification that they were who they said they were. Louise explained that we did not know and that if in doubt the requests would be treated as if they were being made by a member of the public, unless and until there was a contrary indication. Had the requests been pursued a formal application would have to be filed.
8. It was agreed that the court would keep this under regular review

Agenda item 4 – New Forms and Practice Directions

9. Louise stated that the new Forms and Practice Directions were available on the website in December but that there had been some errors. New corrected versions of the Forms were now online but the court will continue to accept the old forms until the summer to mitigate any impact this may have had. Louise also pointed out there had been some errors in the Practice Directions for both the JCPC and UKSC but these have now been corrected. Louise asked that if any member of the group identified further errors could they contact her directly
10. The group discussed the consequences of having separate forms for appeals and applications for permission to appeal. The Practice Direction stated that if a party is given permission to appeal then the same form would be resealed and used for the appeal. Louise confirmed that was the case.

Agenda item 5 - Wi-Fi Upgrade

11. Paul Brigland confirmed that the Wi-Fi upgrade in the court had started and that it was intended to double the strength of line coming in, including upgrading 43 access points. This will provide a stronger and more reliable signal in the courtrooms as well as across the rest of the building. Paul also explained that free Wi-Fi for the public was also planned to be rolled out later in the year but that would be separate to the professional and staff Wi-Fi networks to maintain integrity.

Agenda item 6 – Costs

12. Lord Kerr welcomed Ian Sewell to the meeting. At the last meeting in July there was a discussion on costs and Ian had been asked to attend this meeting to provide an overview on costs and the guidelines rates.

13. Ian explained to the group how the guideline rates for both solicitors and counsel came to be. He confirmed that he had discussed with the Senior Costs Judge Gordon-Saker whether an increase in the current Senior Courts Costs Office guidelines was planned: none was. There is a difficulty in establishing an evidence baseline for setting new guidelines. The UKSC/JCPC/HoL had for many years adopted the SCCO rates for solicitors wholesale. Guidelines for counsel were more complicated and the genesis of the current rates is somewhat hidden in the past. Generally, the group highlighted that the rates were not commercially realistic because of the length of time they had been in place.
14. There was a discussion on what guideline rates were adopted in other jurisdictions. Ian explained that for Northern Ireland cases we would allow twice the rate allowed by the Taxing Master in Belfast; for Scottish cases, we relied on the parties, given the complex Table of Fees applied to taxations in Scotland; in JCPC jurisdictions the costs officers would generally look favourably on rates allowed in the jurisdiction.
15. Ian was asked how the guideline rates were monitored. He said that counsel's fees were looked at every few years but the default position on solicitor guidelines was to use the SCCO rates. It was recognised that the rates were not necessarily commercially realistic and the court was very open to looking at the guidelines rates, so would welcome any suggestions and feedback. Camilla Hart pointed out that the cost of making submissions could be less than the recoverable costs, particularly in smaller matters, if the guidelines are adhered to. It was pointed out that in the past counsel's brief fee guideline did not encompass work on the written case but now did. There was discussion about the challenges of getting evidence for working out guideline rates, which would include overheads, inflation, rents etc. The anomalous situation of the London postcode split was also raised.
16. In summing up Lord Kerr suggested that a working group could be set up, and that the issue needed to be looked at on a regular basis. **Lord Kerr and Ian would discuss and come back to the group next time with proposals.**

Agenda item 7 – Any Other Business

17. Lucy Barbet raised an issue on behalf of Counsel in her chambers regarding the functionality of OYEZ produced e-bundles and how material (PDFs) could be annotated and highlighted. It was noted that justices were able to do this, but that counsel and others did not have this ability.
18. Lord Kerr asked whether this may have something to do with how the document was saved but all highlighted that they experienced similar difficulties. There was a discussion about the reason these documents could not be marked up and it was believed there were a number of factors, including commercial considerations by the provider.
19. It was agreed that group members should ask OYEZ to see what could be done to resolve any issues. **Lord Kerr requested that this matter be brought back to the next meeting for an update.**

20. Camilla Hart raised an issue around JCPC jurisdictions: whether between transmission of the record and a case being issued there was a period when no court held jurisdiction, so disputes could not be resolved. This specifically related to the potential period of 56 days between obtaining final leave and filing in the JCPC.
21. Louise stated that the Registry often received the record long before the appeal was filed. Louise explained that a pre-appeal system, was being developed to record an application when it arrived, when it could not be issued. This would automatically generate a pre-appeal reference. But, it was the view of the group that where a local court had given leave to appeal and the record had been sent to UK, then the local court no longer had jurisdiction, so any disputes should be referred to JCPC.
22. It was agreed that further consideration would be given to this area and in particular whether the original practice of registering records should be reintroduced. **Louise was asked to report back at the next meeting.**
23. Conrad McDonnell then raised Practice Direction 14.2.2. about electronic filing and asked whether this was in force yet. It was confirmed that it was not mandatory and could not be until such a time as the new UKSC/JCPC Websites were up and running, which was expected to be in 2020. **It was agreed that a footnote would be added to the existing text to confirm the position.**
24. Robin Lloyds raised the issue of electronic banking and whether the court was any further forward. This was being investigated by the Finance Director and an update would be provided when available.
25. There was then a general discussion about going paperless, the potential for looking at having electronic bundles for PTAs, the use of hard copy core bundles and how much paper is too much. Lord Kerr explained this this was something which was discussed regularly at Justices' meetings.

Sam Clark
14th February 2019