Note of The UKSC/JCPC Users Group Meeting

Held on Friday 21 January 2011 at 11am in the Lawyers' Suite at The UKSC

Present:	Lady Hale	}
	Lord Kerr	}
	Jenny Rowe (JR)	} Supreme Court/JCPC
	Louise di Mambro (LdiM)	}
	Rake Orekie	}
	David Jackson	HMRC
	Daniel Waller	Matrix
	Michael Fordham QC	Blackstone Chambers
	Derry Moloney	Alan Taylor & Co.
	Steven Durno	Law Society
	Ishbel Smith	McGrigors
	Robin Tam QC	TG Chambers
	Karl Banister	TSols
	Hannah May	Royds LLP
	Chris Barber	Gregory Rowcliffe Milners
	Ailsa Carmichael QC	Murray Stable
	Jan Luba QC	Garden Court Chambers
	Saul Lehrfreund	Simons Muirhead & Burton
	Parvais Jabbar	Simons Muirhead & Burton

Apologies received from:

Jonathan Crow QC	4 Stone Buildings
Lucy Barbet	11 KBW
John Almeida	(Charles Russell LLP)
Nigel Fisher	Norton Rose
Nicole Curtis	Penningtons
Andrew Arden QC	Arden Chambers
Rabinder Singh QC	Matrix
Chris Jeans QC	11KBW
William Rose	Sharp Pritchard
Timothy Brennan QC	Devereux Chambers
Julia Staines	Charles Russell

David Perry QC	6KBW
David Pannick QC	Blackstone Chambers
Nick Hanna	Bar Library
Patrick Allen	Hodge, Jones & Allen
Nigel Pleming QC	39 Essex
Nigel Giffin	11KBW
David McMillen	NI

After the welcome and introductions the following matters arising from the minute of the previous meeting on 25 June were dealt with:

(a) **Timetables** – the Registry has been suggesting tailor made timetables for a number of cases. This has worked well from the Court's point of view and seems to have solved a number of problems experienced by solicitors. Those present agreed that this approach was better than a "one-size fits all" approach.

(b) **Authorities** – this issue was on the substantive agenda.

(c) **Interim Certificates** – this issue had been resolved and at least one interim certificate had been issued so far.

(d) **Printer for the Lawyers' Suite** – JR explained that there were practical and financial difficulties over installing a printer in the Lawyers' Suite. For the time being, the current arrangements whereby the Registry would print documents would remain in place. The Registry was also happy to photocopy documents for a modest charge (as set out in the Fees Order).

(e) **Printed cases appearing on the w ebsite** – there was a technical issue which we were in the process of trying to resolve.

(f) **Costs Review** – this issue had been discussed at the meeting a year ago. I explained that we had decided to postpone the start of the review pending seeing what the government response was to Lord Justice Jackson's Review of Costs in England and Wales. The government had now produced a consultation paper and we were having an internal meeting to discuss the implications for the Supreme Court. The UKSC would let the User Group know when it would be appropriate for them to make submissions. (**Action: UKSC**.)

Electronic Presentation of Material

Lord Kerr, as the Justice with the responsibility for IT issues, led this item. He made clear that, whilst the Court did not wish to force the pace, electronic presentation of material had been used very successfully in one case before Christmas. There was a range of abilities amongst advocates and solicitors, and a range of abilities amongst Justices. It was important to embark on this exercise in a spirit of co-operation.

The amended Practice Direction had been circulated to attendees prior to the meeting and comments were welcome. In addition Rake, as the Court's IT Officer, was ready to provide assistance and answer questions.

Lord Kerr and Rake then demonstrated some of the fundamental elements of the system using documents from the case mentioned above. There were a number of fundamental rules which must be observed for electronic presentation to be a success:

(i) Pagination must be continuous. This was the most important feature.

(ii) Documents must be presented in a single pdf.

(iii) The font size must be 100%.

(iv) The text must allow the imposition of highlights and electronic "sticky notes".

(v) The index page must be hyper-linked to the relevant document.

In subsequent discussions the following points were made and issues clarified:

- It was not essential to use Adobe Acrobat Pro.
- It might be possible for one side only to use the technology, but it was important that if advocates/solicitors thought a case was suitable for the use of electronic presentation they should contact the Registry as soon as possible. There were implications for listing and the composition of panels.
- It was possible to have two pages open at once.
- It might be possible to dispense with the use of an independent operator at some point. Under such a system advocates could indicate to which page they were referring and then every individual would find that page.
- The Practice Direction might need clarification in some respects. Individual documents were likely to be lodged separately in order to comply with Court timetables. It would then be necessary to merge them all into a single pdf for electronic presentation. It was not possible to wait for the single pdf to be created as the information on the case management system was dependent on individual components being available at certain times.
- Creating hyper-links did involve some work but it was not too onerous. Firms like Oyez were ready and able to do this.
- It might be helpful to use the Practice Direction to encourage parties to co-operate in preparation of material.
- The technology, as well as enabling more than one page to be open at once, would also allow certain pages to be minimised as the discussion continued.
- It was feasible to cut and paste from the electronic bundle to other documents such as judgments. But it was important that pdf documents were converted from Word documents and not scanned.

(ACTION: UKSC to finalise and publish Practice Direction.)

Authorities

Lady Hale introduced the item, which had also been suggested for the agenda by Robin Tam QC. She pointed out that in a number of cases, large quantities of authorities were provided for the Court but not referred to. This could become very unmanageable for the Justices and led to great deal of photocopying which might not be necessary. There are a number of options. They included:

- Including only authorities to which reference would be made during the hearing.

- Having a core volume of authorities that were the most important for Justices to read ie not footnote cases. This would probably be no more than 20 cases and in many cases would be fewer.

- The proliferation of authorities in the case of WL Congo had been particularly problematic.

She then opened up the issue for further discussion:

- Robin Tam QC had been one of the counsel in WL Congo. He agreed that the 50 plus volumes of authorities had become unmanageable. One possibility might be to impose a similar rule to that which was theoretically applied in the Court of Appeal where only one authority should be cited for each proposition. However this rule was more honoured in the breach than the observance. Counsel had to bear in mind the depth of study the Court might need to give in order to decide the case. This was particularly important in the Supreme Court. In the case of WL Congo the parties did consider whether it would be feasible to provide a core volume. But, in the event, they concluded that they were unlikely to agree on anything less than 10 volumes.

- A number of other points were made in the subsequent discussion:

    - The UKSC confirmed that Arabic numerals should now be used rather than Roman numerals: this was generally welcomed.

    - There was a difficult balance between providing too much and not enough.

    - Sequencing could be a problem ie date order or alphabetically. It would be helpful to have the freedom to approach this sensibly.

    - Comb-binding was seen by some as a problem. Other courts used lever arch files.

    - A solution to some of the challenges had been apparent in the previous discussion – using electronic means for assembling and presenting authorities, particularly the secondary authorities would be helpful.

    - But it was equally important not to put the authorities together too early as the needs could change when you saw the other side's case.

- If authorities could be produced in light floppy ring binders rather than spiral bound this would make it easier for justices to select the essential ones to read.

In response to some of these points Lady Hale indicated that a number of the Justices shared her view that lever arch files were not the way forward. There were practical dis-benefits. She went on to say that the Court did want a depth of research but that was a separate issue from the way material was presented. She hoped it might be possible to separate the authorities into primary, secondary and, if necessary, tertiary authorities. She strongly encouraged the parties to co-operate and to give Justices a steer on the cases that were <u>really</u> important rather than spending hearing time reading them in court.

There was general agreement that we should move towards having a core volume of authorities. The following further points were made in discussion:

- It would be helpful to change the JCPC Rule about alphabetical listing to allow sensible listing as set out above.

- If a three tier approach was to be adopted the Practice Direction should make clear what should be included in each category to stop arguments between the parties.

- There might be an issue of when volumes of authorities should be lodged to try and ensure they were as sensibly done as possible.

- Did every footnoted case need to be in a volume?

- Oyez should be informed that Arabic numbers rather than Roman numerals should be used.

- In some cases which depended on statutory construction it was necessary to show how a statute had been amended and at what point, in relation to the issue being discussed in the case. This would need to be the subject of further consideration.

- It would be sensible to allow parties to organise cases in the way they thought would be of most assistance to the Court. But there should be an alphabetical index and the parties should be asked to provide core authorities about one week before the hearing.

- There is a problem with cross-references to the bundles of authorities only being included in the written cases at a late stage, and even then not giving the volume number but only the tab number.

- Against that worries were expressed about relying on the co-operation of counsel alone.

- It was reported that in Scotland in the Inner House they sometimes asked for passages to be highlighted for reading before the hearing. There was, however, concerns about passages being difficult to read out of context.

(ACTION: The amended Practice Di rection will secure some of these changes but some issues to be discussed at the next Justices' meeting.)

Format of SFI and Printed Cases

Robin Tam QC had asked for this to be put on the agenda, informed by the experience in **WL Congo.** Whilst there was some guidance in the Practice Direction it was important for parties to know what was and was not important. In particular there was ambiguity about whether it was still acceptable to use old House of Lords practice. After some discussion it was decided to amend Practice Directions 5 and 6 to remove the references to House of Lords practice.

A further point was raised about the summary of reasons which is required at the end of the case. Lady Hale thought that the Justices found this helpful. It was agreed this would be put on the agenda for Lady Hale to discuss with other Justices at one of their regular meetings. (**ACTION: UKSC**)

The following points were also agreed:

- Those preparing papers could dispense with lettering on the side of the pages as paragraphs number would suffice.

- Footnotes could be used instead of marginal notes to provide references to the appendices and authorities.

- There were differing views as to how far the Court should be more prescriptive about size of font, line spacing and margins. It was pointed out that cross-references could not be inserted when cases were lodged because authorities might be identified later.

Public Interest Interveners

Robin Tam led the discussion on this item. He thought it necessary to consider when interveners added to the case and the decision: were they providing additional material for the argument or simply reproducing what the parties had said? Some interveners did add to the complexity of dealing with a case.

Michael Fordham pointed out that there was no substitute for being at the hearing itself so that you were aware of points being made and questions being asked. It was surely a question for the Court to decide if it would be assisted by the intervener being present. It was equally important for interveners to keep under review what they wanted to say. A lot of interveners were represented by people acting pro bono who did not want to waste time.

Lady Hale affirmed that the Justices thought very hard before giving permission to intervene. Some bodies would generally be given permission. Others would depend upon the subject matter. She gave the example of *Yemshaw v London Borough of Hounslow* where two interventions had been allowed and were particularly helpful when the court was examining the meaning of domestic violence in homelessness cases. In particular the interveners made available additional material which the parties had not provided. Another example where the interventions had been useful was the Jewish Free School case.

It was acknowledged that there could be issues about the number of authorities interveners wanted to refer to, leading to problems for the other parties. It was suggested that interveners should be asked not to include cases otherwise readily accessible unless they were to be referred to in the hearing. Alternatively interveners

could be asked to produce their own volumes of authorities. It was thought this was quite possible where large firms of solicitors were acting pro bono.

Louise di Mambro commented that from the Court's point of view applications from interveners often came separately and late and they could impact on time estimates.

Equality and Diversity Strategy

JR invited any comments on the papers circulated to members of the User Group. It would be possible to make available the more detailed material if that would be of any assistance.

In response to a question JR indicated that the UKSC would be happy to consult the User Group on the objectives we had to draw up under the Public Sector Equality Duty.

Some specific points were made about possible limits on the accessibility of the advocates' robing rooms to disabled advocates in wheelchairs. **(ACTION: JR agreed to look at this and report back.)**

Any Other Business

JR gave attendees a short update on the UKSC's Spending Review settlement, pointing out that the budget was set to decline over the next three or four years. The aim was to do everything possible to maintain levels of service to users but this would require understanding on their part.

JENNY ROWE
Chief Executive