



## **UKSC AND JCPC USER GROUP MEETING**

At: 16:30pm on **Tuesday 16 January 2024**  
At: The UK Supreme Court,  
In person and remotely via Teams

**Chaired by Lord Hodge and Lord Briggs**

### **MINUTES**

#### **1. Welcome to the UKSC and JCPC user group and introductions (Lord Hodge)**

Lord Hodge introduced Lord Briggs, Vicky Fox, Sam Clark, and Laura Angus.

#### **2. UKSC fees update (introduced by Vicky Fox)**

At the last meeting, Vicky Fox noted that a consultation on the UKSC fees, being done in conjunction with the Ministry of Justice had launched in October 2023 and closed in November 2023. It received nine responses. The consultation covered three issues:

1. Routine fee reviews: in the future, the UKSC proposes to have routine fee reviews every two years. At present, the UKSC's fees have not increased since 2009 (meaning they have decreased 40 percent in real terms).
2. Fee increases in line with historical inflation: the UKSC proposes to increase its current fees in line with historical inflation (i.e., 40 percent) to reflect the fact that there has been no increase since 2009.
3. Simplifying the fee structure: for example, removing the distinction in fees between the devolution appellate jurisdiction and other applications.

The Ministry of Justice is now considering those responses. Any changes made will take effect from 1 April 2024. The UKSC will alert users in advance.

In response to a question, Vicky Fox clarified that this consultation (and any changes) related solely to the UKSC fees, not those for the JCPC. The JCPC would look at increasing its fees in the future.

#### **3. Practice Note to be issued by Lord Reed regarding junior counsel speaking in hearings (introduced by Lord Hodge)**

Lord Hodge explained that the UKSC will be introducing a requirement for junior counsel to speak in UKSC hearings to facilitate their career development. The UKSC also hopes that this will

increase the number of female and ethnic minority lawyers who are presently underrepresented before it. Lord Hodge noted that the Royal Courts of Justice have a similar requirement. Attendees generally indicated that they approved of this proposal.

#### **4. Change Programme update and case management Portal show and tell (introduced by Sam Clark)**

Sam Clark provided an overview of the Change Programme:

1. **New Website:** Sam Clark showed the attendees an illustrative (but not final) video demonstration of the new UKSC website (which the new JCPC website would mirror the design and layout of). The new design is cleaner and more intuitive and is based on data about what people search for most and designed to require fewer steps to reach the desired information. It will also be viewable on mobile devices and in dark mode. The new website is still a work in progress and the Court will share more detail in spring/summer.
2. **Case Management Portal (“CMP”):** Sam Clark showed the attendees an illustrative (but not final) video demonstration of the new UKSC CMP. She explained that the Court is creating a new CMP which will sit behind a user portal, for which users will have a unique account. This will increase contact with the Court, foster a two-way dialogue between the Court and users, and ensure that there is ‘one version of the truth’. Users will be able to pay fees via the CMP (through BACS, credit card, or debit card).

Laura Angus also explained that, aside from the initial application for permission to appeal or notice of appeal, all service would take place via the CMP. Appellants would serve the initial permission to appeal application (“PTA”) or notice of appeal on respondents in the normal way (as is done today, typically by the appellant emailing the relevant documents to the respondent), then log in to the CMP to confirm they have served the respondent. The Court will then invite the respondent via email to join the CMP, by creating an account. Once the respondent has created an account, then all service will take place electronically via the CMP. For the avoidance of doubt, using the CMP will be required for professional users.

Sam Clark also explained that the Court is working to update its procedure rules and practice directions to reflect these changes. The Court will circulate those changes for consultation in due course.

The new CMP will be brought into effect by March 2025 at the latest. The UKSC’s intention is to implement it by the latter part of 2024.

3. **User testing:** Internally, the Court has been testing the new website and CMP. From February onwards, the Court will invite external users to test the website and CMP and provide feedback. As part of this user testing, and sessions such as this one, the Court is collating questions for an FAQs section of its website so that it can address questions via videos, guides, hints, and tips.

#### **5. JCPC specific items: (introduced by Lord Briggs)**

- a. **The attitude of the Court to JCPC appeals**

Lord Briggs explained that the Justices had not lost interest in the JCPC cases. While there had been relatively few last term, there are far more this term. The Justices are committed to working on the JCPC's case load.

### **b. Court approach to JCPC appeals as of right**

Lord Briggs explained that the JCPC screens appeals as of right in two ways:

1. If the appeal is of no general public importance, then the JCPC may allocate three justices (rather than five). This is a more sensible use of its resources.
2. If the appeal is hopeless, for one of two reasons:
  - a. It seeks to relitigate concurrent findings of fact of the courts below; or
  - b. It advances an impossible proposition of law.

If the appeal falls into this second category, then it goes to a single justice for consideration. The Registry will write to the appellant to say that the JCPC is minded to dismiss the appeal and asking for their comment. If their response does not persuade the JCPC, then it may go to a panel of three justices who will decide whether to deal with the appeal on the papers.

Lord Briggs reiterated that this process was not because the JCPC is losing interest in appeals as of right. However, the JCPC thinks that it is unfair on respondents to be forced to address such hopeless appeals and wait until a panel of five justices can be convened to decide upon it. It is also a better use of the JCPC's resources. In this way, while the appellant may not get a full one-day oral hearing, they retain their appeal as of right to the JCPC.

Lord Briggs stated that the JCPC is minded to continue with this process. Laura Angus added that there was a practice direction / guide on this process which was with the Justices for approval and would be forthcoming. **This is now codified in JCPC PD 4.7.**

One attendee asked whether the respondent would automatically get a costs award against the appellant in such cases. Lord Briggs and Laura Angus explained that this process is intended to operate *ex parte* (i.e., without involving the respondent). There should be no need for the respondent to comment, nor does the JCPC necessarily encourage it. Another attendee added that, in their practical experience, it is difficult for the respondent to know whether it is helpful for them to incur further costs by making submissions or whether to just sit tight. Lord Hodge acknowledged this issue but reiterated that the purpose of the screening was to try to save costs for the respondent if possible.

An attendee also suggested that the question of whether an appeal was seeking to relitigate concurrent findings of fact was not as straightforward as it may seem. For example, it may seem to be simple based on the judgments of the courts below, but when one looks at the case something may have gone terribly wrong. Lord Briggs noted that in such a case, the Registry would send the 'minded to' letter, and the appellant could raise such a concern in its response.

A question was also raised as to at what point in the process the JCPC carries out the screening process. Laura Angus clarified that it happens when the JCPC feels that it has enough information/papers to go on. However, it is intended to take place before the JCPC has received the full case file. However, Lord Hodge and Lord Briggs stated that there may be appeals in which it is not clear whether it is hopeless until the JCPC has received the respondent's notice of

objection. It was also noted that the respondent may raise issues, such as the appellant seeking to relitigate concurrent findings of fact, in its acknowledgement.

Lord Briggs also noted that, even if this screening process was not being used, but it appears from the submissions of the parties that the appellant is seeking to relitigate concurrent findings of fact (for example), the JCPC may ask counsel to address this point at the start of the hearing.

### **3. Registry items (introduced by Laura Angus)**

- a. Change in solicitor or counsel – please inform the Registry explicitly in an email (do not just rely on names on written cases);
- b. Cross appeals – flagging that the process in the new CMP will be clearly set out for cross appeals and will require a permission to appeal fee to be paid. If permission to cross appeal is granted a notice of intention to proceed fee will be required to be paid by the respondent;
- c. Extension of time – flagging that in the new CMP formal extensions of time applications will be required when any extension of time is required (except when filing a notice of appeal or application for permission to appeal). This will require a fee each time. This is a departure from previous practice but in line with the recent moves to tighten up procedure around Court deadlines;
- d. Reminder that the court photocopying service is no longer available;
- e. Reminder on PD guidance on written cases (no more than 50 pages, including footnotes, 12 point font). Written cases don't have to be 50 pages in length, but they must not be more than that. If a written case of more than 50 pages is submitted, then it will be rejected unless a formal application has been made.

Lord Hodge added that late applications for longer written cases cause timetabling delays for the court. He indicated that the page limit should be impressed upon counsel. It also does not mean that counsel may shrink the font size. He also added that some of the best written cases are the short ones. Lord Briggs concurred, noting that parties who wished to apply for permission to file a longer written case should not submit their application alongside a 60-page written case. Instead, parties should work out in advance whether they are going to require an extension and make their application accordingly. Lord Hodge added that late applications for longer written cases cause timetabling delays for the court. He indicated that the page limit should be impressed upon counsel. It also does not mean that counsel may shrink the font size. He also added that some of the best written cases are the short ones. Lord Briggs concurred, noting that parties who wished to apply for permission to file a longer written case should not submit their application alongside a 60-page written case. Instead, parties should work out in advance whether they are going to require an extension and make their application accordingly. In response, one attendee noted that respondents may not know how long their written case may need to be until they receive the appellant's written case. Lord Briggs noted this difficulty, but suggested that if both parties were being reasonable, they could talk to one another before that point, perhaps at the point at which they agree the statement of facts and issues and make a joint application at the outset for permission to file a longer written case. Lord Briggs and Lord Hodge also suggested that parties should quote less from authorities, which would help reduce the length of parties' written cases; and

- f. Reminder not to file ANY hard copies except the key documents bundle.

Laura Angus clarified that the changes precipitated by the new CMP system (i.e. items b and c on the list above) would only come into force alongside the new CMP, not before.

#### **4. AOB**

##### **a. Rooms for hearings when parties are legally aided**

Laura Angus explained that legally aided parties should contact the Registry as soon as possible regarding rooms for hearings. If there is a free room three weeks before the hearing, the Registry will offer it to the party free of charge. The party will still have to pay for catering if wanted.

An attendee asked whether the Court's trial with a new PDF reader had been successful and, if so, whether PDF submissions should be made in a particular format. Sam Clark clarified that the new reader was FOXIT, but that no change to the way in which PDFs were submitted was necessary.

#### **5. AOB – closed session with opportunity to give feedback on the performance of the Court to Chief Executive and Registrar without Justices present**

No points raised.