Jane Wright
Secretary to the Civil Procedure Rule Committee
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Dear Sirs

Appeals to the Court of Appeal: proposed amendments to Civil Procedure Rule and Practice Direction

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law, to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. At present, APIL has approximately 3,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

While the proposals in this consultation are not ideal, we recognise that because of economic pressures, there is no alternative solution at this time. The Court of Appeal is currently operating in an unsustainable way, with serious backlogs and increasing delays because of a shortage of funding and resources, and this does not allow proper access to justice. If the suggested reforms allow the Court of Appeal to regain all of the hours that it anticipates, and therefore substantially reduce delays, the reforms should be permitted to go ahead.

Our comments on this consultation are made only in relation to the Court of Appeal and the specific difficulties that the Court of Appeal is currently experiencing. If there are plans to extend the proposals to other appeal processes, very different considerations will be brought into play, and there must be a separate consultation on this.

Appendix 4 also contains several proposed reforms that are not included in this consultation. We are sceptical that the proposal to route all appeals from County Court decisions to the next level of judge instead of to the Court of Appeal will be workable in practice – the High Court already reports delays of its own, and directing appeals to that court instead of the Court of Appeal will not solve the problems, but simply move them down a court level.

Comments on the proposed threshold

Amendment of CPR Part 52.3(6)(a) to create a test of "a substantial prospect of success" for permission to appeal to the Court of Appeal in a first appeal, in place of the current test of " a real prospect of success"

The proposed new threshold may actually result in greater consistency in the application of the test, with less room to interpret the test laxly or stringently (some judges having a tendency to do so one way or the other, at present). "Substantial prospect of success" is more clearly defined than "real prospect of success" - the recent case of *Billet v MoD*[1] having endorsed an interpretation of "substantial" as "more than minimal". The new threshold may therefore make it clearer to the judges which cases fall above or below the threshold, helping to ensure consistency. Guidance should also be issued on interpretation of the threshold, to further ensure a consistent approach.

Comments on removal of automatic right to oral hearing

Amendment of CPR Part 52.3 to remove a right of oral renewal for an application for permission to appeal to the Court of Appeal, but with a power in the single LJ reviewing the application on the documents to call the application in for an oral hearing

If the automatic right to an oral hearing is removed, clear and sensible safeguards must be built into the new mechanism for deciding whether an oral hearing should go ahead. The Lord Justice who is to decide whether an oral hearing is necessary must decide that it is, if they do not have enough information to determine the application on the documents alone. The rule as drafted states that "52.3B (2) Where the judge considering the application on paper is of the opinion that the application cannot be fairly determined on paper without an oral hearing, the Court of Appeal must direct that the application be determined at an oral hearing". We are pleased that "cannot be fairly determined on paper" is included in the wording, but suggest that there should be further accompanying guidance to judges to make it clear that, rather than the Lord Justice having an outright discretion, an oral hearing must be directed if they feel that they do not have enough information to determine the application on the documents alone.

We also suggest that there should be a requirement that if oral permission to appeal is refused, the Lord Justice must provide reasons as to why an oral hearing is not necessary. This will ensure that the decision as to whether an oral hearing is necessary is fully considered by the Lord Justice.

Comments on new Practice Direction 52.3B

We welcome the new Practice Direction 52.3B - it is much clearer than the current version.

Other comments

We are strongly in favour of docketing, and would welcome any proposals to increase specialism of judges. If specialist judges with personal injury knowledge dealt with personal injury permissions to appeal and the appeal hearings, this would help to ensure consistency in appeal decisions - this is important as it will ensure clarity. Appeals would also be dealt with more efficiently because the judges will be familiar with the principles and common issues in dispute.

[1] [2015] EWCA Civ 773

We hope that our comments prove useful to you. If you have any queries about the response, please do not hesitate to contact us.

Yours faithfully

Alice Warren

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APIL