ILPA response to the Civil Procedure Rules Committee consultation on appeals to the Court of Appeal: amendments to the civil procedure rules and practice directions

Preliminary

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations.

ILPA concurs with the judges of the court that the present position is neither acceptable nor sustainable. Lord Dyson MR sets out in his forward that discussions with the Ministry of Justice have led him to conclude that there is no possibility at the present time of increasing the number of judges in the court. ILPA urges the Ministry to rethink this position, at least in the short term until other measures have taken effect. Backlogs, once established, are difficult to clear and place unhelpful pressure on those working under them. Lord Justice Briggs said in his December 2015 *Civil Courts Structure Review: interim report:*

> *The simple reason for this large increase in waiting times is that the incoming work of the Court of Appeal has increased by over 54% during the last six years, and the latest statistics do not suggest any alteration in that upward trend. During the same period there has been no increase in the number of LJs, and no significant increase in the use of HCJs as deputies. There has been a small decrease in back office staff. Also during the same period, as already explained in Chapter 2, the theoretical capacity for case-related work of individual LJs has reduced, due to the ever-increasing demands on them for leadership and administrative activities. In practice, this has been partly offset by LJs working substantially longer hours, but in 2014 the level of incoming work passed the saturation point, and the rate of deterioration in waiting times thereafter has been alarmingly steep….*

In what follows, however, we have assumed that no extra funds will be forthcoming.

We have struggled to do justice to this consultation given the volume of materials and short time frame.

Questions: A. Do you agree that the threshold for permission to appeal to the Court of Appeal should be raised to "a substantial prospect of success"? If not, why not?

No.

Changing the test will result in cases currently succeeding before the court or before the Supreme Court being denied permission with the results that appellants in individual cases are denied justice and guidance is denied to the rest of the courts system, with the potential for increased costs elsewhere as a result. Decisions of the Court of Appeal set precedents for the lower courts to follow and to reduce the guidance and structure of the law given at this level is likely to have a deleterious effect throughout the courts and tribunals system.

The calculations set out in the annexes suggest that the required savings can be made without taking steps that deny justice and efficiency in this way. For example the figures in Appendix 4 suggest that moving to two Lord or Lady Justices of Appeal on a panel in some 50% of appeals would result in a saving of some 4000-4600 judicial hours per year, with a greater saving were such panels to become the norm. We leave others to comment on the proposed changes to family routes of appeal and appeals to the county court but we observe that with changes to panels of two Lords or Lady Justices savings equivalent to the time deficit could be achieved.

We do not consider that the consultation paper gives a clear explanation of how the test would change if "substantial prospects" were substituted for the test of "a real prospect of success". The concept of degrees of arguability is, we suggest, a fuzzy one, in the technical as well as in the general sense.

In immigration appeals from the Upper Tribunal to the Court of Appeal, in addition to the existing test of a real prospect of success' a case must also satisfy the second tier appeals test set out in s 13 of the Tribunals, Court and Enforcement Act 2007[1]: permission to appeal is not to be granted unless the Upper Tribunal or the Court if Appeal considers that:

(a) the proposed appeal would raise some important point of principle or practice; or
(b) there is some other compelling reason for the Court of Appeal to hear the appeal.[2]

The risks of a denial of justice are increased if the "substantial prospect of success" test interacts with the second tier appeals test. The test should not be used in cases already subject to that test.

The second appeals test was considered in the case of *PR (Sri Lanka)* [2011] EWCA Civ established that there would be 'some other compelling reason' if:

- it is "clear" that the decision is perverse or plainly wrong;[3]
- a "plainly wrong" decision includes one that is, "inconsistent with authority of a higher court;"[4]

[1] That test also applies to applications for judicial review of the Upper Tribunal's refusal of permission to appeal from the First Tier Tribunal (Immigration and Asylum Chamber) to the Upper Tribunal: *Cart v SSHD* [2011] UKSC 28 and *Eba v Advocate General for Scotland* [2011] UKSC 29

[2] Section 13(6) of the Tribunals, Courts and Enforcement Act 2007 and The Appeals from the Upper Tribunal to the Court of Appeal Order 2008***

[3] *PR* at 35.

- because of a some procedural irregularity the applicant did not have a fair hearing at all.[5]

The second appeals test was considered further in *JD (Congo) & others v SSHD* [2012] EWCA Civ 327. In this case JD sought permission to appeal to the Court of Appeal after the Upper Tribunal, having conducted a full hearing *de novo* had dismissed the appeal. In JD the Court of Appeal affirmed that the 'some other compelling reason' test is inherently flexible; and gave further guidance on the factors relevant to that test.

The Court highlighted the importance of:

- The provenance of the appeal [6] including that the appeal to the Court of Appeal is the first opportunity that the applicant has had to correct the error. The Upper Tribunal's having heard the appeal de novo the decision JD sought to appeal to the Court of Appeal was, in effect a first instance decision.[7]
- The consequences for the applicant for permission including the irreversible nature of those consequences.[8] The Court said] that, "…very adverse consequences for an applicant… are capable, in combination with a strong argument that there has been an error of law, of amounting to "some other compelling reason".[9] How arguable the error of law; how high the prospects of success need be, depend on the circumstances of the individual case. That immigration and asylum cases might, of their nature, frequently have "dire" consequences for appellants was "no reason to minimise the significance of the consequences"[10] of a decision in the immigration context.

The combined effects if the judgments are that the **'**some other compelling reason' criterion is likely to be made out in appeals from the Upper Tribunal to the Court of Appeal which are appeals from a de novo hearing by the Upper Tribunal where the applicant for permission is at risk of very adverse consequences and a strongly arguable error of law, including an alleged failure properly to apply Country Guidance is present.[11]

As with the second appeals test in immigration and the cases of *PR* and *JD*, the "substantial prospect" test is itself likely to give rise to litigation.

B. Do you think that amendment of CPR Part 52.3(6)(a) will assist in reducing delays in determination of appeals in the Court of Appeal?

If it does so, there is a risk that this will be by restricting access to the court in a manner that denies justice.

See above.

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[4] PR at 35 and see *Uphill v BRB (Residuary) Ltd* [2005] 1 WLR 2070, at paragraph 24 as approved in *Cart* and *Eba*, see also *FP (Iran) v SSHD* [2007] EWCA Civ 13 at [46].
[5] *PR* at 35.
[6] Paragraph 18. See *PR* at 53, although the caveats expressed there are not expressed in *JD*.
[7] Paragraphs 23, 28, 30.
[8] Paragraphs 18, 22, 27. Also relevant was the extent to which the decision of the First-tier Tribunal was set aside by the Upper Tribunal, including the extent to which the findings of the Firs-tier Tribunal remained intact, see paragraphs 30 to 31.
[9] Paragraph 22, see also paragraph 26.
[10] Paragraph 27.
[11] See JD at 44; contrast PR at 63.

C. Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

As described above, we consider that there would be a particular impact upon those already subject to the second appeals test. Immigration and asylum cases, by their nature, affect foreign nationals and have a disproportionate effect on minority ethnic groups.

The Equality Impact Assessment for the Ministry of Justice consultation on fees in the High Court and Court of Appeal acknowledged that these proposals were likely to impact more severely on ethnic minority groups because of the high percentage of the workload of both the High Court and the Court of Appeal which involves immigration and asylum matters. The same applies to this consultation. Many of these cases will also involve people who are at risk for other reasons, such as mental and physical health problems.

D. Do you have any other suggestions for assisting the Court of Appeal to reduce delays in the hearing of appeals?

The solution to reducing delays in the Court of Appeal lies outside the Court of Appeal. It lies with those who propose laws, those who make them, those who bring them into effect and those who implement them and operate the structures they set up. It lies in the ways in which appeals are dealt with in courts and tribunals below the Court of Appeal and the extent to which the parties are assisted or sanctioned before those courts. It also lies in respect for the rule of law so that the judgments of judges are recognized as the integral part of law-making that they are, and the work of judges facilitated.

Of the options proposed in the appendices of which we have particular knowledge, we consider that greater use of courts of two Lord or Lady Justices are the least bad way to achieve savings. In preferring this option we do not underestimate the advantages of panels but consider that the risks of injustice are less than for other options. The number of cases in which there is a split in the court, other than on cases in which a major point of principle is at stake (in which provision could continue to be made for a panel of three Lord or Lady Justices) is not large and single lead judgments are the norm. Statistical evidence of this could be obtained. We consider that in costs appeals or appeals against refusals of permission in judicial review which do not raise wider points of principle, there may be potential have hearings before a single justice. We recall that in Scotland Lord Penrose published a Review of Inner House Business in 2009[12] in which it was set out that there should be a sift mechanism under which a single judge of the Inner House should consider grounds of appeal. The amendment made to the Court of Session Act 1988 by the Judiciary and Courts (Scotland) Act 2008 permits a single judge of the Inner House to dispose of procedural matters.

Chapter 37A of the Rules of Court of the Court of Session at 37A.1. deals with *Quorum of the Inner House for Certain business* and makes provision for procedural judges. See further Chapters 38 to 41.

Section 103 of the Courts Reform (Scotland) Act 2014 makes provision for the Court of Session to make provision by act of sederunt make provision for the procedure and practice to be followed in proceedings in the Court, and in particular about

(2)…,

[12] *Review of Inner House Business* http://www.scotcourts.gov.uk/docs/default-source/cos-generaldocs/lord_penrose_inner_house_business_report?sfvrsn=2

(b) avoiding the need for, or mitigating the length and complexity of, such proceedings, including—

(i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,

(ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,

(c) other aspects of the conduct and management of such proceedings, including the use of technology,

…

(p) the quorum for a Division of the Inner House considering purely procedural matters and, in the case of an extra Division, as to which judge is to preside and to sign any judgment or interlocutor pronounced by the extra Division,

Given the extent and scale of changes in Scotland it would be sensible to consult the judiciary and the administration in Scotland, to consider the changes made there and whether they appear to be working well or badly. In particular it would be worth examining the efforts made in Scotland to make better use of technology to support the courts.

Our expertise is in immigration and asylum and related matters, including challenges in the public interest: cases where there is an imbalance of power and resources between the parties and where one party, the Home Office, is frequently before the court and may indeed be involved in a considerable number of cases raising the same point, often with a lead case behind which others are stayed. The Home Office is responsible for making the laws as well as the decisions under those laws, on which the court is adjudicating. Incentivising good behaviour by such a party may yield dividends both in its conduct as a litigant but also in the laws it proposes to parliament and the way in which it brings those laws into force. We reiterate our calls for a "polluter pays" approach, previously made in the legal aid context but also applicable here. The behaviour of government departments generates costs for the legal aid budget and for the courts. To minimise such expenditure, a department needs to evaluate

- Whether it is appropriate to bring in new laws or procedures and the time frames involved; provisions drafted in haste frequently require amendment and attract costly litigation.
- The content of laws: the "Do X unless to do so would result in a breach of human rights, in which case do Y" approach is a receipe for litigation[13].
- The quality of decision-making;
- The timescales within which decisions are made;
- The department's conduct as a litigant

In immigration there have been Acts of Parliament in 1993, 1996, 1999, 2002, 2005, 2006, 2007, 2008, 2009, 2014 and 2016 plus many more regulations, rule and policy changes, many of which have been hastily devised and led to all sorts of confusion. Rule changes are frequently made at very short notice. Complex transitional and consequential provision is common.[14]

[13] See for example the Nationality, Immigration and Asylum Act 2092, s 94B and Schedule 3, both of which are amended by the Immigration Act 2016.

[14] See for example the commencement of s 15 of the Immigration Act 2014 which reduced appeal rights, as set in no less than four commencement and related orders: the Immigration Act 2014 (Commencement No. 1,

The complexity of the law, the quality of decision-making and the timescales within which decisions are made are frequently lamented by judges. Lord Justice Ward's

> *The history fills me with such despair at the manner in which the system operates that the preservation of my equanimity probably demands that I should ignore it, but I steel myself to give a summary at least… What, one wonders, do they do with their time?*
>
> *…I ask, rhetorically, is this the way to run a whelk store?"* [15]

is as pertinent now as ever it was.

Government departments can take many steps to make the administration of the tribunals and courts systems more efficient; ways of reducing the number of cases coming to hearings include the initial decision maker making the right initial decision, that decision being effectively reviewed before coming to the tribunal or court and withdrawn if it cannot be justified. If a case goes to appeal then effective and proper conduct of litigation by the Government department, including being represented at hearings and having provided the court or tribunal with the documents and case papers in good time, can reduce costs. The rapid implementation of decisions can eliminate further challenges arising from delays.

In immigration it is frequently the case that a number of appeals are brought on the same point and stayed behind the leading case. Expediting and publicising lead cases could help to ensure more cases were joined to the lead case, saving judicial time. Publicity would also be a means by which potential intervenors could identify cases at an early enough stage to make a timely application to intervene and such interventions may be of considerable assistance to the court. It is of course the case that the quality of decision-making in the Tribunal or lower courts will have an effect on the workload of the Court of Appeal. Issues are not always clearly identified in the tribunals, as the Court of Appeal has highlighted[16]. Determinations are often prolix and the precise approach to points of law difficult to isolate. We recall Lord Neuberger's warning:

> *…we Judges could do better…We are often pretty prolix. … when Judges deal with the law, we are often setting out principles which strangers to the particular case, lay people, lawyers and other judges, should be able to understand and apply. We seem to feel the need to deal with every aspect of every point …and that makes the judgment often difficult and unrewarding to follow. Reading some judgments one rather loses the will to live – and that is particularly disconcerting when it's your own judgment that you are reading.*[17]

It is not uncommon for the Home Office to contest a grant of permission but concede as soon as permission is granted.

The Home Office continues to miss opportunities for early settlement of claims by its failure to provide instructions to its own lawyers and allow them to keep to deadlines for acknowledgment of service. In the case of *Kadyamarunga v SSSHD* [2014] EWHC 301 (Admin)

Transitory and Saving Provisions) Order 2014, SI 2014/1820; the Immigration Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2014, SI 2014/2771; the Immigration Act 2014 (Transitional and Saving Provisions) Order 2014, SI 2014/2928; and the Immigration Act 2014 (Commencement No. 4, Transitional and Saving Provisions and Amendment) Order 2015, SI 2015/371.

[15] *MA (Nigeria) v Secretary of State for the Home Department* [2009] EWCA Civ 1229.

[16] A recent example is *ML (Nigeria) v SSHD* [2013] EWCA Civ 844.

[17] Justice – Tom Sargant Memorial Lecture 2013 Justice in an Age of Austerity Lord Neuberger, President of The Supreme Court Tuesday 15 October 2013.

(14 February 2014) Mr Justice Green stated at para 20:

> *…it is now more or less a notorious fact that the Defendant is overwhelmed by both applications for leave to remain and disputes over such decisions this is not in and of itself an excuse for not complying with the procedural rules governing judicial reviews. I acknowledge that lawyers acting for the Defendant (both in-house and external) may be under considerable strain in cases of this sort. However, it is not acceptable for the internal problems of the Defendant or her advisors to be visited upon the judicial system.*[18]

One way to encourage the Home Office to consider the merits of opposing a challenge at an earlier stage would be to require it to file a respondent's statement or even a skeleton. The proposed draft of 52PD.27(4) is "encouraged". We do not envisage that mere encouragement will result in the Home Office filing an increased number of such statements. Practice directions could underpin the powers of individual Lord or Lady Justices in this regard and could even make provision for departments consistently failing to file statements or to concede cases at an early stage to do so. Alternatively, it would be possible to penalise by costs a respondent which pursued a point at a full hearing which they could have identified in the respondent's statement but did not.

Again, to facilitate early concession, in the proposed amended 52PD27.10 there should be a date by which the review by the parties before the hearing should be done. Consideration should be given as to whether there is scope for the parties to be "encouraged", with penalties for unreasonable failure so to do, to agree the issues to be determined by the Court.

As we read the proposed rule 52.15A, it maintains the position that the court cannot grant permission in a judicial review from the Upper Tribunal, a step it can take when the judicial review comes from the administrative court. We do not consider that this difference in treatment is justified: the court should be empowered to grant permission for the judicial review in cases coming from the Tribunal as well as from the Administrative Court, thereby helping to dispose of such cases at an earlier stage.

The judges of the Court of Appeal should not, as far as possible, be dealing with litigants in person. We consider that where the means test for legal aid is satisfied and the court, or a court below, has granted permission, the merits test for legal aid should be considered satisfied and the test for exceptional funding for cases otherwise out of scope should be treated as met. We have seen cases where although the Court of Appeal has granted permission, an impecunious appellant has been refused exceptional funding.

Particular consideration should be given to ways in which appeals arising out of disputes over costs can best be handled. All too frequently government departments such as the Home Office have little to lose by disputing costs.

The Annex on Background Information identifies that 17% of Lord and Lady Justices' time is spent on administrative and leadership tasks and anticipates this rising. We question whether this represents an efficient deployment of Lord and Lady Justices or an efficient use of resources overall. The evidence suggests that the growth of a managerial culture has not improved capacity to address the challenges facing the court, rather the contrary. Consideration should

[18] http://www.bailii.org/ew/cases/EWHC/Admin/2014/301.html

be given to freeing judges up to do more judging. While there may be leadership roles which they can usefully play we are unpersuaded that administration is an efficient use of their time. If judges are doing more administration while numbers of court staff are falling, this suggests that people paid at lower levels are being replaced with people paid at very much higher levels to carry out the same tasks. That cannot be tolerated in any organization aspiring to maximum productivity and efficiency or concerned about the workload of those working in it.

E. Do you agree that the right of oral renewal for an application for permission to appeal should be removed and replaced by a system allowing for determination of such an application by a single LJ on the documents coupled with a case-management power to call the application in for an oral hearing if it assessed to be appropriate to do so? If not, why not?

No.

Lord Justice Briggs said in his review

> *5.20 Although currently afflicted by serious overload and therefore delay, the Court of Appeal otherwise commands high public respect for the balance currently struck between written presentation and oral submissions and for the quality of its judgments over the very wide range of different and often complex cases with which it deals. Its written and oral procedures for the obtaining of permission to appeal virtually guarantee that no appeal with significant merit or importance goes without a full hearing…*

In *MD Afghanistan* [2012] 1 WLR 2422, the Court of Appeal referred to

> *"…a general rule of our civil procedure that, in the absence of any order or legislation to the contrary, a party who has applied for an order which has been refused by a judge on the papers, without oral argument, has the right to renew his application orally before a judge of co-ordinate jurisdiction"*[19]

No cogent argument based on clear empirical evidence for such a restriction is advanced in the consultation paper. An oral hearing may result not only in success, but in a settlement out of court.

The data provided in Appendix 6B *Oral Permission to Appeal Renewal applications 2* indicates that "When compared to 2009 – 2014 data, paper P[ermission] T[o] A[ppeal] reliability has improved in all areas except immigration and asylum JR and family appeals." The table for "Permission to appeal refused on paper and granted on renewal – percentage of appeals allowed in court, by consent or remitted (all stats for year to 30th September 2015)" in that annex shows that from 2010 to 2015 a massive 61% in the Immigration and Asylum statutory appeals category; dwarfing all the others. While the percentage is down to 30% is 2014-2015, the percentage in immigration judicial reviews is up to 45%. The stark conclusion is that immigration cases are not being determined accurately on the papers and that the new proceedings will result in unfairness in those cases.

[19] Paragraph 21.

We recall the Ministry of Justice consultation *Judicial review: proposals for reform* which ran from December 2012 to January 2013. According to paragraph 31 of that consultation, of the 1,200 cases in which permission was granted by the High Court in 2011, 300 were granted following an oral renewal, therefore 25% of grants of permission were made at the oral hearing stage.[20] Only around a third of unsuccessful applicants for judicial review renewed their applications to an oral hearing. Statistics in that consultation paper demonstrated that around one in six judicial review permission decisions were positive and that as many as 25% of these were granted permission at the oral hearing stage .[21] Appendix 6a *Outcome of appeals where PTA has been granted at oral renewal following refusal on paper* suggests that as many as 23% of cases refused permission on the papers but granted it an oral hearing go on to succeed on the full hearing or as a result of reaching agreement with the respondent. This may not capture all the cases in which the respondent concedes but the appellant derives a benefit.

In ILPA's response to the *Judicial review: proposals for reform* consultation we provided examples of cases in which permission, in those cases for a judicial review, was granted only after an oral hearing. We cited inter alia the cases of *R (MK and AH) v SSHD* [2012] EWHC 1896 (Admin), *R (D) v SSHD* [2010] EWHC 2110 (Admin), R (BN) v SSHD [2011] EWHC 2367 (Admin) in which permission was refused on the papers, granted on oral renewal and in which the claimant went on to succeed in the substantive case.

Consideration could be given to proceeding directly to an oral permission stage in appropriate cases where there has already been a paper stage in the court or tribunal below, in particular where, contrary to our recommendations, the person bringing the appeal is not represented. This is already done in permission applications in family cases by litigants in person although there may be a suggestion in the *Background Information* annex that this is under review.[22]

We are concerned at the suggestion that permission hearings be listed at very short notice. It does not make best us of judicial time if counsel who has prepared the application for permission is not available and a different counsel has to be substituted and the costs to the Legal Aid Agency may outweigh any savings in publicly funded cases. Short notice listings may also affect the chances of the parties reaching agreement and thus avoiding the need for a hearing at all.

F. Do you think that amendment of CPR Part 52.3(4) and (4A) will assist in reducing delays in determination of appeals in the Court of Appeal?

It would do so by restricting access to the court in a manner that would deny justice.

Lord Briggs said in his review

> *The disparity between the increase in incoming work (consisting mainly of applications for permission to appeal) and full appeals has two main possible causes. The first is that there has been a disproportionate increase in unmeritorious appeals which fail to survive the permission stage. The second is that the judges are (possibly unconsciously) applying a higher hurdle in practice in determining whether to give or refuse permission, even though the formal tests set*

[20] Consultation paper CP25/2012 paragraph 31.
[21] Consultation paper CP25/2012 paragraph 2
[22] Paragraph 34 of the *Background Information* annex.

out in the Rules have not significantly changed. The fact that a substantial proportion of the increased incoming workload consists of applications for permission to appeal by LIPs would tend to support the first of those reasons, since they have only their sense of injustice, rather than legal advice about the merits, to guide them whether or not to seek permission to appeal.[23]

The proposal appears designed to encourage the second reason.

G. Do you agree that CPR Part 52.15(A)(1) and Part 52.15A(2) should be amended as proposed? If not, why not?

We agree that the Court of Appeal should not be bound by a lower court's designation of a case as totally without merit. We do not agree with a proposal to restrict the right of oral renewal.

We consider that time limits that cause parties to prepare applications in haste and truncate time for negotiation may prove counterproductive.

We recall that the second appeals test already operates in these cases. See comments above.

H. Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

See comments above. The statistics demonstrate a particular effect in immigration and asylum cases. As described above the correlation between impact on ethnic minority groups and immigration and asylum matters has been acknowledged by government.

The conduct of a respondent government department and the imbalance of power between the parties are relevant to the effect of the proposals. Litigants in person may find it particularly difficult cogently to present their arguments on paper. The loss of the opportunity to present their case orally, and for the Judge to seek clarification of points which are unclear from the written argument, is likely to result in injustice.

I. Do you have any other proposals as to how the procedure for considering applications for permission to appeal could be made more efficient or effective?

As described above, we consider that more use of courts of a single Lord or Lady Justice would be the least bad way of achieving savings. Adequate information from the respondent and communication between applicant and respondent prior to the hearing are essential.

[23] Paragraph 5.59.

J. Do you have any other proposals as to how the procedure for considering applications for permission to appeal could be changed so as to help reduce delays in the Court of Appeal?

See comments above.

We draw particular attention to the question of legal aid. ILPA is participating in the Court of Appeal pro bono scheme but pro bono work should never be a substitute for legal aid.

K. Do you agree that CPR Part 52.16 should be amended as proposed? If not, why not?

No.

See comments on oral hearings above.

As to the changes to paragraph 52.16(3)(d) we have found no explanation of them in the consultation paper and are unclear as to their intended purpose. On their face, removal of the powers of a court officer to decide an application for a temporary stay other than a stay of execution over a period where the Court of Appeal is not sitting or cannot conveniently be convened look liable to create many more problems than they solve.

L. Do you think that amendment of CPR Part 52.16 will assist in reducing delays in determination of appeals in the Court of Appeal?

See comments above. The changes to paragraph 52.16(3)(d) appear unlikely to do so. As to removal of oral hearings, only by restricting access to the court in a way which denies justice.

M. Do you think that these changes will adversely or positively affect any appellants or respondents more than others and if so, why?

See comments above.

Removal of the power to decide an application for a temporary stay other than a stay of execution when the court of appeal is not sitting or cannot conveniently be convened may cause particular problems in non-money cases and in cases such as immigration where the rights and liberty of the subject may be at stake.

N. Do you have any other proposals for amending CPR Part 52.16 to make the procedure for consideration of ancillary applications more efficient and effective?

No but see our comments on legal aid above.

O. Do you have any other proposals how the procedure for considering ancillary applications in the Court of Appeal could be changed so as to help reduce delays in the Court of Appeal?

No but see our comments on legal aid above.

Adrian Berry

Chair

ILPA

24 June 2016