



**Consultation on Appeals to the Court of Appeal:
proposed amendments to Civil Procedure Rules and
Practice Directions**

JUSTICE response

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Introduction

1. Established in 1957, JUSTICE is an independent, all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. JUSTICE believes that access to justice forms the foundation upon which our legal system and the rule of law rests. Without effective access to the justice system, the fundamental freedoms purportedly enjoyed under it are rendered illusory. Since our inception, JUSTICE has worked actively on issues of access to justice in a range of contexts – including in our recent report on *Delivering Justice in an Age of Austerity*,¹ which focuses on improving access to civil justice in the face of state retrenchment and cutbacks to legal aid.
2. We are grateful for this opportunity to respond to the Civil Procedure Committee’s consultation on appeals to the Court of Appeal, first published in May 2016 (“**the consultation document**”).²
3. This document sets out JUSTICE’s response to the consultation. We limit our comments to our areas of expertise, and accordingly have omitted some questions from our response. Silence on a specific consultation question or issue should not be read as approval.

JUSTICE’s response to the consultation

4. In responding to this consultation, JUSTICE takes account of, and derives support from, the fact that the reforms have received unanimous support from the current bench of the Court of Appeal.³
5. JUSTICE emphasises that any reforms to the Court of Appeal’s appeals process must be designed and implemented on a principled basis. With this in mind, JUSTICE’s response to this consultation has been informed by a number of principles which we consider to be crucial to the reform process.

Access to justice

6. In the context of appeals, considerations of access to justice impose two competing pressures on the justice system. On the one hand, access to justice requires that the grant of permission to appeal is not unduly restricted. Serious injustice would evidently result if litigants with meritorious complaints were prevented from appealing in order to correct errors made by courts or tribunals below.
7. On the other hand, and as Lord Dyson noted in his Foreword to the consultation document, justice delayed is justice denied. The greater the number of appeals granted permission, the greater the workload of the Court of Appeal, and the longer the delay in disposing of appeals. With excessive delay comes the possibility that the circumstances of the parties may have

¹ JUSTICE, *Delivering Access to Justice in an Age of Austerity* (2015), available online at <http://2bqk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2015/04/JUSTICE-workingparty-report-Delivering-Justice-in-an-Age-of-Austerity.pdf>.

² *Appeals to the Court of Appeal: proposed amendments to Civil Procedure Rules and Practice Direction*.

³ The consultation document, pp.4-5.

changed in the interim, rendering the eventual decision irrelevant or materially less effective.

8. The appeals process must therefore balance these two competing elements of the access to justice principle. The JUSTICE view is that this balance is best struck by a conception of access to justice which emphasises maximising access to justice for as many litigants as possible, rather than achieving the perfect litigation process for a few. Every justice system rightly aspires to achieve as close to perfect justice as possible. However, JUSTICE believes that in a system equipped with limited resources, we should focus on getting the greatest possible number of full appeals determined fairly, effectively and within a reasonable time scale. Accordingly, we echo the observations of Lord Justice Briggs that theoretically perfect but very slow justice can be worse than timely, but slightly rough justice for everyone.⁴

Finality

9. Closely related to the principle of access to justice is that of finality. A vital function of the justice system is to finally dispose of disputes between litigants within a reasonable timeframe. All litigants benefit from the certainty which arises from being able to plan one's actions in accordance with the court's final decision. For litigants of limited means, the looming shadow of an appeal for any significant length of time is in itself inherently prejudicial.
10. The appeals process must reflect this. It is important that applications for permission to appeal are quickly determined, whichever way they are decided. Where permission is granted, it is equally important that the court is in a position to hear the appeal and hand down a final judgment without undue delay.

Evidence-based decision-making

11. In order to make informed decisions about our justice system, it is vital to have an accurate picture of how it is currently performing. JUSTICE therefore welcomes the data collection and analysis that underpin the proposals made in the consultation document – in particular, the time and motion study conducted by Professor Dame Hazel Genn and Niger Balmer.⁵ The efforts made to provide an empirical basis upon which to propose reforms constitute a welcome step towards evidence-based decision-making within the judiciary, which is to be strongly supported. JUSTICE emphasises the importance of capturing comprehensive and reliable data on the operation of the justice system, and the experiences of the litigants that use it.

Ongoing evaluation

12. In line with our support for evidence-based reforms, JUSTICE emphasises the importance of empirically monitoring the impact of whichever reforms are ultimately implemented. This will enable quantification of the extent to which

⁴ Lord Justice Briggs, *Civil Courts Structure Review: Interim Report* (“the Briggs Report”) (2015), §9.30, available online at <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf>.

⁵ Appendix 3 to the consultation document: Genn & Balmer, *Court of Appeal: Time and Motion Data Analysis* (“the Genn & Balmer Report”)(2016).

the reforms are successful in reducing the Court of Appeal's workload, and will be crucial for monitoring their potential impact on access to justice.

13. JUSTICE therefore echoes Genn & Balmer's view that a system for monitoring and evaluating the reforms should be adopted.⁶ Any such system should specifically seek to evaluate the impact of the reforms on access to justice. Whilst we leave the precise nature of the monitoring process to those who are more qualified, we provisionally suggest that it should include the collection of reliable and representative quantitative data, as well as sampling the qualitative experiences of those using and applying the new appeals process. A commitment to reviewing the reforms after a designated period may also be appropriate.

Resources

14. The recent history of the justice system has been marked by state retrenchment and the cuts to legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("**LASPO 2012**"). The result has been to place the justice system under considerable strain, as courts and tribunals, including the Court of Appeal, continue to seek to do justice with limited resources.
15. At the same time, Court of Appeal judges are being asked to take on an increasing number of responsibilities outside their core judicial function. Many – and in particular, the Heads of Division - have administrative and leadership roles which take up a significant amount of their time.⁷ Understandably, members of the Court of Appeal are also in considerable demand elsewhere – for example, as chairs of public inquiries, or at bodies such as the Law Commission. However, the result is that significant time may be diverted away from the judicial role in the Court of Appeal, usually without any additional resources being provided to make up the shortfall.⁸
16. JUSTICE recognises the importance of the role played by judges across all these areas. It is a reflection of the quality of, and trust in, our judges that they are in such high demand. However, the diversification of judicial responsibilities must be met by an increase in the Court of Appeal's core 'judging capacity' if a negative impact on access to justice is to be avoided.
17. Against this background, JUSTICE regrets the fact that further resources for the Court of Appeal are unlikely to be forthcoming. We re-iterate our position that there is no substitute for a properly funded Court of Appeal, or for a properly funded justice system as a whole.

⁶ The Genn & Balmer Report, p.1.

⁷ The consultation document, p.36, §6; see also the Genn & Balmer report, p.37.

⁸ For a discussion of these pressures, see the Briggs Report, §2.69-§2.70.

Consultation question 1(i): ‘a substantial prospect of success’

(1)(i) Amendment of CPR Part 52.3(6)(a) to create a test of “substantial prospect of success” for permission to appeal (PTA) to the CA in a first appeal, in place of the current test of “a real prospect of success”

(A) Do you agree that the threshold for permission to appeal to the CA should be raised to “a substantial prospect of success”?

18. JUSTICE welcomes the proposal to raise the threshold for permission to appeal to the Court of Appeal from a “real” to “substantial” prospect of success.
19. The Court of Appeal cannot cope with its current workload. There is a significant backlog of outstanding cases, and a considerable shortfall of judicial time.⁹ As a result, the wait time for hearings is rising, there is delay in the preparation and delivery of reserved judgments, and judicial work is increasingly having to be done out of hours.¹⁰ This creates the serious concerns for access to justice outlined above at paragraph 7. It is clear that action needs to be taken in order to bring the caseload back within manageable bounds.
20. Heightening the test is an obvious and likely effective measure for reducing the amount of work to be done by the Court of Appeal, and therefore the delay between appeals being lodged and disposed of. Under the new test, fewer appeals will be granted permission, and litigants may well be dissuaded from lodging borderline or ‘long-shot’ appeals. The judicial time freed up by raising the threshold for permission to appeal can then be concentrated on dealing with the most critical appeals. Reducing the pressures on judicial time will also help to preserve the Court of Appeal’s ability to explore legal issues through detailed oral argument at the substantive hearing stage.¹¹
21. Whilst JUSTICE supports the introduction of a “substantial prospect” test for appeals to the Court of Appeal, we emphasise our agreement that the “real prospect” test should not be replaced more generally. Appeals to the Court of Appeal will, in the main, take place from senior courts such as the High Court or Upper Tribunal, where the quality of judicial decision-making must be presumed to be high. However, there can be no justification for further curtailing a litigant’s right to appeal lower down in the justice system, where the right to have a second review of one’s case may be more critical.
22. As set out above at paragraphs 6-8, JUSTICE further emphasises that considerations of access to justice should remain paramount under the new test. The consultation document notes that the new standard is a “*somewhat more stringent test*”, which requires it to be “*seriously arguable that an error has been made*”.¹² Evidently, in order for the “substantial prospect” test to have the desired effect, it is important that it constitutes a higher threshold than the “real prospect” test. However, it will be vital that judges remain prepared to interpret the “substantial prospect” test flexibly where

⁹ Appendix 4, *Summary of impact of proposed reforms on the work of the Court of Appeal*, p1.

¹⁰ The consultation document, p35-37; see also the Briggs Report, §2.71-§2.72.

¹¹ See the recommendations of the Bowman Report, adopted in this regard by the consultation document (p.40, §30); see also the Briggs Report, §9.25.

¹² The consultation document, §2 and §4.

considerations of access to justice require it, and in particular in cases involving fundamental rights.

(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?

23. JUSTICE agrees that the amendment to CPR Part 52.3(6)(a) will assist in reducing delays in the determination of appeals in the Court of Appeal, for the reasons set out above. Given that the heightened test constitutes a significant change, we consider that it is better to implement reform by way of a formal change to the CPR, as opposed to, for example, a Practice Direction.

24. In order for the CPR amendments to be fully effective, consideration should be given to whether it would be useful and appropriate to publish accompanying Practice Guidance. Such Guidance might explain the rationale for the changes, as well as the principles of access to justice which underpin them. Guidance of this sort would assist judges in interpreting the new test, as well as litigants in anticipating how it might be applied to their appeals. Should accompanying Practice Guidance be issued, care should be taken to ensure that it is kept as concise as possible, and provides genuinely explanatory, rather than confusing or contradictory, context to the reforms.

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

25. As a result of the cutbacks to legal aid and legal support services, the number of litigants in person using the justice system is increasing. Although forming a relatively small proportion of its court users, the Court of Appeal is not immune from the additional pressures created by litigants in person. This is particularly the case in oral hearings of applications for permission to appeal.

26. JUSTICE considers that there is potential for the heightened test to disproportionately disadvantage litigants in person, who are likely to lack the ability to craft their grounds of appeal in the manner most likely to overcome the more stringent hurdle. We acknowledge that the judiciary has developed substantial experience in assisting litigants in person. However, we also emphasise that, in applying the “substantial prospect” test to appeals lodged by litigants in person, care must be taken to examine the substance and not the form or presentation of the appeal.

27. Furthermore, the consequences of being denied permission may be correspondingly more serious where litigants are seeking to lodge appeals which relate to their fundamental rights – an obvious example is in appeals relating to immigration and asylum matters. The importance of the rights at stake in such cases warrants a commensurately more cautious judicial approach.

(D) Do you have any other suggestions for assisting the Court of Appeal to reduce delay in the hearing of appeals?

28. JUSTICE welcomes the increase in the number of Judicial Assistants available for members of the Court of Appeal. We echo Lord Justice Briggs’

observation that Judicial Assistants represent a relatively effective and low-cost way of increasing the capacity of the Court of Appeal.¹³

29. We also suggest that consideration be given to the following methods of reducing delay by increasing the number of appeals that the Court of Appeal can hear:

- a. Protecting the time immediately before and after the substantive hearing of appeals. Judges should have adequate time to read the papers directly before hearing the appeal. Equally, judges should have sufficient time to write their judgments very shortly after the hearing, whilst the facts and principles in the case are still fresh in their minds. Time should not be wasted through judges having to re-familiarise themselves with the case papers following an unacceptably long delay between the various stages of the appeal.
- b. Increased use of courts composed of two Lord or Lady Justices.¹⁴ Reducing the number of judges hearing substantive appeals can be an appropriate way to economise on judicial time provided that the appeal does not involve a real question of legal principle. From a practical perspective, it is also crucial that where two-judge courts are used, the judges have sufficient time to read, and confer on, the papers. This will enable them to evaluate whether the nature of the case is such that a third judge will be required. The false economy of having the appeal re-heard in front of a three-judge panel, where two judges have failed to agree following the initial hearing, is thereby avoided.
- c. Reducing the number of Divisional Courts. Similar considerations apply to those set out above in relation to two-judge courts.
- d. Considering whether a greater number of appeals can properly be linked. Linked appeals use up considerably less judicial capacity than single listed appeals.¹⁵ JUSTICE emphasises that appeals should only be linked when it is appropriate to do so - when the facts and/or legal principles involved are materially similar. The best approach may simply be for the linking of appeals to remain within the discretion of the supervising judge, but to ensure that court staff provide sufficient information to enable the judge to identify appeals which can properly be linked.

30. JUSTICE has consistently advocated for the better use of technology to increase access to justice.¹⁶ We therefore also suggest that thought be given to how the benefits of technology can be utilised so as to increase the number of appeals the Court of Appeal can hear, thereby reducing delays. For example, some judges may find sophisticated dictation software to be

¹³ The Briggs Report, §9.18.

¹⁴ As recommended by the consultation document, p.38, §18-§19.

¹⁵ Appendix 3, p.2-3.

¹⁶ See, for example, our recommendations on the use of technology in our recent Working Party reports, *Delivering Justice in an Age of Austerity* (2015) and *What is a Court* (2016), available online at <http://2bqk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2015/04/JUSTICE-working-party-report-Delivering-Justice-in-an-Age-of-Austerity.pdf> and <http://2bqk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2016/05/JUSTICE-What-is-a-Court-Report-2016.pdf>.

useful. Software which converts PDFs to Word documents, thereby saving time on re-typing content, should be also available as standard. JUSTICE has no doubt that there are many other, more sophisticated, methods of increasing efficiency through the use of technology. Serious consideration should be given to how best to identify them, and to this end it may be appropriate to obtain expert technological advice.

31. Finally, JUSTICE emphasises that these, and any other additional reforms suggested in response to this consultation, should be carefully scrutinised for compliance with the access to justice principle as set out in paragraph 6-8 above. Further consultation may be required on additional reforms suggested in response to this question.

Consultation question (1)(ii): no right of oral renewal for PTA applications

(1)(ii) 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

(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 is assessed to be appropriate to do so? If not, why not?

32. JUSTICE welcomes the removal of the right of oral renewal for applications for permission to appeal, and its replacement with a power in the single judge reviewing the application on the documents to call the application in for an oral hearing.
33. A major factor driving up the workload of the Court of Appeal is the increasingly high number of oral hearings for permission to appeal applications.¹⁷ Currently, around 70% of litigants choose to exercise their right of oral renewal.¹⁸ Removing the right of oral renewal therefore has the potential to substantially reduce the amount of judicial time spent on determining applications for permission to appeal. Consideration of an application for permission to appeal on the papers only takes up around one third of the judicial time required to hear an oral renewal.¹⁹ Judicial time freed up by the removal of the right of oral renewal can be redeployed in the hearing of substantive appeals, thereby reducing delays.
34. This proposal will also decrease the time taken to determine applications for permission to appeal themselves. Currently, a determination on the papers takes on average 6 months, with an oral renewing adding on average a further 6 months.²⁰ This creates uncertainty for applicants, especially where permission is ultimately refused, and is as inimical to access to justice as are delays in the disposal of full appeals. The removal of the right to oral renewal

¹⁷ Appendix 1, *Court of Appeal 10-year Workload Trend*.

¹⁸ The Briggs Report, §9.22.

¹⁹ The Briggs Report, §9.4.

²⁰ The consultation document, p42, §36.

has the potential to facilitate the prompt determination of applications for permission to appeal - a positive end in itself.²¹

35. We also note that there is relatively little evidence that an oral hearing makes the Court of Appeal more likely to reach the 'correct' decision on whether to grant permission to appeal. The number of successful appeals in which permission was denied on the papers, but then granted upon oral rehearing, is small.²² This suggests that concerns about meritorious appeals being denied permission on the papers are relatively limited. This is doubly true given that the would-be appellant will already have had two chances to persuade a judge that their appeal has some merit. In addition, accepting that there is going to be a small number of incorrectly made decisions in any judicial system is in line with the 'best possible, not perfect' conception of access to justice set out at paragraph 8 above.²³
36. Giving the reviewing judge the power to direct an oral hearing where they consider that the application cannot be fairly determined on paper represents an appropriate 'half-way house' between preserving and wholly abrogating the right of oral renewal.²⁴ However, JUSTICE emphasises that the decision of whether to direct an oral hearing is not, and should not be, at the total discretion of the judge. Under draft CPR 52.3B(2), where the judge considering the application on paper is of the opinion that it cannot be fairly determined without an oral hearing, the Court of Appeal **must** direct that the application be determined at an oral hearing (emphasis added). The mandatory nature of the oral hearing in these circumstances is to be strongly welcomed. JUSTICE also notes the extreme importance of careful consideration of each application on the papers. The single judge considering the papers must appreciate the finality of a refusal, and exercise even greater diligence than might be applied at the first stage of consideration under the current system.²⁵
37. Finally, an immediate referral system currently operates for applications for permission to appeal giving rise to complex issues. Under this system, if the appeal is clearly sufficiently complex to require an oral hearing, it will go straight to an oral hearing without passing through the papers stage.²⁶ The spirit of this principle, which is to speed up the processing of permission applications which will inevitably require an oral hearing, should be applied under the new approach. That is, it should still be possible for the judge to dispense speedily with the written permission application if it appears that the case will need be called in for an oral hearing in order to determine it fairly.

(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 CA?

38. JUSTICE agrees that the amendment to CPR Part 52.3(4) and (4A) will assist in reducing delays in the determination of appeals in the Court of Appeal, for the reasons set out above. We re-iterate our comments at paragraph 23, above.

²¹ The Briggs Report, §9.2.

²² The consultation document, p.46, §57-§58; see also Appendices 6A and 6B.

²³ We therefore echo the analysis in the consultation document, p.46, §58.

²⁴ The Briggs Report, §9.32.

²⁵ The consultation document, p.46, §57.

²⁶ See the White Book, Volume 1, §52.3.6.

39. In particular, JUSTICE welcomes:

- a. The mandatory nature of the oral hearing where the judge considers that the application cannot be fairly decided on the papers, as considered at paragraph 36 above. This will act as an important safeguard in preserving the oral hearing in cases where the application cannot be fairly disposed of on the papers. It also gives a clear indication that where there is any doubt as to whether permission to appeal should be granted, the judge should err on the side of inviting the parties to make oral submissions.
- b. The removal of the 'totally without merit' certification currently contained in CPR 52.3(4A)(a) for appeals to the Court of Appeal. Because of the negative connotations of certifying an application to be totally without merit, judges have been reluctant to use the certification in order to reduce the number of oral renewals.²⁷ The new approach removes the stigma of certifying an application to appeal as being totally without merit. It may therefore be hoped that it will allow for a greater number of unmeritorious appeals to be filtered out at the paper consideration stage, with the corresponding benefits of reducing delay and increasing access to justice which are outlined above.
- c. The fact that the Court of Appeal has the power, under Draft CPR 52.3B(4), to direct the party applying for permission to appeal to focus their submissions on a particular issue, or, where appropriate, require the respondent to serve and file written submissions of their own. However, JUSTICE considers that the discretionary nature of these powers is important. In some cases, requiring respondents to make written submissions may have the effect of actually increasing the time needed to decide applications, as well as creating unnecessary costs. We also note that there may be cases – for example, where the respondent is a litigant in person – where it would be unduly onerous to require the respondent to make written submissions.

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

40. JUSTICE re-emphasises the need for particular caution in cases involving litigants in person and/or fundamental rights.

²⁷ The Briggs Report, §2.76.

Consultation question (1)(iii): no right to oral rehearing for reconsideration of decisions on other applications made during Court of Appeal proceedings

(1)(iii) Proposal to amend CPR Part 52 rule 15.16 to remove the automatic right to an oral hearing for reconsideration of decisions on other applications made in the course of proceedings in the Court of Appeal, replacing it with a discretion for the court to decide whether to hold a hearing or to determine an application on the documents.

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

(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?

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

(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?

(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?

41. In principle, JUSTICE welcomes the proposed shift towards deciding applications made during Court of Appeal proceedings predominantly on paper. To the extent that this proposal will reduce the pressures on judicial time, it has the potential to reduce delay and increase access to justice in the same way as set out in relation to the proposals above. Such an approach is also in line with that taken in the Supreme Court.

42. JUSTICE also emphasises the importance of giving the parties the right to request reconsideration of such decisions on the papers as provided for in draft CPR 52.16(5) and (6). As with the second proposal above, the requirement for the judge to direct an oral hearing, when they consider that the review cannot be fairly determined on the papers, is also to be welcomed.

Consultation question (2): Amendment of Practice Direction 52C

(P) Do you agree that Practice Direction 52C should be amended as proposed? If not, why not?

43. JUSTICE agrees that it is always desirable to make the CPR and accompanying Practice Directions as accessible as possible for both professional and lay court users. Reducing the amount of documentation the Court of Appeal is expected to read may also speed up the process of determining both applications for permission and substantive appeals.

44. Permitting excessive documentation not only places pressure on the capacity of the judges required to read it, but also provides no incentive for litigants to keep their statements of case and evidence succinct. The amended Practice Direction gives a clear steer to all court users that the amount of

documentation should be limited to what is necessary and relevant – for example, at paragraph 31, through the insertion of the requirement that skeleton arguments should be concise. Reduced documentation should allow judges to focus on key issues without having to wade through reams of extraneous material.

45. JUSTICE also welcomes the obligations, in paragraphs 27(6) and (10), on parties to review the case, and seek to refine the issues in dispute once permission has been granted. Equally, we welcome the obligation on parties to seek to agree the contents of the bundle. As a general principle in all spheres of litigation, the more the parties can agree, the more speedily and effectively the court can dispose of their dispute.²⁸ The proposal for an ‘unagreed documents’ bundle clearly indicates to the court those documents on which most attention may need to be concentrated.

46. JUSTICE emphasises, however, that there must be sufficient flexibility to allow parties to introduce additional documentation where appropriate. Parties should also be permitted to include copies of authorities in bundles for permission to appeal.

(Q) Do you think that amendment of Practice Direction 52C as proposed will make it more user-friendly for litigants and assist in limiting the volumes of documentation placed before the Court of Appeal in determining appeals?

47. JUSTICE emphasises the need for any amendments to be carefully drafted. Increasing the length of a Practice Direction does not necessarily increase its clarity for either professional or lay court users.

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

48. We repeat our concerns in relation to litigants in person, who may lack the legal skills and knowledge to present their court documents in the prescribed way. We therefore expect that the requirements of the Practice Direction would be interpreted flexibly when a failure to comply is due to a party’s status as a litigant in person.

Conclusion

49. JUSTICE reiterates the importance of the principles set out above at paragraphs 6-17. Our agreement with the reforms set out in the consultation document should be understood in the context of the extreme pressure currently being placed on the Court of Appeal. We recognise the compromise demanded by this reality. However, JUSTICE emphasises that there is no substitute for ensuring that the Court of Appeal is adequately resourced.

²⁸ This approach is consistent with the recommendations made in the JUSTICE Working Party report on *Complex and Lengthy Trials* (2016), §5.12, available online at <http://2bquk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2016/03/CLT-FINAL-ONLINE.pdf>.