

The  
Court of Appeal

*Civil Division*



Review of the Legal Year

2007 - 2008

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## Introduction – the Master of the Rolls



*The Rt. Hon. Sir Anthony Clarke,  
Master of the Rolls*

In my introduction last year I reported that the Civil Appeals Office was going through a period of change. Following the retirement of the Head of Civil Appeals in June last year, Loraine Ladlow was appointed Director of the Court of Appeal offices, thus bringing the management of the Civil Appeals and Criminal Appeals offices under one administrative head for the first time.

Part of the new Director's role was to take forward the recommendations which were outlined in a review conducted in May 2006, and in which all of the administration in the Royal Courts of Justice was scrutinised. I am pleased to say that good sense has at last prevailed. Loraine has sensibly taken this year to understand fully the workings and issues that are discrete to each Division of the Court of Appeal and has concluded that there is no case for bringing the administration of these two completely separate courts together; a message which the judiciary had been espousing for some considerable time. That is not to say there are no areas that could reasonably be rationalised. Loraine is looking at how the support services, such as finance and personnel for example, might usefully be brought together to bring about efficiencies in both areas. This seems to me to be a very sensible way forward.

There were also concerns that in splitting her time between the two Divisions of the Court of Appeal, the high standard of service we have enjoyed as members of the Court, might be compromised. I am pleased to report that this concern has been completely unfounded. This is due not only to the fact that Loraine has proved herself to be eminently capable of balancing the priorities of the two Divisions, but also because of the excellent support given to her, and to us, by the Deputy Masters.

Indeed, it was with great sadness that we said goodbye to one of our most able Deputy Masters this year. After 11 years of dedicated service to the Court, Louise di Mambro left us to take up a new role in the House of Lords, as 'Deputy Head of the Judicial Office and Acting Registrar of the Supreme Court'. Louise's knowledge and sensitivity, particularly when dealing with the most urgent and complicated family cases, was highly valued by the Court. We wish her every success in her new position.

We had the worst possible news at Christmas time when we learned of the tragic death of Lord Justice Pumfrey. Nicholas Pumfrey had particular expertise in intellectual property law and during his time with Chancery Division tried some of the most challenging and difficult cases in that area of law. He was a brilliant judge who would have made a major contribution to the Court in many different areas. He was a lovely man and is sadly missed.

We were lucky however, to gain the expertise of Lord Justice Stanley Burnton who became a member of the Court in April this year. He also plays a major role in the administrative responsibilities which now fall to the judiciary; being a judicial member of the newly formed HMCS board as well as the judicial expert on all matters relating to IT and Estates.

In September Lord Justice Buxton retired, following a distinguished legal and judicial career. A man of great intellect he became a High Court Judge in 1994, and was quickly promoted to the Court of Appeal in 1997. Lord Justice Buxton has made a major contribution to the Court, particularly in the ever growing area of asylum and immigration. His individual approach both to cases and to the organisation of the Court will be hard to replace. I miss him. We wish him every happiness for the future.

We have of course had a change at the highest level with Lord Phillips, C J, leaving us to become the Senior Law Lord. Not only was Lord Phillips the first ever Lord Chief Justice to carry the title of 'Head of the Judiciary', he will soon become the first ever President of the Supreme Court. We are very lucky however, to have Lord Judge as our new Chief. His appointment has rightly been welcomed with acclaim. We wish them both every success in their new roles.

Finally I would like to thank everyone who works so hard for the Court for all their help and assistance over the past year. Without it we would be lost.

A handwritten signature in black ink that reads "Anthony Clarke". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

The Right Honourable Sir Anthony Clarke  
Master of the Rolls

## The Right Honourable Lord Justice Waller – Vice President of the Court of Appeal



*Lord Justice Waller*

In his introduction the Master of the Rolls has mentioned the significant change that has taken place in the Civil Appeals office during the course of this year. As Vice President of the Court of Appeal, I have regular contact with members of the office, it is clear, and I think inevitable, that the changes in individual roles and responsibilities has, at times been difficult for some members of staff. However, the new Director, Loraine Ladlow has an open, honest and inclusive way of working and has done all she can to make the transition as seamless as possible, for both her team and members of the Court.

As with most court offices in London, the Civil Appeals office struggles with a high level of staff turnover. This problem is particularly acute at the clerical and junior manager grades, putting additional pressure on those left behind who have to continually train new members of staff, as well as keeping the work flowing effectively through the system. We are lucky to have a dedicated core of staff who manage to keep most of these problems away from the judges and who continue to provide us and our court users, with a first class service.

Of particular concern to judges is listing; we were lucky this year to persuade an experienced and talented listing officer, Ann Marie Munn to join us. Ann Marie has worked with me this year to transform the way in which cases are listed with some positive improvements. The life of a listing officer is highly pressurised and last minute changes are inevitable but the systems Ann Marie has put into operation, mean that they are now easier to cope with.

Looking back through previous reports I note that a recurring theme for the past few years has been the increasing number of appeals from the Asylum and Immigration Tribunal (AIT). I regret to say that this year has been no exception, as the workload of the Court has continued to be over-burdened by appeals from the AIT. Indeed, there has been an even sharper rise in workload this year.

Many of the cases are appeals from single immigration judges, the majority of which raise no point of general importance. This cannot be a good use of our judicial resources. It is very much hoped that the recommendations from the working group led by Lord Justice Richards, to look at the Immigration work in the Administrative Court, will also have a positive effect for the Court of Appeal.

Earlier this year the Civil Procedure Rules Committee extended the procedure for considering applications for permission to appeal (PTA) on paper with no right to appeal if the application is judged to be totally without merit, to applications relating to family cases (family cases had previously been excluded from the scheme). This means that from October 08, all PTAs will be dealt with in the same way.

As with any new system it is right that it should be reviewed to ensure that the benefits envisaged are being realised. Robert Hendy, one of our Deputy Masters has begun some helpful work in this area which will be continued in the coming year.

Lord Justice Waller

## Recent changes to the membership of the Court of Appeal

The following Judicial appointments were made during the period of this review:

21st April 2008	Lord Justice Stanley Burnton
29th September 2008	Lord Justice Etherton
2nd October 2008	Lord Justice Jackson
9th November 2008	Lord Justice Aikens



*Lord Justice Stanley Burnton*



*Lord Justice Etherton*



*Lord Justice Jackson*



*Lord Justice Aikens*

## International Family Justice



*Lord Justice Thorpe*

The International Family Justice office is situated in the Court of Appeal under the direction of Lord Justice Thorpe, head of international Family Justice for England and Wales. The office handles an ever increasing volume of work. Trial judges in this jurisdiction appeal for assistance and advice, particularly asking the office to facilitate direct judicial collaboration with the trial judge in the other jurisdictions. In answering such requests the first port of call is generally the liaison judge in the European network, for cases proceeding under the regulation Brussels (II revised) or the judge in the global judicial network maintained by the Hague conference.

In addition to internal requests the office receives frequent emails from other jurisdictions, particularly European, asking for assistance. Sometimes the request will be for information, sometimes for direct contact with the judge in this jurisdiction.

The bulk of the work of the office is done either by the legal secretary, Delia Williams, or by the administrative secretary, Karen Wheller.

In January 2009 the European Commission and the Permanent Bureau of the Hague conference are jointly convening a meeting of the European and global judicial networks to debate the future development of judicial activism in international family justice. The conference will look at both practicalities and safeguards with a view to the production of a practice guide that will be published by the permanent bureau. The existence and the operation of the office is a matter of considerable interest throughout the common law world and beyond. Accordingly a report on the operation of the office will be presented to the conference in Brussels in January. Within the report there will be a statistical analysis demonstrating the number of specific cases managed in the legal years 2006/2007 and 2007/2008. The analysis will demonstrate not only the volume but the distribution of the work undertaken together with some appraisal of successful outcomes.

Lord Justice Thorpe  
Head of International Family Justice and Deputy Head of Family Justice

## Overseas Visitors to the Court of Appeal 2007 - 2008

Date	Visitor	Position of visitor(s)	Country of origin	Appointment within the RCJ
October 2007	Judge Marja-Liisa Judstrom	Senior Judicial Secretary, Supreme Administrative Court of Finland	Finland	Lord Justice Thomas
November 2007	Boleslovas Kalainis	Chairman of the Siauliu Regional Court in Lithuania	Lithuania	Lord Justice Thomas
March 2008	JUDr. Jakub Camrda JUDr. Zdenek Kuhn Mgr. Jan Passer JUDr. Barbara Porizkova JUDr. Et PHDr. Karel Simka	Czech Supreme Admin Court	Czech Republic	Lord Justice Thomas
March 2008	John Bradley Justin Adams	Lawyers	New Zealand	Lord Justice Moore-Bick
May 2008	Professor Kaino	Director of Institute of Comparative Law at Waseda University, Japan	Japan	Lord Justice Leveson
May 2008	Audrey Bodden	Deputy Clerk of Court, Courts Office	Barbados	Deputy Master Hendy
	Galaletsang Ofithile	Senior Clerk of Court, Administration of Justice	Botswana	
	Catherine Monifah Kgwakgwe	Senior Clerk of Court, Administration of Justice	Botswana	
	Tshepo Motswagole	Deputy Government Attorney, Attorney General's Chambers	Botswana	
	Nana Opoku Asomani	Senior High Court Registrar Supreme Court of Ghana	Ghana	
	Mzonde Eric Mvula	Assistant Judiciary	Malawi	
	Elizabeth Ekanem Eleonyosi	Nigerian Deposit Insurance Corporation	Nigeria	
	Ike Okonjo	Economic & Financial Crimes Commission	Nigeria	
	Ahmed Arogha	Economic & Financial Crimes Commission	Nigeria	
	Comfort Adesumbo Omobo	Nigerian Deposit Insurance Corporation	Nigeria	
	Hon. Justice Muhammed Shehu	Sharia Court of Appeal	Nigeria	
	Uche Bilkisu	Chief Magistrate, High Court of the Federal Capital Territory	Nigeria	
	Augustine C Mhina	Senior Consultant and Co-ordinator Tanzania Public Services College	Tanzania	

Date	Visitor	Position of visitor(s)	Country of origin	Appointment within the RCJ
May 2008 cont.	Gabriel Rwakibalila	Senior Deputy Registrar, Judiciary of Tanzania	Tanzania	
	Ignas P Kitusi	Private Secretary to Chief Justice, Ministry of Justice & Constitutional Affairs	Tanzania	
	John R Kahyoza	Registrar, Ministry of Justice & Constitutional Affairs	Tanzania	
	Ferdinand L K Wambali	Senior Deputy Registrar, Ministry of Justice & Constitutional Affairs	Tanzania	
	Phocus K Bampikya	Deputy Registrar, Ministry of Justice & Constitutional Affairs	Tanzania	
	Mary Peter Mrio	Resident Magistrate, Ministry of Justice & Constitutional Affairs	Tanzania	
	Sauli H Kinemela	District Registrar, Ministry of Justice & Constitutional Affairs	Tanzania	
	Richard M Kibella	Ministry of Justice & Constitutional Affairs	Tanzania	
	Charles Kafunda	Principal Resident Magistrate	Zambia	
June 2008	Forty prominent Judges & Attorneys	State Bar of California	United States of America	Master of the Rolls
July 2008	Marc Bertrand Monique Van Der Goes	European Network of Councils for the Judiciary		Lord Justice Thomas
July 2008	HH Judge Gabriel Rwelengera, Ms Lame Otladisa, Mr States Serurubele	Senior Judiciary	Botswana	Deputy Master Hendy
July 2008	Kelly Murdoch Jo Murdoch	Lawyers	New Zealand	Lord Justice Moore-Bick
September 2008	Alex Calabrese	Presiding Judge at the Redhook Community Justice Centre, New York	United States of America	Lord Justice Leveson
October 2008	Joshua Hawley Rachel Kovner Ashika Singh Zack Tripp Cindy Dennis	Temple Bar Scholars  Accompanying Judge	United States of America	Master of the Rolls
October 2008	Judge Teresa Bielska- Sobkowicz	Supreme Court Judge	Poland	Lord Justice Thomas

Date	Visitor	Position of visitor(s)	Country of origin	Appointment within the RCJ
October 2008	Judge Ants Kull	Justice, Chairman of the Civil Chamber of the Supreme Court of the Republic of Estonia	Estonia	Lord Justice Thomas, Lord Justice Moore-Bick
October 2008	HE Ahmet IYIMAYA, MP HE Ahmet AYDIN, MP HE Ihsan KOCA, MP HE Halil UNLUTEPE, MP HE Ridvan YALCIN, MP Mr. Huseyin YILDIIM, Mr. Mustafa AKKUS, Mr. Yusuf Solmaz BALO, Ms. Hatice KARA, Mr. Yavuz AYDIN, Bill Marsh,	Head of Justice Committee Member of Justice Committee Member of Justice Committee Member of Justice Committee Member of Justice Committee Deputy Under Secretary, Moj Deputy Director General, General Directorate for EU Relations, Moj Head of Department, General Directorate for Codes and Regulations, Moj Judge, Department for Legal Issues, Moj, Judge, General Directorate for EU Relations, Moj Director of Conflict Management International	Turkey	Lord Justice Wilson
October 2008	Dominique Hascher	Secretary General of the Network of the Presidents of the Supreme Courts of the European Union		Lord Justice Thomas
October 2008	Judge Marek Pietruszynski	Supreme Court Judge	Poland	Lord Justice Moses

## Civil Appeals Listing – a personal perspective



*Clarissa Angus,  
Civil Appeals Listing Office*

I have worked in the Civil Appeals Office for approximately three years. Most of that time was spent working as an administration officer for Case Management Group B. Case Management are responsible for monitoring the progress of cases; checking that bundles lodged by parties' contain the correct documentation, (orders, transcripts etc), and seeking judicial directions from case lawyers, Deputy Masters and Lord and Lady Justices', as to how to proceed with certain aspects of cases.

My role involved working for a Case Manager; preparing bundles for court as mentioned, and performing ad hoc administration duties. The role was very customer focused and meant aiding litigants in person (ALPs) who were unsure or distressed by what they (sometimes) viewed as very complex court processes. I worked with the case manager who handled family work, and was pleased to go the extra mile for customers, more often than not, making up court bundles for them by obtaining the documents directly from lower courts, or from the respondents. I also learned about the work undertaken by organisations behind family law and social work, such as Children and Family Court Advisory Support Service (CAFCASS), and that there was more to both the roles of a case manager and admin officer than simply ensuring the paperwork was correct. Indeed, many of the litigants sought our counsel, and though we couldn't help them with legal advice, it was imperative to be as empathetic as possible in such cases.

For the past year and a half, I have had the pleasure of working in the Civil Appeals Listing office. As a team, we are all trained to deal with a number of jobs, which involves listing applications and appeals for hearings, handling adjournment requests, referring consent orders from parties hoping to settle matters out of court to judges; preparing the Daily Cause list, allocating bundles to the relevant judge to make decisions based on the papers, setting up hearings for video and telephone conferences; producing race cards (weekly lists of upcoming cases the clerks use to assign work to their judges) and recording the time estimates for cases agreed by parties.

My responsibilities also included setting up video and telephone conferences for parties unable to travel to the court, those appealing civil cases from prison, or who reside overseas (other courts and some prisons all over the country house these facilities too). This is a method we are constantly keen to utilise, as it is a cost effective way to save on legal costs for all involved in litigation. I am eager to promote its advantages.

In essence, the work in Listing is the culmination of the processes started in Registry and Case Progression. Once all the documentation and judicial directions have been put together, our roles include listing them appropriately (within their listing window, before a suitable constitution) and bringing them to a conclusion. It is challenging and stimulating, as we try to accommodate cases within a hectic diary that is constantly changing. When a case requires it, we can approach the judges and liaise with them with queries in order to find a solution. In such a short time, I have built a rapport with most of the judges and feel that they appreciate the functions and hard work of both the Listing and Case Progression office.

This year I had the pleasure of taking part in a programme with the Prince's Trust which ultimately lead to a City and Guilds qualification. It was a twelve week course which saw a team of 16 – 25 year olds work on fundraising projects in order to help out the local community, and acquire skills for employment. The programme aims to help young people who have struggled to get into employment, and, in certain aspects, with their lives. One of the highlights was redecorating a garden at a day centre for adults with visual and learning disabilities as well as organising a car wash as part of the fundraising activities. Meeting with the centre's users, was a humbling experience. It was an amazing opportunity for all!

As the employed team member, there were only twenty days to get to know the team and complete the course. There were a wide range of people from various backgrounds, and was in awe of some of them, especially as most of them had had to overcome hardships during their lives. In turn, some of them looked to me as a role model for achieving the best out of the course. It was a challenging and rewarding experience, a scheme the office encouraged its staff to get involved with. It showed me that I possess certain skills that I can develop in order to progress my career in Civil Appeals, whether for managerial or developmental roles.

Clarissa Angus  
Civil Appeals Listing

## Areas of Casework

**Savage v South Essex Partnership NHS Foundation Trust and MIND [2007] EWCA Civ 1375 [B3/2007/0445] : Jt 20 Dec 2007 [MR, Waller and Sedley LJJ]**

In the context of a HRA claim arising out of the suicide of a person detained involuntarily under Section 3 of the Mental Health Act 1983 the Court considered the proper test in law to establish a breach of Article 2 of the ECHR and concluded the Osman test was the relevant test : the Claimant must show that at the material time the Defendant knew or ought to have known of the existence of a real and immediate risk to the life of the patient from self harm and that it failed to take measures within the scope of its powers which, judged reasonably, might have been expected to avoid that risk.

**Gray v Thames Trains Ltd & Anr [2008] EWCA Civ 713 [ B3/2007/1645] : Jt 25 June 2008 [ MR, Tuckey and Smith LJJ]**

A claimant who suffered post traumatic stress disorder following a rail crash and was later convicted of manslaughter on the grounds of diminished responsibility was entitled to damages for loss of earnings up to and after the date of the manslaughter. The claim was not defeated by issues of public policy on the basis of *ex turpi causa*.

**Harris ( a minor and a patient suing by his mother and litigation friend, J Harris] v Perry and Ors [2008] EWCA Civ 907 [B3/2008/1142] Jt 31 July 2008 [ LC], May and Wilson LJJ]**

The Claimant was injured while playing with children of different sizes on a bouncy castle at a private party. The Court of Appeal held that the standard of care needed was that appropriate to protect children against a foreseeable risk of physical harm that fell short of serious injury. In this context it was not necessary to have uninterrupted supervision of the bouncy castle.

**The Claimants appearing on the Register of the Corby Group Litigation v Corby Borough Council [2008] EWCA Civ 463 [B3/2007/2352] Jt 8 May 2008 [Ward Smith and Dyson LJJ]: Dyson LJ gave the lead jt]**

The Court of Appeal held that the long established principle that damages for personal injury can be recovered in public nuisance had not been impliedly reversed by the House of Lords decisions in *Hunter v Canary Wharf Ltd* and *Transco Plc v Stockport MBC*. A claim for damages for personal injury by 18 claimants was brought alleged to be referable to their mothers' exposure during pregnancy to toxic materials during land reclamation works.

**Carver v BAA [2008] EWCA Civ 412 [B3/2007/1350] Jt 22 April 2008 [Ward Rix and Keene LJJ]**

The Court of Appeal considered the effect of the changes to CPR Part 36 holding that a wide ranging review of all the facts and circumstances of the case can be conducted in deciding whether the judgment is "more advantageous" than an offer.

**Poppleton v Trustees of the Portsmouth Youth Activities Committee [a charity] [2008] EWCA Civ 71 [B3/2007/1920] Jt 12 June 2008 [May Richards LJ] Sir Paul Kennedy]**

The Court observed that adults who choose to engage in physical activities which obviously give rise to a degree of unavoidable risk [in this case indoor climbing] may find that they have no means of recompense if the risk materialises so that they are injured. [Evans v Kosmar was mentioned]

**Evans v Kosmar Villa Properties Plc [2007] EWCA Civ 100 3 [B3/2007/0021] Jt 4 Oct 2007 [Arden Hooper Richards LJ]**

In a package holiday context, the holiday company did not owe a duty of care to guard the claimant against the risk of diving into a pool and injuring himself.

**Iqbal v Whipps Cross University NHS Trust [2007] EWCA Civ 1190 [B3/2007/0085] Jt 20 Nov 2007 [Laws Gage and Rimer LJ]**

The question of whether a young child, seriously injured at birth, is entitled to damages for the “lost years” and if so how to calculate such damages was considered by the Court of Appeal.

**Gravil v Carroll & Anr [2008] EWCA Civ 689 [B3/2007/1593] Jt 18 June 2008 [MR Smith and Richards LJ]**

A rugby club was found to be vicariously liable for the assault by one of its part time employed players on an opposing team player during a game. The Court stressed that nothing in the judgment was relevant to the playing of rugby or any other game otherwise than under a contract of employment.

**Allison v London Underground Ltd [2008] EWCA Civ 646 [B3/2007/0536] Jt 13 Feb 2008 [MR Smith Hooper LJ]**

The Court considered the adequacy of training in determining whether a breach of Regulation 9 of the Provision and Use of Work Equipment Regulations 1998 had occurred.

**Arnup v MW White Limited [2008] EWCA Civ 447 [B3/2007/0740] Jt 7 May 2008 [Ward Dyson and Smith LJ]**

The meaning and construction of sections 3 and 4 of the Fatal Accidents Act 1976 were considered by the Court who held that 2 payments made to a widow [one from a death in service benefit scheme and the other a payment under a trust fund established by the defendant company; the trustees having purchased life insurance in respect of named employees of the defendant company; both the employer and trustees’ having discretion as to how to apply the payments] were not to be taken into account when assessing her entitlement to damages.

**Kamali v City & Country Properties Ltd [2006] EWCA Civ 1879**

Service of Claim – Defendant out of Jurisdiction: The Court held that the decision in paragraph 47 of *Chellaram v Chellaram (No 2)* [2002] 3 ALL ER 17 was not good law. A claim form can be validly served on a defendant whilst the defendant is out of the jurisdiction. Such service can be effected by, for instance, postal service within the jurisdiction.

**Citibank NA & Another v QVT Financial LP [2007] EWCA Civ 11**

Securitisation – Trust Deeds: An issue arose as to the proper interpretation of a trust deed and charge in respect of Eurotunnel junior debt. The Court held that as a general rule a security holder would not normally be expected to be able to, or to take, steps in respect of charged property until the charge became enforceable, except where it could show that the sufficiency of the security was threatened. It was however perfectly permissible for parties to agree that the security holder: see *Nelson v Hannam* [1943] 1 Ch 59.

**Re Boodhoo (A Solicitor) [2007] EWCA Civ 14**

Wasted Costs – Solicitor – Criminal Procedure: A wasted costs order was imposed on a solicitor who withdrew from a case at the outset of a trial following a communication from his client that he would not attend the trial. The solicitor withdrew on the basis, that in the circumstances of the case, it was not possible to ascertain if the client wanted him to continue to represent him. The wasted costs order was imposed as a result of the trial having to be adjourned and the trial judge holding that the decision to withdraw was unreasonable. The Court of Appeal held that the trial judge erred in concluding that it was unreasonable of the solicitor to withdraw from the case and in imposing the wasted costs order. The solicitor had taken all reasonable steps in an attempt to take instructions. It could not be inferred that the client having deliberately chosen not to attend the trial wished to be represented by the solicitor. The solicitor had to keep in mind his own professional responsibilities.

**Johnson & Others v London Borough of Havering [2007] EWCA Civ 26**

Care Homes – Human Rights: The Court of Appeal held it was bound by its previous decision in *R (Heather) v Leonard Cheshire Foundation* [2002] EWCA 366 that a private care home did not perform public functions when it gave accommodation to individuals and in doing so was assisting a public body discharge its public functions. A transfer of control of a care home from the public sector to the private sector did not amount to a breach of a care home resident's human rights under Article 8 ECHR.

**Appiah & Another v Bishop Douglass RC High School [2007] EWCA Civ 10**

Discrimination – Burden of Proof: The Court held that in respect of claims of race discrimination and victimisation brought under section 57ZA of the Race Relations Act 1976 the two-stage test set out in *Igen Ltd (Formerly Leeds Careers Guidance) v Wong* [2005] EWCA Civ 142; [2005] 3 ALL ER 812 as explained in *Madarassay v Nomura International Plc* [2007] EWCA Civ 33 applied.

**Brown v London Borough of Croydon [2007] EWCA Civ 32**

Burden of Proof – Discrimination – Test: The two-stage test established in *Igen Ltd (Formerly Leeds Careers Guidance) v Wong* [2005] EWCA Civ 142; [2005] 3 ALL ER 812 should, as a general rule, be followed in discrimination cases. The test first required the claimant to establish a prima facie case of discrimination. Once a prima facie case was established the burden of proof shifted to the respondent to provide an adequate explanation of the differential treatment. There would however be cases where the complainant would not be prejudiced by the Tribunal moving straight to the second stage of the test.

**Madarassay v Nomura International Plc [2007] EWCA Civ 33**

Burden of Proof – Sex Discrimination: The Court held that the burden of proof did not shift to the respondent in a sex discrimination action under section 63A (2) of the Sex Discrimination Act 1975 because the complainant had established as a fact different status and different treatment: *Igen Ltd (Formerly Leeds Careers Guidance) v Wong* [2005] EWCA Civ 142; [2005] 3 ALL ER 812 applied.

**Lahey v Pirelli Tyres Ltd [2007] EWCA Civ 91**

Costs – Detailed Assessment: Where a party has accepted a Part 36 payment a costs order is deemed to have been made on the standard basis. This order could not be

varied under CPR 3.1 (7), as that power applied to orders made by the court and not those deemed to have been made by operation of the CPR. A costs judge therefore had no jurisdiction to order a percentage reduction from the costs order at the outset of a detailed assessment. A judge at the conclusion of a trial could order such a reduction when making a costs order, however the costs judge on a detailed assessment was not in an analogous position as he was not making the costs order itself. A costs judge could however disallow items and sections claimed in the Bill of Costs. Furthermore, the Court held, in obiter, that insofar as its decision in *Haji-Ioannou v Frangas & Others* [2006] EWCA Civ 1663 was inconsistent with *Burrows v Vauxhall Motors Ltd* [1998] PIQR P48 (CA), *Haji-Ioannou* was to be preferred.

#### **Mersey Care NHS Trust v Ackroyd [2007] EWCA Civ 101**

Civil Procedure – Confidential Information – Disclosure: A newspaper had been ordered in previous proceedings (*Ashworth Security Hospital v MGN Ltd* [2002] UKHL 29; [2002] 1 WLR 2033) to disclose the name of a journalist who had disclosed confidential information. An action was subsequently brought against the journalist seeking disclosure of the name of his informant. The Court of Appeal upheld the Judge's decision not to order disclosure of the source's name. The Judge had approached the exercise of his discretion correctly. The Judge had correctly approached the issue by looking at whether, at the time of his decision, it was both necessary and proportionate to order disclosure of the source's name.

#### **Babula v Waltham Forest College [2007] EWCA Civ 174**

Employment Rights – Whistleblowers: The Court held that in assessing whether an employee's disclosure was protected by section 43B (1) (b) of the Employment Rights Act 1996: i) the whistleblower's reasonable belief as to the nature of the disclosed information was relevant e.g., a reasonable belief that the information disclosed tended to show a criminal offence had been committed; ii) there was no requirement that the employee's belief had to be correct: *Kraus v Penna Plc* (2004) IRLR 260 while it was correctly decided on the facts did not state the law correctly.

#### **Baxendale-Walker v The Law Society [2007] EWCA Civ 233**

Costs – Solicitors Disciplinary Tribunal: The Court of Appeal held that the rule that costs follow the event was not appropriate for disciplinary proceedings before the Solicitors Disciplinary Tribunal brought by the Law Society against a solicitor. The Law Society brought disciplinary proceedings in the public interest in its regulatory capacity. The costs follows the events rule could undermine that regulatory role through having a dampening effect on the Law Society's willingness to bring disciplinary proceedings.

#### **BR (Iran) v Secretary of State for the Home Department [2007] EWCA Civ 198**

Immigration – Extensions of Time to Appeal: The Court of Appeal gave guidance as to the correct approach to take to applications for extensions of time to file an Appellant's Notice in the Court of Appeal when permission to appeal had already been granted by the AIT. In this type of case the Court held that: i) there was a presumption that the appeal ought to be heard by the Court of Appeal; ii) that presumption could be displaced where the AIT's grant of permission was plainly wrong if the Court of Appeal had to consider whether the appeal should be allowed to proceed in circumstances, such as these, where a procedural default had arisen; iii) in assessing whether the presumption was displaced delay in filing the Appellant's Notice should not be taken account of when it was caused by the appellant's legal representative; iv) if delay was caused by the appellant personally the Court would examine whether this had any impact on the appellant's credibility in claiming to require

asylum. The Court also stated that in future the AIT should stress the requirement to file an Appellant's Notice with the Court of Appeal within 14 days of the grant of permission when it notified the appellant that permission had been granted. It further stated that any future situations where delay had been caused by the legal representatives would be referred by the Court to the SRA and the LSC. Future extension of time applications would be listed with appeal to follow, if granted.

#### **David Paul Johnson v The Medical Defence Union [2007] EWCA Civ 262**

Data Protection – Processing Data: Information held on a computer was accessed by way of downloading to a computer screen by a risk manager. The information was then selected, summarised and analysed by the risk manager, who made subsequent observations on aspects of the data. The Court held that the manager's data selection did not amount to data processing within the meaning of the terms as set out in the Data Protection Act 1998, which implemented Directive 95/46/EC. The selection of data by the risk manager was not even partially carried out by automated means per Article 3.1 of the Directive. The Court distinguished the present case from that of *Campbell v MGN Ltd* [2003] QB 633 (see paragraphs 38 – 42). The Court went on to consider in obiter whether the data was processed fairly. It noted that in assessing fairness consideration had to be given to the interests of both data subjects and data users.

#### **Hammerton v Hammerton [2007] EWCA Civ 248**

Human Rights – Committal for Contempt in Family Proceedings: A former husband had breached an undertaking not to contact or communicate with his former spouse, amongst other. Subsequent committal proceedings were listed at the same hearing as his application for contact with his and his former spouse's children. He was not represented at that hearing and was committed to three months imprisonment for contempt of court arising out of his breach of the undertaking. The Court of Appeal stated that committal proceedings were criminal charges per Article 6 ECHR, which in principle required legal representation for the individual concerned. Absent unreasonable behaviour by the defendant he was entitled to such representation and, save where there was extreme urgency, committal proceedings should be adjourned in order to enable such representation to be obtained. Violation of Article 6 rights was so serious that the committal order and sentence had to be set aside in the interests of justice.

#### **Stretford v The Football Association Ltd & Another [2007] EWCA Civ 238**

Arbitration – Human Rights: A football agent challenged the legality of an arbitration clause set out within Rule K of the Football Association Rules. It was argued that it was in conflict with Article 6 ECHR. The Court stated that the issue was whether the parties had waived their right to a public hearing before a tribunal established by law, as the Arbitration Act 1996 was Article 6 ECHR compliant and the court had power to rectify any procedural unfairness in the arbitration, which included bias on the part of the arbitrator. The Court went on to hold that the parties had waived their right to a public hearing before a tribunal established by law as Rule K was incorporated into the contract under which the FA licensed the appellant as a football agent. Strasbourg jurisprudence was supportive of the conclusion that where parties freely entered into arbitration agreements they were to be treated as having waived their Article 6 ECHR rights.

#### **Sumukan Ltd v The Commonwealth Secretariat [2007] EWCA Civ 243**

Arbitration – Human Rights: The Court held that a clause within an arbitration agreement which excluded, pursuant to section 69 (1) of the Arbitration Act 1996, a right of appeal was neither onerous nor unusual and did not give rise to an infringement of Article 6 ECHR.

**Willis v Nicolson [2007] EWCA Civ 199**

Costs Capping Orders: The Court expressed continuing concern about the high costs of personal litigation. This stemmed from the continuing practice of assessing professional fees on the basis of reasonable hourly charging at market rates. In the premises costs limitations had to be based on the manner in which cases were conducted, which involved the Court engaging in a careful assessment of the claim at an early stage. The Court noted that there was a tension between an approach taken to costs capping orders at first instance, which favoured making such orders in limited circumstances only, and guidance by the Court of Appeal which encouraged their use. That tension should perhaps be resolved by the Civil Procedure Rules Committee.

**White v Knowsley Housing Trust & Another [2007] EWCA Civ 404**

Landlord & Tenant – Possession Orders: The tenant's assured tenancy was the subject of possession proceedings, which resulted in an order requiring possession to be given up on or by 06 July 2004. The landlord agreed not to enforce the order whilst the tenant paid weekly rent and paid the arrears. The tenant subsequently sought to exercise a right to buy under the Housing Act 1985. The issue arose as to whether the failure to enforce the possession order resulted in the assured tenancy enduring or whether it came to an end on 06 July 2004. The Court held that the situation was not analogous to tenancies arising under the Rent Act 1977. Where an order for possession was made with a date of delivery, the tenancy came to an end on the date of delivery, or as in this case, the last date on which delivery was to take place. The Court noted that in cases such as these in order to protect the tenant the approach taken in *Bristol City Council v Hassan* [2006] 1 WLR 2582 could be adopted i.e., an order for delivery could be made with the date for delivery to be fixed (paragraph 48). From the date on which delivery was to be given up, as in this case, the (then former assured) tenant would be no more than a tolerated trespasser.

**Lawrence v Pembrokeshire County Council [2007] EWCA Civ 466**

Human Rights – Family Law: The Court followed *JD v East Berkshire Community Health NHS Trust* [2005] AC 373. The common law principles of negligence were unaffected by Article 8 ECHR insofar as duties owed by professionals to the parents of children who were suspected of inflicting child abuse on their children were concerned. Parents were not owed a duty of care by such investigating professionals. To impose such a duty would be a step too far (paragraph 56).

**Lamont v Burton [2007] EWCA Civ 429**

Costs – RTA – Success Fees: CPR 45.16 (a) provides that a 100% success fee is recoverable in road traffic accident cases, and for that matter employer's liability claims, which conclude at trial and in which a conditional fee agreement has been entered into. The Court held that this provision was mandatory; there was no discretion to vary it by way of an application of CPR 44.

**Van Colle v The Chief Constable of the Hertfordshire Police [2007] EWCA Civ 325**

Human Rights – Witness Protection: The Court held that Article 2 ECHR required the State to take reasonable measures to prevent harm from coming to a witness to criminal acts where they knew or ought to have known that there was a real and immediate risk to their life as a result of witnessing such a criminal act. The proper context for assessing whether there was a real and immediate risk the fact that an individual was a prosecution witness within a criminal trial. Where the duty imposed was breached damages were to be assessed with regard to such awards made by the European Court of Human Rights.

**Halpern v Halpern [2007] EWCA Civ 291**

Contract – Rescission – Counter Restitution: In principle rescission for duress should be decided on the same basis as rescission for other vitiating factors. That being said the practical effect of counter-restitution could only be decided on the facts of each case: see *Erlanger v New Sombrero Phosphate Co* (1877 – 1878) LR 3 App Cas 1218. It would be surprising if a party could establish that a contract was entered into on the grounds of duress or undue influence of the law were unable to provide a remedy. Such matters could however only be decided when the facts were ascertained.

**Shepherds Investments Ltd v Walters [2007] EWCA Civ 292**

Costs – Split Trials: A trial judge could make a variety of orders at the conclusion of a liability hearing, which formed part of a split trial. There was no requirement that the judge had to make a costs order at the conclusion of that hearing; it was perfectly permissible to postpone the decision as to costs until the conclusion of the quantum hearing (paragraph 18).

**Framlington Group Ltd v Barnetson [2007] EWCA Civ 502**

Civil Procedure – Without Prejudice Communications: The Court of Appeal held that the without prejudice rule applied to communications made as part of negotiations between parties prior to the commencement of litigation where such litigation was contemplated or might reasonably have been contemplated. It was neither confined to communications which took place during the course of litigation, nor to communications which took place either after the threat of litigation had been intimated, or to those which took place after a certain period of time before litigation commenced.

**Austin & Saxby v Commissioner of Police for the Metropolis [2007] EWCA Civ 989**

Breach of the Peace – Police Powers: The imposition of a police cordon in Oxford Circus was not a deprivation of liberty per Article 5 of the European Convention on Human Rights. There had however been an interference with liberty which could have amounted to the tort of false imprisonment if unlawful. However, the Court of Appeal held that the police action was in the wholly exceptional circumstances of the case lawful. The Court summarised the relevant principles at paragraph [119]:

- “i) the appellants were ‘imprisoned’ for the purposes of the tort of false imprisonment but their ‘imprisonment’ was lawful because, although the appellants did not themselves appear to be about to commit a breach of the peace, on the judge’s findings of fact the police had no alternative but to ask all those in Oxford Circus to remain inside the police cordon in order to avoid an imminent breach of the peace by others;
- ii) the correct approach is . . . as follows:
- a) where a breach of the peace is taking place, or is reasonably thought to be imminent, before the police can take any steps which interfere with or curtail in any way the lawful exercise of rights by innocent third parties they must ensure that they have taken all other possible steps to ensure that the breach, or imminent breach, is obviated and that the rights of innocent third parties are protected;
  - b) the taking of all other possible steps includes (where practicable), but is not limited to, ensuring that proper and advance preparations have been made to deal with such a breach, since failure to take such steps will render interference with the rights of innocent third parties unjustified or unjustifiable; but
  - c) where (and only where) there is a reasonable belief that there are no other means whatsoever whereby a breach or imminent breach of the peace can be obviated, the lawful exercise by third parties of their rights may be curtailed by the police;

- d) this is a test of necessity which it is to be expected can only be justified in truly extreme and exceptional circumstances; and
- e) the action taken must be both reasonably necessary and proportionate.”

### **O’Byrne v Aventis Pasteur [2007] EWCA Civ 966**

Limitation – Substitution of Defendant – Directive 85/374: The European Court of Justice had held that it was for national procedural law to decide the conditions in which it was permissible to substitute a new party as defendant to an action following the expiry of limitation. It was thus for national law to prescribe the conditions in which a party could be substituted under Article 11 of Directive 85/374. The Court was bound by the test laid down in *Horne-Roberts v SmithKline Beecham Plc* [2002] 1 WLR 1662, which was consistent with the ECJ’s approach, as to the exercise of the discretion to substitute following the expiry of the limitation period.

### **Sumukan Ltd v The Commonwealth Secretariat [2007] EWCA Civ 1148**

Arbitration – Doctrine of de facto authority: The Court held that the common law doctrine of de facto authority did not apply to arbitration proceedings. Where an arbitrator had been invalidly appointed his participation in the arbitration was unlawful and any award made a nullity. The common law doctrine could not apply to arbitration proceedings as the arbitral tribunal was not a court of law; on the contrary it was the creation of a private contractual agreement between the parties and was governed by the terms of that agreement (paras. 34; 50 – 52).

### **London Borough of Wandsworth v Randall [2007] EWCA Civ 1126**

Housing – Succession to Secure Tenancy – Possession: The respondent had succeeded to his grandfather’s secure tenancy of a four bedroom house. The Local Authority sought possession under ground 16 of Schedule 2, Part III of the Housing Act 1985. It did so on the basis that the house was more extensive than the respondent could reasonably need. Following service of the notice the respondent’s mother and half-sister moved into the property. The Court of Appeal held that in determining the size of the tenant’s family for the purposes of the ground 16 the assessment was to be made not on succession to the secure tenancy but at the date of the possession hearing.

### **Davey v Aylesbury Vale District Council [2007] EWCA Civ 1166**

Judicial Review – Costs: The Court gave guidance as to the assessment of costs in judicial review proceedings. It noted that under the CPR two rules of practice had developed: i) that an unsuccessful applicant for permission must expect to pay the defendant’s costs of putting in an acknowledgment of service; and ii) where a defendant chooses to oppose an oral application for permission they cannot ordinarily expect to recover their costs of so doing even if the application is refused: see *R (Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346 (para 16). Where however a full judicial review had taken place the following guidelines were to apply to the issue of costs (para. 21):

- (1) On the conclusion of full judicial review proceedings in a defendant’s favour, the nature and purpose of the particular claim is relevant to the exercise of the judge’s discretion as to costs. In contrast to a judicial review claim brought wholly or mainly for commercial or proprietary reasons, a claim brought partly or wholly in the public interest, albeit unsuccessful, may properly result in a restricted or no order for costs.
- (2) If awarding costs against the claimant, the judge should consider whether they are to include preparation costs in addition to acknowledgment costs. It will be for the

defendant to justify these. There may be no sufficient reason why such costs, if incurred, should be recoverable.

(3) It is highly desirable that these questions should be dealt with by the trial judge and left to the costs judge only in relation to the reasonableness of individual items.

(4) If at the conclusion of such proceedings the judge makes an undifferentiated order for costs in a defendant's favour

(a) the order has to be regarded as including any reasonably incurred preparation costs; but

(b) the Practice Statement (QBD: (Admin Court): Judicial Review: Costs) [2004] 1 WLR 1760 should be read so as to exclude any costs of opposing the grant of permission in open court, which should be dealt with on the Mount Cook principles.

These guidelines were however subject to the three caveats:

The costs should, ordinarily, follow the event with a losing claimant having to show that some other approach is on the facts of the case justified (para. 29): see *Dyson J in R v Lord Chancellor ex p Child Poverty Action Group* [1999] 1 WLR 347 at 355H-356E.

While it is for a successful defendant to justify the recovery of his preparation costs; it is for a losing claimant to show that any costs that would otherwise be recoverable ought not to be recovered it is for him to persuade the court of that (para. 30).

Permitting recovery of preparation costs was not to be taken as encouragement for public authorities to incur needless costs at the pre-permission stage: Carnwath LJ's dicta at paras 40 – 47 of *Ewing v Office of the Deputy Prime Minister* [2005] EWCA Civ 1583 approved (para. 32)

### **Martins v Choudhary [2007] EWCA Civ 1379**

Personal Injury – Damages: The Court held that where damages for injury to feelings and damages for psychiatric injury were being assessed there was no absolute rule that required separate awards to be made for each head of loss. Where, for instance, damages for psychiatric injury were very modest it was permissible for a single award to be made encompassing both heads of loss. Where however damages for psychiatric injury were not insubstantial it would be helpful to the parties if the court should separate the two awards. Whether the former or latter approach was the correct one to take depended on the circumstances of each individual case (see para. 18).

### **Aldi Stores Ltd v WSP Group Plc [2007] EWCA Civ 1260**

Procedure – Strike Out – Rule in *Henderson v Henderson*: The Court held that following *Johnson v Gore Wood & Co (No 1)* [2002] AC 1 a broad merits-based approach should be taken to strike out applications brought on the basis that the claim was an abuse of process as it offended the rule in *Henderson v Henderson*. An important factor in carrying out that an assessment was whether or not the defendant in the immediate case had been a defendant in the original litigation. That the defendants in the immediate action had not been defendants in the original action was not a bar to a finding that the action was an abuse of process (see para. 10.). In carrying out the assessment the court was not exercising a discretion, but was rather arriving at a decision, for which there was only one right answer, which was arrived at by taking account of a number of factors. Despite this an appeal could be reluctant to interfere with the decision arrived at by the court of first instance (see para. 16). In carrying out the assessment it made no difference as to whether the original action was concluded by way of settlement or judgment (see para. 11).

**C v D [2007] EWCA Civ 1282**

Arbitration – The Bermudan Form – Seat of Jurisdiction: The Court held that where the parties had chosen London as the seat of arbitration whilst applying New York substantive Law, which was the aim of the drafting used in the Bermudan Form, the procedure provided by the Arbitration Act 1996 applied to the arbitration. Any challenge to the award therefore had to be made under the terms of the 1996 Act. Agreements in respect of the seat of arbitration where analogous to exclusive jurisdiction clauses thus any challenge to awards made under the arbitration agreement had to be challenged within the courts of the designated seat: *A v B* [2007] 1 Lloyd's Rep 237 and *A v B (No. 2)* [2007] 1 Lloyd's Rep 358 approved (see para. 16 – 20).

**Hoddinott v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203**

Service – Jurisdiction – Extension of Time: An ex parte application for an extension of time to serve the claim form was granted. The defendant issued an application to set aside the extension of time. The claim form was served and the defendant then filed an acknowledgment of service. The defendant did not indicate that he wished to challenge the jurisdiction under CPR 11. The Court held that the term 'jurisdiction' within the CPR had two meanings: first, it referred to the court's territorial jurisdiction as per CPR 2.3 and 6.20; secondly, it referred to its power to try a claim. It had the second meaning within CPR 11, which therefore had to be used where a defendant wished to dispute jurisdiction on either territorial or other grounds. The defendant in the present case out therefore to have utilised CPR 11; its failure to do so amounted to a waiver of its earlier set aside application. The Court also held, as part of the decision's ratio, that there was clear guidance as to the circumstances when an extension of time to serve the claim form could be granted: see *Hashtrودي v Hancock* [2004] EWCA Civ 652; [2004] 1 WLR 3206 and *Collier v Williams* [2006] EWCA Civ 20; [2006] 1 WLR 1945. Claimants could not rely on what had been described as the 'false sense of security' given them by a court acceding to an ex parte extension of time application. Claimants relied on extensions of time granted in such circumstances at their peril: see *Collier v Williams* at [38]. Tugendhat J on this point in *Mason v First Leisure Corporation Plc* [2003] EWHC 1814 (QBD) at [11] disapproved and *Jones v Wrekin* (CA, 09 July 1999 unreported) not to be followed.

**City Index Ltd v Gawler [2007] EWCA Civ 1382**

Knowing Receipt – Civil Liability (Contribution) Act 1978: The Court considered two issues: first, whether liability for knowing receipt fell within the ambit of the Civil Liability (Contribution) Act 1978 (the 1978 Act); and secondly, if it did, whether there was any rule of law or practice which required a knowing recipient to bear 100% of any loss incurred. The Court noted that liability for knowing receipt arose when money paid in breach of trust was retained or paid out in circumstances where it was unconscionable for the recipient to do so: see *BCCI (Overseas) Ltd v Akindele* [2001] ChD 437. While liability for knowing receipt arose in such circumstances, it was only when the knowing recipient failed to repay the money to the victim of the breach of trust that a loss arose which engaged the 1978 Act. It was correct to hold that the liability to make good the loss fell within the wide view of the liability to pay compensation under the 1978 Act: see *Friends Provident Life Office v Hillier Park May & Rowden* [1997] QB 85. In answering the second question once it was clear that the 1978 Act was engaged section 2 of that Act enabled the court to order such compensation as was just and equitable having regard to the damage in question of the person against whom a contribution was sought.

**Collier v P M J Wright (Holdings) Ltd [2007] EWCA Civ 1329**

Promissory Estoppel – Statutory Demand: Judgment by consent was entered against three partners to be paid by monthly instalments. The partners' liability was joint. One of the partners (the appellant) paid off a third of the judgment debt by monthly instalments. The other two partners became bankrupt. The judgment creditor sought to enforce the judgment against the appellant via service of a statutory demand. The appellant sought to set aside the statutory demand alleging that there was an agreement between the parties that if he paid a third of the debt the respondent would not seek payment of the remainder from him. The Court of Appeal held that while the alleged agreement could not be binding as it was given for no consideration, per *Foakes v Beer* (1883) LR 9 App Cas 605, there was a real prospect of the appellant establishing that a promissory estoppel arose which would render it inequitable for the respondent to enforce the debt against the appellant: *D & C Builders v Rees* [1966] 2 QB 617 considered (see para. 38 – 42).

**Crane v Canons Leisure Centre [2007] EWCA Civ 1352**

Costs – Disbursements – Fee Agreements: The court held that work done by costs consultants in costs-only proceedings were not disbursements. They fell within the scope of solicitors' base costs under a collective conditional fee agreement. As such they formed part of the costs used to calculate the success fee (see para 14 – 22).

**Hall v Stone [2007] EWCA Civ 1354**

Costs – Assessment under CPR 44.3: Claimants in a personal injury action recovered amounts within the small claims limit, even though the claim had been issued within the fast track limit. The defendant raised in its defence an issue as to fraud and dishonesty on the part of the claimants, which caused the claim to be allocated to the multi-track. At trial the claimant's succeeded, albeit they received damages lower than those which they had claimed. The trial judge awarded them only 60% of their costs because the claimants had not done as well as they hoped insofar as damages were concerned. By a majority (Smith and Lloyd LJJs) the Court of Appeal held (para 71 – 88) that the trial judge erred in the approach taken to the costs assessment. It was clear that the claimants had won on every issue per CPR 44.3 (2); the defendant had only succeeded in keeping damages done, which did not amount to a partial success under a consideration of CPR 44.3 (4). While it was correct to take account of any exaggeration by a claimant as to damages under CPR 44.3 (4) (a), the exaggeration had to be an important feature of the claim with costs consequences for a defendant to be able to be taken to be a winner or partial winner on the issue. Consideration could properly be given under CPR 44.3 (4) to whether the claimants' conduct in initially exaggerating the value of the claim should be reflected in the costs award. However it was apparent in this case that the initial exaggeration had had no real effect on the costs of the case and ought not therefore effect the costs award.

**Jones v Wrexham Borough Council [2007] EWCA Civ 1356**

Conditional Fee Agreements: The court considered whether a CFA entered into was unenforceable due to the solicitor's failure to inform the client of an interest per Regulation 4 (e) (ii) of the Conditional Fee Agreements Regulations 2000 (as amended). The solicitor had been referred the case by the client's insurer. The solicitor then recommended that the client take out insurance with the insurer, which was only made available due to the relationship between the solicitor and the insurer (see para. 8). The Court held that the solicitor had an interest, despite its disclosure to the client that it was on the insurer's panel

(see para. 68). It was only because the CFA was a CFA Lite that the non-compliance with Regulation 4 did not render the CFA unenforceable (see para. 69). When construing a CFA the correct approach for the court to take was to look at the entire package produced by the solicitor, i.e., the CFA agreement and the client care letter. The court had to ask itself whether the arrangement was one under which the client was not liable for any of its own costs or expenses other than those actually recovered by the other side or insurers (see para. 27 – 30).

#### **Cinpres Gas Injection Ltd v Melea Ltd [2008] EWCA Civ 9**

Patents – Civil Procedure – Bill of Review: The Court held that sections 12 and 37 of the Patents Act 1977 were concerned with the same cause of action for the purposes of cause of action estoppel (para. 74 – 76). Prior to the Judicature Act 1873 – 1875 reforms a procedure existed in equity whereby a judgment of the Chancery Court could be set aside by Bill of Review. This procedure was more liberal than the equivalent common law procedure as it required the party concerned had to show either that the earlier judgment had been obtained by fraud or produce fresh material evidence which could not have been previously procured. The common law procedure required it be demonstrated that the earlier judgment was obtained by the fraud of the party who obtained it; the party seeking to upset the earlier judgment could not rely on his own fraud. The Court held, in obiter, that the Bill of Review jurisdiction, that the jurisdiction no longer existed (para. 97 – 99). The fraud of the party rule is the sole rule governing this type of challenge: see *Re Barrell Enterprises* [1973] 1 WLR 19.

#### **Kolden Holdings Ltd v Rodette Commerce Ltd [2008] EWCA Civ 10**

Regulation 44/2001 – Party to Proceedings: There were two sets of proceedings, one in England, the other in Cyprus. They both concerned the same cause of action. The parties to the two actions were initially the same. However, following an assignment a new party was joined to the English proceedings in substitution for the assignor. The Court held that for the purposes of Article 27 of Regulation 44/2001 the assignor and assignee were the ‘same party.’ In assessing whether they were the ‘same party’ the court was to look at the substance not the form; while the parties must be identical, identity is not destroyed by the mere fact of the parties being separate legal entities; whether they were the ‘same party’ depended on whether their interests were identical and indivisible and whether a judgment against one would be *res judicata* against the other (para.85).

#### **MA Holdings Ltd v George Wimpey UK Ltd [2008] EWCA Civ 12**

Procedure – Non-Party Appeal: Prior to the introduction of the CPR a non-party to a claim could seek permission to appeal the judgment given in proceedings. The CPR could not be interpreted so as to cut down that right. It was inherently unlikely that given the introduction of the overriding objective that the CPR would have taken a more restrictive approach. Read together CPR 52.1 (3) (d) and (e) did not require an appellant to have been a party to the proceedings at first instance. The putative appellant was not a party to the proceedings at first instance. Its interests were however affected by the judgment; it was not simply an intermeddling busybody. Given a real prospect of success on appeal, it would amount to a real injustice to refuse permission to appeal.

### **Stuart v Goldberg [2008] EWCA Civ 2**

Procedure – Abuse of Process – *Henderson v Henderson*: The Court applied the *Aldi Stores v WSP Group Plc* [2007] EWCA Civ 1260: a decision as to whether a second claim was brought in abuse of process was not an exercise of discretion (para. 24). The Court could in this case interfere with the decision as the judge had erred in taking account of the merits of the claim advanced and the delay in bringing it. Only in an extreme case either way would the merits be relevant to the decision (para. 57). Equally delay is irrelevant, except in so far as it related to a Limitation Act or equitable laches point (para. 58). Where a claimant held a second claim up his sleeve there was a high chance that it would be held to be an abuse of process. Requiring the parties to put their cards on the table meant more than simply warning a defendant that a further future claim was or might be a possibility. It meant enabling them court to properly manage the claim and issues in a manner which was fair to both parties (para. 77 & 101).

### **Tameside & Glossop Acute Services NHS Trust v Thompson & Others [2008] EWCA Civ 5**

Personal Injury – Periodical Payments under section 2 Damages Act 1996: The Court rejected the submission that *Flora v Wakom (Heathrow) Ltd* [2007] 1 WLR was per incuriam. It established that section 2 (9) of the 1996 Act enabled the court to depart from the default position set out in section 2 (8) whenever it appeared appropriate and fair (para. 3). The language of section 2 (9) permitted the default position in 2 (8) to be modified so that another index for the Retail Price Index (RPI) (para. 43). When the court considers whether to make a periodical payments order under section it will have to consider whether to use the RPI or another index. This will be a comparative exercise (para. 55).

### **ZT (Kosovo) v Secretary of State for the Home Department [2008] EWCA Civ 14**

Immigration – Renewed Asylum Applications: The proper procedure for the Home Secretary to take when considering renewed asylum applications under the Nationality, Immigration and Asylum Act 2002 and the Immigration Rules (IR) was held to be:

Under rule 353 IR, the Home Secretary needs to consider whether she now accepts the claim. This does not depend on the renewal being a fresh claim as the option of acceptance is untrammelled;

If the renewed claim is rejected but contains enough new material to create a realistic prospect of success on appeal, the Home Secretary must so decide and her refusal, being a refusal of a fresh claim, can then be appealed;

If, however, the Home Secretary lawfully decides that it is not a fresh claim, she does not need to consider whether, having rejected it, she should also certify it as clearly unfounded; for, not being a fresh claim, its rejection is not appealable at all, whether in-country or out;

It is only, therefore, to a first claim that the process of certification is relevant. This will, however, include a certified claim which has been varied or added to by a further application while an appeal against refusal is still open or pending. §353 does not apply to such a claim, and it is accordingly here alone that the question of lifting an extant section 94 (of the 2002 Act) certificate can arise.

The Court went on to hold that in the circumstances a renewed claim ought therefore to be dealt with under rule 353 and not section 94 of the 2002 Act.

**Smith v Chief Constable of Sussex Police [2008] EWCA Civ 39**

Police – Duty of Care to Member of the Public: The claimant issued negligence proceedings against the Chief Constable. He had on a number of occasions alerted the police to his fears that his former partner had threatened to kill him. While the police were investigating the threats he was attacked by his former partner with a claw hammer and consequently suffered serious injury. The claim was struck out as disclosing no reasonable cause of action. The Court of Appeal held that while there was no general duty of care imposed on the police in respect of members of the public, in certain circumstances, where the individual's life or safety had been placed into their hands, that a duty of care could arise. Whether or not that was the case depended on an analysis of the facts and of the law. In these circumstances the claim ought not to have been struck out; it was not doomed to failure (para 27 – 31).

**R (Raissi) v Secretary of State for the Home Department [2008] EWCA Civ 72**

Criminal Procedure – Compensation Scheme: The Secretary of State operated an ex gratia compensation payment scheme for individuals who had been wrongfully convicted or charged. The Court of Appeal held that the scheme should be construed according to the 'reasonable and literate man' test per *R (Webb) v Criminal Injuries Compensation Board* [1987] QB 74 (para 110 & 123). Applying this test it was clear that a reasonable and literate man would not construe the scheme as being limited to wrongful charges to be limited to those presented to a domestic criminal court. A defendant whose extradition is sought faced charges in a UK court, albeit those charges would ultimately not be determined by the UK courts (para 125 – 126). He did so because the extradition hearing determined whether he would be detained in the interim period prior to extradition. There was also no basis in interpreting the scheme so as to exclude detention which arose as a consequence of serious default on the part of the police.

**National Westminster Bank Plc v Ashe [2008] EWCA Civ 55**

Adverse Possession – Mortgagor in Possession: A mortgagor remained in possession of the property mortgaged for 12 years during which time no mortgage payments were made to the mortgagee bank. While the bank made intermittent demands for payment it took no formal steps to enforce its rights. The mortgagor's trustee in bankruptcy applied for a declaration that the bank's title had been extinguished by operation of sections 15 and 17 of the Limitation Act 1980. The Court held that the meaning given by *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 to adverse possession was of general application (para 92). There was no good reason to conclude that the defaulting mortgagor was not in possession of the property. Nor was there any evidence to support the contention that he had been given either express or implied consent to remain in the property by the mortgagee. The bank's title was extinguished as a consequence of the adverse possession.

**James v London Borough of Greenwich [2008] EWCA Civ 35**

Employment – Agency Workers: The Court held that a temporary worker supplied by an employment agency (an agency worker) to a local authority was not an employee of the local authority and could not bring proceedings for unfair dismissal against the authority. The worker had a contract with the employment agency. The local authority also had a contract with the agency. There was neither an express nor implied contractual relationship between the worker and the local authority. In three-party situations as this the crucial question in assessing whether contractual relations existed between the worker and the local authority was whether it was necessary imply mutual contractual obligations between the two in order to give business reality to the relationship between the parties (para 49 – 51).

**R v Bogdal [2008] EWCA Crim 1**

Dangerous Dogs Act 1991 – Definition of Public Place: Visitors to a care home for the elderly had been bitten by a dog tethered in an adjacent property's garden. The tether permitted the dog to move onto a shared driveway, where it proceeded to bite three visitors, one of whom was a police officer investigating a previous such incident. The Court held that the shared driveway was not a public place for the purpose of the 1991 Act. The shared driveway was plainly a private one; members of the public only had the right to use it as permitted visitors to either the house or the care home: *DPP v Fellowes* [1993] 157 JP 936. It made no difference that the driveway led to a care home, that did not alter its essentially private nature. The Court also held that the fact that it was a shared driveway did not bring it within the ambit of the common parts provision within section 10 (2) of the 1991 Act. It did not because the driveway could not be properly described as forming the common parts of a building: as an external area it was not part of a building: *R v C* [2007] EWCA Civ 1757.

**Emmott v Nicholas Wilson & Partners Ltd [2008] EWCA Civ 184**

Arbitration – Confidentiality – Disclosure: While there was an implied obligation that parties to an arbitration would maintain confidentiality in respect of documents prepared for and used within an arbitration the court had the jurisdiction to order the disclosure of such documents. The court could exercise this power where it was in the interests of justice to do so. In the instant case it was in the interests of justice to order disclosure in order to ensure that a foreign court was not misled in proceedings which raised essentially the same matters as dealt with in the arbitration (para 102 – 114).

**Olafsson v Gissurarson [2008] EWCA Civ 152**

Dispensing with Service – Overseas Jurisdiction: Proceedings were served in Iceland under CPR 16.9 (1); Iceland being a signatory to the Lugano Convention 1988. All necessary documents were served on the defendant; however service was not effected according to Icelandic law as he was not asked to sign a declaration confirming receipt. The Court of Appeal held that this was an ineffective attempt to serve via a permitted method (para 29). It went on to hold that in the circumstances of the case, given that the defendant would suffer no prejudice from an order dispensing with service, it would be contrary to the overriding objective to refuse an order granting the clamant relief (para 32). As this case was truly exceptional there was no reason in principle why the Court could not grant an order dispensing with service to ensure that a domestic time bar would not defeat a claim: *Phillips v Symes* [2008] UKHL 1; [2008] 1 WLR 180 (para 53 – 66).

**RHJ Ltd v FT Patten (Holdings) Ltd [2008] EWCA Civ 151**

Prescription Act 1832 – Right to Light: A preliminary issue arose as to whether a lessee had in virtue of the 20 year prescription period acquired a right to light. The lease contained a clause which permitted the lessor full and free rights to erect or rebuild on land adjoining the leased land. It also contained a provision to the effect that purported to exclude the grant of easements or estate rights unless expressly granted. The lease did not expressly refer to the right to light within the exclusion. The Court held that for the purposes of section 3 of the 1832 Act the lease clause did not need to expressly refer to the right to light in order to prevent the acquisition of the right by way of express agreement within the lease. It had to be determined by normal principles as to whether the lease clause on its true construction encompassed the right to light such that its enjoyment by the lessor was by consent (para 44 & 48).

**Smith v Northamptonshire County Council [2008] EWCA Civ 181**

Health & Safety – Personal Injury: A local authority care worker was required as part of her duties to collect an individual from her home and transport them to a day care centre. In order to do so she had to traverse a wooden ramp, which had been installed by the NHS some years before, that led from the individual's house. The care worker suffered an injury following a fall from the ramp; the edge of which collapsed when she stepped on it. The ramp had been inspected by the council shortly before this. The inspection had noted no defects. The issue before the Court was whether the ramp was work equipment for the purposes of Regulation 5 (1) of the Provision and Use of Work Equipment Regulations (1998) (para 5). If it was work equipment the council would be subject to strict liability for their employee's injury. The Court held that the ramp was not work equipment for the purpose of the Regulations. It was not work equipment as the Regulations could not have been intended to impose strict liability for something of which they could only maintain with the permission of a third party and to which they had limited access (para 31). That the council inspected the ramp was explicable by its common law duty of care to ensure that it was safe for its employee to attend the individual home; this did not give rise to strict liability under the Regulations in respect of the ramp (para 32 & 34).

**Masri v Consolidated Contractors International Company SAL [2008] EWCA Civ 303**

Procedure – Equitable Execution: A receivership order by way of equitable execution acted in personam. It did not therefore exceed the limits of the court's international jurisdiction (para 50 - 72). Such an order could properly be made in respect of foreign debts. The Court could also properly appoint a receiver in respect of future income from a specified asset (para 136 – 184). It could do so as the power provided by section 37 (1) of the Supreme Court Act 1981 could be adapted and applied to novel situations (para 182).

**Employment-equal pay**

The Court considered the lawfulness of pay protection arrangements lasting several years adopted by local authority employers, and favouring male employees. The Court ruled in favour of two groups of female employees and held that, on the facts of these two appeals, the pay protection arrangements could not be justified and indirectly discriminated against female employees. The employer's knowledge and intentions when putting arrangements into place were relevant when considering justification but were not relevant when considering the preliminary question of whether there had been discrimination. Whether discrimination was justified depended on findings of fact by the original employment tribunal and, unless perverse, these could not be overturned on appeal. *Redcar and Cleveland Borough Council v Bainbridge & ors; Middlesbrough Borough Council v Surtees & ors* [2008]EWCA Civ 885

**Employment-constructive dismissal**

The Court held that even in cases of constructive dismissal an employment tribunal can only award losses that flow from an actual dismissal. Hence the Claimant could not recover unfair dismissal compensation for losses caused by bullying at work, even though the bullying led to her constructive dismissal. The employer's repudiatory conduct is not conduct that effects the dismissal and damage by that conduct is not damage suffered in consequence of the dismissal. *GAB Robins UK Ltd v Triggs* [2008]EWCA Civ 17

## Insolvency-power to replace trustee

The Court had power under the Insolvency Act 1986 to appoint a replacement trustee in bankruptcy following the removal of a person from the office under section 298 of that Act, without a creditors' meeting. *Donaldson v O'Sullivan* [2008]EWCA Civ 879

## Insolvency-status of protective award in company's liquidation

Protective awards made by an employment tribunal following the failure of a company to comply with its statutory obligation concerning collective redundancies before going into liquidation were contingent debts of the company and therefore provable debts in the liquidation. *Day v Haine & anr* [2008]EWCA Civ 626

## Personal injury-accrual of cause of action

A cause of action, under the principle in *Francovich v Italian Republic*, for damages against the government for failure to implement EU law, resulting in failure to provide a remedy in a personal injury case accrued as soon as some measurable damage had been suffered. In these two appeals a measurable loss was suffered by both claimants in relation to their claims against the government when they suffered their personal injuries. In the result the claims were barred by section 2 of the Limitation Act 1980. *Spencer v Secretary of State for Work and Pensions; Moore v Secretary of State for Transport and anr* [2008]EWCA Civ 750

## The Work of the Court: A Statistical Analysis

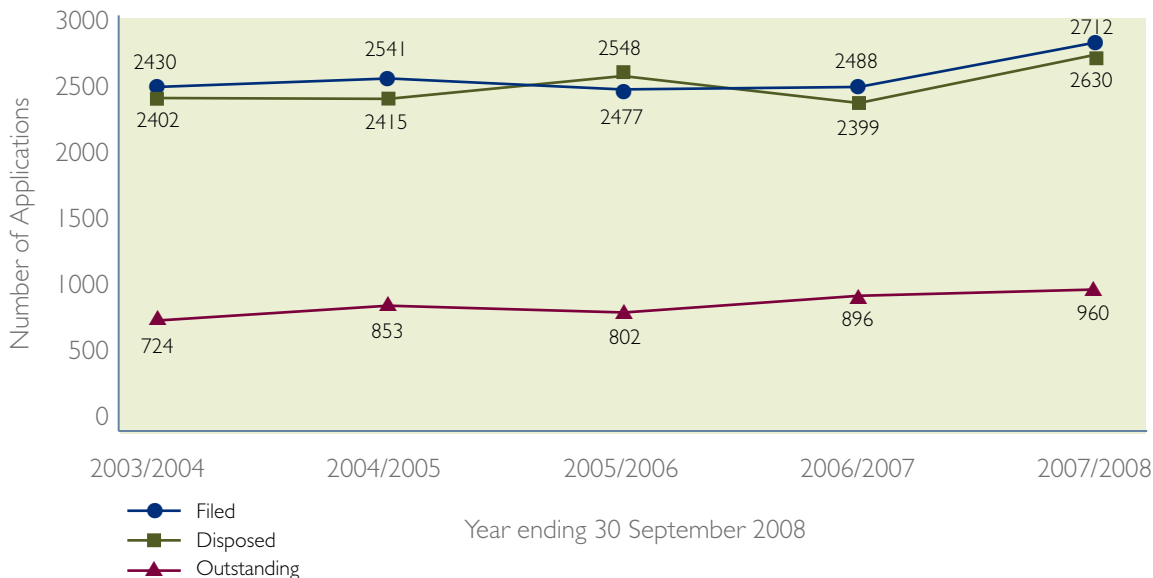
**Table I Appeals set down for year ending September 2004-2008**

	% OF		% OF		% OF		% OF	
	2004/05	TOTAL	2005/06	TOTAL	2006/07	TOTAL	2007/08	TOTAL
Queen's Bench Final	123	10.4%	104	8.7%	90	7.1%	89	7.0%
Queen's Bench Interlocutory	27	2.3%	20	1.7%	30	2.4%	22	1.7%
Queen's Bench Administrative Court (formerly Crown Office)	107	9.0%	102	8.5%	116	9.2%	153	12.0%
Queen's Bench Commercial Final	62	5.2%	41	3.4%	77	6.1%	74	5.8%
Queen's Bench Commercial Interlocutory	8	0.7%	12	1.0%	5	0.4%	0	0.0%
Chancery Final	165	13.9%	177	14.8%	138	10.9%	168	13.1%
Chancery Interlocutory	10	0.8%	7	0.6%	0	0.0%	3	0.2%
High Court Family Final and Interlocutory	32	2.7%	35	2.9%	36	2.8%	36	2.8%
County Court Final	281	23.7%	226	18.8%	244	19.3%	217	17.0%
County Court Interlocutory	7	0.6%	0	0.0%	1	0.1%	0	0.0%
County Court Family Final and Interlocutory	82	6.9%	56	4.7%	83	6.6%	58	4.5%
Employment Appeal Tribunal	50	4.2%	44	3.7%	45	3.6%	38	3.0%
Social Security Commissioners	23	1.9%	6	0.5%	11	0.9%	7	0.5%
Immigration Appeal Tribunal	172	14.5%	25	2.1%	3	0.2%	2	0.2%
Asylum/Immigration Tribunal	26	2.2%	332	27.7%	364	28.8%	400	31.3%
Other	12	1.0%	13	1.1%	23	1.8%	13	1.0%
<b>All Appeals</b>	<b>1,187</b>		<b>1,200</b>		<b>1,266</b>		<b>1,280</b>	

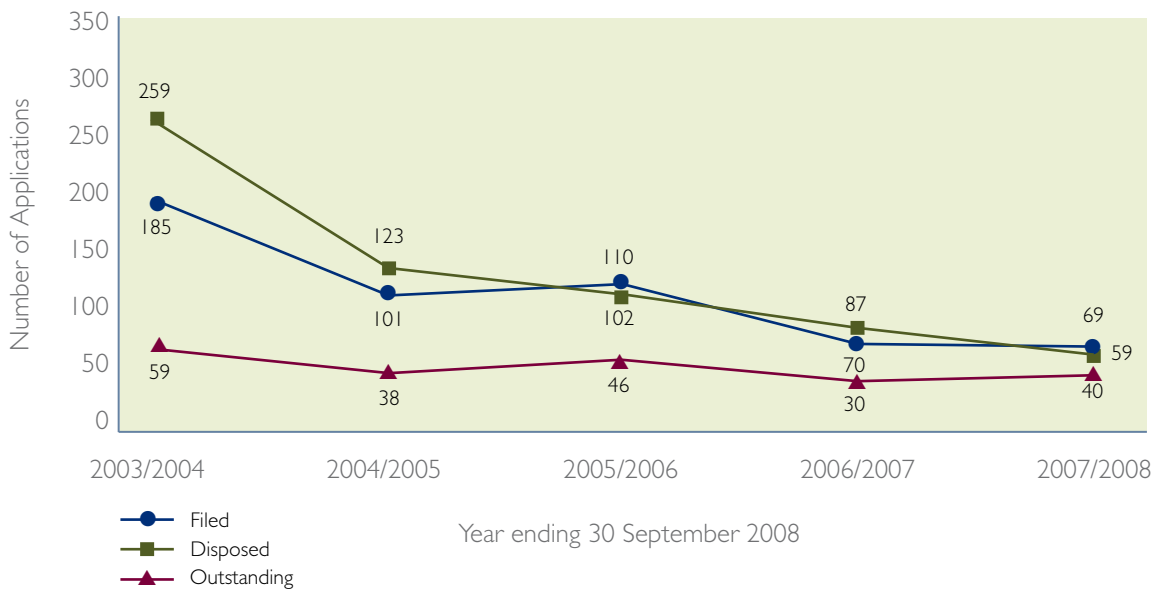
**Table 2 Applications set down for year ending September 2004-2008**

	% OF		% OF		% OF		% OF	
	2004/05	TOTAL	2005/06	TOTAL	2006/07	TOTAL	2007/08	TOTAL
Queen's Bench Final	342	10.1%	309	9.6%	220	7.2%	217	6.4%
Queen's Bench Interlocutory	58	1.7%	50	1.6%	58	1.9%	54	1.6%
Queen's Bench Administrative Court (formerly Crown Office)	357	10.6%	359	11.2%	299	9.7%	464	13.8%
Queen's Bench Commercial Final	118	3.5%	86	2.7%	135	4.4%	112	3.3%
Queen's Bench Commercial Interlocutory	13	0.4%	21	0.7%	10	0.3%	1	0.0%
Chancery Final	401	11.9%	371	11.6%	312	10.1%	369	11.0%
Chancery Interlocutory	26	0.8%	20	0.6%	7	0.2%	3	0.1%
High Court Family Final and Interlocutory	199	5.9%	188	5.9%	174	5.7%	150	4.5%
County Court Final	675	20.0%	607	18.9%	612	19.9%	522	15.5%
County Court Interlocutory	13	0.4%	8	0.2%	0	0.0%	3	0.1%
County Court Family Final and Interlocutory	315	9.3%	253	7.9%	315	10.2%	283	8.4%
Employment Appeal Tribunal	198	5.9%	153	4.8%	181	5.9%	152	4.5%
Social Security Commissioners	34	1.0%	26	0.8%	18	0.6%	11	0.3%
Immigration Appeal Tribunal	410	12.1%	28	0.9%	2	0.1%	1	0.0%
Asylum/Immigration Tribunal	195	5.8%	693	21.6%	700	22.8%	992	29.5%
Other	29	0.9%	37	1.2%	32	1.0%	31	0.9%
<b>All Applications</b>	<b>3,383</b>		<b>3,209</b>		<b>3,075</b>		<b>3,365</b>	

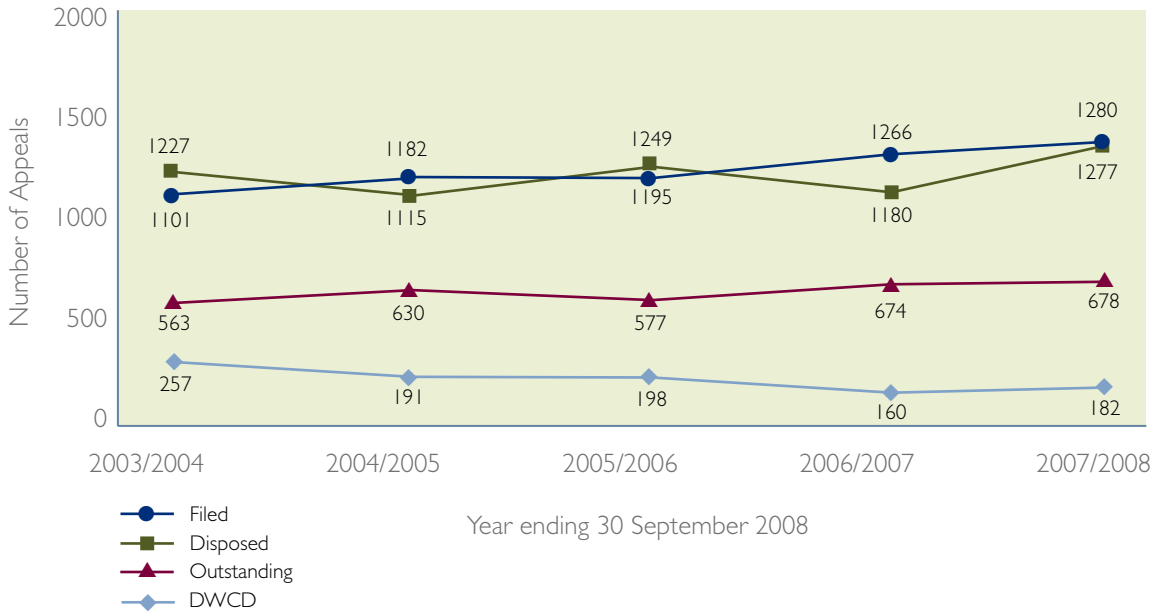
Graph 1 Applications for Permission to Appeal



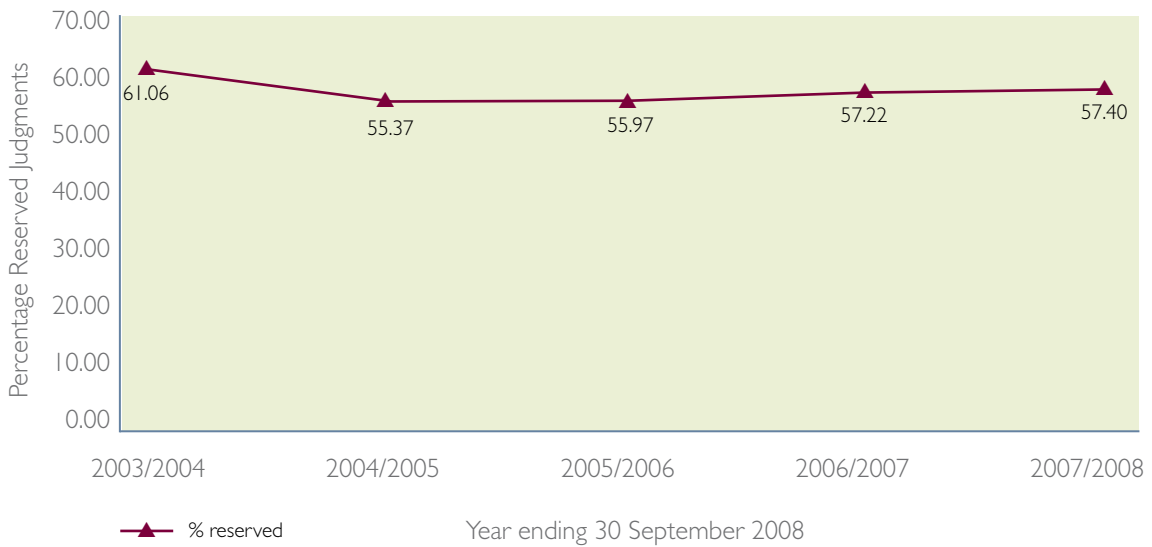
Graph 2 Applications for Permission to Appeal a Decision Refusing Permission to Claim for Judicial Review



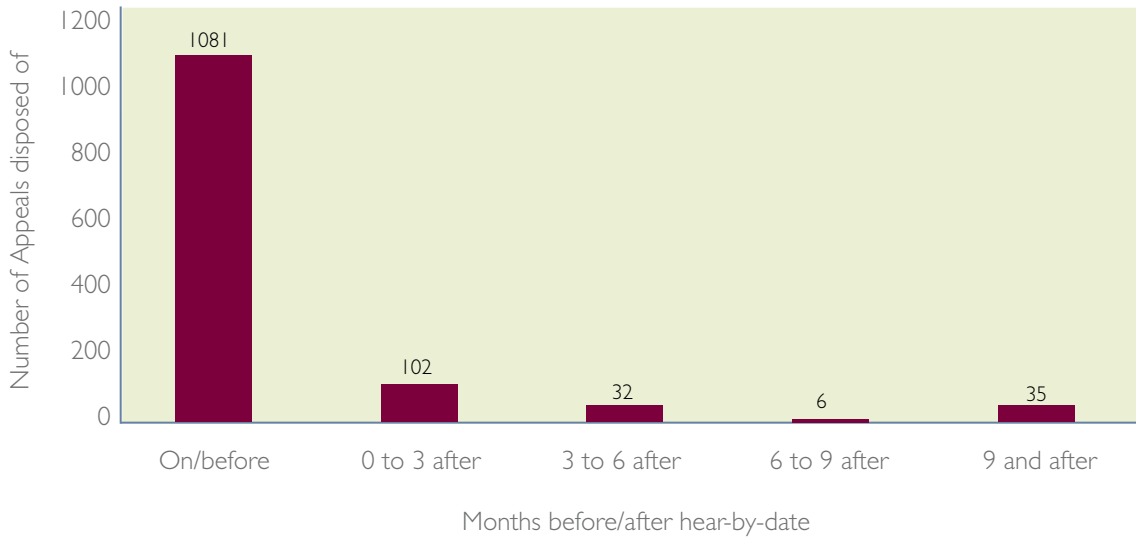
Graph 3 Throughput of Appeals



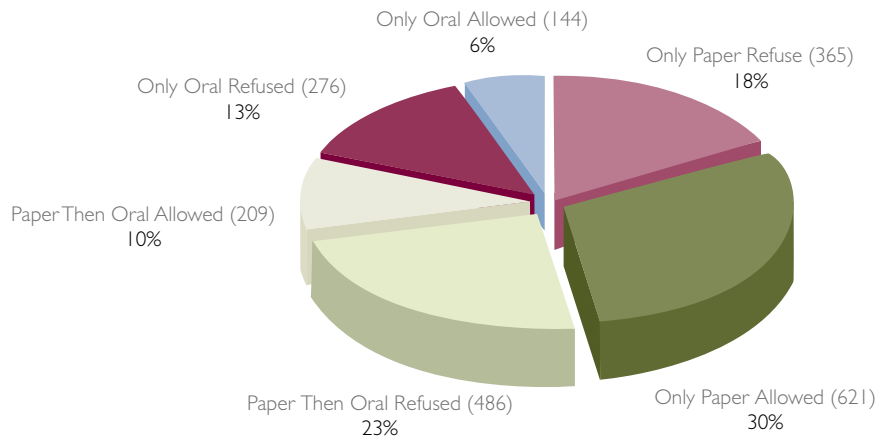
Graph 4 Percentage of Appeal Judgments Reserved



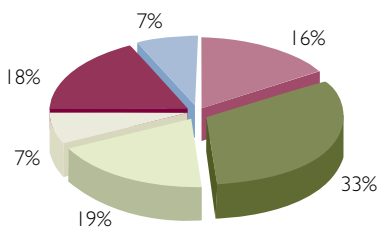
Graph 5 Yearly Disposal of Appeals before/after their hear-by-date (year ending 30 September 2008)



Graph 6 Disposal of Permission to Appeal Applications (year ending 30 September 2008)



Year ending 30 September 2007



## Members of the Court of Appeal 2007 - 2008

### Master of the Rolls and Head of Civil Justice

The Rt. Hon. Sir Anthony Clarke

*Clerk: Mr Graham Lister*

*Legal Secretary: Mr John Sorabji*

*Private Secretary: Mrs Judy Anckorn*

*Personal Secretary: Ms Jackie Sears*

*Administrative Assistant: Ms Christine Damrell*

### Ex Officio Members of the Court

The Rt. Hon. Sir Igor Judge, Lord Chief Justice of England and Wales

*Clerk: Mrs Linda Francis*

The Rt. Hon. Sir Anthony May, President of the Queens Bench Division

*Clerk: Mrs Glenys McDonald*

The Rt. Hon. Sir Mark Potter, President of the Family Division and Head of Family Justice,  
President of the Court of Protection

*Clerk: Mr John Curtis*

The Rt. Hon. Sir Andrew Morritt CVO, Chancellor of the High Court,  
and Vice President of the Court of Protection

*Clerk: Ms Sheila Glasgow*

### Lords Justices

The Rt. Hon. Lord Justice Pill

*Clerk: Ms Linda McCarthy*

The Rt. Hon. Lord Justice Ward

*Clerk: Mrs Melanie Vasilescu*

The Rt. Hon. Lord Justice Thorpe

and Head of international Family Justice and Deputy Head of Family Justice

*Clerk: Mrs Denny M Daly*

The Rt. Hon. Lord Justice Waller

and Vice President CDCA

*Clerk: Ms Barbara O'Shea*

The Rt. Hon. Lord Justice Mummery

*Clerk: Mr Malcolm Harding*

The Rt. Hon. Lord Justice Buxton

Retired September 2008

*Clerk: Mr Graham Lister*

The Rt. Hon. Lord Justice Tuckey

Retired January 2009

*Clerk: Mrs Enid Scott*

## Members of the Court of Appeal 2007 - 2008 (continued)

- The Rt. Hon. Lord Justice Laws  
*Clerk: Mrs Collette Ramsey*
- The Rt. Hon. Lord Justice Sedley  
*Clerk: Mr Kevin Kilbane*
- The Rt. Hon. Lord Justice Latham  
Retired February 2009  
*Clerk: Mr John Pheasant*
- The Rt. Hon. Lord Justice Rix  
*Clerk: Mr Robert Worker*
- The Rt. Hon. Lady Justice Arden DBE  
*Clerk: Mr Graham Catherall*
- The Rt. Hon. Lord Justice Keene  
*Clerk: Mr Robin Cliffe*
- The Rt. Hon. Lord Justice Dyson  
*Clerk: Ms Carlie Thelwell*
- The Rt. Hon. Lord Justice Longmore  
*Clerk: Miss Julie Faint*
- The Rt. Hon. Lord Justice Carnwath CVO  
and Senior President of Tribunals  
*Clerk: Ms Lorraine Pugh*  
*Legal secretary Tribunals: Ms Clare Radcliffe*
- The Rt. Hon. Lord Justice Scott Baker  
*Clerk: Mrs Rajinder Kalsi*
- The Rt. Hon. Lady Justice Smith DBE  
*Clerk: Mrs Pat Rodwell*
- The Rt. Hon. Lord Justice Thomas  
and Vice President of the Queen's Bench Division  
and Deputy Head of Criminal Justice  
*Clerk: Mrs Jean Curtin*
- The Rt. Hon. Lord Justice Jacob  
*Clerk: Mrs Lorraine Bennett*
- The Rt. Hon. Lord Justice Wall  
*Clerk: Ms Julie Baker*
- The Rt. Hon. Lord Justice Maurice Kay  
*Clerk: Mrs Carole Dobbie*
- The Rt. Hon. Lord Justice Hooper  
*Clerk: Miss Ann Lynn*
- The Rt. Hon. Lord Justice Gage  
Retired November 2008  
*Clerk: Ms Jackie Fawcitt*

## Members of the Court of Appeal 2007 - 2008 (continued)

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*Clerk: Mr Paul Aitkenhead*

The Rt. Hon. Lord Justice Moore-Bick  
and Deputy Head of Civil Justice

*Clerk: Ms Michelle Spiteri*

*P.S. Mr Andrew Caton*

The Rt. Hon. Lord Justice Wilson

*Clerk: Ms Jessica Lear*

The Rt. Hon. Lord Justice Moses

*Clerk: Ms Elizabeth Bardin*

The Rt. Hon. Lord Justice Richards

*Clerk: Ms Deirdre Guinane*

The Rt. Hon. Lady Justice Hallett DBE

*Clerk: Ms Sue Middleton*

The Rt. Hon. Lord Justice Hughes

*Clerk: Mr George Grimmett*

The Rt. Hon. Lord Justice Leveson

and Senior Presiding Judge

*Clerk: Ms Kate Arrowsmith*

The Rt. Hon. Lord Justice Lawrence Collins

*Clerk: Mrs Jackie Forshaw*

The Rt. Hon. Lord Justice Toulson

*Clerk: Mrs Linda Dimsdale*

The Rt. Hon. Lord Justice Rimer

*Clerk: Mr Nigel Bourne*

### Retired Lords Justices sitting in 2007-2008

Sir Paul Kennedy

Sir Peter Gibson

Sir Henry Brooke

Sir William Aldous

Sir Robin Auld

Sir John Chadwick

## Judicial Assistants 2007 - 2008

Ruth Metcalfe  
Lynne Douglas  
Daniel Bovensiepen  
Andrew Perfect  
Richard O'Brien  
Shalini Perera  
Abbey Vooght  
Kelly Coutinho  
Thomas Restall  
Rachel Oakeshott  
Mrinalini Sen  
Nadia Whittaker  
Kashif Ashraf  
Daniel Clarke  
Emma Duckett  
Katherine Dunseath  
Erica John-Marie  
Camini Kumar  
Ian McCann  
Yasmin Yasseri  
Jack Anderson  
Katherine Apps  
Rajendra Desai  
Inderjeet Gill  
Rhys Hadden  
Hafsah Masood  
Lucy McCormick  
Molly Mulready-Jones  
James Weale  
Emily Fox  
Rebecca Wright