IN THE COURT OF APPEAL **Appeal Court Ref: A2/2017/2747**
Claim No. C90CF012

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

(HIS HONOUR JUDGE KEYSER QC SITTING AS A HIGH COURT JUDGE)

B E T W E E N : **MAURICE JOHN KIRK** Appellant

- and -

SECRETARY OF STATE FOR JUSTICE 1st Respondent

and

PAROLE BOARD FOR ENGLAND AND WALES 2nd Respondent

and

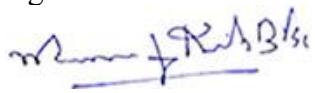
CHIEF CONSTABLE OF SOUTH WALES POLICE 3rd Respondent

APPELLENT'S SKELETON ARGUMENT REGARDING PAPER APPLICATIONS FOR PERMISSION TO APPEAL UNDER CPR 52.5(1)

TIME ESTIMATE: 4 hours

I certify that no hearing date has been fixed for the hearing of this application for permission to appeal.

Signed



MAURICE JOHN KIRK
Appellant

The Appellant seeks the following further ancillary reliefs from the court on this appeal and/or renewed application for permission to apply for Statutory Planning Review:

1. A Declaration that CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only is unlawful and in breach of the principle of the constitutional right of access to the court, not having been authorised by a substantive statute approved of by Parliament.

   Further or in the alternative:

2. A Declaration that CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only is unlawful and/or *ultra vires* of section 1 and/or 2 Civil Procedure Act 1997 and/or section 54(1)(a)-(c) and (3)(a)-(d) Access to Justice Act 1999.

   Further or in the alternative:

3. A Declaration that CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only is unlawful and/or in breach of the principle of *audi alteram partem*, the right to be heard under the Common Law principles of Natural Justice.

   Further or in the alternative:

4. A Declaration that CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only is in breach of the implied right to a court where there is a determination of "civil rights or obligations" under article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998, or any other "convention rights" under schedule 1 of that Act.

LIST OF ISSUES

1. Whether the provision in CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only, is lawful relating to the constitutional right of access to the court, not having been authorised by a substantive statute approved of by Parliament?

2. Whether the provision in CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only, is *ultra vires* of section 1 and/or 2 Civil Procedure Act 1997 and/or section 54(1)(a)-(c) and (3)(a)-(d) Access to Justice Act 1999, providing for the making of court rules in the Court of Appeal?

3. Whether the provision in CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only, is a denial of the principle of *audi alteram partem*, the right to be heard under the Common Law principles of Natural Justice?

4. Whether the provision in CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only, is compatible with the implied right to a court where there is a determination of "civil rights or obligations" under article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998, or any other "convention rights" under schedule 1 of that Act.

PROPOSITIONS OF LAW

CHALLENGE TO *VIRES* OF SI'S

1. Contended that as a matter of law, a collateral challenge may be made in the present application to the legal validity of CPR Pt. 52.5(1) in the context of the present application, rather than a separate application for permission to apply for Judicial Review of the specific provision.

2. It isn't necessary to mount a separate legal challenge to a subordinate Statutory Instrument *per se* to challenge its legal validity solely by Judicial Review, as the *vires* and legality of such measures may be lawfully challenged when their operation is applicable and as the Appellant in this case, disputes the lawfulness of the particular measure in question, being possibly directly affected by its imposition.

3. For instance, a collateral challenge was made to the removal of legal professional privilege in the CPR in General Mediterranean Holdings v. Patel [2000] 1 W.L.R. 272, Tolson J. 291E-H–292A-G.

4. See also in the Ct. of Appeal, Howker v. Secretary of State for Work and Pensions [2003] I.C.R 404, Peter Gibson L.J. 417G.

5. Finally, See R. (Reilly) v. Secretary of State for Work and Pensions [2012] EWHC 2292 (Admin); [2012] WL 3062460, Foskett J. no. 179.

STATUTORY PROVISIONS RELATING TO CPR

1. The general authority for making "Civil Procedure Rules" and related "Practice Directions" in the Court of Appeal is authorised by the Civil Procedure Act 1997.

2. The specific rule making power to make "Civil Procedure Rules" for the Ct. of Appeal, is set out in section 1(1)(a) Civil Procedure Act 1997, *"Civil Procedure Rules"*.

3. The general scope of any such "Civil Procedure Rules" and definitions of "enactment" and "practice directions", are set out in section 9(1) and (2) Civil Procedure Act 1997, *"Interpretation"*.

4. Further provisions as to the scope of any "Civil Procedure Rules" are fully set out in Schedule 1 Civil Procedure Act 1997.

5. Schedule 1, para. 1 Civil Procedure Act 1997, *"Matters dealt with by the former rules."*, gives powers to make new rules regarding matters that were previously covered by the former Rules of the Supreme Court 1965 as amended.

6. Schedule 1, para. 5 Civil Procedure Act 1997, *"Application of other rules",* gives powers to include other rules of court into "Civil Procedure Rules" outside the specific scope of them.

7. Schedule 1, para. 7 Civil Procedure Act 1997, *"Different provision for different cases etc."*, gives powers to make differing rules for different areas and cases and courts generally, and for specialised jurisdictions.

8. Section 54(1)(a)(b)(c) and (3) Access to Justice Act 1999 also provides for a specific rule making power regarding permission to appeal, including the right to impose conditions for the grant of permission, in addition to the general rules already provided for in the Civil Procedure Act 1997.

LEGAL VALIDITY OF CPR PT. 52.5(1)

1. CPR Pt. 52.5(1) currently enables the judge dealing with an application for permission to appeal to dismiss it on the papers without an oral hearing, unless otherwise referred to an oral hearing under CPR Pt. 52n.5(2).

2. It is contended that CPR Pt. 52.5(1), is unlawful and *ultra vires* of the rule making powers contained in both section 1 and/or 2 Civil Procedure Act 1997 and section 54(1)(a)-(c) and (3)(a)-(d) Access to Justice Act 1999.

3. CPR Pt. 52.5(1), currently purports to remove the right to renew to paper refusal of permission to appeal by a single Lord Justice to an oral hearing, which was hitherto a right under the former CPR Pt. 52.3(4),(5), although CPR Pt. 52.3(4A), previously provided that if the application for permission to appeal was considered to be "totally without merit", that right may not be exercised.

4. It is also considered that the same arguments advanced in relation to the present rule may well have been applicable to CPR Pt. 52.3(4A) as well.

5. The present substantive statutory right to an appeal is provided by section 16(1) Senior Courts Act 1981, which also does not authorise removing or cutting down in whole or in part, the constitutional right of access to the court.

6. Regarding applications for permission to appeal all judgments and orders, the authorisation for making rules requiring permission to appeal is specifically found in section 54(1)(a)-(c) and (3)(a)-(d) Access to Justice Act 1999.

7. Those provisions however do not provide any further inhibitions on the right of access to the Ct. of Appeal in respect of any right of appeal otherwise granted by statute, either in whole or in part, nor do the general rule making powers found in section 1 and/or 2 Civil Procedure Act 1997.

8. Section 54(3)(a)-(d) Access to Justice Act 1999 however, does give statutory authority for imposing "the classes of case in which a right of appeal may be exercised only with permission", the court or courts which may give permission" and most importantly, "any considerations to be taken into account in deciding whether permission should be given", along with "any requirements to be satisfied before permission may be given", which

could be taken as an indicator that likewise, it was never Parliament's intention to either restrict or cut down the right to an oral permission hearing before the Ct. of Appeal.

9. Section 54(1)(a)-(c) and (3)(a)-(d) Access to Justice Act 1999 therefore only has the effect of cutting down the previous unrestricted right of appeal to the Ct. of Appeal from the High Court previously provided by section 16 Supreme Court Act 1981 (as then entitled) relating to appeals from the High Court and any other relevant statutory rights of appeal, such as the County Court in section 77(1) County Courts Act 1984.

10. The constitutional right of access to the Ct. of Appeal is only barred by statute under section 18(1)(c) Senior Courts Act 1981 if either there is a provision of "that Act or another Act" which makes a judgment or order of the lower court "final", but that isn't the case with CPR Pt. 52.5(1), as it is not an "Act" but only subordinate legislation.

11. It is therefore contended that no constitutional right of access to the Ct. of Appeal may be barred unless that has been provided for under any of the provisions of section 18(1) Senior Courts Act 1981.

12. CPR Pt. 52.5(1), should in order to be a lawful rule, merely mirror those requirements regarding granting permission to appeal in section 54(1)(c) Access to Justice Act 1999, but go no further.

13. There also appear to be no other statutory provisions authorizing rules of court to be made regarding the removal of the right to apply for oral hearings in support of applications for permission to appeal under either the Civil Procedure Act 1997, Access to Justice Act 1999 or sections 84(5)(b) and (5A)(b), section 85(1)(a)(b) or section 87(1), (2) Senior Courts Act 1981.

14. Section 54(1)(a)(b)(c) and (3) Access to Justice Act 1999 also provides for a specific rule making power regarding permission to appeal, including the right to impose conditions for the grant of permission, in addition to the general rules already provided for in the Civil Procedure Act 1997.

15. Therefore, it is contended that CPR Pt. 52.5(1), is unconstitutional, unlawful and *ultra vires* of sections 1(1)(a) and schedule 1 rules 1-5 Civil Procedure Act 1997, section 54(1)(c) Access to Justice Act 1999 and sections 84(5)(b) and (5A)(b), section 85(1)(a)(b) or section 87(1) and (2) Senior Courts Act 1981.

PRINCIPLES OF REMOVAL OF ACCESS TO COURT BY STATUTE

1. There are many authorities regarding proper access to courts unless the right is specifically removed by statute without any ambiguity.

2. See *Re* Boaler [1915] 1 K.B. 21, Scrutton L.J. 36, 39, 41, where the principles were overwhelmingly applied.

3. There is a presumption that Parliament cannot exclude an individual's recourse to the courts unless provisions that purport to do so are clear and unambiguous, see Maxwell on Interpretation of Statutes, 116; Cross on Statutory Interpretation, p. 166 and Bennion, Statutory Interpretation, 718.

4. See also, R. & W. Paul Ltd. v. Wheat Commission [1937] 1 A.C. 139, Lord Macmillan 153, Lee v. The Showmen's Guild of Gt. Britain [1952] 2 Q.B. 329, Romer L.J. 354, Pyx Granite Ltd. v. Ministry of Housing and Local Government [1960] A.C. 260, Viscount Simonds 286.

5. Both Lee v. The Showmen's Guild of Gt. Britain [1952] 2 Q.B. 329 and Pyx Granite Ltd v. Ministry of Housing and Local Government [1960] 1 A.C. 260, considered and approved of in Commissioners of Customs and Excise v. Cure and Deeley Ltd. [1962] 1 Q.B. 340, Sachs J. 357-358.

6. See also Raymond v. Honey [1982] 1 A.C. 756, Lord Bridge at 14G, R v. Secretary of State for Home Department *ex p.* Ruddock [1987] 1 W.L.R. 1482, Taylor J. 1492F-G,

7. Also see R v. Lord Chancellor *ex p.* Witham [1998] 1 Q.B. 575, Laws L.J. 579H, 580A, 581E-H to 583A-C, 584A-F, 585G-H, 586A, 586G-H, Rose J. 586H, 587A-B.

8. See also R v. Secretary of State for the Home Department *ex p.* Pierson [1998] 1 A.C. 539, Lord Browne-Wilkinson, 573G-H, 574A; R. (Daly) v. Secretary of State for the Home Dept. [2001] 2 A.C. 532, Lord Bingham, 537H, 538A.

9. For approval of the "*Witham*" principle, see R v. Secretary of State for the Home Department *ex p.* Pierson [1998] 1 A.C. 539, Lord Browne-Wilkinson 575A-D.

10. Also, see Wiseman v. Borneman [1971] 1 A.C. 297, Lord Reid, 308B-G, Lord Guest, 310G-H, 311B-C, Lord Wilberforce, 317, 318, where it was held that the right to *audi*

alteram partem and "Natural Justice" and thereby audience before a tribunal, whether regarding a preliminary or final determination, could only be clearly removed by statute.

11. It is also clear that Common Law rights may only be removed by Parliament and not the courts, see R. v. Secretary of State *ex p.* Pierson [1998] A.C. 539, Lord Browne-Wilkinson, 573G-H–575A-C; R. v. Secretary of State for the Home Dept. *ex p.* Simms [2000] 2 A.C. 115, Lord Hoffmann, 131E-G; General Mediterranean Holdings SA v. Patel [2000] 1 W.L.R. 272, 292A-G, 293E-F, 295C-D, approving R. v. Secretary of State for the Home Dept. *ex p.* Leech [1994] Q.B. 198, Steyn L.J. 209G-H, 211G-H, 212A-D.

12. See further in Ahmed v. HM Treasury [2010] 2 A.C. 534, Lord Hope JSC, 626E-G, no. 47, 631B-D, no. 61; Al Rawi v. Security Service [2012] 1 A.C. 531, Lord Dyson JSC, 581B, G-H, 582A-B, nos. 44, 47-48, 585F-H, 586C-D, nos. 67, 69, Lord Hope JSC, 586E-G, no. 71, 587F-G, no. 74, Lord Brown JSC, 588C-E, no. 78, Lord Phillips JSC, 619F, no. 192.

13. Lord Hoffman's statements in R. v. Secretary of State for the Home Dept. *ex p.* Simms [2000] 2 A.C. 115, were recently approved in R. (Miller and anor.) v. Secretary of State for Exiting the EU [2017] 2 W.L.R. 583, Lord Neuberger JSC, Lady Hale JSC, Lord Mance JSC, Lord Kerr JSC, Lord Clarke JSC, Lord Wilson JSC, Lord Sumption JSC, Lord Hodge JSC, 644H–645A-B, 650B, nos. 87, 108.

14. Access to the court as a "fundamental right" is enshrined in article 29 Magna Carta 1225, "To none will we delay right or justice", recently referred to in Belhaj v. Straw [2017] 2 W.L.R. 456, Lord Mance JSC, 513F-H, no. 98, Lord Sumption JSC, 578D-F, no. 272.

15. The Supreme Court has also recently held that the Common law rules of access to the court are still in force, and any inhibition on that is unlawful if it will have the effect if persons are effective prevented from access to justice, see R. (Unison) v. Lord Chancellor [2017] UKSC 51, [2017] 3 W.L.R. 409, Lord Reed JSC with the concurrence of the other JSCs, 431D-H–438A-G, 438H–442S, nos. 65-85, 86-104.

16. It is contended therefore that CPR Pt. 52.5(1), in so far as it purports to deny absolute access to the right to an oral hearing for an application for permission to appeal hasn't therefore been authorised by clear and unambiguous words by statute, and cannot therefore constitutionally cut down an Appellant's constitutional right of access right of

access to the Ct. of Appeal given by section 16(1) Senior Courts Act 1981 and is thereby rendered unlawful and *ultra vires*.

REQUIREMENT FOR HEARINGS TO BE HEARD IN OPEN COURT IN PUBLIC UNDER COMMON LAW

1. Contended that all litigants before the courts have a Common Law right to be granted an oral hearing, see R. (Osborn) v. Parole Board [2014] A.C. 1115.

2. For the applicability of overall Common Law principles of fairness relating to oral hearings, see R. (Osborn) v. Parole Board [2014] A.C. 1115, Lord Reed JSC, 1152G-H, 1153A-C, no. 81-82.

3. It is clear that detailed criteria should be applied, see R. (Osborn) v. Parole Board [2014] A.C. 1115, Lord Reed JSC, 1153G-H, nos. 85-86.

4. It also is clear also that prospects of success are not the determinative criteria applicable, see R. (Osborn) v. Parole Board [2014] A.C. 1115, Lord Reed JSC, 1154C-E, nos. 88-89, 1155D-E, no. 95.

5. In relation to the final nature of a refusal of refusal of permission to appeal by analogy with the single member of the Parole Board refusing an oral hearing, see R. (Osborn) v. Parole Board [2014] A.C. 1115, Lord Reed JSC, 1155D-E, no. 95.

6. It appears that it isn't necessary to determine the issue of whether or not to grant an oral hearing under article 6(1) ECHR as incorporated in schedule 1 Human Rights Act 1998 as the Common Law still runs simultaneously to the Human Rights Act 1998, see R. (Osborn) v. Parole Board [2014] A.C. 1115, Lord Reed JSC, 1156F-G, no. 101.

7. For the value of oral hearings regarding the importance of being able to renew applications for permission to appeal to an oral hearing, see John v. Rees [1970] Ch. 345, Megarry J. p. 402; Sengupta v. Holmes [2002] EWCA Civ 1104; [2002] WL 1446248, Laws L.J. no. 38.

8. These *dicta* regarding the importance of oral argument being central to our adversarial judicial system were stated in the context of the same judge who had previously refused permission to appeal on the papers sitting on a renewed application for permission to appeal or the substantive appeal. Of particular importance is the opportunity to persuade

the judge to change his mind or bring new arguments or clarify previous ones if they have been misunderstood.

9. The Common Law rule also was that all proceedings should be held in public unless special circumstances apply; see Scott v. Scott [1913] A.C. 417, Viscount Haldene, 435, 437-438, Lord Halsbury, 440, 445.

10. This fundamental principle was approved of in Al Rawi v. Security Service [2012] 1 A.C. 531, Lord Hope, 542H, 543A-B, nos. 17, 21.

11. Finally, see R. (Hammond) v. Secretary of State for the Home Dept. [2006] 1 A.C. 603, where it was held that where article 6(1) ECHR convention rights concerned, oral hearings should be held, and that schedule 2 para. 11(1) Criminal Justice Act 2003 was incompatible with the Human Rights Act 1998, by denying completely the right to the possibility of any oral hearing at first instance.

12. See R. (Hammond) v. Secretary of State for the Home Dept. [2006] 1 A.C. 603, Lord Bingham, 1235-1239 nos. 10-15 for review of some ECHR authorities relating to oral hearings, and see in particular, no. 13 relating to non-criminal cases and article 6(1).

13. For consideration of oral hearings regarding article 6(1) E.C.H.R convention rights, see R. (Hammond) v. Secretary of State for the Home Dept. [2006] 1 A.C. 603, Lord Bingham, 615A-G, no. 16.

THE RULES OF NATURAL JUSTICE AND THE RIGHT TO BE HEARD UNDER COMMON LAW REGARDING APPLICATIONS FOR PERMISSION TO APPEAL

1. There is nothing in the provisions of section 16(1) Senior Courts Act 1981 or section 54 Access to Justice Act 1999 which specifically and unambiguously removes an appellant's right to be heard in support of any application for permission to appeal.

2. Contended that CPR Pt. 52.5(1) regarding a determination of an application for permission to appeal on the papers only, thereby denying a right to be heard, constitutes a denial of Natural Justice at Common Law by an appellant being denied "*audi alteram partem*".

3. See University of Ceylon v. Ferodo [1960] 1 W.L.R. 223, Lord Jenkins 231-232; Kanda v. Government of Malaya [1962] 1 A.C. 322, Lord Denning 338.

6. See also Wiseman v. Borneman [1971] 1 A.C. 297, Lord Reid 308C, Lord Guest 310G-H, where it was held that the right to Natural Justice and an audience before a court could only be removed by statute, and Ridge v. Baldwin [1964] 1 A.C. 40, where complete hearing before Watch Committee denied to the Chief Constable of Sussex.

7. See Ridge v. Baldwin [1964] 1 A.C. 40, Lord Reid 68-80, Lord Morris, 122, 123, 124, Lord Hodgson 132, 133, for a review of previous decided cases and approval of Hopkins v Smethwick Local Board of Health [1890] 24 Q.B.D. 712 at 69, Wills J.

8. This analysis subsequently reviewed and fully approved in Chief Constable of North Wales Police v. Evans [1982] 1 W.L.R. 1155, Lord Brightman 1174B-H, 1175A-C.

9. See further regarding the principles of *audi alteram partem* in Ridge v. Baldwin [1964] 1 A.C. 40, Lord Morris 113-114, 121,

10. Also, it is contended that before any adverse order is made against a party, that party should have the right to be heard, and it is contended that this principle is applicable to a refusal of permission to appeal that is final in effect.

11. See also R v. Central Criminal Court *ex p.* Boulding [1984] 1 Q.B. 813, head note, 813, 814, Watkins L.J. 820H, 821A.

12. See also Raja v. van Hoogstraten [2004] 4 All E.R. 793, Chadwick L.J. 831C-F, no. 94, 835J, 836A-B, no. 106, where it was held to be a breach of Natural justice to make a committal order without the defendant being heard, and not proper to make it in his absence on the basis that had he been present, he would have had nothing useful to say.

13. See also Polanski v. Condé Nast Publications Ltd. [2005] 1 W.L.R. 637, Lord Nicholls, 642C-F, nos. 18-19, and in particular, 644E-F, no. 31, Lord Hope, 650B-C, no. 61, where a fugitive Claimant entitled to give evidence *via* video link to support his claim to justice.

COMPLIANCE WITH THE HUMAN RIGHTS ACT 1998

1. It is contended that an application for permission to appeal should be determined at an oral hearing in order to comply with the Human Rights Act 1998.

2. Many applications for permission to appeal may involve the determination of the appellant's "civil rights and obligations" and other "convention rights" as defined under section 1(1)(a)-(c) Human Rights Act 1998, under article 6(1), 8(1), 9, 10(1) ECHR as incorporated in schedule 1 Human Rights Act 1998.

3. As such, there should be an oral hearing in "public" for a "determination of" the appellant's civil rights and obligations" "by an independent and impartial tribunal established by law" under article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998.

4. Where the right of appeal is granted by statute however, such as under section 16(1) Senior Courts Act 1981, then the respective CPR appeal procedures should guarantee article 6(1) ECHR safeguards; notwithstanding that article 6(1) ECHR by itself may not guarantee the right of appeal in civil cases *per se*, see Delcourt v. Belgium [1979-80] 1 E.H.R.R. 1.

5. In addition, it is also unlawful for a "public body" to act in a manner that is incompatible with a "convention right" under section 6(1) Human Rights Act 1998.

6. The phrase "public authority" includes a "court or tribunal" under section 6(3)(a) Human Rights Act 1998.

7. It is contended that an appellant is therefore entitled to rely on the convention right under article 6(1) ECHR or any other relevant "convention rights" applicable in any particular case under section 7(1)(a)(b) Human Rights Act 1998.

8. The right to obtain any redress for a breach or possible breaches of "convention rights", as relating to the current claim and application for permission to appeal, is also specifically provided by section 8(1) of that Act.

9. Therefore, it may be necessary to hold oral hearings where proceedings have been issued under the Human Rights Act 1998 for breach of "convention rights", in order to "grant such relief or remedy, or make such order, within its powers as it considers just and appropriate" under section 8(1) Human Rights Act 1998, and although not specifically incorporated into UK law, the right to an "effective remedy" under article 13 ECHR.

10. It is contended therefore, that claims involving breaches of "convention rights" under the Human Rights Act 1998, or indeed claims were there is a "determination of civil rights and obligations" under article 6(1) ECHR may also fall into a special category and even if CPR Pt. 52.5(1) were upheld as being validly applicable to other categories of applications for permission to appeal, they should be specifically exempted from that provision.

THE IMPLIED RIGHT OF ACCESS TO A COURT UNDER ARTICLE 6(1) ECHR

1. CPR Pt. 52.5(1) may be in breach of article 6(1) ECHR as incorporated under schedule 1 Human Rights Act 1998, as judgments of ECHR show that there should be no impediment to the implied right of access to a court in a manner that impairs the "very essence" of such right of access, see Golder v. UK [1979] 1 EHRR 524, 535, no. 34.

2. For application of this principle, see also Philis v. Greece [1991] 13 EHRR 741; Tinnelly & Sons Ltd. v. UK [1998] 27 EHRR 249; Fayed v. UK [1994] 18 EHRR 393; Powell v. UK 12 EHRR 335.

3. The right of access to a tribunal is not absolute under article 6(1) ECHR, but this principle must be proportionate and "necessary in a democratic society" to satisfy the procedural guarantees of article 6(1) and right of "freedom of expression" under article 10(1) and the measures must be "prescribed by law".

4. See Ashingdane v. UK [1985] 7 EHRR 528, 547, no. 57; Lithgow v. UK [1986] 8 EHRR 329, 394, no. 194; Tolstoy v. UK [1995] 20 EHRR 442, 475, no. 59; Stubbings v. UK [1997] 23 EHRR 213, 227, no. 52; Société Levage Prestations v. France [1997] 24 EHRR 351, 365, no. 40.

5. The right to an oral hearing is however inherent in article 6(1) ECHR, see Lobo Machado v. Portugal [1997] 23 EHRR 79, 98, no. 31.

6. Any hearing that involves application of article 6(1) ECHR, regarding consideration of "civil rights and obligations", must be heard in open court in public.

7. The issue of holding hearings that determine "civil rights" of parties in public under article 6(1) ECHR was considered in Scarth v. UK [1999] App. no. 33745/96, 22/07/99. It was held that in particular circumstances of that case, that holding of arbitration

hearings in County Court under then Order 19 CCR 1981 in chambers breached article 6(1) ECHR.

8. It is also essential and inherent principle implied by article 6(1) ECHR that all parties must be given equal opportunity of presenting their own case and adducing evidence, see Dombo v. Netherlands [1994] 18 EHRR 213, 229-230, no. 33.

9. The principle regarding the right to be heard is also consistent with principle of "equality of arms", see De Haes and Gijsels v. Belgium [1998] 25 EHRR 245, 56-57, no. 53.

10. See Osman v. UK [2000] 29 EHRR 245, 315-317, nos. 147-154, for the most recent example of a restriction of access to a court on policy grounds being in breach of article 6 ECHR.

11. ECHR jurisprudence under article 6(1) ECHR, has also upheld right to oral hearings unless there may exist "exceptional circumstances", and this would appear to be inapplicable to applications for permission to appeal to the Ct. of Appeal in general.

12. It is also contended that any restriction of the right to an oral hearing for applications for permission to appeal to the Ct. of Appeal wouldn't qualify for "exceptional circumstances" under ECHR jurisprudence in any event, and there is no authority for such a proposition.

13. What may be "exceptional" depends on each case, and it is contended that for this to apply for applications for permission to appeal to the Ct. of Appeal would require legislation expressly stating this to be case with some convincing criteria applicable.

14. For a review of principles, see Ekbatani v. Sweden [1988] 13 EHRR 154, 508-511, nos. 23-33 and in particular, 511, nos. 31-33. See also Fredin v. Sweden (No. 2) App. 20/1993/494, 25/01/94, nos. 21-22; Stallinger v. Austria [1998] 26 EHRR 81, 97, nos. 50-51; Salomonsson v. Sweden App. 38978/97, 12/11/02, nos. 34-40, Lundevall v. Sweden App. 38629/97, 12/11/02, nos. 34-40; Miller v. Sweden [2006] 42 EHRR 51, 1164, no. 29.

15. Therefore, it is contended that ECHR jurisprudence under article 6(1) ECHR gives a legal presumption in favour of an oral hearing and that CPR Pt. 52.5(1) is clearly at odds with this fundamental principle, and should be declared as such.

THE RIGHT TO BE HEARD UNDER ARTICLE 6(1) ECHR

1. Contended that an appellant seeking permission to appeal to the Ct. of Appeal must be given the opportunity of being heard under article 6(1) ECHR, before any adverse order such as a final refusal of permission to appeal is made against him, see Hooper v. UK [2005] 41 EHRR 1, 8-9, nos. 29-31, relating to requirement for being heard before a binding over order is made.

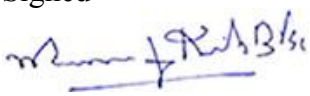
2. It is contended therefore if it is necessary for a Defendant to be heard before the making of a binding over order, it must equally be required that an appellant seeking permission to appeal to Ct. of Appeal should be heard before any final order made refusing permission to appeal is made.

3. This is essential, as no further appeal lies from a refusal of permission to appeal to the Ct. of Appeal, see section 54(4) Access to Justice Act 1999.

4. Such an application may or may not involve a "determination of civil rights and obligations" under schedule 1 article 6(1) Human rights Act 1998, depending on particular circumstances and nature of the underlying proceedings and judgment that are proposed to be appealed.

Dated 7th November 2017

Signed



MAURICE JOHN KIRK
Appellant

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

CARDIFF DISTRICT REGISTRY

(HIS HONOUR JUDGE KEYSER QC SITTING AS A HIGH COURT JUDGE)

Appeal Court Ref: A2/2017/2747
Claim No. C90CF012

B E T W E E N:

MAURICE JOHN KIRK Appellant

- and -

SECRETARY OF STATE FOR JUSTICE
1st Respondent

and

PAROLE BOARD FOR ENGLAND AND WALES
2nd Respondent

and

CHIEF CONSTABLE OF SOUTH WALES POLICE
3rd Respondent

APPELLENT'S SKELETON ARGUMENT REGARDING PAPER APPLICATIONS FOR PERMISSION TO APPEAL UNDER CPR 52.5(1)

Maurice John Kirk,
Flat 1,
21A Goldhurst Terrace,
London
NW6 3HB
Appellant