

Evaluation of the Impact of the Reforms in the Court Of Appeal (Civil Division)

by
Joyce Plotnikoff and Richard Woolfson

Executive Summary

This study looked at the impact of the changes to the Court of Appeal (Civil Division) following the review conducted by Sir Jeffery Bowman in September 1997.

A combination of approaches was used in carrying out the study: 'shadowing' of staff in the Civil Appeals Office (CAO); examination of the use of the RECAP computer system by the CAO; interviews with administrative staff, office lawyers, judiciary and others involved in the operation of the civil justice system; surveys of unrepresented litigants and solicitors; requests for statistical reports to be generated from RECAP; and purpose-designed data collection exercises to obtain quantitative data on specific aspects of the Court's operations.

The Court's workload and performance changed as follows after the introduction of the new rules:

- The number of interlocutory appeals from County Courts and the Queen's Bench and Chancery Division fell sharply.
- Final appeals set down increased by nearly a quarter overall although the number arising from the County Court fell slightly.
- The number of final appeals disposed of was unchanged overall but those from the County Court fell by a third.
- The number of pending appeals fell and a greater proportion of those disposed of were allowed (32% in 2001 compared with 27% in 1999). Applications for permission to appeal followed a similar pattern.
- The proportion of all applications set down that were for permission to appeal rose slightly.
- In the first two years, there were 704 applications for permission to appeal a decision that was already made on appeal. A third were granted permission and half the subsequent appeals were successful.
- Hearing lengths were largely unchanged despite the weightier nature of the cases before the Court.
- The times for all key stages in the processing of appeals and applications fell. The age of cases at disposal also showed a downward trend.
- The proportion of reserved judgments rose to 54% in 2001/02 compared with 37% in 1997/98.

Most of the paperwork presented at the Registry's public counter or received through the mail is flawed in some respect. Identifying the errors and ensuring they are rectified accounts for a formidable amount of staff time.

The most common problems included attempts to set down an appeal where the Court of Appeal had no jurisdiction and failure to obtain the order of the lower court or a transcript of its judgment within the time limit for filing the appeal.

Litigants advised by the Citizens Advice Bureau at the Royal Courts of Justice (CAB at the RCJ) had great difficulty in understanding the appellate routes. The problems were compounded because

lawyers, court staff and judges in other parts of the civil justice system also had a poor grasp of jurisdictional issues.

Most unrepresented litigants found the procedures hard or impossible to understand. However, among the small number of respondents to our surveys, a majority of experienced solicitors' firms felt that the new appellate procedures and appellate routes were simpler than before.

Most judicial interviewees admitted that they were insulated from the problems litigants experience in complying with the procedural aspects of the new rules. Some Lords Justices were aware of problems with the new appellate routes. Only one thought the new routes were simpler than before.

Lawyers within the CAO were clear that the new rules were inflexible and that the objective of simplifying procedure had not been achieved. Lack of understanding of the rules was common among lower courts and solicitors as well as unrepresented litigants.

There is a daunting range of information about the appeals process which litigants can consult but not all of it accurately reflects procedure in the Court of Appeal. Information in leaflets and on the Court Service website is presented as a catalogue instead of leading users to the information they require through decision trees or interactive questions.

Clients of the CAB at the RCJ are generally happy with the service they receive from staff in the CAO.

The extension of the requirement for permission to appeal was the most widely welcomed aspect of the reforms among Lords Justices. It was generally acknowledged to be effective at filtering out unmeritorious appeals.

A majority of Lords Justices favoured extending the time limit of 14 days in which to file an appeal or application for permission to appeal and standardising the time allowed across different types of case.

Some Lords Justices expressed concern about differential treatment of represented and unrepresented litigants in respect of applications for permission to appeal but most felt the practice was justified.

There were objections on practical grounds to allowing litigants to request a hearing at a regional sitting of the Court of Appeal.

Lords Justices were generally sceptical about any claim that the new rules had reduced the cost of appellate litigation.

Judges generally thought that the reforms had resulted in better use of their time although the pressure on them had increased as a result.

Supervising Lords Justices saw their role as mainly reactive. They expressed little enthusiasm for the managerial tasks described in the Bowman report. They nevertheless felt that the creation of the role had been worthwhile.

The most valuable task undertaken by judicial assistants was preparing bench memoranda in cases involving unrepresented litigants. Poor remuneration made it difficult to recruit and retain judicial assistants of the appropriate calibre.

A dedicated clerk was regarded as essential by most Lords Justices, particularly those who were not computer literate.

Many changes have been made to the RECAP computer system used in the CAO to reflect the new environment but much more needs to be done to provide the full range of case management facilities recommended in the Bowman report.

Very limited use has been made of video and telephone links for conducting hearings. The Master of the Rolls is keen that more use should be made of these technologies.

The office within the High Court set up to deal with the appellate work transferred to that court under the new rules was poorly resourced in comparison with the CAO.

Appellate practice in the High Court differed in a number of ways from that in the Court of Appeal and this was a potential source of confusion for litigants.