

Court of Appeal
Permission to Appeal
Shadow Exercise

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Background

1. Figures produced by the Court of Appeal have demonstrated that a high proportion of applicants who are refused permission to appeal at the paper stage go on to renew their application and are refused again. In addition it is possible that a number of applicants who are initially dealt with orally could be dealt with on paper, with saving of time and resources, if it were not for the likelihood that they would renew.
2. Consideration is therefore being given to a change in the Civil Procedure Rules so that on an application for permission to appeal submitted for consideration on the basis of the papers alone the Court should be enabled to:
 - (a) grant permission – whether on all grounds or some;
 - (b) refuse permission – but preserve the right to an oral renewal;
 - (c) adjourn to an oral hearing – with or without notice;
 - (d) refuse permission – and order that there be no right to renew to an oral hearing.
3. The proposed change would provide the court with discretion to allocate only an appropriate amount of court resources to cases that were hopeless. This would enable the Court to deal with cases in a way that is consistent with the overriding objective of dealing with cases justly.
4. The Court would only exercise this discretion to order that there be no right to renew where the application disclosed no ground in law or was otherwise completely hopeless. It is not intended that oral reconsideration would automatically be denied to those refused on paper.
5. The Court lacks the data at present to counter an argument that the introduction of such a regime could prejudice the interests of some applicants unfairly, particularly litigants in person, who may be better at expressing themselves orally rather than on paper. In order to obtain the information needed to rebut this argument, it was decided in January 2004 to run a shadow exercise for that Term. Family cases were *not* included in the exercise.

Shadow Exercise Procedure

6. All non-Family PTAs were sent to a Lord/Lady Justice on paper - with a Bench Memorandum where the appellant was unrepresented.
7. In cases where the applicant was unrepresented and had not requested that his case be dealt with on the papers, the LJ received a form asking the single question: ‘Do you consider this application to be ‘totally devoid of merit?’ [“TDM”] The answer had no effect on the course of the case and was for reference purposes only. The decision was not disclosed to the parties.
8. In cases which would normally be dealt with on the papers, and in urgent cases involving an unrepresented applicant, the LJ received the normal form of order (granted/refused/adjourned), together with the form (for completion where the application has been refused) asking the single question: ‘Do you consider this application to be ‘totally devoid of merit?’

9. Those cases which a LJ designated as totally devoid of merit were not listed before the LJ who made that assessment. The LJ hearing the oral application was not aware of the preliminary assessment.
10. At the oral hearing, the Court was again asked, when refusing an application, to assess whether the application itself (not the reasons for renewing that application) was totally devoid of merit. An Associate completed a form recording that assessment.
11. The term ‘totally devoid of merit’ is taken from the judgment in ISMAIL ABDULLAH BHAMJEE v DAVID FORSDICK and OTHERS (No 2) [2003] EWCA Civ 1113. It was to be interpreted in line with the Court’s power to strike out a statement of case under CPR Part 3.4 (2) –

“The court may strike out a [statement of case] if it appears to the court –

(a) that the [statement of case] discloses no reasonable grounds for bringing or defending the claim;

(b) that the [statement of case] is an abuse of the court’s process”

For “statement of case” read “notice of appeal.”

12. An objective assessment was required in each case. If permission was being sought for a second appeal, the test was whether the notice of appeal disclosed no reasonable grounds for bringing a second appeal.
13. Members of the Court were asked to treat these assessments in exactly the same way as they would if they were not involved in a shadow exercise.
14. The TDM forms completed during the shadow exercise included information about the name of the LJ, case reference, case type, parties, fee exemption or remission status, the TDM evaluation and the reason for the decision. The completed forms were collected by the Civil Appeals Office and retained in the Office until the end of the exercise. The forms were then handed over to the researchers and the information was entered on to an SPSS database for analysis.

Results

15. In the course of the shadow exercise some 497 TDM forms were completed by the judiciary. These forms related to 385 cases. Of the 497 forms collected, 372 TDM evaluations had been made on the papers and 125 TDM evaluations had been made on the basis of an oral hearing (including 13 TDM forms where no paper evaluation was available).

Case type

16. The most common case type categories for which forms were completed were immigration and asylum, appeals from the Employment Appeal Tribunal, landlord and tenant and personal injury (Table 1).

Table 1. Most common case type categories for which forms completed

CASETYPE	% of total	Total N
Immigration/Asylum	24%	91
Employment Appeal Tribunal	10%	36
Landlord and Tenant	9%	33
Personal injury	9%	32
General Procedure	6%	24
Judicial Review	5%	21
General Commercial	4%	16
General contract	4%	14
Land	3%	12
Professional Negligence	3%	10
Environment/Planning	3%	10
Patents	2%	8

17. The most common case types involving litigants in person were immigration and asylum; employment appeals; general procedure; and landlord, tenant and possession (Table 2).

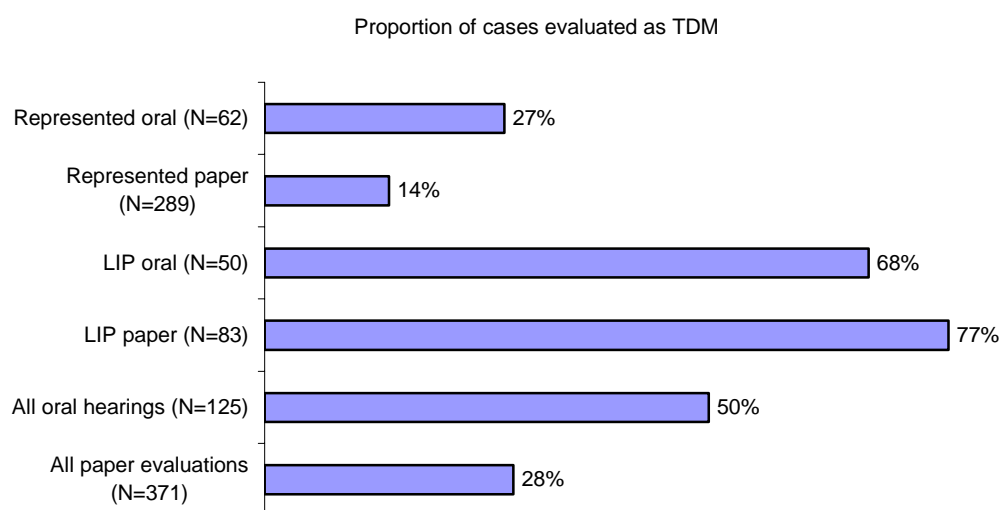
Table 2. Case types of cases involving litigants in person

Case type	%	N
Immigration and Asylum	23	19
Employment Appeal Tribunal	21	17
General Procedure	13	11
Landlord, Tenant and Possession	10	8
Social Security	7	6
Land	7	6
Judicial Review	6	5
Insolvency	5	4
Personal injury	1	1
Professional negligence	1	1
Patents	1	1
General contract	1	1
Company	1	1
CPR	1	1
Environment/planning	1	1
Total	100%	83

Overall proportion of cases judged to be TDM

18. Looking at *oral* hearings in general, half were judged to be TDM and half were judged not to be TDM. Looking only at evaluations on the papers, some 28% of cases were judged to be TDM and 72% of cases were judged to be not TDM (Figure 1).
19. However, there were significant differences in evaluations depending on whether or the applicant was a litigant in person. At *oral hearings* 68% of cases involving LIPs were evaluated as TDM as compared with 27% of cases not involving a LIP. Some 77% of paper evaluations involving litigants in person were marked as TDM as compared with only 14% of paper evaluations involving represented parties.

Figure 1. Evaluations of TDM on paper and at oral hearings



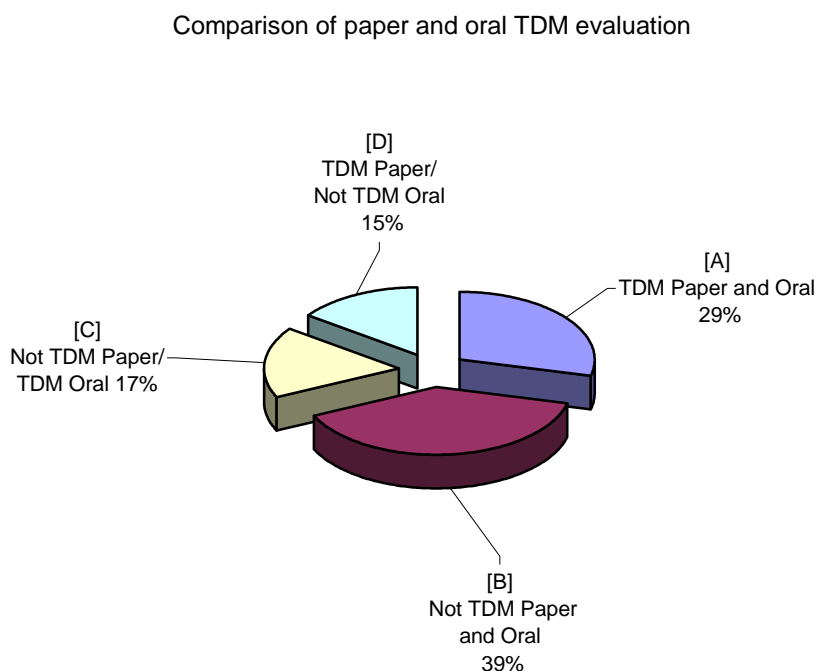
20. As far as outcome is concerned, at oral PTA hearings involving represented parties permission was granted in 44% of cases. In oral PTA hearings involving LIPs permission was granted in only 10% of cases. **Thus in 90% of oral hearings involving LIPs permission was either refused (82%) or the hearing was adjourned (8%). The comparable figures for represented parties were 52% permission refused and 3% adjourned.**

Consistency of Decisions Between Paper and Oral TDM Evaluations

21. There were 112 cases where TDM forms had been completed both on the papers and independently at an oral hearing. A comparison between evaluations on paper and at oral hearings revealed a **high degree of consistency**.
22. In just under one third of cases first and second evaluators judged the case to be TDM (Figure 2 segment [A]); in over one-third of cases both evaluators judged the case to be Not TDM (segment [B] Figure 2). In 17% of cases there was a discrepancy that would have worked **in favour of the appellant** (segment [C] Figure

2 – not TDM on paper but TDM at the oral hearing); and in a similar proportion of cases (15%) there **was a discrepancy between the first and second evaluation that might have worked against the interest of the appellant** (segment [D] Figure 2 – TDM on paper but not TDM at the oral hearing).

Figure 2. Comparison of paper and oral TDM evaluation



23. An analysis of consistency between evaluations on paper and oral hearings in relation to case type shows a relatively high level of inconsistency in landlord and tenant cases and in EAT cases (Table 3), although the numbers within many of the case type categories are too small to form any conclusions.

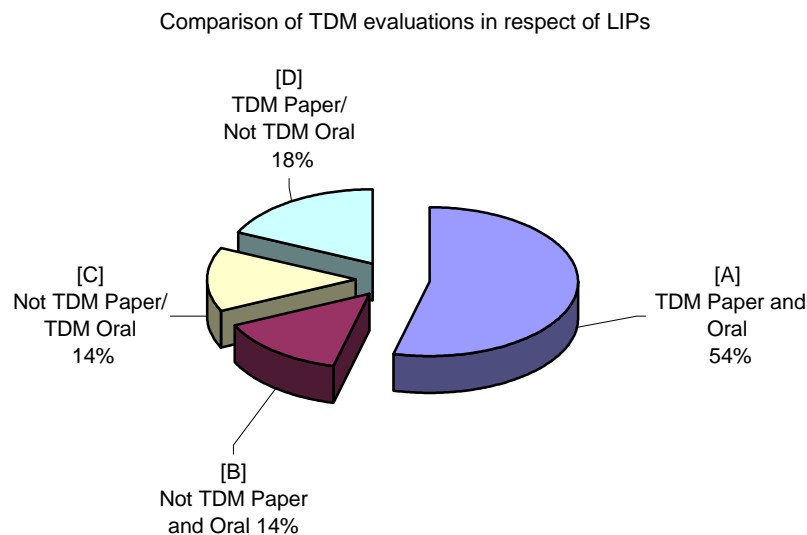
Table 3 Consistency in TDM evaluations between paper and oral hearings in relation to case type (where more than two cases in the category).

CASE TYPE	TDM Paper and Oral	Not TDM Paper and Oral	Not TDM Paper/ TDM Oral	TDM Paper/ Not TDM Oral	Total N
Landlord/Tenant/Poss	2	7	7	4	20
Immigration/ Asylum	9	6	2	3	20
EAT	4	4	2	4	14
Judicial Review	3	7	3	0	12
General Procedure	4	2	0	0	6
Personal Injury	1	2	2	1	6
Social Security	2	2	0	2	6
Insolvency	1	1	1	1	4
Land	1	2	0	0	3
Environment/Planning	1	0	1	1	3
General contract	1	2	0	0	3

Litigants in Person

24. Looking more closely at the 112 cases where decisions were available both on paper and at oral hearing and focusing specifically on cases involving litigants in person (LIP), there is clearly a difference both in TDM evaluations and some difference in degree of consistency between evaluations on the papers and evaluations at oral hearings. Figure 3 shows that a high proportion of cases involving LIPs (54%) were judged to be TDM both on paper and independently at the oral hearing. A minority of cases (14%) were judged to be not TDM both on paper and at the oral hearing. In almost one-third of cases there was a discrepancy in the evaluation. Overall in 14% of cases involving LIPs the evaluation on paper was that the application was not TDM while the decision at the oral hearing found that the case was TDM and the application was refused (seven cases in all). **Under the proposed change in procedure this discrepancy would work in favour of the LIP.**
25. However, in 18% of cases involving LIPs there was a TDM evaluation on paper followed by a not TDM evaluation at an oral hearing. **Under the proposed change in procedure this discrepancy would theoretically work against the interest of the LIP. However, among this group of cases two-thirds were refused permission or adjourned and in only one-third (5 cases) was permission granted at the oral hearing.**

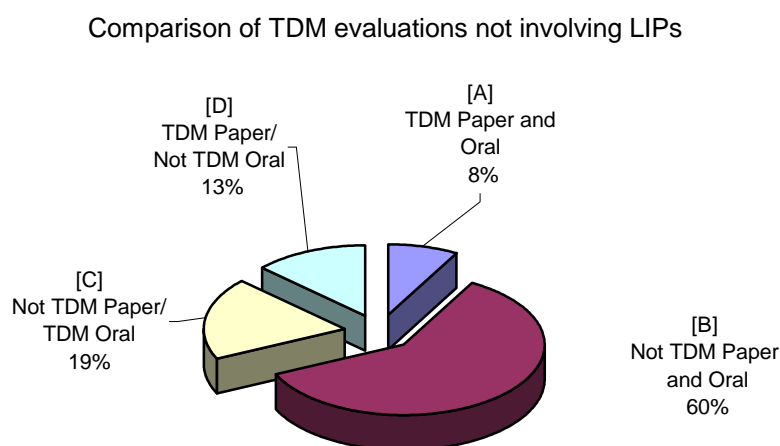
Figure 3. Comparison of TDM evaluations in respect of LIPs (N=50 cases)



26. Looking at cases involving represented parties only, Figure 3 shows that in only a small minority of cases was there an evaluation of TDM both on paper and at the oral hearing (8% or five out of a total of 62 cases where there were two evaluations). On the other hand 60% of represented cases were judged to be not TDM on both paper and at an oral hearing. There was a discrepancy in almost one-third of represented cases with 19% of represented cases involving an evaluation of not TDM

on the papers and TDM at an oral hearing and 13% (eight cases) involving an evaluation of TDM on paper and not TDM at the oral hearing. This last discrepancy again might theoretically work to the disadvantage of represented appellants, and at oral hearings five of these eight cases were granted permission.

Figure 4 Comparison of TDM evaluations in respect of represented parties (N= 62 cases)



Discrepancies

Not TDM on Paper/TDM at oral hearing

27. In some 17% of cases overall (19 cases in total) the evaluation on paper was that the case was not TDM, but at the oral hearing the case was judged to be TDM and the application was refused. Just over one-third of these cases involved LIPs and the remaining two-thirds were represented parties.
28. In policy terms this type of discrepancy is less significant than when the decision on paper is that the case is TDM. In these cases the discrepancy works in favour of the appellant who would not be barred from renewing the application for permission to appeal despite the fact that, in the shadow exercise, all of these applications were refused at the oral hearing.
29. Table 4 shows that a substantial proportion of these cases were appeals relating to landlord and tenant issues.

Table 4 Case type of cases not TDM on paper and TDM at oral hearing

Case type	%	N
Landlord, Tenant and Possession	37	7
Employment Appeal Tribunal	10	2
Personal injury	10	2
Immigration and Asylum	10	2
Judicial Review	10	2
Company Law	5	1
Insolvency	5	1
Probate	5	1
Environment/planning	5	1
Total	100%	19

TDM on Paper/Not TDM at oral hearing

30. There were 17 cases evaluated as TDM on paper but not TDM at the oral hearing, representing 15% of the 112 cases where evaluations were available on paper and at an oral hearing (Appendix A). This type of discrepancy is important in policy terms since, in theory, it would work against the interest of the appellant if there were an order of no right to renew. It is therefore worth looking at these cases in some detail.
31. A little over half of these cases involved litigants in person (53%) and the most common case types were EAT, landlord and tenant and immigration. There were 33 cases involving LIPs in which an oral TDM form had not been completed.

Table 5 Case type of cases TDM on paper and not TDM at oral hearing

Case type	%	N
Employment Appeal Tribunal	23	4
Landlord, Tenant and Possession	23	4
Immigration and Asylum	18	3
Social Security	12	2
Insolvency	6	1
Patents	6	1
Environment/planning	6	1
Personal injury	1	1
Total	100%	17

32. In seven of the seventeen discrepant cases permission to appeal was given at the oral hearing. **Only two of these cases, however, concerned a litigant in person. In other words, in seven of the nine discrepant cases involving litigants in person permission was not granted at the oral hearing even though the case was judged not to be TDM at the oral hearing.** Of the two cases where permission was granted at the oral hearing, one involved an appeal from the Employment Appeal Tribunal and the other was a Landlord and Tenant possession case (see Table 6

below). Neither case was a second appeal. In two cases involving litigants in person the PTA was adjourned at the oral hearing.

Table 6. Outcome of cases TDM on paper and not TDM at oral hearing

CASE TYPE	LIP	Paper TDM	Oral TDM	Oral Decision
Landlord/Tenant/Possession	YES	YES	NO	Adjourned
Landlord/Tenant/Possession	NO	YES	NO	REFUSED
<i>Landlord/Tenant/Possession</i>	<i>YES</i>	<i>YES</i>	<i>NO</i>	<i>ALLOWED</i>
Landlord/Tenant/Possession	YES	YES	NO	REFUSED
EAT	NO	YES	NO	ALLOWED
EAT	YES	YES	NO	REFUSED
<i>EAT</i>	<i>YES</i>	<i>YES</i>	<i>NO</i>	<i>ALLOWED</i>
EAT	YES	YES	NO	REFUSED
Immigration/ Asylum	NO	YES	NO	ALLOWED
Immigration/ Asylum	YES	YES	NO	REFUSED
Immigration/Asylum	NO	YES	NO	ALLOWED
Social Security	YES	YES	NO	REFUSED
Social Security	YES	YES	NO	Adjourned
Personal Injury	NO	YES	NO	REFUSED
Insolvency	NO	YES	NO	ALLOWED
Patents/Copyright	NO	YES	NO	REFUSED
Environment, Planning	NO	YES	NO	ALLOWED

Analysis of Discrepant Cases Where PTA Granted

33. This section contains a detailed analysis of seven cases that were judged to be TDM on paper, but at the oral permission hearing they were judged to be not TDM *and* permission to appeal was granted. This is an important group of cases because in theory a ruling of TDM on paper with no right to renew could theoretically have worked against the interest of the appellant.
34. Because of the policy significance of this group of discrepant cases, the cases have been followed up in order to discover the final outcome of the appeal [See Appendix B for detailed descriptions of the seven cases].
35. The final outcome of the seven cases judged to be TDM on paper, but not TDM at an oral hearing with PTA granted, is as follows:
 - Four of the cases have had substantive appeal hearings and have been dismissed
 - One case has had a substantive appeal hearing and has been allowed in part
 - Two cases were settled prior to any substantive hearing
36. Gathering together all of the data relating to discrepant cases, we find that of 112 cases in which independent evaluations were made, there were only seven cases in which a discrepancy occurred that could theoretically have worked to the disadvantage of the appellant had a policy change led to paper-only PTA decisions. Of these seven, in only one case was there ultimately a judicial decision that went

partly in favour of the appellant. In two cases the parties achieved a settlement. In the majority of these discrepant cases (four), the appeals were ultimately dismissed.

37. It is thus fair to conclude that of the 112 cases analysed in the exercise where independent shadow judgments were available, there were only three cases where the proposed change in policy to decisions on paper would have disadvantaged the appellant. This represents 3% of 112 cases included in the shadow exercise. Only one of these three cases involved a substantive judicial decision and even then the appeal was allowed only in part, although that case concerned a litigant in person.

Summary of Results and Conclusion

38. The shadow PTA analysis was based on 372 paper evaluations and 112 oral hearings. Among the evaluations made on paper, a little over one in five cases (22%) were judged to be TDM. **The TDM rate at oral hearings was considerably higher, with 45% of applications heard orally being evaluated as TDM. This represents a substantial proportion of judicial work and time. In effect a little under half of all oral PTA hearings involved cases without merit.**
39. Among paper determinations involving LIPS a much higher proportion of cases was judged to be TDM than among represented parties. Over three quarters of cases involving LIPS were judged on paper to be TDM (77%) as compared with only 14% of represented cases assessed on the papers. At oral hearings applications from LIPS were somewhat less likely than on paper to be evaluated as TDM (68%) while a higher proportion of represented cases (27%) were judged to be TDM at oral hearings than on paper.
40. As far as the outcome of oral PTA hearings is concerned, permission was granted in 44% of represented cases and in only 10% of cases involving LIPS. **In 90% of oral hearings involving LIPs, permission was either refused (82%) or the hearing was adjourned (8%). The comparable figure for represented parties was 55% (52% permission refused and 3% adjourned).**
41. In 112 cases paper TDM evaluations and oral TDM evaluations were available. There was complete consistency between the paper and oral TDM evaluation in a little over two-thirds of cases (68%). In 17% of cases where paper and oral determinations were available, there was an inconsistency between paper and oral TDM which would have worked in favour of the appellant when the application was judged to be **not** TDM on paper but was judged to be TDM at the oral hearing.
42. In 15% of the 112 cases in the shadow exercise there was a discrepancy between the paper evaluation and the oral hearing that in theory went against the interest of the appellant, with the paper evaluation being TDM but the determination at the oral hearing being not TDM. **Most importantly in seven of these cases the application was *allowed* at the oral hearing, representing 6% of the 112 cases in which evaluations were obtained on paper and at an oral hearing. Only two of these discrepancies affected litigants in person, representing 2% of the 83 cases involving LIPs where two TDM evaluations were available.**

43. We therefore find a relatively high level of consistency between TDM evaluations made on paper and those at oral hearings. **More than two-thirds of decisions were wholly consistent. In 19 cases where an inconsistency arose, the appellant would have benefited from a paper-only procedure (not TDM on paper/TDM at oral hearing). In 17 inconsistent cases a paper-only procedure would have disadvantaged the appellant to the extent that they would have been refused permission with no right to renew (TDM on paper/not TDM at oral hearing). However, in 14 of those 17 cases this would not have resulted in any ultimate disadvantage to the appellant. This is because in 10 discrepant cases permission to appeal was refused at the oral PTA hearing despite the fact that the case had been evaluated as not TDM; of the seven discrepant cases in which permission was granted at the oral PTA hearing, four substantive appeals were dismissed at the subsequent appeal hearing. Of the remaining three cases, one substantive appeal was allowed in part, and in two cases the parties settled.**
44. The level of discrepancy and potential substantive disadvantage to appellants revealed by this shadow exercise is small both absolutely and as a proportion of decisions made. Whether this degree of discrepancy is acceptable or unacceptable in policy terms will clearly be a matter for discussion. However, it seems reasonable to note two principles. First, that within our common law system some degree of inconsistency in judicial decision-making is regarded as both inevitable and legitimate. The concept of the dissenting judgment reflects this principle. Second, inherent in current policy on the administration of justice is an acknowledgement that the principles of proportionality and cost effectiveness may result in an occasional injustice. The potential risk of unjustly barring further appeal by defining a case as TDM based on a paper evaluation has to be weighed against the current situation in which expensive judicial time is being allocated to oral PTA hearings involving cases with no merit. Based on this shadow exercise the risk of injustice implied by a move to paper PTA determinations appears to be small if not negligible, particularly in relation to litigants in person... This small risk should be weighed against the potential gains to the system of releasing judicial time and sparing parties the cost of attending oral PTA hearings.

Appendix A

Discrepant cases TDM on paper/not TDM at oral hearing Reasons for paper TDM evaluation

- 1 On its merits, the substantive application is hopeless. Adjudicator's decision is unassailable. No prospect of Art 10.
- 2 No cause of action.
- 3 The reasons are those given by lower judgment for refusing the application.
- 4 (1) JR: out of time, not exhausted internal remedies; (2) Commissioner's decision: no point of law in appellant's challenge.
- 5 In light of A's job description he cannot hope to establish that this contract of employment was not frustrated by a 3-yr disqualification from driving.
- 6 No prospect of establishing an error of law in decision of EAT. EAT decision is clearly correct.
- 7 Concentrating on decision of ET, there are no errors of law. Proposed appeal has no real prospect of success and in my opinion is TDM.
- 8 There is no reason for CofA to see trouble with this point. The A is pursuing litigation without a proper regard to reality.
- 9 About costs only, point unarguable, judge's discretion is exemplary, defendants copied and lost - it is no injustice that they should pay most of the costs.
- 10 No arguable points of law. A thinly disguised "merits" appeal, albeit TDM.
- 11 ET finding is unassailable. EAT dealt correctly with the reformulated case. The contrary is not arguable.
- 12 Judge gave clear and plainly sustainable reasons for rejecting the alleged contributory negligence.
- 13 This is attempt to re-open by way of appeal a decision of a local housing authority which it was plainly entitled to reach after making proper enquiries.
- 14 For the reason given for refusal.
- 15 I can see no merit in an application for PTA in circumstances in which it is plain that there is no prospect that the secure tenant will be able to resume occupation.
- 16 Flagrant breach of planning control over considerable period justified the injunction. Appeal based on alleged merit of new planning app but there was no substantial evidence/support.
- 17 The only material issue was the availability of suitable alternative accommodation, as to which the judge's findings are unimpeachable. A not willing to cooperate.

Appendix B

Final substantive outcome of cases judged TDM on paper/Not TDM at oral hearing with permission given

Appeal dismissed at substantive hearing

TDM on paper. Permission granted at PTA oral hearing.
Asylum case.

At oral hearing:

“I confess that when I read the papers, I was minded not to grant permission to appeal. It seemed to me that this was no more than an attempt to overturn findings of fact made by the Adjudicator and the Tribunal. But [counsel] has persuaded me that there are features of the reasoning of both the Adjudicator and Tribunal which are cause for concern, and it is for those reasons – particularly given the fact that this is an asylum case which requires anxious scrutiny – that I have decided to give permission to appeal.”

Substantive hearing – **appeal dismissed.**

“The reality is that there were a series of matters in the appellant’s account which could properly be said to demonstrate discrepancies or implausibilities. The adjudicator remarked upon some nine or ten of them in all. ..In my judgment [the IAT] was entitled to conclude that the adjudicator could properly disbelieve the appellant and her witnesses ...I can see no error of law in the IAT’s decision.”

“The IAT’s determination was rationally based on a range of discrepancies and implausibilities which undermined the appellant’s account. It contains no material error of law.”

Appeal dismissed at substantive hearing

TDM on paper. Permission granted at PTA oral hearing.
Appeal against refusal by District Judge to set aside a statutory demand. Equitable assignment of debt

Paper TDM

“There is no reason for CofA to be troubled with this point. The A clearly feels a deep sense of grievance and is pursuing litigation without a proper regard to reality.”

At oral PTA hearing view taken that there might be a point of principle of some importance which should be considered by the Court of Appeal.

“I am persuaded on balance that he should not be deprived of the right he would otherwise have to have a point of general principle decided by the Court of Appeal. I am prepared, therefore, with some misgivings, to give permission to appeal.”

Mediation subsequently attempted and failed.

Substantive hearing – the District Judge was right to refuse to set aside the statutory demand. **Appeal dismissed.**

Appeal dismissed at substantive hearing

TDM on paper. Permission granted at oral hearing. Renewed application
Enforcement notice - planning

Paper TDM

“A flagrant breach of planning control over a considerable period clearly justified the injunction. The appeal is based on the alleged merits of a new planning application, but there was no substantial evidence in support.”

Oral PTA

“..the making of an order was inevitable....So far as the time limits are concerned, it seems to me a lot less obvious that a short time limit – as short as a month in most cases – was proportionate. (Article 8 issue). I propose to grant permission to appeal on the issue of the length of time allowed by the judge for compliance.

Substantive hearing: **Appeal dismissed** (one dissenting judgment). “The legitimate aim of maintaining a planning regime really does make it necessary to interfere with the Article 8 rights of the appellants.”

Appeal dismissed at substantive hearing

TDM on paper. Permission granted at oral hearing
Employment appeal Discrimination/unfair dismissal

Paper TDM

“Concentrating on the decision of ET, there are no errors of law. Proposed appeal has no real prospect of success and in my opinion is TDM.”

Substantive hearing: **Appeal dismissed:**

“Tribunal entitled to dismiss the Appellant’s claims under RRA 1976 and they gave adequate reasons for doing so. Tribunal did not misdirect itself. There were no facts which would form the basis for the inferences that less favourable treatment was racially based.”

Case allowed in part

TDM on paper. Permission granted at PTA oral hearing
Possession action and money judgments relating to unpaid rent
Renewed application for permission involving litigant in person.

.Paper TDM

“I can see no merit in an application for permission to appeal in circumstances in which it is plain that there is no prospect that the secure tenant will be able to resume occupation.”

Substantive appeal **allowed in part** at permission hearing.

- (a) Judge entitled to order possession, but
- (b) Money judgment “cannot stand”. Tenant was licensee prior to secure tenancy coming to an end by order for possession.

Case settled after permission given at oral hearing

Appeal from EAT

TDM on paper. Permission granted at oral hearing

Paper TDM:

“In light of A’s job description he cannot hope to establish that this contract of employment was not frustrated by a 3-yr disqualification from driving.”

Oral PTA

“I have extended the time for appealing on the grounds that the appellant was not only acting in person but that there was a certain amount of muddle.. and the decision of the EAT was not available for several months...

As regards the merits of the appeal, two points are taken. Wrong in law to treat the contract as having come to an end by frustration....Some material upon which it can be suggested that this appellant was treated differently from others who were in a similar position...What the appellant particularly would like is his job back. Whether this matter needs to go to a full appeal is a matter for the council. It would be sensible if at least some attempts were made to achieve a settlement.”

Case settled after permission given at oral hearing

Immigration appeal. Renewed application for permission to appeal against decision in the Administrative Court when refused to grant judicial review permission to challenge refusal by the IAT to grant leave to appeal to itself against an earlier determination of an adjudicator.

TDM on paper. Permission granted at oral hearing (appellant not represented and did not attend. Respondent not represented and did not attend)

Paper TDM

“On its merits, the substantive appeal is hopeless. Adjudicator's decision is unassailable. No prospect of Art 10.”

Oral hearing

“With some misgivings .. I propose to grant judicial review permission on the basis that it is arguable that the IAT ought to have grappled with the merits challenge to the adjudicator’s determination rather than simply rely on [a decision], from which in any case events have moved on.

Substantive appeal: Parties reached agreement. Allowed with consent