Judgment 01/2013

Tostevin & Tostevin v Newhouse & Newhouse
Royal Court
28th January 2013

Application for leave to appeal the final decision of a single arbitrator, appointed to resolve a dispute between the owners of the neighbouring properties. Leave granted.

Approved Text
28.01.2013

IN THE ROYAL COURT OF GUERNSEY

(CIVIL DIVISION)

Between: **(1) DAVID DANIEL ALFRED TOSTEVIN**
(2) PAMELA NORA TOSTEVIN **Appellants**

-and-

(1) CRAIG NEWHOUSE
(2) ANN NEWHOUSE **Respondents**

Application for leave to appeal

Hearing date: 19th December 2012 (pm)

Judgment handed down: 28th January 2013

Before: Richard James McMahon, Esq., Deputy Bailiff

Advocate for the Appellants: **Advocate N J Barnes**
Advocate for the Respondents: **Advocate F J Haskins**

Cases, texts & legislation referred to:

P & J Ogier (1991) Limited v Watts and Watts (unreported, 22 February 2012)
The Arbitration (Guernsey) Law, 1982, as amended
The Arbitration Act 1979
The Arbitration Act 1996
Mustill and Boyd, *The Law and Practice of Commercial Arbitration in England* (2nd ed., 1989)
BTP Tioxide v Pioneer Shipping Co, The Nema [1981] 3 WLR 292
Antaios Compania Naviera v Salen Redierna AB [1985] AC 191
Zermalt Holdings SA v Nu-Life Upholstery Repairs Limited [1985] 2 EGLR 14
Schwebel v Schwebel [2010] EWHC 3280 (TCC)
Mustill and Boyd, *Commercial Arbitration: 2001 Companion Volume to the Second Edition*
President of India v Jadranska Slobodna Plovidba [1991] 2 Lloyd's Rep 274
Everglade Maritime Inc v Schiffahrtsgesellschaft Detlef Von Appen mbH [1993] QB 780
Olcott Investments Limited v Mark Amy Limited 1998 JLR 62

The Rules for the Arbitration Scheme for the Resolution of Disputes in the Construction Industry Chartered Institute of Arbitrators, Channel Islands Branch (May 2009)
Royal Court Civil Rules, 2007

Introduction

1. By an application dated 31 July 2012, the Applicants, David and Pamela Tostevin, seek leave to appeal a final award of the arbitrator, Gary Naftel, issued on 11 July 2012 and made in favour of the Respondents, Craig and Ann Newhouse. The basis of the proposed appeal is primarily to challenge the arbitrator's award in relation to costs, but there is also an allegation in the Notice of Appeal that the arbitrator wrongly ordered the Appellants to register the interim and final awards at the Greffe when the arbitrator had no jurisdiction to make that order.

2. At the conclusion of the hearing on 19 December 2012, in particular because both Counsel agreed that the test for leave to appeal an arbitration award is not that set out in *P & J Ogier (1991) Limited v Watts and Watts* (unreported, 22 February 2012), I reserved my judgment to enable me to consider more fully the helpful submissions made by Advocate Barnes and Haskins on behalf of the Applicants and the Respondents respectively.

Background

3. Because this is an application for leave to appeal, I do not propose to set out in any great detail the facts of the dispute leading to the arbitrator's award.

4. The parties are neighbours. The Applicants live in their first floor apartment, which is directly above the Respondents' ground floor apartment. The Applicants have lived in their apartment since 1991 and the Respondents purchased their apartment, in which they live, in early 2009. By virtue of the conveyances by which they purchased their apartments, any dispute or difference arising between apartment owners is to be referred to a single arbitrator.

5. Various disputes arose quite soon after the Respondents acquired their apartment and the parties agreed in October 2009 to the appointment of Mr Naftel as arbitrator to resolve them. Those disputes alleged breach of several of the covenants by which the parties are bound. The Respondents' complaints related *inter alia* to noise and pollution, including the use of a washing machine, wrongful use of common parts through maiming, injuring or defacing the roof and roof space, and trespass and interference with access and/or a right of way resulting from the planting of flowerbeds. The Applicants complained in return that the Respondents had engaged in aggressive behaviour, had banged loudly on the ceilings and that the noise transference problems had been exacerbated by the sound proofing system installed on behalf of the Respondents.

6. The arbitration hearing eventually took place in May and June 2011. It was a six-day hearing, during which evidence was adduced from two experts and 11 other witnesses and submissions were made. The arbitrator's findings on the substance of the parties' disputes were set out in an interim award dated 5 September 2011. The arbitrator found in favour of the Respondents on the vast majority of the issues raised by them and ordered relief. That relief came in the form of sums of money, aggregating to a little under £4,000, which were to be paid by the Applicants to the Respondents and directions both as to times at which the washing machine could be used and in respect of the removal of the flowerbed, albeit the latter was to be at the Respondents' cost. The arbitrator agreed with the Applicants that the soundproofing system installed on behalf of the Respondents had exacerbated the level of noise disruption and ordered its replacement with a more suitable alternative. The arbitrator found both sides to be jointly responsible for the frayed relationship that existed between them.

7. Following the issuing of the arbitrator's interim award, both sides withdrew their claims for damages for physical injuries, but pursued claims for costs. In the event, those claims were dealt with on written submissions. Having considered all those submissions, the arbitrator made an award of £87,662.25 in the terms, and for the reasons, set out in his final award of 11 July 2012. He further ordered that the costs he had awarded should carry interest at 8% per annum from the date of his award until they were paid, being a daily rate of £19.21. Finally, he ordered that the damages referred to in his interim award had to be paid within 14 days of his final award, namely by 25 July 2012.

Applicable legal test

8. Section 19 of the Arbitration (Guernsey) Law, 1982, as amended, deals with judicial review of arbitration awards. Subsection (2) confers a right of appeal to this Court on any question of law arising out of an award made on an arbitration agreement, but that right of appeal is expressly subject to subsection (3), which provides that an appeal requires the consent of all other parties to the reference to arbitration or can only proceed with the leave of the Court. This is not a case in which section 20A of the 1982 Law applies, so the basis of determining an application for leave to appeal is as set out in section 19(4), namely:

> "*The Court shall not grant leave under paragraph (b) of the last preceding subsection unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement; and the Court may make any leave which it gives conditional upon the applicant complying with such conditions as it considers appropriate.*"

9. Section 19 of the 1982 Law does not appear to have been referred to the Court in *P & J Ogier (1991) Limited v Watts and Watts* because there is no reference at all to it in the judgment. The approach taken in that case was described in para. 3 of the judgment as follows:

> "*The law in Guernsey is settled as to the test to apply. See McNamara v Gauson (Application for Leave to Appeal) Royal Court, 22 March 2010. In paragraph 22 of his judgment, Collas DB referred to Ogier v Grand Havre Holdings Limited (2007, Civil Appeal 374), which appeal upheld the decision of Hancox LB. Collas DB considered that by implication the Court of Appeal agreed the English Practice Direction [1997] 1 W.L.R. 1027 should be followed in Guernsey. Collas DB also followed it. It lays down (paragraph 2.8) a general test for permission to appeal (citing the relevant parts):*
>
> > *"… permission will be given unless an appeal would have no real prospect of success. A fanciful prospect is insufficient."*
>
> *As Hancox LB had followed this test at first instance in the Ogier case and as this was not criticized by the Court of Appeal, Collas DB followed it (paragraph 34 of his judgment). To have a "real prospect of success" entails having a case which is more than merely arguable, but not necessarily that it will clearly succeed. The phrase is a clear one and requires no further gloss.*"

As a statement of the law relating to determining applications for leave to appeal a decision of the Royal Court to the Court of Appeal, this brief summary is unimpeachable. However, neither of the Advocates invites me to take the same approach in this case. Even though Advocate Barnes acknowledged that this test would more readily be capable of being satisfied on behalf of the Applicants, he submitted that the approach the Court should take is to regard the decision as having been reached *per incuriam*. It is, of course, not strictly binding on me anyway but, before taking a different approach to the learned Judge in that case, I should explain the reasons for doing so.

10. Section 19 of the 1982 Law appears to have been drawn from the provisions enacted in England and Wales dealing with judicial review of arbitration awards. The particular

provision at that time was section 1 of the Arbitration Act 1979, which created a new regime for challenging arbitration awards made in that jurisdiction under the principal enactment, the Arbitration Act 1950. Section 1(1) of the 1979 Act was couched in almost identical terms to section 19(4) of the 1982 Law, as amended:

> "*The High Court shall not grant leave under subsection (3)(b) above unless it considers that, having regard to all the circumstances, the determination of the question of law concerned could substantially affect the rights of one or more of the parties to the arbitration agreement; and the court may make any leave which it gives conditional upon the applicant complying with such conditions as it considers appropriate.*"

11. Other provisions in section 1 of the 1979 Act have also been replicated in the 1982 Law. Therefore, although the 1979 Act was repealed by the Arbitration Act 1996, and new provisions relating to appeals and challenges, which are not in quite the same terms, were enacted, I can see that the drafting of section 19 of the 1982 Law drew heavily on what was current at the time in English law, with the consequence that the learning from English jurisprudence about how to approach that wording as a matter of English law might be regarded as highly persuasive as to the approach to take in construing section 19(4) of the 1982 Law. Both Advocates submitted that this is the way the Court should approach the matter.

12. The approach to take under the 1979 Act was described in Mustill and Boyd, *The Law and Practice of Commercial Arbitration in England* (2nd ed., 1989), by reference to two principal cases, *BTP Tioxide v Pioneer Shipping Co, The Nema* [1981] 3 WLR 292 and *Antaios Compania Naviera v Salen Redierna AB* [1985] AC 191. The learned authors suggested (at page 605) that the principles extracted from these cases "*enabled applications which had previously lasted for hours or even days, to be disposed of within minutes*" (albeit that that was not achieved in the present case) because:

> "*… the Court … simply asks whether … it can be said that the interests of justice to the individual parties, and the need to promote the health of the common law, and to preserve the integrity of the arbitral process, require that the question of law should be argued again and decided in the High Court.*"

13. Advocate Haskins submitted that the onus on the Applicants before they can be granted leave to appeal is a heavy one. She highlighted the opening general comments of Bingham J in *Zermalt Holdings SA v Nu-Life Upholstery Repairs Limited* [1985] 2 EGLR 14:

> "*… as a matter of general approach, the courts strive to uphold arbitration awards. They do not approach them with a meticulous legal eye endeavouring to pick holes, inconsistencies and faults in awards and with the objective of upsetting or frustrating the process of arbitration. Far from it. The approach is to read an arbitration award in a reasonable and commercial way, expecting, as is usually the case, that there will be no substantial fault that can be found with it.*"

I accept that such a general statement of the approach to take can properly be adopted as under Guernsey law.

14. Advocate Haskins also referred to one of the conclusions drawn by Akenhead J in *Schwebel v Schwebel* [2010] EWHC 3280 (TCC), at para. 23(c):

> "*Great care and circumspection should be exercised by the Court to identify cases which genuinely give rise to a serious irregularity and those which essentially reflect a losing party's upset that its evidence was not accepted or that inferences were made against it or for the other party. There will be no serious irregularity simply because*

> *the Claimant in the Court proceedings considers that the tribunal failed to arrive at the right decision, factual or legal.*"

I similarly recognise that an application for leave to appeal an arbitration award must, in the words of section 19(4) of the 1982 Law, involve "*the determination of [a] question of law [which] could substantially affect the rights of one or more of the parties to the arbitration agreement*", meaning that the hurdle over which an appellant is required to pass is inevitably more than being disgruntled at decisions reached on the evidence. The decision being challenged in the Court must be shown to be legally wrong.

15. That was the way in which Lord Diplock approached matters in ***The Nema***. Advocate Haskins argued that the following passage from Lord Diplock's speech established as an important principle that leave should not be given other than in the clearest case:

> "*Where … a question of law involved is the construction of a 'one-off' clause the application of which to the particular facts of the case is an issue in the arbitration, leave should not normally be given unless it is apparent to the judge upon mere perusal of the reasoned award itself without the benefit of adversarial argument, that the meaning ascribed to the clause by the arbitrator is obviously wrong. But if on such perusal it appears to the judge that it is possible that argument might persuade him, despite first impression to the contrary, that the arbitrator might be right, he should not grant leave; the parties should be left to accept, for better or for worse, the decision of the tribunal that they had chosen to decide the matter in the first instance.*
> *… rather less strict criteria are in my view appropriate where questions of construction of contracts in standard terms are concerned. … if the decision of the question of construction in the circumstances of the particular case would add significantly to the clarity and certainty of English commercial law it would be proper to give leave in a case sufficiently substantial to escape the ban imposed by the first part of section 1(4) bearing in mind always that a superabundance of citable juridical decisions arising out of slightly different facts is calculated to hinder rather than to promote clarity in settled principles of commercial law. …*
> *In deciding how to exercise his discretion whether to give leave to appeal under section 1(2) what the judge should normally ask himself in this type of arbitration, particularly where the events relied upon are 'one-off' events, is not whether he agrees with the decision reached by the arbitrator, but: does it appear upon perusal of the award either that the arbitrator mis-directed himself in law or that his decision was such that no reasonable arbitrator could reach?*"

16. The position, as both Counsel submitted, was adequately summarised by Mustill and Boyd (at page 607) as being:

> "*… that the award must be 'obviously wrong on mere perusal'; that it must be 'clearly wrong'; that the judge 'would need a good deal of convincing that the arbitrator was right'. Leave would however be given if the judge received the decision with 'very considerable surprise'. It is not, however, always enough to show 'very considerable doubt'.*
> *… In exceptional cases, however, where the point is of great general importance, it may well be enough to show that the arbitrator may have been wrong, or that the point is capable of serious argument.*"

The flexibility of approach indicated by the second part of that summary was acknowledged by learned authors' comment (at page 606) that "*the mere fact that a general principle is involved in the dispute does not necessarily make the case apt for appeal*".

17. In the context of an application for leave to appeal the costs element of an arbitrator's award, I was also referred to para. 398 of Mustill and Boyd, *Commercial Arbitration: 2001 Companion Volume to the Second Edition*:

> "*In order to demonstrate an appealable error of law it is not sufficient to allege that the arbitrator has made an award which a judge would not have made: it has to be shown from the reasons given by the arbitrator that the award of costs was unlawful, in the sense that there were no grounds on which the arbitrator could properly in law have made the order which he did, or that he made the order on grounds which he could not properly in law have taken into account, or failed to exercise the discretion at all.*"

One of the authorities given for that proposition was *President of India v Jadranska Slobodna Plovidba* [1991] 2 Lloyd's Rep 274, a decision of Hobhouse J on which Advocate Barnes relied.

18. In the *Jadranska* case, Hobhouse J explained the basic principle in the following manner (at page 277):

> "*If the arbitrator has erred in his approach the error must be one of fact or law. If it was an error of fact his finding of fact is conclusive. If it was an error of law then it would be open to the claimants to apply for leave to appeal on that question of law. I can see no difference between an error of law in a reasoned award as to costs and any other error of law.*"

After emphasising that "*the awarding of costs involves an exercise of a judicial discretion not the recognition of a legal right*", the learned judge continued (at page 282):

> "*The legal test will in effect remain the same; the appellant will have to satisfy the Court, on the reasons, that the arbitrator misdirected himself on what was involved in the judicial exercise of his discretion or that, although there was no express misdirection, it must be inferred that he did misdirect himself because that is the only explanation of his award.*"

In summary, therefore, by reference to the principles drawn from *The Nema* and the subsequent cases to which he referred, Hobhouse J decided (at page 279) that:

> "*… what the applicant for leave has to do is to show that the sum involved in the costs award is sufficiently substantial and depends on the resolution of the alleged question of law.*"

19. The final English case to which I was referred was *Everglade Maritime Inc v Schiffahrtsgesellschaft Detlef Von Appen mbH* [1993] QB 780. This was a substantive appeal against the award of costs made by an arbitrator, which was then appealed to the Court of Appeal. The judgments of the three judges constituting the Court of Appeal focus on the legal questions raised by the appeal rather than the test to apply when initially considering whether leave should be granted. However, Sir Thomas Bingham MR did offer the following comments (at page 790):

> "*It is generally accepted that those who entrust decisions to arbitrators do so because they wish to rely on the judgment, skill and fairness of those arbitrators. If a decision of the courts was what the parties had wanted they would not have chosen to arbitrate. While, therefore, a power in the courts to review arbitral awards on grounds of legal error is preserved, it is, as the authorities show, a power to be exercised with the utmost caution.*

> *These points lead me to conclude that while the court can review an arbitrator's exercise of discretion on costs it cannot do so unless the appellant can, at the least, show grounds which would suffice to disturb the order of a judge who had not given leave. It is not enough to show that the arbitrator's order is one which a judge would not have made or would not be likely to have made. The parties chose an arbitrator, not a judge. It must be shown that the arbitrator's order was one which was not lawfully made.*"

The choice made by the parties to the present case to arbitrate was not, of course, a specific choice arising from their need to resolve their disputes in some way and having a free choice between litigating before the Court or through arbitration. The choice to proceed to arbitration was made for them in the conveyances by which the apartments were transferred into their ownership, which they assumed when they acquired their apartments through those conveyances. However, the wisdom offered in the passage from the judgment of the former Master of the Rolls offers further sound guidance to this Court as to how to proceed.

20. Advocate Barnes also referred me to *Olcott Investments Limited v Mark Amy Limited* 1998 JLR 62, in which the Jersey Court of Appeal stated that (at p. 66):

> "*It is common ground between the parties in this court that as a matter of Jersey law, the court only has the right to interfere with the arbitrator's exercise of his discretion in relation to costs, if that decision "were wrong in law or so unreasonable that no sensible arbitrator could have reached the decision" ..., but that in such circumstances the court does indeed have jurisdiction, notwithstanding that the arbitration agreement, as here, provides that the award "shall be final and binding between the parties" and contains no provision for an appeal.*"

Although the legal framework for challenging an arbitrator's award in Jersey differs from that in Guernsey, which, as I have set out, is drawn from the 1979 Act approach in England and Wales, this approach is effectively the same and, therefore, lends further support about the way to construe section 19 of the 1982 Law.

21. The conclusions I draw, therefore, are that the test for leave to appeal an arbitrator's award found in section 19(4) of the 1982 Law should be approached in the same way as the approach in England and Wales when section 1 of the 1979 Act was in force. For this reason, I do not propose to take the same approach as the Court did in *P & J Ogier (1991) Limited v Watts and Watts*. Instead, I have assessed the grounds of appeal advanced on behalf of the Applicants, and the opposition made to the application for leave to appeal on behalf of the Respondents, against the principles derived from *The Nema* and subsequent cases. The first consideration will be whether the arbitrator's decision, particularly the costs award, was "*clearly wrong*", in respect of which the Applicants will need to persuade me that the position is more extreme than a situation in which I entertain only "*very considerable doubt*". The appeal must involve a question of law as to whether there has been an obvious or an inferred misdirection rendering unlawful the way in which the arbitrator's discretion when awarding costs was exercised. If, however, leave were not to be forthcoming from the specific issues raised by the Applicants, the Court will go on to consider whether it is a case of "*great general importance*" where the decision "*may have been wrong*".

Discussion

22. Although I note what was said in the main work of Mustill and Boyd (at page 611) that "*No reasons are given for the judge's decision to give or refuse leave to appeal, except in the very unusual case where the judge considers that the existing guidelines laid down by the appellate courts call for amplification, elucidation or adaptation to changing practices*", this appears to be a sufficiently unusual set of circumstances where providing the parties with brief reasons seems to me to be desirable.

23. The arbitration was conducted in accordance with the Rules for the Arbitration Scheme for the Resolution of Disputes in the Construction Industry, issued in May 2009 by the Chartered Institute of Arbitrators, Channel Islands Branch (hereafter referred to as "the 2009 Rules"). Rule 5, to which the arbitrator referred in his final award, provides:

> "*5.1 Each party shall bear its own costs of preparing and submitting its case and of attending any meeting or hearing.*
> *5.2 The recoverable costs of the reference shall be the Arbitrator's fees and expenses, the appointment fee, the costs of hiring rooms for meetings and/or hearings and any other costs determined by the Arbitrator to be costs in the reference.*
> *5.3 The Arbitrator shall determine by Award the recoverable costs of the reference and shall direct to and by whom and in what manner those costs or any part thereof shall be paid.*
> *5.4 The Arbitrator shall determine the recoverable costs of the Arbitration on the general principle that the costs should follow the event, except where it appears to the Arbitrator that in the circumstances this is not appropriate in relation to the whole or any part of the costs.*
> *5.5 The Arbitrator may also order one Party to pay any part of the other's costs where the former has acted unreasonably and caused the opposing party unnecessary expense.*
> *5.6 The Arbitrators fees, as set out on the application form or as otherwise agreed with the Parties and any additional fees as may become payable, shall be paid on demand as the Arbitrator shall direct.*
> *5.7 Each Party shall be jointly and severally liable for the payment of the Arbitrator's fees.*"

Rule 5 provides a comprehensive set of provisions as to how to determine where the costs of arbitration under the 2009 Rules lie. Their proper interpretation is, therefore, potentially a matter of general importance across the Channel Islands.

24. On behalf of the Applicants, the main ground of appeal advanced is that the arbitrator misdirected himself when awarding indemnity costs. The Notice of Appeal suggests that the approach to indemnity costs in arbitration under the 2009 Rules should be closely aligned to the approach the Royal Court would take under the Royal Court Civil Rules, 2007. Because the Applicants had not been responsible for conduct that was so unreasonable that it would, if in an action before the Court, attract an award of costs on the indemnity basis, it is argued that the arbitrator has erred in law. By relying on the decision of the Applicants not to settle the dispute in the way suggested by a jointly commissioned expert, Mr Dunnell, it is said that the arbitrator took into account an irrelevant consideration.

25. That main ground of appeal raises, in my view, a question of law the resolution of which will affect the position of the parties. If the Applicant is correct, then this would potentially have a significant impact on what the costs award should have comprised. Instead of a costs award of partial indemnity costs in the sum of £66,832, any award made against the Applicants under Rule 5.5 may well have been significantly less. I consider that the mere fact that the outcome of the arbitration was different from what had been suggested by Mr Dunnell as a solution suggests that the Applicants have a strong argument to make that the arbitrator misdirected himself. Because of the amounts involved, I take the view, adopting the style of Hobhouse J in the ***Jadranska*** case, that it is "*sufficiently substantial*" to pass the threshold for the granting of leave to appeal.

26. If I then proceed to test my provisional conclusion that this is a proper case in which leave to appeal should be granted against what was set out in the main work of Mustill and Boyd, it would be fair to note that, when I first read the arbitrator's award, my reaction was, at the very

least, one of "*very considerable surprise*". I understand that the interim award found in favour of the Respondents on a number of matters. However, the relief granted was not particularly substantial and not apparently as far-reaching as had been sought by the Respondents. Rather than ordering that huge amounts of remedial work be undertaken, possibly at considerable expense to the Applicants, the arbitrator awarded what, certainly by comparison to the award of costs, was a small amount of money to be paid for what might be regarded as technical and largely historical breaches of covenants. He did direct a sensible regime to minimise the noise transference when using the washing machine. He did not find that one side was more to blame than the other for the breakdown in their relationship. Taking the overall nature of his interim award in the round, he found that the parties' disputes were capable of being sorted out without massive expenditure by either side. In the light of those conclusions, the decision to award costs totalling nearly £90,000 appeared to me to be quite disproportionate to how the parties' disputes were resolved.

27. In the light of the submissions of Counsel, I have re-visited the arbitrator's final award, especially on costs, but I am still left holding the view that I will "*need a good deal of convincing that the arbitrator was right*". Having regard to Rule 5.5 of the 2009 Rules, it is quite possible that the arbitrator has misconstrued what he can lawfully do under those Rules, which means that this case would also potentially have a wider impact than just these proceedings. In saying that, I remain open to persuasion that the way in which the arbitrator has approached the issue is legally sound. I could only resolve these questions after full submissions. However, at this leave stage, I am satisfied that the grounds of appeal to be advanced on behalf of the Applicants raise one or more questions of law which "*could substantially affect the rights*" of the Applicants and, to the extent that the arbitrator's award on costs might require modification, would also impact on the Respondents.

28. For these reasons, I will grant the Applicants leave to appeal the final award of Mr Naftel, the arbitrator, issued on 11 July 2012.

Ancillary matters

29. As regards costs, the approach set out in the main work of Mustill and Boyd (at page 616) is that "*The usual order for costs, if leave is granted, is that the costs of the application for leave to appeal shall be costs in the appeal*". That seems to me to be the appropriate course of action here and that is what I propose to do unless either Counsel wishes to suggest a different approach by way of an application made to an Interlocutory Court.

30. Having decided to give leave to appeal to the Applicants, the matter now needs to be progressed to a final hearing. Counsel indicated that they would be able to agree a timetable between them to prepare the case for that hearing. In particular, I understood that Advocate Haskins, on behalf of the Respondents, wished to be able to lodge further written submissions and material. I trust, therefore, that Counsel will liaise with the Greffe to identify a mutually convenient date at which the appeal can be heard and work backwards to ensure that all the parties' submissions and authorities are lodged in good time beforehand. If agreement cannot be reached, the matter should be listed in the Interlocutory Court for further directions.

