



The Bar Council

## **Bar Council response to the Supreme Court consultation on the proposed revision of the Supreme Court Rules**

1. This is the response of the General Council of the Bar of England and Wales (“the Bar Council”) to the Supreme Court Consultation on the proposed revision of the Supreme Court Rules.<sup>1</sup>

2. The Bar Council represents approximately 18,000 barristers in England and Wales. It promotes the Bar’s high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (“BSB”).

### **Question 1. Do you foresee any practical difficulties with reducing the methods for filing of documents with the Registry as proposed?**

4. No. The Bar Council supports the use of a portal which has proved a more reliable method of filing documents than simply emailing the Court when used in lower courts.

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<sup>1</sup> <https://www.supremecourt.uk/docs/uksc-rules-consultation.pdf>

**Question 2. Do you foresee any practical difficulties with removing a deemed date of filing with the Registry for the remaining methods of filing?**

5. No.

**Question 3. Do you foresee any practical difficulties with reducing the methods for service of documents on other parties as proposed?**

6. No.

**Question 4. Do you foresee any practical difficulties with removing a deemed date of serving documents on other parties for the remaining methods of service?**

7. No.

**Question 5. Do you have any view on the proposal that the 28 day time limit for filing an application for permission to appeal should run from the date of refusal of permission by the court below instead of from the date of the decision or order appealed against?**

8. Yes. The Bar Council supports this proposal. The previous regime resulted in a truncated period between permission being refused by the Court of Appeal and an appeal being filed with the Supreme Court, prejudicing the Appellant in the preparation of its appeal to the Supreme Court.

**Question 6. Do you foresee any practical difficulties with introducing a time limit for the application to the court below for permission to appeal to the Supreme Court where there is currently no time limit?**

9. No.

**Question 7. Do you foresee any practical difficulties with the proposed time limits for filing and serving bundles?**

10. No.

**Question 8. Do you foresee any practical issues in complying with the transitional provisions in Rule 62?**

11. No.

**Question 9. Do you wish to add any other comments?**

12. Yes. Rule 6(3) has been amended to replace the current automatic extension of time where a party is seeking public funding. Instead, the Registrar has a discretion to extend time in those circumstances. In exercising their discretion whether to extend time and for how long, the Registrar will have regard in particular to how promptly the appellant has applied for public funding and how diligently the application has been pursued. The change is supposedly aimed at ensuring that the appellant is incentivised to avoid delay; the previous rule resulted in some instances in very long delays occurring before the appeal was lodged by the appellant.

13. The Bar Council strongly opposes this change. The Legal Aid Agency (LAA) is notoriously slow in its decision-making and parties are not infrequently severely compromised by such delays.

14. The Bar Council considers that the effect of this change will be to impede access to justice. The constitutional right of unimpeded access to the courts was recognised by Lord Diplock in *Attorney General v Times Newspapers Ltd* [1974] AC 273, 310 and in *Bremer Vulkan Schiffbau und Maschinenfabrik v South India Shipping Corpn Ltd* [1981] AC 909, 977 and can only be curtailed by clear statutory enactment. The legal test is whether there is a real risk that persons will effectively be prevented from having access to justice. The Bar Council considers that the threshold of real risk is crossed with this change.

15. As per *Unison v Lord Chancellor* [2017] UKSC 51 at [29]:

- i. "the right of access to justice ... is not restricted to the ability to bring claims which are successful. Many people, even if their claims ultimately fail, nevertheless have arguable claims which they have a right to present for adjudication."

- ii. At [66]: “The constitutional right of access to the courts is inherent in the rule of law.”
- iii. [78]: “... impediments to the right of access to the courts can constitute a serious hindrance even if they do not make access completely impossible.”

**Bar Council<sup>2</sup>**

**17 May 2024**

*For further information please contact*  
*Enehuwa Adagu, Policy Analyst: Legal Practice and Remuneration*  
*The General Council of the Bar of England and Wales*  
*289-293 High Holborn, London WC1V 7HZ*  
*Email: [EAdagu@barcouncil.org.uk](mailto:EAdagu@barcouncil.org.uk)*

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<sup>2</sup> Prepared by the Bar Council Legal Services Committee