



## **Practice Note 10 October 2024**

Lord Reed, as Chairman of the Judicial Committee, has issued the following practice note in respect of the Judicial Committee of the Privy Council (JCPC):

PD 4.7.1 introduced a review procedure for full appeals before listing. In summary, it provided for a review by a single Justice to ascertain whether the appeal was in substance a challenge to concurrent findings of fact which would be contrary to the rule in *Devi v Roy* or was otherwise devoid of merit.

This formalised a procedure which was introduced into the Court in April 2023 after discussion in a User Group meeting held remotely and in person in the Cayman Islands in November 2022.

In April 2024, the JCPC began a consultation process on revising its rules and included in its draft rules Rule 23, which codified the process at PD 4.7.1. At the consultation meetings and in written submissions on the proposed rules it became clear that the procedure in PD 4.7.1 was causing concern to many court users. In response, the Court suspended the operation of PD 4.7.1 with immediate effect on 23 May 2024. Thereafter, it held consultation meetings on a revised process, which received support and is now set out below

### **Review of appeals (where permission has not been granted by the JCPC)**

Where a notice of appeal is filed and permission has been granted by the court below the papers will be referred to a single Justice.

The single Justice will review the notice of appeal including the grounds of appeal, order granting permission to appeal, transcripts of the judgments at first instance and on appeal, and the notice of acknowledgment filed by the respondent (if any). The single Justice may do one of the following:

- a) Direct that the appeal be listed for hearing before a panel of 3 Justices;
- b) Direct that the appeal be listed for hearing before a panel of 5 Justices;
- c) (In the case of an appeal 'as of right' only) Direct that the appeal be listed for a case management hearing to consider why the appeal should not be dismissed on the basis that it falls foul of the rule in *Devi v Roy* [1946] AC 508, i.e. seeks to overturn concurrent findings of fact.

In the case of c above, parties will be invited to a short case management hearing before a Board comprising three members which is to be listed on notice to the respondent. The respondent will be invited to attend but is not required to

attend or to make submissions. The appellant will be asked to make submissions as to why the appeal should not be dismissed for falling foul of the rule in *Devi v Roy*. The hearing will be listed for 30 minutes if the appellant alone appears, and for one hour if the respondent wishes to be heard.

The hearing will be offered as a remote hearing (although the parties may request a hearing in person before the Board). If, following the oral hearing, the members of the Board consider that the appeal should not proceed to any further argument, they may then dismiss the appeal. They may also choose to direct that a further hearing takes place.

This review procedure will come into effect today and will include notices of appeal filed before the suspension of PD4.7.1 and not yet considered under that review procedure. For the avoidance of doubt, the JCPC will not be reviewing any of the decisions made under the PD4.7.1 procedure.

Lord Reed of Allermuir

10 October 2024