

ANNEX C CONSULTATION QUESTIONNAIRE

1. Do you agree that the rules should not define 'prohibitively expensive'?

We agree that the rules should not define 'prohibitively expensive'.

2. Do you agree that the rules should not distinguish the question of prospects of success from the question of whether or not the proceedings are prohibitively expensive?

We believe that the rules should continue to refer to the question of the prospects of success as a factor for determining the question of whether or not proceedings are prohibitively expensive.

3. Do you have any comments on draft rule 58A.6 for the determination of an application?

We would not agree that there should be a presumption against a hearing for determining an application. We would agree that any hearing should be focused and notes could be lodged prior to any hearing.

4. Do you have any comments on draft rule 58A.9 for the expenses of the application?

We would suggest that limiting expenses of the motion hearing would appear to contradict the court's decision not to award the PEO. The court would have discretion to limit expenses at the motion hearing on an application from the petitioner. If a proposed cap is implemented it should be at a reasonable level for the work completed for the motion hearing.

5. Do you have any comments on draft rule 58A.8 for expenses protection in reclaiming motions?

We would suggest that the PEO from the first instance proceedings should not stay in place for the appeal hearing. A fresh application should be made to allow the limits to be reviewed as we would not agree it is reasonable for the limits to remain the same to include both the first instance and appeal proceedings.

6. Do you have any comments on the draft amendment to rule 38.16?

We would refer you to our answer in Q.3.

7. Do you have any other comments on the proposals contained in this paper?

No further comments.