his conclusion that s.57 of the Access to Justice Act 1999 "does not permit the "leapfrogging" of an application for permission to appeal, as opposed to an appeal in respect of which permission has been granted".

If the lower court refuses permission to appeal, it does not have jurisdiction (either under s.57 of the Access to Justice Act 1999 or under r.52.14) to direct that any appeal which may subsequently be permitted should go to the Court of Appeal as opposed to a junior appellate court: see *7E Communications Ltd v Vertex Antennentechnik GmbH* [2007] EWCA Civ 140; [2007] 1 W.L.R. 2175.

The Court of Appeal may give such directions as are considered appropriate, following receipt of an appeal under the leapfrog procedure (this follows from the Court's general power to give directions "as the case may require" stated in Practice Direction 52C para.2).

52.14.2 In *Southwark LBC v Ofogba* [2012] EWHC 1620 (QB), the appeal concerned both a money judgment for rent arrears and the county court judge's decision to adjourn the claim for possession. The appeal against the money judgment was a matter for the Court of Appeal, but the appeal against the adjournment lay to the High Court. Hickinbottom J. concluded that all issues should be dealt with in the same forum and ordered that the appeal against the adjournment should also be dealt with by the Court of Appeal.

In *Safin (Fursecroft) Ltd v Badrig* [2015] EWCA Civ 739, July 10, 2015, CA, unrep., the Court of Appeal gave judgment on the difficult matter of whether a court may extend time for a defendant to comply with conditions contained in a consent order granting him relief from forfeiture of a lease of residential premises (see para.3.1.2 above). The court below was the County Court where the judge concerned granted the claimant permission to appeal his decision extending time and directed that the appeal be heard, not by the High Court, but by the Court of Appeal because he considered it raised an important point (an opinion with which the Court of Appeal did not disagree).

Judicial review appeals from the High Court[1]

52.15

52.15—(1) Where permission to apply for judicial review has been refused at a hearing in the High Court, the person seeking that permission may apply to the Court of Appeal for permission to appeal.

(1A) Where permission to apply for judicial review of a decision of the Upper Tribunal has been refused by the High Court or where permission to apply for judicial review has been refused and recorded as totally without merit in accordance with rule 23.12—

- **(a) the applicant may apply to the Court of Appeal for permission to appeal;**
- **(b) the application will be determined on paper without an oral hearing.**

(2) An application in accordance with paragraphs (1) or (1A) must be made within 7 days of the decision of the High Court to refuse to give permission to apply for judicial review or, in the case of an application under paragraph (1A), within 7 days of service of the order of the High Court refusing permission to apply for judicial review.

(3) On an application under paragraph (1) or (1A), the Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review.

(4) Where the Court of Appeal gives permission to apply for judicial review in accordance with paragraph (3), the case will proceed in the High Court unless the Court of Appeal orders otherwise.

Application for permission to appeal against refusal of permission below

52.15.1 The court's permission to proceed is required in a claim for judicial review (r.54.4). Where permission to apply for judicial review has been refused at a hearing in the High Court, the person seeking that permission may apply to the Court of Appeal for permission to appeal (r.52.15(1)). (Where the court, without a hearing, refuses permission to proceed the provisions of r.54.12 apply.) Rule 52.15 modifies the general provisions about permission to appeal (r.52.3) in relation to judicial review appeals.

Para. (1A) was added to r.52.15 by the Civil Procedure (Amendment No.2) Rules 2012 (SI 2012/2208) as one of a number of amendments made to the CPR following the decision of the Supreme Court in *R. (Cart) v Upper Tribunal* [2011] UKSC 28; [2011] 1 A.C. 663, SC. (See also r.54.7A.) The

[1] Introduced by the Civil Procedure (Amendment) Rules 2000 (SI 2000/221) and amended by the Civil Procedure (Amendment No.2) Rules 2012 (SI 2012/2208), the Civil Procedure (Amendment No.4) Rules 2013 (SI 2013/1412) and the Civil Procedure (Amendment No.6) Rules (SI 2014/2044).

addition to para.(1A) of the words "or where permission to apply for judicial review has been refused and recorded as totally without merit in accordance with rule 23.12", effected by the Civil Procedure (Amendment No.4) Rules 2013 (SI 2103/1412), has a different provenance. Those words were inserted for the purpose of implementing one of the proposals for the reform of procedure for judicial review claims published by the Ministry of Justice on April 23, 2013. For meaning of "totally without merit", see para. 23.12.2 above and para.54.12.1 below.

Para.(1A) ensures that applications for permission to appeal to the Court of Appeal, following adverse results in both the Upper Tribunal and the Administrative Court, can be dealt with on paper, rather than by way of an oral hearing, thereby addressing one of the consequences of the Supreme Court's decision. But the provision has a wider effect. In *R. (Parekh) v Upper Tribunal (Immigration & Asylum Chamber)* [2013] EWCA Civ 679, May 23, 2013, CA, unrep., it was submitted by an appellant, principally on the terms of r.52.3(4), that para.(1A) of r.52.15 does not have the effect of precluding a renewed application for permission to appeal at an oral hearing by a Court of Appeal judge after another judge of the Court of Appeal has refused, on the papers, permission to appeal from a refusal by the High Court to grant permission to apply for judicial review of a decision of the Upper Tribunal. In rejecting that submission the Court of Appeal noted that the terms of r.52.3 are of general application in cases where permission to appeal is required, whereas para.(1A) relates specifically to cases where permission to apply for judicial review of a decision of the Upper Tribunal has been refused by the High Court, and stated that the specific rule took precedence over the general rule.

The risk of escalating costs

52.15.2 There is an obvious danger that cost-saving mechanisms (viz. the requirements for permission from an Administrative Court judge and from the Court of Appeal) may end up multiplying costs. Before their claim for judicial review gets under way the applicant might have undergone three preliminary hearings, namely (1) a permission hearing before an Administrative Court judge, (2) a permission hearing before the Court of Appeal and (3) a substantive hearing before the Court of Appeal.

The solution

52.15.3 Rule 52.15(3) empowers the Court of Appeal to cut the Gordian knot and, instead of granting permission to appeal, to grant permission to apply for judicial review. It is respectfully suggested that (except in cases where the court needs to adjourn in order to hear the respondent) this power should generally be exercised, essentially for three reasons: (1) If there is a real prospect of success on the appeal, almost by definition the underlying claim for judicial review must be arguable. (2) It is undesirable that the merits of a judicial review claim should be scrutinised at a full hearing before two or three lords justices before it is adjudicated upon by a first instance judge. (3) It may be thought oppressive to make the claimant pay a third set of costs before their claim reaches the starting line.

The true nature of the application

52.15.4 Although in substance the claimant is trying to persuade the Court of Appeal to grant permission to apply for judicial review, the legal basis of their application should not be overlooked. It is, and can only be, an application for permission to appeal to the Court of Appeal against the refusal by the High Court to grant permission to apply for judicial review. Where (as sometimes happens) the Court of Appeal states that it is refusing permission to apply for judicial review, this is by necessary implication a refusal of permission to appeal to the Court of Appeal. Furthermore, since the only application before the Court of Appeal is an application for permission to appeal, an adverse decision on that application (however formulated) cannot be the subject of an appeal to the House of Lords. See *R. v Secretary of State for Trade and Industry, ex p. Eastaway* [2000] 1 W.L.R. 2222. If, on the other hand, the Court of Appeal grants permission to appeal but then refuses permission to apply for judicial review at the substantive hearing, there is potentially a right of appeal to the House of Lords. See *R. (Burkett) v Hammersmith LBC* [2002] 1 W.L.R. 1593; *R. (Werner) v Commissioners of Inland Revenue* [2002] EWCA Civ 979 per Brooke L.J. at [33].

Where the court wishes to hear the respondent

52.15.5 It is sometimes necessary to hear the respondent, in order to determine whether the original claim is fit for consideration at a substantive judicial review hearing. In those circumstances the normal course is to adjourn the application for permission to appeal to be heard on notice, with the appeal to follow if permission is granted. See *R. (Werner) v Commissioners of Inland Revenue* [2002] EWCA Civ 979 at [28]–[32].

Time limit for application to Court of Appeal

52.15.6 The time limits for applying to the Court of Appeal for permission to appeal are as stated in r.52.15(2). That provision was clarified by amendments made by the Civil Procedure (Amendment No.6) Rules 2014 (SI 2014/2044). Depending on the circumstances, the seven day period runs either from the date of the decision of the High Court or from the date of service of the order of the High Court. The principles governing the grant of any extension of time are as set out in the notes to r.52.6 above.

Consequential directions if permission is granted

52.15.7 Pursuant to s.31A of the Senior Courts Act 1981 (inserted by s.19 of the Tribunals, Courts and Enforcement Act 2007) (a) certain categories of judicial review applications must be transferred to

the Upper Tribunal and (b) certain categories of judicial review applications may be transferred to the Upper Tribunal if this appears to be "just and convenient". A fuller explanation of these provisions is set out in the commentary on Part 54 below.

If the Court of Appeal grants permission to apply for judicial review, then in the exercise of its powers under r.52.15(4) the Court of Appeal should go on to consider the question of transfer to the Upper Tribunal. If the judicial review claim is to remain within the courts, then the Court of Appeal must decide whether that claim should be determined by the Court of Appeal or by the High Court. In taking these decisions, the Court of Appeal will be seeking to find the most convenient and coste ffective course: see *R (Shiner) v Commissioners of HM Revenue and Customs* [2010] EWCA Civ 558.

Judicial review appeals from the Upper Tribunal[1]

52.15A

52.15A—(1) Where permission to bring judicial review proceedings has been refused by the Upper Tribunal and permission to appeal has been refused by the Upper Tribunal, an application for permission to appeal may be made to the Court of Appeal.

(2) Where an application for permission to bring judicial review proceedings has been recorded by the Upper Tribunal as being completely without merit and an application for permission to appeal is made to the Court of Appeal in accordance with paragraph (1) above, the application will be determined on paper without an oral hearing.

(The time limits for filing an appellant's notice under rule 52.15A(1) are set out in Practice Direction 52D.)

Effect of rule

52.15A.1

This rule was inserted by the Civil Procedure (Amendment No.6) Rules 2014 (SI 2014/2044) and came into effect on October 1, 2014.

Paragraph 3.3 of Practice Direction 52D (substituted by CPR Update 75 (July 2014), with effect from October 1, 2014) states that, where the appellant wishes to appeal against a decision of the Upper Tribunal, the appellant's notice must be filed within 28 days of the date on which notice of the Upper Tribunal's decision on permission to appeal to the Court of Appeal is sent to the appellant.

An application for permission to appeal may be considered by an appeal court at an oral hearing or on paper. Paragraph (2) of this rule states, categorically, that in the circumstances provided for therein "the application will be determined on paper without an oral hearing". In this respect, r.2.15A accords with r.52.15.

Rule 30 of the Tribunal Procedure (Upper Tribunal) Rules 2008 states that where that rule applies and the Upper Tribunal refuses permission to bring judicial review proceedings and considers the application to be totally without merit, it shall record that fact in its decision notice.

Planning statutory review appeals[2]

52.15B

52.15B.—(1) Where permission to apply for a planning statutory review has been refused at a hearing in the High Court, the person seeking that permission may apply to the Court of Appeal for permission to appeal (see Part 8 and Practice Direction 8C).

(2) Where permission to apply for a planning statutory review has been refused and recorded as totally without merit in accordance with rule 23.12—

- **(a) the claimant may apply to the Court of Appeal for permission to appeal;**
- **(b) the application will be determined on paper without an oral hearing.**

(3) An application in accordance with paragraph (1) or (2) must be made within 7 days of the decision of the High Court to refuse to give permission to apply for a planning statutory review or, in the case of an application under paragraph (2), within 7 days of service of the order of the High Court refusing permission to apply for a planning statutory review.

(4) On an application under paragraph (1) or (2) the Court of Appeal may, instead of giving permission to appeal, give permission to apply for a planning statutory review.

---

[1] Introduced by the Civil Procedure (Amendment No.6) Rules (SI 2014/2044).

[2] Inserted by the Civil Procedure (Amendment No.4) Rules 2015 (SI 2015/1569).