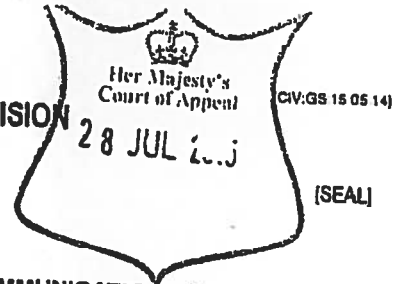




## IN THE COURT OF APPEAL, CIVIL DIVISION



REF: C3/2015/2159

SKY UK LIMITED &amp; ORS -v- OFFICE OF COMMUNICATIONS &amp; ORS

**ORDER made by the Rt. Hon. Lord Justice Lewison**

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

**Decision:** granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

REFUSED

**Reasons**

1. The CAT applied the correct legal test in deciding whether the panel as a whole should recuse themselves from hearing the remitted issue.
2. The observations of the original panel in dealing with the stay application must be seen in the context of BT's grounds of appeal as presented to the panel. Although BT did successfully appeal, that appeal was limited to one part only of its more comprehensive grounds of appeal, and related to part of Ofcom's concerns which the panel had not considered at all. This is not, therefore, a case in which any member of the panel has expressed strongly held views on the very matter in issue. The whole thrust of the Court of Appeal's judgment was to the contrary: viz that the panel had not considered that part of Ofcom's case.
3. In those circumstances the fair-minded and informed observer would conclude that the panel (under a new chairman) would be considering that aspect of Ofcom's case for the first time.

**Information for or directions to the parties**

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories\*. Yes  No

Recommended for mediation Yes  No

If not, please give reason:

**Where permission has been granted, or the application adjourned**

- a) time estimate (excluding judgment)
- b) any expedition Refer to the VP to consider certifying any renewal as fit for vacation business



Signed:

Date: 27 July 2015

By the Court

**Notes**

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 16(1) of CPR PD 52C.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 7 days of the date of the listing window notification letter and seek to agree the bundle within 21 days of the date of the listing window notification letter (see paragraph 21 of CPR PD 52C).

**DATED 27TH JULY 2015  
IN THE COURT OF APPEAL**

**SKY UK LTD & ORS  
-and-  
OFFICE OF COMMUNICATION & ORS  
ORDER**

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Lower Court Ref: 1156-9/8/3/10**