The Supreme Court of the United Kingdom: an overview of key themes, with references to further material

Educational resource for Higher Education Institutions

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"A thousand years of judgment stretch behind –
The weight of rights and freedoms balancing
With fairness and with duty to the world:
The clarity time-honoured thinking brings.
New structures but an old foundation stone…"
(*Lines for The Supreme Court*, 2009, Andrew Motion – then Poet Laureate)

The Supreme Court, which opened in October 2009 as the successor to the Appellate Committee of the House of Lords, is the Highest Court of Appeal in the United Kingdom, dealing with civil cases from the whole of the United Kingdom and criminal cases from England, Wales and Northern Ireland.

This is a resource provided by the Communications team of the UK Supreme Court, nothing contained in it should be considered as an official opinion of the Court.

1. Creation of The UK Supreme Court

Since the Appellate Jurisdiction Act of 1876, the Lords of Appeal in Ordinary (or Law Lords, as they were known) conducted the judicial work of the House as members of The Appellate Committee of the House of Lords[1]. While the Law Lords in recent times abstained from speaking or voting on politically sensitive matters, when a Law Lord retired, they were then free to participate in debates on legislation and public policy, as peers.

The creation of the Supreme Court by Parliament was highly symbolic and sought to counter the perception that there was not a clear enough separation of powers between the legislature and the judiciary. The move over Parliament Square to the former Middlesex Guildhall building on 1 October 2009 underlined the separation of powers and judicial independence by removing the judicial role of the House of Lords to a physically separate building.

Lord Phillips explains this in some more detail in his Gresham Special Lecture at Lincoln's Inn (June 2010):
https://www.supremecourt.uk/docs/speech_100608.pdf

The following link sets out the Constitutional Reform Act 2005, which provided for the establishment of the Court:
http://www.legislation.gov.uk/ukpga/2005/4/contents

[1] http://www.parliament.uk/documents/lords-information-office/hoflbpjudicial.pdf

2. Key differences between the Appellate Committee of the House of Lords and the Supreme Court

While the judicial *function* of the Supreme Court has barely changed, its *form* has altered considerably. The creation of the Supreme Court has made the administration of justice by the UK's highest court much more visible.

In 2011, over 70,000 people – including a high number of students – visited the court to tour the building or observe a hearing. This contrasts with hearings that took place in the House of Lords' Committee rooms, where access was inevitably more limited (due to space and security constraints). The Supreme Court building contains an exhibition space, a welcoming café and spacious public areas to encourage visitors.

Underlining the drive for transparency and accessibility is the Supreme Court's exemption from legislation prohibiting filming in courtrooms in England, Wales and Northern Ireland (achieved by a specific exemption from the Criminal Justice Act 1925, in the Constitutional Reform Act 2005).

One of the wall-mounted court cameras

Each court in the building has 4 remotely-operated wall-mounted cameras, recording every case and judgment that is heard. Sky News also streams live coverage of Supreme Court: https://news.sky.com/supreme-court-live

Lord Hope's speech at the Edinburgh Centre for Commercial Law (March 2010) describes a number of the practical differences ("No mace, no prayers, no motions put and voted on": http://www.supremecourt.uk/docs/speech_100312.pdf) as does his Barnard's Inn Reading (June 2010), "The Creation of the Supreme Court – was it worth it?": http://www.supremecourt.uk/docs/speech_100624.pdf

3. Bringing a case to the Supreme Court

In its first year, the court heard 67 appeals and gave 62 judgments; in its second, the court heard 76 appeals and gave 56 judgments. As a broad overview, the Supreme Court can consider appeals from the following courts:

In England and Wales
The Court of Appeal, Civil Division
The Court of Appeal, Criminal Division
(in some limited cases) the High Court

In Scotland
The Court of Session

In Northern Ireland
The Court of Appeal in Northern Ireland

The Supreme Court can also hear 'devolution issues', cases which raise important constitutional matters about the exercise of a function by ministers of the devolved assemblies/parliaments or the legislative competence of those assemblies/parliaments.

A general overview of the jurisdiction of the Supreme Court can be found here:
https://www.supremecourt.uk/about/role-of-the-supreme-court.html

A more detailed guide to the Court's jurisdiction can be found here:
http://www.supremecourt.uk/docs/bringing-case-to-UKSC.pdf

And a factual note on the Court's jurisdiction in criminal matters in Scotland can be found here:
http://www.supremecourt.uk/docs/scottish_criminal_cases.pdf

When a party (the appellant) seeks permission to appeal it is considered by a panel of Justices – usually three – typically on the basis of the written submissions they receive from the appellant and the respondent. Occasionally, the Court directs that an oral hearing should take place to explore the legal argument about the merits of the appeal in greater depth. The panel's decision to allow or refuse an appeal depends on whether they deem that the case involves an *arguable point of law of general public importance*.

The Justices deal with about 200-250 applications a year (plus a small number relating to the Judicial Committee of the Privy Council). If permission is granted, the appeal will then be listed for a full hearing at some point between approximately six months and one year from the granting of such permission.

The hearing date largely depends on the availability of the parties' preferred advocates. In urgent cases (such as those involving the welfare of a child), these timescales can be substantially shortened – and in some cases, appeals have been filed, heard and a judgment delivered within just a few weeks.

4. The hearing

A case is usually heard by a panel of five Justices, though this can be increased to seven or even nine depending on the importance of the case – criteria against which the President and Deputy President will consider constituting a larger panel can be found here: http://www.supremecourt.uk/procedures/panel-numbers-criteria.html

Analysis has shown that the Supreme Court has been more willing to convene larger panels than when sitting in the House of Lords[2]: this is, in part, because of the greater physical space available to the Justices in the courtrooms[3].

Observers tend to comment that proceedings are less formal than in lower courts[4], with the Justices encouraging an atmosphere of "learned debate" rather than adversarial argument. Counsel increasingly dispense with wearing wigs and gowns (since December 2011, where the parties agree, they have been able to ask the Court to remove this requirement), though some do still choose to appear in traditional court dress[5].

A timetable is agreed between the parties and the Court for the appellants, respondents and any interveners to make their submissions. There are frequent questions from the Justices as arguments are developed and challenged. The length of hearing varies, but the average is two days.

The court is beginning to hear more appeals relying on the use of 'electronic bundles' displayed in court via linked computer screens and controlled by an operator, working under the instruction of the advocates. Working with fewer paper bundles obviously reduces the Court's use of consumables, helping save time, money and the environment.

The link below is to the Court's press release announcing a pilot 'paper-less' JCPC hearing:
http://www.supremecourt.uk/docs/pr_1012.pdf.

[2] Comparing the Annual Reports of 09/10 and 10/11 suggests a small (4 per cent) increase between the two years of the proportion of 7 or 9 member panels: http://www.supremecourt.gov.uk/news/annual-report.html
[3] For further discussion of this trend, see para 31 of Lord Clarke's Bracton Law Lecture, 'The Supreme Court – One Year On', November 2010: http://www.supremecourt.gov.uk/docs/speech_101111.pdf
[4] http://www.parliament.uk/documents/lords-information-office/hoflbpjudicial.pdf
[5] See announcement by Lord Phillips, November 2011:
http://www.supremecourt.gov.uk/docs/pr_1112.pdf

5. Decision making and judgment hand-down

In practically every case, the Court will reserve its judgment. Immediately following a case the justices will retire to discuss the case. Each justice involved in the hearing will have the chance to give his/her initial opinion. Interestingly, it is the junior justice who goes first – the theory being that he will not be influenced by other, more senior justices. Once everyone has had their say, a Justice will usually be chosen to write the lead judgment, and others may indicate they too wish to write a judgment. If there are 'dissenters' from the majority, they too will be able to write a dissenting opinion. Of course, this meeting is simply for the purposes of planning how the judgment will be produced – the Justices are at liberty to change their mind as their research and consideration of the submissions they have received takes shape.

The practice of publishing several different perspectives is not shared by all European courts. For example, the Spanish Supreme Court will give one decision – with no dissenting opinions. UK Supreme Court judgments sometimes exceed one hundred pages long[6].

Once the Court's judgment is finalised, a date is set for it to be handed-down (usually Wednesday mornings in legal term time). The Justice who gave the lead judgment will prepare a summary lasting around three minutes, which is read out to the courtroom, with some of the other Justices who sat on the appeal also present on the judicial bench.

Footage from judgment 'hand-downs' are sometimes broadcast on TV news bulletins

The judgment is then made available in printed form from our Reception area, and a copy is published online along with a two-page press summary.

The text of all judgments and press summaries are later uploaded to the 'decided cases' section of the Supreme Court website: http://www.supremecourt.uk/decided-cases/index.html.

[6] http://www.judiciary.gov.uk/NR/rdonlyres/316CA225-82FB-4655-BA0B-5CDA8CE71F6B/0/sptcla2011speech.pdf

6. Relationship with Europe

Before the Human Rights Act was passed by Parliament in 1998 it was not possible for an individual in the UK to challenge a decision of a public authority on the grounds that it violated his or her rights under the European Convention of Human Rights (ECHR), within the courts of the UK. Individuals instead had to take their case directly to the European Court of Human Rights in Strasbourg (ECtHR).

Once the Act came into force on 2 October 2000, individuals could claim a remedy for breaches of their Convention rights in the UK courts. An individual who thinks that his or her Convention rights have not been respected by a decision of a UK court may still bring a claim before the ECtHR, but they must first try their appeal in the UK courts.

European Court of Human Rights, Strasbourg

It is the duty of all such courts, including the UK Supreme Court, to interpret all existing legislation so that it is compatible with the ECHR; so far as it is possible to do so. If the court decides it is not possible to interpret legislation so that it is compatible with the Convention, it will issue a 'declaration of incompatibility'.

Although a declaration of incompatibility does not place any legal obligation on the government to amend or repeal legislation, it sends a clear message to legislators that they should change the law to make it compatible with the human rights set out in the Convention. In giving effect to rights contained in the ECHR the Court must take account of any decision of the ECtHR in Strasbourg. No national court should "without strong reason dilute or weaken the effect of the Strasbourg case law" (Lord Bingham of Cornhill in R (Ullah) v Special Adjudicator [2004] UKHL 26).

However, in rare circumstances, the Supreme Court has sent cases back to Strasbourg. For example, in 2009 the Court declined to follow a decision of the ECtHR in *R v Horncastle* (https://www.supremecourt.uk/cases/docs/uksc-2009-0073-press-summary.pdf). This case raised the question whether there could be a fair trial when a defendant was prosecuted based on evidence given by witnesses who subsequently did not attend the trial in person and therefore were not available to be cross-examined by the defendant.

Lord Philips, President of the Supreme Court, said that although the requirement to "take into account" the Strasbourg jurisprudence would "normally result" in the domestic court applying principles that are clearly established by the ECtHR. "There will, however, be rare occasions where the domestic court has concerns as to whether a decision of the Strasbourg court sufficiently appreciates or accommodates particular aspects of our domestic process. In such circumstances, it is open to the domestic court to decline to follow the Strasbourg decision, giving reasons for adopting this course".

In December 2011, the ECtHR gave judgment in *Al-Khawaja*, a case that raised the same issue as in *Horncastle*. Commentators noted how the Strasbourg court had evidently taken

into consideration the UK Supreme Court's judgment in the latter case, demonstrating the concept of 'dialogue' between the two courts.
You can find more details on this topic on our website at:
http://www.supremecourt.uk/about/the-supreme-court-and-europe.html

For further examination of this topic see Lady Hale's lecture, 'Argentoratum Locutum: Is the Supreme Court Supreme?', given in December 2011:
http://www.supremecourt.uk/docs/speech_111201.pdf

And Lord Kerr's Clifford Chance Lecture on a similar topic, from January 2012:
http://www.supremecourt.uk/docs/speech_120125.pdf

7. Appointments to the Supreme Court

The procedure for the Selection of Members of the Supreme Court is set out in sections 23-31 of the Constitutional Reform Act 2005 (CRA).

The Supreme Court Justices, as at January 2020

When a vacancy to the Supreme Court bench arises, the Lord Chancellor will be notified. It is his responsibility to convene a selection commission: he usually does this by way of a letter to the President of the Court who chairs the selection commission. Other members are the Deputy President, and a member of each of the Judicial Appointments Commission for England and Wales, the Judicial Appointments Board in Scotland, and the Judicial Appointments Commission in Northern Ireland. At least one of those representatives must be a lay person.

The commission must consult with several prescribed people – senior judges from across the UK, the Lord Chancellor, the First Minister in Scotland, the First Minister in Wales and the Chairman of the Northern Ireland Judicial Appointments Commission.

The Committee then reports their selection to the Lord Chancellor who undertakes further consultation under S28(5) of the CRA. He will notify the selection to the Prime Minister, reject it or ask the Commission to reconsider.[7]

Once a name is sent to the Prime Minister, Downing Street then liaises with Buckingham Palace over the official announcement of the new appointment, which is made by the former on behalf of HM The Queen.

Applicants must have held high judicial office for at least two years. ('High judicial office' is defined to include High Court Judges of England and Wales, and of Northern Ireland; Court of Appeal Judges of England and Wales, and of Northern Ireland; and Judges of the Court of Session.) Alternatively, applicants must satisfy the judicial-appointment eligibility condition on a 15-year basis or have been a qualifying practitioner for at least 15 years.

[7] Judicial Appointments Commission website: www.judicialappointments.gov.uk

More detail on the qualification criteria and consultation process can be found on our website at: http://www.supremecourt.uk/about/appointments-of-justices.html

The issue of judicial diversity remains a topic of considerable debate. A number of Justices have been quoted stating the need for the judiciary to reflect the composition of the society it serves, while underlining the importance of appointing solely on merit. While noting the considerable progress made, particularly since the creation of the Judicial Appointments Commission, others have expressed impatience at the rate of appointment of senior women and minority ethnic judges.

The links below offer insights into the views of Lord Phillips, Lady Hale and Lord Kerr, who each gave evidence to the House of Lords Constitution Committee on the issue:
http://www.parliament.uk/documents/lords-committees/constitution/JAP/ucCNST191011ev5.pdf
http://www.parliament.uk/documents/lords-committees/constitution/JAP/corrCNST130711ev2.pdf
http://www.parliament.uk/documents/lords-committees/constitution/JAP/corrCNST021111ev7.pdf

A list of current and former Justices of the Supreme Court can be found on our website at: http://www.supremecourt.uk/about/whos-who.html

8. Endnote

We hope this brief overview to our role and work has been helpful in your studies.

We would welcome feedback on other areas that we could usefully cover in future updates – please get in touch via enquiries@supremecourt.uk or drop us a line on Twitter, @UKSupremeCourt.