Why does the UK Supreme Court matter for Scotland?

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University of Strathclyde, 28 October 2024

Introduction

1st October 2009 was a significant date in the constitutional history of the UK. It is the date when the highest court in the UK ceased to be the House of Lords, where the judges were known as Law Lords, and became the newly created Supreme Court of the United Kingdom. At first sight, it might seem that little had changed. The Supreme Court inherited the functions previously discharged by the Law Lords. Its first Justices were the same judges who previously sat as Law Lords. And the Supreme Court, like the Law Lords, sits in a building located on Parliament Square in Westminster. So, from the outside, it might appear that not much had changed.

But, while there is a degree of continuity, there is also much that is new. So what difference has the Supreme Court made in the 15 years since it was established? And, since I am a Scottish judge speaking to an audience in Scotland, why does any of this matter for Scotland? During the next 45 minutes, I plan to highlight nine aspects of the Supreme Court that strike me as important. In doing so, I hope it will become clear that Scotland and the Scottish legal system are important to the Court, and that the Court is also important to them.

But I will begin by making three introductory points about the role of the Court, and the involvement of Scottish judges and other Scots in its work. First, the Court is the highest court in the UK for all civil cases, and so it sits above the Court of Session in Edinburgh, the Court of Appeal in London, and the Court of Appeal of Northern Ireland in Belfast. It is also

[1] I am grateful to my judicial assistant, Rebecca Fry, for her assistance in the preparation of this lecture.

the highest court for criminal cases in England and Wales, and Northern Ireland. For historical reasons, the Court only hears appeals from the Scottish criminal appeal court, the High Court of Justiciary, if they raise an issue relating to human rights or to the powers of the Scottish Parliament or Government.

Secondly, the Court is a court of law, so it decides only questions of law, applying established techniques of legal reasoning. It does not decide political issues.

Thirdly, the Court comprises 12 judges. The selection commission which selects the judges is required to ensure that between them the judges will have knowledge of, and experience of practice in, the law of each part of the UK. In practice, there have always been two Scottish judges on the Court. The selection commission for every appointment, whether of a Scottish judge or not, has to include at least one member of the Judicial Appointments Board for Scotland ("JABS"). The selection commission also has to consult the First Minister on every appointment. The commission is chaired by the President of the Court, currently also a Scot. There are at least three Scots involved in every appointment. A judge from the Court of Session is also invited to sit on the commission when the appointment of a Scottish judge is being considered.

1: Visibility

The first aspect of the Supreme Court that I want to highlight is that it is a more visible court than its predecessor.

Why appeals from all over the UK ended up being decided by the House of Lords is a long story. In short, before the Treaty of Union of 1707, the English Parliament heard petitions of appeal against the decisions of the highest English courts, while in Scotland there was a right to petition the Scottish Parliament for what was called "remeid of law" against the decisions of

the Court of Session. The merger of the Scottish and English Parliaments in 1707 had the effect of conferring on the British Parliament at Westminster the function of a final court of appeal for the whole of Great Britain. Over time, this function came to be performed by a committee of the House of Lords, known as the Appellate Committee or the Law Lords.[2]

The Law Lords' role was not easy for members of the public to understand. When a decision was reported as having been made by the House of Lords it was not obvious that the decision had been taken by judges. As early as 1867, this situation was criticised by Walter Bagehot on the grounds that, "[t]he supreme court… ought to be a great conspicuous tribunal…[and] ought not to be hidden beneath the robes of a legislative assembly."[3] By the early 2000's many people agreed. In 2005 legislation was passed to provide for the establishment of the Supreme Court[4] and, in 2009, we opened our doors for the first time. Today, it is clear when we make a decision that we have done so as a court, and that the decision is made by judges.

2: Independence

Independence was another important driver for the creation of the Supreme Court. The constitutional principle of the independence of the judiciary requires judges to be independent so that they can make decisions by applying the law to the facts of the cases before them, free from any external influence. When the Law Lords served as the UK's highest court, their independence was, as one former Law Lord put it, "potentially compromised in the eyes of citizens by relegating the status of the highest court to the position of a subordinate part of the legislature."[5] A further difficulty was that the Lord Chancellor, a government minister, was also

[2] See Louis Blom-Cooper, Brice Dickson and Gavin Drewry (eds), *The Judicial House of Lords 1876-2009* (Oxford University Press 2009).
[3] Walter Bagehot, *The English Constitution* (first published in 1867, Oxford University Press 2009), p. 96.
[4] Constitutional Reform Act 2005, Part 3.
[5] Lord Steyn, "The case for a Supreme Court" (2002) 118 Law Quarterly Review 382, 383.

the head of the judiciary in England and Wales and could (and sometimes did) sit as the presiding judge in the House of Lords.[6]

The Supreme Court was consequently designed to achieve a complete separation between the UK Parliament, the UK government and the UK's most senior judges. The importance of this becomes obvious when you consider the kinds of cases the Court is required to decide. In 2020, for example, the Court heard an appeal from the Court of Session brought by a cross party group of members of Parliament concerning the lawfulness of the Prime Minister's advice to the Queen to prorogue Parliament in the weeks before the UK's planned withdrawal from the European Union.[7] The case was heard and decided by the Supreme Court together with an English appeal brought by Gina Miller. The English High Court, with the Lord Chief Justice presiding, had dismissed Mrs Miller's claim on the ground that the lawfulness of the advice was not justiciable in a court of law.[8] On the same day, the Inner House of the Court of Session, with the Lord President presiding, announced its decision that the issue was justiciable, that the advice was motivated by the improper purpose of stymying Parliamentary scrutiny of the government, and that it, and any prorogation which followed it, were unlawful and thus void and of no effect.[9] The English and Scottish courts could not both be right: Parliament could not simultaneously have been validly prorogued, as the English court had held, and not prorogued, as the Scottish court had held. As the only court sitting above both the English and the Scottish courts, the Supreme Court heard both appeals together. We agreed, unanimously, with the Scottish court's conclusions.

This case illustrates the importance of having a Supreme Court capable of resolving such important constitutional questions which affect the whole of the UK, and also why it is so

[6] Ibid. See also Andrew le Sueur and Richard Cornes, "The Future of the United Kingdom's Highest Courts", UCL Constitution Unit (June 2001), para 3.2.4, available at: 76.pdf (ucl.ac.uk).
[7] *R (Cherry) v Advocate General for Scotland* heard and decided together with *R (Miller) v The Prime Minister* [2019] UKSC 41.
[8] *R (Miller) v The Prime Minister* [2019] EWHC 2381 (QB).
[9] *Cherry v Advocate General for Scotland* [2019] CSIH 49.

important for the Court to be independent of the other branches of government. As my predecessor, Lady Hale, has said, it would have seemed strange, and even inappropriate, for this decision to be left to a committee of the House of Lords: a committee of the Parliament which had been purportedly prorogued.[10]

3: A constitutional court?

As a result of the Supreme Court's increased visibility, many of our decisions have attracted media and public attention. Some of this attention has been positive, while some of it has been negative. This is to be expected in a democratic society. Cases that come before the Supreme Court are necessarily difficult and important, because we only grant permission to appeal in cases that raise an arguable point of law of general public importance.[11] Where appeals have controversial consequences, people may understandably have different views, and those views may be expressed in strong terms.

Having said that, it has been necessary for the Court to address misunderstandings about its role and its decisions. One of those is the assertion that the Court is increasingly acting as the UK's constitutional court. It is important to understand that the Court is not a constitutional court in the same sense as those that exist in many other countries. For example, unlike the United States Supreme Court, we cannot and do not strike down legislation enacted by the UK Parliament. But we do decide constitutional questions of significant importance, both for Scotland and for the UK as a whole.

That does not mean that the Supreme Court is "activist" or is overreaching its powers. The legal principles which make up the UK constitution are laid down partly in legislation and

[10] Lady Hale, "Lessons from our first ten years", Supreme Court Ten-Year Anniversary Lecture Series (12 December 2019), available at: Ten year anniversary lecture series (supremecourt.uk)
[11] Supreme Court Practice Direction 3.3.3. Available at: https://www.supremecourt.uk/procedures/practice-direction-03.html

partly in the common law. As the highest court has the final word on the interpretation of legislation and on the development of the common law, the Law Lords were always required to adjudicate on constitutional issues, and the Supreme Court has inherited that role. In particular, as our democracy is underpinned by a long-established constitutional principle that public power must be exercised lawfully, the role of the courts has for centuries included deciding disputes as to whether the government and other public bodies have exercised their powers, and fulfilled their duties, in accordance with the law. This is not anti-democratic: we expect legislation to be made through a democratic process, but courts don't need a democratic mandate to enforce the law. And when they enforce the law enacted by Parliament, they are making democracy work. If they failed to say so when the government has violated the law enacted by Parliament, they would be failing in their duty, and our democracy would be in crisis.

4: The Human Rights Act

The Supreme Court has followed in the Law Lords' footsteps in deciding constitutional cases. However, this role has been expanded as a result of legislation enacted in the last 30 years. One of the most significant developments occurred in 1998, when the Human Rights Act gave the courts the function of assessing Acts of Parliament for compliance with the human rights protected by the European Convention.[12]

Many of the most important cases on the effect of the Human Rights Act were decided by the Law Lords before the Supreme Court's creation. The baton was passed to the Supreme Court when it began hearing appeals in 2009. For Scotland, the impact of this was seen mainly in cases concerned with criminal procedure. Between 2009 and 2013, ten of the 50 Supreme Court judgments handed down in appeals from Scotland concerned the compatibility of

[12] Human Rights Act 1998, section 4.

Scottish criminal procedure with the Convention.[13] The most important of those cases concerned the Scottish practice of detaining suspects for police questioning without access to a lawyer, introduced in 1980 in the hope that, without legal advice, suspects would be more likely to incriminate themselves. The Supreme Court held that the Convention required that suspects be given access to a lawyer before they were interviewed, unless there were compelling reasons to restrict that right in the particular circumstances of the case.[14] At the time, the Supreme Court's decisions on Scottish criminal procedure led to some tensions with the courts in Scotland, as well as some political criticism. But, with the benefit of hindsight, I would hope that most people would agree that the resulting changes to the Scottish criminal justice system were beneficial.

5: Devolution

As a Scottish audience will be well aware, the Human Rights Act was not the only significant constitutional statute passed in 1998. That is also the date of the Scotland Act, which created the Scottish government and the Scottish Parliament. Similar devolution legislation was also passed in relation to Wales and Northern Ireland. The legislation reserved certain areas of law and administration to Westminster and Whitehall, and placed other areas within the powers of the devolved institutions. This arrangement required a court with the final authority to decide whether the devolved executives and legislatures were acting within their statutory powers. Since the Law Lords formed part of the House of Lords, the second chamber of the UK Parliament, they were thought to lack the institutional independence required to determine

[13] Between 2009 and 2013, the Supreme Court handed down 50 judgments in appeals from Scotland. Of these, the following ten concerned the compatibility of Scottish criminal procedure with Convention rights: (i) *Allison v HM Advocate* [2010] UKSC 6; (ii) *McInnes v HM Advocate* [2010] UKSC 7; (iii) *Cadder v HM Advocate* [2010] UKSC 43; (iv) *Fraser v HM Advocate* [2011] UKSC 24; (v) *Ambrose v Harris* [2011] UKSC 43; (vi) *HM Advocate v P* [2011] UKSC 44; (vii) *McGowan v B* [2011] UKSC 54; (viii) *Jude v HM* Advocate [2011] UKSC 55; (ix) *Kinloch v HM Advocate* [2012] UKSC 62; and (x) *O'Neill v HM Advocate* [2013] UKSC 36.

[14] *Cadder v HM Advocate* [2010] UKSC 43. Note, however, that in *Ambrose v Harris* [2011] UKSC 43, the Court declined to extend this principle to questioning which took place before a person was detained at a police station.

questions relating to the division of power between Westminster, Holyrood, Stormont and Cardiff.[15] So, devolution issues were initially referred to the Judicial Committee of the Privy Council, which consisted of the same judges sitting in a different institution.

This changed with the advent of the Supreme Court, as it took over the Privy Council's devolution jurisdiction. We have had to decide a number of references from Scotland, Wales and Northern Ireland, all of which have raised controversial questions. One of the most high-profile was referred to us by the Lord Advocate, who asked whether a provision of a proposed Bill which provided for a referendum on Scottish independence would be outside the Scottish Parliament's legislative competence (or power to make legislation).[16] As I have explained, the Scotland Act reserves certain matters to the UK Parliament, including "the Union of the Kingdoms of Scotland and England" and "the Parliament of the United Kingdom".[17] The Court held that the proposed Bill related to these reserved matters, because its purpose was to provide for a referendum on whether the Union of Scotland and England, and the sovereignty of the UK Parliament over Scotland, should come to an end.

Quite understandably, people hold a range of views on the political consequences which flowed from the Court's decision. But most people seem to have understood that the Court was responding to a legal question, and that our decision was taken on legal grounds.

6: A UK-wide final court of appeal

[15] Andrew Le Sueur, "What is the future for the Judicial Committee of the Privy Council?", UCL Constitution Unit (May 2001), pp. 11-14, available at: Microsoft Word - 72_judcomm.doc (ucl.ac.uk). See also Lady Hale, "Welcome to the UK Supreme Court?" The Bar Association for Commerce, Finance and Industry (BACFI) Denning Lecture 2008, available at: LEADERSHIP IN THE LAW: WHAT IS A SUPREME COURT FOR (bacfi.org).

[16] *Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31.

[17] Scotland Act 1998, sections 29(1) and (2)(b) and Schedule 5, paragraphs 1(b) and (c).

The Supreme Court's role is not confined to deciding constitutional questions: in fact, they form only a small part of our work. We decide a very wide range of disputes as the UK's final court of appeal. In doing so, we fulfil a role which is different from that of the intermediate appellate courts: the Court of Appeal, the Court of Appeal of Northern Ireland, and the Inner House of the Court of Session.

How is the role different? First, it is necessary for someone to decide the UK's most difficult and most significant legal problems. It is not possible for this need to be met fully by the intermediate appellate courts. To begin with, they simply do not have the time to perform this role, as they are required to deal quickly and efficiently with thousands of cases every year, sitting normally in panels of two or three judges.[18] In contrast, the Supreme Court hears a far more limited number of cases, sitting normally in panels of five or seven judges. As I have explained, permission to appeal is granted only in cases which raise an arguable point of law of general public importance. This enables us to focus on the relatively small number of cases which raise the most important issues of principle brought to us from across the UK. To give you a sense of the numbers, in 2023, the Supreme Court granted permission to appeal in just 43 cases.[19] We handed down 52 judgments, alongside a further 44 judgments of the Privy Council, which is comprised of the same judges, but hears appeals from countries in the Commonwealth.[20]

Secondly, the Scottish, English and Northern Irish courts may disagree on the correct interpretation of legislation or common law principles which apply across the UK, as we saw in the prorogation case. This can lead to inconsistency and uncertainty across the three

[18] For an overview of the workload of the Court of Appeal of England and Wales, see Civil Justice Statistics Quarterly: January to March 2024 - GOV.UK (www.gov.uk) and 24.16_JO_A_Review_of_the_Year_In_the_Court_of_Appeal_Criminal_Division_2022-23_WEB (judiciary.uk).
[19] Permission to appeal - The Supreme Court. That amounted to 26% of the 163 cases in which permission was sought
[20] Decided cases - The Supreme Court and Decided cases - Judicial Committee of the Privy Council (JCPC)

jurisdictions which can only be resolved by the Supreme Court as the highest appellate court for all three jurisdictions.

Thirdly, the intermediate appellate courts are generally bound by precedent: that is to say, they are expected to follow their own previous decisions and those of the House of Lords and the Supreme Court. There are good reasons for this, but it restricts their ability to develop the law in response to the evolving needs of society. In contrast, the Supreme Court is not bound by precedent and can depart from its own previous decisions, or those of the House of Lords, where it appears right to do so.[21]

Discharging each of these functions requires an understanding of the coherence of the law as a whole, of its development over time, and of how it should develop now to respond to the evolving needs of our society. Judges are selected to sit on the Supreme Court because they are assessed as having those particular capabilities.

Let me try to bring our work to life with some examples. One of the most important Scottish appeals to the Supreme Court established for the first time the need for informed consent to medical treatment. The appellant, Mrs Montgomery, was expecting a baby, and was at risk of a complication occurring during the baby's delivery.[22] Her doctor failed to advise her of this risk, or of the possibility of avoiding it by delivery by caesarean section. The complication went on to occur during the birth of Mrs Montgomery's son, causing him to suffer very serious injuries. Mrs Montgomery's medical negligence claim was dismissed at all levels of the Scottish courts.[23] This was, in part, because they were required to follow a House of Lords' decision from the 1980's, which held that the amount of information a doctor was

[21] Practice Statement (HL: Judicial Precedent) [1966] 1 WLR 1234, [1966] 3 All ER 77 (26 July 1966). The Practice Statement has equal effect in the Supreme Court, so it has not been necessary for the Court to re-issue it as a fresh statement of practice in the Court's own name. See *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28, para 25 (Lord Hope). See also Supreme Court Practice Direction 3.1.3, Applications for permission to appeal | Practice direction 3 - The Supreme Court

[22] *Montgomery v Lanarkshire Health Board* [2015] UKSC 11.

[23] [2010] CSOH 104 and [2013] CSIH 3.

required to give a patient was a matter of medical judgment.[24] However, the Supreme Court was not bound by this approach. Our judgment held that an adult person of sound mind had to give her consent before treatment interfering with her bodily integrity was undertaken, other than in exceptional circumstances such as where she was unconscious or there was an emergency. Treatment to which she had not consented would be an assault. When obtaining her consent, doctors were under a duty to take reasonable care to ensure that the patient was aware of any material risks involved in any recommended treatment, and of any reasonable alternative treatments. The judgment in this Scottish appeal has been of the utmost importance to medical practice not only in Scotland but throughout the whole of the UK.

Altogether, the Court has handed down 115 judgments in cases from Scotland. This represents 13% of the Court's workload.[25] However, the proportion of cases from Scotland has declined over time from 18% to 9% of the total, which is about the level one would expect, since approximately 8% of the UK's population lives in Scotland. That reduction reflects the fact that the human rights-based challenges to Scottish criminal procedure I mentioned earlier have become much less common, in part because the early cases addressed the most serious problems.[26]

All of the 115 Scottish judgments have been important, but I should give a few more examples of how they have affected life in Scotland and throughout the UK. The *AXA* case in 2011 established that Acts of the Scottish Parliament were not open to judicial review on the ordinary grounds on which acts of public authorities can be challenged. That was an important

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[24] *Sidaway v Board of Governors of the Bethlem Royal Hospital* [1985] AC 871. Following the approach in *Sidaway*, the courts below held that the question whether a doctor's failure to warn a patent of the risks of a proposed treatment constituted a breach of duty was normally to be determined according to the test set out in *Hunter v Hanley* 1955 SC 200 (or the equivalent test set out in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582). This holds that the omission will not amount to a breach of duty so long as it is accepted as proper by a responsible body of medical opinion.

[25] Between 2009 and 2023, the Supreme Court handed down 898 judgments in total.

[26] The Supreme Court also made it clear in 2015 that it would not normally grant permission to appeal in Scottish criminal cases unless there was a question as to whether the Scottish courts had applied the right legal test, as opposed to a debate about whether the law had been correctly applied to the facts of the case: *Macklin v HM Advocate* [2015] UKSC 77.

decision in itself, but the judgment also made it possible for individuals to challenge the lawfulness of the actions of other public authorities without needing to show that their individual rights were being infringed.[27] That was a major reform of the law, which enabled environmental and other organisations, and indeed any citizen with a reasonable concern, to bring proceedings designed to prevent unlawful action by public authorities.[28] In 2012, the case of *Gow v Grant* established the approach to be taken to deciding fair financial arrangements when relationships between unmarried couples come to an end.[29] In 2013, the case of *North v Dumfries and Galloway Council* was one of the most important employment cases of modern times, establishing that female employees could compare themselves for equal pay purposes with male employees doing different jobs at different establishments, so that, for example, nursery nurses and teaching assistants in primary schools could find male comparators doing work which was different but of equal value.[30] That decision has been very important in enabling people working in traditionally female occupations to bring equal pay claims. Another important judgment in 2020 established that evidence obtained by people who impersonate children online and then provide the police with copies of any resulting inappropriate communications could be used to convict paedophiles, and did not contravene their Convention right to privacy.[31] The amplifying effect of the Supreme Court gives Scottish decisions such as these an influence outside Scotland which is much greater than they would otherwise have.

Life in Scotland has, of course, also been affected by judgments given by the Court in appeals from England and Wales and Northern Ireland. For example, in the *Nicklinson* case in 2014 the Court declined to hold as a matter of judicial decision that there was a human right to assisted suicide, holding instead that it was a matter for democratic decision by Parliament.[32]

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[27] *AXA General Insurance Ltd* [2011] UKSC 46.
[28] See also *Walton v Scottish Ministers* [2012] UKSC 44.
[29] *Gow v Grant* [2012] UKSC 29.
[30] *North v Dumfries and Galloway Council* [2013] UKSC 45.
[31] *Sutherland v HM Advocate* [2020] UKSC 32.
[32] *R (Nicklinson) v Ministry of Justice* [2014] UKSC 38.

People who accuse the Court of activism should remember that decision. In the *UNISON* case in 2017 the Court decided that it was unlawful for the government to introduce fees for bringing claims before employment tribunals that were set at a level which made it unaffordable for claims to be brought.[33] The *Steinfeld* case in 2018 made it possible for heterosexual couples to enter into civil partnerships, by finding that the existing law, under which civil partnership was restricted to gay couples, was discriminatory: a finding to which Parliament responded by changing the law.[34] The *Uber* case in 2021 decided that taxi drivers working for Uber were entitled to employment rights such as minimum wages and paid holidays, and had implications for the employment rights of all workers in the gig economy.[35] The Rwanda case in 2023 established that the government's policy of deporting asylum seekers to Rwanda was unlawful because it contravened legislation enacted by Parliament.[36] Those are only a few out of hundreds of examples.

As I have mentioned, the Court includes judges from Scotland as well as England and Wales and Northern Ireland, and we all sit on cases from all parts of the UK, as well as on cases in the Privy Council. Currently, both the President and the Deputy President of the Court are Scottish. All of the Scottish judges who have served on the Supreme Court previously served on the Court of Session, the first two of them - Lord Hope and Lord Rodger - as Lord President. Inevitably, the Scottish Justices act as ambassadors for the Scottish legal system, and, if they perform well, enhance the reputation of Scots lawyers not only in the rest of the UK but internationally.

We also invite senior judges from the Scottish courts to sit with us in both Supreme Court and Privy Council hearings. That was not possible in the House of Lords unless the relevant judge also happened to be a peer, which was rarely the case. There are great benefits

[33] *R (UNISON) v Lord Chancellor* [2017] UKSC 51.
[34] *R (Steinfeld and Keidan) v Secretary of State for International Development* [2018] UKSC 32.
[35] *Uber BV v Aslam* [2021] UKSC 5.
[36] *R (AAA (Syria)) v Secretary of State for the Home Department* [2023] UKSC 42.

in extending these invitations, both because they can strengthen the relationship between the Supreme Court and the intermediate appellate courts, and because they provide judges on those courts with experience of working on the Court and the opportunity to contribute to its judgments.

Since I became President in 2020, the Lord President, Lord Carloway, has sat with us in three Supreme Court cases: one a tax case from Scotland, one a very significant case from Northern Ireland concerned with the regulation of protests outside abortion clinics, and one from England, also of great significance, raising the question whether doctors are liable in damages to the relatives of their patients, in the event that the relatives suffer psychiatric harm as a result of witnessing the death of the patient from a condition which the doctor has negligently failed to diagnose or treat.[37] During the last few years we have also benefited from the expertise of other Court of Session judges who have been invited to sit with us. Lady Dorrian, Lord Malcolm, Lord Pentland, Lord Woolman, Lord Turnbull and Lord Boyd have all written judgments in appeals to the Privy Council,[38] and Lady Wise will be sitting with us next week.

We also have 12 young lawyers who work as our judicial assistants. We actively recruit in Scotland, and currently two of our 12 judicial assistants are young Scottish lawyers.

7: An international court

[37] *Balhousie Holdings Ltd v Commissioners for Her Majesty's Revenue and Customs* [2021] UKSC 11; *Reference by the Attorney General for Northern Ireland - Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32 and *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1.
[38] *Hinds v Director of Public Prosecutions (Jamaica)* [2021] UKPC 10 (Lady Dorrian); *Smith v Attorney General of Trinidad and Tobago* [2022] UKPC 28 (Lord Malcolm); *Gulf View Medical Centre Ltd v Tesheira (Trinidad & Tobago)* [2022] UKPC 38 (Lord Pentland); *Dorsey McPhee v Colina Insurance Ltd (The Bahamas)* [2023] UKPC 8 (Lord Woolman); *Miller v The King (the Bahamas)* [2023] UKPC 10; and *Mussington v Development Control Authority (Antigua & Barbuda)* [2024] UKPC 3 (Lord Boyd).

The Supreme Court also has an international role which is important to Scotland as well as to the rest of the UK. This has a number of aspects.

In the first place, 80% of the world's trade is governed by the common law. Shipping, banking and insurance contracts around the world are commonly governed by English law and contain clauses choosing English courts or arbitrations for the resolution of disputes. The same is true of much of the world's trade in financial instruments. This is crucial to the UK's role as a leading centre for international legal and financial services, and so is of great importance to the UK economy. Scotland shares in this, directly as well as indirectly: Edinburgh and Glasgow are both among the world's top 50 financial centres, and they are also both important centres for legal services.

This has two significant consequences for the Supreme Court. First, as the highest UK court, the Supreme Court plays a critical role in developing the law that governs a large part of world trade. Every year we decide cases concerned with the impact of current events on standard contracts used in international trade. A recent example was a case concerned with the impact of EU sanctions against Russia on the liability of German banks under bonds which they had issued to a subsidiary of the Russian energy giant Gazprom guaranteeing the performance of contracts entered into by German companies for the construction of power stations in Russia.[39] The bonds were governed by English law, and so this dispute between German banks and a Russian energy company came to our court.

The second consequence is that the UK's position as a global centre for legal and financial services is underpinned by international confidence in the UK judiciary and our reputation as a country where the rule of law is upheld: matters which ultimately depend on the Supreme Court.

[39] *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC xx.

The level of international confidence in our courts is reflected in the fact that foreign governments also choose to litigate or arbitrate in the UK. An example in the Supreme Court recently was a dispute between Ukraine and Russia, where both governments agreed that their contract would be governed by English law and that any disputes would be decided by the English courts.[40]

The Supreme Court's international standing is reflected in the level of international interest in the Court. Some countries are keen to learn from the way we manage hearings and appeals. For example, I spent a week in Tokyo last year as a guest of the Japanese Supreme Court, as they wished to learn about our methods of case management, our use of oral hearings, and our use of technology. That brought a tangible benefit, as Japan has now relaxed its rules enabling UK lawyers to work there. Other countries want to learn from our approach to outreach, communications, transparency and diversity, so as to develop their own efforts in these areas. An example is Bosnia, where the Constitutional Court wants to build trust across a divided community. Other countries want to learn from how we protect ourselves against political risks to our independence. In fact, we receive visits almost every week from judges and justice ministers from other countries.

As the UK's highest court, we also represent the UK in international judicial networks. So, for example, I attend every year the meeting of the Presidents of EU Supreme Courts, at which we remain a valued participant**.** I also attend the J20, the meeting of the most senior judges of the G20 countries. This year's meeting in Rio focused on the role of the courts in relation to social inclusion, climate change and artificial intelligence. In September I took part in a conference in Miami concerned with international financial crime, at which I was asked by the US State Department to give the opening address. These are valuable opportunities to influence legal thinking outside the UK and to present the UK judiciary to the wider world.

[40] *Law Debenture Trust Corporation plc v Ukraine* [2023] UKSC 11.

8: Transparency, accessibility and open justice

Polling conducted for the Economist magazine in 2022 found that about a third of the public know a great deal or a fair amount about the Supreme Court.[41] Among those who do, the proportion who have a high level of confidence that the Court will do its job well is 84%. Among those who do not know much about us, the proportion drops to 52%. Knowledge about the Court, and therefore transparency, accessibility and open justice, are critical to public confidence in the Court.

This is one of the most important differences which has resulted from the move from the House of Lords. As an independent court, the Supreme Court has been able to employ an expert communications team and has made use of a number of strategies to inform the public about our work.

To begin with, it is much easier to get inside the Supreme Court building and to come and watch our hearings in person. The Law Lords sat in a committee room at the end of a long corridor tucked away deep in the House of Lords. In contrast, members of the public are actively encouraged to step into the Supreme Court to watch our hearings and tour our court rooms. We have had over a million visitors since the Court opened, and our court rooms are usually busy with school and university students and other visitors. Our basement contains an exhibition area, where visitors can learn more about the Court and its case law, as well as a public café.

As someone who had never lived in London until I went to work on the Court, I am well aware that it is not easy for everyone in the UK to visit the Court. One of our first

[41] Ipsos/The Economist, "UK Supreme Court polling" (May 2022). Available at: https://www.ipsos.com/sites/default/files/ct/news/documents/2022-06/Ipsos%20Supreme%20Court%20polling_300522_PUBLIC%20%28002%29.pdf

innovations was, therefore, to livestream every appeal hearing on the Court's website. Recordings of our past hearings are also available on our website and on our YouTube channel.[42] We also livestream the delivery of our judgments, when the Justice who has written the lead judgment gives a short explanation of the Court's decision in ordinary language. We also post on our website a short written summary of the judgment and the reasons for it prepared by our Judicial Assistants, expressed in plain language. We also sit outside London as often as our budget allows. In 2017, we sat in Edinburgh for a week in the City Chambers. Since then, we have also sat in Belfast, Cardiff and Manchester. In each case, as well as our hearings we had a busy programme of meetings with legal professionals, educational events with schools and universities, and meetings with community leaders.

We also pursue legal education with schools and universities. One example is a scheme we call "Ask a Justice", which gives students at schools across the UK, particularly in areas of deprivation, the opportunity to participate in a live question and answer session with a Supreme Court Justice directly from their classroom via a video link. Ten Scottish schools have participated so far, and the feedback from the pupils and their teachers has been extremely positive.

Lord Hodge and I regularly come to Scotland and speak with university and school students here, as I did earlier today. We also have meetings with Scottish judges, as I had with the Glasgow Sheriffs last Friday, and with the Lord Advocate and Solicitor General for Scotland. We also make use of social media and online education, with currently around 300,000 followers on X, 17,000 on Instagram, 50,000 on LinkedIn, and 4000 following an online educational course run in partnership with Royal Holloway University. My hope is that, through these initiatives, we are sending the message that the Court exists to serve the whole of the UK, as well as promoting greater public understanding of our work.

[42] https://www.youtube.com/user/uksupremecourt?app=desktop

9: Diversity, inclusion and belonging

Last but not least, we are taking steps to improve the degree of diversity on the Supreme Court and in the judiciary more broadly. When I became President of the Court, I identified improving diversity as one of my priorities. The public has to be confident that judges are able to understand the cases before them and deliver justice fairly, and that can be difficult if the bench is drawn from a narrow section of society. We also need to ensure that we are recruiting the highest quality lawyers as judges, and not missing out on talented people. For me, this is also a question of fairness: that every lawyer should have the opportunity to progress in their career and to apply for judicial appointment.

In 2021, the Court published its first Judicial Diversity and Inclusion Strategy, which sets out our aim to support the progress of under-represented groups – whether women, members of ethnic minorities, or people from poorer backgrounds - at every stage of their legal career, and into judicial roles.[43] We have pursued this strategy through a range of initiatives targeted at lawyers and judges at all stages of the career pipeline.

One example is an internship programme for aspiring lawyers from under-represented groups, which we run in partnership with a charity called Bridging the Bar. The interns have included young lawyers from Scotland. The feedback we receive indicates that it has a significant impact on the interns' confidence and contributes to a sense of feeling welcomed and respected in the legal profession. Similar schemes have now been adopted by other courts in England and Wales.

For those who are further on in their careers, we have held webinars on career pathways in partnership with the Law Society, which provide early and mid-career professionals with an

[43] Judicial diversity and inclusion strategy 2021-2025 (supremecourt.uk)

opportunity to learn more about the judicial appointments process and the skills and experience required. The speakers include a member of the Judicial Appointments Board for Scotland. Recently, we held a very successful event in partnership with the Black Talent Charter,[44] and we have hosted or taken part in events with lawyers from other minority ethnic groups, such as the Sikhs in Law Association, the Society of British Bangladeshi Solicitors and the UK Association of Jewish Lawyers and Jurists. We also have mentoring schemes which match justices with young lawyers from under-represented groups. We also host scholars supported by the Stephen Lawrence Scholarship Foundation, which aims to address the under-representation of young black men from disadvantaged backgrounds in commercial law firms. Other schemes we support include the Girls' Human Rights Hub, designed to empower girls to use advocacy, leadership and litigation, and the Young Muslim Leadership Programme, which aims at encouraging greater participation by Muslims in public life.

I have not lost sight of the need for diversity on the Supreme Court itself. 50% of the new appointments since I began chairing the selection commission have been of women. We have also recently increased the diversity of the Privy Council, with the appointment of a senior judge from the Caribbean, Dame Janice Pereira.

More needs to be done. But progress is being made in encouraging and supporting people from all backgrounds across the UK to join and progress in the legal profession and to proceed into judicial roles.

Conclusion

I began by asking why the Supreme Court matters to Scotland. I hope you now have some idea of why it is relevant to Scotland. Over the last 15 years, the Court has become a visible and

[44] A video featuring this event alongside other highlights of our work supporting diversity and inclusion is available at: Court looks back on year of milestones - The Supreme Court

accessible focal point for justice and the rule of law: for Scotland, across the UK, and internationally. Over the next 15 years, we look forward to working with all the nations of the UK so that we can continue to respond to the evolving needs of our society and use the opportunities presented by emerging technologies to achieve our overall goal: to make justice happen, every day, for the benefit of everyone in our jurisdiction.