Working Methods of the UK Supreme Court

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This is a lightly revised version of a presentation given at the 7th COMBAR (Commercial Bar Association) India Roundtable on 13 September 2025 in Mumbai. Andrew Burrows shared the platform with former Indian Supreme Court Justice Hima Kohli. Their presentations were followed by a discussion between them and then by an extensive question and answer session with the delegates.

1. Introduction: jurisdiction, number of Justices, appointments process

The UK Supreme Court ("UKSC") is the final court of appeal on points of law in all civil and, with the exception of Scotland, all criminal cases in the UK. Hearing appeals (ie its appellate jurisdiction) comprises the vast bulk of the UKSC's work, although there is a very limited original jurisdiction in relation to a few matters (eg references from the devolved legislatures in Scotland, Northern Ireland and Wales).

The UK has no written constitution and the UKSC cannot strike down statutes. But the UKSC and lower courts have a constitutional role for example in ensuring, through hearing applications for judicial review, that public authorities, including the Government, act lawfully within their powers. Also, under the Human Rights Act 1998, rights under the European Convention on Human Rights are protected in domestic law and this includes the power of the courts to declare that statutes are incompatible with the Convention (although Parliamentary Sovereignty is maintained because those statutes remain binding unless and until Parliament passes amending legislation). [1]

It is also important to point out that UKSC Justices spend a considerable amount of their time (for most of us at least a third) sitting in the Judicial Committee of the Privy Council ("JCPC") which is the final court of appeal for over 30 jurisdictions, primarily present or former countries of the British Commonwealth. The Privy Council was the final court of appeal for India until independence in 1950.

The UKSC has 12 Justices, headed by the President of the Supreme Court. It is independent of the other courts in the UK, which are headed by the Lord (or Lady) Chief Justice. The Lord (or Lady) Chief Justice is not a UKSC justice and instead sits in the Court of Appeal. The retirement age for all UK judges is 75.

Before moving to our working methods, it may be of interest to describe the appointments process. A vacancy on the UKSC is openly advertised. Anyone interested has to apply. There is a (difficult) application form to fill in, in which the applicant has to provide evidence as to how he or she meets the criteria. The criteria are listed under four headings (or were when I applied): first, intellectual capacity, knowledge and expertise, secondly, judicial and personal qualities, thirdly, understanding and fairness, and, fourthly, communication skills. The applicant also has to submit a specified number of written pieces of work which, for most applicants, will be judgments but, in my case, I submitted two judgments sitting as a Deputy High Court Judge and an academic piece. If called for interview, there is then an hour interview with what is a special appointments commission, provided for by statute, which is chaired by the President of the UKSC, with another senior judge, usually the Lord (or Lady) Chief Justice or the Master of the Rolls, and three lay people who are the chairs of the respective Judicial Appointments Commissions of England and Wales, Scotland and NI. The

[1] There have been 7 declarations of incompatibility by the UKSC (since 2009). There have been some 58 declarations of incompatibility in total by all courts since the coming into force of the Human Rights Act 1998. I am grateful to Professor Brice Dickson and Professor Alan Paterson for supplying me with these figures.

appointments commission will also consider the references provided and there are two rounds of consultation primarily among senior judges.

The first five minutes of my interview was spent presenting an answer to a question sent in advance and the rest comprised free-flowing questions which ranged far and wide. They examined both legal knowledge and also matters such as unconscious bias and the role of the court (eg, I was asked whether it had overreached itself in some decisions). I was also asked what I saw as the particular challenges of coming straight from academia. Note that in contrast to the US Supreme Court, this is all in private (there is no equivalent of confirmation hearings) and, even in private, there were no questions about, eg, my moral beliefs about, say, abortion or same-sex marriage and still less, of course, about my political beliefs. This is in line with the principle that the appointments process is designed to find the best lawyers and does not have any real political input (albeit that the appointment has to be approved by the Lord Chancellor who is a Minister and who, by convention, can send the decision back once).

2. Permissions to appeal to the UK Supreme Court

There is no right of appeal from the Court of Appeal of England and Wales (or the Court of Appeal of Northern Ireland or the Court of Session in Scotland) to the UKSC. Rather permission to appeal must be sought from the UKSC itself or, in rare circumstances, may be given by the Court of Appeal. This essentially means that the UKSC is in control of which cases it hears. As our United States Supreme Court colleagues would say, "we control our own docket".

Permissions to appeal (PTAs) are almost always determined on paper, that is, without a hearing, by panels of three UKSC Justices. Although in theory there can be an oral hearing, this is rare and I have never been involved in one. The criteria for granting permission, as laid down in the UKSC's Practice Directions, is that the appeal must raise "an arguable point of law of general public importance."

On a rough calculation, there have been about 180 PTA applications annually to the SC in the last few years and, if permission is granted - and in 2024 the SC granted permission in about 35% of cases where PTA is sought – there are no further reasons given (although it is implicit that the case raised an arguable point of law of general public importance).[2] If PTA is refused, there is a very brief explanation. Normally all that is said is that PTA is refused because there is no arguable point of law or because there is no point of law of general public importance or both. The PTA decisions appear on our website.

3. Allocation of Justices to hear the cases

The normal panel size for an appeal is five but there can be exceptional cases where the panel is seven or larger. Normally this is where one of the parties is asking the court to overrule one of its own previous decisions (or of its predecessor, the House of Lords) using the power under what is called the 1966 Practice Statement. On two occasions only, has the full possible panel of 11 Justices sat (it cannot be 12 because an odd number is needed). Those were in the two *Miller* cases where questions of fundamental constitutional importance were raised. Perhaps most famously, *Miller (No 2)* [2019] UKSC 41, [2020] AC 373, was the case in which it was held that Boris Johnson's prorogation, ie suspension, of Parliament for several weeks at a time when Brexit was being decided on was unlawful on the basis that no reasonable justification had been given for that suspension.

[2] I am grateful to Professor Alan Paterson for his help with these statistics.

The decision as to which Justices sit on which appeals is ultimately a matter for the President of the Supreme Court. The listings for each term, which include which Justices are sitting on which appeals, is published on the UKSC website before the start of each legal term.

4. Pre-hearing preparation

Electronic bundles with all the relevant papers including the parties' written statements of case (ie skeleton arguments) and all relevant material (ie legislation, cases, academic articles) are sent to the Justices sitting in a case about two weeks in advance of the hearing. We each prepare for the case by reading, as a minimum, the key documents (the agreed statement of facts and issues, the written statements of case of each party, and the judgments below) and there is a hard copy of those provided. Those key documents usually run to several hundred pages. The pre-hearing preparation normally takes me about a day (but can be longer depending on the complexity of, or lack of familiarity with, the issues). The only meeting the Justices who are sitting have in advance of the hearing is 15 minutes beforehand where we very briefly discuss any procedural matters and our preliminary view of the case. Very importantly, we do not know in advance who is going to be asked to write the judgment. The fact that each sitting UKSC Justice is expected to prepare in the same way for every case no doubt reflects the relatively small number of cases that are heard by the UKSC (for example, in 2024 there were 43 decisions handed down, although there were also 41 in the JCPC).

5. The hearing

All UKSC hearings are in person (although virtual hearings were used during Covid) with submissions being made by counsel for the parties. As we are dealing with points of law, there are no witnesses. We (and counsel) are neither wigged nor robed. The hearing normally lasts for 1-2 days. The Justices can and do ask questions of counsel and often the questioning by the Justices is the most important part of the hearing. Occasionally counsel will be pre-warned that the panel wishes to be addressed on certain issues that have not featured in the written statements of case. The timetables for the submissions of counsel are agreed by the parties in advance (within the overall timing allowed for the hearing) and are rigidly enforced by the presiding Justice. The presiding Justice is the President or Deputy President or, if neither is sitting, the Justice who has been appointed the longest. Each hearing is live-streamed on our website.

6. Post-hearing deliberation meeting (ie the conference)

All UKSC judgments are reserved. The most important (and often only) decision-making meeting is the private post-hearing meeting that immediately follows the close of the oral hearing in a case. In that meeting, each of the Justices sitting is required to give orally on a provisional basis (one can of course change one's mind) the decision one has reached, ie whether to allow or dismiss the appeal, with a summary of one's main reasons. Normally each summary lasts about 5-10 minutes. The others listen to that summary without intervening. In line with the long-established practice, the order of giving those summaries or, as one might otherwise call them, mini judgments is in reverse order of seniority so that the most recently appointed Justice goes first and so on upwards to the presiding Justice. I have to say that, at the start, I found that somewhat daunting although, of course, you have had the opportunity to read the papers, and to think about the issues, in advance. After that relatively formal part of the post-hearing meeting, there will often be a general discussion although that may depend on whether, or not, there is a large measure of agreement between the Justices.

Towards the end of that meeting, the presiding Justice chooses which Justice, or it could be more than one Justice, should write the first judgment or one or more Justices may, if the presider asks for

volunteers, volunteer to write the first judgment. The choice, or decision to volunteer, may depend on all sorts of factors but will principally turn on the particular Justice's work-load, his or her expertise, his or her own degree of interest in the particular case, and the Justice's view as to what the correct decision is in the case at hand and the reasons for that.

Writing individual judgments used to be the predominant position in the House of Lords (although there were periods when this was the exception). The disadvantage of multiple judgments, although fun for academics and law students to analyse, is that it is sometimes difficult to work out the ratio of a decision where there are, let us say, five judgments reaching the same decision for different reasons. Not surprisingly, such uncertainty in what has been laid down by the highest court does not appeal to practitioners. On the UKSC, the present approach therefore is one of trying, if possible, to achieve a single judgment (whether written by one Justice or, increasingly common, by two or more Justices). In 2023 and 2024, the proportion of single judgments in the Supreme Court was 77%.[3] Dissenting judgments are permitted and are not discouraged in so far as a Justice feels duty-bound to dissent.

7. Writing the judgment

Once a draft judgment has been written, which usually takes several weeks given that the Justice or Justices writing it is/are sitting on other cases, it is circulated for comment by email to the other Justices who were sitting in the case. The other Justices sitting on the panel may choose to agree with it, or to write their own concurring judgment (nowadays comparatively rare), or to disagree with it and to write a dissenting judgment. Occasionally, where there continues to be disagreement as to the outcome or reasons, there will be a further meeting to try to reach a consensus or to clarify the precise disagreements. The process between first draft and the final version of the judgment, including the writing of any concurring and dissenting judgments, usually takes several months.

The final judgment or judgments is/are checked by law reporters (to ensure references etc are correct) and are sent to counsel, on a strictly confidential embargoed basis, a few days in advance of publication for any suggested corrections.

8. Style of judgments

Considerable efforts are made to try to ensure that the final judgment is as clear, transparent in its reasoning, and readable as possible. Judgments are broken up into numbered paragraphs. There has been an ever-increasing use of headings and sub-headings (including, very often, numbered headings and sub-headings) over the last few years in an attempt to make the presentation of judgments as user-friendly as possible. But each Justice does have, and is permitted to have, his or her own style (although there is a fixed house-style for references and a fixed font for text and headings). One significant feature, compared to other apex courts in common law jurisdictions, is that there are no footnotes. All references are incorporated into the text of the judgment. Depending on the area of law in question, judgments typically rely heavily on the primary sources of law, ie legislation and past decisions of the courts (reflecting the doctrine of precedent), but also increasingly refer to secondary sources, for example, books and articles by academics.

9. Handing down of the judgment

Once the judgment or judgments have been finalised internally, a publication date is fixed. On that date the judgment is handed down. The hand-down comprises an oral summary and explanation of

[3] I am grateful to Professor Alan Paterson for supplying me with this statistic.

the judgment, taking no more than about ten minutes, being given in court by the Justice or one of the Justices who wrote the leading judgment. That hand-down is live-streamed on our website. Once the judgment has been handed down, the full judgment is published by being put up immediately on our website. The text of the full judgment is the sole authoritative source.

A press summary is also prepared for every judgment and is put up on our website along with the full judgment. The press summary is akin to an executive summary of the judgment. It is normally prepared by a judicial assistant but is subject to the approval of the Justice who is handing down the judgment.

10. Outreach work

Another aspect of our work is liaison with schools and universities through the "Ask a Justice" scheme and judging moots. There are also numerous outside speaking engagements.

11. Judicial assistants

We have the assistance of one judicial assistant each and, as regards judgments, they predominantly assist by researching points of law. They have no role in drafting the judgment or in deciding the case (but they do prepare a summary of the case for the purposes of PTA hearings and also assist with drafts of public lectures).

12. Conclusion

There are two points in conclusion. First, most of the way we work is based on convention and practice and not rules. Secondly, the working methods of the UKSC and the work done are not fundamentally different from the old House of Lords. The big difference is the use of electronic bundles and the open transparency of our work not least because our hearings and hand-downs are live-streamed on the UKSC website. Moreover, the court building is easy to access and, with a café and exhibition about the work of the court, it is now well-recognised as a tourist attraction.