A View from the Thames

Lord Rodger Memorial Lecture 2026[1]

Introduction

It is a pleasure and a privilege to give this lecture in memory of Lord Rodger. I first became aware of him in about 1980 when I was a Bar apprentice at Simpson & Marwick WS. Evan Weir, the senior partner, was very complimentary of him. Having heard some rather harsh assessments of other counsel, I knew this was no mean praise.

I don't remember seeing Alan in action in court at that stage, but I remember he was instructed by Simpson & Marwick as George Penrose QC's junior in an appeal to the House of Lords. It was a planning case. Checking the Session Cases, I see that their opponents were not called upon.[2] Alan said counsel frequently made their names losing cases. *Junior Books Ltd v Veitchi Co Ltd*[3] was an example of that for him. However, it was not long before he was vindicated by *Murphy v Brentwood DC*.[4]

The following year I met Gerry Moynihan at Hertford College, Oxford. I learned more about Alan from Gerry. He had guided him towards Oxford and he was a great mentor to him.

When I began devilling to Ronald Mackay[5], Mungo Bovey was devilling to Alan, and Alan got to know the other devils.

I had the privilege of being Lord Rodger's junior on several occasions, in both civil and criminal cases. In 1990, when he was solicitor general, he invited me to become a standing junior. I became clerk of faculty the same year, and I benefited from Lord Rodger's advice as a former clerk. When I wrote a short history of the Faculty from 1900, he took the time to read the draft and write to me with comments. When he became a judge I appeared before him on many occasions, especially in the Criminal Appeal Court when I was an advocate depute.

Lord Rodger was a Lord of Appeal in Ordinary for 8 years and then sat as a Justice of the Supreme Court for 18 months before illness struck. In the lead up to the establishment of the Supreme Court he was sceptical about the change. He feared there would be a move towards single judgments, which would diminish the freedom of judges to shape their opinions as they wished. The concern reflected his belief in the importance of the

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[1] I am grateful to my judicial assistant, Anna Macfadyen, for her valuable research assistance and suggestions.
[2] *Inverclyde District Council v Secretary of State for Scotland* 1982 SC(HL) 64.
[3] 1982 SC(HL) 244.
[4] [1991] 1 AC 398.
[5] Ronald D Mackay, Lord Eassie.

contribution to the law made by individual judges and jurists in their own words.[6] As he put it:

> "Up until now, the practice of the judges delivering individual speeches has given us the humour of Lord Macnaghten, the classical elegance of Lord Wilberforce, the Whig history lessons of Lord Bingham and the philosophical insights of Lord Hoffmann. The much-touted efficiency savings of a single judgment will be dearly bought indeed if, as a result, we lose individual hallmark contributions of that quality."[7]

However, despite his initial misgivings, he quickly became reconciled to the change and he enjoyed his role as a Justice.[8]

This evening, in the week in which the Supreme Court sits in Glasgow, it seems appropriate to speak about my early impressions as a Justice, describing what we do, and comparing some things with my previous experience in Scotland.

Moving and the building

For Scots and Northern Irish Justices, the transition to the Supreme Court is not without its difficulties. It involves either moving to London or commuting each week during term time with the consequent disruption to family life. I have chosen the latter option.

The Supreme Court is flanked (some would say dwarfed) by Westminster Abbey on one side and the Treasury on the other. It looks across Parliament Square to the Houses of Parliament. It is housed in the former Middlesex Guildhall, which was built between 1906 and 1913. The architect was a Scot, James Gibson, who practised in Dundee before moving to London. When it opened in 1913 the Guildhall had 2 courtrooms for the Middlesex Sessions, as well as the Middlesex County Council Chamber and offices.

Middlesex had been abolished as a judicial and administrative area by 1964, and in 1971 the Guildhall became Middlesex Guildhall Crown Court. In the lead up to October 2009 the building was carefully renovated to become the home of the Supreme Court.

The building is pleasant mix of Art Nouveau and Gothic Revival styles. Inside, Scottish connections of note are that some of the curtains and wall-hangings were made by Glasgow-based Timorous Beasties, and the Court emblem, seen best in Court 2, was designed by Yvonne Holton, Herald Painter at the Court of Lord Lyon.

There is a significant art collection, which includes paintings by Sir Joshua Reynolds and Thomas Gainsborough; but one of my favourites is a painting of the Law Lords handing

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[6] Lord Reed, "The Form and Language of Lord Rodger's Judgments", in Andrew Burrows, David Johnston, QC and Reinhard Zimmerman (eds), Judge *and Jurist: Essays in Memory of Lord Rodger of Earlsferry* (Oxford University Press, 2013) at p130.
[7] Alan Rodger, *Humour and the Law,* 2009 SLT (News) 202 at 211.
[8] Lord Phillips, "Strasbourg Has Spoken", in *Judge and Jurist* at p112.

down judgment in the chamber of the House in their final case on 31 July 2009.[9] Lord Hope is on his feet delivering his opinion and Lord Rodger is seated in a row to himself to the right.

The work of the UKSC and the JCPC

The Supreme Court and the Judicial Committee of the Privy Council are independent from the other judiciaries in the United Kingdom. They are funded by the taxpayer through contributions from the Treasury, HMCTS, the Northern Ireland Court and Tribunals Service, the Scottish Government, and fees paid by litigants. In addition to the 12 Justices, there are 12 judicial assistants and about 40 other staff. So we are a fairly small group of people.

The breakdown between appeals to the Supreme Court and to the Judicial Committee varies from year to year, but generally about half of our time is spent on each. In 2024-25 the Supreme Court heard 61 appeals and delivered 43 judgments and the Judicial Committee heard 66 appeals and delivered 49 judgments.[10] Both courts hear appeals raising a very wide range of legal questions. The subject matter of the cases heard is broken down each year in the courts' annual report.[11] In the Supreme Court last year the largest category of case was Commercial; followed by Public Law and Human Rights; Business, Property, Wills and Trusts; and Tax. In the Privy Council the largest category was Business, Property, Wills and Trusts, followed by Crime, Commercial, Public Law and Human rights, and Constitutional Law.

While specialism in particular areas of law can be helpful to a Justice, the breadth of the courts' work means that Justices have to be generalists. Scottish Justices tend to have had broader experience of different areas of the law when in practice than Justices who may have practised as specialists at the Bar. Sometimes that can be an advantage. But all of the Justices have sat on a wide range of case as judges.

UKSC

Permission to appeal

The vast majority of cases heard by the Supreme Court have required to obtain permission to appeal. There are a limited number of cases where there is an appeal as of right, and there are some cases where lower courts or law officers may refer questions for decision by the Court.

Permission to appeal is granted where three criteria are satisfied. The application must (i) raise an arguable point of law (ii) which is a point of general public importance (iii)

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[9] *R (Purdy) v DPP* [2009] UKHL 45.

[10] *The Supreme Court and Judicial Committee of the Privy Council: Annual Report and Accounts 2024-25*, p. 45. Available at: Annual reports and accounts - UK Supreme Court .

[11] Annual Report 2024-25, pp. 41-42.

which ought to be considered by the Court at that time.[12] In applying the third criterion the Court will bear in mind that the case has already have been the subject of judicial decision and has usually also been reviewed on appeal. If the case is not suitable for testing the point of law, the panel will refuse permission.

The test applies in both criminal and civil appeals, but in the case of criminal appeals from England and Wales and Northern Ireland permission to appeal may only be granted if it is certified by the court below that a point of law of general public importance is involved.[13]

The High Court of Justiciary sitting as an Appeal Court is the final court of appeal in criminal proceedings in Scotland. There is no appeal to the Supreme Court unless it involves a devolution issue, compatibility issue, or UNCRC compatibility issue, in which case the Supreme Court's jurisdiction only extends to that matter.[14]

PTA applications are generally considered by 4 panels of 3 Justices once each month. At the beginning of the month all 12 Justices are sent a grid listing all of the month's applications for both the Supreme Court and the Judicial Committee. Each panel may have up to 10 applications to deal with, but usually there are fewer than that. Any Justice may offer a view on an application which is before another panel, but that does not happen often.

Where a respondent wishes to oppose an application, they must lodge a notice of objection setting out their grounds of opposition. The Supreme Court Rules also provide that "any person" may file submissions asking the Court to grant or dismiss the application and requesting that the Court takes them into account.[15]

A judicial assistant will have prepared a bench memo for each application summarising the decision below and the grounds of appeal and hyperlinking the relevant documents. Each Justice will read the papers and may discuss them with their judicial assistant or ask them to do further research. The chair of the panel arranges a meeting where the Justices outline their views on each application, starting with the most junior Justice and with the chair giving their view last. Usually there is unanimity. If one Justice thinks that permission ought to be given, generally it will be, unless the Justice concerned is persuaded otherwise by their colleagues. However, there have been some cases where, despite one Justice being firmly in favour of the grant of permission, it has been refused because the chair and the other Justice felt very strongly that it should not be granted.

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[12] UKSC Practice Direction 3.32. Available at: Practice Directions - UK Supreme Court.
[13] UKSC Practice Direction 12.8.
[14] Supreme Court Rules 2024, rule 44. Available at: Rules of The Court - UK Supreme Court. UKSC Practice Directions 10.2,10.3 and 12.6.
[15] Supreme Court Rules, rule 16.

If a panel considers that a hearing is required to determine an application, one will be fixed. This happens very infrequently. When it does, the hearing usually lasts less than an hour.[16]

In 2024-25 the grant rate for applications for permission to appeal to the Supreme Court was 36.1%.[17] If permission is refused, very brief reasons are given, generally that the test for permission to appeal is not met. Some Justices like to specify which part of the test has not been met, but most consider that to be unnecessary.

Writing in 2004, Lord Rodger remarked that he found making decisions on the papers in applications for permission to appeal to the House of Lords one of the most difficult and time-consuming tasks he had to perform.[18] I agree. It often involves reading a great deal of material in a case which is new to you, without the benefit of oral submissions to focus matters. However, having 3 Justices scrutinising the application increases the likelihood of getting it right.

How does that all compare with my experience of applications in Scotland for permission to appeal? There are similarities and differences.

Applications for permission to appeal to the Court of Session from other courts, tribunals or bodies are usually dealt with by an Inner House judge sitting alone in their capacity as a procedural judge.[19] Here too, there is often a good deal of reading to be done, but there is a hearing of up to 90 minutes duration which assists in focussing the issues. The judge usually gives their decision at the end of the hearing, with a statement of reasons being appended to the court's interlocutor. If the application is for permission to appeal against a decision of the Sheriff Appeal Court or the UK Upper Tribunal the second appeals test will require to be satisfied.[20]

Criminal appeals against conviction or sentence require leave to appeal from the High Court.[21] The application is considered by a single judge at the first sift. Leave is granted where a ground of appeal is arguable.[22] If leave is granted, generally no reasons are provided. If leave is refused or only granted in part, an application may be made to the second sift where 3 judges consider it if it is an appeal against conviction or where two judges may consider it if it is an appeal against sentence.[23] Views are usually exchanged

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[16] UKSC Practice Direction 3.39-3.41.
[17] Annual Report 2024-25, p.31.
[18] Alan Rodger, *What are Appeal Courts For?*, (2004) 10 Otago Law Review 517 at 523
[19] Court of Session Act 1988, s 31A; Rules of the Court of Session 1994, 37A.1, 37A.2, 40.2(2) and 41.3(1). Available at: Court of Session rules | Scottish Courts and Tribunals Service.
[20] Courts Reform (Scotland) Act 2014, s 113(2); Tribunals, Courts and Enforcement Act 2007, s 13(6). Where the proposed appeal is from the Upper Tribunal for Scotland the second appeals test does not require to be met: Tribunals (Scotland) Act 2014, s 48.
[21] Criminal Procedure (Scotland) Act 1995, s106, s107.
[22] S107(1)(a).
[23] S107(4),(5).

by email. It would be unusual to have a meeting. At each stage the application is dealt with on the papers. If the application is refused in whole or in part, written reasons are given for the refusal. At second sift if one of the judges thinks leave should be granted it will be.

Applications for leave to appeal from the Inner House to the Supreme Court are dealt with by the bench whose decision is challenged. The application is served on the respondents and on such other person as the Inner House thinks fit, each of whom may lodge answers if so advised.[24] Then there is a 30-minute hearing. The test is the same test the Supreme Court applies.[25]

Applications to the High Court for permission to appeal to the Supreme Court in relation to devolution issues, compatibility issues, or UNCRC compatibility issues are also dealt with at a 30 minute hearing by the bench whose decision is challenged.

Since the bench will have heard the appeal being argued, it is well informed as to the issues, and it has the benefit of oral submissions.

In applications for leave to appeal to the Supreme Court the practice in the Inner House and the High Court is for a statement of reasons (or, less frequently, an opinion) to be prepared, whether permission is granted or refused. Where permission to appeal to the Supreme Court has been refused, the written reasons may assist the Supreme Court if an application for permission is made to it.

My impression is that the Inner House and the High Court of Justiciary take less of a "hands off" approach to the grant of permission to appeal to the Supreme Court than the Courts of Appeal of England and Wales and Northern Ireland, which seem more inclined to refuse permission and to leave it to the Supreme Court to decide for itself whether permission should be granted.

Written material lodged in advance of the appeal

After permission has been granted the parties are required to lodge an agreed statement of facts and issues and their written cases.[26] The Practice Direction states that the Court favours brevity in written cases, that they should not exceed 50 pages and that in most cases fewer than 50 pages will suffice.[27] Despite this, many parties seem to regard 50 pages as a target. That is unfortunate. An unnecessarily lengthy submission can reduce the impact of a good argument.

In the Court of Session the most important written advocacy is contained in the grounds of appeal and answers and in the parties' notes of argument. The grounds of appeal

[24] Rules of the Court of Session, 41A.1(1)(a).
[25] Court of Session Act 1988, s40A(3).
[26] Supreme Court Rules 2024, rule 27; UKSC Practice Direction 5.5.
[27] UKSC Practice Direction 5.9.

should consist of brief specific numbered propositions stating the grounds upon which the appeal should be granted.[28] Notes of argument should not normally exceed 25 pages and no more than 10 authorities should be cited unless the scale of the appeal warrants more extensive citation.[29] The lower maximum page limit results in there being fewer cases of notes of argument being longer than necessary, but it does still happen sometimes.

The appeal hearing

In the Supreme Court cases are listed for hearing by the Registrar who is also responsible for the composition of the panel of Justices which is to sit, but the President and the Deputy President see the draft listings to approve them and may instruct changes. The aim is to have at least one of the Justices with expertise in the area of law under consideration. The Registrar tries to fix a hearing for about 9 months after permission is granted, but sometimes later dates are requested. The listings are circulated before the beginning of each term. Panels are usually 5 strong, unless a party suggests a previous decision of the court may have to be overruled or the case is a particularly sensitive one. In 2024-25 there were 2 panels of 7.

The documents for an appeal are usually available electronically to Justices about 2 weeks before the hearing. A core bundle containing the statements of facts and issues, the parties' written cases, and the judgments of the courts below is also provided in hard copy.

Unless there are good reasons not to, appeal hearings are livestreamed. To enable viewers to follow hearings, the statement of facts and issues and the parties' written cases are usually published on the court's website. They may be redacted if good reason is shown.

The Justices have a 15-minute meeting immediately before the hearing begins to discuss how to handle the appeal. At the hearing "speaking notes" are not welcomed. The timetable for counsel's submissions is fairly strictly enforced. At the close of counsel for the appellant's submissions, if there appears to be a possibility that counsel for the respondent need not be called upon in relation to some or all of the grounds of appeal, the court is likely to adjourn briefly to decide how to proceed.

[28] Rules of the Court of Session, 38.18(3).
[29] Practice Note 2 of 2021, para 5. Available at: Practice notes and directions | Scottish Courts and Tribunals Service.

Recently the court has encouraged giving junior counsel an opportunity to present part of the case,[30] and often parties do that. Ultimately however, it is for the parties to decide how best to present their case and how best to use their allotted time.

At the end of the case judgment is invariably reserved. Usually, the Justices go immediately into their deliberation meeting. Each Justice in turn, starting with the most junior, gives their views on the issues arising in the case and how they think the case should be disposed of. During this process it either becomes apparent that there is a consensus, or that there are opposing views. If the latter, the discussion is likely to be lengthier, and occasionally a second meeting is required. More often, if there is unanimity or a clear majority in favour of a disposal, the chair of the panel may ask one of the Justices to write the judgment or they may ask for a volunteer. Until then each Justice will have proceeded upon the basis that they might have to write the judgment.

Lord Rodger's anticipation of a move towards single Judgments proved to be right. It is now the norm. Most Justices think that it assists in achieving clarity and certainty. However, if a Justice wishes to write a judgment of their own, concurring or dissenting, they are not discouraged.

Although he was concerned about losing individual judgments, Lord Rodger was well aware of difficulties which may be caused by them. He had this to say about the judgments in *McFarlane v Tayside Health Board,*[31] where the House of Lords had to deal with the question of damages for the cost of bringing up a child born after a failed vasectomy:

> "The five Law Lords discussed the different arguments and eventually gave reasons that were all different from one another. The impact of their unanimous decision was thereby somewhat dissipated. Had they been able to find one set of concise reasons in which they all agreed, then, arguably at least, the impact of the decision would have been immeasurably stronger."[32]

In recent years there has been a growth in judgments being jointly written by two justices. About half of the court's judgments are now co-authored. The thinking is that joint judgments increase the prospects of unanimity and reduce the incidence of separate concurring judgments.

In over 90% of cases judgments are unanimous.[33] Lord Rodger's independent judicial spirit manifested itself in his dissenting in 12% of the cases in which he sat in the

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[30] Lord Reed, Practice Note, 7 March 2024. Available at: practice-note-march-2024.pdf.
[31] [2000] 2 AC 59.
[32] Alan Rodger, *What are Appeal Courts For?*, (2004) 10 Otago Law Review 517.
[33] Lord Reed of Allermuir, "What do Supreme Court Justices do all Day?", The Wolfson 2026 London Lecture. Delivered on 3 March 2026. Available at What_do_Supreme_Court_judges_do_all_day_speech_Lord_Reed_March_2026_6d45d399b7.pdf.

Supreme Court, more than any other Justice during the same period.[34] By way of comparison, in the 168 cases decided by the Supreme Court between October 2022 and February 2026 there were dissents in 18 cases (11%) and in the 184 cases decided by the Privy Council in that period there were dissents in only 5 cases (3%). Overall, the dissent rate was 6.5%.

Generally, first drafts of Judgments are expected to be prepared within 3 months of the hearing. Draft judgments are circulated to the rest of the panel for comments and suggestions. The fact that the panel is larger than in the Inner House is an advantage in terms of increased scrutiny, and often judgments are improved. They are then checked and formatted by the judgments clerk. The Court has an arrangement with the Incorporated Council of Law Reporting for proof reading. The draft judgment then goes to counsel who may draw attention to errors. The scope of that exercise is very limited. It is not an invitation to reargue the case.[35] Unless there is good reason not to do so, the judgment is made available to the parties 24 hours before hand down, on a confidential basis. Where a judgment is likely to attract media interest, the Court's communications team hold a media briefing on a confidential basis an hour before the judgment is made public, at which they distribute the judgment and press summary and answer the journalists' questions. The confidentiality of the briefing is protected by the law governing contempt of court. It has never been breached.

The hand down is in open court by a panel of 3 Justices, usually at 9.45 am on a Wednesday, with the Justice who wrote the judgment being invited by the chair to deliver a 5-10 minute summary of the issues and the decision. This is not the same as the press summary. The aim of a judgment summary is to be intelligible to a lay listener, which is easier in some cases than in others. The hand down is livestreamed and it remains available on the Court's website. The judgment, and a press summary which has been prepared by a judicial assistant and revised by the judgement writer, appear on the website almost immediately.

How does all that compare with what happens in the Inner House and in the High Court of Justiciary?

The composition of courts for cases is decided by the Keeper of the Rolls with input from the Inner House civil and criminal administrative judges and the Inner House clerks of court, subject to the approval of the Lord President. The documents for cases are provided electronically, and in the case of reclaiming motions and civil appeals core documents are also provided in hard copy.

The judges usually have a short discussion before the case begins about case management and provisional views about the issues may be offered. Sometimes the

[34] Lord Brown, "Dissenting Judgments", in *Judge and Jurist* at p29.
[35] UKSC Practice Direction 6.24.

chair of the court may have indicated in advance that they will take the lead, or that another member of the court has agreed to do so. In other cases, no decision is taken as to who will write the judgment until the deliberation.

Many, but not all, appeal hearings in the Court of Session and the High Court of Justiciary are livestreamed. In such cases a "case description" summarising the facts and the arguments is posted on the Scottish Courts website and the decision of the court or other body which is being appealed is also uploaded. The livestreamed hearings are uploaded to the court's website for those who may wish to view them later.[36] Viewing figures for many cases have been large. These changes have greatly improved open justice. It is impressive that they have been achieved against a background of significant budgetary constraints.

The course of appeal hearings is similar to that before the Supreme Court. Written skeleton arguments are not welcomed. If time allocations have been set, they are enforced if need be. In appeal hearings in the Court of Session the court may be open to junior counsel presenting part of a party's argument, provided there is no duplication and the court is forewarned about it, preferably at the procedural hearing. In criminal appeals before the High Court only one counsel for each party addresses the court. At the conclusion of the hearing judgment is usually reserved. Very occasionally, if the outcome is clear and the issues are straightforward, an *ex tempore* judgment may be delivered after a short adjournment.

Discussions during the deliberations do not follow a fixed protocol of junior judge first. There is no tradition of two judges preparing a joint opinion. Generally, the aim is to produce an opinion of the court. Occasionally this is not possible, if a judge wishes to dissent, or, although concurring with the disposal, they have different reasons for doing so. Draft judgments are circulated to the other judges for suggestions and comments, which not infrequently lead to improvement. The checking process is by the other judges, and by the clerk of court. There is no law reporter's check, and draft opinions are not issued to counsel for their input. There is rarely an advising in court. The opinion is simply issued to the parties, and normally it is published on the Scottish Courts judgments website. Usually, there is no press summary, but in high profile cases there may be a media release.

Litigants in person

A significant number of applications for permission to appeal to the Supreme Court, and even more applications for permission to appeal to the Judicial Committee, are by litigants in person. In the event of permission to appeal being granted, or an unrepresented party being a respondent, the Registry will put them in touch with

[36] Available at: Court of Session livestream | Scottish Courts and Tribunals Service.

Advocate, the Bar's pro bono charity, which usually results in the party being represented at the appeal.

In Scotland the Faculty of Advocates has a Free Representation Unit, and sometimes the court may suggest to a party litigant that they contact the Unit. However, in many cases party litigants present their appeals.

Appeals from Scotland

In recent years there have been fewer appeals from Scotland to the Supreme Court than was previously the case. Nine judgments were issued in Scottish appeals in each of 2013 and 2014. That compares with 4 in 2023, none in 2024, and 4 in 2025. In the period up to the end of July this year the only Scottish appeal listed for a hearing is the one which the Court will hear tomorrow.[37] I am not aware of any other pending case where permission to appeal has been granted. Part of the explanation for there being fewer appeals may be the introduction in 2015 of the requirement for permission to appeal.[38] Another likely reason is that recently there have been fewer cases in the Inner House. In 2020 the Inner House issued 74 civil judgments. There were 70 in 2021, 59 in 2022, 48 in 2023, 40 in 2024, and only 32 in 2025. More encouragingly, in the first 4 months of 2026 there were 21. Scottish Courts and Tribunals Service statistics show there were marked dips in the number of appeals to the Inner House during 2022-23 and 2023-24, but that in the year 2025-26 the number of appeals was projected to recover to the level in 2021-22.[39] Hopefully, those indicators point to an upturn in civil business. If the Court of Session and the Supreme Court do not have sufficient opportunities to decide important points of law the development of Scots law is liable to suffer.

JCPC

The Judicial Committee of the Privy Council hears appeals from Commonwealth countries that have chosen to retain appeals to His Majesty in Council, some independent republics who have abolished the monarch as their head of state but retained their right of appeal to the Board [40], British Overseas Territories[41], and UK

[37] *Forthwell Limited v Pontegadea UK Ltd* (UKSC/2025/0081).
[38] Court of Session Act 1988, ss40 and 40A, substituted by the Courts Reform (Scotland) Act 2014, s 117.
[39] Scottish Courts Court Data April 2026. Available at: Publications | Scottish Courts and Tribunals Service.
[40] Mauritius, Trinidad and Tobago, and Kiribati.
[41] Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Pitcairn Islands, St. Helena and its dependencies, South Georgia and South Sandwich Islands, Turks and Caicos Islands, and two sovereign base areas in Cyprus (Akrotiri and Dhekelia).

dependencies.[42] By a special agreement with the Sultan of Brunei, the Board can also hear certain civil appeals from Brunei.

In many of the jurisdictions the legal systems are largely based on the common law, but Mauritius has a civil code derived from its time as a French colony. The Board is careful to respect the jurisprudence on the code, including any relevant French authorities. The fact that two of the Justices are Scots lawyers who are familiar with dealing with a mixed legal system is an advantage in that regard. The Board also has to deal with Polynesian law in some appeals from countries in the Pacific.

For the jurisdictions which use the Judicial Committee, the right of appeal is regulated by the constitution and legislation of the country in question, and in many cases there is an appeal as of right (for example, if the claim is over a certain, often fairly small monetary value or if the proceedings concern a question as to the interpretation of the constitution).

Where there is not an appeal as of right, the test for permission to appeal in civil cases is essentially the same as applies for appeals to the Supreme Court.[43] For criminal appeals the test is whether there is a risk that a serious miscarriage of justice has occurred.[44]

Usually, about half of the appeals heard are appeals as of right and the other half have been granted permission. Some jurisdictions (Trinidad and Tobago, the Bahamas and Jamaica) are the source of many appeals each year, while others only send cases very occasionally.[45]

For those cases which require permission, the procedure is the same as for applications to the Supreme Court, but the proportion of applications granted permission has generally been lower. In 2024-25 it was 10.6%.[46]

Where there is an appeal as of right, a single Justice considers the most appropriate form of hearing for the case. In some cases it will be clear that the case should simply be listed for hearing before a Board of 5 judges. However, if it appears that the appeal may be seeking to overturn concurrent findings of fact made by the lower courts,[47] it may be listed for a case management hearing before a Board of 3 Justices to hear argument as to whether or not the appeal should be dismissed on that ground.[48]

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[42] Jersey, Guernsey and the Isle of Man.
[43] JCPC Practice Direction 3.35. Available at: Practice Direction - JCPC.
[44] JCPC Practice Direction 3.36.
[45] Annual Report 2024-25, pp.43-44.
[46] Annual Report 2024-25, p.31.
[47] Contrary to the rule in *Devi v Roy* [1946] AC 508.
[48] JCPC Practice Direction 4.30-4.33.

Where a case proceeds to an appeal hearing, the pre-hearing procedure in relation to documents mirrors the procedure in Supreme Court appeals.

At the hearing the Board will usually be 5 strong, sometimes 5 Justices, sometimes 4 Justices with the fifth judge from the Court of Appeal of England and Wales, the Court of Appeal of Northern Ireland, or the Inner House. Currently there are also two judges from other jurisdictions who have been made Privy Counsellors and who sit on appeals: Dame Janice Pereira (formerly Chief Justice of the Eastern Caribbean Supreme Court) and Sir Anthony Smellie (formerly Chief Justice of the Cayman Islands).

Privy Council appeals are almost always heard in Court 3. The flag of the jurisdiction from which the appeal comes is displayed in Court. Counsel may appear in person or may attend remotely. The facility for counsel to appear remotely can reduce the cost of an appeal for the parties. Where counsel appear remotely the times the Court sits are adjusted to take account of the time of day where counsel are. Otherwise, the procedure at the hearing, and after it in relation to preparation the Judgment, is the same as in Supreme Court cases. Recently there has been an issue with counsel appearing in person having to pay for visas, but hopefully that is a matter which may soon be resolved.

Where the appeals are from jurisdictions where the King is the Head of State, the Board makes a report or recommendation to His Majesty humbly advising him to allow or dismiss the appeal, and the King makes the appropriate order at a Privy Council meeting. Where the King is not the Head of State, the Board simply allows or dismisses the appeal.

Decisions of the Privy Council are binding precedents for the jurisdictions from which the appeal comes, and, depending on the subject matter, they also may be binding on other Privy Council jurisdictions. They are not binding precedents on the courts of any of the UK jurisdictions. However, in *Willers v Joyce (No 2),*[49] a 9-Justice decision, the Supreme Court pointed out that, while not binding, Judicial Committee decisions are of great weight and persuasive value where they rule upon a common law issue, and that the courts of England and Wales could normally be expected to follow them unless there is a decision of a superior domestic court to the contrary effect. Where the Board is addressing a point of English law, it can rule that the Supreme Court or the Court of Appeal was wrong and direct that the courts in England and Wales should treat the decision of the Board as representing the law of England and Wales. In a recent appeal from the British Virgin Islands the Board exercised that power to overrule a decision of the Court of Appeal.[50] The Board indicated that precisely the same principles should apply in Northern Ireland, but that since judgments of the House of Lords and the

[49] [2016] UKSC 44,
[50] *Sian Participation Corporation v Halimeda International Ltd* [2024] UKPC 16, para 125.

Supreme Court in English appeals are generally at most highly persuasive in Scotland, it was impossible to see how Board decisions on English law could have any greater authority here.[51]

The Judicial Committee has heard a number of appeals relating to the imposition of the death penalty. In several jurisdictions the laws relating to the death penalty were enacted long before their constitutions were adopted, with the result that they are protected from challenge on human rights grounds by savings in the constitution for existing law. In 2022 in *Chandler v State of Trinidad and Tobago (No 2)*[52] a panel of 9 judges held that the constitution of Trinidad and Tobago saved existing laws, including the mandatory death penalty, from constitutional challenge, notwithstanding that it was cruel and unusual punishment and that had it been contained in legislation adopted after the constitution came into force it would have been unlawful.

However, some aspects of the death penalty have been mitigated by decisions of the Judicial Committee. In *Pratt and Morgan v Attorney General for Jamaica*[53] the Board opined that in any case in which execution is to take place more than 5 years after sentence there will be strong grounds for believing that the delay is such as to constitute "inhuman or degrading punishment or other treatment". In *Boodram v Attorney General of Trinidad and Tobago*[54] the Board held that where a death penalty sentence was commuted, while the substitution of life imprisonment might often be appropriate, it would be arbitrary, and could in some cases amount to cruel and unusual punishment or other treatment, for the court to be constrained to impose life imprisonment as a substitute sentence in every case.

In 2016, for the first time, the Supreme Court and the Judicial Committee sat together as a single body to hear *R v Jogee*[55] (an appeal to the Supreme Court from England and Wales) and *Ruddock v The Queen*[56] (an appeal to the Judicial Committee from Jamaica). Both appeals concerned the law of joint enterprise, and the principles at issue in the two cases were the same. A single judgment was delivered, but it was given two citations, one for each court.

The Judicial Committee also has a domestic jurisdiction. It can hear appeals in relation to the removals and suspensions of veterinary surgeons' registration; appeals about pastoral measures of the Church of England; appeals from the Court of Arches of Canterbury and the Chancery Court of York; appeals from Prize Courts; and appeals from the Court of Admiralty of the Cinque Ports. In addition, the Board has jurisdiction to hear applications that a person purporting to be an MP is disqualified under the

[51] *Willers v Joyce (No2),* para 22.
[52] [2022] UKPC 19.
[53][1994] 2 AC 1.
[54] [2022] UKPC 20.
[55] [2016] UKSC 8.
[56] [2016] UKPC 7.

House of Commons Disqualification Act 1975; and section 4 of the Judicial Committee Act 1833 provides that His Majesty may refer to the Judicial Committee for hearing or consideration such other matters he shall think fit, for it to hear or consider the same, and advise him thereon. Nowadays, little of the domestic jurisdiction is exercised with any regularity, but earlier this year a 3-Justice Board heard a veterinary surgeon appeal.

Judicial Assistants

I mentioned judicial assistants earlier. There are 12 of them, one for each Justice. 11 of them are appointed on fixed-term contracts which run from September to the end of July. They are recruited annually in an open competition. They need not be professionally qualified, but many of them are. My judicial assistant has a Scots law degree and she qualified as a solicitor in Scotland.

Judicial assistants do work for the Justice to whom they are assigned but also do other work for the Court.

A judicial assistant's work for their Justice includes any research which the Justice requires, discussing the issues which arise in the Justice's cases and permission to appeal applications, and assisting the Justice to prepare for lectures, moots and other engagements.

Their work for the Court includes drafting bench memos for permission to appeal applications, drafting plain English press summaries of judgments, preparing draft responses on behalf of the Court to requests for information from international judicial and comparative law networks, and supporting educational and outreach activity.

The head judicial assistant is a permanent member of staff. They are the judicial assistant to the President and they have a management role in relation to the other judicial assistants. The current head judicial assistant will have served in that post for 6 years when she leaves this summer to become a partner in a firm of solicitors.

In Scotland judicial assistants are called law clerks. There are 4 of them. They are all professionally qualified. Until now, they have had 2-year fixed-term contracts, with an option for the court to extend the appointment for a third year. I understand that this year that will change. New appointments are to be for one year with options for extension for a further year at the end of the first year and at the end of the second year.

The law clerks support the Inner House judges and the Sheriff Appeal Court. In advance of most appeals of any complexity they prepare a note summarising the issues and the authorities. Sometimes they also prepare a draft of the background facts and the parties' submissions to assist the judge writing the opinion. They may also provide help with research for speaking engagements which judges have.

Communications

The Court's communications team provide assistance to Justices as required. They also maintain the Court's social media accounts with X, Instagram and LinkedIn, which have about 400,000 followers.

The Court encourages physical and web access by the public to hearings. There were 66,000 visitors to the Court last year. Some years there have been up to 100,000. When cases are being heard the norm is that many members of the public attend Court. The livestreams of hearings are watched by many more. In 2024-25 the Courts' websites had more than 1.4 million users, and the Court's YouTube channel had more than 272,000 views.[57]

Education and outreach

The Court also tries to connect with the general public through its education and outreach work. There is a scheme which gives 16- and 17-year-old pupils at schools the opportunity to take part from their classroom in a live question and answer session with a Justice. There are essay competitions. Justices judge law students moots and debates and attend other events at universities where we meet students. In conjunction with a university, the Court has an online course on the Supreme Court in which about 5,000 members of the public have enrolled.

The Court recently updated its Diversity and Inclusion Strategy to support the progress of able lawyers from under-represented groups into judicial roles.[58] It runs webinars for those interested in appointment to the judiciary, and it provides internships for young lawyers from disadvantaged backgrounds to help them to gain confidence and progress in their careers. It has hosted events for Sikh lawyers, Bangladeshi lawyers, organisations working to overcome barriers for black lawyers, and organisations helping young people from different ethnic and religious communities.

Contacts with other courts, Parliamentarians and others

The Court takes part regularly in bilateral meetings with other national courts and international meetings to foster close working relationships with courts around the world.

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[57] Annual Report 2024-25, pp. 8-9.

[58] *Judicial Diversity & Inclusion Strategy, 2026-2030*. Available at: UKSC_and_JCPC_Judicial_Diversity_and_Inclusion_Strategy_2026_2030_1b21141c26.pdf.

Representatives of the Court meet with groups of MPs to foster better understanding of the Court's role. Materials prepared by the Court are issued to every new MP, and Justices meet with committees of the House of Commons and House of Lords (eg the Constitution Committee) to discuss matters of mutual interest.

Concluding thoughts

In my first few months as a Justice I have been greatly impressed by the ethos and operation of the Supreme Court and the Judicial Committee, and by the first-class support which Court staff provide. The Courts' commitment to high standards of adjudication, to open justice, and to educating the public and others as to the Courts' roles are readily apparent, as are their commitments to diversity and inclusion, and to maintaining and enhancing the standing of the Courts domestically and internationally. There is an openness to change which produces improvement, and a determination to understand and exploit new technology. For my part, I have found all of that to be an inspiring combination.

I shall end as I began, with Lord Rodger, one of the greatest judges and jurists which Scotland has produced. He contributed greatly to the standing of the Appellate Committee, the Supreme Court, and the Judicial Committee. His successors can but strive to approach the extremely high standards which he set. I like to think that, despite his reservations at the time of the Court's birth, he would have thoroughly approved of how it has developed.

Thank you.