

The first year of the UK'S Supreme Court

SIR LOUIS BLOM-COOPER QC,

PROFESSOR BRICE DICKSON

Queen's University Belfast

AND

PROFESSOR GAVIN DREWRY

*Royal Holloway, University of London*¹

On 1 October 2009 a significant institutional change occurred in the United Kingdom when a new Supreme Court took over the jurisdiction of the Appellate Committee of the House of Lords, as well as the devolution jurisdiction of the Judicial Committee of the Privy Council. Now that the new court has a full legal year under its belt, the time is opportune to make an initial assessment of what else may have changed at the top judicial level in Britain, apart from the location of the court and the official title of the judges who work there. This article looks at procedural and substantive legal changes. It focuses on appeals that were decided during the first year, but also makes passing reference to some appeals that had been heard but not yet decided by the end of that year.

The composition of the Court

The composition of the Supreme Court during its first year turned out to be a more interesting topic than might perhaps have been anticipated, since the Constitutional Reform Act 2005² predetermined that the 12 Lords of Appeal in Ordinary who were in office on 1 October 2009 should instantly be metamorphosed into 12 Justices of the Supreme Court, retaining their titles as life peers but losing their entitlement (until retirement) to participate in proceedings in the House of Lords. By the end of the year the judicial picture was not quite as predicted.

When Lord Clarke of Stone-cum-Ebony, the Master of the Rolls, was appointed as a Justice of the Supreme Court in the summer of 2009, to replace the retiring Lord Scott of Foscote, a rival candidate had been a prominent member of the Bar, Mr Jonathan Sumption QC. It was generally believed at the time that the latter's candidature had been so strong that he was almost certain to be appointed the next time round.³ The resignation of Lord Neuberger at the moment of the changeover, to allow him to return to the Court of Appeal

1 The authors (respectively, a retired legal practitioner, the Professor of International and Comparative Law at Queen's University Belfast, and an emeritus Professor of Public Administration at Royal Holloway, University of London) are co-editors of a commemorative volume on the Supreme Court's predecessor: *The Judicial House of Lords 1876–2009* (Oxford: OUP 2009). For a volume explaining the genesis of the new court, see A Le Sueur (ed.), *Building the UK's New Supreme Court: National and comparative perspectives* (Oxford: OUP 2004). See, too, A Le Sueur, *A Report on Six Seminars about the UK Supreme Court* (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1324749.

2 S. 24(a).

3 But of course selection has to be on merit: Constitutional Reform Act 2005, s. 27(5).

as Master of the Rolls as Lord Clarke's replacement, created an unexpected early vacancy in the Supreme Court.⁴ Unfortunately, the process of selection was administratively delayed for some six months and was subject to some lobbying, not all of it discrete. A widely held view among judges of the Court of Appeal is that the Justices of the Supreme Court should be drawn – not invariably, but usually – from the ranks of existing judges who have appellate court experience, and when he reflected on this Mr Sumption withdrew his candidature.⁵ The history of appointments to the post of Lord of Appeal in Ordinary does not readily support such exclusivity; after all, perhaps the most distinguished of the Law Lords in post-Second World War Britain was Lord Reid, who served from 1948 to 1975 and had never previously worked as a judge. Against a background of competing voices, the selection commission set up to make the selection nominated Lord Justice Dyson for the vacancy and it was he who was ultimately appointed, in April 2010. He was a very popular choice, although the fact that he has not been given a peerage (or even a courtesy title, like judges of Scotland's Court of Session) has raised some eyebrows. The brouhaha over Mr Sumption's candidature was an unfortunate backdrop to a process that had been designed to avoid any politicisation of the higher judiciary. By and large, however, the public image of an independent judiciary was maintained, mainly because very little public interest is ever displayed in UK judicial appointments, even when they occur at the highest level.⁶

The retirement age for Justices is also back in the news. Shortly before the government's announcement that it would be abolishing the compulsory retirement age of 65 for all workers,⁷ a parliamentary question was asked in the House of Lords by Lord Pannick QC about the retirement age for Supreme Court Justices.⁸ At present, if first appointed to the bench after March 1995, Justices have to retire when they reach the age of 70, otherwise they can continue in post until they reach the age of 75. In his reply to the parliamentary question, Lord McNally, for the government, said that the retirement age for Justices was under review, as was whether they should be given a peerage.⁹ The position of Lord Collins, whom Lord Woolf described as "probably the outstanding private international lawyer in the judiciary as a whole",¹⁰ was highlighted, since he was appointed as a Justice in 2009 at the age of 68 and, unless the law is changed, will have to retire in 2011 after serving less than two years. Lord Saville meanwhile, no doubt exhausted after his marathon stint chairing the Bloody Sunday Inquiry between 1998 and 2010, decided to retire in September 2010, even though he was qualified to sit for a further six months.¹¹ From September 2010 to March 2011, when he turns 75, Lord Saville will be a member of "the supplementary panel", which means that he can be called upon to assist the Justices of the Supreme Court

4 A selection commission was appointed, in accordance with s. 26(5) of and Sch. 8 to the Constitutional Reform Act 2005.

5 See the account by Frances Gibb in *The Times*, 4 February 2010: <http://business.timesonline.co.uk/tol/business/law/article7013960.ece>.

6 Contrast the position in the USA, where in 2010 extensive media coverage was given to the nomination and senatorial interviewing of Elena Kagan, who was eventually sworn in as a Justice of the US Supreme Court on 7 August.

7 See the consultation document issued by the Department for Business, Innovation and Skills, *Phasing out the Default Retirement Age* (London: DBIS 29 July 2010).

8 HL Debs, vol. 720, cols 505–7 (12 July 2010).

9 Ibid. col. 507.

10 Ibid.

11 Lord Saville sat in 10 of the decided cases during 2009–10, but did not deliver any substantive judgments. He also sat in four cases that had been heard but not decided by the end of the year. In two cases during the year he sat as the presiding judge, being the longest serving of the judges sitting in those cases.

with their work.¹² Indeed, according to the Supreme Court's list of sittings for the Michaelmas Term 2010, Lord Saville sat in an appeal heard in November 2010.

During its first year the President of the Supreme Court (Lord Phillips) or the Deputy President (Lord Hope) presided in all but six of the 57 decided cases.¹³ Of the 12 cases in which judgment was awaited at the end of the year, they presided in 10. These two most senior judges sat together in eight of the decided cases and in three of the undecided ones. They were also the judges who produced the most judgments during the year – each of them wrote 12. The next most productive Justices were Lords Rodger and Mance, who each wrote eight substantive judgments. Lord Clarke, despite being a new boy on the court, also wrote eight judgments, though one of these was merely the order of the court in a case decided some months earlier.¹⁴ These comments about “productivity” are not for a moment intended to suggest that other judges did not pull their weight during the year: many of them contributed numerous minor judgments and Justices were also active in the Judicial Committee of the Privy Council, which issued 77 decisions during the year, none of which has been taken into account for the purposes of the present analysis.¹⁵ Moreover, during the month of November 2009, Lord Walker of Gestingthorpe was out of the country serving as a nominated judge of the Final Court of Appeal in Hong Kong.¹⁶

Although Lord Neuberger did not serve as a Justice of the Supreme Court during the year, having become Master of the Rolls on 1 October 2009, he was involved in six cases which were heard by the Appellate Committee of the House of Lords before the summer recess but in which judgments were issued between October and December 2009. He sat as an “acting judge of the Court” in one Supreme Court appeal heard before nine judges in July 2010.¹⁷ Lord Judge, the Lord Chief Justice of England and Wales, was the only other non-Justice to sit in the Supreme Court during its first year. He participated in four criminal cases, authoring the long annex on European Convention caselaw in *R v Horncastle*¹⁸ (having chosen not to sit as the presiding judge when that case was in the Court of Appeal),¹⁹ and contributing a substantive judgment in the sentencing case of *R (Noone) v Governor of HMP Drake Hall*.²⁰

Applications for permission to appeal and to intervene

Permission to appeal (PTA) is being granted by the Supreme Court at roughly the same rate as it was by the Appeal Committee of the House of Lords. In 2009–10, there were

12 As provided for by the Constitutional Reform Act 2005, s. 39.

13 Two were presided over by Lord Rodger, two by Lord Walker and, as mentioned in n. 11 above, two by Lord Saville.

14 *RTS Flexible Systems Ltd v Molkerei Alois Müller GmbH* [2010] UKHL 38, which supplements [2010] UKHL 14.

15 Supreme Court Justices spend about 30% of their time on Privy Council business.

16 *The Supreme Court Annual Report and Accounts 2009–2010* (HC 64, 2010), p. 40: www.supremecourt.gov.uk/docs/ar_2009_10.pdf.

17 *Manchester City Council v Pinnock* [2010] UKSC 45, [2010] 3 WLR 1441, which concerns the compatibility of the procedure for the termination of a “demoted tenancy” under the Housing Act 1996 with ECHR Articles 6 and 8. Acting judges are provided for in the Constitutional Reform Act 2005, s. 38.

18 [2009] UKSC 14, [2010] 2 WLR 47 (Annex 4 to Lord Phillips’ judgment).

19 It has been suggested (at a conference held at the Supreme Court on 30 September 2010 to mark the first anniversary of the Court, the notes of which are on file with the authors, but Chatham House rules apply to the proceedings) that Lord Judge CJ was asked to sit in the Supreme Court for this case because the presence of a Chief Justice might help to convince the European Court of Human Rights of the authoritativeness of the decision.

20 [2010] UKSC 30, [2010] 1 WLR 1743. The other two cases were *Norris v Government of the United States of America* [2010] UKHL 9, [2010] 2 WLR 572 and *R v Rollins* [2010] UKHL 39, [2010] 1 WLR 1922.

219 applications for permission, of which 131 were refused, 75 were granted (34 per cent) and 13 were struck out, withdrawn or adjourned. In the three calendar years 2003–05, the percentage of granted appeal petitions was, respectively, 33 per cent, 35 per cent and 31 per cent.²¹ The website of the Supreme Court summarises the outcomes of the applications but, alas, provides no further details as to what legal issues were raised by them. (It does, however, show details of “current” cases, that is, cases in which appeals have already been heard but no judgments issued, as well as a small number of the cases in which hearings have already been scheduled but not yet heard.) A better way to track the fortunes of applications for PTA is to use the information provided on the website of the Incorporated Council of Law Reporting for England and Wales: this provides a list of the outcomes of the applications, together with neutral citations for the judgments being appealed from; one can then look up the citations to see what those judgments said, thereby obtaining some clues as to the issues likely to have been raised before the Supreme Court in the PTA application.

The process for handling applications for PTA differs from that used in the House of Lords in that all Supreme Court Justices are now made aware of all pending applications, though only the three Justices on the Appeal Panel receive the full set of papers relating to the application. Any of the other nine Justices can, if they wish, comment on an application and it was made clear at a conference held at the Supreme Court in September 2010 that during the court’s first year one Justice did succeed in getting an Appeal Panel to reverse its decision not to grant permission to appeal in one case (and was then selected as one of the five Justices to hear the appeal).²² But from the information made public it is impossible to know when or how frequently this kind of influence is wielded. The invariable practice does seem to be, however, that, if just one of the three members of the Appeal Panel wishes the PTA application to be granted, it will be.

There were seven occasions during the year on which oral hearings were held to consider PTA applications. The Supreme Court’s website²³ reveals that permission was granted in one of these; it gives no indication as to the ultimate outcome in the other six applications but the “current cases” section reveals that at least one of them was successful. In the last few years of the Appellate Committee of the House of Lords, oral hearings were just as rare (11 in 2003, six in 2004, and four in 2005).²⁴

The Justices of the Supreme Court are as laconic as the Law Lords in the reasons they give for refusing permission: they simply certify that no point of law of general public importance requires consideration “at this time”.²⁵ This raises the possibility that the Justices are not complying with their own Practice Direction 3.3.3, which strongly suggests that Appeal Panels will give “brief reasons for refusing permission to appeal” over and above the ground that the application does not raise a point of law of general public importance at this time. Interestingly, during 2009–10, no PTA was granted in a devolution case, even though 11 such applications were considered.²⁶ It would have been illuminating to Scottish lawyers if more details had been provided as to why those applications were rejected (beyond merely stating that the appeal did not raise a devolution issue), and it might even have reduced the Justices’ future workload (as well as the expenses incurred by

21 B Dickson, “The processing of appeals in the House of Lords” (2007) 123 *LQR* 571, 583.

22 See n.19 above.

23 In the section headed “News”.

24 Dickson, “The processing”, n. 21 above, p. 582.

25 Cf. *ibid.* p. 583.

26 These were all Scottish devolution cases. There has not yet been a devolution case emanating from Northern Ireland or Wales.

litigants), since lawyers would have been made aware of what arguments were probably not worth making in PTA applications.

It would appear that the Supreme Court is planning to be every bit as welcoming to interveners as the House of Lords became in its last few years. In the cases decided to date, interventions were allowed in at least 12, with as many as three interveners being permitted in one case²⁷ and five in another.²⁸ Unfortunately, the website of the Court does not supply any information about the number or outcome of applications to intervene.²⁹ Those that were successful were all from organisations with special interests in the subject matter of the dispute. On the other hand, no *amicus curiae* seems to have been requested by the Court during its first year.

The decided cases

During its first legal year the UK's Supreme Court decided 57 cases,³⁰ three of which did not result in full judgments because they were decisions to refer questions to the European Court of Justice for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union,³¹ and a fourth of which was simply the court's order consequential on its earlier judgment in the same case.³² The total of 57 is roughly on a par with that for the House of Lords in recent years: in 2008–09 the number of decisions was 49; in 2007–08 it was exceptionally high at 82; and in 2006–07 it was 59. As already noted, the Supreme Court Justices also decided 77 cases in the Judicial Committee of the Privy Council during 2009–10, a higher number than in recent years (58 in 2008–09, 57 in 2007–08, and 73 in 2006–07). There has certainly been no fall in the level of productivity of our top judges since they set up camp in the new Supreme Court building in Parliament Square.

Seven of the Supreme Court's 57 decisions were in Scottish cases,³³ one was in a case from Northern Ireland, and one (though processed through the English courts) was solely about Sark, in the Channel Islands.³⁴ In five of the remaining 48 cases (all but two of which were appeals from the Court of Appeal of England and Wales),³⁵ the issues were linked to an earlier decision by the Supreme Court in the same legal year³⁶ and in two further cases

27 *I (A Child)* [2009] UKSC 10, [2010] 1 AC 319.

28 *R (E) v Governing Body of JFS* [2009] UKSC 15, [2010] 2 WLR 153.

29 Interventions are governed by the Supreme Court Rules 2009, rr. 15 and 26.

30 This is the number of cases in which sets of judgments were issued; several cases involved more than one appeal.

31 These were *Office of Communications v The Information Commissioner* [2010] UKSC 3, *British Airways plc v Williams* [2010] UKSC 16, and *O'Brien v Ministry of Justice* [2010] UKSC 34.

32 See n. 14 above, and accompanying text.

33 One of the cases in which judgment was awaited at the end of the year was also Scottish: *Cadder v HM Advocate* [2010] UKSC 43, [2010] 1 WLR 2601. This deals with whether Scotland's rules on the right of access to a solicitor can lead to an unfair criminal trial.

34 *R (Barclay) v Lord Chancellor* [2009] UKSC 9, [2010] 1 AC 464. This was an application for judicial review of decisions taken by the Lord Chancellor, the Privy Council, and a committee of the Privy Council (the Committee for the Affairs of Jersey and Guernsey). Lord Neuberger described Lord Collins' judgment in this case as "magisterial": para. 120.

35 The exceptions were two cases on extradition, where the court appealed from was the Divisional Court of England and Wales.

36 *In re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 WLR 325 and *Ahmed v HM Treasury (No 2)* [2010] UKSC 5, [2010] 2 WLR 378 were linked to *Ahmed v HM Treasury* [2010] UKSC 2, [2010] 2 WLR 378; *In re appeals by Governing Body of JFS* [2009] UKSC 1 was linked to *R (E) v Governing Body of JFS* [2009] UKSC 15, [2010] 2 WLR 153; *Secretary of State for the Home Department v AP (No 2)* [2010] UKSC 26, [2010] 1 WLR 1652 was linked to *Secretary of State for the Home Department v AP* [2010] UKSC 24, [2010] 3 WLR 51; and see the pair of cases cited at n. 14 above.

the issues were linked to decisions reached by the House of Lords two years earlier.³⁷ It would appear that only three appeals were heard as a result of PTA being granted by a lower court,³⁸ thereby confirming the trend in recent years towards keeping the country's top court in almost complete control of its own docket. In one case involving two appeals, there was a leapfrog appeal direct from the High Court, but it too required the leave of the Appeal Committee of the House of Lords before it could proceed.³⁹

As in recent years, most of the cases decided by the top court involved issues of public law. Of the 57 decisions, 30 (53 per cent) involved matters of public law, a further eight (14 per cent) were criminal law cases⁴⁰ and 19 (33 per cent) were private law cases. Sixteen cases (29 per cent) concerned European Convention rights⁴¹ and seven (12 per cent) involved issues around asylum or immigration. Only one case related to taxation law.

The form and promptness of judgments

In no fewer than 19 of the year's 57 cases the Supreme Court's decision took the form of a "judgment of the court", a much higher number than in any previous year. This is a practice pioneered by Lord Bingham while he was the Senior Law Lord from 2000 to 2008.⁴² It would seem that the Supreme Court is keen to issue a judgment of the court if that is possible, not just where it is desirable.⁴³ The practice surely betokens a desire on the Justices' part to be more united and more certain in the guidance they give to lawyers in future cases. The wish to appear more authoritative is also reflected in the high number of cases in which more than the standard group of five judges participated. In the 2009–10 decision, nine judges sat in three cases and seven judges sat in 10 cases, meaning that the norm of five judges per case was exceeded in 23 per cent of all cases. Moreover, of the 11 cases that were heard but not decided by the end of the year, two involved nine judges⁴⁴ and three involved seven.⁴⁵ Of the 190 cases decided during the two previous years combined, there were only two cases with nine judges and none with seven (i.e. only 1 per cent of the cases involved more than five judges).⁴⁶ Lord Phillips has revealed that the Justices do have a set of criteria that are applied when suggestions are made that a larger

37 *Norris v Government of the USA* [2010] UKSC 9, [2010] 2 WLR 572 was a sequel to the case reported at [2008] UKHL 16, [2008] 1 AC 920; *O'Byrne v Aventis Pasteur MSD Ltd* [2010] UKSC 23, [2010] 1 WLR 1412 was a sequel to [2008] UKHL 34, [2008] 4 All ER 881.

38 *R v Horncastle* [2009] UKSC 14, [2010] 2 WLR 47; *Martin v HM Advocate* [2010] UKSC 10, 2010 SLT 412; *R (Smith) v Oxfordshire Assistant Deputy Coroner* [2010] UKSC 29, [2010] 3 WLR 223.

39 *R (Youssef) v HM Treasury*, part of *Ahmed v HM Treasury*, n. 36 above. See Administration of Justice Act 1969, s. 13(2).

40 This figure includes two judicial review applications that related to criminal law issues: *R (F) v Secretary of State for the Home Department* [2010] UKSC 17, [2010] 2 WLR 992 and *R (Noone) v Governor of HMP Drake Hall* [2010] UKSC 30, [2010] 1 WLR 1743.

41 In the "current cases" section of the Supreme Court's website an indication is given as to whether the cases raise human rights issues (or devolution issues).

42 B Dickson, "A hard act to follow: the Bingham court 2000–8" in Blom-Cooper et al., *The Judicial House*, n. 1 above, pp. 261–2.

43 Lord Phillips, the President of the Court, has been cited as saying "[T]here is agreement that, where possible, we should reduce the number of individual judgments." See *The Times*, 7 October 2010, p. 66.

44 These were *Manchester City Council v Pinnock* (see n. 17 above) and *Granatino v Radmacher* [2010] UKSC 42, [2010] 3 WLR 1367 (on the weight to be given to prenuptial contracts).

45 These were *Oceanbulk Shipping and Trading SA v TMT Asia Ltd* [2010] UKSC 44, [2010] 3 WLR 1424 (on whether evidence of without prejudice negotiations can be used to help construe a settlement); *Cadder v HM Advocate*, see n. 33 above (on whether a criminal trial is unfair if evidence is admitted that has been provided by the accused in the absence of a lawyer).

46 The practice of using nine judges began in 2003 and there have now been a total of seven such decisions.

than usual bench is required for an appeal. These include that the appeal raises a point of high constitutional importance, that it is otherwise a high profile case, that it raises doubts over the correctness of an earlier decision of the House of Lords or Supreme Court, and that if there were just five judges there might be a 3:2 split. Reviewing the year's cases, he felt that in one or two of them a larger than normal bench was used when in retrospect it was not actually required.⁴⁷

The Supreme Court has also dropped the House of Lords' practice whereby judges delivered their judgments (which were, strictly speaking, "speeches") in order of their seniority. Now the most substantive judgment is usually given first and other judgments follow (in order of the judges' seniority) only if the judges in question have something to add. Often the first judgment, by Justice A, will simply indicate, for example, that it has the agreement of Justices B and C, leaving only Justices D and E to add further comments (and Justices B and C may also add one or two additional remarks). Of course, we do not know what transpires at conferences between Justices after an appeal hearing has concluded, and there is nothing in the Supreme Court's Rules of Procedure or Practice Directions⁴⁸ to indicate an express change of practice, but it would seem that there is a growing assumption that a Justice will not add any comments unless doing so is specifically justified. Lord Walker, for example, is prone to say that he is adding some remarks of his own only because there is a difference of opinion between his colleagues, or because the Supreme Court is overturning the decision of the court below. In *R (E) v Governing Body of JFS*, Lord Walker added just three paragraphs, mainly to stress that he agreed with much of what Baroness Hale had said but that he had reached a different conclusion,⁴⁹ and, in *R (Smith) v Oxfordshire Assistant Deputy Coroner*, Lord Walker inserted another three paragraphs, mostly saying that the Supreme Court should not be issuing lengthy judgments on issues that cannot actually affect the litigants in the case before them.⁵⁰

The overall length of judgments does not seem to have diminished compared to previous years. In three cases, the total number of paragraphs in the judgments exceeded 200,⁵¹ and in a fourth it was 340.⁵² The single longest judgment by any particular judge was the 112 paragraphs by Lord Collins in the case about Sark, *R (Barclay) v Lord Chancellor*.⁵³ In two cases there were eight substantive judgments followed by a brief comment from the ninth judge (Lord Walker in both instances).⁵⁴ In *R v Horncastle*,⁵⁵ the Court adopted the extraordinary expedient of adding not one but four annexes to the Court's collective judgment,⁵⁶ delivered by Lord Phillips. Two of these annexes were attributed to particular Justices – Annex 1 to Lord Mance and Annex 4 (itself 96 paragraphs) to Lord Judge CJ.

47 See n. 19 above. See too Buxton LJ, "Sitting en banc in the new Supreme Court" (2009) 125 *LQR* 288. The criteria applied are now listed on the Supreme Court's website: www.supremecourt.gov.uk/procedures/panel-numbers-criteria.html.

48 These can all be consulted on the Court's website.

49 See n. 28 above, paras 235–7.

50 See n. 38 above, paras 129–31.

51 *R v Horncastle*, n. 38 above; *R (E) v Governing Body of JFS*, n. 28 above; *Ahmed v HM Treasury*, n. 36 above, p. 378.

52 *R (Smith) v Oxfordshire Assistant Deputy Coroner*, n. 38 above.

53 See n. 34 above.

54 *R (E) v Governing Body of JFS*, n. 28 above; *R (Smith) v Oxfordshire Assistant Deputy Coroner*, n. 38 above.

55 See n. 38 above.

56 Lord Brown, like the other five Justices, fully agreed with the judgment of Lord Phillips, but he could not resist adding 10 paragraphs of his own to reinforce his view that the Supreme Court should, in effect, join with the UK government in inviting the Grand Chamber in Strasbourg to overrule the Chamber's judgment in *Al-Khawaja v UK* (2009) 49 EHRR 1.

These annexes set out details about various precedents, which, if inserted into the text of the main judgment, would have considerably disrupted the flow of the argument. The case is remarkable for the deep rift it overtly displays between the thinking of the Supreme Court and that of the European Court of Human Rights on whether the use of hearsay evidence to convict a defendant violates the requirements for a fair trial.

In the 57 cases decided during the year, the average time allowed for each hearing was two days, but only one day was required in 11 cases and in two cases four days were required.⁵⁷ Judgments were issued fairly promptly during the year. The average delay between the hearing of an appeal and the issuing of judgments was 73 days, although this narrows to 59 days if the 10 cases are excluded in which a hearing occurred in the House of Lords prior to the long summer recess in 2009 but judgments were issued by the Supreme Court in the autumn. In the three calendar years 2003–05, the average overall delay for judgments in the House of Lords was 62 days.⁵⁸ It may be that the increase in the time taken for judgments to be issued is partly a function of the increasing use of benches of more than five judges, since in such cases more time is required for the sharing and considering of draft judgments. Four of the cases that were not affected by the summer recess nevertheless took at least 105 days (i.e. 15 weeks) for judgments to be delivered, the longest delay being 126 days in the foreign divorce case of *Aghaje v Aghaje*.⁵⁹ However, as the Supreme Court's *Annual Report* points out,⁶⁰ the Court can also act very quickly if it needs to: in *In re W (Children) (Family Proceedings: Evidence)* it handed down judgment just one day after the case was heard.⁶¹

Dissents and attitudes to precedent

The striving for authoritativeness and unity should not be interpreted as diminishing the determination of individual Justices to pronounce their own thoughts about an issue, particularly if they wish to dissent from the reasoning of the majority or from the outcome of the appeal. In 2009–10, there were dissents (to all or part of the case) in 13 of the 57 cases (23 per cent), and in six of these 13 cases more than one Justice dissented. The starkest instances of “close calls” were: the 5:4 split on whether a Jewish school had *directly* discriminated against a prospective pupil (it had);⁶² the 3:2 split on whether the Scottish Parliament had power to increase the sentencing powers of sheriffs in road traffic cases (it did);⁶³ the 4:3 split on whether Wolverhampton City Council had breached the planning

57 These two cases were *R (A) v London Borough of Croydon* [2009] UKSC 8, [2009] 1 WLR 2557 (on the duty on local authorities to provide accommodation and related services under the Children Act 1989) and *Ahmed v HM Treasury*, n. 36 above (on the validity of legislative orders freezing the assets of people suspected of involvement in terrorism).

58 Dickson, “The processing”, n. 21 above, p. 599.

59 [2010] UKSC 13, [2010] 2 WLR 709. In the *RTS Flexible* case (n. 14 above), 140 days elapsed between the issuing of reasons for the decision and the actual court order (about which further argument from counsel was heard).

60 *Annual Report*, n. 16 above, p. 27.

61 [2010] UKSC 12, [2010] 1 WLR 701. The case was about whether a child could give live evidence during care proceedings; the Supreme Court issued its guidance in time for a fact-finding hearing by the lower court judge the following week.

62 *R (E) v Governing Body of JFS*, n. 28 above. According to Baroness Hale (relying on the opinion of the Supreme Court's judicial assistants), this case was the highlight of the Court's first year (see uksblog.com, interview with Lady Hale, 16 September 2010); Lord Phillips too thought it was most interesting (n. 43 above). Seven of the nine Justices thought there had been either direct or indirect discrimination; only two thought there had been neither.

63 *Martin v HM Advocate*, n. 38 above. The two Scottish Justices, Lords Hope and Rodgers, were sharply divided on this point.

laws when preferring Tesco's development bid to Sainsbury's (it had);⁶⁴ the 6:3 split on whether Convention rights of UK soldiers are protected when they are serving abroad (they are not);⁶⁵ and the 4:3 split on whether donations unlawfully received by political parties have to be entirely forfeited to the Electoral Commission (they do not).⁶⁶

For a while, it seemed that the Supreme Court would be issuing all the majority judgments in a case before issuing any dissenting judgments. This is the way it proceeded in the prominent case of *R (E) v Governing Body of JFS*⁶⁷ and in the Scottish case of *Martin v HM Advocate*.⁶⁸ But, ever since *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council*,⁶⁹ the Court seems content to insert dissenting judgments before or between majority judgments, and in that case it even relegated the leading majority judgment to the very end, this being the judgment of the most junior Justice sitting in the case, Lord Collins. The difficulty in assessing whether there are any dissenting judgments in a case, and the extent to which they are dissenting, has been somewhat alleviated by the fact that the Supreme Court's press releases invariably summarise the state of play regarding dissents, although in our opinion some of those releases have not been as explanatory as they might have been, certainly for legally informed readers. Some dissenting judgments, moreover, are still extremely long. The record for 2009–10 is the 89 paragraphs of Lord Rodger in *Martin v HM Advocate*,⁷⁰ which is more than twice the length of the leading majority judgment by Lord Hope. The partly dissenting judgment of Lord Clarke in *Star Energy Weald Basin Ltd v Bocardo SA*⁷¹ was lengthier than the main majority judgment delivered by Lord Brown.

The Supreme Court has not gone out of its way to specify a different attitude to the handling of precedents from that preferred by the House of Lords. Indeed, in *Austin v Southwark LBC*,⁷² Lord Hope said that it was not necessary for the Supreme Court to re-issue the Practice Statement of 1966 as a fresh statement of practice in the Supreme Court's own name:

because it has as much effect in this Court as it did before the Appellate Committee in the House of Lords. It was part of the established jurisprudence relating to the conduct of appeals in the House of Lords which was transferred to this Court by s. 40 of the Constitutional Reform Act 2005.⁷³

The Supreme Court Practice Direction 3.1.3(a) provides that: "If an application for permission to appeal . . . asks the Supreme Court to depart from one of its own decisions or from one made by the House of Lords . . . this should be stated clearly in the application and full details must be given." This is very similar to what was contained in the Practice Directions applicable to appeals in the House of Lords: "If a party intends to invite the House to depart from one of its own decisions, this intention must be clearly stated in a separate paragraph of their case, to which special attention must be drawn."⁷⁴ No change there then.

64 *R (Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2010] UKSC 20, [2010] 2 WLR 1173.

65 *R (Smith) v Oxfordshire Assistant Deputy Coroner*, n. 38 above.

66 *R (Electoral Commission) v City of Westminster Magistrates Court* [2010] UKSC 40, [2010] 3 WLR 705.

67 See n. 28 above.

68 See n. 38 above.

69 See n. 64 above.

70 See n. 38 above.

71 [2010] UKSC 35, [2010] 3 WLR 654.

72 [2010] UKSC 28, [2010] 3 WLR 144.

73 *Ibid.* para. 25. For a recent analysis of the Practice Direction, see L. Blom-Cooper, in Blom-Cooper et al., *The Judicial House*, n. 1 above, ch. 9.

74 Practice Directions 15.5 (Civil Appeals) and 16.5 (Criminal Appeals).

The success rate of appeals

The Supreme Court reversed the court appealed from in 26 cases, a success rate of 46 per cent, which is again in line with statistics for appeals to the House of Lords in recent years.⁷⁵ For procedural reasons, in seven of the 57 cases decided during the year there either was no lower court decision to reverse or the decision taken by the Supreme Court was simply to refer the case to the European Court of Justice (ECJ) for a preliminary ruling, so the success rate for appeals could on that basis be said to be 52 per cent. On several occasions the Supreme Court found that the Court of Appeal had developed the law or applied existing legal principles in ways that were unacceptable. This occurred, for example, in three family law cases. In *In re B (A Child) (Residence: Biological Parent)*,⁷⁶ Lord Kerr, for the Court, reminded the Court of Appeal that where a child's custody or upbringing is in question the welfare of the child must be the paramount consideration and, if this means that a three-year-old child should reside with his maternal grandmother rather than with his father, so be it: sometimes parental rights have to be overridden by the interests of the child. In *In re S-B (Children) (Care Proceedings: Standard of Proof)*,⁷⁷ Baroness Hale, for the Court, stressed that in care proceedings the standard of proof is the balance of probabilities, and that no heightened standard of proof is required in cases where the potential carer is facing allegations of serious abuse. And in *Aghaje v Aghaje*,⁷⁸ Lord Collins, again for the Court, ruled that, when deciding whether to grant financial relief after a foreign divorce, an English court does not have to apply a *forum non conveniens* test. In two further family law decisions, the Supreme Court held that the Court of Appeal had interpreted much too narrowly the power of the courts to do what is in the best interests of a child.⁷⁹

In four cases dealing with the Human Rights Act 1998, the Court of Appeal was also held to have erred. Three of these were cases where the Supreme Court's approach led to protection of human rights being enhanced, but the fourth decision had a negative effect. The first of the positive cases was *ZN (Afghanistan) v Entry Clearance Officer*,⁸⁰ where Lord Clarke, for the Court, held that, when family members seek entry to the United Kingdom to join a sponsor who has been granted asylum but has subsequently obtained British citizenship, they have to satisfy only the rules relating to applications to join a person who has been granted asylum, not the maintenance and accommodation requirements applicable to family members in general. In *Secretary of State for the Home Department v AP*,⁸¹ the Supreme Court held that conditions which are proportionate restrictions on European Convention on Human Rights (ECHR) Article 8 rights *can* "tip the balance" and lead to a conclusion that a person's ECHR Article 5 rights have been violated. Most notably of all, in *HJ (Iran) v Secretary of State for the Home Department*,⁸² the Supreme Court held in no uncertain terms that it would be wrong to deny asylum to homosexuals on the ground that they could live without fear of persecution in their home country so long as they hid their sexuality: such a "reasonable tolerability" test, as set down by the Court of Appeal,⁸³ was

75 In the three calendar years 2003–05, 48% of appeals were allowed: Dickson, "The processing", n. 21 above, p. 583.

76 [2009] UKSC 5, [2009] 1 WLR 2496.

77 [2009] UKSC 17, [2010] 2 WLR 238.

78 See n. 59 above.

79 *R (A) v London Borough of Croydon* [2009] UKSC 8, [2009] 1 WLR 2557 and *I (A Child)*, n. 27 above.

80 [2010] UKSC 21, [2010] 1 WLR 1275.

81 See n. 36 above.

82 [2010] UKSC 31, [2010] 3 WLR 386.

83 [2009] EWCA Civ 172 (Pill and Keene LJ and Sir Paul Kennedy).

found to be incompatible with the UN Convention Relating to the Status of Refugees of 1951.⁸⁴ Lord Rodger delivered a particularly luminous judgment.

The disappointing decision, from a human rights point of view, was *R (Smith) v Oxfordshire Assistant Deputy Coroner*⁸⁵ where, by 6:3, the Justices held that when British soldiers are on active service abroad they are not “within the jurisdiction of the United Kingdom” for the purposes of ECHR Article 1, and so are not protected by the Convention rights scheduled to the Human Rights Act 1998. The dissenting judges, Baroness Hale, Lord Mance and Lord Kerr, would have upheld the Court of Appeal’s stance, as represented by Sir Anthony Clarke MR, Dyson and Keene LJ, the first two of whom had become Justices of the Supreme Court by the time that Court decided the appeal. If those two Justices had been available to sit in the Supreme Court in place of two of the six who were in the majority, the decision would very probably have gone the other way.

In at least one other case the Supreme Court thought that the Court of Appeal had extended the law unnecessarily. This was in *R (Lewis) v Redcar and Cleveland Borough Council (No 2)*,⁸⁶ where a unanimous Supreme Court reversed a unanimous and experienced Court of Appeal⁸⁷ in ruling that, when deciding whether land, which had been used by local inhabitants for lawful sports and pastimes for 20 years, had been used “as of right” so that the local inhabitants were entitled to have the land registered as a town or village green under the Commons Act 2006, the tripartite test of *nec vi, nec clam, nec precario* sufficed (i.e. not by force, in secrecy or accidentally), and it was not necessary to impose a further requirement that it would have appeared to a reasonable landowner that the local inhabitants were asserting a right to use the land for lawful sports and pastimes.

Decisions attracting publicity

Several decisions hit the headlines in the media, the most notable being the ruling that the Office of Fair Trading had no power to consider the fairness of charges imposed by banks for unauthorised overdrafts,⁸⁸ and the decision that asylum applicants who are gay should not be returned to their home countries (Iran and Cameroon) if, to avoid persecution, they would have to pretend not to be gay.⁸⁹ Publicity was also given to the decision that it was not a breach of ECHR Article 8 rights for the police to disclose to a school, on the enhanced criminal record certificate of a midday assistant at the school, the fact that her son had been placed on the child protection register on the ground of neglect.⁹⁰ Surprise was expressed at the decision that the Tamil Tigers are not an organisation that is “predominantly terrorist in character”,⁹¹ and at the ruling that restrictions imposed on a man who was the subject of a control order were actually a violation of his right to liberty.⁹² This last decision was followed by a further controversial ruling that the media could not

84 Oddly, amongst those who thought the Supreme Court had gone too far in this case was Matthew Parris, a prominent supporter of gay rights: “We must harden our hearts and our borders”, *The Times*, 10 July 2010.

85 See n. 38 above.

86 [2010] UKSC 11, [2010] 2 WLR 653.

87 The lead judgment there was given by Dyson LJ (now a Justice of the Supreme Court) and was supported by Rix and Laws LJ.

88 *OFT v Abbey National plc* [2009] UKSC 6, [2009] 3 WLR 1215; see <http://news.bbc.co.uk/1/hi/8376906.stm>.

89 See n. 82 above; *The Times*, 8 July 2010, pp. 12–13. See too n. 84 above.

90 *R (L) v Commissioner of Police of the Metropolis* [2009] UKSC 3, [2010] 1 AC 410.

91 *R (JS) (Sri Lanka) v Secretary of State for the Home Department* [2010] UKSC 15, [2010] 2 WLR 766; see www.telegraph.co.uk/news/worldnews/asia/srilanka/7465833/Terrorist-members-can-claim-asylum-in-Britain.html.

92 *Secretary of State for the Home Department v AP*, n. 36 above. See J Meikle, *The Guardian*, 17 June 2010.

reveal the identity of the controlee because to do so might result in a violation of his ECHR Article 3 and 8 rights.⁹³

Criminal lawyers (and politicians) will have been very interested in *R v Horncastle*,⁹⁴ where the Supreme Court sent a strong message to the European Court of Human Rights that England's law on the admissibility of hearsay evidence in criminal cases is compatible with the ECHR: the Supreme Court was well aware that the Grand Chamber of the European Court of Human Rights was due to consider a case brought against the United Kingdom on the same issue (in fact the Grand Chamber had delayed its decision on whether to hear the case until the outcome of the Supreme Court's deliberations was known).⁹⁵

Constitutional and international lawyers (and again politicians) will have been very struck by *Abmed v HM Treasury*,⁹⁶ where the Supreme Court found that Orders in Council freezing the assets of suspected international terrorists were invalid because in making the orders the government had acted beyond the powers conferred on it by the United Nations Act 1946. Superficially, this approach seems to chime with that adopted by the ECJ regarding the status of the United Nations Charter in *Kadi and Al Barakaat International Foundation v Council and Commission*,⁹⁷ while running counter to that preferred by the European Court of Human Rights in *Bebrami v France*.⁹⁸ But in reality the decision is one based on traditional national law principles relating to legislation that is *ultra vires*. It does not purport to say that the ECHR in some way trumps action taken under the authority of UN Security Council Resolutions.

Lawyers in Scotland will have noted the decisions on the test to be applied when a trial is rendered unfair as a result of the prosecution's failure to disclose information to the defence,⁹⁹ and on whether it was within the legislative competence of the Scottish Parliament to pass the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, which amended the Road Traffic Act 1988 by increasing the sentencing powers of sheriffs (it was held to be competently made, although the two Scottish Justices were divided on the matter).¹⁰⁰ These cases were the first devolution cases to be dealt with by the Supreme Court under the powers transferred to it from the Privy Council by the Constitutional Reform Act 2005.¹⁰¹ They neatly illustrate the apparent anomaly that, while Scottish criminal cases cannot end up in the Supreme Court on an "ordinary" point of law (as was also the case as regards the House of Lords), they can do so if the point of law can be framed in a way that makes it a devolution issue. The criminal law of Scotland is thus creeping, through a side-door, into the corpus of UK jurisprudence.

Management of the Court

The public face of any court is presented by the judges of that court and how they handle judicial business. Hence much of the attention that has been given to the new Supreme Court has focused primarily on the substance of its decisions. The social and professional

93 *Secretary of State for the Home Department v AP (No 2)*, n. 36 above.

94 See n. 38 above.

95 For the Chamber's decision, see *Al-Khawaja v UK* (2009) 49 EHRR 1.

96 See n. 36 above. *The Times*, 28 January 2010, pp. 20–1.

97 Cases C-402 and 415/05P, 2008 ECR I-6351.

98 (2007) 45 EHRR SE10.

99 *Allison v HM Advocate* [2010] UKSC 6, 2010 SLT 261; *McInnes v HM Advocate* [2010] UKSC 7, 2010 SLT 266. These decisions are discussed by M Scott QC at 2010 SLT 47 and 53.

100 *Martin v HM Advocate*, n. 38 above. Lord Hope was one of the majority of three, Lord Rodger was one of the minority of two (along with Lord Kerr, from Northern Ireland).

101 S. 40(4)(b) and Sch. 9, paras 85–119.

backgrounds of the Justices have sometimes come under some media scrutiny (though occasional calls for parliamentary confirmation hearings of top judicial appointments have so far made no headway).¹⁰² But half-concealed behind the judicial face of a court are other important actors. Even in the modern era, where the judges themselves, now liberated from the oversight of Lord Chancellors, do so much to manage both their own professional affairs and the progress of litigation, it has been increasingly recognised that a court cannot function effectively without substantial administrative support. And here we can identify some crucial changes that render the Supreme Court a substantially different institution from its predecessor, the Appellate Committee of the House of Lords. Apart from the transfer to it of the “devolution” jurisdiction formerly exercised by the Judicial Committee of the Privy Council, the Court has the same remit as its predecessor. So, in the first year of its existence, the substantive judicial work of the Court has carried on where the House of Lords left off. But the arrangements and processes by which it is managed are, in many respects, strikingly different.

The most obvious source of difference lies in the fact that, to borrow an apt phrase used by a distinguished former Clerk of the House of Lords Judicial Office, the work of the judicial House of Lords “had to be filtered through the prism of parliamentary procedure”.¹⁰³ The essay from which this quotation is taken provides a fascinating account of the developing role of the Judicial Office since the late nineteenth century in supporting the appellate function in its rather incongruous parliamentary setting; and parts of the story, particularly some of the earlier parts, have a quaintly Dickensian flavour. The Clerk of the Judicial Office and his staff were parliamentary officials rather than civil servants; the Registrar of the court was the Clerk of the Parliaments; the procedures followed were governed both by the Practice Directions issued from time to time by the Law Lords and by the judicial Standing Orders of the House. Although, since the establishment of the Appellate Committee in 1948, judicial hearings had been detached from the general legislative business of the House of Lords, parliamentary protocols, and the vocabulary associated with them, were faithfully preserved – “petitions” rather than “applications”, “speeches” (rather than judgments) handed down in the chamber of the House. In recent years, quite a lot of significant changes had occurred to modernise the way in which judicial business was managed, as well as the accommodation and resources available to the Law Lords, but at the point of transition to the Supreme Court, the final appeal court retained much of the style and ambience of a parliamentary institution. A consequence of that, of course, was that proceedings in the Chamber, when appeals were heard or judgments delivered there, were recorded for television, in contrast with every other court in the land. In that respect the Supreme Court has followed its predecessor, but in practice the eventual broadcasting of any such recordings is very rare.

So, given that part of the rationale for establishing the UK Supreme Court was that the location of the final appeal within Parliament was increasingly seen to be constitutionally anomalous, it is not surprising to find that, while some judicial procedures remain much the same, the status of the Court and the infrastructure that supports it are markedly different.

The Constitutional Reform Act 2005 specifies in some detail the qualifications and methods and terms of appointment of the Justices; it defines the jurisdiction of the Court, its composition for proceedings and its rules of practice and procedure. Sections 45 and 46 empower the President of the Court to make Supreme Court Rules, to be submitted to the

102 See ML Clark, “Introducing a parliamentary confirmation process for new Supreme Court Justices: its pros and cons, and lessons learned from the US experience” (2010) *Public Law* 464.

103 J Vallance White, “The judicial office”, in Blom-Cooper et al., *The Judicial House*, n. 1 above, pp. 30–47.

Lord Chancellor and subject to approval by statutory instrument. These rules,¹⁰⁴ together with various Practice Directions,¹⁰⁵ have replaced the Civil, Criminal and Taxation Practice Directions and standing orders of the Appellate Committee of the House of Lords, and regulate how the Court conducts its judicial business.

The 2005 Act also places the administration of the Court – which has the status of a “non-ministerial department”¹⁰⁶ – on a statutory footing. Section 48 provides for a Chief Executive to be appointed by the Lord Chancellor, after consulting the President of the Court. The Chief Executive is subject to any directions given by the President, who may delegate to him or her any non-judicial functions of the Court and the responsibility, set out in s. 49, for the appointment of staff and officers – including the numbers of such personnel and their terms of appointment. The first *Annual Report*, covering the first six months of the Supreme Court’s existence and published very promptly in July 2010,¹⁰⁷ confirms that Lord Phillips has chosen to delegate these functions. By s. 51, the Chief Executive “must ensure that the Court’s resources are used to provide an efficient and effective system to support the Court in carrying on its business”. Section 54 requires the Chief Executive to prepare an *Annual Report* at the end of each financial year. This is very much the modern language of public management – efficiency, effectiveness and economy – rather than that of parliamentary proceedings.

In January 2008, the then Lord Chancellor announced the appointment of Ms Jenny Rowe as the first Chief Executive of the Court and its accounting officer. She is a career civil servant, who has held several posts in the former Lord Chancellor’s Department and, immediately prior to her appointment as Chief Executive, was Director of Policy and Administration in the Office of the Attorney General. In the period before the Supreme Court opened for business, she divided her working life between the Judicial Office of the House of Lords and the Supreme Court implementation team in the Ministry of Justice, overseeing and managing the transition process.

The *Annual Report* – particularly section 7 (“corporate services”) and section 8 (“management commentary”) – contains a wealth of interesting material on the management of the new Court and on the challenges that have faced the Chief Executive and her colleagues in the first few months. This can be read in conjunction with the useful organisation chart of the administrative personnel of the court, also available on the Supreme Court’s website,¹⁰⁸ which illustrates the bifurcation of functions below the level of the Chief Executive. On the one hand there are various support services of the kind found in most organisations, headed by a Director of Corporate Resources and covering such aspects as communications management, human resources, finance, records management, and health and safety. On the other side of the organisation chart, we find the legal and judicial support functions specific to the needs of a top court; these are headed

104 Supreme Court Rules, 2009, www.supremecourt.gov.uk/docs/uksc_rules_2009.pdf.

105 Listed at www.supremecourt.gov.uk/procedures/practice-directions.html.

106 A device commonly used to emphasise the independence of a government function from political interference. Among many other examples of non-ministerial departments are the Office of Parliamentary Counsel, the Treasury Solicitor’s Department, the Charity Commission, the Land Registry, HM Revenue and Customs and the Crown Prosecution Service.

107 *Annual Report*, n. 16 above. Rather curiously, although, by s. 54(2) of the Constitutional Reform Act 2005 the reports must be laid before “each House of Parliament”, the first such report was published only as a House of Commons paper. At the time of writing, the management of the Judicial Committee of the Privy Council remains constitutionally separate from that of the Supreme Court, and the *Annual Report* covers only the latter institution – though both courts occupy the same building and there is, in practice, a great deal of overlap between their management.

108 www.supremecourt.gov.uk/docs/hr_organogram.pdf.

by a legally qualified Registrar, and include judicial assistants, listing officers and the secretaries to the President and the Justices. The internal governance structure also includes a Management Board (with two Non-Executive Directors), an Audit Committee (chaired by one of the Non-Executive Directors and including representatives from Scotland and Northern Ireland), and a Health and Safety Committee.

The report indicates that the Court employed 38.4 FTE (full-time equivalent) staff, including seven judicial assistants on fixed-term contracts from September to July. Some staff (11 in total) transferred from the House of Lords, thus metamorphosing from parliamentary officials into civil servants; some came from the Ministry of Justice or from other government departments. Six staff, in addition, came with the Judicial Committee of the Privy Council, which transferred from 9 Downing Street. Although the administration of the Court is not part of the Courts Service, its staff have initially adopted the pay and employment conditions of civil servants employed by the Ministry of Justice. The report notes that, “for some staff (who had been providing direct support to the Law Lords in the House of Lords) this involved a significant change to their terms and conditions and a new way of working”.¹⁰⁹

Having mentioned the status of the staff, we should note one paragraph of the *Annual Report* that is of particular significance in relation to our discussion earlier of the public law functions that have featured so prominently in both the recent history of the Appellate Committee and, now, in the early work of the Supreme Court. It reads as follows:

The justices regarded achieving tangible independence from both the Legislature and the Executive (in the shape of the Ministry of Justice) as a key constitutional objective. *This was particularly important because the Government is in practice a party in slightly more than half the cases in which an application is made or a hearing takes place before the Court.* The Chief Executive is therefore also an Accounting Officer in her own right, accountable directly to the House of Commons Public Accounts Committee.¹¹⁰

Thus the Court's status as a free-standing non-ministerial department, detached not only from its former parliamentary status but also from the executive branch of government, clearly signals the fact that it plays a very special part in the machinery of justice. The fact that its jurisdiction embraces the whole of the United Kingdom (a role inherited, of course, from its predecessor) further underlines its constitutional uniqueness. These were recurrent themes in the discussions leading up to the establishment of the Court, and the need both to maintain its constitutional independence (not least from the Ministry of Justice) and to embrace all the countries of the United Kingdom are clear and robust sub-themes of its first *Annual Report*. Baroness Hale, too, has spoken about how essential it is for the Supreme Court to be seen to be in complete charge of its own affairs, even as regards the type of water sold in its café!¹¹¹

The Supreme Court's *Annual Report* was published a few weeks after the general election, against the background of political statements suggesting that the new government was looking for public expenditure cuts of around 40 per cent to alleviate the economic crisis. Under the heading, “Principal risks and uncertainties”, the report suggests that “the key risk facing the organization is that the current funding arrangement could be perceived as compromising the independence and effectiveness of the Court”. At the press conference to launch the report, the Chief Executive was quoted as saying: “as 62% of our costs are

¹⁰⁹ See *Annual Report*, n. 16 above, p. 46.

¹¹⁰ Ibid. p. 43 (emphasis added).

¹¹¹ See *uksblog.com*, n. 62 above (interview with Lady Hale).

genuinely fixed, a 40% cut causes us some problems. We couldn't actually deal with any casework, in fact, with a 40% cut." At the same press conference, Deputy President, Lord Hope, appeared to echo her sentiments: "It's a quite different operation from what we had before [i.e. in the House of Lords]. It's one which cannot be maintained without resources."¹¹²

The contents, and indeed the very existence, of the *Annual Report*, signals that the Supreme Court has begun its life as a twenty-first-century institution, steeped in the businesslike culture of "new public management" – effectiveness, efficiency and economy. It was unlucky to have been born into a harsh world of economic crisis, where it faces similar challenges to those confronting other public institutions. Despite some worrying suggestions to the contrary,¹¹³ it is hard to imagine that it will be stunted in its infancy by denial of necessary resources. The effective working of the Court depends and will continue to depend on constructive partnership between the Justices and those behind-the-scenes administrators. On the evidence available so far, this partnership seems to have got off to an excellent start.

Conclusion

Those in the legal professions and others concerned in the administration of justice in modern Britain who mourned or were apprehensive about the disbandment of the Appellate Committee of the House of Lords can rest assured that, after the first year of the UK Supreme Court, the high quality of judicial output (even if some of the judgments are as prolix as those of its immediate predecessor) has been fully maintained. The introduction of a modern infrastructure is one very visible and significant by-product of the top court's move from its former parliamentary environment. So far, the Supreme Court has been a success: it is transparently asserting its authority across the nation in a way that fully justifies the decision to substitute it for its predecessor.

¹¹² "Cuts 'would close Supreme Court'", *The Guardian*, 30 July 2010.

¹¹³ The Supreme Court appeared on a leaked list prepared for the Cabinet Office of public bodies that may be axed or merged: http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/24_09_10_bbcnewsquangos3.pdf; see, too, www.guardian.co.uk/law/2010/sep/24/uk-supreme-court-quangos.