

## **LEGAL WEEK LITIGATION FORUM**

### **ON THURSDAY 17 SEPTEMBER**

Thank you for inviting me here to speak to you today – exactly two weeks before the Supreme Court comes into existence; and six and a quarter years since the Government announced that a Supreme Court was to be created. I know that some have doubted the day would ever arrive; but here we are on the verge of a significant constitutional and legal change.

#### How did we get here?

It is no secret that the initial announcement did not lead to universal acclaim – and there are still those who doubt the necessity or wisdom of the move – see, for example, the comments made by Lord Strathclyde during tributes to the Law Lords in the House of Lords on 21 July when he said: “I think it would be fair to say that the overwhelming need for the expulsion of the Law Lords had not struck many of us until that infamous press release from No.10...” Others, however, have described this as a long overdue reform – Lord Wallace on the same occasion mentioning that the Lib-Dems have supported the separation of courts from the legislature “for a mere 200 years”.

The Constitutional Reform Bill introduced by the Government in February 2004 underwent significant amendment during debates, including the creation of the post I now occupy. Further delays were caused by the need to find a suitable building, along with legal challenges to the decision to use the Middlesex Guildhall.

But we now have a building in the perfect location on Parliament Square, with the other three sides of the square taken up by the legislature (Palace of Westminster), the executive (the Treasury) and the church (Westminster Abbey). And the building has been very sympathetically restored with a balance of old and new. We have three courtrooms, two of which are based on historic courtrooms and one of which is modern. There are improved facilities for lawyers in a suite of rooms which run along the front of the building on the first floor, and which incorporates working space, male and female robbing rooms and meeting rooms. And a handsome library has been created at the centre of the building for the Justices and their staff.

In early August this year the staff of the Judicial Office moved from the House of Lords and the staff of the Judicial Committee of the Privy Council from 9 Downing Street. At the same time newly recruited staff who had been “camping out” in the Ministry of Justice headquarters at 102 Petty France also moved in. There is still some work remaining to be completed

but the UK Supreme Court will be ready to open its doors on Monday 5 October for our first case.

The Judicial Committee of the Privy Council will also be hearing its first cases in the new building that week. I should stress that the JCPC will retain its separate identity as a Committee of the Privy Council, but co-location makes sense in efficiency terms given that the same Judges will largely be sitting in both bodies, and we can co-operate much more easily over issues such as listing.

The Constitutional Reform Act creates a Supreme Court of the United Kingdom. It will comprise twelve Judges; there will be a President and a Deputy President; and the other Judges are to be styled “Justices of the Supreme Court”. The existing Supreme Courts of England and Wales and Northern Ireland will be renamed. The Supreme Court of England and Wales is to be renamed the “Senior Courts of England and Wales”; and the Supreme Court of Judicature of Northern Ireland will be renamed the “Court of Judicature of Northern Ireland”.

On 1 October the persons who immediately before that were Lords of Appeal in Ordinary automatically become Justices of the Supreme Court; and the Senior Lord of Appeal and Second Senior Lord of Appeal become

respectively the President and Deputy President. The individuals concerned are Lord Phillips and Lord Hope. Lord Clarke will be the first Justice appointed direct to the Supreme Court. In court they will be addressed as “My Lord” or “My Lady”, as appropriate.

We will, of course, start one Justice short because of Lord Neuberger’s appointment as Master of the Rolls. The process of selecting his successor will start in earnest very soon.

One question I am often asked is whether the Justices will wear robes: the answer is “no” for daily sittings, although they will have a ceremonial robe for certain occasions.

### Status

It may be worth saying a few words to explain the status of the institution. We are The Supreme Court of the United Kingdom. As such we do not form part of Her Majesty’s Court Service, of the Northern Ireland Court Service, or the Scottish Court Service. In essence we are a small court service in our own right. In government terms, the administration of the institution is a non-Ministerial department – but the Court is obviously a

court. We are not part of the Ministry of Justice and we will have our own separate budget for which I am the Accounting Officer.

### Powers

You will no doubt have seen speculation in the media over the last week or so about the Court's powers. With one exception, the Supreme Court has no additional powers to those exercised by the Appellate Committee of the House of Lords. The one addition is that the devolution jurisdiction until now exercised by the Judicial Committee of the Privy Council will be transferred to the Supreme Court.

The jurisdiction of the Supreme Court comprises civil appeals from England and Wales, Northern Ireland and Scotland; and criminal appeals from England and Wales and Northern Ireland. But issues relating to criminal proceedings in Scotland may come before the Supreme Court as devolution issues under the Scotland Act 1998. The Human Rights Act 1998 applies to the Supreme Court and issues under that statute will often arise on appeals to the Court.

As with the House of Lords, European community law requires that the Supreme Court (as the domestic court of last resort) should refer to the

Court of Justice of the European communities any doubtful questions of community law necessary to its decision.

### Rules, Practice Directions and Forms

We have a new set of Rules, Practice Directions and Forms for the Supreme Court. These were published later than we would have wished but can now be accessed on our new website – [www.supremecourt.gov.uk](http://www.supremecourt.gov.uk).

The Constitutional Reform Act 2005 requires that the Rules are, and I quote, “simple and simply expressed” and that the Court is “accessible, fair and efficient”. Rule 2 provides that the overriding objective of the Rules is to secure that the Court is accessible, fair and efficient and that the Court must interpret and apply the Rules with a view to securing that the Court is “accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged”. No doubt many of you will recognise this provision as modelled on that in the Civil Procedure Rules. Whilst these words might sound like “motherhood and apple pie” they are very important in underpinning the approach we will be taking. And Rule 9(6) provides that, if any procedural question is not dealt with by the Rules, the Court or the Registrar “may adopt any procedure that is consistent with the overriding objective, the Act and these Rules”.

That said, those of you who have appeared in the House of Lords, will recognise much of the procedure set out in the Rules and the Practice Directions. There are no major changes in procedure, although the language has been updated to reflect the fact that we are now a Court, and not a Committee of Parliament. For example you will apply for permission to appeal rather than submit petitions for leave to appeal.

In the time available it is not possible for me to take you through the Rules in any detail – and I suspect that would not be very exciting! So, apart from the remarks I have already made, I will confine myself to a few major points to highlight:

- Rule 15 is new and provides for interventions to be made in applications for permission to appeal. Where an intervention is taken into account by an appeal panel, and permission to appeal is granted, a formal application has then to be made under Rule 26 if the person making submissions wishes to intervene in the appeal.
- Rule 18 requires that, where the Supreme Court grants permission to appeal, the form of application for permission to appeal is re-sealed and stands as the Notice of Appeal and the appellant is required to give notice that he wishes to proceed with his appeal.

- Judgments may be delivered in open court or issued in writing.
- Both electronic and paper copies of volumes are to be provided, but the provisions governing the format of documents are less prescriptive than those which applied in the House of Lords.

We will be keeping the rules under review and will be seeking feedback from users – both formally through a User Committee or informally in other ways.

## IT

I mentioned earlier that through the creation of the Supreme Court we were able to offer improved facilities to legal professionals using the UK's highest court. It is worth me saying a few words about information technology. In planning the Supreme Court we have tried to make the best use of IT within available resources. We have a new computer-based case management system and all three of our courtrooms are IT-enabled. That means it will be possible to bring electronic bundles on memory sticks or CD and for advocates to use this material in court rather than refer to paper copies. We are not requiring both paper and electronic copies of documents at this stage because we do not wish to add to the cost of litigation which started some time ago. But for the future we will be requiring electronic copies of



material – in much the same way as currently happens with the Judicial Committee of the Privy Council.

I mentioned that our website was up and running. It is not yet complete but when everything is working fully key information from the case management system will be accessible via the website. This means that individuals involved in cases will be able to check on the progress of their case. It also means that interested members of the public will be able to find out more information about cases by looking at public documents. We aim to put as much information as we can on the website, including case lists and brief explanations of what is involved in a case. We will also be posting judgments on our website along with press summaries of those judgments. We piloted press summaries in three cases in the House of Lords last term and they were generally well received.

There are two other technologically related issues I should cover. First, the building is Wi Fi enabled, including in the court rooms and in the lawyers' suite. This may not be free Wi Fi. I understand that the policy implemented by the Ministry of Justice in courts in England and Wales where Wi Fi is available is to charge, and we are currently in the process of putting together information for users on how they can access and (if necessary) pay for the available Wi Fi.

Second, and this is something which has been covered reasonably extensively in the media of late, we have the facility to film and broadcast proceedings. Section 47 of the Constitutional Reform Act excludes the Supreme Court from the prohibition on taking photographs etc under Section 41 of the Criminal Justice Act 1925 and under Section 29 of the Criminal Justice Act (Northern Ireland) 1945. This does mean that it will be technically and legally possible for proceedings in the Supreme Court to be filmed and broadcast. Each of the three courtrooms has been equipped with four fixed cameras. We will be routinely filming proceedings for our own use – and indeed live feed from the courtrooms will be shown on two television screens in the exhibition area in the lower ground floor.

### Education and Outreach

The senior judiciary and the work they do will be more visible than ever before after we open our doors. The Court will be there to educate and inspire, as well as to adjudicate.

One of the main reasons underpinning the creation of the Supreme Court was to increase the transparency of the workings of the highest court in the UK and to make the Court much more accessible than the House of Lords

could ever be to those who wish to watch proceedings. This presents a wonderful opportunity for us to engage with students and others in order to increase people's knowledge of the UK justice systems and of the difficult issues on which the Court is asked to adjudicate. On the lower ground floor of the building we have an exhibition area. The panels for the exhibition are just being installed. They will tell the history of the Appellate Committee and of the Judicial Committee of the Privy Council; some of the key aspects of the creation of the Supreme Court; and will describe what happens in the Court on a daily basis, as well as set out some of the history of the building and the surrounding area. There will be two interactive elements to the exhibition – a timeline of key political, constitutional and legal events; and a series of very simplified case studies where, through a touch screen, individuals will be taken through the issue and the law and invited to say what their decision would have been. We want the Court to act as an educational facility in its own right and have already started engaging with a couple of schools on a pilot basis to see if case studies can provide helpful material to fit with the national curricula in the various parts of the UK.

With the clock ticking towards the swearing in of Justices on the 1 October, and a grand opening on the 16<sup>th</sup> October – a historic moment of constitutional reform is soon to become a reality. An enormous amount of work has gone into making the Court a reality and we have a unique

opportunity to educate and inspire the next generation of lawyers – with a purpose built educational facility and imaginative outreach work. I will make sure that as an organisation we seize this opportunity with both hands in the coming months and years.

Thank you