

**THE UK SUPREME COURT:
TAKING STOCK TWO YEARS ON**
18 NOVEMBER 2011
PROGRAMME

UCL JUDICIAL INSTITUTE



The UK Supreme Court: Taking Stock Two Years On a UCL Judicial Institute Special Event

Friday 18 November 2011
Denys Holland Lecture Theatre
UCL Faculty of Laws

The United Kingdom Supreme Court: Taking Stock Two Years On

This UCL Judicial Institute Special Event is held to mark the second anniversary of the opening of the United Kingdom Supreme Court. In the first two years of its existence, the court has firmly established itself as an independent final court of appeal for the country. But its decisions have not been without controversy.

The Focus of the Seminar

This invitation-only event is designed to take stock of how the UK Supreme Court has created an identity for itself in its early years and what challenges it still faces. Two main issues will be covered:

1. **Internal Workings**
2. **External Relations**

Chatham House Rule:

This seminar will operate strictly under the Chatham House Rule.

“When a meeting is held under the Chatham House Rule participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.”

Launch of the UCL Judicial Institute’s UK Supreme Court Project

The UCL Judicial Institute has created a detailed, large-scale database of all UK Supreme Court cases. This forms the basis of research aimed at understanding the work of the court in a comprehensive and empirically sound manner. The UCL UK Supreme Court Project will grow with the Court’s output, and it will provide the material for a continuing longitudinal study of the UK Supreme Court as it develops over time.

Analysis Document on the Internal Workings of the UK Supreme Court

The UCL Judicial Institute has published in this programme a short Analysis Document on the *Internal Workings of the UK Supreme Court*, providing a background analysis of some of the main issues being discussed at the event. This is the first analytical work to come out of the UCL Judicial Institute’s new UK Supreme Court Project and it is a Working Document. This initial analysis is designed to provide a starting point for a more contextual discussion of the internal workings of the Court.

THE SUPREME COURT OF THE UNITED KINGDOM

The Supreme Court of the United Kingdom (UKSC) was created by the Constitutional Reform Act 2005 and came into being on 1 October 2009. The UKSC inherited the jurisdiction of the Appellate Committee of the House of Lords and is the highest Court of Appeal for civil cases throughout the United Kingdom and for criminal cases from England and Wales and Northern Ireland. In addition, as at 1 October 2009, the UKSC assumed the devolution jurisdiction formerly exercised by the Judicial Committee of the Privy Council (JCPC). This jurisdiction allows Bills, or Acts, of the devolved Assemblies/Parliaments to be referred to the Supreme Court for a ruling on whether they are within the legislative competence of that Parliament or Assembly. In addition there can be appeals or references from the superior courts or the Law Officers on cases which raise devolution issues.



Aside from civil cases in Scotland, which can come to the Court as of right, parties generally have to apply for permission to appeal to the Supreme Court. The test applied in considering whether permission should be granted is whether the case raises an arguable point of law of general public importance which should be considered by the Supreme Court at this time. For criminal cases from England and Wales and Northern Ireland the Court of Appeal must certify a point of law as being of general public importance before the UKSC can consider a permission application. In addition to sitting in the UKSC, Justices of the Supreme Court sit in the Judicial Committee of the Privy Council (JCPC) to determine appeals from the Crown Dependencies, the British Overseas Territories and a number of countries in the Commonwealth.

THE UCL JUDICIAL INSTITUTE

The UCL Judicial Institute (JI) is the first and only centre of excellence for research and teaching about the judiciary in the UK. The Institute's purpose is to provide evidence-based understanding and intellectual leadership about the judiciary as a critical social institution and the about the process of judicial decision-making. The Institute carries out leading-edge research on the judiciary and provides outstanding educational opportunities for students, practitioners, judges and those performing quasi-judicial roles. The Judicial Institute is led by Co-Directors Professor Dame Hazel Genn and Professor Cheryl Thomas and guided by a distinguished Advisory Board. The Judicial Institute launched in November 2010 with a high profile debate on The Future of Judging between Lord Neuberger Master of the Rolls, Professor Richard Susskind and the Institute Directors. The launch seminar attracted an audience of over 200 including senior judiciary, policy makers, practitioners, third sector professionals and academics from a range of disciplines. For further information on the Institute please see the JI website: www.ucl.ac.uk/laws/judicial-institute



UCL JUDICIAL INSTITUTE'S UK SUPREME COURT PROJECT

The UCL Judicial Institute has established a new research programme on the UK Supreme Court. Its starting point is a detailed, large-scale database of all UK Supreme Court decisions. This forms the basis of research aimed at establishing an understanding of the work of the Court as it grows. Its aim is not to reduce the work of the Court only to a statistical analysis of decisions. Instead the aim is to use empirical analysis of Court decisions as the basis for a more detailed contextual analysis of the work of the Court. The UCL UK Supreme Court Project will grow with the Court's output, and provide the material for a continuing longitudinal study of the UK Supreme Court as it develops over time.

PROGRAMME

- 9:00 **Registration**
Cissy Chu Common Room (1-2 Endsleigh Street entrance)
- 9:30 **Welcome**
Denys Holland Lecture Theatre (basement level)
Professor Dame Hazel Genn
Dean, UCL Faculty of Laws, and Co-Director, UCL Judicial Institute
- UCL Judicial Institute UK Supreme Court Project**
Professor Cheryl Thomas
Professor of Judicial Studies and Co-Director, UCL Judicial Institute
- 9:40 **Session 1: Internal Workings of the UK Supreme Court**
PANEL:
Lady Hale, *Justice of the UK Supreme Court*
Lord Dyson, *Justice of the UK Supreme Court*
Lord Mance, *Justice of the UK Supreme Court*
Lord Neuberger, *Master of the Rolls*
Mr. Olivier Dutheillet de Lamothe, *member French Conseil d'Etat, former member French Conseil Constitutionnel*
Professor Dame Hazel Genn (Chair)
- Permissions to appeal and hearings:**
Findings of analysis: Professor Cheryl Thomas
Comment: Lord Dyson, *Justice of the UK Supreme Court*
 Lord Neuberger, *Master of the Rolls*
- Panel size and composition:**
Findings of analysis: Professor Cheryl Thomas
Comment: Lady Hale, *Justice of the UK Supreme Court*
- Judgment writing:**
Findings of analysis: Professor Cheryl Thomas
Comment: Lord Mance, *Justice of the UK Supreme Court*
- 11:15 Coffee break

11:30

Session 2: External Relations

PANEL:

Lord Phillips, *President of the UK Supreme Court*

The Right Hon Lord Justice Carnwath, *Senior President of Tribunals*

The Hon Lord Hodge, *Judge of the Court of Session, Scotland*

The Hon Mrs Justice Fidelma Macken, *Justice of the Supreme Court of Ireland*

The Right Hon the Baroness Scotland of Asthal, *former Attorney General*

The Right Hon the Lord Bach of Lutterworth, *Shadow Spokesperson for Justice*

Professor Dame Hazel Genn (Chair)

Relation to European Court of Human Rights and Court of Justice of the European Union

Comments:

Lord Phillips, *President of the UK Supreme Court*

The Hon Mrs Justice Fidelma Macken, *Justice of the Supreme Court of Ireland*

Relations with Courts of England & Wales, Scotland and Northern Ireland

Comments:

Lord Justice Carnwath, *Senior President of Tribunals*

Lord Hodge, *Judge of the Court of Session, Scotland*

Relations with Government

Comments:

Baroness Scotland of Asthal, *former Attorney General*

Lord Bach of Lutterworth, *Shadow Spokesperson for Justice*

13:00

Closing Remarks

13:00 -

Lunch: Cissy Chu Common Room

14:00

Office Facilities Available to Attendees

Special office and contact facilities are available during the event for any attendee who may need to access email or print any documents. In addition, as there is no mobile phone reception in the Lecture Theatre, an assistant is available to take calls for any attendees as well as make calls, order taxis, etc. during the seminar.

List of Attendees

HOSTS

Directors, UCL Judicial Institute

Professor Dame Hazel Genn
Professor Cheryl Thomas

The Rt Hon the Lord Phillips
The Rt Hon the Lord Walker
The Rt Hon the Lady Hale
The Rt Hon the Lord Mance
The Rt Hon the Lord Kerr
The Rt Hon the Lord Clarke
The Rt Hon the Lord Dyson
The Rt Hon the Lord Wilson
The Rt Hon the Lord Saville
The Rt Hon the Lord Collins

President of the UK Supreme Court
Justice of the UK Supreme Court
Justice of the UK Supreme Court
Justice of the UK Supreme Court
Justice of the UK Supreme Court
Justice of the UK Supreme Court
Justice of the UK Supreme Court
Justice of the UK Supreme Court
retired Justice, UK Supreme Court
retired Justice, UK Supreme Court

The Rt Hon The Lord Judge
The Rt Hon The Lord Neuberger
The Rt Hon Lord Justice Carnwath

The Lord Chief Justice of England & Wales
The Master of the Rolls, Head of Civil Justice
Senior President of Tribunals

The Rt Hon Lord Justice Rix
The Rt Hon Lady Justice Arden DBE
The Rt Hon Lord Justice Moore-Bick
The Rt Hon Lord Justice Hughes
The Rt Hon Lord Justice Burnton
The Rt Hon Lord Justice Etherton
The Rt Hon Lord Justice Jackson
The Rt Hon Lord Justice Goldring
The Rt Hon Lord Justice Elias
The Rt Hon Lord Justice McFarlane

Court of Appeal
Court of Appeal
Court of Appeal, Deputy Head of Civil Justice
Court of Appeal, Vice President CACD
Court of Appeal
Court of Appeal
Court of Appeal
Court of Appeal, Senior Presiding Judge
Court of Appeal
Court of Appeal

Olivier Dutheillet de Lamothe

former Justice, French Conseil Constitutionnel,
current member French Conseil d'Etat
Judge of the Court of Session, Scotland
Supreme Court of Ireland, former Justice ECJ
High Court of England and Wales

The Hon Lord Hodge
The Hon Mrs Justice Macken
The Hon Mr Justice Cranston

Hayley Amoss
William Arnold
Robin Allen QC
Andrew Arden QC
The Rt Hon the Lord Bach
Alex Bailin QC
Eddie Craven

Office of Baroness Scotland
Director Corporate Services, UK Supreme Court
Cloisters
Arden Chambers
House of Lords, Shadow Spokesperson for Justice
Matrix Chambers
UKSC Judicial Assistant

Jonathan Crow QC	4 Stone Buildings
Professor Brice Dickson	School of Law, Queen's University Belfast
Anna Donovan	UCL Judicial Institute
Richard Drabble QC	Landmark Chambers
Tim Eicke QC	Essex Court Chambers
Nick Fluck	Deputy Vice President, The Law Society
Antoine Garapon	Secretary-General, Institute des Haute Etudes sur la Justice (IHEJ), France
Manjit Gill QC	No 5 Chambers
Edwin Glasgow QC	39 Essex Street
Penelope Gorman	UKSC Judicial Assistant
Richard Hermer QC	Doughty Street Chambers
Stephen Hockman QC	6 Pump Court
Richard Keen QC	Axiom Advocates
Robert Khan	Head of Law Reform, The Law Society
Jeff King	Senior Lecturer in Law, UCL
Jacqueline Kinghan	Director Clinical Legal Education, UCL
Patrick Lawrence QC	4 New Square
Professor Andrew Le Seur	Queen Mary School of Law
Yael Levy Ariel	UCL Judicial Institute
Peter Lodder QC	Chairman, Bar Council
Charles McCall	Head of Judicial Policy, Ministry of Justice
Frances McClenaghan	UKSC Judicial Assistant
Chris Maile	Head of Human Resources, UK Supreme Court
Louise di Mambro	Registrar, UK Supreme Court
Alexandra Marks	Linklaters LLP, UCL JI Advisory Board
Paul Mendelle QC	Criminal Bar Association
Gavin Millar QC	Doughty Street Chambers
Professor Paul Mitchell	Professor of Law, UCL
The Rt Hon Frank Mulholland QC	Lord Advocate of Scotland
Colm O'Cinneide	Reader in Law, UCL
Femi Oguntunde	Director of Finance, UK Supreme Court
Professor Dawn Oliver	Professor of Public Law, UCL
Professor David Ormerod	Law Commissioner
Tim Owen QC	Matrix Chambers
Professor Alan Paterson	University of Strathclyde
Nigel Fleming QC	39 Essex Street
David Pope	Teaching Fellow in Advocacy, UCL
Professor Rick Rawlings	Professor of Public Law, UCL
Professor Genevra Richardson	King's College London
Maria Roche	UKSC Judicial Assistant
Jenny Rowe	Chief Executive, UK Supreme Court
Richard Salter QC	3 Verulam Buildings
The Rt Hon the Baroness Scotland	House of Lords, former Attorney General
Paul Skinner	UKSC Judicial Assistant
Hugh Southey QC	Tooks Chambers
Professor John Tasioulas	Quain Professor of Jurisprudence, UCL
Colin Troup	Legal Secretary to the Lord Advocate of Scotland
Sharon Witherspoon	Deputy Director, Nuffield Foundation
James Wolffe QC	Axiom Advocates
Diana Wood	UK Supreme Court Reporter

An Initial Empirical View of Decision-Making by the United Kingdom Supreme Court in Its First Two Years (2009-11)

UCL Judicial Institute's UK Supreme Court Project

The following provides a brief initial look at some of the information collected in the UCL Judicial Institute's new database on all UK Supreme Court decisions. This initial analysis is designed to provide a starting point for a more contextual discussion of the internal workings of the Court.

Permissions to Appeal

The Supreme Court generously provided information to the UCL UK Supreme Court Project on applications for permissions to appeal (PTA) in 2009-11, and data on 431 applications in these two years have been incorporated into the Project database and analysis.

UCL Judicial Institute UK Supreme Court Database

The Project database includes 120 judgments issued by the UK Supreme Court in its first two years (including 9 cases heard before October 2009) and all the permissions to appeal data provided by the Court. The database covers a wide range of aspects of the Court's work including:

Permissions to appeal

- Jurisdiction
- Court appealed from
- Legal issues raised
- UKSC panel composition for PTA
- Outcome of PTA applications (granted or refused)

Cases heard

- Jurisdiction appealed from
- Court appealed from
- Appellant type
- Respondent type
- Legal issues raised

Hearings

- Panel size
- Panel composition
- Length of hearing
- Appellant(s) legal representative(s)
- Respondent(s) legal representative(s)
- Intervener(s)
- Intervener type
- Level of intervention (written submission or oral argument)

Case Outcomes and Judgments

- Outcome of appeal (allowed, dismissed, referred)
- Time from hearing to judgment
- Type of judgment (unanimous, majority)
- Author of unanimous/majority judgments
- Author of main dissenting opinion
- Contribution to judgment by Justice
- Frequency of dissents by Justice
- Citation of non-UK jurisprudence
- Citation of academic work

This represents the first stage of the UCL Judicial Institute's organisation of information on UK Supreme Court cases, and what follows is an initial analysis of some main topics. We hope the discussion during the seminar will generate further ideas and recommendations for how the UCL Judicial Institute's UK Supreme Court Project may approach its analysis in future.

PART 1: Permissions to Appeal

By Jurisdiction

Figure 1: Jurisdiction of all applications for permission to appeal 2009-11 (n=431)

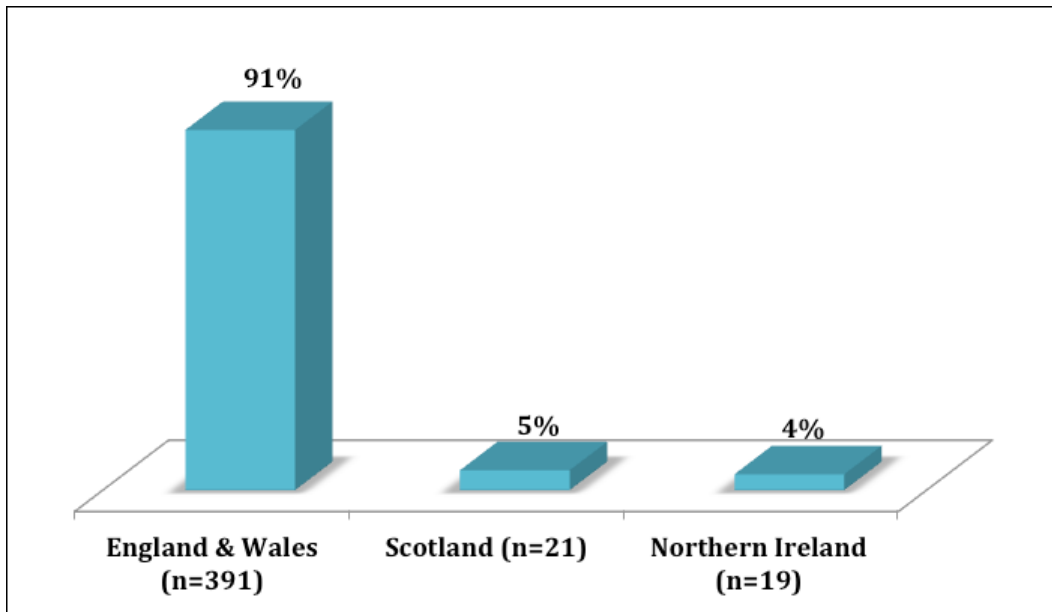
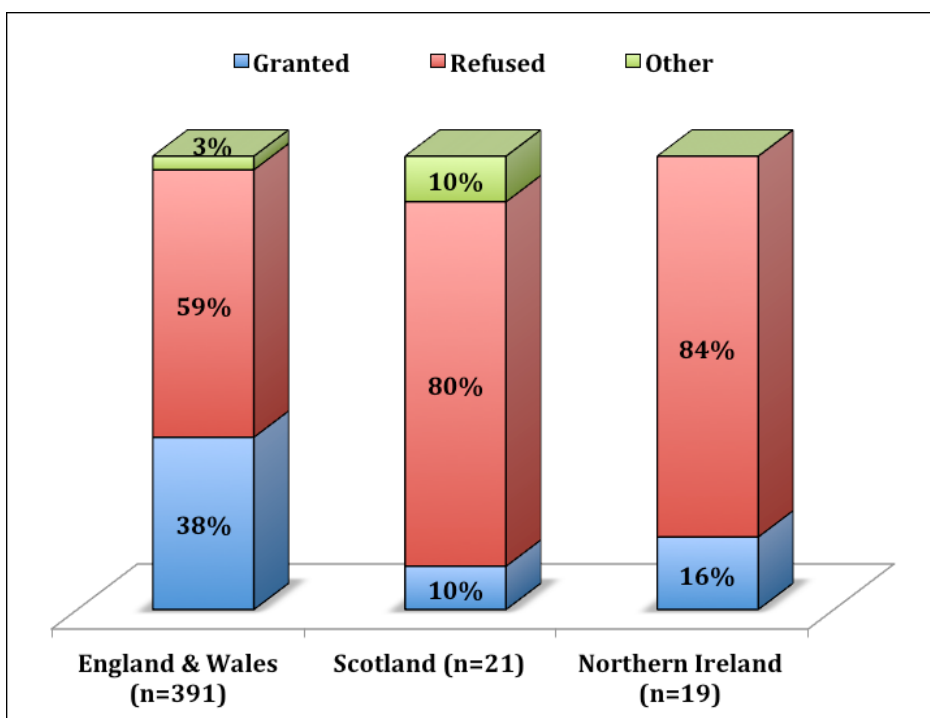


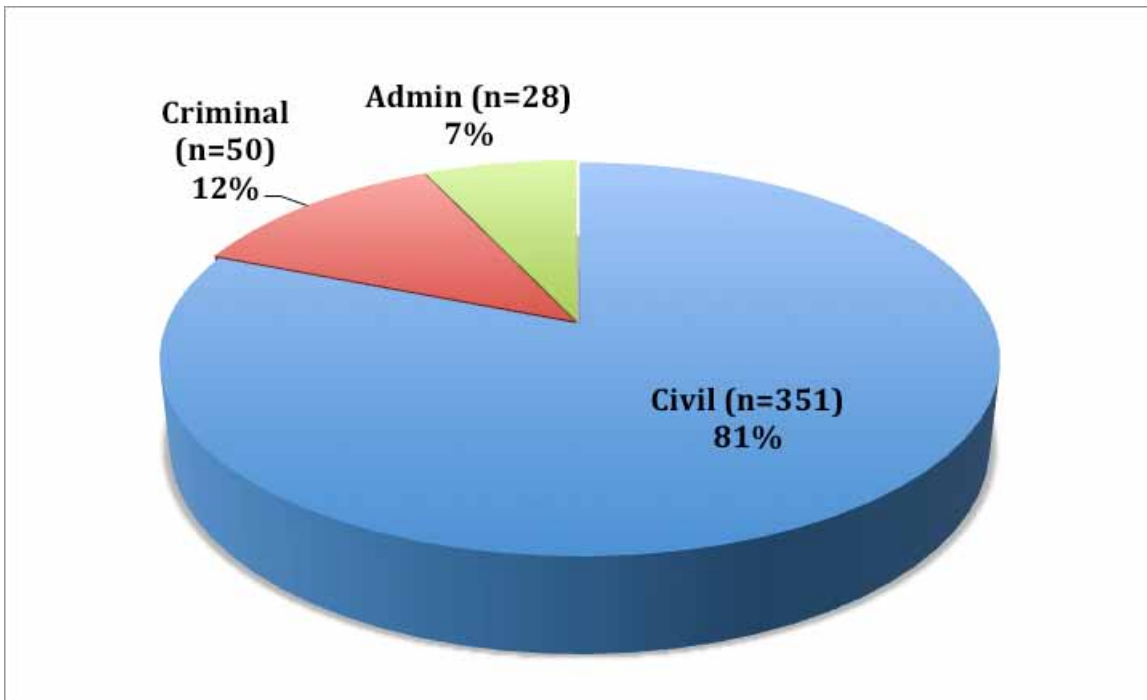
Figure 2: Outcomes of all applications for permissions to appeal by jurisdiction (n=431)



NOTE: Scottish civil appeals come to the UK Supreme Court as of right, with the exception of cases that fall within the Tribunals and Inquiries Act 1992

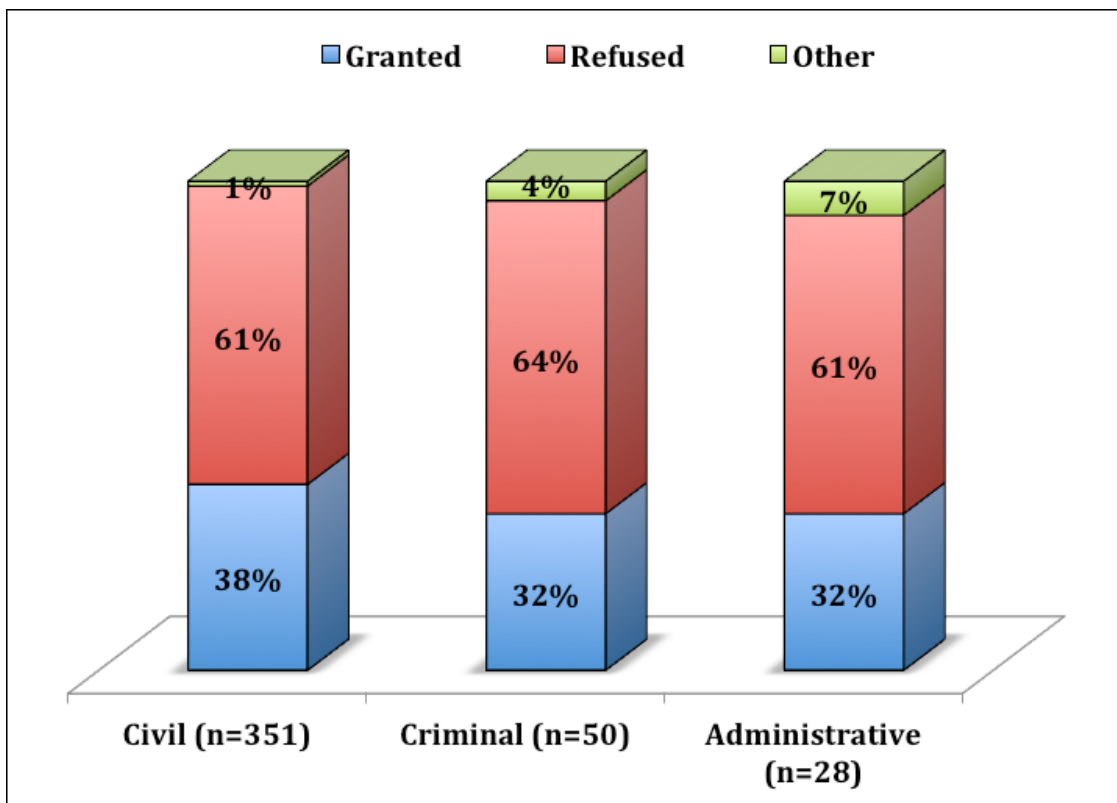
Type of Court Appealed from

Figure 3: Type of court appealed from: all applications to appeal 2009-11 (n=429)



Note: The total number (429) reflect 2 appeals where the court appealed from was not indicated in the data

Figure 4: Outcome of applications to appeal by type of court appealed from (2009-11)



Permissions to Appeal and ECHR issues

28% (120 of 431) applications for permission to appeal raised an ECHR issue

Figure 5: Proportion of Permissions to Appeal with ECHR issues by jurisdiction (n=431)

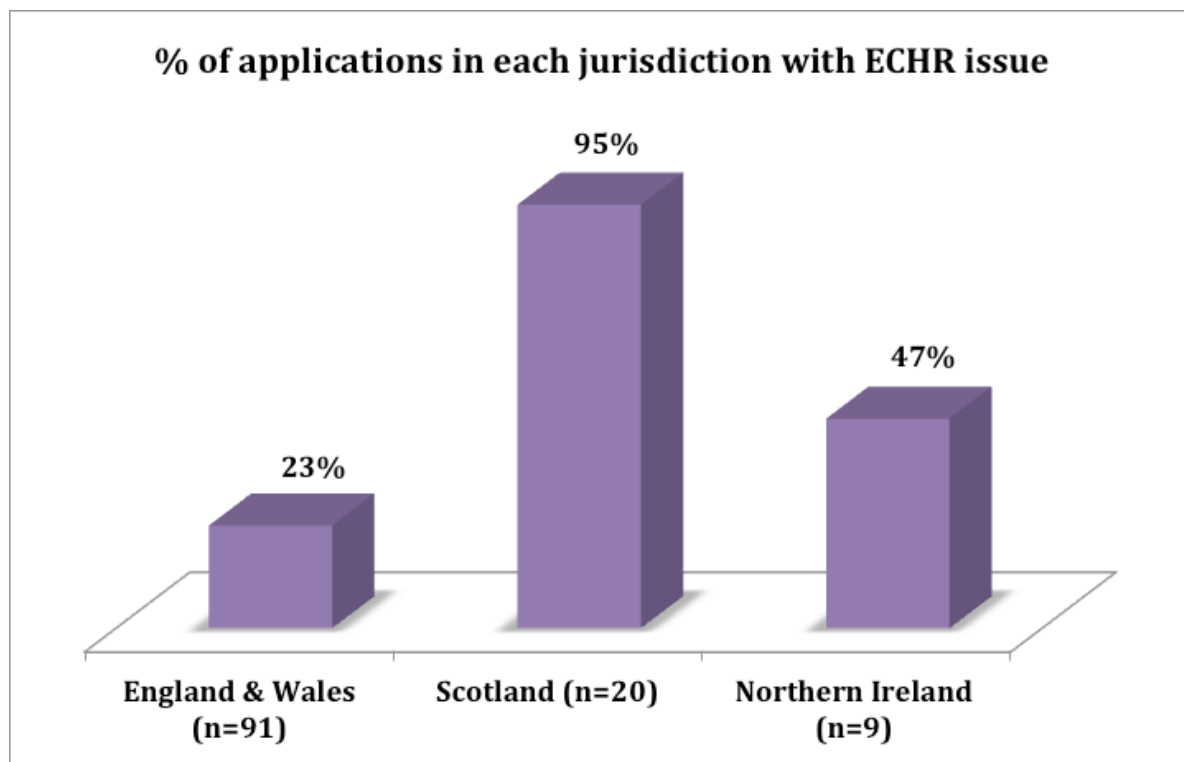
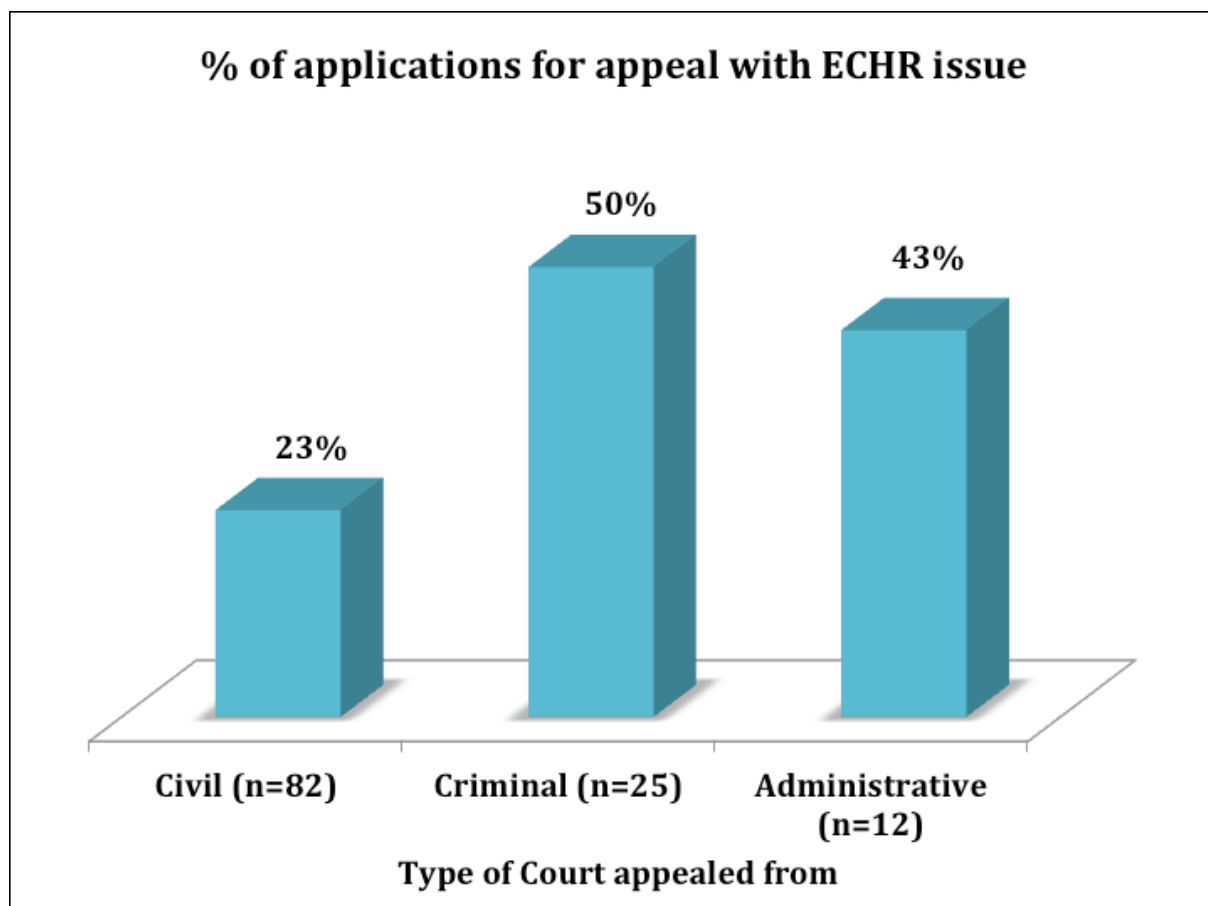
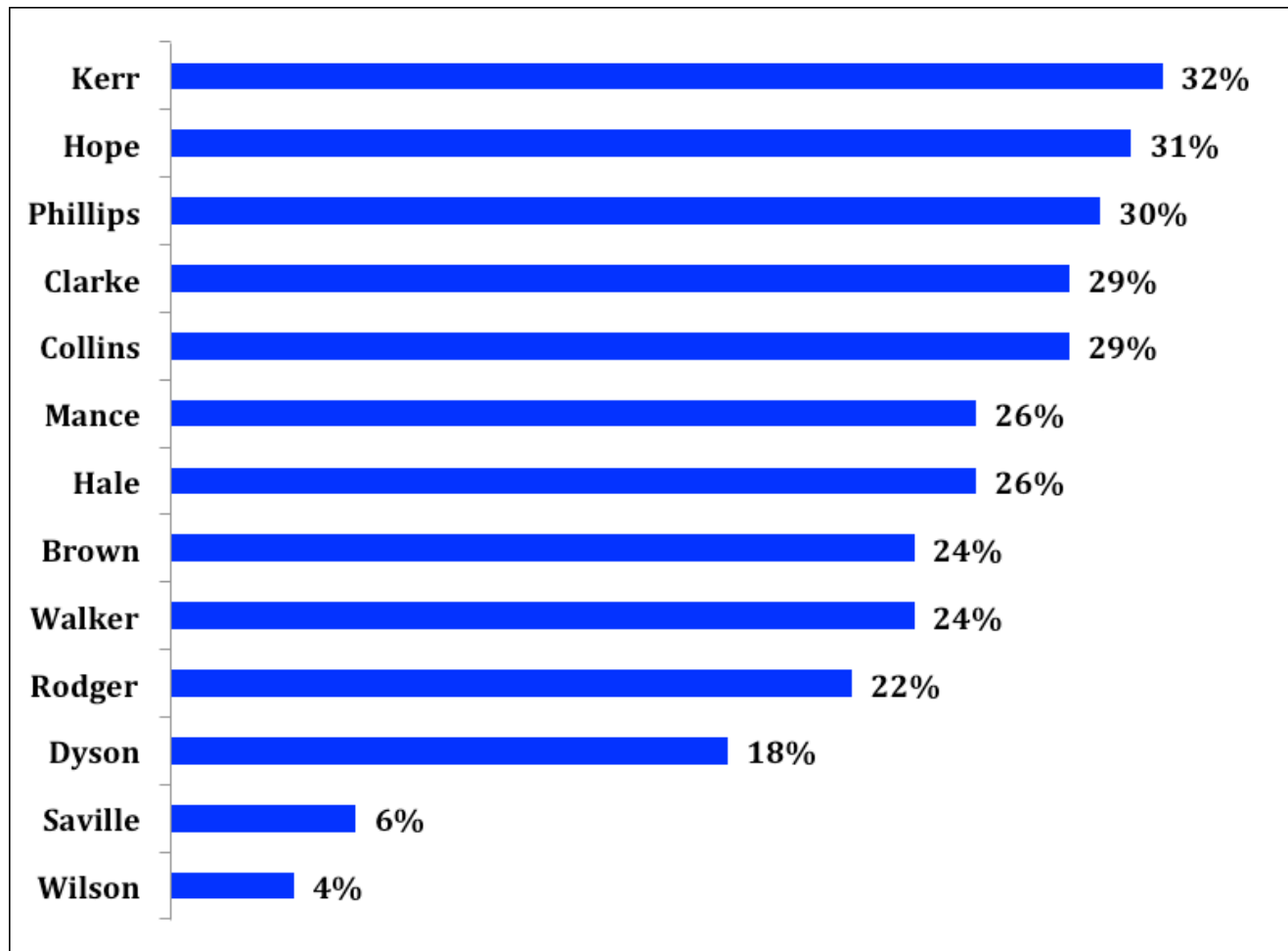


Figure 6: Permissions to Appeal with ECHR issue by court appealed from (n=431)



Justices and Permissions to Appeal

Figure 7. UKSC Justices frequency of membership on Permission to Appeal panels (n=431)

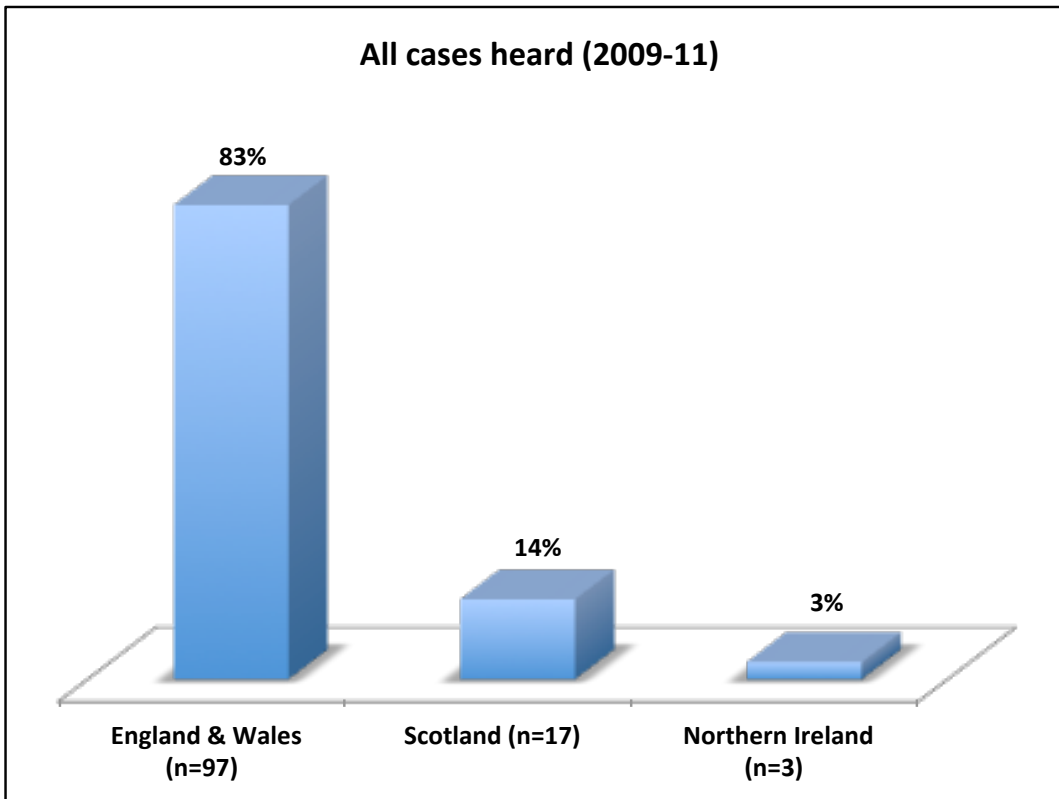


Note: Frequency of membership on PTA panels will be affected by length of tenure on UKSC

PART 2. CASES HEARD

Jurisdictions

Figure 8: Jurisdiction of all cases heard by UKSC 2009-11 (n=117)



Courts

Figure 9: Type of court appealed from for all cases heard by UKSC 2009-11 (n=118)

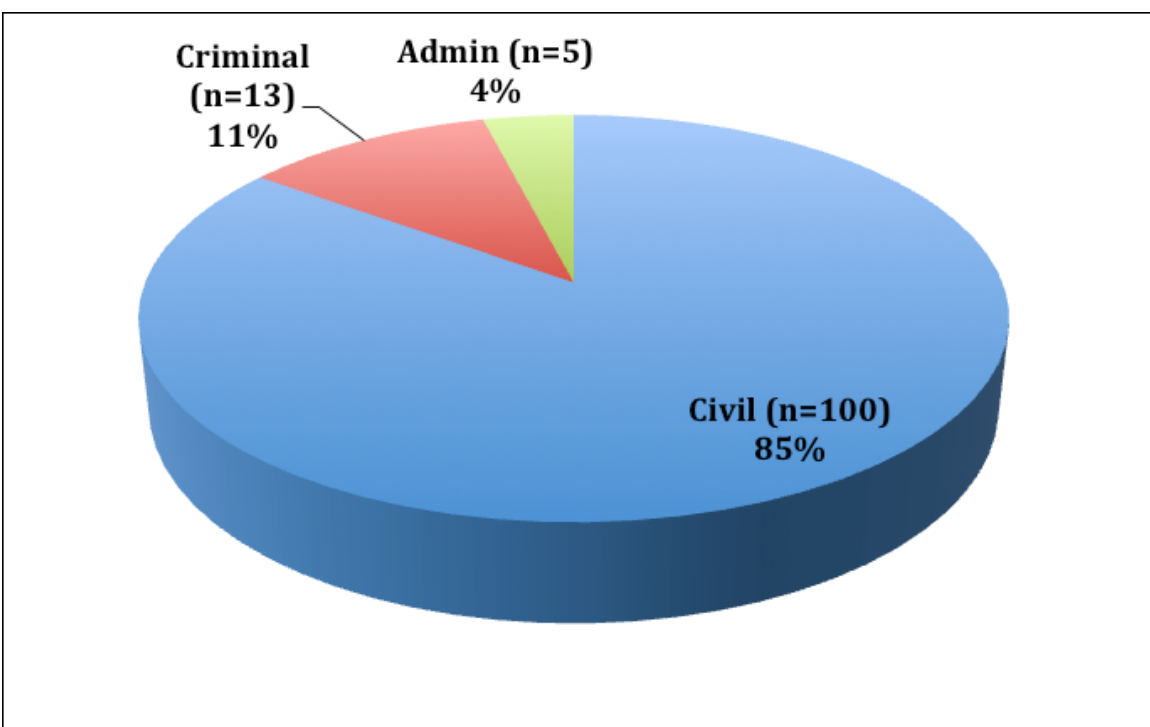
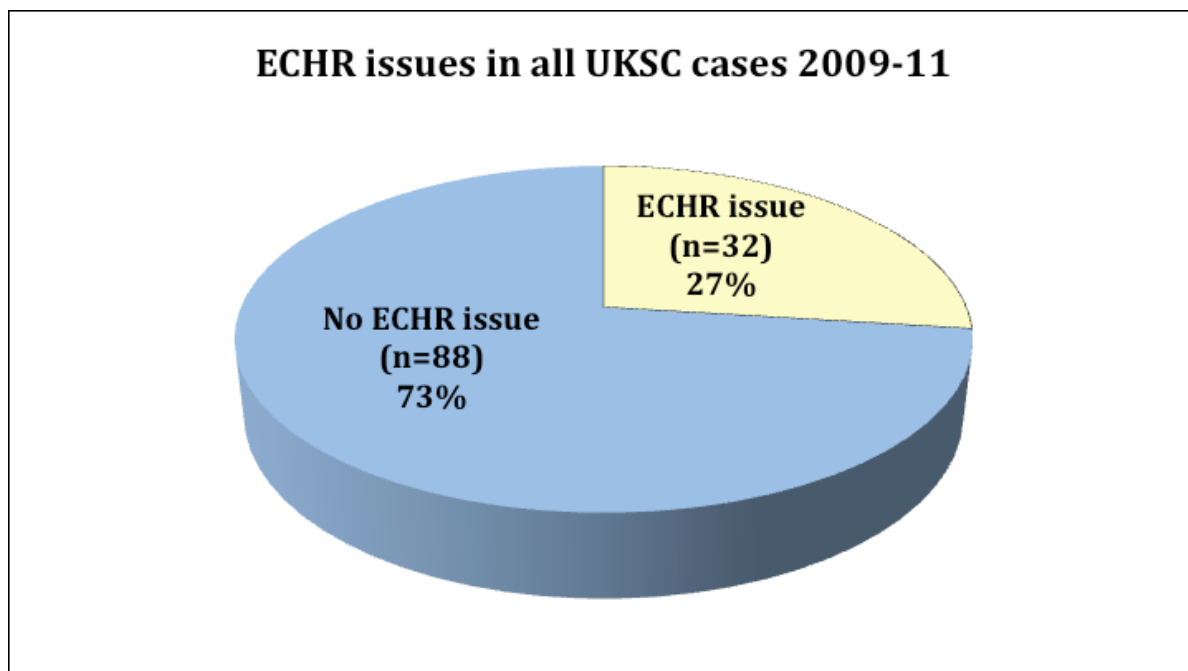


Figure 10: Proportion of all cases heard by UKSC with ECHR issue (n=120)

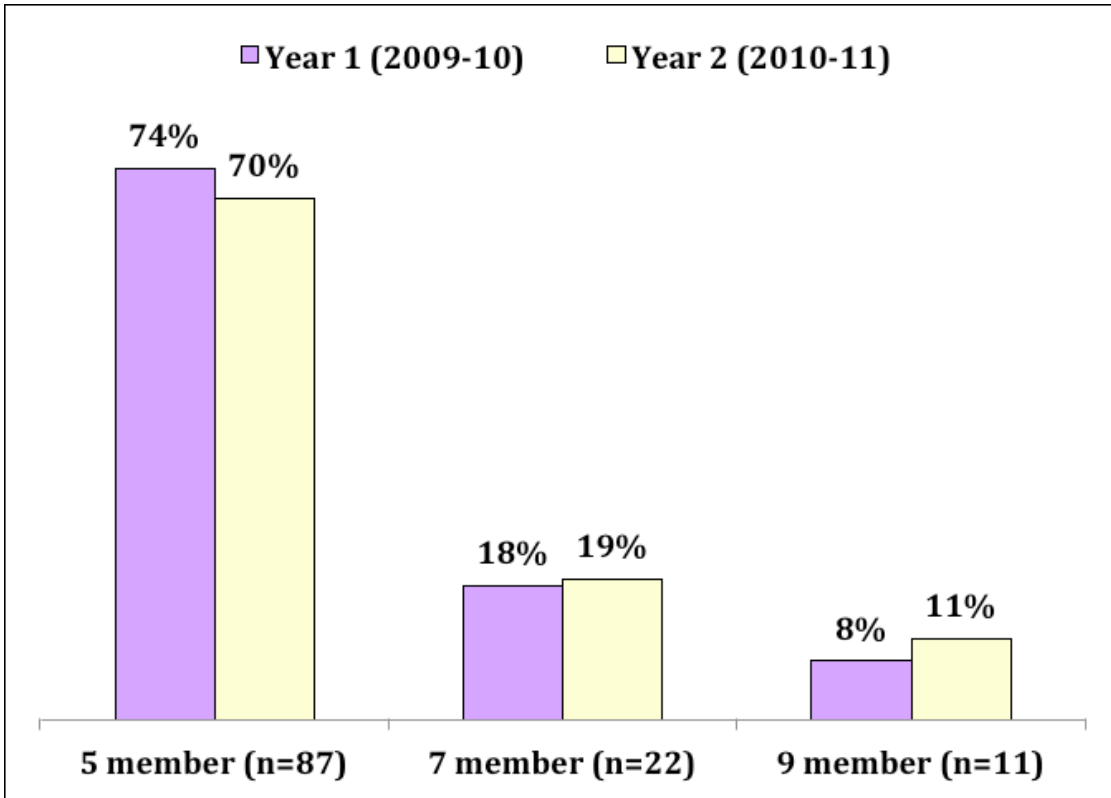


PART 3: PANEL SIZE & COMPOSITION

PANEL SIZE

Most cases (73%) are heard by panels of 5 Justices. There is virtually no change in the proportion of 7 person panels from Year 1 to Year 2, and only a small increase in 9 person panels

Figure 11: Panel size by year for all cases heard by UKSC



Characteristics of cases with 7 and 9 panels

Figure 12: Relationship between panel size and government involvement in case

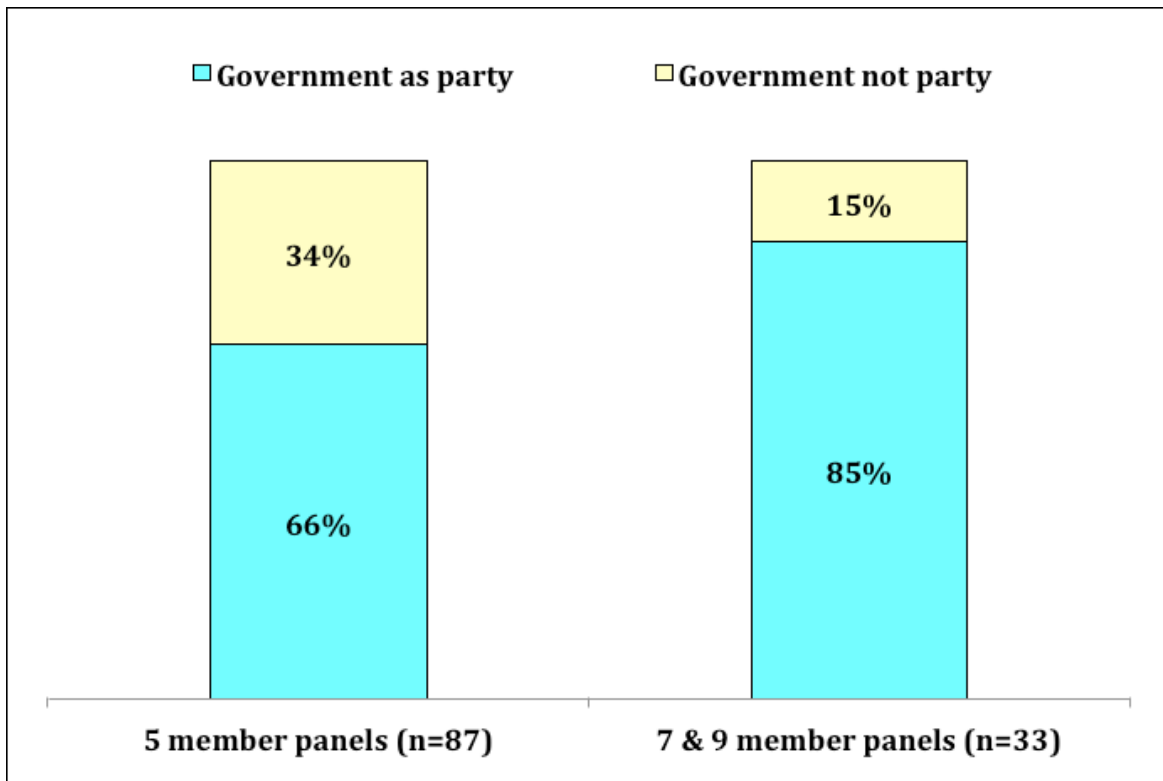
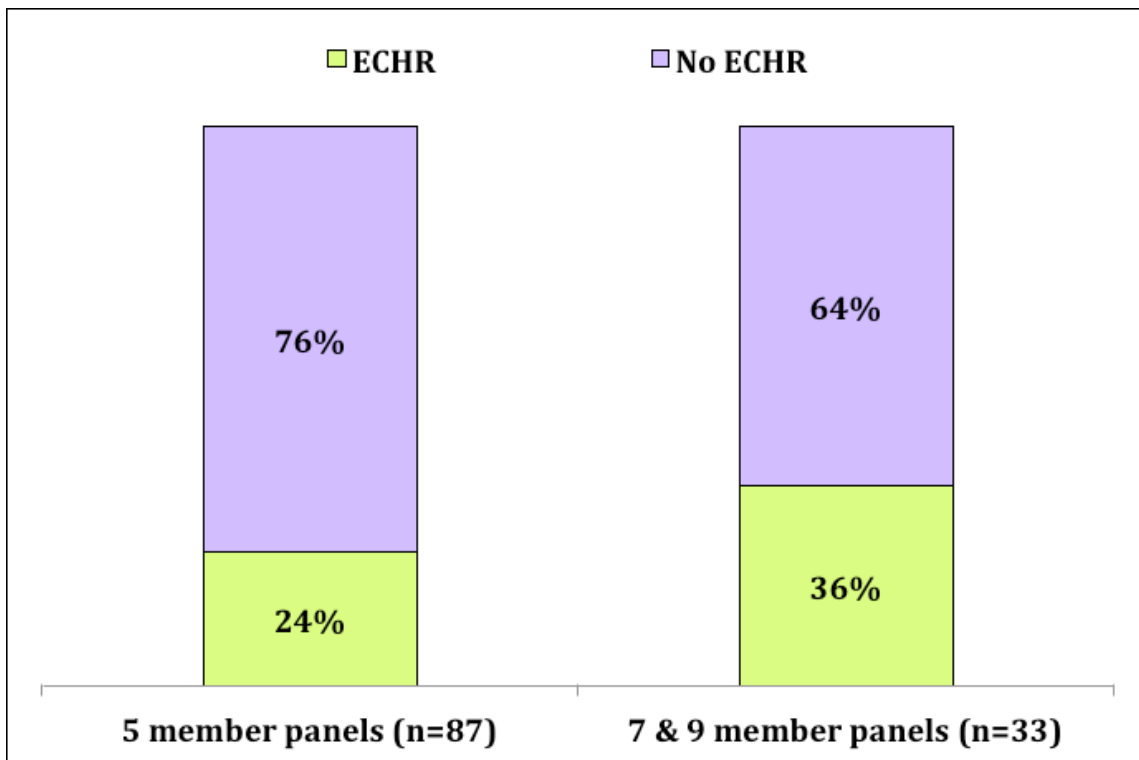
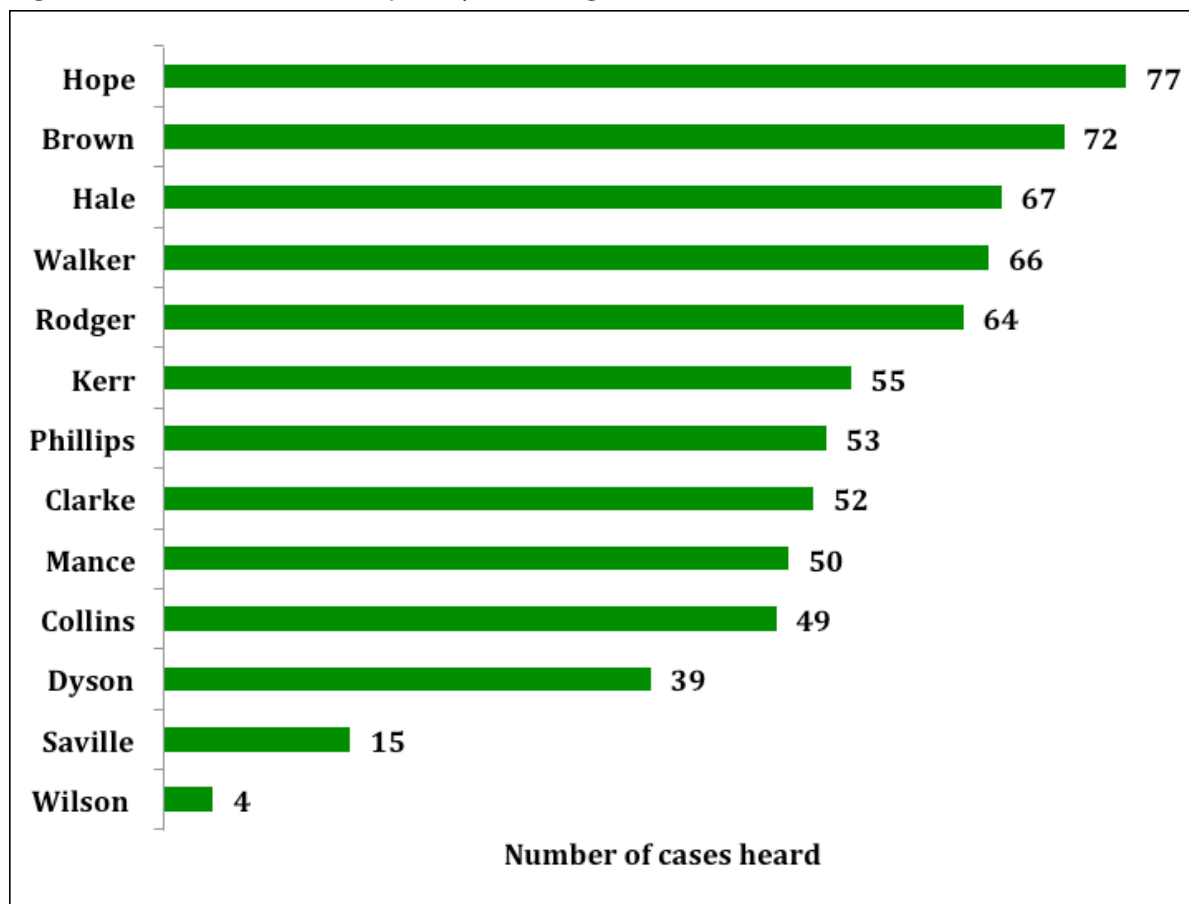


Figure 13: Relationship between panel size and ECHR issues raised in cases



PANEL COMPOSITION

Figure 14: UKSC Justices frequency of sitting on cases heard 2009-11 (n=119)



Note: The number of cases heard by a UKSC Justice is affected by the number of Judicial Committee of the Privy Council cases heard and by length of tenure on the UKSC

Panels with non-UK Supreme Court Justices sitting

In all the cases heard in the UKSC (ie, from 1/10/09) (113 in the database), 11 cases (10%) used panels with a judge who is not a Justice of the UK Supreme Court.

Four different non-UK Supreme Court judges sat on panels:

1. The Lord Chief Justice (5 cases)
2. The Master of the Rolls (4 cases)
3. Lord Reed (1 case)
4. Lord Clarke (Matthew) (1 case)

Lord Reed and Lord (Matthew) Clarke sat on panels involving an appeal from Scotland in the absence of Lord Rodger (but with Lord Hope sitting).

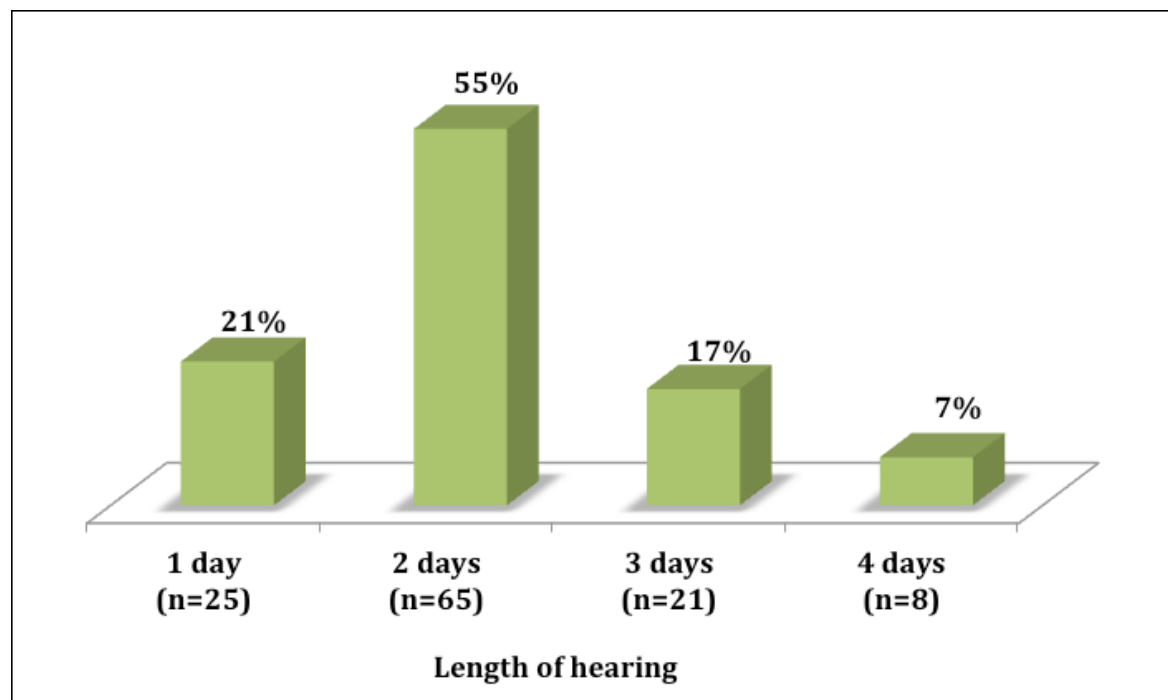
All the cases where the Lord Chief Justice sat were cases involving a criminal appeal.

The four cases where the Master of the Rolls sat involved a range of issues such as housing, land use and finance.

PART 4: HEARINGS

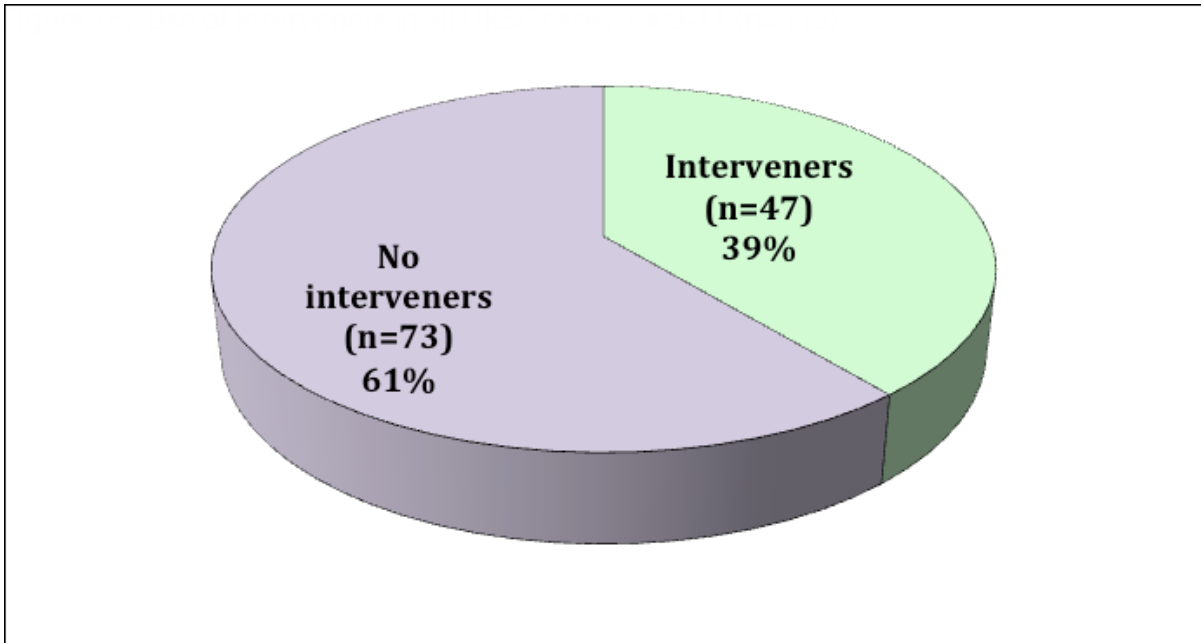
Length of hearings

Figure 15: Length of hearings in all cases heard by UKSC 2009-11



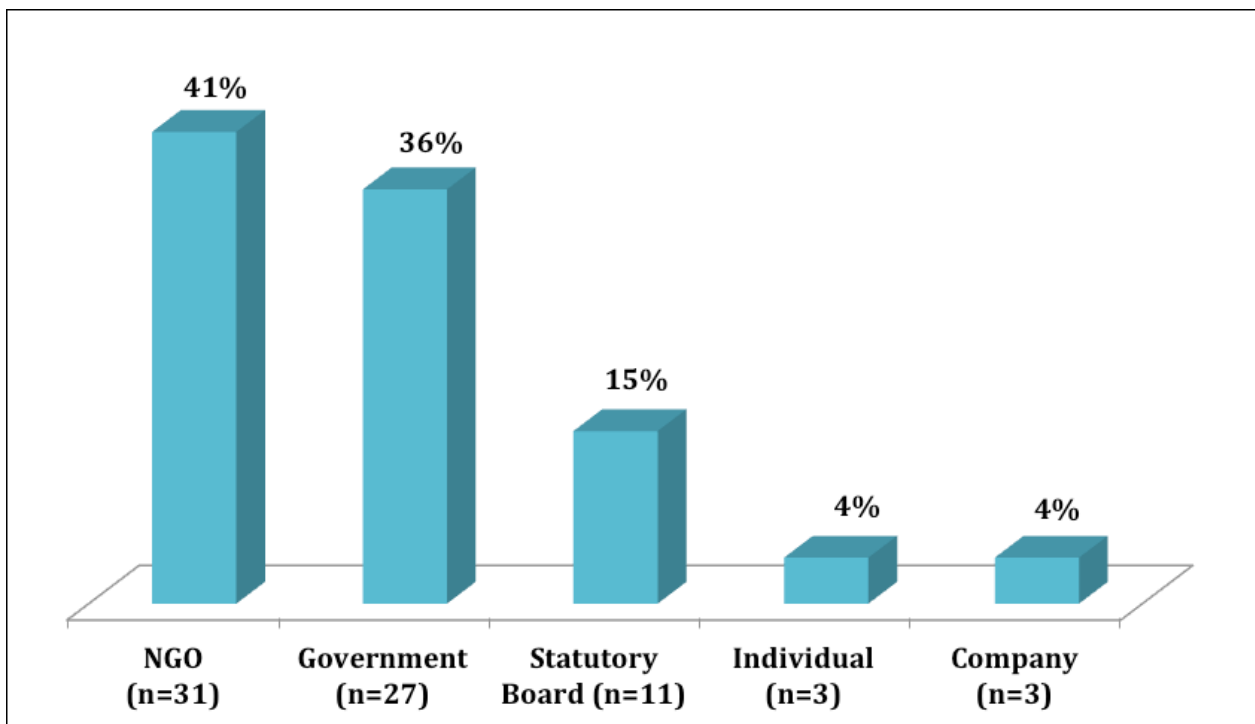
Interveners

There was a single intervener in 49% of all cases with interveners and multiple interveners in 51% of the intervener cases.



Type of Interveners

Figure 17: Type of interveners and frequency of appearance in all hearings 2009-1



PART 5: OUTCOME OF CASES

Note: The number of total outcomes (120) reflects multiple decisions in some cases and the inclusion of cases heard before 1 October 2009 but issued by the UK Supreme Court after 1 October 2009.

Figure 18: Proportion of appeals allowed, dismissed and referred 2009-11

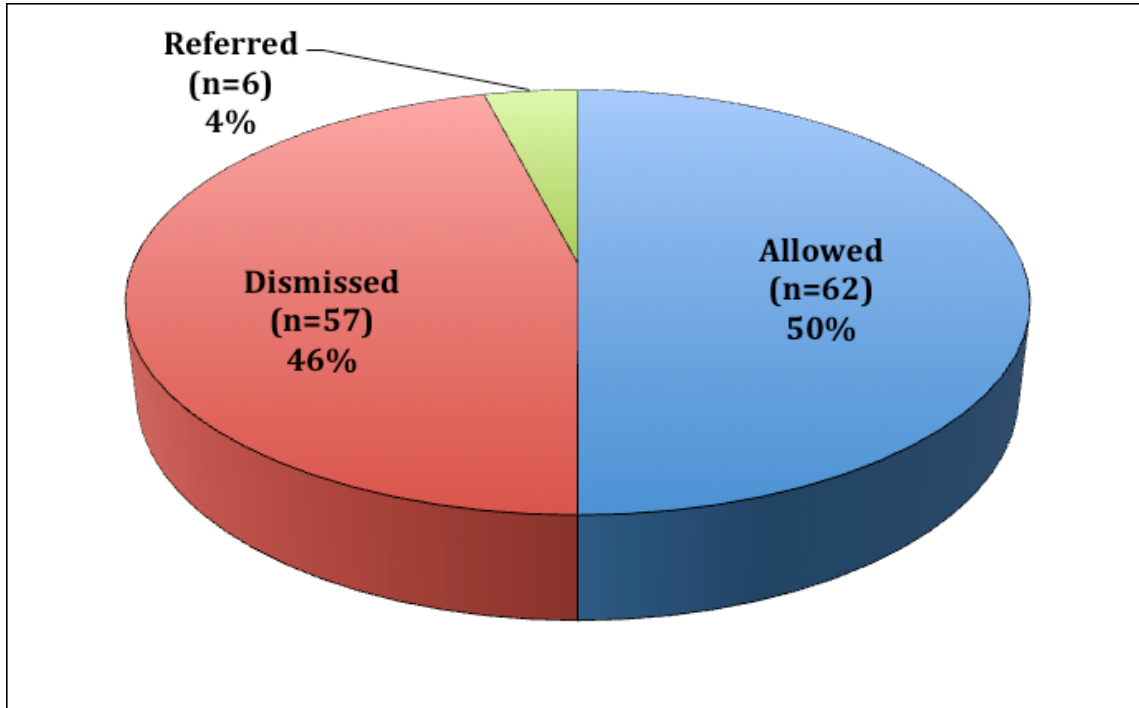


Figure 19: Outcome of appeals by court appealed from (2009-11)

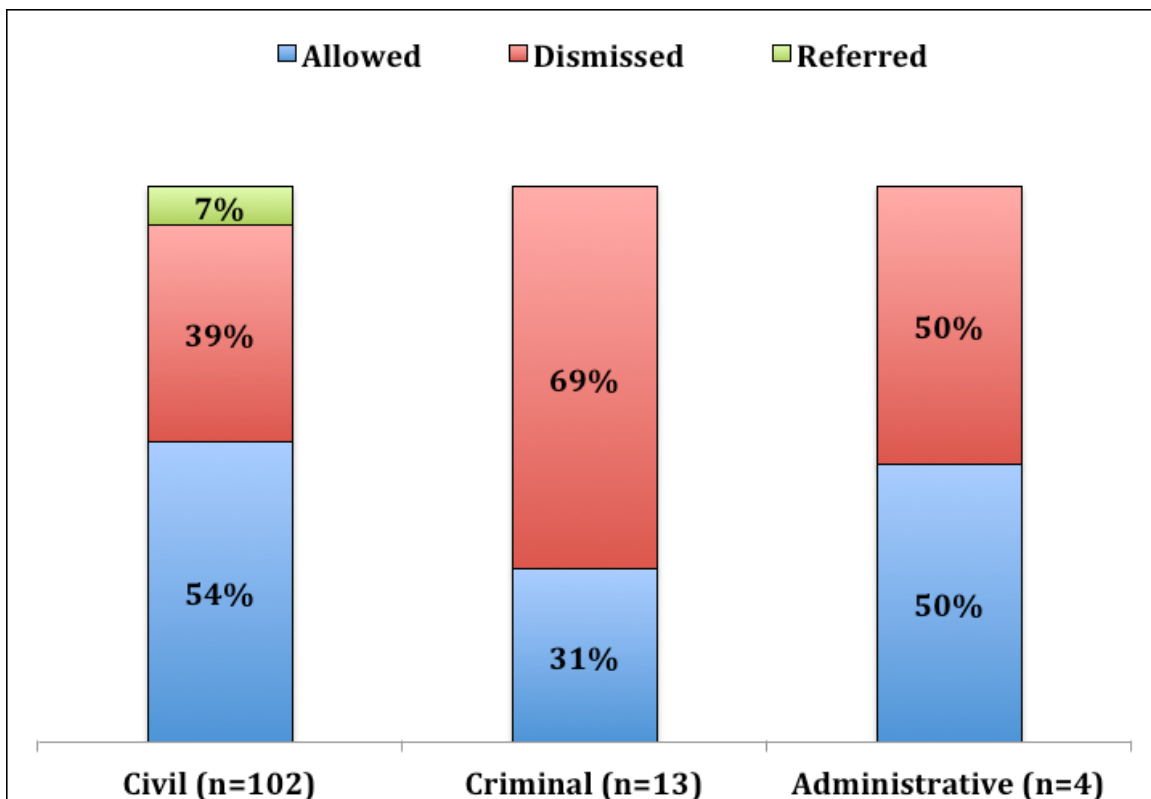
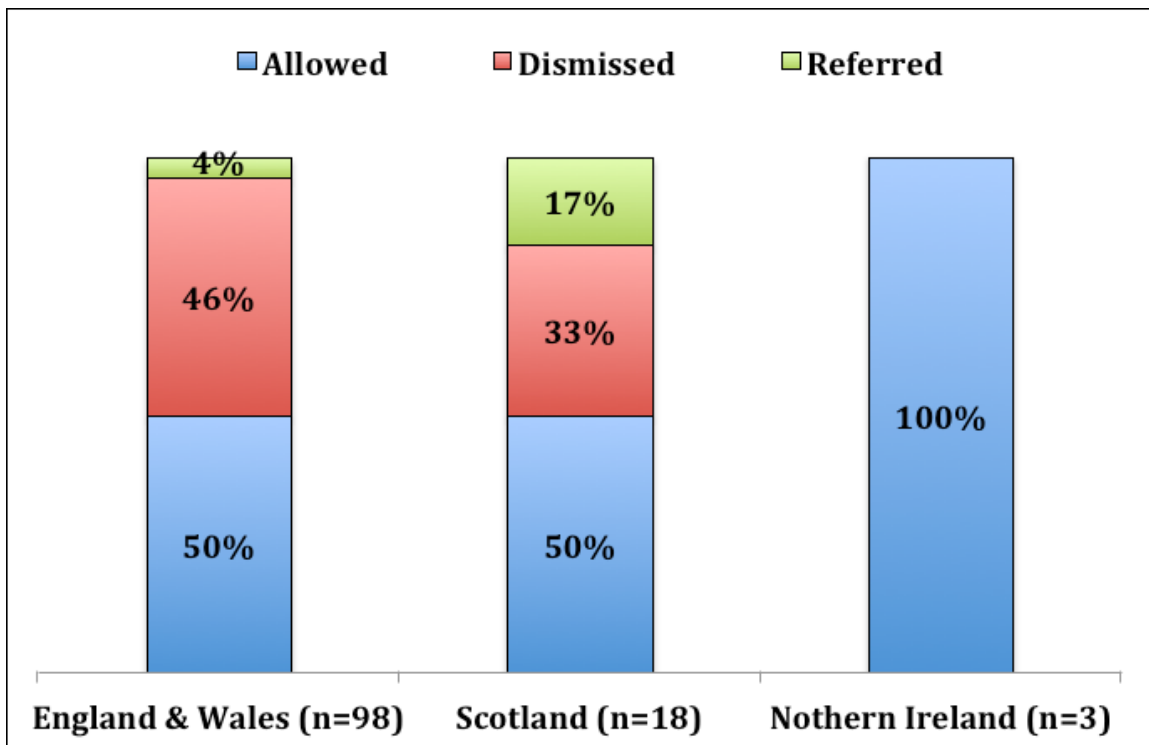
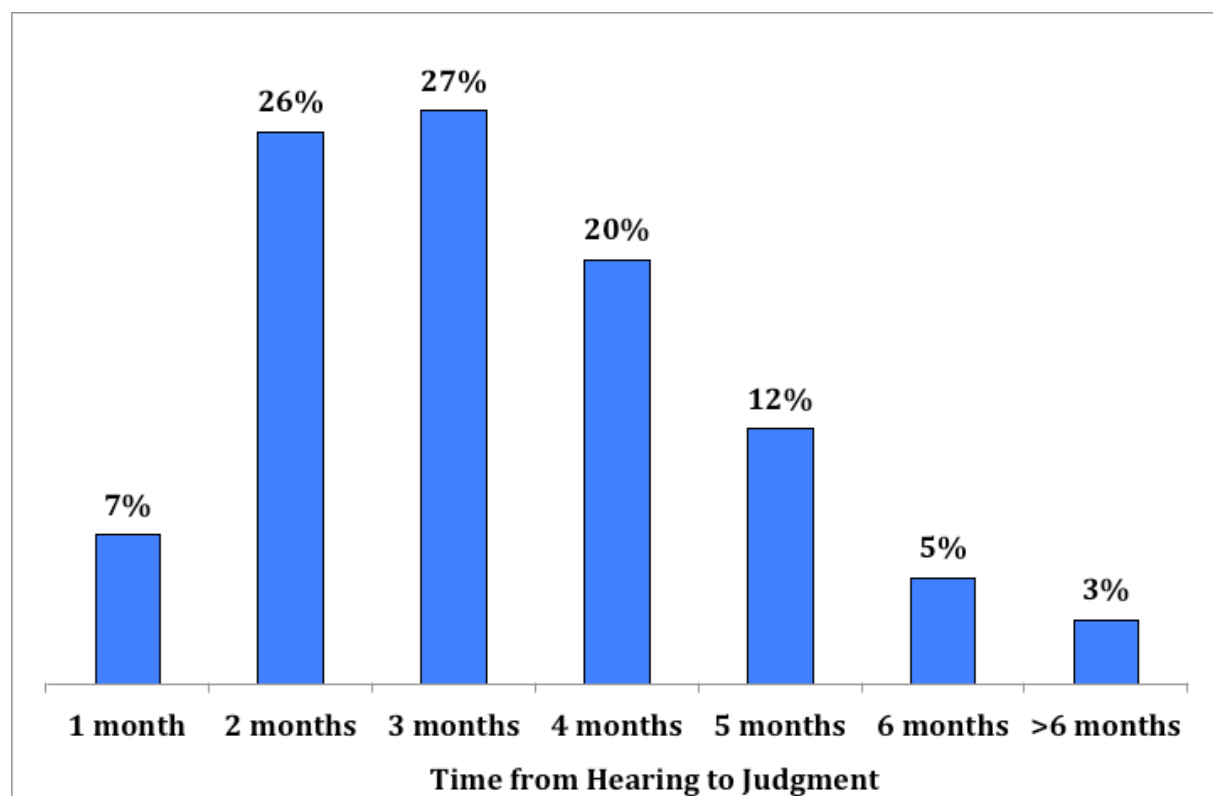


Figure 20: Outcome of appeals by jurisdiction appealed from 2009-11



Time from hearing to Judgment

Figure 21: Time from hearing to Judgment in all cases heard 2009-11 (n=119)



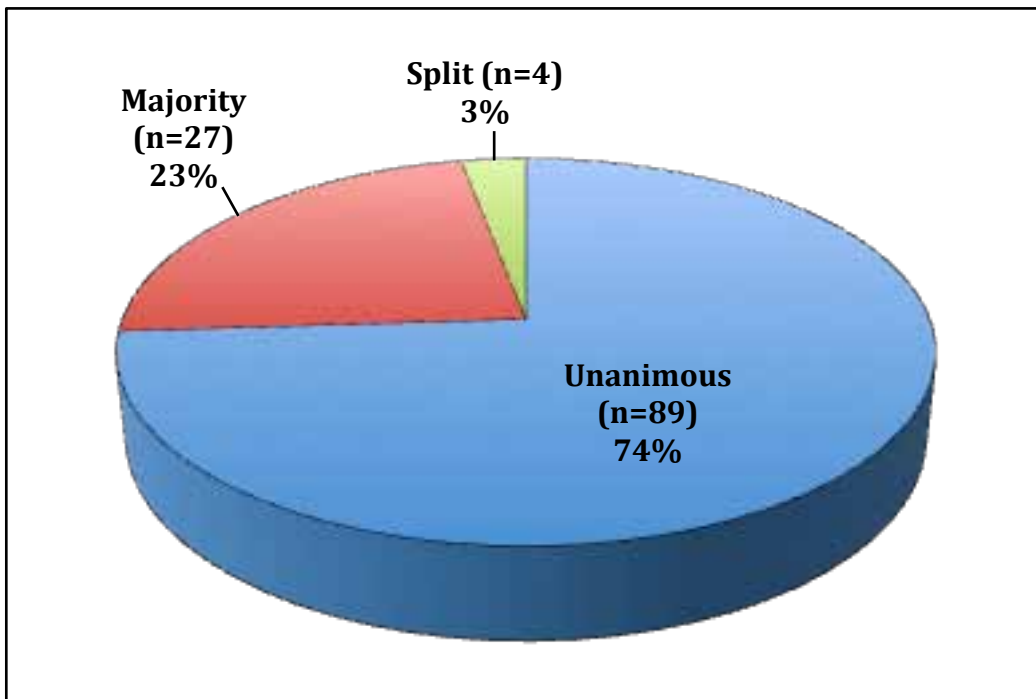
Average days to Judgment:

- Year 1 and 2 combined: 85 days
- Year 1 (2009-10): 79 days
- Year 2 (2010-11): 91 days

PART 6: JUDGMENTS

Type of Judgment

Figure 22: Proportion of Unanimous and Majority Judgments 2009-11



Note: A split decision refers to a single case where the court reached a unanimous decision on some issue(s) and majority decision on at least one other issue.

Figure 23: Type of Judgments issued by UKSC by year (n=120)

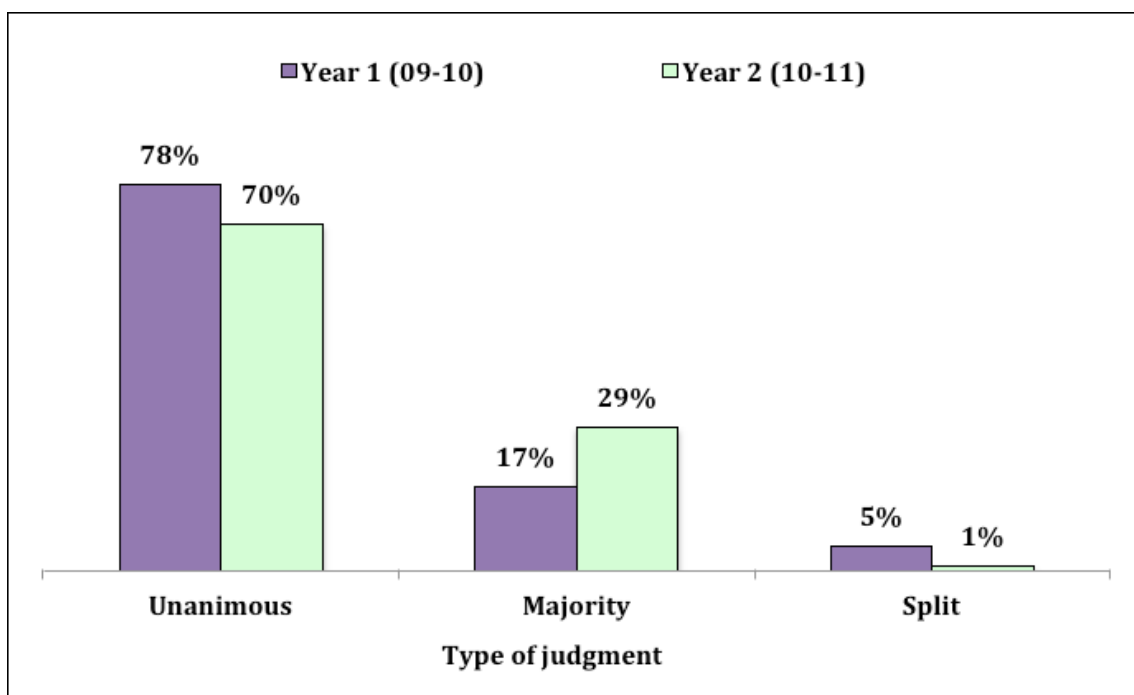


Figure 24: Frequency of Dissents by Justice (n=120)

Note: Frequency is calculated as dissents per cases heard for each individual Justice

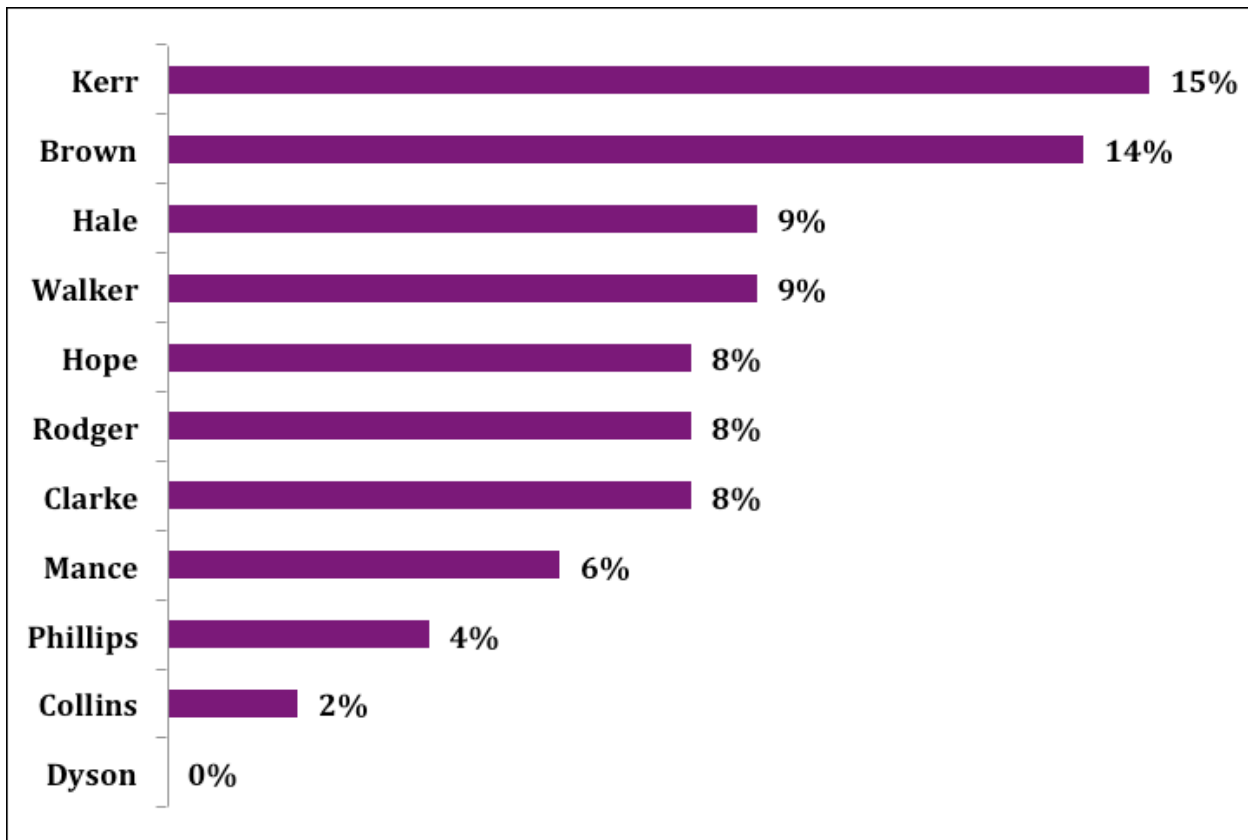
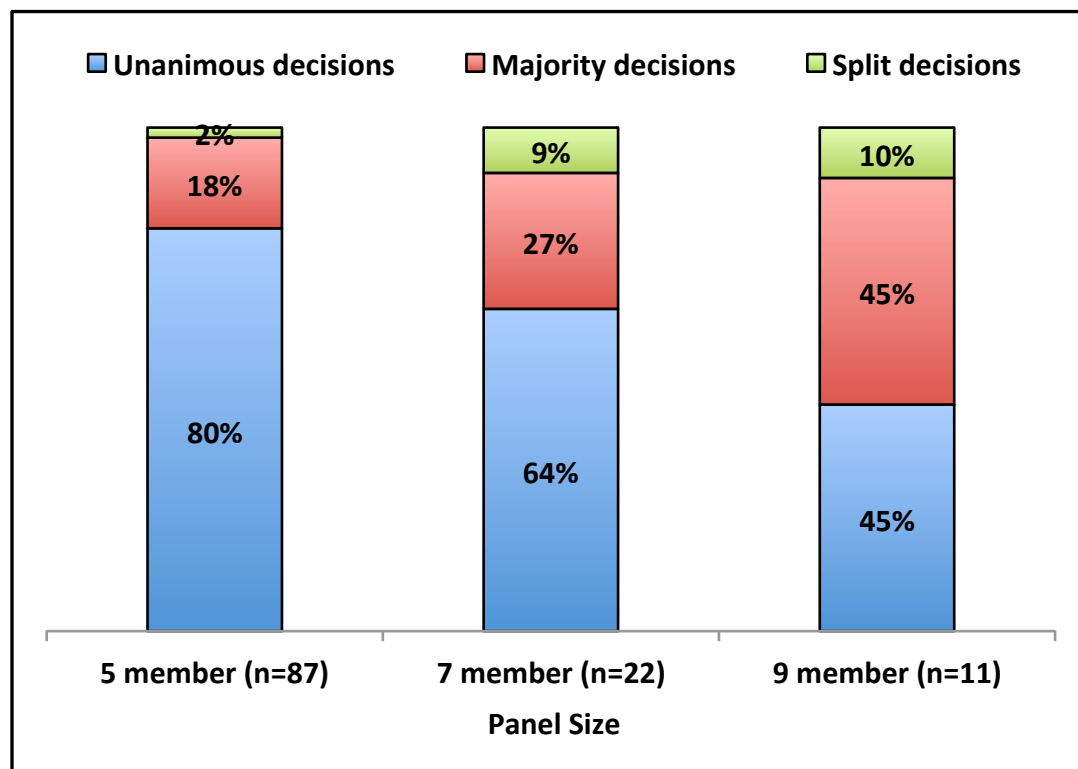


Figure 25: Type of judgment in relation to panel size 2009-11 (n=120)



Note: A split decision refers to a single case where the court reached a unanimous decision on some issue(s) and majority decision on at least one other issue.

Figure 26: Main Author of Unanimous/Majority opinions 2009-11 (n=120)

Note: calculated as proportion of main opinions authored per times in majority/unanimity

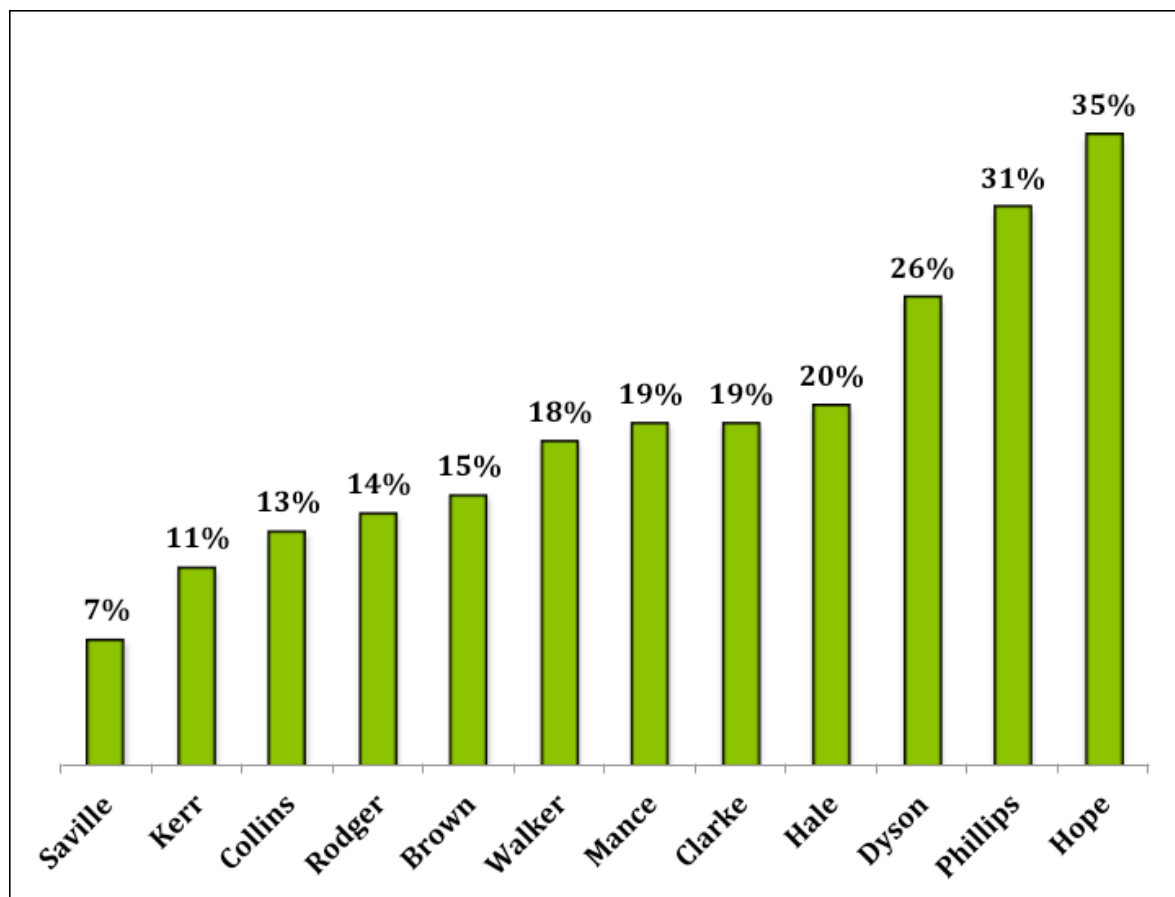
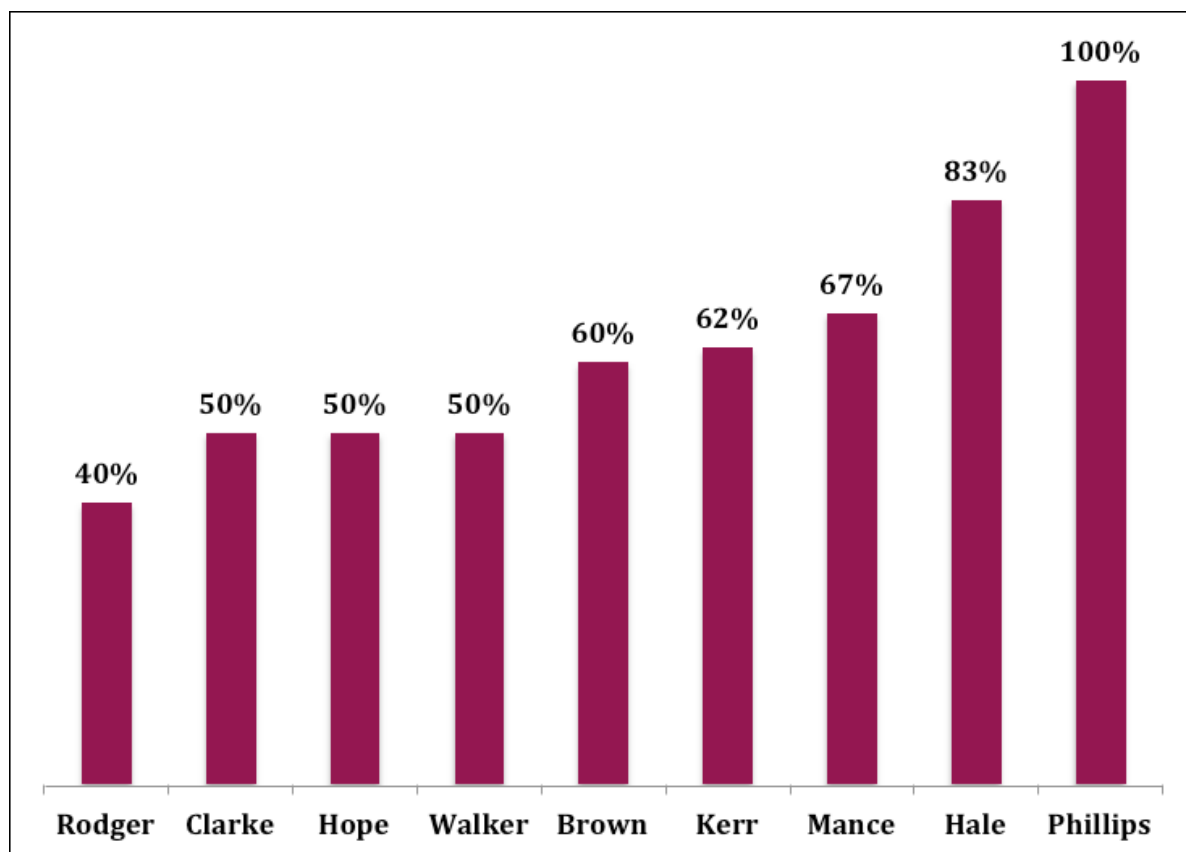


Figure 27: Main Author of Dissenting opinions 2009-11 (n=31)

Note: calculated as proportion of main dissenting opinions authored per times dissenting



Your Notes:

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UCL Faculty of Laws

Bentham House

London

WC1H 0EG

www.ucl.ac.uk/laws/judicial-institute