

<b>Institution:</b> Queen Mary University of London		
<b>Unit of Assessment:</b> 18 Law		
<b>Title of case study:</b> The Politics of Judicial Independence		
<b>Period when the underpinning research was undertaken:</b> 2011-2016		
<b>Details of staff conducting the underpinning research from the submitting unit:</b>		
<b>Name(s):</b> Kate Malleson	<b>Role(s) (e.g. job title):</b> Professor of Law	<b>Period(s) employed:</b> Sept 2005-present
<b>Period when the impact occurred:</b> 2015-18		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>1. Summary of the impact</b>		
<p>Prof Malleson's research, which was triggered by fears that constitutional changes were threatening judicial independence, has informed and influenced key stakeholders regarding the relationship between the Judiciary and politicians – both in the executive and Parliament. As a result of the project:</p> <ul style="list-style-type: none"> <li>• both the Judiciary and politicians recognised that judicial independence and accountability are best served by more engagement</li> <li>• the Lord Chief Justice was persuaded to provide a detailed report to Parliament annually</li> <li>• Parliament had been given firmer grounds to be able to ask judges to give evidence before select committees</li> <li>• the Judicial Appointments Commission in England and Wales revised its governance to greater protect its independence</li> <li>• the Judiciary in Northern Ireland argued for greater judicial involvement in managing the courts.</li> </ul>		
<b>2. Underpinning research</b>		
<b>Research context</b>		
<p>Judicial independence and accountability in the UK depend on an effective relationship between the Judiciary and Parliament. The Constitutional Reform Act 2005 weakened that relationship, raising concerns that judicial independence was under threat in the UK. More recently, Brexit and the <i>Miller</i> litigation has resulted in senior judges being branded 'enemies of the people' in the press and led to increased tensions between politicians and the judiciary.</p> <p>Against this background, the research analysed the relationship between the Judiciary and the political branches of Government, the Supreme Court and the judicial appointments processes. The four-year (2011-2015) research project, a large grant-funded by the Arts and Humanities Research Council (AHRC), was carried out by Kate Malleson and co-researchers based (at the time of the research) in the Constitution Unit at UCL (Prof Robert Hazell and Dr Patrick O'Brien) and the University of Birmingham (Professor Graham Gee).</p>		
<b>Research findings</b>		
<p>Interviews with over 150 key stakeholders (judges, politicians and civil servants), as well as high-level seminars and other meetings, challenged conventional wisdom about the relationship between the branches of the state and the best way to protect judicial independence and promote judicial accountability. The findings:</p> <ul style="list-style-type: none"> <li>• highlighted the paradoxical threat posed by the greater constitutional separation between judges and politicians brought in by the Constitutional Reform Act 2005</li> <li>• showed that the new arrangements required <i>more not less</i> contact between the branches of government</li> <li>• demonstrated that judicial independence has multiple guardians, in the Executive and Parliament as much as in the Judiciary</li> </ul>		

- exposed the dangers of excessive judicial influence in the judicial appointments process in England and Wales
- revealed the benefits of more involvement by the Judiciary in managing court business in Northern Ireland.

### Dissemination of research findings

In addition to the seminars, the project's findings were developed through: private meetings with the senior judiciary, Ministry of Justice officials and members of the Judicial Appointments Commission; oral and written evidence to parliamentary select committees; written submissions to consultation papers; blogs; journal articles; book chapters by different members of the research team; and a jointly written monograph published by Cambridge University press [3.1].

The key research finding – that judges and politicians need to engage more to protect judicial independence – was presented to and influenced the Judicial Executive Board, the Lord Chief Justice, the Permanent Secretary in the Ministry of Justice and her senior staff, and the All Party Parliamentary Group on the Constitution in the ways described below [3.1,3.2].

### 3. References to the research

[3.1] Gee, G., Hazell, R., Maleson, K., & O'Brien, P. (2015). *The politics of judicial independence in the UK's changing constitution*. Cambridge University Press. [doi.org/10.1017/CBO9781107589223](https://doi.org/10.1017/CBO9781107589223)

[3.2] Maleson, K. (2016). The changing institutional politics of the UK Supreme Court. *UK Supreme Court Yearbook 7*, Legal Year 2015-2016. <https://ukscy.org.uk/doi/10.19152/ukscy.vol.7>

### Evidence of the quality of research

[EQR.3.1, 3.2] Maleson, K. [PI]. (2011-2015). The Politics of Judicial Independence in Britain's Changing Constitution [AHH0395541]. *AHRC*. GBP506,000.

### 4. Details of the impact

The research findings had a significant impact on the thinking and behaviour of senior politicians, judges and civil servants at a crucial moment in the evolution of the constitutional relationship between the judiciary and political branches.

#### Improved engagement between judges and politicians

The research finding that judges and politicians need to engage more to protect judicial independence was enabled by the 12 high-level seminars run by the project, and immediately enhanced such engagement. Sir Ross Cranston QC said the conversations were necessary to work towards a new relationship that 'both strengthens judicial independence and supports accountability' [5.7].

The project's influence went both ways, affecting Parliament and the Judiciary. The then Chair of the House of Commons Justice Committee, Sir Alan Beith MP, attested that the research had been 'very helpful to the Justice Committee at a time when we were actively developing the engagement of the judiciary with Parliament in ways which did not threaten that independence'. He added that it had helped to 'clarify the thinking' of committee members and staff and 'informed the discussions' of the Chair with successive holders of the Lord Chief Justice post about the judiciary's relationship with the committee and other parliamentary committees. [5.2] This understanding of the potential of closer engagement to strengthen judicial independence fostered greater confidence in asking judges to give evidence before select committees as noted by Nick

Walker, Clerk to the Justice Committee, who said that the research had been valuable to Parliament in 'supporting the idea that the judiciary should be less nervous about engaging with us' [5.2].

The research was disseminated via 12 high-level practitioner seminars at Queen Mary under Chatham House Rules attended by senior figures, including the President of the Supreme Court, Lord Chief Justice, Chair of the Justice Committee, former Lord Chancellors and Cabinet Secretaries. The seminars strengthened dialogue between the three branches of government about their shared responsibility for upholding judicial independence. The Lord Chief Justice said the seminars helped to 'build understanding of the role of the judiciary and identify the benefits of a constructive relationship between the judiciary and the other branches of the State' [5.3-5.6].

Sir Ross Cranston QC, a High Court judge and former member of the Executive as Attorney General, attested that the seminars had allowed senior judges, politicians and civil servants to discuss the research findings 'in a way which influenced thinking around the changes and promoted a better understanding of the ways in which the relationships between these branches of government could develop' [5.7].

### **Increased accountability**

In response to the project's recommendation that a more detailed report be submitted to Parliament annually, the then Lord Chief Justice provided such a report in 2016. He said that such reports had previously been submitted irregularly, and that the research project had 'argued persuasively that the time had come for regular annual reports and when I was appointed Lord Chief, I established the practice of providing an annual report. It has become an important part of the explanatory accountability of the judiciary – another concept for which the research project persuasively argued. In these respects, the research project played an important role in helping develop an aspect of constitutional development' [5.8]. The former Chief Executive of the Judicial Office confirmed that the project had influenced the Lord Chief Justice's thinking on this matter [5.2].

### **Influencing the judicial appointments process**

The project highlighted the potentially unexpected and generally unacknowledged dangers of excessive judicial influence in the judicial appointments process in England and Wales. The Chair of the Judicial Appointments Commission (JAC) from 2011-2016 attested that the research had 'caused those involved in judicial appointments to pause and consider the influences that are brought to bear on the process in a way that did not happen previously.' As a result, he said, 'the Lord Chancellor will need to take care to ensure the appointment of robust lay commissioners in future' to avoid risks to judicial independence. He said that the establishment of an interim governance group in 2016 was 'a direct result of the work that you [the project] carried out and the focus which you brought in particular to the potential for inappropriate judicial influence over the JAC's activities' [5.9].

### **Influencing judicial involvement in court management**

In Northern Ireland, a senior official in the Department of Justice said that the project had contributed to the debate on whether a non-ministerial department could be responsible for administrative oversight of courts [5.1].

The Lord Chief Justice of Northern Ireland, Sir Declan Morgan, noted that the project had found that 'enhanced judicial independence and greater accountability are often two sides of the same coin', and had 'highlighted the benefits of more active and transparent involvement of the Judiciary in the management of court businesses. As a result, he encouraged the Department of Justice to consider legislating for a non-ministerial department [5.1].

**5. Sources to corroborate the impact**

[5.1] [Testimonial] Department of Justice

[5.2] [Testimonials] Chief Executive of the Judicial Office

[5.3] [Report] [https://www.judiciary.gov.uk/wp-content/uploads/2014/12/lcj\\_report\\_2014-final.pdf](https://www.judiciary.gov.uk/wp-content/uploads/2014/12/lcj_report_2014-final.pdf)

[5.4] [Speech] <https://www.judiciary.gov.uk/announcements/speech-by-the-lord-chief-justice-judicial-independence-in-a-changing-constitutional-landscape/>

[5.5] [Speech] <https://www.judiciary.gov.uk/announcements/speech-by-lord-chief-justice-judicial-leadership/>

[5.6] [Dossier] <http://scc-csc.ca/case-dossier/stat/fw-ap-eng.aspx>

[5.7] [Testimonial] High Court judge

[5.8] [Testimonial] Lords Chief Justice Officer

[5.9] [Testimonial] Chair of the Judicial Appointments Commission (JAC)