



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD THOMAS OF CWMGIEDD, LORD CHIEF JUSTICE OF
ENGLAND AND WALES

JUSTICE IN ONE FIXED PLACE OR SEVERAL?

BIRKENHEAD LECTURE

GRAY'S INN

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The context

1. It is a great privilege and honour to be following in the footsteps of the previous lecturers who have delivered the Birkenhead Lecture¹. Much has been written and even more said, whether true or apocryphal, about the Earl of Birkenhead. His career was so remarkable that it would be difficult to give a lecture in his honour without mentioning his contribution to the subject. It is, however, more convenient to do this a little later, as I must first place this lecture in context.

2. That context must begin with the significant issues that the administration of justice faces today. These include, apart from issues of law, the following ten issues:
 - (i) The consequences of what has been described as the retreat or retrenchment of the State. The most obvious manifestations as it affects the administration of justice are the reduction in the scope of legal aid and the reduction in the remuneration paid to lawyers for the legal aid that is available. Another, though at present not quite so manifest, is the need to find an effective way of ensuring the funding of an efficient and effective system to support the carrying on of the business of the Courts of England and Wales².
 - (ii) The changes in the legal services market. The first of these changes is the now evident impact of the Legal Services Act 2007 in implementing policies to liberalise access to legal

¹ I am grateful to Sophie Briant and John Sorabji for their assistance.

² S. 1 of the Courts Act 2003.

work and to establish a new regulatory structure to enable this to happen; London's global position has meant that the policies have attracted considerable worldwide interest. This change has coincided with the continued expansion of the legal profession and those who aspire to join it; many cannot get training contracts or pupillages. This has necessitated a re-examination of the way in which legal education is provided. These changes are coincidental with the consequences of the retrenchment of the State to which I have referred and to the growth in the cost of litigation and the use of information technology to which I will refer.

(iii) The growth in the cost of litigation. Reforms such as the Woolf and Jackson reforms in civil justice, the Auld reforms to criminal justice and the current reforms to family justice are all intended to bring greater judicial control to litigation so as to increase the speed at which cases are heard and reduce cost. However, cost is still far too great. The users of the courts and legal services, whether the public or private sector, want, to adapt a phrase, "more and better for less".

(iv) The need to make better use of information technology. The courts have few modern systems.

(v) The need for flexibility to meet the fluctuations in the business of the courts and tribunals. For example in the first nine months of this year the total number of applications for judicial review in the Administrative Court exceeded the total number of judicial reviews in 2012. In the Social Entitlement Chamber, receipts in the first quarter of this financial year were 57% greater than in the first quarter of 2012

(vi) The growth in the number of litigants in person. This has been the consequence of both the reduction in legal aid and the cost of using lawyers; it is having a significant impact on the courts, particularly in the county courts and the family court.

(vii) The diversity of the professions and the judiciary. The significant change in society is evidently not reflected in the professions and the judiciary.

(viii) The rights of victims of crime and other vulnerable parties. These must be properly accommodated within the legal system.

(ix) The contribution of the courts and the legal profession to the UK economy. Legal services have a significant impact not only for international business but also for the domestic economy, not only in London, but elsewhere.

(x) The changing constitutional structure of the United Kingdom. This includes the gradual increase in the powers devolved to Wales, the Scottish referendum and the relationship to the European Union.

There are others but for tonight that is sufficient to illustrate the scale of the issues.

3. The judiciary has, in my view, a duty to consider the way in which it, within its area of responsibility, should address these issues. Although it must work closely with the two other branches of State in addressing them, it has, with the help of the legal profession, its own real contribution to make in modernising the administration of justice in such a way that it materially helps to address the issues to which I have referred.
4. Tonight I wish to take the topic indicated by the title I have chosen for this lecture: “justice in one fixed place or several?”. It is the first illustration of the way in which I foresee the judiciary addressing the issues to which I have referred in a proactive manner. That choice of topic reflects two matters. First, this Inn has a significant proportion of out of London practitioners. Second its Treasurer, Lord Justice Maurice Kay, not only came from the Chester Bar, but also, when a Presiding Judge of the then Wales and Chester Circuit, did much to encourage the doing of more work on that circuit rather than seeing it done in London.
5. I intend therefore to consider whether justice can be better administered by providing greater opportunities for access to justice in places other than London and moving the emphasis away from London. As I shall explain there are in my view good reasons for doing this, there are steps that ought to be considered to that end and there are benefits in terms of making a contribution to addressing some of the issues I have outlined.

Magna Carta

6. Like many of the issues that face us, there is a long history to the number and location of the places where justice should be administered. This is illustrated by the title to this lecture, which is derived from Chapter 17 of *Magna Carta*:

“Common pleas shall not follow our court but should be held in some fixed place”.

7. In the 12th Century, as justice was the King’s justice, the *Curia Regis* followed the King. This could mean considerable delay, annoyance and expense. One illustration is the case of Richard d’ Anesty where the history of his plea begins:

“These are the costs and charges which I, Richard de Anesty “bestowed in recovering the land of William my uncle,”

Sir James Fitzjames Stephen gives this summary of Richard de Anesty's account of his efforts to have his case heard³:

It proceeds to enumerate the various journeys which he took to get writs, to get "days" given him by the king and the justices, and to keep the days so given. The history fills nearly nineteen quarto pages. The litigation lasted more than five years (1158-1163). It involved journeys by d'Anesty and others to the following amongst other places, Normandy, Salisbury, Southampton, Ongar, Northampton, Southampton, Winchester, Lambeth, Maidstone, Lambeth, Normandy, Canterbury, Avinlarium (supposed by Sir F. Palgrave to be Auvilar on the Garonne), Mortlake, Canterbury, London, Stafford, Canterbury, Wingham, Rome, Westminster, Oxford, Lincoln, Winchester, Westminster, Rumsey, Rome, London, Windsor, and at last Woodstock. The principal question in d'Anesty's case was whether a marriage was void by reason of a pre-contract. This was regarded as a matter of ecclesiastical cognisance, and involved questions in the spiritual courts and an appeal to Rome, but the different steps in the case strongly illustrate the meaning of "following" a pleas. Here is a specimen of the narrative.

"After I had fined with the King, my Lord Richard de Lucy by the king's precept gave me a day for pleading at London at mid-Lent; and there was then a Council; and I came there with my friends and my helpers; and because he could not attend to this plea on account of the king's business I tarried there for four days and there I spent fifty shillings. From thence he gave me a day on the clause of Easter, and then the King and my Lord Richard de Lucy were at Windsor; and at that day I came with my friends and helpers as many as I could have ... And because my Lord Richard de Lucy could not attend to this plea on account of the plea of Henry de Essex, the judgment was postponed until the King should come to Reading, and at Reading in like manner it was postponed from day to day until he should come to Wallingford. And from thence because my Lord Richard was going with the King to Wales, he removed my plea into the court of the Earl of Leicester at London; and there I came And because I could not get on at all with my plea I sent to the Lord Richard in Wales to the end that he might order that my plea should not be delayed; and then by his writ he ordered Ogerus Dapifer and Ralph Brito that without delay they should do justice to me: and they gave me a day at London. I kept my day From thence my adversaries were summoned by the king's writ and also by the Lord Richard's writ that they should come before the king; and we came before the king at Woodstock and there we remained for eight days, and at length, thanks to our lord the king and by judgment of his court, my uncle's land was adjudged to me."

Richard d'Anesty was ultimately successful, but that success nearly ruined him.

8. Sometime before 1215 cases that were not Pleas of the Crown, but were Common Pleas, that is claims between subjects of the Crown, came to be heard at a court that was generally held at one fixed spot for the convenience of the litigants. Chapter 17 of Magna Carta was

³ A History of the Criminal Law of England: 1883, Vol 1, p 88.

directed at ensuring that this was guaranteed. Common Pleas would in future have one fixed home: Westminster Hall.

9. Indeed so great was Chapter 17's influence that when Sir Orlando Bridgman, incidentally another Chester man, was Chief Justice of the Common Pleas from 1660-1668 he would not have his court moved a few feet to avoid the draught from the north door of Westminster Hall lest the relocation infringed this clause of *Magna Carta*.
10. Two lessons may be drawn from this short history. First, attempts to try and contain the expense and delay of litigation have always involved the location of places where justice is delivered. Second, lawyers are always reluctant to see change.

The Earl of Birkenhead

11. Time does not permit me to go into what happened in the intervening centuries, save to return to the Earl of Birkenhead and two episodes of his career.
12. After his Vinerian scholarship at Oxford and joining this Inn because of its connections with the Northern Circuit, he began his practice in Liverpool in 1899. Although that practice was first in licensing work, he built up a large shipping and commercial practice there⁴; his clients included the Liverpool shipping magnate Sir Robert Houston, and Mr William Lever, the great industrialist and philanthropist. The latter's subsequent action for libel against the press was the subject of the Earl of Birkenhead's most famous opinion which read in full: "There is no answer to this action for libel, and the damages must be enormous".
13. That was a time in which there was a huge volume of civil High Court business in Liverpool and Manchester that could not be accommodated within the time allocated to High Court Judges to hear cases at this then heartland of British industry and commerce. This was not a problem confined to the North West. There was great pressure from at least 1882 to deploy judges out of London more effectively to meet this demand. For example in 1909, the Chambers of Commerce in the UK presented a memorial noting the fact that the provinces were neglected and seeking a means:

"whereby litigation (and especially commercial litigation) arising in the provinces shall be dealt with efficiently and expeditiously and at a reasonable cost".

⁴ RFV Heuston: Lives of the Lord Chancellors, Vol 1, p 358.

14. Many attempts were made to meet these requests; for example, in 1892, the Judges' Council proposed that judges be better deployed so that civil business could be tried at 18 centres in England and Wales in place of the 56 assize towns. More work could then be done in, for instance, Liverpool, Manchester and Leeds; the places which had the most cases. The Council also proposed that a Commercial Court be established⁵. Although the latter happened in 1896, the former was frustrated by the lack of will on the part of politicians.
15. When Lord Birkenhead became Lord Chancellor, he made similar attempts. In 1919-20, he made his first attempt, in conjunction with Lord Reading the Lord Chief Justice, to reform the way in which High Court Judges were deployed out of London so that their time could be better used. Lloyd George blocked it. He would not contemplate the prospect of the High Court not sitting at Beaumaris and similar conurbations. Birkenhead tried again in 1922. During the then period of austerity, under "the Geddes Axe", he appointed a Committee under Rigby Swift J⁶. The report was modest in its proposals, but even that was frustrated by the conservatism of local politicians who did not want to see courts closed; they were unconcerned with the effect elsewhere on the administration of justice out of London.
16. In the result there was over the last century a significant move of litigation, particularly commercial litigation, to London.

The establishment of specialist courts out of London

17. It was not until 1990 that serious steps were taken to reverse this trend and make proper provision for the trial of specialist civil work out of London. The starting point was the creation of a Chancery Court in Manchester in 1990. Since then we have opened specialist Chancery, Mercantile, Technology and Construction Courts and Administrative Courts in Birmingham, Bristol, Cardiff, Manchester and Leeds, with supervising High Court Judges for Chancery and Administrative work and other High Court Judges trying cases as they arise.
18. One consequence of these reforms was that in each of these cities the County Court and the High Court operate at the same Civil Justice Centre. They have the ability to use the

⁵ Law Journal, 13 August 1892.

⁶ Cmd 1831.

different judges who can sit in them flexibly and are able to transfer work between each other, as justice requires. London, however, is at present different. Save for one or two specialist courts such as the Mercantile Court which is based in the Royal Courts of Justice, the County Court, which also has specialist Chancery and Technology and Construction Court judges, hears cases near Regent's Park. This however is to change next spring as the County Court moves to the Royal Courts of Justice. London will then operate, though with some differences, in much the same way as Civil Justice Centres out of London so that judges can be used more flexibly and work transferred between them.

19. The structural reforms outside London from the 1990s put the courts there into the position where they could encourage local litigation to stay local. In addition to this, courts in London are being required to transfer all cases which relate to matters arising out of London to an appropriate local Civil Justice Centre, save where it can be demonstrated there are good reasons for the case to be managed or heard in London.

20. The way in which the Administrative Court now operates is illustrative of the transformation outside London. When the court's sittings were extended to the Centres in the English regions, it was largely for the parties to determine if they wished to issue the proceedings at one of these Centres or to seek to have the proceedings transferred to them. However, it became clear that some cases, which were unrelated in any way to London were being heard in London, despite the fact that an earlier hearing date was generally available at one of the other Centres. Parties had issued in London and the proceedings had not subsequently been transferred to a more appropriate local Civil Justice Centre. Once that was noted, something was done in order to improve the economical and efficient pursuit of justice. The Administrative Court in London now scrutinises all cases to see if they relate to issues that have arisen out of London; the Liaison Judges consider cases that appear to relate to issues out of London and, subject to the views of the parties, transfer them to a local court.

21. In addition the Administrative Court has made special provision for planning cases. These are now subject to strict time limits; judges with expertise have been designated at each of the courts out of London. High Court Judges will go specifically to hear major cases out of London as was done in Bristol and Leeds in July 2013.

Should we be satisfied with the present position?

22. Although significant steps have been taken, should we be satisfied with the present position or do we need to go further? You will not be surprised at my answer. We cannot be satisfied. We should continue to develop the provision of justice out of London. There are at least five reasons why we must do this:

(i) Providing justice out of London across the whole of the business of the High Court provides access to justice without the cost to the parties of coming to London.

(ii) It enables cases to be heard in the area in which the dispute arises; for example, when the decisions of a local authority or employer are challenged in a court, the public and the local media should have ready access.

(iii) The provision of justice is important to the local economy, as the money expended is retained locally and the profession locally is strengthened. It also encourages the growth of real rather than back offices.

(iv) As lawyers out of London charge less and the provision of court accommodation is cheaper, litigation costs are less.

(v) Within the jurisdiction of England and Wales, it is important to respect the separate governance of Wales, particularly as the laws of England and Wales are diverging in some areas, a trend which will continue, given the recently conferred power on the National Assembly of Wales to make primary legislation.

23. Let me then turn to further steps that should be considered

(1) Greater deployment out of London

24. Very significant changes have over the years been made to the way the High Court judiciary is deployed out of London. Apart from the judges who have administrative and supervisory roles, judges by and large only try specific cases or cases that have been grouped to be tried in a list.

25. The changes have meant that in so far as the trial of serious criminal cases and Administrative Court cases is concerned, the system is working much better. There remains, however, considerable room for improvement in civil cases. The problem there though lies

with the unmodernised IT that the courts have for civil cases. This significantly impairs the ability to identify the cases that should be tried by a High Court judge locally and to list such cases on a national basis so that more are heard out of London at fixed dates without impairing the flexible deployment of the judiciary.

26. Let me turn to look for a moment at the Divisional Court. It too aims to sit out of London on cases that arise out of London. This is facilitated by the Administrative Court's IT system which enables cases to be identified and by the readiness of a Lord Justice to go and hear a case or cases as part of their deployment to the Divisional Court. We have also been addressing similar issues in the Court of Appeal (Criminal Division) by holding more regular sittings out of London on significant cases; Lord Judge sat in Cardiff last year to hear two significant appeals and I am sitting to hear appeals in Nottingham and Liverpool next month. The fact that the major centres are now all within two hours or so of London greatly facilitates this.
27. Thus although much has been done, more remains to be done.

(2) The provision of a modern infrastructure

28. Deploying judges out of London on a more efficient basis will not, however, be enough on its own.
29. I have already touched on the lack of modern IT systems as an impediment to proper deployment. But the lack of modern IT has other significant drawbacks. Virtually everything done in court is still paper based. I welcome the decision of the Government to digitalise the criminal justice system; but the same will need to happen in civil, family and administrative justice.
30. Furthermore although many of the out of London centres have good modern courts, not all do. Last year we were unable to deploy a High Court Judge to hear a long case involving a local council in the major city to which the litigation related, as there was no available courtroom.
31. Modern IT and proper buildings requires investment based on long term decisions on how to provide the best overall service. In Norway when the Court Administration was considering amalgamating two small courts so that it could provide more judges of the

required expertise at one location, the politicians were prepared to make more money available so that a similar level of expertise could be provided at both locations. Even if the state here was not retrenching, England and Wales does not have the wealth of Norway; the funds are simply not available. There is therefore a need to recognise the advantages of providing a number of centres at which the whole of the business of the High Court, County Court, Family Court and Tribunals can be heard and making other adjustments. We are in the same position as virtually every country in that we must be realistic as to what is feasible, if there is to be proper long term investment.

32. Long term investment not only requires decisions on the way of providing the best overall service, but it requires security of funding. One example will suffice. Lord Woolf was assured that a modern IT system would be provided to support the procedural reforms in civil justice brought into effect in April 1999. Very significant investment was made in providing the wiring of the courts to this end; however, a very significant overrun in another part of the budget of the Ministry, meant that the funding had to be terminated just at the time the wiring neared completion; there was no money for anything more. More than ten years later, wi-fi has rendered the wiring largely unnecessary, but the software is, with one or two exceptions, what it was in 1999.
33. Although this aspect requires much more time than I can give it in the context of this lecture on justice out of London, it is a topic that has a central role in enabling progress to be made. On the premise that providing more justice out of London will provide better justice, will strengthen the profession out of London and benefit local economies, long term investment should be seen in this wider context.

(3) Procedural uniformity

34. Across all the jurisdictions, the procedural rules committees have by now largely reformed procedural law and are keeping it up to date. Until this was done, judges in localities had sought to devise their own solutions. It has not been easy to persuade some that local practices are no longer necessary or lawful. We all have a tendency to think that the solution we have devised is the best.
35. However, procedural uniformity is essential for a number of reasons. First, we are one jurisdiction in England and Wales; local practices are not consistent with the uniform application of the law. Second, local practices are a barrier to competition; there is no easier

way of making it difficult for a practitioner from another city or from another area of the law to act in a case than by creating local practices. Third, digitalisation is only practicable and affordable if practices are uniform.

36. The judiciary is doing all it can to bring this about; one illustration was the conference held by the Chancellor of the High Court earlier this month for all those who sit in Chancery to make clear the need for uniformity of practice and quality where ever a case is heard.

(4) The profession and the recoverability of costs

37. None of these further steps will bring about the proper provision of justice out of London unless the profession is structured and motivated to support the delivery of justice out of London.

38. There plainly is a problem. Two illustrations will suffice.

(i) 85% of advocates appearing in the Administrative Court in Cardiff do not practice there; the greater part of that 85% practices in London.

(ii) There seems to be an increase in the number of proceedings issued in the High Court in London or proceedings transferred to London where there is no apparent reason to do so. Such cases ought properly be issued and pursued in the High Court or County Court at one of the out of London civil justice centres.

39. It is not entirely clear why this is so given the transformation that has taken place in the Civil Justice Centres out of London. It may be that the transformation has not been sufficiently appreciated. There may, however, be issues in relation to the way in which the provision of advocacy in some areas of law is now increasingly concentrated in London and in relation to the recoverability of solicitors' costs.

Advocacy

40. I turn first to advocacy and to the figure I gave in respect of the Administrative Court in Cardiff. In updated, but as yet unpublished, research on the operation of the Administrative Court out of London recently undertaken by Sarah Nason of the University of Bangor, one of the conclusions reached is that the provision of public law service is fairly well developed in and around Manchester, especially as regards the public law bar⁷. Her research, and other

⁷ The original research was undertaken by S Nason and M Sunkin and is published in 76 Modern Law Review 223.

evidence, suggests that the bar at Manchester has succeeded in providing advocacy in the Administrative Court in a way that is in marked contrast to the figures for Cardiff.

41. Does this matter? In my view it does for a number of different reasons. First, a bar where advocacy in what have been traditionally regarded as specialist areas (such as administrative law) is provided predominantly by barristers based in London does not make for a bar that is cohesive. Secondly, the local availability of advocacy at what must be a lower cost than in London, is important for access to justice. Third for the reasons I have already given, it is important to the local economy. Fourth, this is a problem that, if not addressed will get worse; when the last advocate in a city with local expertise in a particular subject ceases to practice, it is very difficult to re-establish that expertise in that city.
42. Although this is without doubt a difficult problem to address, some steps can or should be taken. Some members of the bar with large practices in what are regarded as more specialist areas have helped develop local expertise; this may not be to the short-term advantage of their younger colleagues in their own chambers, but it is plainly in the long term interests of the bar. It is right to pay especial tribute to them. There is said to be a difficulty with marketing; clients look to the legal directories that seldom include the local advocate who has a developing practice in this work. But cannot this be overcome by locally based clients with an interest in the local economy (particularly local government authorities) nurturing local advocates by encouraging their use for smaller cases whilst they develop their practice and requesting leaders when instructed to use locally based junior advocates?
43. There are no doubt other steps that can be taken, but strengthening the position of local advocates is an essential step in the provision of local justice across the whole spectrum of the work of the High Court.

Differential hourly rates

44. Let me next turn to the position of solicitors whose costs in litigation are based on hourly billing. Questions have recently been raised about the continued use of hourly billing by law firms. Lord Neuberger, then Master of the Rolls, did so in one of his Jackson Implementation Lectures⁸. Sir Rupert Jackson had highlighted in his Preliminary Costs Report the fact that General Counsel wanted to move away from instructing lawyers on an hourly fee basis, and solicitors were doing this for transactional work, but this had

⁸ Lord Neuberger, MR, Keynote address, Association of Costs Lawyers' Annual Conference 2012 (14th Lecture in Implementation Programme) (11 May 2012) at paragraphs 14 – 25.

‘not proved practical for most litigation, because no-one knows where the case will go. No-one [he went on to say] has yet suggested any viable alternative to hourly billing in litigation.’⁹

Lord Neuberger explained the origins of hourly billing as a tool to increase efficiency, which then became the way of billing clients. He returned to the issue of hourly rates briefly last week in his Tom Sargant Memorial Lecture. He described the centrality of the hourly rate as malign; he said it was often wrong to give it a central role as it often confused costs with value. Others have also criticised the system, as it does not encourage efficiency; no doubt there should be a debate as to whether this is always an appropriate system, but I do not wish to enter that tonight. I will assume hourly billing will continue as the basis for charging costs in litigation.

45. What is of importance is that this method of charging produces differential hourly charging - work done in London is charged at a higher rate than the same work done outside London. Rates are higher in London because the method of fixing rates takes account of fee and non-fee earner salaries and overheads which are generally higher in London than elsewhere. They factor into the hourly rate. Hence the traditional Guideline Hourly Rates, which provide a descriptive picture of such rates across the country, and price lawyers at different rates depending on where they are situated and the work is done. No doubt when Mr Justice Foskett and the Civil Justice Council’s Costs Committee complete the new Guidelines, such differences will remain evident.
46. Given the economic rationale that lies at the heart of the expense of time, differential rates across England and Wales are inevitable. One positive aspect of this is that lower overheads outside London mean that work can be priced more competitively if a firm is based in Cardiff, Manchester, Leeds, Birmingham or any of our great towns and cities in-between. London has no monopoly on skill or experience, as any of our law firms and chambers based out of London will tell you with both pride and justification. In the age of the internet, of tele-conferences, Skype and Facetime there is no reason why a litigant should not or could not properly instruct a lawyer from outside London to work for them at a cost significantly less than in London but with equal quality experience in most fields.

⁹ Sir Rupert Jackson, *Review of Litigation Costs: Preliminary Report* (May 2009, Vol. I) at p 100.

47. Our professions enjoy the benefits of a technologically connected society and the increased competition in terms of skill and experience that that promotes should help to reduce litigation costs. Why go to the highest charging lawyer when you can go to one who is just as good but given the fact they are based in, say, Leeds, they can charge less. And of course such increased competition from a truly national market will affect London prices. To compete those prices will need to come down, which consequently will produce a benefit to society as a whole as it will increase the affordability of justice. It will also, no doubt, at some point in the future result in a reorganisation of the Guideline Hourly Rates.
48. There is a wider point to draw from this. Technological advances do not just mean that the nature of competition and pricing is likely to change. It also means that there is a real opportunity to reverse the recent historic trend that has seen London gain the largest concentration of the legal profession. Overheads in London are inevitably higher than elsewhere. Relocation outside London, with perhaps only the retention of a small branch office there with conference facilities may become the norm over the next decade or so. Justice outside London cannot but gain from this. And the spur to greater competition outside London would again serve to lower costs and render justice more affordable.

The recovery of costs

49. Before I turn to one serious impediment to this attractive prospect of reducing the cost of litigation, I must say something of London's excellence as a global legal centre for international and city disputes. The issue in relation to domestic out of London work is not relevant to the rightful pre-eminence of London on the international stage, or to London as a centre of quality, efficiency and expertise in international work. What I wish to say relates solely to domestic litigation which is brought to London instead of being conducted through courts outside London.
50. The serious impediment in reducing the costs of domestic litigation to which I now turn is reflected in a trend towards the use of London lawyers and the courts in London to do work that can properly be carried out by lawyers based outside London in courts based outside London. The impetus for this may well be the fact that higher rates can be charged and, in respect of litigation, recovered from the paying party in the event that the London firm's client is ultimately successful.

51. However, in so far as recoverability of costs is concerned the position remains, subject to reasoned argument to the contrary, that which the Court of Appeal set out in *Truscott v Truscott & Others; Wraith v Sheffield Forgemasters*¹⁰. The question to be asked is whether it was objectively reasonable for London solicitors to be instructed. Convenience is of limited value relevant in assessing that question. The fact that higher fees may potentially be recoverable is no factor at all. Two points that Kennedy LJ emphasised in his judgment, when he endorsed Potter J's first instance view that it was of little relevance that London solicitors were instructed rather than Leeds or Sheffield solicitors because that was the practice of the instructing party, the Trade Union involved in the case. It may have been convenient to use the same solicitors for all work, but that would not automatically mean that London rates were recoverable. Where Leeds or Sheffield solicitors could have done the work, those were the rates that ought to be recoverable¹¹. Where higher costs were concerned, Kennedy LJ simply made the point that parties, in that case Trade Unions and insurers, were under a duty to keep the costs of litigation down. A consequence of which was that they either instruct local solicitors, or expect to recover only local rates if they instruct London solicitors¹².
52. Kennedy LJ's judgment sets out a series of factors that can be taken into account of in determining whether it was appropriate to instruct local or London solicitors. Other cases have elaborated and added to them.
53. However, it is important to note that the legal services market has undergone a transformation. There are in fact only a few types of case that truly require the party to employ a firm that is based in London for out of London work and which charges rates that are greater than rates which are charged elsewhere by firms that can do the work equally well and, given modern communications, as conveniently. Of course a party is entitled to employ any firm it wishes in any city, but if the party does instruct a London firm for out of London work, it should do so in the knowledge that in the event of success, it will be necessary to explain to the court at the costs budgeting stage or on any assessment why it was reasonable to use a London firm for such a dispute. The differences in costs are now huge.
54. In a Divisional Court case relating to Wales on which I sat last October in Cardiff¹³, there were two interested parties – the Coal Authority and Welsh local government authorities.

¹⁰ [1998] 1 WLR 132.

¹¹ See pages 142-3.

¹² Ibid.

¹³ *R (CE) v Bridgend County Borough Council & Others*, transcript 12 October 2012.

The Coal Authority had instructed the Sheffield office of a national law firm; it sought recovery on the basis of the following hourly rates:

Partner £198.12, solicitor grade C, £170.69; trainee £96.52.

The Welsh local government authorities had instructed the London office of the same firm: it sought recovery on the basis of the following rates:

Partner £510; solicitor grade C £221; trainee £148.75.

As we observed of the two offices:

“We have seen their work and the work is of exactly the same standard; indeed the Sheffield one can be said to be a little better.”

55. We held that it was not reasonable for the Welsh local government authorities to have instructed London solicitors.
56. But the advent of the national firm, the huge differences in rates and the increased emphasis on proportionality the Jackson reforms have introduced into the conduct of litigation are all matters that have arisen since the judgment of Kennedy LJ in *Truscott*. It may be that this will necessitate a reconsideration of the factors that go into an assessment of whether it was reasonable to instruct London solicitors in cases where the dispute arises out of London. Kennedy LJ may have noted the duty to avoid higher costs. It will be interesting to see the view that the Courts take of that duty now. Will it be seen as one that carries with it the requirement that instructing parties have to consider how best to ensure that costs are proportionate to the claim? Will this go beyond simply avoiding higher costs than would otherwise be incurred?
57. If proportionality does have this effect, in addition to its wider effects on costs through budgeting and costs assessment, it may well serve to increase the impetus for clients in cases arising out of London to use expert local firms or, if a national firm is instructed, to ask the question of their solicitors why the work, or the bulk of it, was not done in an office out of London and charged accordingly. The location of an office in London cannot in such litigation justify London rates if the work is or can be done at an office where the costs are materially less.

58. There will always be certain types of work that require the use of a solicitor based in a certain part of the country. In the 19th Century, as the career of the Earl of Birkenhead illustrates, the great port cities had specialist-shipping lawyers. You would not have gone elsewhere if you were based in Liverpool, and needed shipping advice; expert solicitors and counsel such as F.E. Smith were at hand. With the historic decline of our ports and shipyards there was a degree of inevitability that the shipping law firms would end up based in London. The firms are situated where the work is. London remains one of the world's financial and commercial centres. It is inevitable that those law firms specialising in such work will locate there. Nothing should disturb that or question the reasonableness of using them for such work.
59. However there is a vast amount of litigation, including what has traditionally been seen as specialist such as much traditional chancery work and administrative court work that can and should properly be litigated outside London by local firms where that work arises out of London. The courts will do all they can to encourage that in the ways I have described.

Conclusion

60. The issues relating to the places at which justice is provided has a long history. Much has been done to ensure that justice is provided at several places. However, there is no doubt that more of what is only provided at one fixed place, namely London, should also be provided at other places, namely the centres to which I have referred. I have set out my view of what must be done to achieve this. There is no doubt much else. The benefits will be a start to addressing parts of the many issues that face our system for the administration of justice. We will now have to work hard to ensure that those benefits are realised and that equal justice is available and delivered as effectively and efficiently as possible from several fixed places across England and Wales.

A postscript:

This is a first for a lecture in this Hall, as Mr Joshua Rozenberg has agreed to record proceedings. Recording what judges say in an extra-curricular setting is a valuable way of ensuring that what we say is directly communicated to the public.

Next week, on Monday, televising of the Court of Appeal in the Royal Courts of Justice is expected to begin. I and my fellow judges welcome the recording of the proceedings. We believe it will help assist understanding of the way in which the courts work and enable the

public to see the way justice is delivered in an even more open and transparent manner than at present. I look forward to people to seeing the court as it actually works, just as this recording will enable many more than can be present tonight to hear this lecture.

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