



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HON. THE LORD BURNETT OF MALDON

ENGLISH LAW ON THE WORLD STAGE

LONDON INTERNATIONAL DISPUTES WEEK

8 MAY 2019

1. It is a pleasure to join you this morning at the Flagship Conference for the inaugural London International Disputes Week. The programme, range and quality of speakers is truly impressive. I am sure they will guarantee that the conference and the week, as a whole, is a great success.
2. We have just heard from Jasmin Whitbread about how London is a global hub of legal expertise. There is no objective observer who would doubt that. Commercial law in all its aspects finds a wealth of expert practitioners in London and English practitioners are found in almost every part of the world. The focus of this conference is on international dispute resolution but only a tiny proportion of commercial and financial transactions governed by English law or English jurisdiction clauses find themselves the subject of dispute. It is natural enough for commercial activity within this jurisdiction, or closely connected to it, to be governed by English law and subject to the jurisdiction of the English courts. But much of the work of the legal profession, arbitrators and the Business and Property Courts comes from parties who may be considered volunteers. Those who have chosen English law and English jurisdiction when they might have settled for the law and jurisdiction of the country in which they were operating or any of the available international disputes resolution venues. There are reasons why these

volunteers choose English law and the jurisdiction of the English courts. The common law is both accessible and flexible. It is predictable and consistent. It can react swiftly to new developments in the commercial and financial world. For example, at a time when vast numbers of financial contracts are being automated the common law will be able to adjudicate on the inevitable disputes without the constraint of operating within a fixed code. Our legal profession is of exceptionally high calibre and is known to be honest and independent. And our judiciary enjoys a high reputation. It is fiercely independent. It is incorruptible and it is recognised as attracting to its ranks expert practitioners whose standing and expertise are widely respected in the commercial world. Between us, the legal profession and the judiciary provide a service to international business which leads large numbers of them to choose to come to London.

3. In this environment we all must recognise that we are providing a service and operate in an international market for legal services. There are many other jurisdictions, both common law and civilian, that are well able to satisfy the needs of the international commercial community. We are far from unique in being able to offer a first-rate service. The overall service provided by our lawyers, our arbitrators and our courts must remain attractive if London is to maintain its position.
4. To some degree, there is uncertainty. Others will be talking this week about the impact of Brexit on London as a venue for dispute resolution. Uncertainty itself has a damaging impact on much commercial activity but once uncertainty recedes so too, I expect, will this concern.

5. But there are also more pressing challenges from technology and from competition from other jurisdictions. Competition is healthy in almost all environments. It keeps everyone on their toes. It is the enemy of complacency. It forces all constantly to be looking at what they do, how they do it and to anticipate future developments. Let me say at the outset that I have every confidence that we will meet those challenges, that we will maintain our competitive edge as well as overcome any Brexit-related uncertainty.

6. What leads me to this conclusion? The answer lies in the fundamental features of English law, the skills of English lawyers, the integrity and expertise of the judiciary and its willingness to innovate. Let me take each in turn.

7. First, the fundamentals. There is nothing more fundamental than a commitment to the rule of law. Statutory recognition of the rule of law in England and Wales had to wait until the Constitutional Reform Act 2005 but it has been a deeply entrenched feature of our constitutional settlement since at least the 17th century. Nobody doubts it. It manifests itself in a strong, expert and fiercely independent legal profession; and an expert and fiercely independent and incorruptible judiciary within an accessible civil justice system. Orders of the courts are obeyed or, if need be, enforced. Judgments are enforced. Neither the executive nor any powerful interests, commercial or otherwise, get special treatment in our courts.

8. We cannot underestimate the importance of our national commitment to the rule of law. It provides the basis on which businesses, whether small, medium or international, can have confidence that their rights are capable of vindication and enforcement. That confidence underpins the health of markets, just as it underpins the health of society generally – and it underpins English law on the international stage.

9. The rule of law as understood in the United Kingdom encompasses the ability of the judges, through the development of the common law, to adapt and fashion the law to reflect changing circumstances subject, of course, to the supremacy of Parliament. That has real benefits of the sort I have already touched on. It provides both stability and predictability but also pragmatism and the ability to develop to meet new situations and changing market conditions.
10. It is stable and predictable because it is based on principles that have been honed over time. Let me focus on commercial law, although the points are generally applicable. This stability provides certainty for businesses, who can readily understand the law and the approach the courts will take to its interpretation. It is a stability that has developed since the time of Lord Mansfield with an understanding and appreciation of commercial practice. Our business lawyers and judges have, through decades of experience, immersed themselves in the workings of the businesses in question. They understand how they work and are sensitive to the commercial realities. But it is never static and can respond to changing circumstances. The common law is, in this sense, the greatest of legal living instruments.
11. For the common law to maintain its strength as a living instrument, evolving to meet the needs of modern businesses – for example smart contracts and digital ledger technology – it rests on two other aspects of our legal system. The first of those is the skills of the legal profession, which CityUK described in 2016 as underpinning London’s reputation as a *‘global centre for the provision of international legal services and dispute resolution.’*¹ And the same is true today.²

¹ As reported by CityUK’s Legal Services Report 2016.

² IRN Research, UK Legal Services Market Report 2018 <<https://www.newsanyway.com/2018/02/15/uk-legal-services-market-report-2018-8th-edition/>>

12. That London, and the Business and Property Courts, including the Commercial Court, continue to be a significant forum of choice for international business and commercial disputes underscores the reputation of our legal profession. For example, the survey of cases before the Commercial Court in 2017-2018 published recently bears this out. It highlighted how 70% of the court's business comes from international cases. That is those cases where no party was UK-based.³ Many cases in the Business and Property Courts generally are in the same position as are many arbitrations.
13. Contentious work is, of course, only part of the story. Business relationships arising from advisory work both in London, and in the global offices of law firms as well as barrister's chambers, are just as important a marker of the reach and influence of English law. It underscores why, for instance, English contract law with its aim, as Lord Steyn famously said, of seeking to give effect to the reasonable expectations of honest men and women,⁴ remains so widespread a law of choice for commercial contracts across the world.
14. The second is the acknowledged expertise and standing the judiciary. One reason why the judiciary maintains a high reputation internationally is that it is drawn from the senior ranks of the legal profession. Those who exercise the various commercial jurisdictions in the Business and Property Courts are known to the international commercial legal community who have confidence in them. It is well-known that all vacancies in the High Court have not been filled in recent years; and the reasons are equally well-known. The Lord Chancellor and I share a determination to resolve the issues identified by the Senior

³ Commercial Court Annual Report 2017-2018 at 9 <<https://www.judiciary.uk/wp-content/uploads/2019/02/6.5310-Commercial-Courts-Annual-Report-WEBSITE.pdf>>.

⁴ *First Energy UK Ltd v Hungarian International Bank Ltd* [1993] 2 Lloyd's Rep 194 at 196; Lord Steyn, *Contract Law: Fulfilling the Reasonable Expectations of Honest Men*, (1997) 113 LQR 433, 440.

Salaries Review Board on which we have been working very closely. But on one thing there is agreement: the bar for appointment will not be lowered.

15. Judicial expertise is complemented by another feature of English law. It is one that underpins why the English courts have a global reputation and are the forum of choice for so many. It is, as Lord Justice Gross has put it, that our courts do not provide a 'home advantage' to litigants.⁵ If you come to our courts you are guaranteed a fair trial. English companies do not gain any advantage from being so. The State, if it is a party, does not gain any advantage from its position. Equality before the law is a reality. The judiciary is known and respected for embodying the words of the judicial oath, to *'do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will'*.
16. There is more to it than not providing a 'home advantage'. Integrity and moral courage are equally hallmarks of our judiciary. Everyone who litigates in our jurisdiction may do so with complete confidence that there is no corruption within our courts and judiciary. They come with complete confidence that the judiciary will make their decisions based on the law and the facts, and not influenced by any external pressure. They come confident that justice will be done and seen to be done in open court. That justice is not arbitrary; and that there is an effective appellate system to correct error and to develop the common law when necessary.
17. Expertise and integrity are complemented by a third factor. A willingness to innovate. By this I do not mean to return to the common law's willingness to develop to meet modern circumstances. The way in which we operate our courts is subject to constant

⁵ Sir Peter Gross, LCLCBA Lecture 2019 <<https://www.judiciary.uk/wp-content/uploads/2019/01/lclcba-lecture-jan-2019.pdf>>.

review by the judiciary in an effort to improve the service we provide to court users. Examples of that in the sphere of commercial dispute resolution include the fundamental review of disclosure carried out under the supervision of Lady Justice Gloster and the introduction of the Financial List following the work of a group chaired by Lord Justice Hamblen.

18. Our courts are continuing to innovate to ensure their procedures remain at the cutting edge. We have recently introduced new forms of procedure in our Business and Property Courts to enable parties to tailor the proceedings more closely to their needs – enabling them, if they wish, to have a shorter or a more flexible form of process. We have also introduced a market test case procedure, which in the evolving areas of smart contracts, provides an ideal forum for guidance via precedent to be given even in the absence of a dispute between parties.
19. The legal profession cannot wait for a new type of dispute to arise before thinking about the implications of developments going on elsewhere. LawTech is with us. The UK's LawTech Delivery Panel is working on the legal issues that arise. There is judicial representation on that panel. Its work will help the development of an important new area of activity in financial services, enhance the confidence of those providing investment and place London in pole position for legal work.
20. At the same time the use of technology in our courts is gathering pace.
21. Effective e-filing is now standard in the Business and Property Courts. Predictive analytics or coding has been embraced by our courts as a means by which litigants can carry out the disclosure process more accurately, more speedily and at much less cost than previously. Video-hearings are being piloted in civil proceedings. An online civil claims court is evolving.

22. Technological innovation does not stop there. Earlier this year I announced the creation of an Artificial Intelligence Advisory Panel. It is to advise me on the potential uses of AI within the courts. It is chaired by Professor Susskind, who will be speaking this afternoon. There are few, if any, people better qualified than he is in this area. The possibilities for the use of AI are many, whether to help train judges, to assist settlement or to act as an aid to decision-making. Careful thought will be given to assessing its utility. The point, though, is that such thought is being given to this area, one that has the potential to transform the delivery of justice. Again, English law does not shy away from innovation, but examines it carefully to see how it can gain from it.

23. When we take together all these factors – our commitment to the rule of law; the common law’s stability, predictability and flexibility; the strength of our legal profession; judicial expertise and integrity; and our willingness and ability to embrace innovation in its various forms; I have little doubt that English law’s position on the world stage will be secure in the years to come. Challenges, competition and uncertainty may come to test us. But the strength of the foundations will enable those tests to be met. If between us we meet the expectations of the international marketplace and demonstrate the advantages of using English law and English jurisdiction clauses, the vitality of London as a leading centre of international dispute resolution will be secure. That is in the national interest in contributing to invisible exports and it represents one of the many ways in which a successful legal sector contributes to the well-being of the nation.

Thank you.