

London International Disputes Week

Keynote Address, 11 May 2022

I am very pleased to have been invited to address you this morning. In my remarks, I am going to consider some of the factors which underpin London's position as a leading centre of international legal services. In particular, I would like to focus on the impact of two factors on our economic performance in that field: first, international confidence in this country's lawyers and judiciary, and secondly, this country's reputation for respecting the rule of law. I am going to suggest that those factors are crucial to our success in the international market in legal services and in attracting international investment, and thus to our prosperity as a nation. I'm also going to suggest that the City, and you in particular as lawyers involved in the provision of international legal services, have a stake in the quality and independence of the judiciary and the legal profession, and an equally important stake in the reputation of our country for respecting the rule of law.

The UK has been a leading centre of commerce for centuries. Today, notwithstanding the development of major commercial centres in many other countries, London remains one of the world's leading financial centres, ranked second by revenue only to New York, according to the Global Financial Centres Index published a few months ago.¹ Two other British cities also feature in the world's top 65: Edinburgh and Glasgow. It is no coincidence that the UK is also one of the world's largest centres for legal services, ranked second by revenue only to the US. According to two studies

¹ Source: The Global Financial Centres Index, published in September 2021.

published last year, it is the world's leading centre for international dispute resolution by litigation and, equally with Singapore, by arbitration.²

That situation reflects confidence in English law and in our legal profession, our arbitration system and our judiciary. A survey in 2010 found that 40 per cent of the world's international commercial arbitrations used English law: more than twice as many as used the next most popular legal system, the law of New York.³ Other studies have found that English law is particularly important in relation to international swaps and derivatives trading, global commodities trading, the maritime sector, and global mergers and acquisitions.⁴ The clearest evidence of confidence in the quality and the independence of justice in the UK is that so many foreign companies and foreign governments choose to write their contracts in English law and to resolve their disputes in the UK. I have found that this is not widely known outside legal circles. But in 2020, and in the first nine months of 2021, in over a third of the cases issued in the Commercial Court all the parties were registered outside the UK.⁵

But the UK faces serious challenges in maintaining its present position. International litigation and arbitration is geographically mobile, as indeed is much of our domestic commercial litigation and arbitration. There is growing competition to attract international litigation and arbitration. Some countries, such as the US, have long

² Source: City of London, *The Global City*, published in March 2021. This is also the source of much of the other statistical information relied on in this lecture. The 2021 Queen Mary University of London/White & Case International Arbitration Survey confirmed that London remained the most popular seat of arbitration (equal, for the first time, with Singapore): www.arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMULInternational-Arbitration-Survey-2021_19_WEB.pdf

³ See White & Case LLP, *International Arbitration Survey: Choices in International Arbitration* (2010).

⁴ See Oxera, *Economic Value of English Law* (2021): <https://legaluk.org/wp-content/uploads/2021/09/The-value-of-English-law-to-the-UK-economy.pdf>.

⁵ https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F1037781%2FBPC_Main_Tables ods&wdOrigin=BROWSELINK.

had commercial courts and arbitration centres which have been competing with London for business. In addition, we have recently seen new commercial courts being established around the world. They include courts operating in English, applying the common law, and staffed by UK and other common law judges of the highest calibre: essentially, a simulacrum of UK commercial courts, but more generously funded and offering more attractive salaries, often as part of a national strategy of economic diversification.

Abu Dhabi, for example, has established the Abu Dhabi Global Markets Courts, whose President is a retired British judge, and whose other judges are drawn from the UK and other common law jurisdictions. The United Arab Emirates have established the Dubai International Financial Centre Courts, whose President is a retired British judge, and whose other judges are drawn from the UK, Australia and the UAE itself. Kazakhstan has established the Almaty International Financial Court, whose Chief Justice and other judges are all drawn from the UK. The Singapore International Commercial Court includes a large number of judges from the UK, as well as judges from other common law jurisdiction. Qatar has established its International Court and Dispute Resolution Centre, whose President is a retired British judge, and whose other judges come from the UK and other common law jurisdictions.

In the Member States of the European Union, English language commercial courts have also been established recently in Stuttgart, Mannheim, Frankfurt, Hamburg, Amsterdam and even Paris. They can take advantage of the UK's loss of membership of the Lugano Convention: membership which we have been unable to regain since we left the EU as a consequence of the Commission's blocking our application.

For the present, however, the UK retains its leading role as a centre for legal services. That is reflected in the economic significance of the legal sector. There are, for example, about 200 international law firms operating in the City, including all of the world's top 50 by revenue. Five of the world's top 15 law firms have their main base in the UK. Their annual turnover, and their contribution to UK exports, are very substantial: the largest firms have revenues of around £2 billion each. Legal activities also account for the employment of about 365,000 people across the UK - two-thirds of them outside London. These figures indicate the importance of the legal sector to our national economy, and also the weight which ought to be attached to the views of that sector about developments in the UK which affect its competitiveness at the international level.

One crucial aspect of that environment is a well-functioning and well-respected legal system. Those who can choose the law which will govern their contracts and the jurisdiction in which their disputes are resolved, and those who can choose the country where they will invest or carry on business, need certainty that the contracts which they enter into will be interpreted and enforced in a predictable way. They need certainty that the regulatory framework which governs their trade will be applied in a lawful and non-abusive manner. Above all, they need certainty that they can, if need be, have access to high quality legal advice and to fair and independent courts which will uphold the law without protectionism, corruption or political pressure. They need certainty, in particular, that the final court of appeal is of the highest quality and is independent of government influence. That is not to ignore the fact that in commerce the parties often prefer arbitration to litigation. But arbitration itself relies on the availability of the courts

to enforce arbitration agreements, to exercise a variety of powers in support of arbitration proceedings, and to enforce arbitral awards. Ultimately, arbitration also depends on confidence in the accessibility, integrity, quality and independence of the legal profession and of the judiciary.

Another important aspect of the environment is trust in public institutions more widely. Numerous studies have found that trust in public institutions is associated with higher rates of investment, regulatory compliance, tax collection and economic growth, and that a lack of trust is economically destructive. That was reflected in the emphasis placed by the International Monetary Fund and the European Central Bank, during the eurozone crisis of 2010–15, on the need for some member states to boost confidence in the competence and integrity of their institutions, so as to counter high levels of tax evasion, weak private sector investment, and low growth. By contrast, this country's adherence to the rule of law - by which I mean that all in society, whether those in authority or those under their authority, are equally subject to the law of the land administered by independent courts – has been vital to maintaining confidence in the UK as a rule-governed country.

It is because we have historically performed well in all these respects that we have achieved the position we enjoy in relation to international legal services. It is not simply a matter of our law. After all, almost a third of the world's jurisdictions are governed by common-law systems; and, as I have explained, even countries outside the common law world have established commercial courts using English law. A critical factor has been the level of confidence in the quality, integrity and independence of the judiciary and the legal profession in the UK. It is no accident that the new international

courts have recruited heavily from this country, and from other common law jurisdictions whose judiciaries enjoy comparable reputations. And that confidence in our judiciary and our lawyers, by attracting legal work to the UK, also enables our commercial law to continue to develop. It is because the UK remains a leading centre of international commerce, particularly in markets such as commodities, financial derivatives, shipping and insurance, that the courts continue to be nourished by a constant stream of innovative cases, enabling the law to develop.

Let me relate this to the work of the Supreme Court. A high proportion of the judgments we deliver are concerned with international commerce and international affairs more widely. Many of the commercial cases which the Supreme Court hears are brought by foreign corporations and foreign governments which choose to litigate in this country. One recent case of that kind concerned a dispute over who should be recognised as the President of Venezuela and therefore entitled to control the country's gold reserves held in the Bank of England and Deutsche Bank:⁶ a case which illustrated the level of international confidence in the UK as a destination for investment. Another case currently before the court concerns a dispute between the governments of Russia and the Ukraine over the enforceability of a \$3 billion debt.⁷ The two governments agreed that their contract would be governed by English law and that the English courts would have jurisdiction, demonstrating their confidence in our legal system and our courts. Other recent cases of an international character have concerned cross-border

⁶ *Maduro Board of the Central Bank of Venezuela v Guaidó Board of the Central Bank of Venezuela* [2021] UKSC 57.

⁷ *Law Debenture Trust Corp Plc v Ukraine*, heard 11 Nov 2021, on appeal from [2018] EWCA Civ 2026; [2019] Lloyd's Rep Plus 54; [2019] QB 1121.

taxation,⁸ international shipping,⁹ the responsibility of multinational companies for wrongs committed by their overseas subsidiaries,¹⁰ and the construction and enforcement of international commercial agreements, including arbitration agreements.¹¹

The Justices of the Supreme Court also sit as the Judicial Committee of the Privy Council, which is the final court of appeal for some Commonwealth countries and for the UK's overseas territories and crown dependencies. Many of those jurisdictions are themselves important financial centres, and provide us with international disputes concerning commercial law, company law and insolvency.¹²

Taking the Supreme Court and the Privy Council together, the judges of the Supreme Court sit as the final court of appeal for 12 out of the world's 100 leading financial centres, deciding legal disputes from around the world and developing the law in a way which influences the common law in many jurisdictions.

As I have explained, cases such as these come to the Supreme Court and the Privy Council because of a high level of international confidence in our legal system, our lawyers and our judiciary. Looking to the future, in the increasingly competitive environment which I have described, it is important for the country's economy and its place in the world that we maintain our reputation as a centre of legal excellence and a

⁸ *Test Claimants in the Franked Investment Income Group Litigation v HMRC* [2020] UKSC 47; [2022] AC 1.

⁹ *Evergreen Marine (UK) Ltd v Nautical Challenge Ltd (The Ever Smart)* [2021] UKSC 6; [2021] 1 Lloyd's Rep 299; [2021] 1 WLR 1436; *Alize 1954 v Allianz Elementar Versicherungs AG (The CMA CGM Libra)* [2021] UKSC 51; [2021] 2 Lloyd's Rep 613.

¹⁰ *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3; [2021] BLR 237; [2021] Bus LR 332; [2021] 1 WLR 1294; *Lloyd v Google LLC* [2021] UKSC 50; [2021] 3 WLR 1268.

¹¹ *Triple Point Technology Inc v PTT Public Co Ltd* [2021] UKSC 29; [2021] BLR 555; [2021] AC 1148; *Kabab-Ji SAL (Lebanon) v Kout Food Group (Kuwait)* [2021] UKSC 48; [2022] 1 Lloyd's Rep 24; [2021] Bus LR 1717.

¹² See, for example, *Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd* [2021] UKPC 22, *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, and *ITG Ltd v Fort Trustees Ltd*, heard 15–17 June 2021.

global exemplar of judicial independence. This is particularly important at a time when the country has to establish its place in the world outside the EU, and to achieve the economic recovery required after the pandemic.

That is recognised by the Government's Global Britain strategy, which is based on the idea that the UK's place in the world reflects both its role in international trade and investment, and its commitment to the rule of law and to the rules-based international order.¹³ As the Government has recognised, these matters go together. Our economic performance, as well as the influence which this country exercises and the respect in which it is held, depend in no small measure upon confidence in our adherence to the rule of law in our domestic affairs and on our reliability in our dealings with other countries as a partner who will respect international law. It is to a significant degree because of the respect in which our institutions are held internationally that we are able to punch above our weight in international commerce and in international dispute resolution, when compared with larger economies.

Drawing these threads together, it seems to me that international confidence in the rule of law in this country is a major factor in our attractiveness as a destination for investment, for international commerce and for international dispute resolution. That confidence requires, among other things, that the courts can decide independently any cases that are brought before them, including cases involving the Government. It is the courts' ability to do that which most clearly differentiates our legal system from those of many other countries in the world, and encourages their citizens to invest in this country and to do business here. They can be confident, as can the UK's own citizens,

¹³ www.gov.uk/government/collections/global-britain-delivering-on-our-international-ambition

that in this country any unlawful interferences with their rights, whether by private enterprises or by public authorities, can be challenged in courts which are truly independent, and whose decisions will be respected and given effect.

Let me conclude by saying that the rule of law is not something that can be taken for granted. The law imposes constraints. Judicial decisions enforcing the law can be controversial. As a result, there is always a risk that lawyers and judges may be criticised for doing their jobs, and that the independence of the judiciary may be questioned or undermined. But, as I have explained, an independent legal profession, judicial independence and the rule of law are immensely valuable assets of our society, and, in addition to their importance to our democracy, also form a vital foundation for our prosperity and our international reputation. Reputations take a long time to be established but can be lost very quickly. Judicial independence and the rule of law may seem arcane and irrelevant to most people's lives. But the rule of law matters to us all.