



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RT HON. THE LORD THOMAS OF CWMGIEDD

DINNER FOR HER MAJESTY'S JUDGES

MANSION HOUSE

5 JULY 2017

1. My Lord Mayor, Ladies and Gentlemen. It is a pleasure once again to thank you, My Lord Mayor, on behalf of the judiciary of England and Wales and your other guests for your magnificent hospitality. It is stupendous.
2. But much more importantly, may I say that the judiciary particularly appreciated the strong support given by you personally in Guildhall last November and by the City on many other occasions when the judiciary was subject to an unprecedented and wholly unjustified attack for carrying out its duty.
3. That strong support is reflective of the deep and long established relationship between the City and the judiciary. It is symbolised in many ways, particularly the swearing in each year of the new Lord Mayor, this dinner, the rendering of the Quit Rents and so much more. Such occasions are emblematic of the pragmatic and symbiotic relationship; one that understands that successful business and commerce, as well as the recognition of basic rights, depends upon a robust, impartial and independent judiciary.
4. That relationship has achieved so much over hundreds of years. For example, we see this relationship reflected in a Recorder of London appointed in

February 1686; in the following year, he courageously held at the Old Bailey that King James II could not use the royal prerogative to dispense with the provisions of a statute. For that steadfastness, he was promptly removed from office by that King. Within two years, the Glorious Revolution resulted in the former Recorder being made Chief Justice, as Sir John Holt.

- In 1703 he tried at Guildhall, one of the cases that is the foundation of our modern commercial law as it systematised and modernised the law of bailment.
- In 1706, after another trial at Guildhall, he declared that there was no such thing as a slave by the law of England.
- When a prisoner was brought in irons to be tried before him in Westminster Hall in 1696 for High Treason, Holt said:

I should like to know why the prisoner is brought in in irons. If fetters were necessary for his safety before, there is no danger of escape or rescue from here. Let them be instantly knocked off. When prisoners are tried, they should stand at their ease.

The reply from the officer in charge of the prisoner was as helpful as we often we get today:

My lord, we have no instruments here to do it just now.

5. Then, as now, as a country, we should be so glad to have a judge who shows an absolute commitment to justice, a deep understanding of humanity, and a quiet determination to establish the truth and to do right to all persons irrespective of their position in society or of whatever injustices may have been done to them.
6. We are also today ensuring that the young generation whose diversity characterises the success of our state learns that our institutions stand for justice, for tolerance and diversity, for ethical conduct and for a global

outlook; we are encouraging them to participate in the relationship between the judiciary and the City which recognises the centrality of law to the humanity of all, to our prosperity and to our harmony as a society.

7. However, we also now recognise that law itself is a business – something which as judges we leave behind upon taking up our office – but which is carried on so successfully by our expert solicitors, barristers, and arbitrators and makes a signal contribution to our national income. Only last year CityUK reported that legal services contributed £25.7 billion to the national economy.¹ Just as the common law, developed over the centuries by our greatest judges, is one of our greatest exports, our legal profession – LegalUK – and our courts and their ability to deliver timely, efficient and effective justice are our greatest means to maintain its worldwide reputation and prominence.

8. The strength of the relationship between the judiciary and the City is fundamental to maintaining the excellence of English law. It is also a fundamental means by which we can maintain the excellence of our courts and arbitration centres, as they ultimately depend upon the strength and reputation of our judges and arbitrators. I am sure that our relationship will continue to be as constructive in the future as it has been historically. You have recently agreed to provide enormous support for the development of the Standing International Forum of Commercial Courts which brought 22 different jurisdictions to its first meeting in London two months ago, symbolising our determination to provide leadership for the future. The continued relationship between the judiciary and the City will benefit our whole state, not only London, because Legal UK, as its name implies, contributes to the economy throughout the UK.

¹ The CityUK, UK Legal Services Report (2016) at 5.

9. However, we cannot at this time think of resting on our past achievements. Hope for the future is not enough in the very, very difficult and uncertain times we face. In such times, as the Governor of the Bank of England said here three weeks ago, our commitment must be a commitment to promote the common good. As institutions independent of the political fray, we have a clear duty to do what is necessary for that common good. Although as a judge, I must avoid political controversy, the promotion of the common good points unequivocally to two further matters about which I must speak.
10. First, Brexit. I know that all here know that Brexit does not affect the quality or certainty of English law, or the standing of our courts or London's arbitration centres. They remain as before June last year. The perception of some may, however, be that this is not the case. Such a perception is fuelled by our competitors for their own advantage. Rumour may insinuate that English law is no longer certain; that London is no longer a safe forum to bring disputes. Such rumours are wrong and unequivocally so.
11. Rumour must however be countered if we are to ensure that the lie repeated does not – as it must not – be taken as truth. English contract and commercial law is unaffected by Brexit; it never has been within the scope of EU law. The Arbitration Act 1996 is equally unaffected. Enforcement of arbitral awards will continue to be subject to the New York Convention, and more clearly so post-Brexit.
12. London will continue to be a leading arbitration centre. Our legal profession will continue to be expert and world-respected. Our judges will continue to be drawn from the highest ranks of that legal profession. They will continue to be renowned for their expertise, impartiality and integrity. All the key features that made London into the leading centre for dispute resolution will continue unchanged.

13. All of this must be clearly and resolutely said by all of us. The judiciary, the UK legal profession and the City are doing all we can. Last month we jointly produced a booklet – *English Law, UK Courts and UK Legal Services after Brexit: the view beyond 2019* – to set out that position in unequivocal terms. We are delighted that our new Lord Chancellor has so quickly joined us in this endeavour as exemplified by the support he gave last night at the launch of the Business and Property Courts.
14. But more than making the UK's position clear, the common good urgently requires clarification of a number of issues in relation to Brexit. First, on applicable law, certainty is needed. It can be secured through the incorporation of the provisions of Rome I and II into English law in the ways of which I spoke in the Scarman Lecture last week. Second, choice of jurisdiction clauses should be respected. There is the strongest case that this should be supported through the United Kingdom acceding as a contracting State to The Hague Convention on Choice of Court Agreements. Third, it is essential for the UK that we work with the EU to ensure that there is a simple and flexible regime for the mutual recognition of enforcement of judgments for the future.
15. Many months have elapsed since these points were made clear by the judiciary and the legal profession to Her Majesty's Government. There is no reason for further delay. The common good and the national interest, demands no less than the clearest commitment by Her Majesty's Government on these issues. It is an essential support for the continued position and promotion of our laws, our courts, our judges, our arbitration centres and our legal profession and, of course, the major contribution they make to national prosperity, both in their own right and in the essential support of the financial services industry.

16. Much remains to be done and done with true despatch. For example, Last Thursday, 29 June 2017, position papers on the interim arrangements relating to applicable law, jurisdiction and enforcement of judgments were published by the EU; it is not necessary for me to say how it is also urgent and important to have certainty about these interim arrangements. Of course, the judiciary, in a manner compatible with their constitutional position, and the legal profession will give all proper assistance to Her Majesty's Government to enable the earliest possible resolution of these interim issues.
17. The second matter of which the common good requires me to speak is the reform of our courts system. As I have said before, the reform to our courts will ensure that they not only underpin our international work, but that the courts will become again best-placed to deliver justice for the whole of our society in the years to come - a justice system that leads the world- and one that will be well-able to secure fair and effective access to all who seek justice
18. On Sunday morning, last, 2 July 2017, I saw the commitment of the young to that vision at a 24 hour Hackathon held at the University of Law at Moorgate and arranged by Professor Richard Susskind and his team. The 210 participants, lawyers and techies, brought their skills, their enthusiasm, their altruism and their global outlook to spend 24 hours competing and cooperating to write software that demonstrated what can, and must, be achieved in an on-line court. Their elation at their achievements after 24 hours without sleep demonstrated the commitment of our younger generation.
19. Our generation cannot, and must, not let them down. We will, however, let them down if the speedy passage of the Courts Bill announced in the Queen's Speech is not achieved, as it is needed to provide the necessary legal framework for reform. The debates at the end of the last Parliament showed

there was no real dispute about the merit of the clauses. The national interest is the same now as it was in the last Parliament - the Bill is plainly needed. There is no reason I can think of for delay in the passage of the Bill. The common good and a clear commitment to the young demands no less.

20. These are the further two clear messages which my Lord Mayor you have by your generosity afforded me the opportunity to make this evening in promotion of the common good of our state. The implementation will be for my successor. Whoever he or she may be, and I hope we will know soon, I am sure that my successor will, as I have, enjoy not only the strongest support from the City but the greatest possible help and backing from the judiciary.
21. Although I owe a debt of gratitude I can in no way repay to each and every judge (and to his or her family) for their commitment, their hard work, their dedication, their unfailing help and support, I must mention two - the help and unstinting support that Sir Brian Leveson and Dame Heather Hallett have given me during my time in office. Dame Heather, who unfortunately cannot be here tonight, has with enormous enthusiasm taken forward many tasks, but particularly the task of changing the diversity of the judiciary. Sir Brian has taken on immense burdens and has made a signal contribution to the strength of the judiciary and of the law in our state and in our society. He has done so much in more ways that I could recount even if I detained you for a very long time.
22. It leaves me, My Lord Mayor, finally on my own behalf and on behalf of Her Majesty's Judges to thank you and the City of London. Your unstinting support for the independence of the judiciary continues to be as powerful as it is constant. For that, we are all most grateful.
23. Thank you.