



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

**THE RT HON. THE LORD THOMAS OF CWMGIEDD
LORD CHIEF JUSTICE OF ENGLAND AND WALES**

LAUNCH OF THECITYUK'S LEGAL SERVICES REPORT 2016¹

20 JULY 2016

-
1. We use the work that TheCityUK does to try and get over to Government how important the legal sector is. And, without facts and figures – and I am not going to re-traverse facts and figures because you have got them and you have had a summary of them – we have a very great difficulty. We try and persuade all branches of the State just how important the legal sector is. It is a constant battle (a) to obtain money to fund the courts and tribunals, but (b) to try and make certain that justice is seen as central to our society.
 2. In many of the speeches I make, it is the centrality of justice to society and to our prosperity which has to be underlined.² I regret to say it is often not appreciated. I think this is because we take it all for granted. What I think is so wonderful, if I may say so, about the huge amount of dedicated work you have done is that it pulls together the facts and the figures that show how central justice is to our economy. But, I will come in a moment to what I think is the most important bit of your report, which is at page 7 (which you needn't all turn to immediately): what we should be doing.
 3. But, before that, can I just say a little bit of what *we* have been doing? The facts and figures you set out in your report, which you have so ably summarised, speak for themselves, but our contribution from the judiciary, I think, has been to try and keep our system up-to-date. And, I think that it is important to appreciate a few things.

¹ <https://www.thecityuk.com/assets/2016/Reports-PDF/UK-Legal-Services-2016.pdf>

² See, for instance: <https://www.judiciary.gov.uk/wp-content/uploads/2015/11/lord-williams-of-mostyn-lecture-nov-2015.pdf>

4. First, and I would say this, like a certain well-known lady, would I not, that the Common Law is really the best legal system in the world, and it is not because it happens to be born here. It is because it is so adaptable, and is so willing to take ideas from almost anywhere in the world.
5. Someone asked me the other day, in the context of Brexit, did I think that the continental legal tradition was having too much of an influence upon our systems. I pointed out that the law of general average was borrowed via the medieval isles of Oléron from pre-Roman Rhodes and part of our 18th and 19th Century law was significantly influenced by the writings of Pothier. So, we are a system that, although we think it is just British, actually is international. And I think that that is something we have got to get across. Although we call it the English Common Law, it is actually the common law of the world, but that brand is made in England.
6. Second, the development of English Common Law is, I think, crucial. Many of you will know, I think, of the steps we have taken and the excellence of the work done in the Rolls Building: the bringing together of the various jurisdictions and the provision of modern facilities, and the innovative steps we have taken in the last two-to-three years to set up the Financial List and the fast-track procedure. All of these with slight bells and whistles; but the idea, as we have always tried to do, is to service the market.
7. The market moves all the time. When I started practice as a barrister in commercial chambers, the market work of the Commercial Court was essentially shipping law. It then moved to reinsurance law and that was something traditionally that the courts were able to cope with. They have adapted and people have grown up in it. Financial law is more difficult because it moves at a greater pace, but we have shown we can do it. And I think, in part again, I would like to thank one aspect of the City, which is the Financial Markets Law Committee, for the great help they give us in keeping up-to-date.
8. So we are doing very well. But, we cannot rest on our laurels and I think there are two areas we must look at, and I want to come to the recommendations on page 7 in a minute.
9. I think the first is making our dispute resolution services the best in the world. We have to have an eye to cost and we have to have an eye to innovation. Second, we have also got to keep our law up-to-date.

10. I do not know how well known it is in this country, but, at the beginning of this year, the government of France significantly revised the obligation section of the Code Napoléon. It had not been done since 1804, but they did it for one reason and one reason only: to make French law attractive. They thought if you had a code based upon something beautifully and eloquently derived and written, but encrusted with case law, with jurisprudence, people would not be able to use it as a workable means of selecting a legal system by which contracts could be drafted. So they have redrafted it. They did it by Ordinance, so it did not have to go through the French Parliament, where it might get messed up by politics, and, more important than anything else, they translated it into an excellent English edition.
11. And so, I think, we talk sometimes of the competition from Delaware, from New York, Singapore etc., but actually we have got to keep an eye on matters closer to home and it is equally important to make certain that our law is developed as well.
12. So, what I would like to turn to, therefore, is how you meet these twin challenges: keeping the law up-to-date and keeping our system the best in the world – they are both closely inter-related. So, I read with enormous pleasure page 7 of this Report, which contains a number of recommendations; I am going to add one.
13. The one that I feel it is right to comment on is the first one, which is focusing on innovation and infrastructure; that is, making certain we have got the best dispute resolution, that we work with everyone and we work together to make certain we have got the best system. We must get on with that. That is obvious and I do not think there is much doubt about it.
14. The second, which I think is quite an interesting idea, was something the City of London Law Society mentioned to me by reference to a document produced by the British Council called “The Effect of English” which is a beautifully written document where the British Council set out to show why English is important, what it is worth to the UK and why it matters to the world. We should produce something similar to that, in good plain English, about the value and pragmatism of English Law and the legal sector (which I think is the essence of this second recommendation).
15. I think this would be another excellent idea because it has twin purposes. First of all, it enables you to give to government, who do not always understand the importance of law to the economy, a document that they can read and understand. Secondly, it is very important to distribute the document internationally because I do believe we are not going to promote English law and show that it is the best unless we are prepared to accept that competitor dispute resolution jurisdictions will actually want to understand the great benefits of that law.

16. The third, which is collaboration between arbitral organisations and the judiciary to aid the ongoing development of English law, again I think this is very important. I spoke earlier this year, in a speech that caused not a little controversy, about the problem of developing law without enough court decisions.³ Many thought that I had made an attack on arbitration. It certainly was not, but it was trying to explore in an open way how do you make certain that, where we have got excellent retired judges who sit as arbitrators, decisions get into the public domain. Do you do it by the route, which I personally would favour, of loosening the restrictions on appeal in the Arbitration Act or do you find some other method? But it is very, very undesirable that we are entering into a stage where great legal minds have retired from the bench, are giving awards and setting out principles which are known only to the cognoscenti. This is not good. So I think there is a very fruitful avenue here in exploring this.
17. Next, there is partnering with the government etc. If I can consider the second of these two recommendations, which is ensuring focus on legal services. It does seem to me, if I can say something about the challenge that the country now faces, that we are entering into very complicated changes to our existing agreements in relation to jurisdiction and enforcement together with the huge, complex task in new trade agreements. It is very important that the complexity of this is (a) understood (b) thought through and (c) the importance of the legal sector is taken into account, which is where your facts and figures come in.
18. We have recently published Guidance which tries to explain the judiciary's position in respect of engagement with the Executive.⁴ It is often thought that the judges should not really have anything to do with the way in which policy is developed. We have tried to set out what, I think, has always been the tradition of the British judiciary, which is to engage constructively on a technical basis without going into policy. I think that, therefore, I would take those two bullet points as being, again, work that needs driving forward because I have no doubt that some of the legal complexities of the political course on which we are now set are very, very substantial.
19. It is not for me, I think, to talk about the final bullet point, which is working to obtain a better expansion of legal services in other countries, but I obviously appreciate the great importance of that.

³ <https://www.judiciary.gov.uk/wp-content/uploads/2016/03/lcj-speech-bailli-lecture-20160309.pdf>

⁴ <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/guidance-to-the-judiciary-on-engagement-with-the-executive.pdf>

20. There is one thing that is not here, but which I think is critical and something I have commended (on many occasions) the City for doing. That is explaining why everything we do is relevant to our broader society. I do think that, if I may and with respect, say that there is a tremendous task in showing that, actually, the work we do through the providing of legal services does not just benefit the City, but the UK as a whole. If you take the opening of offices to do legal work in other parts of the UK (Belfast is a prime example), that is bringing highly paid jobs to other parts of the country and addressing, in part, what some perceive to be the different levels of remuneration and reward in society. I know the City has been very keen on doing this in relation to the problems in London, but I do think that trying to see that the legal work that comes through the City provides benefits throughout the rest of the UK – like in Belfast – is tremendously important.
21. So, I think there is work to do and, on behalf of the judiciary, I will say we are very anxious to help you. I thought I ought to say that we do not feel ourselves constrained, beyond what was said in the Guidance on engagement with the Executive. We must get on with this. We have really got to ensure, in what is a very challenging time, that we do everything possible to maintain innovation. If you have got any ideas, the Chancellor of the High Court's successor (or the Chancellor himself) will be very pleased to learn of them, as will Sir William Blair, while we try and innovate and make our commercial courts better, and our specialist courts better, and more user-friendly to everyone. We must also do what we can with regard to TheCityUK's recommendations, as well as developing the law.
22. I have not gone into any facts and figures. They are brilliant and wonderful. Thank you very much indeed.