

## **Annual Bar and Young Bar Conference 2020**

**19<sup>th</sup> November 2020**

### **Leading the Charge – Our international position**

**Sir Geoffrey Vos, Chancellor of the High Court**

#### **Introduction**

1. The blurb in the conference brochure says that “[a]s the UK leaves the EU and seeks new trade agreements with other nations, the opportunities for international growth in and outside Europe are plentiful”. We are to discuss the UK’s future role in the international legal market, and how the UK can remain a leading global centre for dispute resolution.
2. I have no doubt that the UK’s jurisdictions can and will remain a go-to place for international commercial litigants, and that English law will remain one of the most important respected legal systems in the world. I will try to explain briefly why I say this.
3. There are essentially 4 reasons as follows:-
  - (1) The integrity of the UK’s judges and of the UK’s judicial systems is undoubted, and will continue to be respected globally.
  - (2) The UK’s lawyers are widely respected for their quality, integrity, and pragmatism. These are things that will not change as a result of the UK’s departure from the EU.
  - (3) London arbitration supported by the Commercial Court and the Business and Property Courts will continue to provide an efficient and popular service for international business.
  - (4) The UK can and will bring about technologically-based reforms of its business justice system to make

them fit for the 21<sup>st</sup> century and for the age of big data, a ubiquitous internet, smart systems, artificial intelligence, smart contracts and the blockchain.

4. I do not need to provide much detail about the first three reasons. They speak for themselves, but the fourth reason is critical. I will concentrate upon it in my short remarks this afternoon.

#### The blockchain and smart contracts

5. Business is changing rapidly. It used to be local and national with some international elements. It is now mostly international, with some local SME elements.
6. The new technologies emphasise this change. In addition to the global nature of the FAANGs of Facebook, Apple, Amazon, Netflix, Google (Alphabet), blockchain technology is by definition borderless. Cryptoassets, central bank digital currencies (CBDCs), and smart contracts recorded immutably on the blockchain are likewise unconfined by national boundaries.
7. International commerce will be looking for dispute resolution mechanisms that are fit for these new business methods. I believe that English law, UK arbitration and the Business and Property Courts here in England and Wales are ideally suited to adapt swiftly enough to provide what international business needs.
8. The problem with many court systems is their deeply parochial nature. That is not surprising since all countries developed their courts to resolve local disputes. But the courts here in England and Wales have done better than most in attracting international parties for the reasons I have already given.
9. If we are able to reform the way we resolve disputes in our B&PCs sufficiently to cater for the new technological world,

we should continue to attract litigation and arbitration to London.

10. As many of you will know, the UK Jurisdiction Taskforce of the Lawtech Delivery Panel (now Lawtech UK) delivered its Legal Statement on the status of Cryptoassets and Smart Contracts last November. It has been very well received and referred to with approval in several jurisdictions. It expressed the view that cryptoassets were property for the purposes of English law and that smart contracts could be contractually binding.
11. The Taskforce is now preparing a standard form English law and jurisdiction dispute resolution process and accompanying clause for use in smart contracts and blockchain engagements. It will provide a short set of rules providing a menu of options for speedy arbitration or expert determination for disputes arising digitally. The process will be ground-breaking and will be consulted upon publicly in the coming weeks. Rapid resolution of cyber-disputes will hopefully make the UK a go-to jurisdiction for the global technological community.
12. Vital user confidence will be provided by the supervision of these processes by the Business and Property Courts under the widely respected UK Arbitration Act 1996.

### Artificial Intelligence

13. Like the blockchain, artificial intelligence requires a legal foundation to provide users and data providers with confidence. There is not much statute or case law relating to AI right now, but English law is leading the way in considering the issues it raises. Only this week, I have written the Foreword for a new textbook on the subject. One key question will be as to who bears the liability for the output of artificially intelligent algorithms.
14. I have great confidence that the versatility of the English common law will rise once again to the challenge, as it has

done in relation to cryptoassets. Once it become apparent to international businesses that English can provide clarity and certainty in relation to artificial intelligence, it will make our courts and arbitration increasingly attractive for the future.

### Reform of our business dispute resolution

15. I turn next to the processes we adopt to resolve the disputes themselves. I have long been convinced that technology necessitates a new look at the procedures we adopted largely in the 19<sup>th</sup> century. Technology was insufficiently advanced in 1999 when the Woolf reforms were undertaken for there to be a radical rethink of the Rules of the Supreme Court, now the Civil Procedure Rules.
16. I hope that, in my new role as Head of Civil Justice, I will be able to take an holistic look at civil justice across the piece from the 60 million disputes resolved annually by AI on eBay to the lengthy face-to-face trials in the Rolls Building.
17. I have no doubt that we need an online system that creates a single data record, and is directed at identifying and resolving the real issues that divide the parties. Mediated interventions must be integrated into the process, so that ADR is not seen as a voluntary add-on that can be taken or left at the will of the parties.
18. This does not mean that face-to-face or remote court hearing will become obsolete. It simply means that they will be reserved for situations in which the time they take and the costs of them are justified by either the legal complexity of the issues raised or the intractability of the factual dispute. An online process with integrated mediated solutions would undoubtedly attract international business to English law and jurisdiction.
19. None of these ideas would compromise the quality of justice. They would simply provide better access to justice for individuals and SMEs, and more streamlined dispute resolution for international issues which will themselves

arise more and more online or on the blockchain or from the effects of AI.

### Big data

20. Then there is big data. As we all now know data is a more valuable commodity than oil, and yet we have hardly worked out the legal ramifications of its use and misuse. The digital online dispute resolution processes I have been discussing will surely be more appropriate for issues arising from the accumulation and use of big data, which is already occurring not only in connection with Google and Facebook, but in every industrial and information sector you can imagine.

### Conclusions

21. My intention has been to provide some food for thought. The UK legal community needs to be ambitious in terms of digitalisation if it is to retain and enhance its status.
22. I have deliberately not said anything about the UK's departure from the EU. Whatever happens on 1<sup>st</sup> January 2021, our courts will be able to cope with it. I am keen to look ahead to the provision of dispute resolution systems fit for the business needs of the 21<sup>st</sup> century.

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