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LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

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

**BAR CONFERENCE**

**LONDON**

**2 November 2013**

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**INTRODUCTION**

1. It is a pleasure to be able to speak this afternoon at this conference held under Maura McGowan QC's chairmanship of the Bar. She has in very many ways done so much to safeguard the Bar at what is one of the most difficult times it has faced. I look forward to this work being continued by Nicholas Lavender QC.

**QUALITY AND INDEPENDENCE**

2. I have no doubt that many who have delivered this address have emphasised the essential attributes of advocacy. They can be summarised in two words: quality and independence. I make no apology for returning to these two attributes.
3. There can be no doubt that our legal system is much admired throughout the world. For example, continental lawyers, academics and judges, although they may occasionally speak with amusement about our system of common law, look generally with admiration at our legal system for its independence, for its professionalism and for the fact that it has been the essential underpinning of our democratic way of life and our general prosperity for hundreds of years. Ours is a system that has adapted and changed, keeping pace with developments, whilst not being constricted by them. Often we look back with admiration at what our predecessors may have done, though not always for the right reasons; on occasions we question what they have done, though no doubt they were prompted by what they thought at the time were the right reasons.

4. The evolution of our much admired system of adversarial trial in criminal justice was essentially initiated by the victors of the constitutional struggle in the latter part of the 17th century. They wished to ensure that what had happened to that part of the political class under the last two Stuart monarchs did not happen again to the political classes. The changes they made were then developed by the judges in the course of the 18th and 19th centuries to encompass the whole of our criminal justice system. That same period saw, first by the courage of some judges, the weakness of other judges and the intervention of Parliament, the establishment of the independence of the judiciary, although theory has taken some time to catch up with the actuality that has existed for very, very much longer.
5. In a similar way to this development, our mercantile law was very substantially created by great judges such as the Earl of Mansfield and Lord Blackburn. Just as it is accepted that the independence of the judiciary is a cornerstone of a modern constitutional democracy, it is now generally acknowledged that a system of business law, which adapts to change and extends to all parts of industry and commerce, is essential for the maintenance of that economy and a nation's prosperity.
6. Judges did not bring about these developments on their own. Nor can they continue to do so today. It is the role of the advocate in court, with the attributes of quality and of independence, which has always been an essential plank of these developments which mark out our nation and make its legal system so much admired. These attributes are as important today as they have ever been. That independence and that hallmark of quality must always be safeguarded in the profession of advocacy.
7. There is however no room for complacency in relation to those two essential attributes of an advocate. There is much that needs to be done by you. May I mention two in particular: first the cohesion of the Bar and second the need to plan for the future?

### **Cohesion**

8. The Bar of England and Wales is, or should be, one cohesive profession. There are two aspects of that cohesion to which insufficient attention has been paid.

#### *Practice in and out of London*

9. I have for some time viewed with concern the increasing concentration of the legal profession in London, particularly in specialist areas of law. In the Birkenhead lecture I gave

at Gray's Inn last week, I set out my views on how this had come about and what needed to be done to remedy it. I mention it again today because it is of particular importance to the cohesion of the Bar. The circuits in England and Wales have always played a key role in the administration of our justice. They are important for the reasons I explained in that lecture not only to the provision of justice in the towns and cities outside London but also to the strength of economies of those towns and cities.

10. There is however another important aspect relevant to you as the Bar: the need to achieve the right relationship and balance between practitioners on the circuits and the specialist Bars in London. In my view, it is essential to the underpinning both of the rule of law and economic prosperity that you pay serious attention to that relationship and the imbalance which has created and continues to create a growing concentration of specialist practitioners in London. The judiciary will continue to strengthen the provision of access to justice in the great towns and cities on the same basis of equality as is provided in London. You must also play your part by doing all you can to encourage the establishment and nurturing of specialist practitioners based in the great towns and cities of England and Wales. It is vital not only for reasons I have already given, but to your cohesion as one Bar.

*Public and private funding*

11. Just as our system must provide the same justice out of London as it does in London, our system must provide justice irrespective of whether the advocate is privately or publicly funded. It must now do so in circumstances which result from what has been described as the retreat or the retrenchment of the State. Many believe this retreat or retrenchment to represent a permanent shift in the way and in the extent to which the State is prepared to provide certain services. If that is so, and it is essentially a political matter, then the consequences must be addressed.
12. One obvious consequence is apparent from surveys of earnings in the privately funded legal sector; those of you in that sector have for the past few years enjoyed for the most part and are continuing to enjoy a very good income indeed. There is now a very marked difference in income between those of you in the privately funded sector and the publicly funded sector, particularly between those of you who might be described in both sectors as the highly competent, though not yet the stars. It is essential for the cohesion of a legal profession, and particularly for the small profession of advocates, that those in the one part

which is so prosperous understand the importance of maintaining cohesion and take active steps to that end, given the consequences of what many perceive as the retrenchment of the state.

13. I have been greatly encouraged over the past few months in work led by Robin Knowles QC, two partners in two city firms and by Mr Justice Foskett in providing advocacy and advice in Court 37, the interim applications court of the Queen's Bench Division. The scheme works by having, on standby, a young member of the Bar and a young solicitor who will come immediately to the Royal Courts of Justice and represent someone in Court 37 before a judge, normally a judge of the High Court. Last week, I sat in the Divisional Court in contempt of court proceedings arising out of a publication on the Internet; the defendant faced, as we made clear to him, the prospect of a custodial sentence. He had no representation at all and said he had had no legal advice. The scheme provided a young barrister and a young solicitor who gave him some advice and spoke on his behalf in court to explain his position and to provide a reasoned argument as to why the proceedings should be adjourned.
  
14. This is therefore a scheme among many other admirable pro bono initiatives that is addressing in an innovative way the consequences of the change in the role of the State. Not only does this scheme provide assistance to individuals faced with serious problems. It does so in such a way that assists a profession with two distinct halves: the privately funded and the publicly funded. It begins to address the means of providing cohesion through an understanding on the part of the privately funded sector of the reality of the issues faced by the publicly funded sector. But it is only a small step. Much greater steps to maintain cohesion are necessary. The privately funded sector needs, for example, to take active steps to assist those planning on or embarking on a career in the publicly funded sector of the Bar to ensure that that sector attracts those that can provide independent advocacy of a high quality. The maintenance of that quality and the independence of that part of the publicly funded sector is, as you have discussed today, in large measure the responsibility of the Government through the provision of proper levels of remuneration; that has always been the position of the judiciary. Nonetheless the privately funded sector has its part to play in the changed circumstances which now exist and must do so not only in the ways I have mentioned but in many others if the Bar is to maintain its cohesion as one Bar.

### **Looking to the future**

15. I turn next to the second issue. I appreciate that day-to-day problems and even immense problems that are immediate can easily absorb the entirety of your time. However terrible those immediate problems may seem to those of you who face them or however good the times may seem to those of you who do not face them, you must look as a profession to where you wish to be in ten years. And when I say look where you wish to be, I mean have a clear idea of what that is and how to get there.
  
16. Let me return to the two aspects of our legal system with which I began these few remarks. First, our business law. International legal work in which London is now pre-eminent system faces immense competition from other cities such as New York, Singapore and Hong Kong. The judiciary and many who practise in this field know only too well the strength of that competition; Her Majesty's Government knows how important it is to our economy that London's pre-eminence is maintained. For a sector of the profession that is enjoying such prosperity and success, it is easy to be complacent. Complacency would be entirely misplaced. We need to analyse what are the factors that sustain London's current pre-eminence and what are the deficiencies that we must remedy. We must have a coherent plan for the long term to ensure that we strengthen those factors that give us our pre-eminence and remedy those where we are deficient.
  
17. In complete contrast are the issues facing the criminal Bar: the immense and immediate problems that you have discussed today. But, it too must look forward and see where it wishes to be in ten years' time. The establishment of the review by Sir Bill Jeffrey of criminal advocacy services presents the Bar with the opportunity to look forward which it cannot and must not decline.
  
18. This part of the Bar is faced not only with the consequences of the retreat or the retrenchment of the State, but also with the changes that have come about through the significant increase in the size of the Bar and also the number of Higher Court Advocates that now appear. It is not my role to suggest what the solutions are or where you plan to be in these changed circumstances. But I must say to you that you have no alternative but to take that forward look now. One of the ways of doing this in the context of criminal advocacy is the Jeffrey review.

19. But it is not just you who must take that forward look now in addressing the consequences of this retrenchment of the State. The judiciary is doing so too. As you know, Her Majesty's Government is looking closely at reforming the way in which our courts and tribunals are resourced and administered. This has been, in my view, something that has needed doing for some time; necessity now requires our own forward look in these new circumstances.
  
20. It is axiomatic that the State must provide a system that secures sensible, long-term investment for the courts and tribunals and that such investment must be managed in a modern and efficient manner. It is a necessary pre-condition to the proper provision for equal access to justice across England and Wales and to safeguarding the pre-eminence of London in international legal business which is so essential to our economy. This must all be done in a way that safeguards the position of the judiciary as an independent third arm of the State, working alongside Parliament and the Executive. We are therefore analysing what is the best way of funding investment and managing the administration of our court system for the long term. We are looking not merely ten years hence, but much, much longer. I mention this, not to develop the detail as that is for another occasion, but to show that like you the judiciary has no alternative but to plan for many, many years hence, difficult though the task may be, not merely in devising the right solution for the long term, but securing its execution. Your task is no different.

## **CONCLUSION**

21. I have every confidence, however, that you will work out where you want to be in ten years and how to get there. I know you will, because on the capacity for analysis you all have, you cannot afford to do otherwise. You must and will also do it as one cohesive Bar with the attributes in the public and privately funded sectors of quality and independence. You will thus not only safeguard that one Bar, but, as it is an essential plank that underpins our legal system, protect and strengthen our system of justice so that it continues to be a system that others seek to emulate as a model and which safeguards our liberty and our prosperity.

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