



JUDICIARY OF
ENGLAND AND WALES

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THE ROLE OF UK JUDGES IN THE SUCCESS OF UK PLC

KPMG LECTURE

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Introduction

1. First, many thanks to John Ellison for inviting me to give this lecture tonight. He and I go back quite a long way, having done cases with and against one another over many years past. It is nice to be on the same side tonight!
2. This evening I want to address a subject that I feel very strongly about. It is the question of what can be done to promote the aspects of British business and professional life that are thriving and, in short, often the envy of other countries.
3. We in the UK are very good at self-criticism. We are always the first to say what is bad about our society; to say, for example, that the August riots exemplify the problems in society about which nothing is being done, rather than to say, as they probably would in France or Germany, that such unrest was the one-off product of a long summer and some disruptive elements. When double dip recessions are predicted, we write prolix articles about the impossibility of economic recovery, or even survival. I was struck recently, on the day that the FTSE 100 dropped 5% amidst yet another attack of global economic paranoia, by an article explaining that Deloitte (if I dare mention that name in these hallowed halls) had announced record world-wide revenues of US\$28.8bn - up 8.4%.
4. But we are not so good at understanding and defining what we are good at, what others respect us for, and making a study of how we can capitalise on some of these (very many) advantages.
5. I should pause. Some of you may be saying: this guy is an unrestrained optimist – he sees things with rose-tinted spectacles – there is no point in listening to him. Well, maybe. I admit to being an optimist, but please bear with me a little longer before condemning the approach that I would advocate.

Integrity

6. Let me start with a very judge-centric issue: that of integrity and its less-often mentioned bed-fellow, corruption. Our legal system is widely acknowledged to be long on integrity and short on corruption. Someone asked me a few weeks ago

whether it was really true that corruption was unheard of within the judiciary in England and Wales. I lacked the experience necessary to say that no corruption existed, but I was able to say that, if there were any, it was of a very limited compass indeed. Our judges may – very occasionally - get the law wrong, they may even have wrong-headed, dare I say prejudiced views, but to say that they lack integrity is something very rarely alleged and almost never established. They are human – I would allow that.

7. We should not imagine that judiciaries elsewhere are taking bribes all day long to decide cases for the paying party, nor that endemically they lack integrity. These things are all relative. But more important than the precise facts on corruption, which can never be accurately or reliably measured, is the perception. And the perception is clear. It is that the judiciary of the UK, and of England and Wales in particular, attains the highest standards of integrity, and is as close to free from corruption as anywhere else in the world.
8. This perception of integrity goes further than just allowing our judges to be reasonably well thought of overseas, it extends to our legal system, civil and criminal, the civil servants that run it, and to the independence of the judiciary – i.e. the lack of political influence on their decisions. You will recall the uproar earlier this year when the Prime Minister criticised the Supreme Court for its decision on the rights of paedophiles. The uproar was not because the Prime Minister was not entitled to think the decision wrong, nor that he was not entitled to bring forward a Bill in Parliament to change the law on the subject if he saw fit. The uproar was about the perception that he was criticising a decision made by independent judges exercising their judgment in good faith according to law. The decision may be a matter of political debate, but not a matter of criticism of the judges making it, unless their integrity was in issue, which it could never have been suggested it was.

The position in the world of our legal system and our law

9. So how does this help? It means that businesses and individuals in many parts of the world would be pleased to have their legal disputes resolved by UK courts. And it means that, provided English law itself is regarded as good (as it is - something to which I shall turn in a minute), we should have something quite important to recommend the UK, which we ought to be trying to make the best of.
10. Just a word about English law. Many of us believe that the maturity and predictability of English law make it one of the best systems in the world today. That is not to say it does not have some formidable competitors – New York law and German law to give two quite different examples. But looked at broadly, it is no coincidence that businessmen the world over frequently choose to have their major international contracts in numerous fields governed by English law. They do so because English law is not idiosyncratic. It does not have large elements of discretion that can mean that commercial cases are decided at the whim of the judge. To take a specific example, it does not have a general duty of good faith – something I gave a lecture about earlier this year. And perhaps most important of all, it is possible to say what the answer is in many more cases than other laws normally manage. If any of you have litigated under Swiss, Spanish or Portuguese law, just taking these systems as random examples, you will know that the advice you receive will depend, I would say to an unacceptable extent, on the approach of the particular professor who has been instructed to give you an opinion. Though some would say the same of a few of our famous QCs in this country, generally the advice they, and the leading solicitors instructing them, give is similar, the one to the other, and businessman can come

away with a pretty clear idea of which way a particular point of contention is likely to be decided. There may be exceptions, but not many. Generally, we can say that English law is appreciated by overseas businessmen because it is long on predictability, well enunciated in the numerous precedents upon which we rely for guidance, and short on broad untrammelled discretions.

11. I might interpose as a brief diversion that predictability and the lack of unguided discretion is an important hallmark, not only of a good commercial law system, but also of a good public law system. In November 2006, Lord Bingham identified 8 sub-rules making up the Rule of Law when he delivered the Sir David Williams lecture. The first two of those sub-rules were that:-
 - (1) The law must be accessible, and so far as possible, intelligible, clear and predictable.
 - (2) Questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.
12. This address is not about the rule of law, though I have just this morning returned from Egypt, where I have been talking to their judges about just that subject. But in the UK, we are particularly proud of our approach to public law, and the fact that we decide public law cases by the application of now well-established legal principles, rather than the whim of the judge or the level of influence of the stronger party.
13. So, if English law, UK judges and UK legal systems (I am in no way trying to exclude Scotland or Northern Ireland here) are highly regarded overseas, surely not enough is done to capitalise on the commercial advantages of our much respected, in some cases even much loved, law and legal system.
14. Our Commercial Court and Chancery Division (not to mention the TCC and Patents Court) have, at last, moved in to a modern building with good facilities for litigants. That is an important statement about the esteem in which we hold our own commercial legal system. But it was long overdue. Forcing litigants from every country in the world to litigate in St Dunstan's House was a very poor reflection on one of the things that foreigners most respect about the UK.
15. But this kind of thing is just the outward and visible sign. What matters even more to the success of our economy is the exports of professional services that our legal system is capable of generating.
16. Many people do not know the figures. They are actually quite staggering. UK legal services generated 1.8% of GDP in 2009, and constituted £3.2 billion in exports in 2009, nearly three times a decade earlier. Though the figures for UK professional services as a whole are less clear, the Office for National Statistics reported that in 2008 financial and business services contributed £420 billion, or about 32%, to GDP. This included the financial sector and supporting industries such as consultancies and accountancy firms. TheCityUK estimates that professional services that support the financial services industry contributed approximately 3.9% of GDP, in addition to the 10% from financial services themselves.
17. Four of the top 8 global law firms (by gross fees in 2009/2010) are UK firms. Two further firms in the top 8 have their largest presence in the UK or started in the UK (Baker & Mackenzie, and DLA Piper), meaning that 6 of the top 8 global law firms have close connections with the UK.

Legal services can promote other professions too

18. My thesis is that the UK legal profession drives exports of UK professional services generally, and is a huge invisible asset. UK legal services promote exports of other professional services, because once a UK-based law firm is involved in an international project or transaction, they tend to recommend or work with UK accountants, management consultants, engineers, architects, banks, financial services firms, and many other associated professional providers. The lawyers are often in on the ground floor of any major international transaction, and are instrumental in bringing it to fruition.
19. If this is right, and I am pleased to say that the Government is beginning to recognise that it is, can we not do much more to promote what the UK excels at – namely professional services? It is, I suggest, time to stop castigating ourselves and some of our now long gone politicians for the destruction (or some would say reconstruction) of our manufacturing industries. It is time to start to work out how we can make the best of some of the things that the world really respects about us. One of those things is undoubtedly our legal system. But it is not confined to the law. Other UK professionals are also highly respected internationally – we are good – indeed world-beating - at many other professions too: engineering, banking, financial services, architecture and accountancy, to name but a few. I hear a snigger at my inclusion of banks, but I include them advisedly. London is the financial centre of the world. And the UK is a very small country compared to those with whom we compete. Our banks have contributed to that position, and we should, in this as in other respects, limit the way in which we chastise them for what they do wrong, and take more trouble to support them in what they do right. Of course we must do everything possible, alongside our European partners, to rebuild trust in the banking and financial system. But in doing so, we should not forget our national interest in promoting what we do well, whilst making sure that we are continuously improving the ways in which our professions operate and ways in which they are regulated.
20. If what I have said is doubted, just take a moment to consider some of the other professions I have mentioned. When you go to the areas in the world with the highest growth, you notice that many of their biggest flagship and other buildings are designed by British architects and constructed by civil engineering firms from the UK. Management consultancy may be an international business but firms that emanated from the UK like Accenture are at the top of their tree. Likewise in banking and financial services, despite all the recent crises, firms based in the UK or that started here occupy many of the top global positions.

Reforms to our legal system

21. Coming back to the law, I have always been a dedicated supporter of the Woolf reforms, which confronted the archaic civil legal system head-on. But I have never thought they went far enough. Had they gone further at the time in 1999, they would probably not have been accepted by the then legal community. But now there is much more to be done. I would like to see a Woolf II reform to keep our civil legal system out in front. Four of the things that I regard as most important that judges could do by way of continuous improvement to our system include the following:-
 - (1) First I would suggest a major procedural overhaul of court documents including pleadings, witness statements, and experts' reports. Many of these documents have been allowed to become so lengthy that they are never read. Lists of issues can, and should, be used instead. The approach to this problem

has, in my view, never been radical enough. The Commercial Court's long trials working party made a series of very sensible changes, but we need to look at the system as a whole. Big cases at all levels (and, by the way, in arbitrations as well) are plagued by lengthy court documents that fail to focus on the key points.

- (a) One of the ways of doing this is to take advantage of the old distinction between what you put on the Claim Form and the pleadings which follow. If you initiated any case, however complex, with a short summary of the claim, the court could then direct further more lengthy elucidation in the cases where it is necessary, and where a simple list of issues would not suffice.
 - (b) I despair of the number of cases I see in which counsel has drafted bundles of lengthy detailed pleadings which, when the matter comes up for determination, nobody ever reads or considers at all.
- (2) Secondly, I would take more steps to reduce the length of court hearings and particularly trials, by the use of mandatory trial timetables vetted by the court. Many advocates have made great strides in confining their oral submissions, but there is still scope for limiting cross examination and speeches in advance. When I was at the Bar, I always agreed a trial timetable with the other side. When you take the trouble to do that, there are very few occasions when cross-examinations go beyond the estimate. As Cyril Northcote Parkinson first wrote, apparently in the year of my birth, "*work expands so as to fill the time available for its completion*". We should be reducing the time available in most cases.
- (3) Thirdly, I think there is a strong case for the introduction of a universal docket system in all the Rolls jurisdictions. That would facilitate more active, consistent and hands on case management, thereby reducing the time taken from issue of proceedings to judgment, whether that takes place after a summary hearing or a trial.
- (4) Fourthly, I continue to advocate the more efficient and extensive use of IT, and of electronic issue and handling processes. At the moment, IT is used as an add-on to the paper based systems. The effect is that everything is duplicated. We are always enjoined at the bottom of emails to "Save paper" "Think before you print", but how many of us actually do think about what they print. And how many of us change our working processes completely to take account of the fact that everything should be on the computer and can be stored permanently in electronic form.
 - (a) I always ask counsel for all the main documents in the case by email. I rarely get them – sometimes it is hard enough to obtain the skeletons in soft form.
 - (b) I always use a computer in court, but many judges do not. We should work towards that being the norm. It makes judgment writing twice as fast.
 - (c) The electronic filing of court documents should, on any basis, become the norm. how absurd is it for solicitors to prepare all their documents on a computer system, print them out, file them at court, and then only send them by email when specifically asked?

22. So I return to my main theme. And I hear two criticisms. First, that it is all very well saying that we should do more to promote what we do well, but it is quite another thing actually to find ways to do so. And secondly, that it is perhaps inappropriate for a judge to be promoting UK plc.

How do we promote UK legal and professional services?

23. As for the first criticism, I agree. I have struggled for some time with finding concrete proposals as to what can and should be done to make the commercial capital that I say we should be making from our professional services in general and our legal system in particular. I would not criticise the Ministry of Justice's recent action plan on the subject. Whilst it did not make any revolutionary proposals, it recognised the problem and highlighted that things needed to be done. In his recent speech to promote the campaign at Clifford Chance on 14th September, the Lord Chancellor, Ken Clarke MP advanced three main messages:-
- (1) Reform the legal system to avoid high costs thus making it more attractive to overseas clients.
 - (2) Introduce alternative business structures and reform regulation of the UK legal system generally
 - (3) Open up new overseas legal markets such as South East Asia, Brazil, Turkey and India.
24. These proposals are all excellent. But there is a culture change that is also necessary – just as there will need to be for each of the reforms in the legal system that I have mentioned a moment ago. We need to invest in our legal system and in our professionals. The investment need not be entirely financial. It is about confidence, promotion and enhancement. Ministers can do much in what they say in speeches and in the media. But what matters as much is how we behave in dealing with the external and overseas communities and markets.
25. We know that the way we put ourselves across hugely affects tourism. We only need to say once that we have uncontrolled looting thugs roaming our streets, and hundreds of thousands of fickle US tourists will be dissuaded from making London their destination of choice. Likewise, if we call into question the quality of professional services on offer from the many UK firms engaged in overseas activities, it will become a self-fulfilling prophecy.
26. That is not to say that we should discourage free speech or self-criticism. Our limitless capacity for self-analysis and self-deprecation is much admired overseas. But we must not let it get out of hand and become an end in itself. We need to realise more acutely the consequences. We cannot survive forever on warm feelings of goodwill towards Britain; we need a Unique Selling Point – the management consultants' favourite thing. We need to offer something the world needs and cannot get elsewhere, if we are to succeed in the modern world. The USP is the quality and integrity of our professional services.
27. In dealing with EU institutions, we need to make sure that UK interests are being properly protected. I am as pro-European as one can be, but there is no doubt that some elements of the European agenda will, whether or not this is intended, have the effect of reducing the influence and reach of English commercial and corporate law and the UK judicial system. The two most obvious current examples are the

implementation of an optional instrument for the common frame of reference, and the proposed amendments to the Brussels regulation.

28. Another example of where we can be rather short-sighted concerns professional training. Our universities have, for many years, attracted a disproportionately high number of foreign students, who go on to study for our top professions, and then carry the English language, English law and English notions of justice overseas. They promote our professional services in all they do in their many countries of origin. We should, I think, encourage genuine foreign students coming to the UK. It is short-sighted to reduce the number of programmes for overseas students in China, India, Malaysia, Pakistan and numerous other places to study law in England, and qualify for the Bar or as solicitors. I was particularly concerned by the abolition of the Lord Chancellor's Chinese exchange scheme whereby talented young Chinese lawyers came to spend a year in the UK with leading solicitors' firms and barristers' chambers. I was privileged to meet the alumni of this programme over the last 20 years, when they had a 'friends reunited' event in Beijing a few years ago. It was a fantastic assembly of influential anglophile legal luminaries from senior positions all over China. We make a mistake if we think that we are wasting our time by offering Asian, African, South American, Middle Eastern and, indeed, Eastern European, professionals the opportunity to experience the British legal system. Like the old Jesuit saying, give me a child at 6, and he will be mine for life! We can create a generation of worldwide ambassadors extolling our virtues, if we only embrace programmes to bring the best of young overseas lawyers and professionals to spend some time here to see how we do things.
29. None of the suggestions I have made is a silver bullet. What is required is a major cultural shift. We need to appreciate the value of the UK's legal and professional services, to understand their importance to the UK economy, and to promote them in a variety of ways. It is precisely because there is no single solution that the problem is so difficult to solve. But we should be under no illusion as to its importance. The UK's professionals are a hard-working, highly educated, well-trained well-regulated group that can be deployed all over the world. They are trusted better and respected more than almost any other nation's professionals. Moreover, they can provide the growth that the UK economy so desperately needs to allow it to draw away from the cusp of a double-dip recession. If only we were to take ourselves, and thereby be taken, more seriously.
30. And thereby hangs a further point. I have mentioned what judges can do, and how the Government can promote our legal system and our professional services. But surely the responsibility must rest substantially with those offering the services themselves: the lawyers and accountants. I would not for a moment suggest that the major firms, of the kind that I have already mentioned, are not motivated towards self-promotion, nor that they are not making huge strides in increasing the worldwide profile of UK plc. But lawyers and other professionals still have something of a bad reputation at home, which I believe can be quite damaging.
31. I recall vividly, when I was Chairman of the Bar, I was interviewed by John Humphries on the Today programme. I was advancing a similar theme. I was saying that the vast majority of lawyers were valued and valuable public servants, who should be regarded in the same category as doctors, nurses and teachers. Humphries laughed out loud. But the point is not so stupid. The vast majority of criminal, family and administrative lawyers offer the public a vital service for relatively modest (in some cases, extremely modest) remuneration. The commercial lawyers are supporting UK plc in the way that I have described. The antipathy to lawyers shown by the popular press, many politicians and by the public is logically unjustifiable. In

surveys, the public generally respond by saying that all lawyers are dreadful, except their own. The attitude to a range of other professionals also tends to be somewhat negative, albeit rather less negative than the attitude to lawyers. This approach can be changed if the professionals themselves - at all levels - realised the importance of the position that they occupied.

32. Lawyers in the UK have a significant advantage over their European counterparts. Lawyers in most continental European countries regard their duty of confidence to their client as so over-arching as to inhibit their proper regulation, and in some cases their ability to provide effective commercial services.
33. Lawyers in the UK also have a significant advantage over their US counterparts. The US legal profession has a poor reputation for ambulance chasing and large conditional fees. And the US legal profession is proportionately far larger than our own.
34. My own view is that now, as much as when I was at the Bar, a great deal of effort needs to be put into improving the image of the UK's professions. This is not merely cosmetic. If the professionals themselves better understood how important they were to the success of UK plc, and how their public image at home was hindering that objective, they would be able to tackle the factors that are responsible for their tarnished reputation. Again, there is no single bullet. The recent explosion in pro bono work is very much a step in the right direction. Even more important, perhaps, would be a far more widespread understanding of the importance of the quality of our professional services and our legal system to our national economy.

Should judges really be involved in promoting UK plc?

35. As for the second criticism that I mentioned a few minutes ago, namely that judges should not be involved in enhancing UK plc, I reject this absolutely. My call is that we should take more seriously what we value most. We should cherish our legal system and improve it, not just so that we can sell it overseas, but so that it provides the highest quality of, and access to, justice for our own citizens in all walks of life and in all fields. We should not assume that what was historically a ground-breaking legal system will remain so, unless the judges and lawyers remain dedicated to its continuous improvement, and ensuring that it provides what is required by the domestic and international community that it serves.
36. That does not mean that judges should forget the need for absolute independence and impartiality – nationally as well as internationally. It is not the judges' role to take sides. I hope it is clear that I am not doing that – all I am doing is trying to draw attention to ways in which we can make the best of the UK's best qualities and best talents.

What else can judges do?

37. So, I return to the title of this talk: "The role of judges in the success of UK plc". Judges are not – contrary to popular belief - just lawyers that are past their sell by date. I like to think they hold, not only an extremely privileged, but also an extremely important, position as the guardians of our legal system. It is the judges' responsibility to ensure that our legal system is fit-for-purpose, otherwise none of what I have been proposing can possibly be brought to fruition. The judges have

significant influence on the regulation of both lawyers and other professionals. They can do much to make and keep the legal system the envy of the world.

38. I have already mentioned the reforms to the civil justice system that I believe are still necessary. The judges of the Commercial Court, Chancery Division and the TCC will, I am sure, make the move to the Rolls building a huge and visible success, so that our litigation services are seen to have improved and to be improving. But litigation is only the tip of a very large iceberg. By maintaining and enhancing the quality and reputation of the UK legal system, judges can also create the climate in which our professional services can be successfully promoted.
39. Nothing I have said tonight should sound jingoistic. I am not standing up for the UK's professionals because they are British, I am standing up for them because they are generally extremely good at what they do. I am, as I have said, an enthusiastic European, and I think that much can be gained from co-operation between lawyers in the international community generally. But just because we want to work constructively for the improvement of legal systems in developing as well as developed countries, it does not mean that we cannot try to keep our own legal system pre-eminent, so that we remain in a position to help others to improve theirs. I am, in fact, very much involved in this activity, through both the Slynn Foundation and the European Network of Councils for the Judiciary. The objective of improving judicial systems in Europe and beyond is not inconsistent with what I have been saying. It is all part of it. We are widely respected and we should do all we can to help other legal systems, and by that route also enhance our own reputation. Judges have a major role to play in this, and I hope they will continue to rise to the challenge in the years to come.

Conclusion

40. In saying all this, I hope I will not prove to be a lone voice in the wilderness - as I rather felt I was when talking to John Humphries in 2007. The figures that I mentioned at the outset speak for themselves. The UK's professions are indeed very successful. We have a world class legal system, which we need to cosset and promote. We should not allow our British capacity for under-statement and negativity to stand in the way of our success.
41. It is important that, in acknowledging that we produce high quality professional services, we do not give ourselves a licence for complacency. In this, as in all fields, education is crucial. The more we come to understand what we have to offer, the more we can learn how to make the best of it. The cultural change I spoke of earlier is at the heart of it. Without a deeper understanding of what we do well, why we do it well, and what others think of what we do, will have no hope of building on the success of the professionals, who contribute so much to the success and, indeed the economic growth, of UK plc.
42. I hope that the influential people in this audience will take something positive away from tonight. At least, I hope to have provided a little food for thought. I am happy to answer any questions you may have.

Geoffrey Vos

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