



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RT HON. THE LORD THOMAS OF CWMGIEDD

OPENING OF THE BUSINESS AND PROPERTY COURTS FOR WALES

CARDIFF CIVIL JUSTICE CENTRE

24 July 2017

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1. It is a privilege and a great pleasure to be in the other capital city of the jurisdiction of England and Wales to open the Business and Property Courts for Wales at Cardiff.
 2. This opening represents the pragmatic and dynamic approach of our joint jurisdiction. As the Chancellor of the High Court of England and Wales will explain in a little more detail, the bringing together of the specialist civil courts for Wales at Cardiff follows the launch of the Business and Property Courts in London, Birmingham, Manchester and Leeds, to be followed in due course by a similar opening in Bristol.
 3. We want to ensure that for each of these cities, and for Wales, the specialist courts will provide a comprehensive and expert method of court-based dispute resolution, where each of the Business and Property Courts, whether in London or outside London, will deal with any type of business case, whatever its value or complexity. It is essential that businesses in the Principality of Wales and in the regions of England can litigate in those great cities on exactly the same basis as they can litigate in London.
 4. This change, of course, must be seen in its historic context. After the abolition in 1830 of Wales's own system of courts (the Courts of Great Session, which applied the common law and equity in the same court), the assize system of England was extended to Wales. During much of the 19th century and, in particular, during the heyday of Cardiff as one of the greatest ports in the world, there was substantial commercial litigation at the Assizes in Cardiff and

Swansea. A glance at the record of the Assizes shows cases on general average, bills of exchange, disputes over ship brokers' commissions, breaches of charter party, disputes over share ownership and the like were regularly heard at the Assizes. However, as I have explained elsewhere, all this gradually came to an end after 1895. Until the restoration in Cardiff of Chancery work in 1989 through the creation of a Chancery court, very little specialist business work was done in the courts of Wales. The Financial Times of 11 April 1990 hailed this change:

“Judges are not often the subject of enthusiasm. On the contrary, they generally make splendid Aunt Sallies for a press-fed public. Wales, however, has a judge who is generating not only enthusiasm but excitement ...”

These were the terms in which the appointment of Judge Hywel Moseley QC was received. That specialist court was followed by what is now the Technology and Construction Court and, finally, by the Circuit Commercial Court (as it is now to be known) which was opened by Lord Bingham of Cornhill CJ in 1999 in this courtroom. These courts have been a great success and the opening today demonstrates the commitment of the judiciary to progressive change.

5. It is, in the present time and as the negotiations for Britain's withdrawal from the EU are under way, important to emphasise the unique strength of English law and dispute resolution in the United Kingdom. The contribution legal services make to the UK economy as a whole is very substantial. As I said in my speech in the Mansion House in the City of London earlier this month, some have questioned whether after Brexit the quality or certainty of English and Welsh law and the standing of our courts and our arbitration centres will be the same. Some have suggested that this will not be the case. This is completely false, as I then said.
6. I touched in summary on the position but, with the help of the Brexit Law Committee, a summary of the major advantages of English law and UK dispute resolution has been put together.

7. There are in effect 10 points:

1. The UK has a totally independent judiciary and compliance with the rule of law. These factors inspire business confidence and investment.

The UK has a strong and incorruptible judiciary, which is drawn from the highly experienced ranks of senior legal professionals. It is structurally and practically independent from both the executive and the legislature. This ensures fair and predictable dispute resolution. International parties litigating in the UK can be confident that their disputes will be decided only on their intrinsic merits, without regard to nationality, politics, religion or race. Brexit can have no impact on this cornerstone of our legal system - integrity, independence and expertise of the senior judiciary. Arbitrators are also highly qualified and independent (see 6. below).

2. The substantive English common law is clear fair and predictable, based, as it is, on precedent.

The English common law respects the bargain struck by the parties. When planning a transaction, or having to deal with the situation that has gone wrong, businesses know where they stand under English law and can predict outcomes with a high degree of certainty. The English common law respects party autonomy as to the terms of the contract, and will not imply, or introduce, terms into the parties' bargains unless stringent conditions have been met. Brexit will not change the substantive content and application of English contract and commercial law – as it was never part of EU law.

3. The English common law and the UK legal system is, and has always been, flexible. It adapts to meet the challenges of an ever-changing commercial world.

The English common law is the market leader in addressing the problems of globalised financial markets. Currently the common law is leading the way in Fintech, Digital Ledger Technology and Artificial Intelligence. Brexit changes none of this.

4. UK court and arbitral procedures are practical and innovative, delivering speedy and efficient resolution of business and financial disputes.

The UK courts have taken the lead by introducing special procedures for the resolution of high profile market disputes in the Financial List in the newly established Business and Property Courts. By adopting an English jurisdiction or arbitration clause, businesses can be confident that their dispute will be resolved speedily and efficiently. In arbitrations, the supervisory court of the arbitration will be a business-friendly court run by a judge with extensive and relevant commercial experience.

5. Litigation and arbitration in the UK is cost-effective.

Whilst not cheap, the overall cost of UK international dispute resolution compares favourably with costs elsewhere. All fees can be competitively negotiated. Parties have autonomy in the conduct of business litigation. Significant cost/benefit advantages can be achieved by adapting court procedures to meet the particular requirements of the case; for example, by reducing the scope of disclosure. In addition, experienced judges are proactive in preventing unnecessary cost escalation by appropriate case management directions.

6. Arbitration and Alternative Dispute Resolution (ADR): The UK will remain a global arbitration and ADR centre post-Brexit. Brexit will have no impact on the New York Convention on Arbitration Awards.

The UK is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Its subscription to the Convention will be unaffected by Brexit. The Convention will continue to apply so as to allow UK arbitral awards to be recognised and enforced in the 142 worldwide states (including the EU) that are parties to it. London will remain one of the world's most commonly selected seats in institutional arbitration and ad hoc arbitration. This is due to a highly qualified legal community, the presence of the London Court of International Arbitration and other arbitral bodies, a clear legislative framework and a pro-arbitration judiciary.

7. The mutual recognition and enforcement of UK judgments abroad will largely continue as before with the rest of the world, whether under long-standing bilateral treaties or under common law principles of comity.

Nothing will change at all if the UK and the EU have a relationship based on the Brussels Recast Regulation after Brexit. But, in any event, in non-EU states, judgments will continue to be mutually recognised and enforced under previous bilateral treaty arrangements, protocols or as a matter of comity.

8. A UK exclusive jurisdiction clause will continue to be given effect after Brexit.

The EU is a signatory to The Hague Convention on Choice of Court Agreements. The UK can become a signatory in its own right post-Brexit. The Hague Convention requires other courts to dismiss proceedings to which a choice of court agreement applies, save in narrowly defined circumstances. Parties who agree to resolve their disputes before the UK courts can rest assured that the resulting judgment will be given effect throughout the EU, as previously.

9. London will continue to provide unrivalled access to high quality legal services.

London is and will remain home to many of the world's leading international law firms. There is virtually unrestricted access to the UK for law firms headquartered abroad. High quality Solicitors, Barristers, Arbitrators and Mediators are available in London. More than 200 overseas law firms from some 40 jurisdictions practise in London, including more than 100 US law firms.

10. London will remain one of the principal financial, insurance and commercial centres in the world.

In addition, the English language is and will remain the language of business irrespective of the consequences of Brexit. The UK's specialist Business and Property Courts have been specially developed to meet the needs of international businesses operating across industrial sectors. These include the Financial List, the Commercial Court (the world's leading forum for the resolution of international trade, shipping and insurance disputes, where two-thirds of claims involve at least one overseas party), the Insolvency and Companies List (which has handled some of the biggest international reconstructions and insolvencies of recent years), the Intellectual Property List (which will continue as one of the most popular Patent, Trademarks and IP forums in Europe), the Business List of the Chancery Division, and the Technology and Construction Court (dealing with technical construction, procurement and engineering disputes).

8. As is apparent from these 10 points, there will be no material change in:
- (i) The substantive content and application of English contract and commercial law. The law was not and will not be a matter of EU law and is materially unaffected by Brexit. English law will continue to provide a certain and speedy tool for the resolution of disputes.
 - (ii) Arbitration in the UK will not be affected by Brexit in any way.
9. However, I draw attention to three matters in my Mansion House speech in the following terms:

“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...

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.”

10. As to those three points:
 - (i) The adoption of a regime of applicable law is a matter entirely for the UK Parliament. I cannot conceive of any basis on which the law will not be made certain in the terms I have described.
 - (ii) One of the attractions of the UK as a place for dispute resolution is that UK jurisdiction clauses, whether for London or some other city, are internationally recognised through The Hague Convention to which the UK is a party through arrangements made by the European Union. I can see no basis upon which the UK Government would not ensure that the UK, post-Brexit, continued to adhere to The Hague Convention.
 - (iii) As to the regime for the mutual recognition and enforcement of judgments, I can discern no basis on which the UK Government and the European Union would not wish to provide for such a regime as regards the enforceability and recognition of judgments between the UK and the European Union. It is the respective interests of both.
11. It is obvious to any business or lawyer that, when entering into a contract, which either has a jurisdiction clause for UK jurisdiction or which might involve the necessity for the recognition or enforcement of any judgment in the European Union in the years after March 2019 (on the assumption that a dispute would arise), there must be certainty now. That is because contracts are being made now which will have effect for years ahead.
12. For the reasons I have given, I think there will be certainty. That is because, as I have said, there is no basis on which Her Majesty's Government would not wish to provide for these three issues in the way I have described.
13. In the absence of the clarification I sought on these issues, I thought it necessary to set out what I see as the likely position. It is the wish of the entire legal community to continue to assure businesses here and elsewhere in the world that using English law (whether with a UK jurisdiction clause or not) will continue to be the same after March 2019 as it is today. There can be no further delay whatsoever in providing certainty as to that through Her Majesty's Government making the position clear.
14. I therefore look forward to Her Majesty's Government in the immediate future confirming the position.

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