



**Lord Chancellor and Secretary of State for Justice
Rt. Hon Kenneth Clarke MP**

**CityUK Future Litigation event
Clifford Chance
14 September 2011**

INTRO

Good morning ladies and gentlemen. It's a great pleasure to see before me today the leading figures in UK commercial legal services and share with you my views on the future of litigation.

We stand together in this splendid building, the product of what Mervyn King has called the NICE - non-inflationary, consistently expansionary - years. But noone can be unaware of rumblings in the global economy, or the hangover of high debt and low growth that continues to trouble the US and Europe.

If we are to continue down the path to prosperity, not just austerity, government needs to play its part in boosting the economy. The Coalition has made an excellent start by re-establishing our fiscal credibility after Labour's unsustainable spending binge. The priority now is to continue with broader, structural reform.

In justice, there are two areas where we must make progress that I want to highlight this morning.

The first is promoting industry. I place enormous value on UK legal services, which are world-class, but I think we can do more to ensure they thrive. I am almost as much of an enthusiast for English law as I am for English cricket. That's why I am keen to go in to bat with UKTI, the CityUK, the Law Society, the Bar Council and others, on your behalf.

The second area is modernising the justice system. One lesson from my long and much reshuffled career is that it is essential that policy-makers don't waste the opportunities that crisis presents. The UK faces a number of long-standing problems that weigh down on our competitiveness but that have in the past been put in the too difficult pile - be it the operation of welfare, planning, pensions or, in my case, the legal system.

If we're serious about growth, it is only by taking action in these areas that we can make a long-term difference to the economy, not by pursuing the fiscal chimeras so beloved of our political opponents.

The UK's system of civil and criminal justice has many strengths but is also somewhat old-fashioned and bureaucratic, and doesn't always work well for the public, or for business. Putting that right is of course important in its own right. But it is also an economic imperative...

Popular attention has understood my reforms for the justice system through the lens of their impact on legal aid, sentencing, and the aftermath of the riots. Vital though these things are, the case I want to make is that they are part of a broader picture: a government supporting the business of law; a legal system supporting the business of growth

Promoting law as a business

Let me start with our plans to help UK legal services. It's been said, but bears repeating, that the rule of law is one of our greatest exports. This reflects, in part, our national genius for legal services, which generated nearly 2% of UK GDP in 2009 – a rather healthy £23 billion. Exports of law firms totalled more than £3bn in the same year, nearly three times the total of a decade earlier. Our competitive advantage reflects many things: our open market, the unrivalled quality of the UK legal profession, our record of judicial independence and the plain good sense of English common law, amongst others. People turn to us because they understand that a decision from a UK court carries a global guarantee of impartiality, integrity and enforceability.

Despite a very strong record, I believe we could do still more, particularly in the face of increasing competition – be it Singapore or Stockholm, Dubai or Hong Kong.

Government cannot create growth directly itself. Its role is to nurture it by delivering a stable and hospitable environment for business to flourish. Law as an industry has in the past sometimes felt itself to be something of an overlooked Cinderella in its treatment by government – certainly relative to financial services . I want to make it clear that, for this Government, The City of London is a legal centre – not just a financial one. All that is why I have been working closely with the UKTI and the legal profession to develop a range of measures.

First, our Legal Services Action plan, which pledges that Government will do its bit to help open markets.

Contrary to popular myth, I do not wear hush puppies but I am nonetheless prepared to wear out much shoe leather making the case for liberalisation of those areas where protectionist regulations remain an impediment to exporting UK services.

Which areas do I mean? Well, it's for you to tell me. I take my list of target countries from you – South East Asia, Brazil and Turkey. And my fellow Ministers and I are keen to ensure that you always have a place at the table within wider trade missions, wherever they happen within government.

Where we get this right it can pay dividends, as the recent EU-South Korea FTA shows. Other areas are longer-term, but I remain determined to keep up the pressure.

India for example has a great deal to gain from removing barriers, and I will be making the case forcefully when I visit in a couple of weeks' time that action to open up further to international legal expertise is economically and socially vital for India itself. This is not about the UK's narrow mercantilist self-interest, but the interest of Indian business, which risks missing out on investment and growth because of restricted domestic legal provision.

A second area where we're seeking to support legal services is in facilitating basic infrastructure. The Rolls Building is an improvement in UK legal services that is long overdue, especially for the Commercial Court and the Technology and Construction Court, whose facilities have been inadequate and frankly, on occasion, embarrassing for clients.

They can now benefit from state of the art building on Fetter Lane (by some irony just round the corner from Bartlett's Passage, where I'm told the Socialist Party of Great Britain was founded). I hope to see many of you there at the formal opening in December.

Third, my colleagues and I are working hard to ensure the right regulatory framework is in place for legal services – whether that's resisting inappropriate legislation that would hurt industry for little gain, or introducing measures to promote competition and consumer choice.

I have been following closely the European Commission's proposals on contract law, which I continue to believe could be unnecessary, disproportionate and damaging if taken too far. There are 27 systems of contract law available for use in the single market. I have yet to see the evidence and am not yet persuaded that they are causing real difficulties for traders or consumers. But even if they were, it seems to me to be doubtful that the right solution can possibly be inventing a 28th.

I think of this as the Esperanto fallacy – a utopian belief that a perceived problem of diversity of languages can be solved by creating an extra one. The wrong EU contract regime is rather more likely to do damage than the linguistic hobby-horse of good Dr Zamenhof – not least in tying up the Commission when it could be doing useful work elsewhere, and prompting years of litigation as the new law gets tested. I want to work with you to try to find more sensible ways of addressing any problems for small business, if there is real evidence of such problems.

As for domestic regulation, we are less than a month away from an historic change - the introduction of Alternative Business Structures on October 6 that will allow solicitors, barristers and other professionals to combine together in new ways, should they choose to, for the benefit of the consumer.

I know that some voices have expressed a degree of nervousness about ABSs. My intent is that the new structures will be of benefit both to the

economy and the profession by improving growth in the legal services market, whilst protecting standards...

Through allowing law firms and Chambers in England and Wales to access capital, ABSs could provide greater flexibility to serve clients, increase competition and afford new opportunities for global expansion into legal services. Time will tell, but I hope that comparisons with the Big Bang in 1986 do not prove entirely fanciful.

Of course, it is easy to publish action plans. The proof of the pudding is in the eating. I want to be judged on delivery.

The UK may no longer be able to boast that it is the workshop of the world (though my colleagues in Cabinet are working hard on rectifying that). But the UK can be lawyer and adviser to the world, and my plans are all about promoting that.

Making the law work for the public and business

Measures backing the law as a business of course need to be seen alongside my wider reforms. You will be aware that I have a Leviathan of a Bill in Parliament, alongside a number of similarly weighty consultations. Though they haven't always been understood in these terms by commentators, they are designed to support society and the economy as a whole.

I'm well known as a fiscal hawk. I believe we must live within our means to retain the confidence of markets. But I am a reformer, not just a cutter.

The starting point for all my thinking since I became Justice Secretary just over a year ago is that – financial crisis quite aside - our legal system does not work as well as it should to support the economy and the interests of justice.

A modern system should resolve conflict effectively, as early as possible. Courts should be accessible, efficient, but generally turned to as a place of last resort, not a first port of call.

But parts of our justice system are still sometimes rather more Jarndyce and Jarndyce than Formula 1 pitstop. In truth, we have a litigious society but one in which citizens fear the prospect of going to Court or being dragged to Court.

Businesses in particular too often find the law an expensive, daunting nightmare, not a public service. Courts are slow, burden the taxpayer with high costs, and get bogged down in bureaucratic processes and procedures.

If we are to make social and economic progress, we need to continue to ensure that we have a legal system that supports UK competitiveness, one that the public and business can rely on.

Hence our plans to reform the system, which are all about asking: what is the best way to settle disputes? How can we ensure it is affordable? How can we make it quicker and easier, and less intimidating to use?

Some of the steps include:

- consulting on measures to improve the administration of civil justice – from easier enforcement of debts to cheaper and faster resolution of Employers Liability and public liability personal injury claims.
- using data and technology to increase efficiency. Later this Autumn we will be publishing individualised data on court performance that will allow comparison of the length of categories of cases for the first time.
- a sustained push on mediation and Alternative Dispute Resolution. We are increasing funding in private family cases by £10 million. In civil law more broadly, we have proposed automatic referral to mediation in small claims cases and mediation awareness sessions in higher-value cases, to help people avoid court.
- Implementation of Lord Justice Jackson’s recommendations on reform of ‘no win, no fee’ arrangements. The aim here is to restore balance to the costs defendants face. We must put an end to the perverse situation where meritorious claims go undefended because of the risk of facing ruinously high success fees...

...I might highlight too our commitment to address the parasitic referral fees business, the ambulance-chasing activities of which have, in my opinion, done much to move the UK towards an unwelcome compensation culture.

What all adds up to, I hope, is a vision of the future of litigation where the whole is greater than the sum of its parts. My aim is a system which: encourages people only to resort to the courtroom where sensible; cuts costs where costs are unavoidable; and promotes UK law wherever and whenever possible.

What I haven't mentioned so far is my plans on legal aid reform, the area where much debate has focused, sometimes helpfully, sometimes shedding rather more heat than light.

It is worth saying here that no lawyer looks to reform legal aid lightly. It is absolutely vital to protect access to justice, and legal aid providers perform an essential public service, often for little personal material gain. But we cannot obscure the fact that the legal aid system is broken. It is unaffordable, based on a flawed analysis of what the taxpayer should provide funding for and a terrible, bureaucratic and burdensome system of paying for it...

I want to move the national conversation on this subject forward - away from a rather sterile debate about whether there is a need for reform and towards addressing the crucial wider question I've posed for our legal system instead: how do we deliver the best possible system for resolving conflict, and one that makes the best use of the resources available to it?

Challenge to you

Of course, growing legal services, making the courts and justice system more efficient and modern or, where necessary, reducing spending can't just be driven from Whitehall.

Rather, they depend critically on the decisions of thousands of people up and down the country – both those working in the public sector, and those employed in legal services.

That's why I would welcome your support in building a system where business thrives and the law works more effectively.

For example, on ABSs where I do recognise that some solicitors and barristers have mixed feelings. There is no doubt, this is a time of uncertainty.

I know too there are particular concerns regarding the pace of change, the fate of smaller firms and the implications for quality.

I should say: I take a nuanced view on this myself. My priority is that ABSs help firms to work together in an economically viable set-up and that's why we've taken our time in trying to get the regulatory framework right. It is

important that consumers, no matter whether using a traditional law firm or a new ABS firm, are provided with first class service and protection.

I'd also like your backing and help when it comes to opening markets. It is never easy overcoming vested interests, and we only have a chance of doing so with your expertise, knowledge, influence and support.

A close dialogue with officials and ministers so they are informed of the key obstacles to opening up specific markets (& likewise any newly developing issues in other areas of the legal sector) is essential. My door is always open.

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