

## **Speech to Chancery Bar Association Annual Conference**

**19<sup>th</sup> January 2018**

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

### **Introduction**

1. It is a pleasure to be back at the Chancery Bar Association's Annual Conference. And a great pleasure also to be allowed loose to say what I want, without the incisive guidance provided by Joshua Rozenberg when he interviewed me here last year.
2. Many of you will have heard me talk recently about (a) the inauguration of the Business & Property Courts, (b) blockchain, smart contracts and artificial intelligence, and (c) the importance of making sure that English law and UK jurisdiction stay at the forefront of the global dispute resolution firmament post Brexit. These and the other things I often talk about are very important to the legal business community. You might even describe them as my "hobby horses", but if that were so, I want, at least for some of the time, to ride a different horse tonight.
3. This evening, I want to speak about something that is, I think, of increasing concern to the Bench and the Bar alike – and that is the issue of recruitment to the judiciary. I am not talking so much about the processes adopted by the Judicial Appointments Commission ("JAC"), though I will say something about that, but I am thinking more about the culture of judicial aspiration. I will also say something at the end about practice in the Business and Property Courts, but let me start with judicial appointment.

## Some basic parameters about judicial appointment

4. It is axiomatic that we cannot allow the calibre of judges in the Business and Property Courts to slip or slide. Both Lord Kakkar as Chair of the Judicial Appointments Commission and Lord Burnett, the Lord Chief Justice, have made clear that they will not contemplate reducing standards – and that applies across all jurisdictions. It is something I wholeheartedly endorse.
5. If we were to allow any reduction in standards, we would risk losing a reputation that has been hard won as one of the most reliable, effective and predictable courts in the world. Don't get me wrong; I am not saying standards have slipped. They have not. I have been delighted to welcome to the High Court bench some of the very best. We have made excellent appointments recently at all levels, but we are not able to make enough of them, either at High Court level, where the problem is particularly acute or at other levels.
6. It is absolutely critical to the rule of law that we manage to attract the highest quality judges to determine business disputes in this jurisdiction for the benefit of national and international parties. I am not saying that quality is less important in other subject areas. It is not. But I am concentrating on Business and Property for obvious reasons, because that is my area of responsibility.
7. We need just to spend a moment to ask why quality is so crucial in this area. I am talking about quality rather than integrity and independence, because I take the latter for granted. We are lucky to be able to do so. But the factors that allow us to be confident that all our judges are fiercely independent and of undoubted integrity also have a bearing on what I am about to say. But I want to start with quality.
8. Effective dispute resolution, whether in the courts or in arbitration, like effective ADR, is all about the trust and confidence that the parties have in the quality (and integrity) of the tribunal. If the parties do not trust the judge to reach a proper decision according to the evidence and the applicable

law, they will avoid asking the court or tribunal in question to make any decision at all. The necessary trust and confidence is hard to gain, and easy to lose.

9. If we truly want to retain what I unashamedly describe as a pre-eminent position for our justice system after we leave the European Union, we are absolutely going to have to make sure that our courts offer world-leading quality in our Business and Property Courts. So what is the problem?

#### The problem that I see fast approaching

10. One of the problems as I see it is the perception of a changing culture in the legal profession, but particularly at the Bar, which threatens no longer to propel enough of the brightest and best towards a judicial career.
11. There are many excuses offered as to why the best barristers, and indeed solicitors, may be dissuaded from looking for a career on the bench. First, it is said that pay and pensions are inadequate. Secondly, it is said that working conditions and staff supporting judges are no longer adequate. Thirdly, it is said that the workload has become intolerable, and fourthly, it is said that the Judicial Attitudes Surveys show that judges are not happy, and that they are not fully appreciated by the Government and the media or anyone else for that matter.
12. Let me take each of those matters in turn. First pay and pensions: it is true that judges' pay and pensions have deteriorated in real terms over the last 10 years. I cannot and would not seek to gainsay that. Indeed, I have spent much of my time over the last 7 years working to remedy that position and continue to devote much effort to that objective. We are due this year to receive a major review of judicial pay and pensions from the Senior Salaries Review Body, and I am sure that we will work with Government to seize the opportunity that presents itself to rectify these problems. We still need to acknowledge that judges are, even now, amongst the most well-paid public servants. What has actually

happened is that the legal professions have experienced an exponential rise in their levels of remuneration, particularly in the Business and Property field, over the same 10 years in which the judges have seen a pay freeze. But however important pay and pensions are, and they are very important indeed, they are not the whole story, and I want to concentrate this evening on the other elements in the story.

13. As regards working conditions and support staff, it is true also that work needs to be done. But I am confident that these issues, that were caused by austerity across the public sector, are being properly attended to. The reform project is improving the buildings that judges operate from, and allows for better staffing where it is needed, alongside innovative and effective IT solutions, which will change the landscape unrecognisably.
14. So, I come to workload. It is true to say that judges in the Business and Property Courts, work hard. But they are not unreasonably overloaded. You should know that the Chancery Division remains 3 judges short (that is 17%), despite the recent excellent appointments.
15. But it is the fourth factor I mentioned on which I wish to dwell a little more. The suggestion is being made amongst barristers, senior and junior alike, and in the legal profession more widely, that being a judge is not a good job any more; that it is not enjoyable and that judges are miserable. So far as the Business and Property Courts are concerned, and I think elsewhere too, this is simply not true. Most, if not all judges, hugely enjoy the job they do. To put it bluntly, they love the judging and it is perceived as a privilege to do it. It may be that judges generally would like to be more demonstrably appreciated by Government and the media, but these factors do not spoil the enjoyment of the work we do. Those of you who are privileged enough to sit as deputy judges will know that deciding the interesting cases we deal with is fascinating and rewarding.
16. But there is a more important point, even than that. If the profession stops producing the brightest and the best for

appointment to the Bench, the reputation of our jurisdiction for superlative quality in decision-making will quickly fade. It will become a self-fulfilling prophecy. And who will suffer? Well UK PLC for sure, but also the UK legal professions that operate within our legal system and in so many countries abroad as well. If you allow yourselves to be dissuaded from applying at an appropriate time for judicial office, you will miss the boat, and we cannot run a justice system without judges.

17. My message is that the highest quality barristers practising in the Business and Property Courts need to step up to the plate. They need to understand that, if they do not do so, they will be destroying the very infrastructure that has allowed them to prosper, and they will be doing so, I regret to have to say, for not very good reasons. You can ask any of my colleagues in the Rolls Building. I have. They all love the job. They may have this or that complaint. Everybody does. But unashamedly I would repeat, being a judge in our Business and Property Courts across England and Wales is one of the best jobs you can find.
18. So, can I encourage all of you that are successful practitioners at any level in the Business and Property Courts to readjust your horizons, and to positively consider the judiciary as a central career aspiration. Also, I am not suggesting that it will be easy to get on the Bench. It should not be. I know also there are frustrations about the applications process, with which we are actively trying to address. But I should also say that it is not enough to apply to become a deputy judge and then rest on your laurels. We need full time judges for the Business and Property Courts of the very highest calibre if we are to maintain a system that supports a high quality legal profession. The two have a symbiotic relationship. The one cannot exist without the other.
19. Finally, let me say something about the process of judicial application. I know, as I have said, about the frustrations and the great effort that is required from applicants if they are to succeed. Your officers and this association has been

at the forefront of making representations to the JAC about the process. And they are to be congratulated, because they have had considerable success. The recent Recorder competition allowed Business and Property practitioners a proper opportunity to become Recorders without being marked down for their absence of criminal law experience. Many were successful, which is excellent news. There will be a new Section 9(4) competition this year and regular competitions in future. There are many positives.

20. So, with that introduction, can I move on to some other aspects of the work of the Business and Property Courts?

#### The first months of the Business and Property Courts

21. Since the launches in July 2017, we have seen considerable excitement and enthusiasm about the Business and property Courts across the country. We are already extending the regional centres to establish Business and Property Courts in Liverpool and Newcastle, with launches there in the coming weeks. We have already, of course, had successful launches in Birmingham, Leeds, Manchester, Cardiff and, last week, in Bristol. The good news also is that we will be extending electronic filing to the regions in the Spring. That will really start to bring the Business and Property Courts together across the country.
22. When I spoke here last year, I said that I wanted a name that would be understood nationally and internationally for the work that we did. I said I wanted it to be written on the tin. Since then, I have been to many countries to explain the changes we have made. I have found, as I know many of you have, that the new intelligible name is very well received. Moreover, the initiative has been enthusiastically supported by Government, the City of London, and TheCityUK. I know that the Chancery Bar Association has also been on the move with its visits last year to Hong Kong and Gibraltar. I understand that you will be going to Shanghai in May. I was there two weeks ago. We met the

judges of the Shanghai Higher People's to discuss financial dispute resolution. They were very interested in our Financial List, and we agreed to continue our collaboration.

23. I want also briefly to mention the importance of the CLIPS scheme which is so highly valued by our judges. Can I ask you to consider participating if you have not already done so. That request applies not only to juniors, but also to leaders, many of whom have set a shining example by appearing in the applications court pro bono alongside their junior colleagues. It is not just public service. There are real advantages to you in joining CLIPS – you get the chance to appear in the High Court – and CLIPS representatives are very visible to and appreciated by the judges.
24. In closing, I want to say something about raising awareness of professional social responsibility, in which I notice your association is leading the way. I was, as some of you may recall, Chairman for some time of the Social Mobility Foundation, an organisation that has for many years collaborated with the legal profession to help talented young people from less advantaged backgrounds achieve their potential in professions including the law. It is absolutely critical that those of us who operate predominantly in the Business and Property field keep our feet firmly on the ground. We need to understand where our work fits in to the community that judges and lawyers alike exist to serve.
25. That, I think, is why your professional social responsibility programme is so important. It enables all your Chambers to understand and support the wider world that exists outside the City of London and perhaps the other major centres in the UK and abroad where your members practice. I commend the fact that Chambers now encourage volunteering generally and, in particular, promote ethical business practices, such as ensuring staff and suppliers are paid an independently assessed living wage, and environmental policies to reduce waste and energy use. This all fits in with the CLIPS agenda. Lawyers are part of the community and they must not be detached from it. It is easier for Business and property lawyers to become detached

than it is for those practising in crime or family work, so I do hope you will continue and step your work in this area.

26. Can I end then on another positive note. Our legal profession can still boast the highest quality of lawyers, and, I like to think, the highest quality judiciary. But we must not be complacent. I say that in nearly every speech I give. These things do not happen by themselves. We need to be in touch with the real world; we need to make sure that we all play our part in promoting the highest standards, and in ensuring that we achieve and enhance the quality, integrity and best practice to which we aspire.