

Speech: Improving UK Competitiveness, Strengthening the Rule of Law

May I start by thanking Policy Exchange for hosting us today, Ian King for Chairing our Panel, and Linklaters for their excellent report. It is a valuable contribution to the debate on Brexit, and it demonstrates the hard-work that is going into preparing for Brexit amongst the legal profession.

I should disclose, at the outset, that I trained as a solicitor at Linklaters, way back when in the late 90's. They knocked me into shape after Law School. And I remain hugely grateful for the professional training and mentoring I received.

I confess that, as someone who campaigned for Brexit in the face of prevailing opinion in the City, I always stand in a certain degree of trepidation at events like this ... that Richard Godden isn't sat there quietly thinking ... we really screwed up with that one.

All I can say by way of mitigation, is that Linklaters have always placed huge value on critical evaluation, really scrutinising what is in the best long-term interests of their clients ...

And they even sent me to Brussels for six months – where I got my greatest exposure to Brexit – as part of their EU, competition law, and WTO practice.

I'm not blaming Linklaters for becoming a Brexiteer.

But at a tender age, they played an influential role in my formative experience of Brussels. And then I left for the Foreign Office.

With that in mind, I want to thank Richard and Linklaters for this excellent report, entitled "Improving the UK's competitiveness post-Brexit by enhancing the Rule of Law".

It reminded me of that great line, by Thomas Edison, that: "opportunity is missed by most people because it is dressed in overalls and looks like work."

I am in no doubt about the challenges and uncertainty inherent for the UK, at this sensitive moment in our negotiations and preparations for leaving the EU.

The report is clear-eyed about those and about the wider domestic challenges we face. But, it was also important to see the report present this cross-roads in our history as a 'unique' opportunity, to reinforce the rule of law, increase predictability of our laws and law-making, and strengthen the UK's underlying competitiveness.

I couldn't agree more.

That will require some more listening on all sides of the debate, And it will

require a lot of hard graft ... to make sure we both sensibly manage the challenges, and grasp the opportunities that lie ahead.

Above all, this is a shared national endeavour.

We need a bit more unity of purpose.

And, as the report says, we in government and Parliament will need advice and support from businesses and the legal profession to help make a success of Brexit. Fortunately, there's no shortage of that.

So today, I want to briefly set out what I see, in government, as some of the key challenges and opportunities affecting the legal sector, before opening the debate up to the high calibre panel Policy Exchange and Linklaters have assembled.

Mitigating the Challenges

In terms of the rule of law, perhaps the most significant and pervasive challenge of Brexit is to avoid potential legal disruption, and the impact this could have on business and citizens across the country, if we don't address it carefully indeed.

The rule of law – a term we often hear bandied around – sounds rather grandiose. But protecting legal certainty means making sure people have predictable rules that they can plan their daily lives around.

From rules protecting consumers when they buy goods in the shops, to the principles of competition law designed to set a level playing field for businesses to rely on.

I am currently one of the Ministers steering the EU Withdrawal Bill through Committee stage of the House of Commons, and we are five days through an eight day gauntlet.

The Bill is pretty complex. I won't bore you with details, but it addresses this fundamental challenge by taking a snapshot of the substantive EU principles, rules and legislation that apply in the UK at the date of departure, and retaining that body of law as UK law.

That means we will have the time to carefully consider which aspects of EU law, in the future, we wish to retain, amend or repeal.

Crucially – for those nervous on the legal side or more generally, it averts the legal cliff-edge some fear.

It paves the way for a smooth legal transition.

Clearly, in terms of the Bill, there are some contentious areas.

The government is in listening mode.

That's not merely a rhetorical doffing of the cap in the direction of

critics.

We are actively making sure we can give Parliament and the public the reassurances they need.

For example, it is quite right to look very carefully at the amount of legislation that should be passed by primary and secondary legislation, along with the processes for enacting it.

We want maximum scrutiny and transparency ... but we're also up against a deadline – not of our choosing – imposed on us under EU law by Article 50 of the Lisbon Treaty.

So the job for somebody like me is to make sure we can deliver that smooth transition, we all want, within the timeframe we face.

I am confident we can get the balance right, with the appropriate scrutiny arrangements for secondary legislation. Contrary to what you hear amidst the media din on Brexit, there is a lot of goodwill and sensible dialogue going on between Ministers and MPs across all areas of Brexit to make sure we design proper arrangements to get the legislative job done.

Beyond the Bill, and for all the media froth, negotiations between the UK and the EU are making solid progress in the lead up to next week's EU Council.

We are, as the Prime Minister has said, within 'touching distance' of a deal on the status of UK ex-pats on the continent, and EU nationals here.

The contours of agreement on other issues, including the approach to outstanding financial obligations and Northern Ireland, are also taking shape.

And the EU has instructed its officials to prepare for trade talks, also a positive sign.

Clearly, the legal profession has a very real stake in all of this, especially amongst practitioners focussed and advising on UK financial services.

I won't give a running commentary on the negotiations, particularly at this sensitive moment.

But, made clear that we want a deep and special partnership with our EU friends, which includes frictionless trade in goods and services.

And I note, in passing, that confidence in the City remains very strong.

Just one illustration of that bold assertion is the latest publication of the Global Financial Centres Index in September, which still has London ranked number 1, with the gap between London and New York at number 2 expanding.

Incidentally, there isn't an EU hub in the top 10.

We are ambitious for a strong, win-win, deal with our EU partners, and there is a lot of work going on to achieve that.

Clearly, we need to be ready for all outcomes, and it takes two to tango. But I note that on the EU side they are also acutely conscious of the sheer volume of UK finance supporting the continental economy.

Beyond lawyers working in financial services, in August, the UK set out its position paper, 'Providing a Cross-Border Civil Judicial Cooperation Framework', to make sure we have as much legal continuity in the arrangements for the recognition and enforcement of judgments, insolvency jurisdiction and rules, small claims judgments and family law judgments.

This is important, for supply chains, business transactions and also family relationships, which all cross borders and all have resonance for people in their daily lives.

There is a wider corpus of private international law, which the UK could fall back on if necessary.

But, we want the optimum result, the win-win scenario of a deal with the EU that allows for us to continue our close and comprehensive cross border civil judicial cooperation.

From child custody arrangements to cross-border commercial claims, that is manifestly in both sides' interests.

Seizing the Opportunities

So, yes, there are challenges that we need to mitigate and prepare for.

But there are even greater opportunities – and it is vital that we are decisive and seize them.

I agree with the Linklaters' report, which is clear eyed about both the opportunities and challenges we face, that we now face a 'unique' opportunity to reinforce the rule of law.

The EU Withdrawal Bill will help guarantee a smooth and orderly Brexit, but it also delivers on the number one reason people voted to Leave the EU, which is to take back democratic control over our laws, so MPs like me are more accountable to voters for the decisions we make and the legislation we pass.

That is part of the social contract in this country.

It is absolutely fundamental to our democracy.

The Linklaters report also has some interesting ideas about improving scrutiny, and quality of law-making.

Certainly, as we make our way through the legislation that needs to be passed before the date of exit from the EU.

And we consider the changes we can make for the future, this should mark the

moment, an opportunity if you like, for a democratic renaissance, both in terms of politicians' ultimate accountability to the public for the laws that govern them, but also the quality of laws and the scrutiny that informs them.

In that respect, I think our approach to ending the direct jurisdiction of the European Court of Justice is not some procedural house-keeping exercise.

I am proud that we have a world-leading judiciary in this country.

I believe, both on principle and in terms of producing at a practical level, better quality judgments that maximise legal predictability for the citizens of the country, that the UK Supreme Court should have the last word on the laws of the land, it should do what it says on the tin, and it should be supreme in the meaningful sense.

And nor do I think it would make any sense to give the Luxembourg Court the crucial role of determining future international disputes that may arise between the UK and the EU after we leave.

As we have made clear in our position paper on dispute resolution, we need a process for dispute resolution that commands confidence on both sides.

So it would be, obviously I think, partisan and lop-sided to allow either the UK Supreme Court or the ECJ to decide those international disputes at the international level.

It would also by the way conflict with the overwhelming global practice in dispute resolution, including the EU's own practice. If you look at the EU's international agreements, and certainly there are none on free trade where the ECJ has compulsory jurisdiction to settle international disputes.

So as our position paper sets out, drawing on the EU practice, but thinking about the huge tapestry of global practice that there is out there, a typical international dispute resolution process might involve a panel of three arbitrators: one appointed by the UK, one appointed by the EU, and a third chosen by the other two.

There is a wealth of global practice to guide us in this area, so it is not beyond the wit of man to find a balanced approach to dispute settlement.

And, just as we take back democratic control at home, we are restless in government – and certainly for those who campaigned to leave, as I did – we are restless to project the United Kingdom's global reach abroad.

I think that presents major opportunities for the UK legal sector.

UK legal services employ well over 300,000 people – two thirds of those are outside London.

UK law and British courts command respect right around the world.

The proof lies with the 200 foreign law firms from around 40 jurisdictions that are currently doing business here today, and the 27% of the world's

legal jurisdictions already using the English common law.

According to the 2015 International Arbitration Survey, London was the preferred location to resolve disputes. Last year, we had almost 26,000 disputes settled by alternative dispute resolution here in the UK.

It's kind of ironic that for all the domestic haggling and wrangling on Brexit, we risk forgetting that internationally, Britain is the place people think of as the place they would most like to come to resolve their disputes. That is a unique comparative advantage for us.

And let's not forget that all this commercial activity is not just good for business. Lawyers generated £31.5 billion of revenue profit in 2016, and the taxation from this goes to fund the local school and GP practice, so it's got a huge social benefit as well as being important for employment and the economy.

So, legal services are a major comparative advantage for UK plc, and is a distinctive element of post-Brexit Britain's USP.

As the Courts Minister, that's one of the reasons why this government is investing over £1 billion in court reform, Using technology to make our courts and wider justice system more efficient and effective, more sensitive for victims, but also is run in a simpler and more effective way and is also simpler for the parties to use in terms of litigation.

As part of that, last month, the City of London Corporation and HMCTS announced plans for a state of the art court in the Square Mile, hearing civil cases, but also developing our expertise in tackling fraud and cyber-crime.

Far from looking inward, our vision is to reinforce the UK as a global centre for business, the best place in the world to resolve disputes ... the UK renowned not just for our economic competitiveness, but also for promoting the rule of law, and for doing business with integrity.

Equally, as we take advantage of the ability to forge our own distinct trade agenda, aside from the EU, There are far-reaching global opportunities for expanding the export of UK legal services. Free trade negotiations aren't easy.

When I worked at the FCO for six years, I used to negotiate International Investment Protection and Promotion Agreements, including with Mexico and Iran under the Khatami administration.

At times, they could be tough going at times as any trade investment negotiations are.

But, we should embrace that challenge too, from China to South America, where we are ambitious to extend our market share in legal services.

In fact, the Ministry of Justice is already plugging our legal wares through the Britain is Great campaign, Promoting the expertise our law firms,

Promoting UK law as the pre-eminent choice for regulating international business relationships, and spreading the word ... that the UK is the most impartial, swift and reliable jurisdiction to come for settling international disputes.

Lord Keen my Ministerial colleague at the MoJ launched this campaign in Singapore in October, and we are taking that message to 168 countries around the world.

The ultimate goal is liberalisation in strategic overseas markets such as China and India, and Ministers are already in discussions with their counterparts in all of those places.

Sure, this will require a huge amount of hard graft, just as Edison described, but the opportunities are enormous and we must be confident and decisive in grasping them.

Conclusion

So let's be clear-sighted about the challenges in the direction the British people have chosen. Let's avoid those legal potholes – and certainly any talk of legal cliff edges – on the road that lies ahead.

But, as we responsibly seek to minimise legal risk, please ... let's not cower in the corner, afraid of our own shadow. Britain's better than that.

Let's work hard, and let's work together ... across government, parliament, business, legal practitioners, NGOs...

And let's grasp the enormous opportunities for post-Brexit Britain, for democratic renewal at home, for energetic free trade abroad ... and for promoting our world-beating legal expertise from Rio to Shanghai ... and everywhere in between.