Further written evidence from The Bar Council

Thank you for your invitation to submit written evidence to the Justice Committee further to the oral evidence session on courts and tribunals fees I attended on 9 February.

I have conducted further research in relation to the three points that you raised in your letter of 22 February and am pleased to provide this supplementary evidence on the payment of disbursements by barristers, international competitiveness and “leakage” of cases from the employment tribunal.

**Question 367: payment of disbursements by barristers**

In my answer to Q 367 I said that I was not aware of any examples of self-employed barristers, or chambers, paying disbursements, such as court fees, on behalf of claimants (i.e. with money other than the client’s money). I offered to confirm this. I have now made further enquiries, which have confirmed my understanding. It is difficult to see how this could arise in practice other than in the context of a barrister who is authorised to conduct litigation (which the vast majority of barristers are not). The practice of a barrister paying court fees up front and asking the client to reimburse him or her afterwards is not prohibited by the Bar’s Code of Conduct, where the barrister is authorised to conduct litigation (although a barrister’s inability to hold client money precludes him or her from taking money from the client for the purpose of using it to pay court fees). Self-employed barristers generally do not have access to funds from which they could pay the lay client’s court fees, so any such funding would in practice have to come from the barrister’s own pocket.

**Questions 371-376: international competitiveness**

With regard international competitiveness, I referred to contracts being drafted with English law as the governing law, but with Singapore, not England, as the chosen jurisdiction. I have not found any scientific or academic research which proves conclusively that there is an increase in the number of contracts being entered into where English law is combined with Singapore as the chosen jurisdiction. However, it is clear from many reports in legal professional publications, the information the Bar Council receives from its members and the increase in the workload of the Singapore International Arbitration Centre (up from 74 to 271 cases per year over the last ten years) that Singapore is becoming a significant international dispute resolution centre and is therefore posing a competitive threat. Of interest may be a recent study by the Singapore Academy of Law on preferences for the choice of governing law and jurisdiction. The study, commissioned by the Academy’s International Promotion of Singapore Law Committee, is based on the views of 500 commercial law practitioners and in-house counsel involved in cross-border transactions in Singapore and more widely in Asia. The results of the study are at: [http://www.sal.org.sg/Documents/SAL_Singapore_Law_Survey.pdf](http://www.sal.org.sg/Documents/SAL_Singapore_Law_Survey.pdf). Interestingly, whereas some 48% preferred English law (with Singapore law at 25%), some 52% preferred Singapore as the preferred venue for dispute resolution with Hong Kong at 22%, the home country at 12% and the United Kingdom at 7%. This is consistent with
the increasing flexibility in the dispute resolution market whereby parties may choose the law of one country and the jurisdiction of another.

Furthermore, the importance which Singapore attaches to attracting international legal disputes can be seen by the setting up of its international commercial court (SICC) in January 2015. This court has been set up as a court for resolving transnational disputes and was justified by the Singapore International Court Committee in its November 2013 Report as follows: “Singapore is reputed for its efficient, competent and honest judiciary. A new international court would allow Singapore to further emphasise its value as a neutral third party venue with respected judges and sophisticated commercial jurisprudence.” This section of the Report in its footnotes expressly refers to the international work of the English Commercial Court. With the introduction of this court, Singapore is seeking to expand its offer to international parties with dispute resolution either through this new court, or through arbitration.

Other relatively new international dispute resolution centres in Dubai, Seoul, Kuala Lumpur, Kigali, Mauritius, Qatar and Hamburg also present a threat. Most focus on arbitration, although both Dubai and Qatar have set up international courts. The number of international dispute resolution centres is growing, thereby presenting a greater collective threat to London. Competition also remains strong from traditional centres particularly in New York, Hong Kong, Geneva, Stockholm and Paris. It follows that London needs to do everything possible to remain competitive in an increasingly crowded market. Any increase in court fees sends a negative message to clients who are considering bringing their work to London. Competitors are making it as attractive as possible for foreign parties to use their venues and London should do likewise, or at least avoid taking steps which could make London less attractive to potential clients.

It should not be assumed that those parties who decide not to insert a clause choosing the courts in London, or England, for the resolution of their disputes into their contract will instead choose arbitration in London, or England. While we would hope that they would, it must recognised the increased offering in international dispute resolution, both in overseas courts and arbitration, offers a number of options.

Furthermore, it is important to highlight that the level of fees collected through courts fees is likely to be insignificant compared to the large sums which accrue to the economy and to the Exchequer through international disputes attracted to London. In terms of the volume of such work attracted to London, the City UK’s “UK Legal Services 2015” report stated that:


1 The Singapore Government launched the Singapore International Commercial Court on 5 January 2015.
“London’s reputation as the leading global centre for the provision of international legal services is underlined by the fact that in 2013, 1,198 claims were issued in the Commercial Court, of which 80% involved at least one party whose address was outside England and Wales. Furthermore, London is viewed as the leading preferred centre of litigation and arbitration. The number of commercial and civil disputes resolved through arbitration, mediation and adjudication in the UK totalled 24,224 in 2013. Around 40% of governing law in all global corporate arbitrations is English law.”

It would be regrettable to put London at risk of losing this work, and therefore income for the economy and Exchequer, for the sake of raising funds through increased court fees. Similarly, and looking to the future, it would be regrettable to put at risk London’s ability to attract more and new international work in the future, particularly from, but not limited to, the ASEAN market.

**Question 380: “leakage” of cases from the employment tribunal**

I have contacted various employment law barristers who have advised me that barristers are unlikely to be able to comment on this issue in practice. Unless instructed on a direct access basis, barristers are unlikely to have had an involvement with the decision regarding where proceedings are issued and are more likely to become involved in proceedings when they reach the employment tribunal. I therefore think it more likely that solicitors will have practical insight on this issue and I note that Jonathan Smithers of The Law Society undertook to provide you with written evidence on this matter.

**Chantal-Aimée Doerries QC**

**Chairman of the Bar**

*7 March 2016*

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