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The Rt Hon Michael Gove MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
London SW1H 9AJ

23 September 2015

Dear Lord Chancellor

We write on behalf of associations representing nearly all the major law firms and barristers practising commercial law in London. Our members are largely responsible for generating the £3bn annual contribution that legal services make to reducing the UK current account deficit.¹

As you know, the Ministry of Justice is currently consulting on yet further significant increases to Court issue fees. On the MoJ's highly questionable assumption that higher issue fees will not lead to a decrease in claims being issued, the further increases will bring in about £25m per annum. There is a real danger, however, this further increase could seriously affect the UK's legal work. UK legal services added £22.6bn or 1.6% of total GDP to the economy in 2013. If, as we fear, increased issue fees will nudge international businesses into taking their legal business elsewhere, the decrease in tax take will dwarf any additional MoJ income.

Our members have responded to the MoJ's consultation in the usual way, explaining – again – how the proposed new fees will yet further impede access to justice for UK businesses and private individuals. They reiterate the important legal objections Lord Pannick and other eminent lawyers, including retired Justices of the Supreme Court, set out in speeches to the House of Lords in relation to the last round of increases.²

¹ City UK: UK Legal Services 2015

² *Hansard, House of Lords*, 4 March 2015, columns 312 to 330.

In this letter, however, we seek to draw your personal attention to the serious financial impact that these further increases may have on London's position as an international leader in dispute resolution. We do so by way of this separate letter largely because the previous attempts we and others have made to explain the risks to the MoJ have apparently been ignored. We would respectfully suggest that the issue is one that requires your personal and immediate attention, because it threatens one of the UK's most successful exports.

England, in particular London, is a major international provider of legal services because of the international dominance of English contract law. English contract law is predominant because it favours party autonomy and its principles are clear and well understood. Its predominance has been maintained through the impartiality, expertise and intellectual rigour of English judicial decisions. English judicial decisions are of unparalleled standard because the judges, first in practice and then on the bench, are regularly involved in disputes of international significance and complexity. In other words, there has been a virtuous circle of expertise and work which has maintained London's role as the destination of choice for international dispute resolution. None of this has arisen by accident. The position arrived at is very much the consequence of the hard work done by generations of English lawyers and judges who have strived to achieve this result.

The fact that the High Court attracts international litigants does not, as is sometimes suggested, starve other parts of the justice system of resources. The contrary is in truth the case. The fee income from civil disputes already meets the costs of providing the judiciary, the court staff, the court buildings and their share of overhead costs, even before considering the considerable extra tax revenue from fees paid to English lawyers and experts.

The fact that international litigation is profitable is the main reason why other jurisdictions are trying to win work from London. Singapore, Hong Kong, Dubai, New York and Germany, among others, are all serious and active competitors.

The prime competitors are, at present, probably New York and Singapore. Until March 2015, the issue fees in England were higher than New York and Singapore, but not significantly so in absolute terms. In March 2015 the previous government raised fees to issue claims for £200,000 by more than 400%, to £10,000, far in excess of the fees applicable in Singapore or New York. Incredibly, the new proposals will double the issue fee again, to £20,000. The proposal even contemplates removing altogether the cap on issue fees so that, for example, a claim for £50 million (the lower limit in the new Financial List) will incur an issue fee of £2 million, a sum that would dwarf fees payable in competitor jurisdictions. These very high issue fees must be paid merely to commence proceedings. Most cases settle before even a Defence is filed, and very few proceed to a judicial hearing. The fee bears no relationship to services provided by the judicial system. It is a payment demanded by the state to cross subsidise other parts of the court system. It is, in essence, a tax on civil litigants to pay for the costs of the English family and criminal courts.

London's international dispute resolution work is not, as some people might think, dominated by oligarch litigation, or high value divorces, or celebrities seeking to take advantage of English defamation law. The vast bulk of it relates to international trade, financial services,

insurance, shipping and energy contracts. These litigants are usually sophisticated commercial outfits who understand legal risks and how best to resolve disputes.

International dispute resolution has never been as competitive as now, not least because of the efforts made by foreign jurisdictions to improve their legal offerings with a view to improving their competitive position. Seen in this context, the imposition of a tax on those who litigate in London to fund other parts of the justice system involves a serious own-goal and will act as a boon to our competitors. In short, the adoption of such a course runs a serious risk of impairing London's current enviable position. Whilst the effect that this will have on London's position may not be immediately apparent - it takes time for decisions as to choice of forum to work their way through the system - it is unlikely that any reasonable person considering the position objectively would seriously doubt that this will have a negative effect, and that this will not be too long in coming. This view is supported by the MoJ's own evidence.

The MoJ commissioned a survey in 2015 from the British Institute in International Comparative Law. They reported that 61% of respondents thought that enhanced court fees could have a detrimental effect on the English litigation market. The MoJ has dismissed that report in the Consultation Paper as "based on perceptions". This is self-serving. It also betrays a fundamental misunderstanding of our market. When it comes to choosing a dispute resolution forum, perception is everything. If our competitors in Singapore can persuade Far Eastern lawyers that London is expensive, we will lose that work, and it will be practically speaking impossible to get it back. The views of our members, highly experienced in this field, should not be dismissed as "perceptions".

There is a precedent for the loss of legal work through expense. New York lost its preeminent position for maritime dispute resolution because it was perceived as too expensive. It is imperative that London does not suffer the same fate. This is a bad policy proposal, and we urge you not to follow it through.

We have previously offered to discuss with the MoJ different ways of raising income from civil litigation more fairly. That offer has never been taken up, but it is nevertheless repeated again.

Yours sincerely



Alasdair Douglas
Chairman
City of London Law Society



Laurence Rabinowitz Q.C.
Chairman
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cc The Rt Hon Mr George Osborne MP, Chancellor of the Exchequer

The Rt Hon Sajid Javid MP, Secretary of State for Business, Innovation and Skills
and President of the Board of Trade

Sir Theodore Agnew, Lead Non-Executive Board Member, Ministry of Justice