Lecture to the Faculty of Advocates EDINBURGH

"The growth of international arbitration and Scotland's future in ADR"

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We are supposedly in the Golden Age of international arbitration. In the last 10-15 years, the arbitration landscape has changed dramatically. There have been numerous changes in rules of major institutions as they struggle to keep up with demand and be best in show. Not only have there been significant changes in arbitral rules, we have also seen the emergence of new & prominent regional arbitration centres. Institutions, legislators and courts are reacting to industry since major industry sectors have stated time and time again that their preferred method of dispute resolution is international arbitration. There has also been a marked shift from the "Old West" towards the South (Brazil) and to the East in South East Asia. Consumers are looking to other centres and this is where Scotland can make its mark.

International arbitration has now firmly established itself in new as well as the traditional regions. Generally, pro-arbitration jurisdictions are springing up everywhere and new infrastructural developments have enabled continuing growth. This is reflected in the continuing growth in the number of cases being referred to arbitration around the world.

Institution	2012	2013	2014	2015	2016
CIETAC	1060	1256	1610	1968	2183
ICDR (AAA)	996	1165	1052	1063	1050
ICC	759	767	791	801	966
SIAC	235	259	222	271	343
LCIA	277	301	296	326	303
HKIAC	293	260	252	271	262
SCC	177	203	183	181	199
DIS	121	121	132	134	166
SCAI	92	68	105	100	81
VIAC	70	56	56	40	60
ICSID	50	40	38	52	48
TOTAL	**4130**	**4496**	**4737**	**5207**	**5661**

It's worth pointing out the significance of some of these figures.

Firstly, considering that there are over 9,000 arbitral institutions around the globe today, this total figure may well be multiplied by tens or hundreds. It is apposite that Scotland has one too.

Secondly, even though CIETAC had another record year with 2,183 new cases, it includes domestic cases. Last year, 483 cases were international cases from 57 countries. The cases involved a total

amount in dispute of RMB 58.66 billion (USD 8.5 billion). If one limits the focus on international cases, the leading arbitral institution is still the ICDR, the international arm of the AAA.

Thirdly, the new cases filed with the ICC in 2016 increased by 20 % after being almost stable for the last four years. According to the ICC, the massive growth of 165 new cases from 801 in 2015 comes from Latin America, Asia and Africa. The ICC is also the largest promoter of transparency – the names of all arbitrators appointed are published on the ICC's website. It is likely that other arbitral institutions to follow suit. More on the issue of transparency later.

Fourthly, the growth in investment arbitration cases seems to be stable. ICSID had a bumper year in 2015 with a new record of 52 cases. That trend has continued with 48 cases filed with ICSID in 2016 which represents only a minor decline compared to 2015.

Fifthly, SIAC saw the highest number of cases filed in its 25 year history (343), the highest ever number of administered cases (307), the highest ever total sum in dispute (USD11.85 billion; SGD17.13 billion) and the highest ever sum in dispute for a single administered case (USD3.47 billion; SGD5.02 billion). It's quite an achievement for technically a fledgling institution amongst the giants. In 2016, SIAC celebrated its silver anniversary. By way of comparison in the immense growth experienced by SIAC, the ICC will be celebrating its centenary in a couple of years and the LCIA was set up in the City of London in 1891.

Yet, as the Chinese say, we live in interesting times. For those of you who are aware of the nuance in the word 'interesting' will know that this is not a good thing. Just consider the political turmoil we have experienced in the UK in the past 2 years.

In the midst of all that turmoil, last week you heard from Sir Geoffrey Vos on what lies in store in a post-Brexit Britain. He made a number of very important points – the unique selling points – which I want to develop further to show how Scotland can emulate what the courts and arbitration practitioners in London have done with ADR and enhance the position of the legal system here to the benefit of all. If I may take a moment to remind you, especially those of you who were unable to attend, of the significant points made by Sir Geoffrey:

(a) That many jurisdictions are competing for the work undertaken by the British (but particularly the English) legal system. Nowhere is this more apparent than in places like Singapore, followed closely by HK, New York and Paris;

(b) Independence of the judiciary – this is a very important aspect which will hold Scotland in good stead over and above emerging economies. For example, recently, the BRIC states have had more than their fair share of scandal;

(c) The quality and standard of professional services. I read with interest that Scotland has the best and most educated population in Europe. In the post Brexit world, this should be harnessed and promoted widely and loudly;

(d) He said, "*I hazard that ADR providers and experts need to be rather more connected with the providers of court-based dispute resolution. The two must work together, so that consumers and commercial people have the right choices that cater to all their needs*"; and

(e) lastly, the Chancellor said, "*We need to be pro-active and we need to be prepared to take active steps to improve our offering if the clarion call that Britain is open for business post-Brexit is going to be taken seriously*".

As Sir Geoffrey recognised, recent and rapid advances in communications technology, transport and trade have fuelled the globalisation of human activity. Such activity, crosses sovereign state boundaries, gives rise to disputes with an international character, and has resulted in the growing recognition amongst the business community that international arbitration provides a flexible and effective alternative to costly and time consuming litigation.

The truth is that parties do not trust other court systems because processes of court may be unknown or not understood, courts may be known to be unfriendly to foreign litigants and there may be other concerns such as with delay or competence. For instance, we have that battle of 'my-court-is-better-than-yours' brewing right now with the Brexit negotiations.

In addition, courts do not have 'extra-territorial' reach so if the other party is not within the jurisdiction, the possibility of effecting a resolution of the dispute between the parties diminishes significantly. Even if judgment is obtained, then how will it be enforced? There are only a limited number of countries which have reciprocal or mutual enforcement treaties. In post-Brexit Britain that will become an even smaller pool for Britain.

He also said that this is a time of great change. For Scotland it could be the time for great opportunity too. In creating opportunity out of potential chaos, the first step must be in understanding the nature of ADR before setting out your goals for growth and expansion in the field. The key feature in ADR is that the punter has a choice. In fact, parties have many choices and being able to cater to those choices will make any jurisdiction more attractive. Singapore has been using this as its mantra and its success speaks for itself:

The freedom of parties to make decisions concerning their relationship is constrained only by mandatory laws. Relevantly, these choices include:

(a) the choice of which dispute resolution process to use (jurisdiction clause);

(b) the choice of law for determining the merits of the dispute (governing law clause);

(c) the choice of the law applicable to the arbitration (seat);

(d) the choice of the law applicable to the arbitration agreement;

(e) whether to conduct arbitration under rules or ad hoc; and

(f) the choice of which institutional arbitration rules to apply to procedural aspects of the arbitration and therefore have control over the administrative aspects of an arbitration.

Of course, within the choice concerning procedure, the parties have further options open to them, such as which language to use and the whether the tribunal will comprise of 1 or 3 arbitrators. Making the right choice (or a good choice) is important because the seat of the arbitration is likely to extend to:

(a) Whether a dispute is capable of being referred to arbitration (that is to say, whether it is "arbitrable" under the local law);
(b) Time limits for commencing an arbitration
(c) Interim measures of protection;
(d) The conduct of the arbitration, including (possibly) rules concerning the disclosure of documents, the evidence of witnesses; and
(e) The powers of the arbitral tribunal including any power to decide as '*amiable compositeur*';
(f) The form and validity of the arbitration award; and
(g) The finality of the award, including any right to challenge it in the courts of the seat.

There are many studies concerning the practice of arbitration which have highlighted the criteria identified by parties as being of the utmost importance to them in choosing a seat. They include:

(a) Neutrality – as between the parties and the subject matter of the dispute;
(b) Sophisticated legal system with highly trained legal and other professionals;
(c) Independence and high quality of the courts and judiciary of the seat should be matters that are protected by the highest authority of the legal process in that jurisdiction;
(d) A judiciary with extensive knowledge in the art and science of arbitration;
(e) Role of courts at seat – supervisory, interventionist or injunctive role at request of party;
(f) Public policy and types of remedies available;
(g) Ratification of international conventions;
(h) Respect afforded for those from other parts of the world irrespective of race, colour or creed; and
(i) Accessibility, connectedness and availability of all facilities necessary for international arbitration

These were all factors referred to by Sir Geoffrey as making UKL jurisdictions attractive seats.

Scotland ticks all those boxes. So why hasn't arbitration taken off the way it has in say Singapore? How do you demonstrate to the disputing parties that your judicial system is the one that they should choose?

If Scotland wants to emulate a jurisdiction, it should look not only to England – more particularly London – but also to what Singapore has achieved in a relatively short period. In Singapore, there is a great deal of governmental support and greater promotion of ADR generally, possibly more than in any other jurisdiction. There has been a rapid internationalisation of trade, technology and law there with extensive reforms in many sectors to attract investment in services. The Singaporean judiciary has a proven pro-arbitration stance, reflected in its case law. The location is close to major financial centres. There are well established arbitral institutions with a pool of experienced arbitrators. Parties

and arbitrators have access to suitable facilities and there has been, and continues to be, extensive training of the judiciary, legal profession and consumers to keep them abreast of changes in technology, law and services.

As Sir Geoffrey recognised last week an integral element is the support of Courts. Courts play a crucial role in the success of international arbitration around the world. What can the Scottish courts do to attract more work into the country?

International Arbitration cannot operate effectively or at all without court support – legislation adopted by Scotland also makes that clear that there is a pro-arbitration presumption. The judiciary in Scotland is independent and has a pro-arbitration stance. Courts can certainly "talk up" the pro-arbitration preference whenever they have the opportunity just as they do in other jurisdictions.

The creation of an almost uniform law applying to both domestic and international arbitration in Scotland will almost certainly lead to the development of consistent and coherent jurisprudence relating to the supervision of arbitration and the enforcement of awards.

The dominant trend in recent Scottish decisions gives great weight to the need for consistency with the approach evident from court decisions in other comparable jurisdictions, particularly those in our region.

There is therefore every reason to suppose that Scotland will not suffer the disadvantage of a fragmented judicial approach to arbitration that other emerging centres have faced and prospective participants in arbitration in Scotland can be confident that the light touch approach to supervision and the robust approach to enforcement evident in the decisions of the courts of other comparable jurisdictions will be echoed in Scotland.

Nevertheless, the significance of the practical obstacles which lie in the path of making any significant inroads into the market dominance enjoyed by other seats in our region should not be underestimated. However, there is reason to believe that some inroads can be made into this very competitive market, given the natural advantages which Scotland has as a seat.

How can Scotland become a centre for international disputes?

Scotland's role as a source of minerals and energy supplied into the international markets is well-known – perhaps less well known, but significant to the topic under consideration, is the fact that companies based in Scotland are significantly involved in the development of mining and energy projects all around the world, and to my knowledge are currently involved in significant projects on every continent.

First, training & education are critical to the success of establishing centres of excellence of any kind; this needs to be extended to the judiciary. Other emerging energy & resources centres, such as Malaysia, are focussing on promoting arbitration to industry and its friendly approach to arbitration it with extensive support from the judiciary and government. It is possible that Scottish consumers/clients either do not have faith in the international arbitration system as it operates in Scotland or are not yet aware of the benefits it can bring. Maybe they are aware of arbitration but prepared to take their disputes to arbitration in other jurisdictions, such as London, Paris or

Singapore. Lack of faith in arbitration could arise from the complete destruction of domestic arbitration by domestic parties/lawyers in the decade leading up to the turn of this century in many jurisdictions.

Of the LCIA's caseload, 22.53% involved energy resources disputes and in 235 cases, London was selected as the seat of the arbitration and 220 cases with English law as the choice of law in the contract. There is no reason why that choice should not be Scottish law and Edinburgh as the seat. Educating corporate lawyers so that they can in turn advise and inform their clients is always the first step in the promotion of effective dispute resolution methods. Most dispute resolution methods emerge from and are developed through experimentation in energy and construction contracts. Scotland has plenty of those to make a real impact. Engagement with industry is a key aspect of raising awareness amongst the users.

Better promotion by all players – especially bodies such as Scottish Arbitration Centre - of the benefits of ADR should result in a greater acceptance and use of international arbitration in Scotland. Once this cycle commences in earnest it should fall into a self-fulfilling prophecy and generate greater levels of work within Scotland and, more particularly, in those industries which are currently the biggest users of International Arbitration - such as construction, energy, resources and trade.

Scotland seems to have all the ingredients to become an effective international arbitration hub and yet it has struggled to gain traction. Growth has the potential to yield significant benefits for relevant practitioners, and the wider Scottish economy. What is needed to improve the efficiency and attraction of international arbitration in Scotland?

A significant challenge is Scotland's proximity to a number of big players: the LCIA in London, the ICC in Paris, the SCC in Stockholm and PCA in the Hague, to name but a few. But this also represents an opportunity. Scotland can offer itself as an alternative where a conflict exists for the parties in these other seats. Offering that greater and clearer element of neutrality is, in effect, how Singapore got going.

The support of government is key to achieving any level of success, including financial support. There are many examples of such support from the authorities, including that the Scottish Government and the Scottish Building Contracts Committee have publically announced that Scottish arbitration will be used in some or all of their service contracts, with many other organisations also privately choosing to do so.

Suitable facilities – not just for hearings, but also an 'international' airport and appropriate accommodation are now a must-have. Gone are the days, thankfully, when practitioners and arbitrators conducted their hearings in stuffy, underground bunkers in hotels that offered tea and coffee with stale biscuits as refreshments. Again, Scotland has modern facilities in the SAC and in more broadly in beautiful cities, such as Edinburgh.

Finally, time and patience are required to build practices. Arbitration is no different.

In this regard, the work of SAC is critical. It has provided a platform for the promotion of Scottish arbitration and Scotland as a place to arbitrate. This has meant the Centre has had to undertake

extensive domestic and international marketing. They have been instrumental in changing UK Government policy on promotion to ensure Scotland is included, furthering parity with surrounding jurisdictions. They have discussed with Scottish Government the benefits of including arbitration in various reform projects. As a result, the Centre as an appointing body and Scottish arbitration as the default position in the Government's goods and services contracts. The Centre has also taken on the provision of administrative services to the Office of the Convener of the School Closure Review Panels.

Something that will put Edinburgh on the map for a broader international audience is the fact that ICCA 2020 will be hosted in Edinburgh. This conference will bring this prestigious international arbitration event to Europe for the first time in a decade. There is also the economic benefit that will flow from having around 1,200 of some of the world's wealthiest lawyers descending on Edinburgh for a week. There is bound to be a very significant boost to the local economy, and to the wider Scottish economy resulting from delegates extending their stay on either side of the conference to take in the host nation (as generally happens with these conferences). Between conference fees, accommodation, travel, food and drink, delegates are likely to spend several thousand of pounds each, resulting in over £2 million of benefit for the economy from this event alone.

Everyone will need to pull together and contribute to making it a great event and you all need to be a part of that community if you want to have a viable seat here in Scotland. The legacy of ICCA 2020 should be the firm establishment of international arbitration in Scotland. But, it's up to you.

I also want to mention two current trends developing in the international sphere which are worth noting: one is of an alarming nature and the other very pleasing. More than mere populism these trends seek to bring about real change. If Scotland tackles each one of these astutely, it will gain traction as a favourable seat.

The first is the view that like most areas of industry and endeavour, transparency is a good thing. There was a time when arbitration was praised for its confidentiality. Then, in 1995, the Australian High Court's decision in *Esso v Plowman* was handed down and the world went into a tailspin about the principle established by that case: whilst privacy is implied in all arbitrations confidentiality is not to be regarded as an "attribute of arbitration". A generation on from that decision, current trends are in favour of transparency and openness. Institutional approaches to transparency are emerging as is the call for greater public scrutiny of processes and decisions. Although initially intended for investor-state arbitrations which involve claims against nation states, the call for greater transparency is creeping into other forms of arbitration too.

I think this demand for increased openness is a reaction to attacks against and the adverse publicity of investor state dispute systems throughout 2016 which resulted in the collapse of the Trans-Pacific Partnership (TPP) and Trans-Atlantic Trade and Investment Partnership (TTIP). The attacks were in large part borne out of ignorance of how investor state arbitration works and scaremongering abounded. Some of it went uncorrected and so has created a false image of the process. But that call is being inappropriately applied to commercial arbitration. It will ultimately undermine arbitral

confidentiality and the attractiveness of arbitration to commercial parties. Many have long considered confidentiality to be a desirable feature of arbitration and one that distinguishes it from court litigation.

A 2010 Report on confidentiality published by the International Law Association, concluded that although there is no internationally accepted principle of duty of confidentiality, there is tacit acceptance of a generalised principle of confidentiality.

The disparate handling of confidentiality is apparent from another survey of 93 jurisdictions carried out in 2012, which concluded that:[1]

(a) 32 jurisdictions had express provisions regulating the issue of the duty of confidentiality in arbitration, mediation or conciliation. 1 jurisdiction (The Netherlands) intended to incorporate the duty of confidentiality in an amendment to its legislation.
(b) 5 jurisdictions provided for an implied duty of confidentiality.
(c) 56 jurisdictions provided no guidance.

Parties rightly have concerns about the possible disclosure of confidential information. After all, a perception of confidentiality is one of the reasons why many parties choose arbitration. The Price Waterhouse Coopers/Queen Mary College survey in 2004 on *Corporate Attitudes* showed that privacy and confidentiality remain the most important reasons for selecting arbitration over other forms of dispute resolution. In the 2010 Queen Mary University of London/**White & Case** survey: *Choices in International Arbitration*:

- 62% of respondents said that confidentiality was 'very important' to them in international arbitration.
- 50% of corporations interviewed considered arbitration confidential even where there was no specific clause to that effect in the arbitration rules or arbitration agreement.
- 30% in the same survey believed that in the absence of an express agreement, arbitration is not confidential.

Scotland can ensure that it caters for the preferred position of most parties by maintaining the high status afforded to confidentiality. From remarks made by the judiciary it seems this will be the case in Scotland.

The second trend that I want to mention, is the drive for diversity in dispute resolution. As President of ArbitralWomen, this is a subject very dear to my heart. But I'm not the only one who thinks so.

The recent Berwin Leighton Paisner Survey reported on the question: "*Should diversity matter?*" Several responses were collected and put forward to support the opinion that diversity does matter. The authors of the report referred to these following significant factors:

[1] *Duty of confidentiality: myth and reality*: Civil Justice Quarterly 2012 by Hong-Lin Yu

- the inclusion of individuals of varied racial, ethnic, gender and social backgrounds has a value in itself;
- a system serving the needs of a particular constituency – in this case, participants in international commerce – should reflect the make-up of that community;
- a lack of diversity may also affect the quality of arbitral awards;
- the deliberative process before the arbitral tribunal is likely to be crucial and, therefore, the diversity of views may be fundamental for a fair process and outcome;
- widening the pool of arbitrators will give greater choice and fewer conflicts, remove the imbalance in information available to different parties and encourage greater efficiency, as well as facilitating new perspectives on the dynamics of a dispute; and
- a diverse tribunal may be better prepared, more task-orientated, and more attentive to the parties' arguments than a non-diverse tribunal.

For some years now, we have heard that things are improving for diverse groups. However, statistics do not support that optimistic view. Despite the fact that evidence showing a link between gender diverse leadership and higher performance continues to mount, the pace of women's advancement into top management positions (or top arbitral panels), however, remains slow and may actually be slackening! The proportion of women is continuing to decline at each stage of an executive career path, no matter what industry. Today, for instance, there are twice as many men called 'John' as there are women leading FTSE100 companies. This is the case despite the conclusion in a recent study that women are decidedly more suited to management positions than their male counterparts. This applies equally to arbitration.

Many people and organisations pay lip service to their expressed commitment to greater diversity and inclusivity and lay claim to such fantastic goals, including the arbitration community. But, there hasn't been a great leap forward to equality in any sphere of endeavour. Too many people talk the talk but in reality fail to deliver. Unfortunately, these claims to commitment are not translated into action and the final result remains static. Annually, we see meagre growth (if any) but figures remain unrepresentative of the gender & ethnic mix in society. For instance, a 2016 study found that minority job applicants took a companies' diversity statements at face value, choosing to retain ethnic tell-tale signs on their CVs that they might otherwise have "whitened". However, researchers concluded that firms that touted diversity were just as biased in the selection of candidates as the ones that didn't. Candidates with "un-whitened" CVs were half as likely to be chosen for an interview. Selecting an arbitrator falls into the same basket.

In the best interests of all industries but more particularly arbitration, we need more and better people involved in investment and commercial arbitration. We need wholesale structural change in how we think about it, how we do it and who does it.

Here is why change is necessary. We all know and have certainly heard that diversity is an important ingredient in corporate success since it:

(a) Creates greater creativity and a reduction of "groupthink": people's experiences influence the way they see and resolve problems. Therefore, the more diversified a team is (be it

lawyers or the arbitral panel), the more ideas will be presented and the greater the chance will be of obtaining the best possible result;

(b) Improves transparency and corporate governance;

(c) Increases performance (for corporates this includes financial performance);

(d) Results in greater retention of talent, which is especially important for law firms right now.

Numerous other highly-regarded studies have found that diversity can lead to better decisions, despite the potential difficulty of interrupting homogeneity. Specifically, the results demonstrate the mere presence of socially distinct newcomers and the social concerns their presence stimulates among the homogenous group and motivates behaviour that can convert affective pains into cognitive gains.

I accept that under-represented sectors of society, such as women, must engage with all the stakeholders in order to succeed in our goals. We need to attract the attention and the collaboration of arbitration professionals of every type, of professionals drawn from the whole spectrum of geographical, ethnic and gender backgrounds.

Hence, an essential component of bringing about change is inclusion of and by those groups that can effect change. I am not advocating an overthrow of the regime but a structural change that enables greater inclusion of others by those presently seemingly threatened by diversity. One of the questions in the Queen Mary survey of 2015 concerning *Improvements and Innovations in International Arbitration*, was "*If users could have any improvement made to international arbitration what would it be?"* The myriad of answers included "*broadening the pool of arbitrators in number as well as in ethnic and gender diversity*". Therefore, gender diversity is viewed as being a necessary improvement. But in order to improve we need to pull together collectively and collaboratively.

We should not need to be reminded, but from time to time it becomes necessary to do so, that "*pale, male and stale*" does not reflect the composition of our society, and therein lies the problem. Everyone bears a responsibility in cultivating diversity. Promoting the talents in dispute resolution should be the main objective, and this clearly includes women, ethnic minorities and young practitioners who are often excluded.

Despite what Lord Sumption said a couple of years ago, the awful truth is that there is no such thing as natural progression or improvement of the essentially unfair, unjust and unjustifiable situation of gender bias. It requires action but more importantly it requires a social and psychological shift to ensure people who are in a position to bring about those changes are on board.

This is particularly important because the barriers to gender diversity are numerous; some are subtle others clearly visible. Stereotypes are probably the worst enemy. Most business and legal communities are still male-dominated and there seems no willingness to bring women onto the stage. The situation would have continued if women did not raise their heads to show that they exist, that they are talented, and that they are entitled – like their male counterparts – to be considered for certain roles. The discrimination towards female practitioners in any field is an old story, but one which is perpetuated despite the progress of society. The situation has been changing in the last two

decades, although insufficiently and very slowly. Talented female practitioners in dispute resolution are numerous but statistics of nominations stagnate at approximately 10%. The 50:30:10 rule characterises the numerical representation of women in organisations, commonly called 'the leaky pipeline'. That is, the tendency towards 50% representation at entry level, 30% in middle management and 10% in senior management.

One of the reasons behind why the goal of equality hasn't been achieved and why there is new thinking about how to improve diversity lies in the concept of unconscious bias, hidden bias, implicit bias. These biases are our "*mental shortcuts based on social norms and stereotypes*." (Guynn, 2015).

So, your background, personal experiences, societal stereotypes and cultural context can have an impact on your decisions and actions without you realising. Implicit or unconscious bias happens by our brains making incredibly quick judgments and assessments of people and situations without us realising. We are not usually aware of these views and opinions, or aware of their full impact and implications. That's because, our brains have evolved to mentally group things together to help make sense of the world. The brain categorizes all the information it is bombarded with and tags that information with general descriptions it can quickly sort information into. Bias occurs when those categories are tagged with labels like "good" or "bad" and are then applied to entire groups. Unconscious bias can also be caused by conditional learning. For example, if a person has a bad experience with someone they categorize as belonging to a particular group, they often associate that entire group with that bad experience (Venosa, 2015). We've most recently been seeing that with the notion that "*all Muslims are terrorists*."

So, lip service is not good enough to bring about change. What is needed is a firm commitment to change from individuals and organizations. Committing to change means looking at things from a different perspective and being aware of things we cannot presently see, that is, the things we are not currently aware of. By becoming aware of them, we can recognize them as what they are – prejudices, biases and move to managing them by ensuring we do not let them influence us. Turning the unconscious, conscious and then regaining control over our responses, our actions, our behaviour and our decisions.

The SAC has picked up on this vibe and is doing tremendous work. They have gender parity not only with their Board but also with the staff that run the centre. Their independent arbitral appointment committee has more women than men, with seven women and five men. The chairs of the domestic and international sub-committees are both women – Lindy Patterson QC and Juliet Blanch as well as good geographical spread, with, for example, Funke Adekoya in Africa. They have signed the Equal Representation in Arbitration Pledge (which is an initiative to improve the number of female arbitrator appointments) and Andrew McKenzie, the head of SAC, has taken an early step in challenging all professionals to start by getting the balance right when hosting tables at industry dinners which he has tagged as #TurningTheTables.

Why does all this matter in arbitration in Scotland?

It matters because a diverse and inclusive tribunal will be necessary to drive innovation, foster creativity, and guide procedural and management strategies. Multiple voices lead to new ideas, new services, and new methods, and encourage out-of-the-box thinking. Today, organisations are beginning to view diversity and inclusion efforts as an integral part of their other business management practices, and recognise that a diverse workforce can differentiate them by attracting top talent and by capturing new clients. The worst possible outcome is if the group (such as the arbitral tribunal) with the least cultural comprehension is the one that makes the decision. That is what needs to be avoided at all costs. Seeking diversity for its own sake is a legitimate objective but it is even more compelling if it is sought for the sake of improving justice. Diversity, therefore, also plays a significant role in improving the quality of arbitral justice.

Wholesale societal change – and here I am talking not only about diversity but also growth that can be generated in arbitration in Scotland - need not come from a revolution nor does such a revolution need to be violent. Societal change means every one of us feeling confident enough to make small changes every day until we achieve a well-balanced and equal society of arbitration practitioners, representing in equal measure diverse clients and cultures. It's taking action that makes the difference. I urge all of you to do just that today and every day, in every place and with everyone.

Thank you.
29th June 2017