THE WORSHIPFUL COMPANY OF ARBITRATORS

INSTALLATION OF MASTER CHRISTOPHER DANCASTER

29 OCTOBER 2009

THE HON SIR GARY HICKINBOTTOM
RESPONSE ON BEHALF OF THE GUESTS

Master, Wardens and Assistants, Liverymen, and Freemen of this Company: and fellow guests.

Caroline and I are delighted to be here this evening, to mark and celebrate the installation of Chris Dancaster as Master. I have known Chris for many years, although got to know him well when, in the mid-1990s, we were both on the first course run by the Chartered Institute of Arbitrators for the Diploma in International Arbitration. Since then our paths have diverged, as he has pursued his career in arbitration and over the last 10 years I have been a judge - although for some time I was the lead Technology & Construction Court Judge and Patron of the Chartered Institute in Wales, when our paths fortunately crossed again in a bar in Cardiff. Delighted as I am to be here this evening, I think that I agreed to speak tonight after a very good dinner and more than one glass of wine.

Chris follows a long line of eminent Masters of this Company, many of whom I have had the privilege of knowing and working with or appearing in front of. Chris will not only well fill those shoes because of his experience and expertise, we all know that he will perform his role as Master with the dedication, commitment and enthusiasm that he gives to all that he does. This Company is in good hands.

Chris has had a marvellous career: and I too have been fortunate in mine. I have been a registered mediator for 20 years. I am a Fellow of the Chartered Institute, and have acted as an arbitrator - although not as often as the vast majority of this Company. As a judge, I have sat on family, crime and civil work. I am a TCC judge, and a judge of the Admin Court. I was a judge of the Mercantile Court in Wales, until I returned to London a couple of years ago. Since my appointment as a High Court judge in January, I have sat in the Criminal Court of Appeal, and am now sitting in the Crown Court again on serious criminal matters. In addition to the court side, I have been involved in tribunals for 15 years. I was a parking adjudicator, as the newspapers were only too ready to point out when I was appointed to the High Court Bench: I was the Chief Social

Security Commissioner for 5 years: I was the first President of the Administrative Appeals Chamber of the Upper Tribunal, one of the new tribunals established under the Tribunals, Courts and Enforcement Act, the implementation of which I led for the judiciary as Deputy Senior President of Tribunals. I mention these only to show how fortunate I have been to deal in such a spectrum of dispute resolution.

What variety! In 2006, I was appointed a Judge of the Supreme Court of the Falkland Islands. I know that one of your Assistants, Christopher Gardner, is now the Chief Justice of the Falkland Islands. This was before his time. I was asked to go out to deal with a criminal case - involving alleged corruption by the Chief of Police, and the judicial review of the refusal of a fishing licence in South Georgia. I am one of only two judges ever to have heard a South Georgia case. The population is 13, but there are many fish - the Patagonian Toothfish is an ugly looking creature, but plentiful there, and valuable - and it is about fish that they litigate.

One of the challenging case management aspects of the Falklands is that the flights in and out are sparse. The judicial review with which I was dealing had a time estimate of three days, to start on a Monday. The Counsel for the parties - all from London - were booked to fly back to London on the following Thursday. If they missed that, they would have to stop another week. And they had other work booked in London in that week.

I had an application in relation to whether the applicant could rely upon further evidence, which ran to several hundred pages. There was a concern that, if we waited until the Monday morning to deal with that application, it might jeopardise the finishing time. That caused consternation. So I heard an application on the Saturday that the substantive evidential application be heard the following day. Could the Supreme Court of the Falkland Islands, sitting as the Supreme Court of South Georgia, sit on a Sunday, I asked? Counsel went away to beaver. They came back later that afternoon, with the results of their research. The answer was that it could. The research revealed that the court could sit at any time, and any place in the Falklands, except a church or a public house. A church I could understand, but I fail to see why the court could not appropriately sit in a pub, where coroners traditionally sat for years. In the event, I set the application down on the Sunday morning, to be heard between Communion and the annual Cathedral treasure hunt, which was organised by the Deputy Governor, who was also the Director of Fisheries for South Georgia. I participated in both - the Communion service and the treasure hunt - but when I saw that the respondent in the judicial review was the organiser of the treasure hunt I wondered whether this would require me to recuse myself, if I won it. I hurried round the island on the hunt, praying that

I would not win. It was made the more difficult when my team recovered all of the items required of it - although I am pleased to say that the Deputy Governor was wise enough not to give my team the prize on the tie-breaking question about the island. That was a potential recusal problem that, if set in an examination, people would say was so unlikely as to prevent the suspension of belief.

Of course, all of us involved in dispute resolution know that such things in fact happen regularly: and you don't have to go as far as the South Atlantic to find them. I recall a complex series of applications made by a litigant in person in proceedings which he had included not only parties which may have had some interest, but also the Prime Minister and the Archbishop of Canterbury. Joining the Archbishop of Canterbury in a claim for delapidations is not in itself a ground to make a civil restraint order preventing a person issuing or pursuing any claim without the leave of the court - but it is a marker that one's preparation of the case should be particularly thorough. I worked through the night. By 10.30 the following morning, I firmly believed that there was no application - no point of law or evidence - that the claimant could possibly make for which I was not fully prepared.

I went into court, confident. But the claimant had one further surprise up his sleeve. He asked me to step down on the basis that he was not convinced that I was His Honour Judge Hickinbottom. He asked for photographic proof. He said he would not proceed without it. How would you deal with that if asked in an examination, or an interview?

I was tempted to take him to the court next door to mine, where the Chancery Judge for Wales (now Mr Justice Wyn Williams) was sitting: and, pointing at Wyn, saying to the claimant, "Yes - you are absolutely right. That's Judge Hickinbottom": and letting Wyn get on with it. I am sure that, in the fullness of time, Wyn would have found it in his heart to forgive me.

But I didn't. I went instead into case management mode, and told the claimant that, for the purposes of his applications only, we would adopt a working assumption that I was Judge Hickinbottom: but, if he found evidence to support the proposition that I was not, I would give him permission to apply. He seemed happy with that until, after I had heard his applications and had struck all of his claims out as showing no cause of action, he thought better of it. He was obviously not convinced that he would receive a proper hearing before me (whoever I might be) under the permission to apply provision, and he consequently appealed. He did so on a number of grounds. One ground - perhaps his best ground - was that the case had been conducted by

someone who purported to be (but was not) Judge Hickinbottom. It went to the Court of Appeal where it was held that he had failed to prove that ground. Vindication! How many people can say that the Court of Appeal have held that they are who they say they are?

In dispute resolution, in which we all have a particular interest, we all have stories to tell: and we all have things to learn: from each other, and from different strands of the dispute resolving disciplines. That is why I have so enjoyed being here this evening, and talking with you and sharing this evening. It is also why this Company, dedicated as it is to the sensible consideration of arbitration and how that form of dispute resolution can best play a part in the complicated commercial and other affairs of man, is a worthwhile and honourable company. Long may it - and long may you - thrive in those endeavours.

And so may I ask the guests to rise and drink a toast to our hosts - the Worshipful Company of Arbitrators.