

Brexit: a threat or an opportunity for UK lawyers and legal London?

It is 44 years since Lord Denning – in characteristically evocative, quasi-literary language – described EU law as ‘an incoming tide’.¹ Now that the tide appears to have reversed, what legal opportunities will it leave in its wake? Lawyers may feel powerless to control the political currents of integration or divergence. But if Brexit triggers lawyers to embrace disruption in the nature and scope of their work, then the legal services sector, already crucial to the success of the City, might serve as a model for the UK economy as a whole.

Of course, the sector is subject to wider economic flux. The size of the legal services market is only as large as clients’ capacity and willingness to prioritize deal-making and litigation. Bullish or bearish judgments about the post-Brexit legal landscape often reflect underlying political convictions about the type of relationship which the UK ought to seek with the EU, the risk of a no deal scenario and the impact of an independent trade policy.

It is difficult to predict the economic environment in which lawyers will practise post-Brexit. The economic shock of leaving without a deal would undoubtedly create a short-term spike in legal uncertainty, and a corresponding spike in workload, but the long-term effects of a No Deal scenario remain contested. Weighing potential benefits of regulatory divergence and new free trade deals against those of a softer Brexit – greater access to the EU single market and continuity in existing trading arrangements – is necessarily speculative, and politically contentious. For example, it is unclear to what extent the loss of financial passporting agreed under the government’s Political Declaration of November 2018² would harm City institutions.

However, Remainers and Brexiters alike can agree on one fundamental strength of the UK legal profession: its global reach. UK-based law firms have pioneered the globalisation of legal services, building not only market share, but also – increasingly – a physical presence in other jurisdictions. The most globalised among them are therefore well-hedged against the risk of a post-Brexit economic downturn in the UK.³ Firms have also taken steps to preserve their existing practices in EU law – for instance, by registering solicitors in Ireland, as UK solicitors

¹ *Bulmer v Bollinger* [1974] 2 All ER 1226

² *Political Declaration Setting out the Framework for the Future Relationship between the European Union and the United Kingdom* II.IV.37-39

³ <https://www.economist.com/britain/2017/11/25/brexit-could-deprive-british-law-firms-of-business-in-two-ways>

will no longer enjoy the freedom of establishment rights conferred by the Establishment Directive 98/5/EC after Brexit.⁴ With their international client base and their genuinely global reach, law firms offer a microcosm of what “Global Britain” might look like in practice.

Having said that, the effect of Brexit on the English courts and Bar appears more problematic. To a greater extent than UK solicitors, barristers depend on the continued appeal of London as a venue for dispute resolution. In light of uncertainty as to the enforceability of UK judgments in the EU after Brexit, jurisdictions such as France are competing with the UK by enabling use of the English language and reference to English common law in their courts.⁵ As the traditional strengths of UK dispute resolution are emulated by rival jurisdictions, the case for changes to the court system grows more compelling.

Welcome moves, such as the government’s investment in a new fraud and cybercrime court in the City,⁶ are in themselves insufficient to the scale of the post-Brexit challenge. Legal London’s competitiveness will depend not only on the depth of talent educated and trained in the UK (though that will remain essential), but on the willingness of UK courts to become more efficient and user-friendly. Innovations such as virtual courts, long advocated by commentators such as Professor Richard Susskind, will become crucial if London is to retain its competitive advantage over rival dispute resolution centres. In short, Brexit heightens the urgency of realising existing opportunities for disruption in the legal sector.

The same principle applies to the solicitor branch of the profession. Brexit advisory work necessarily involves guidance on political, as well as legal, uncertainty. For example, the degree of divergence between the EU competition regime and future decisions of the UK Competition and Markets Authority will depend ultimately on the closeness of the future relationship between the UK and the EU.

In order to compete in this market, law firms have already strengthened their public affairs and public policy capabilities. Just as the Big Four accounting firms have expanded into legal

⁴ <https://www.irishtimes.com/business/retail-and-services/almost-a-tenth-of-irish-registered-solicitors-from-england-and-wales-1.3590759>

⁵ <https://www.thetimes.co.uk/article/paris-opens-english-court-to-snatch-british-business-before-brexit-swkbwzxdc>

⁶ <https://www.gov.uk/government/news/worldclass-fraud-and-cybercrime-court-approved-for-londons-fleetbank-house-site>

services, so law firms must be willing to expand beyond their core function of legal counsel into strategy and risk management, where appropriate. The liberalising provisions of the Legal Services Act 2007, allowing non-lawyers to share in the ownership of legal businesses,⁷ provide a framework for law firms to offer these ancillary services – which will grow in significance after Brexit. If legal professionals maximise post-Brexit opportunities for innovation and disruption, “lawyer” itself may become something of a misnomer.

The extent to which the UK legal sector profits from Brexit will depend less on its immediate response to UK withdrawal than on its capacity to remake itself in the long term. The question for law firms is whether they are capable of converting Brexit-type advisory work into a permanent strand of their future client relationships, by demonstrating the benefits of a joined-up response to legal, political and commercial uncertainty. The question for the courts and the Bar is to what extent London gains a first-mover advantage in twenty-first century dispute resolution, beating European and global rivals.

The opportunities of Brexit are integrally connected with a tide of disruption, driven by increased competition and new technology, which is transforming legal services globally – a tide which, to return to Lord Denning, ‘cannot be held back’. If responding to Brexit does not come at the expense of innovation, but acts as a spur to it, then legal London will retain its international standing in the face of economic and political risk.

Word Count: 987 words

⁷ See Part 5: Alternative Business Structures