

Brexit: a threat or an opportunity to legal London.

“Your rights were won at Runnymede / no freeman should be fined or bound / or dispossessed of freehold ground / except by lawful judgement found” begins Rudyard Kipling’s Runnymede, a poem celebrating the UK’s illustrious legal history and the signing of the Magna Carta. The worldwide reputation of English law and British justice, often listed as first among the finest in the world, has established legal London as a successful British export and engine of British economy.

English law is therefore robust enough to withstand a force majeure event like Brexit, but is legal London? This essay argues that the opportunities resulting from Brexit, including an increase in competitiveness resulting from our depreciating currency and work for lawyers resolving constitutional uncertainty, will not be sufficient to offset the risks from a downturn in the economy without significant crisis mitigation efforts.

There are upsides for lawyers. Brexit is the most profound legal and constitutional challenge the UK government has ever had to face; unpicking the tangle of questions posed by Brexit will take decades. EU and public specialists will have a glut of work responding to a surge in demand for advice and guidance in the search for clarity around the precise contours of a partnership based on “free trade area, combining deep regulatory and customs cooperation”.

There will be new jobs: Britain’s lawyers will staff the bodies and agencies overseeing the development of new regulations, Britain’s new trade-negotiating capacity at the WTO, and on the joint committee to oversee dispute resolution at the UK/EU level. This is only the beginning: the countless cases concerning the interface between EU, UK and international law create enormous scope for contestation, and specialist legal teams will undoubtedly spring up in response.

Commercial law will also be partially insulated from Brexit, at least in the short term. Legal London has benefited significantly from the commercial law developed in English courts playing a leading role in the development of international private law. Many disputes settled in Britain originate in countries with limited recourse to the rule of law. Consequently, litigants seek to have their disputes resolved under English law to access a neutral and impartial system, the firms best versed in English law often reside in legal London.

London’s pre-eminence as the best location for international arbitration is unlikely to be shaken immediately. Brexit does not stop the UK being a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, nor will the domestic framework supporting arbitration (The Arbitration Act 1996) change. Parties operating in countries with a need for certainty, stability, and maturity of law will continue to look to English law regardless of Brexit. Thus, the thriving commercial practice based on litigating disputes between multinationals in countries as far flung as Angola, Brazil and China should continue as usual. In fact, Brexit potentially offers an ‘upside risk’ of a falling exchange rate, thereby reducing the cost of legal services. This may provide a lifeline to British lawyers facing fierce cost competition from arbitrators and litigators based in Hong Kong and Singapore.

But it is important to avoid complacency; the protection of English commercial law and constitutional law does not amount to the protection of 'legal London', nor law beyond the M25.

First, law is not impervious to a broader downturn in the UK economy. Legal London includes criminal, common and family practitioners dependent on legal aid. Trawling the vaguely worded political deal and draft withdrawal arrangement it becomes patently obvious that the deal outcome is a huge economic downgrade from EU membership, ending freedom of movement in goods and services. If the City of London Corporation is correct and Brexit results in the loss of 75,000 jobs and up to £10bn in annual tax revenue, it is likely that the impact on tax receipts will be felt across the public sector, and legal practitioners dependent on public subsidies will see their practices further squeezed.

Second, legal London is inextricably interwoven with London's broader professional services sector, and Brexit threatens London's future at the heart global commerce and capital flows. The UK's service sector is exposed by a Brexit deal that does not protect the free movement of services, or mutual recognition. The joint declaration on financial services suggests that the UK will move to a stricter regime under which 5,500 UK-based firms risk losing the much valued "passport" that enables authorised firms in any EU or EEA state to trade freely with each-other without additional authorisation. This will affect all parts of legal London that are part of the wider financial and business service ecosystem. What is at stake becomes apparent when one considers that UK is the world's ninth largest exporter of goods, but second largest exporter of services.

Third, continued uncertainty might be good for lawyers, but is terrible for business. The Withdrawal Agreement and Political Declaration do little to resolve many of the issues of glaring importance, with impacts for consumer and business confidence and investment. Lawyers cannot sustainably thrive providing advice to firms that can't afford to pay for it.

Legal London will have to fight hard against a countervailing current that endorses an inward looking, jingoistic turn and the championing of global isolation. Unfortunately, this isn't limited to Brexit: Britain's withdrawal from the international scene, and diminished status, can be seen in our withdrawal of a candidate for the bench of the International Court of Justice, meaning there will be no British judge for the first time in the court's 71-year history.

English Common law, and its practitioners, has passed triumphantly through many previous crises. For legal London to weather this one will require a concerted effort to demonstrate and interest in the world beyond the English Channel, despite messages to the contrary. London will also have to fight against changes that come from tightened purse strings threatening parts of the legal system that underpin our reputation for, in the words of Kipling, "lawful judgement".