

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

*"I looked and I beheld a pale horse, and the name that sat on him was Death, and Hell followed with him."*<sup>1</sup>

Too much? Perhaps. But to many lawyers, Brexit is a spectacle unparalleled in the modern world: one of a country taking the widely-coveted motor of its economic growth, the City, and deliberately tearing apart its delicate and intensely international ecosystem. Add to that the 60% majority for Remain in London, and 29 March 2019 quickly appears to legal London as a looming pair of shackles to be hoisted onto the capital by the provinces. Yet, amongst this wringing of hands, lawyers risk conflating their own personal self-interest with the national interest and so overlook the considerable benefits that a reduction of the London legal sector might have for the country as a whole.

The mantra 'Brexit means Brexit' was never a particularly helpful lodestar given the wide array of potential future relationships. The tautology though has only become truly comical four months out from the default departure date without a clear parliamentary majority in sight. The Prime Minister's proposed deal, which one acerbic commentator noted was announced at 'a funeral masquerading as a baptism', appears to be dead on arrival.<sup>2</sup> Absent a crystal ball, reliable Brexit predictions are impossible to make and so, if only for the sake of offering more than a string of 'what ifs', this essay will focus on the impact of a so-called 'hard Brexit', in which the UK relies on WTO rules.

Once the initial deluge of urgent Brexit-related work abates, the long-term impact on the legal services market will be dramatic. The Law Society predicts that £3 billion could be stripped from legal sector turnover by 2025 and that there will be 20,000 fewer jobs in the legal sector as compared to a soft Brexit.<sup>3</sup> The reason for this sharp decline is twofold. First, as Mark Carney put it, the UK is reliant upon the 'kindness of strangers' to fund its current account deficit with the rest of the world.<sup>4</sup> A sudden departure from the EU would decrease the attractiveness of the UK as an investment destination and there would be a concomitant decline in economic growth. Second, a high percentage of UK legal work is parasitic on the financial services industry. The replacement of concrete 'passporting' rights with a decidedly tentative commitment to 'equivalence' has spurred the relocation of at least €800bn worth of assets to the continent and thousands of jobs.

So far, so gloomy. However, the spectacular growth of the London legal services sector over the past two decades, which Brexit threatens to reverse, has not been a universal success story. It has given rise to what Michael Gove called a 'two-track' justice system: one for the wealthy international elite who choose London as their dispute-resolution centre of choice, and one for everyone else. One in which partners at Magic Circle firms can charge upwards of £1,000 an hour

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<sup>1</sup> Book of Revelation 6:8 (King James Version).

<sup>2</sup> Matthew d'Ancona, *The Guardian* <<https://www.theguardian.com/commentisfree/2018/nov/25/theresa-may-brexit-deal-meltdown>>

<sup>3</sup> <<https://www.lawsociety.org.uk/news/press-releases/legal-sector-growth-halved-if-britain-crashes-out-of-eu/>>

<sup>4</sup> Jill Treanor, *The Guardian* <<https://www.theguardian.com/business/2016/jan/26/mark-carney-fails-to-rule-out-eight-year-term-at-bank-of-england>>

and one where ordinary citizens are priced out of court. The abundance of international high-value legal work in London has had tangible negative effects on the state of the justice system in the rest of the UK.

First, it has driven up the cost of legal advice throughout the country. London law firms have succeeded in leveraging the high demand for their services into markedly higher prices over the past two decades. The continued widespread reliance on hourly rates, despite their having been repeatedly shown to encourage inefficiency, is testament to the bargaining power that lawyers wield. Similarly, the, in one think tank's words, 'remarkable similarity' in rates charged by top law firms is indicative of a lack of competition between them.<sup>5</sup> Although the balance of power between lawyer and client had already begun to shift pre-Brexit, it will be hastened by the overall reduction in legal work. Law firms will be forced to become more innovative and flexible in their provision of services, which will drive down costs. This will benefit clients nationally as the downward pressure on costs spreads. London firms may also be forced to look outside of the capital for work and so enable smaller regional business to take advantage of their offerings.

Second, the exorbitant salaries offered by London law firms has led to an effective monopoly for the most promising graduates. Newly qualified associates can earn up to £143,000 in London, compared to an average £40,000 in the regions. This disparity has an especially pernicious cyclical effect, whereby graduates are economically penalised (even taking into account differential living costs) for taking a job outside of London, which in turn leads businesses to turn to London firms for quality legal advice. A similar effect plays out across practice areas: family and criminal lawyers cannot hope to earn similar amounts to civil lawyers and so their firms attract smaller numbers of aspiring lawyers.

This disparity between London 'and the rest' is particularly iniquitous as a major selling point of large law firms are the UK's common law and independent judiciary. These are national institutions which have their roots in social and political factors extending far beyond the expertise of current practitioners. They should benefit all citizens and not just an elite minority. It is thus the not the case, as is sometimes assumed, of London lawyers generously subsidising the rest of the legal system but rather of them deriving a disproportionate benefit and distorting the legal system in the process.

Thus, far from being a catastrophe of biblical proportions, Brexit will rather hasten the much-needed reorientation of the UK legal economy. A more balanced sector, both geographically and across practice areas, will yield significant benefits for the country and, ultimately, for lawyers themselves. It is perhaps unfortunate that it has taken such a dramatic diplomatic rupture to spark this shift but, considering how firmly the incumbents were entrenched in the system, it is difficult to imagine it happening any other way.

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<sup>5</sup> Jim Diamond, *Centre for Policy Studies* <<https://www.cps.org.uk/files/reports/original/160202103206-ThePriceofLaw.pdf>>

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