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### How do you think Brexit will affect junior lawyers?

On June 23<sup>rd</sup> 2016, the UK voted to leave the European Union. Cue: panic in the country as David Cameron resigns, and George Osborne is nowhere to be seen. The markets instantly respond negatively: shares drop, sterling dives, and it quickly becomes apparent that there is no real plan for taking Britain out of the EU.<sup>1</sup>

Is Brexit good or bad news for junior lawyers? For clients at commercial law firms, it has introduced uncertainty, which usually translates to bad news. And when things go badly, lawyers are usually needed. A ‘Brexit bonanza for lawyers’, the *Financial Times* reported.<sup>2</sup> Presumably, the Brexit hotlines set up by some City law firms were ringing furiously on June 24<sup>th</sup>.

However, voices from the legal community have been less sanguine. ‘We would lose jobs, quite clearly’<sup>3</sup> if Britain exited the EU, said one City lawyer in an interview prior to the EU Referendum. Beyond job security, this essay will consider the potential repercussions of Brexit for junior lawyers at City law firms over the next ten years. It will first consider how junior lawyers could be affected in the run-up to the UK leaving the EU, and second how junior lawyers could be affected by the UK’s exit from the EU on the banking sector, the international opportunities available for lawyers, the position of English law, and the opportunities that could come from Brexit.

#### The form of Brexit

It is beyond the scope of this essay to explore in detail the different exit options available for the UK.<sup>4</sup> In addition, space does not allow for an investigation of the potential impact on Brexit negotiations of the recent decision by the High Court in *R (Miller) v Secretary of State for Exiting the European Union* (2016), and the pending appeal at the Supreme Court.<sup>5</sup>

While Theresa May has assured the country ‘Brexit means Brexit’,<sup>6</sup> this could mean a hundred different things. In the midst of this uncertainty in how we will leave the EU,

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<sup>1</sup> The stock market has since recovered and made gains, though sterling is at its lowest since 1985.

<sup>2</sup> ‘Lawyers prepare for Brexit bonanza’, <https://www.ft.com/content/7c08a07a-3a02-11e6-9a05-82a9b15a8ee7> (accessed 27 November 2016).

<sup>3</sup> The Law Society of England and Wales, *EU and the Legal Sector*, available from <http://www.lawsociety.org.uk/news/press-releases/the-future-of-britain-in-europe-legal-services/> (Accessed 17 September 2016).

<sup>4</sup> For a fuller picture of Brexit options, see: ‘Life after Brexit : What are the UK’s options outside the European Union’, <http://cep.lse.ac.uk/pubs/download/brexit01.pdf> (accessed 27 November 2016).

<sup>5</sup> <http://www.bailii.org/ew/cases/EWHC/Admin/2016/2768.html> (accessed 26 November 2016).

<sup>6</sup> ‘Theresa May says “Brexit means Brexit” and there will be no attempt to stay inside EU’, <http://www.independent.co.uk/news/uk/politics/theresa-may-brexit-means-brexit->

this essay will assume the UK will follow a complete departure from the EU. This will mean an exit from the Single Market and reliance on the UK's membership of the World Trade Organisation as a basis for trade.

## **I Short-term Brexit**

There is little doubt that in the short-term, there will be a growing appetite for legal services in the confusion of Brexit. Not least the plummeting of the pound is likely to pique the appetite of international companies looking to snap-up British companies in M&A deals.

Once the UK has formally given intention to withdraw from the EU through invoking Article 50 of the Lisbon Treaty, there will be a two-year period in which the UK and the EU negotiate the terms of its withdrawal. During this period, clients will be asking more of law firms than ever before. The Brexit hotlines will be in fullswing. This will be a time in which junior lawyers will be truly tested when faced with demanding, difficult and concerned clients: hours may be longer, and the work more complex. Commercial acumen and creativity will be required as there will be a large number of legal unknowns, and junior lawyers may have more client contact than usual to assuage any post-Brexit stress disorders.

While this will be challenging, it will also be an opportunity for junior lawyers to prove their mettle: their intelligence and creativity, resilience, problem-solving and leadership skills and their ability to work well with clients.

## **II Medium to long-term impact of Brexit**

The medium to long-term impact of leaving the EU on traditional business sectors is likely to be a different story. Leaving the single market means that there will be an economic cost for business clients that will affect trade, regulation and the ability to move or expand operations. In particular, Brexit may have the biggest impact on banking – the ‘most exposed sector’ – and the largest industry for the top UK city law firms (33% of total revenue in 2014).<sup>7</sup> This will have a knock-on effect on law firms and their junior lawyers.

There is a serious risk that Brexit will mean the end of passporting of investment under the Markets in Financial Instruments Directive (MIFID). This gives banks in Member States the ability to offer services in the EU area without the need for

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[conservative-leadership-no-attempt-remain-inside-eu-leave-europe-a7130596.html](https://www.conservative-leadership-no-attempt-remain-inside-eu-leave-europe-a7130596.html) (accessed 26 November 2016).

<sup>7</sup> The Law Society of England and Wales, *EU and the Legal Sector*, <https://webcache.googleusercontent.com/search?q=cache:ccdXUAWpOp8J:https://www.lawsociety.org.uk/news/documents/the-uk-legal-services-sector-and-the-eu/+&cd=2&hl=en&ct=clnk&gl=uk&client=safari>, p.14. (Accessed 17 September 2016).

licences. Currently, a number of non-EU banks have a base in London as they see it as the gateway to Europe. Brexit may disrupt this.<sup>8</sup>

If US, Swiss and Asian banks shift staff to other EU destinations, there is likely to be less transactional work, cuts to lawyer headcounts in the London offices, and relocation for others. As one City firm interviewee said, ‘if we don’t have passporting, it will be detrimental’.<sup>9</sup> While it is still early to say, adverse change has already been measured by research that indicates there have been fewer advertised vacancies for in-house lawyers at London banks, while there has been growth in in-house banking vacancies in France, Germany, Ireland and Belgium.<sup>10</sup> Private practice lawyers – especially those in the Square Mile and Canary Wharf – will suffer as they lose their proximity to the banks that might move. Junior lawyers at the London offices of US law firms, which are more focussed on transactional work, may be particularly affected.

If this becomes the future business landscape of Brexit, it will affect many law firms. It may mean that firms will reconsider the number of training contracts and newly-qualified positions going forward, especially if Brexit becomes a catalyst for more firms merging. This will be particularly testing for those seeking training contracts given the already high levels of competition.

### **III Ability to work across EU member states**

Britain’s membership of the EU has allowed British lawyers to move fluidly between international offices through the EU directives on the temporary provision of services (772/49/EEC) and permanent establishment (98/5/EC). This flexible arrangement has been extremely beneficial for trainee solicitors, with many City law firms providing international secondments in the training contract, and for many to have opportunities to qualify into an overseas office.

Brexit could spell an end to these opportunities, and some law firms have already registered their lawyers in Ireland in the wake of the EU referendum result.<sup>11</sup> A complete departure from the EU may hinder the current opportunities open to many junior lawyers to spend time in EU member states. For instance, lawyers may need to apply for visas to work in the EU, and they may be tested under the rule that exists in

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<sup>8</sup> ‘JP Morgan to “move 4,000 jobs out of UK” following Brexit decision’, <http://www.ibtimes.co.uk/brexit-fallout-jp-morgan-could-move-thousands-jobs-out-uk-due-passport-system-rules-1569405> (Accessed 17 September 2016).

<sup>9</sup> The Law Society of England and Wales, *EU and the Legal Sector*, <https://webcache.googleusercontent.com/search?q=cache:ccdXUAWpOp8J:https://www.lawsociety.org.uk/news/documents/the-uk-legal-services-sector-and-the-eu/+&cd=2&hl=en&ct=clnk&gl=uk&client=safari>, p.18, (Accessed 17 September 2016).

<sup>10</sup> ‘London in-house banking roles dry up as Brexit takes toll’, <https://www.thelawyer.com/london-legal-jobs-market-suffers-brexit/> (Accessed 17 September 2016).

<sup>11</sup> Brexit Leads UK Lawyers to Solace in Irish Bar’, <http://www.bloomberg.com/news/articles/2016-06-28/brexit-leads-u-k-antitrust-lawyers-to-see-solace-in-irish-bar> (Accessed 17 September 2016).

fifteen EU member states that one can only be hired if no other suitable candidate has been found within the EU/EEA area.<sup>12</sup>

However, it is unlikely that Brexit will end international opportunities for junior lawyers. In 2014, England and Wales law firms operated in 219 offices in EU countries, with many EU Member State law firms appearing in the Legal 500.<sup>13</sup> Additionally, it has been estimated that 10-20% of trainee solicitors at City law firms are non-British EU citizens.<sup>14</sup> There are practical reasons for both the UK, and Member States, to negotiate for this to continue.

#### **IV Will Brexit signal a waning of the influence English law?**

Leaving the EU could challenge the present position of English law as the dominant legal currency in the EU area, which would have major implications for junior lawyers. The picture is complicated in terms of which areas of law would be most affected, as some areas of law will be more affected than others. For instance, arbitration is unlikely to change because the law governing this stems from the Arbitration Act 1996, whilst competition law is likely to be adversely affected.<sup>15</sup>

One potential issue is the impact of Brexit on the choice of law in contracts. Under Regulation (EC) No. 593/2008 (the Rome I Regulation), English law is recognised as a valid choice of law for contracts in the EU, which will remain unchanged following leaving the EU. It has been suggested, however, that Brexit could make it more likely that a form of European contract law is introduced later down the line.<sup>16</sup> This doomsday argument is that when the UK leaves the EU, there will be much less resistance to its possible introduction by the European Commission.<sup>17</sup> Should this be happen, then it could represent a serious challenge to the use of English contract law in Europe, and likely to mean re-training and possible re-qualification for current junior lawyers at firms which do business in the EU area. It could also mean changes to the content of the law degree and Legal Practice Course.

However, this is a very unlikely prospect as there was also strong resistance to a form of European contract law from other Member States. The central place of English law to the practice of junior lawyers is not likely to change following Brexit. English law will continue to be highly desirable for international clients as it is clear, transparent

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<sup>12</sup> 'Brits Abroad: How Brexit Could Hurt Expats', [http://www.ecfr.eu/page/-/ECFR\\_176\\_-\\_HOW\\_BREXIT\\_COULD\\_HURT\\_EXPATS.pdf](http://www.ecfr.eu/page/-/ECFR_176_-_HOW_BREXIT_COULD_HURT_EXPATS.pdf) (Accessed 17 September 2016).

<sup>13</sup> <http://www.legal500.com/c/foreign-firms/directory> (Accessed 17 September 2016).

<sup>14</sup> London law firms to cut back on EU trainees following Brexit', <http://www.legalcheek.com/2016/06/london-law-firms-to-cut-back-on-eu-trainees-following-brexit/> (Accessed 17 September 2016).

<sup>15</sup> Brexit: What would it mean for UK competition law landscape', [http://webcache.googleusercontent.com/search?q=cache:S9zBm4HwVFs\]:communities.lawsociety.org.uk/download%3Fac%3D15582+&cd=1&hl=en&ct=clnk&gl=uk&client=safari](http://webcache.googleusercontent.com/search?q=cache:S9zBm4HwVFs]:communities.lawsociety.org.uk/download%3Fac%3D15582+&cd=1&hl=en&ct=clnk&gl=uk&client=safari) (Accessed 17 September 2016).

<sup>16</sup> 'A European contract law for consumers and businesses', [http://ec.europa.eu/justice/contract/files/feasibility\\_study\\_final.pdf](http://ec.europa.eu/justice/contract/files/feasibility_study_final.pdf) (Accessed 17 September 2016).

<sup>17</sup> 'EU withdrawal: at what price for lawyers', <http://www.lawgazette.co.uk/analysis/eu-withdrawal-at-what-price-for-lawyers/68469.fullarticle> (Accessed 17 September 2016).

and able to evolve in the face of changing commercial realities.<sup>18</sup> As one City firm put it, ‘London would continue to dominate’ as an international legal and financial centre.<sup>19</sup>

## V New horizons

Following Brexit, the UK will have the hurdle of negotiating deals with the EU member states. As Miriam Gonzalez Durantez, City lawyer and former international trade negotiator has said, the UK has to ‘re-negotiate absolutely everything. From competition, privacy, consumer protection, financial services. The whole thing.’<sup>20</sup> Trade-deal negotiation for the UK is no easy task. Britain handed over control of trade-deal negotiation when it joined the European Economic Community in 1973 and an initial government review suggests that only twenty civil servants in London actually have experience of these difficult negotiations.<sup>21</sup>

This presents a favourable opportunity for junior lawyers who are interested in developing expertise in international and EU trade law policy. This will be at least five years’ work, and probably last much longer.<sup>22</sup> For those seeking training contracts, it is also possible that there will be an increase in the number of trainee positions at the Government Legal Services as there will be a number of legislative challenges involved in Brexit.<sup>23</sup>

New trade-agreements will also need to be struck with countries outside the EU, and the recent election of Donald Trump as President-Elect of the US may mean that Britain is no longer ‘back of the queue’ in a UK-US trade agreement.<sup>24</sup> Liam Fox, international trade secretary, has said he was ‘scoping about a dozen free-trade deals outside the EU to be ready for when we leave’.<sup>25</sup> With more trade of goods and services between the UK and these countries, there is likely to be more work for

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<sup>18</sup> ‘England and Wales: The Jurisdiction of Choice’, <http://www.eversheds.com/documents/LawSocietyEnglandAndWalesJurisdictionOfChoice.pdf> (Accessed 17 September 2016).

<sup>19</sup> The Law Society of England and Wales, *EU and the Legal Sector*, <https://webcache.googleusercontent.com/search?q=cache:ccdXUAWpOp8J:https://www.lawsociety.org.uk/news/documents/the-uk-legal-services-sector-and-the-eu/+&cd=2&hl=en&ct=clnk&gl=uk&client=safari> p.20. (Accessed 17 September 2016).

<sup>20</sup> ‘UK Needs 20 Times more Trade Negotiators to Pull Off “Brexit”, Says Miriam González Durántez’, [http://www.huffingtonpost.co.uk/entry/miriam-gonzález-durántez-brexit-trade-negotiators\\_uk\\_57713ad3e4b0d257114a18b2](http://www.huffingtonpost.co.uk/entry/miriam-gonzález-durántez-brexit-trade-negotiators_uk_57713ad3e4b0d257114a18b2) (Accessed 17 September 2016).

<sup>21</sup> ‘Britain’s Civil Service Confronts Brexit Unprepared’, <http://www.wsj.com/articles/britains-civil-service-confronts-brexit-unprepared-1468004403> (Accessed 17 September 2016).

<sup>22</sup> ‘Britian lacks the skills to go solo on trade deals’, <http://www.ft.com/cms/s/0/3c76e90a-270e-11e6-8ba3-cdd781d02d89.html#axzz4Ci89kG6L> (Accessed 17 September 2016).

<sup>23</sup> ‘Planning for the post-Brexit legal world’, <https://www.thelawyer.com/issues/25-july-2016/planning-post-brexit-legal-world/> (Accessed 17 September 2016).

<sup>24</sup> ‘Barack Obama: Brexit would put UK “back of the queue” for trade talks’, <http://www.theguardian.com/politics/2016/apr/22/barack-obama-brexit-uk-back-of-queue-for-trade-talks> (Accessed 17 September 2016). Compare with ‘President Trump: Will UK business be back of the queue’, <https://www.thelawyer.com/issues/online-october-2016/president-trump-will-uk-business-back-queue/> (Accessed 10 November 2016).

<sup>25</sup> ‘UK opens trade talks in January 2017’, <http://www.thetimes.co.uk/edition/news/uk-opens-trade-talks-for-brexit-in-january-2019-bjpm3t52> (Accessed 17 September 2016).

junior lawyers on advising clients on the interpretation of free trade agreements, international customs law and market access issues, representing clients in international trade disputes, and advising on foreign direct investment.

## **VI Conclusion**

Leaving the EU will introduce uncertainty, disruption and change in some key areas of the UK legal industry. While Brexit in the short-term will keep law firms and their junior lawyers busy, the longer-term picture may see damage to transactional practice areas leading to some uncomfortable changes in the profession.

In the midst of uncertainty, junior lawyers can take some comfort in knowing that there is also likely to be lots of continuity. It is very probable that international opportunities for British junior lawyers in EU countries will be maintained. In addition, the diminution of English law in the EU is not likely to develop: English law is far too important as a means to achieve commercial and legal certainty for international parties. There are also likely to be opportunities in trade-deal negotiation upon coming out of the EU, which can only lead to new roles for junior lawyers.

In conclusion, Brexit will create some significant change in the legal industry. Whilst this change will be challenging, it need not be negative. It will, however, require adaptability, resilience and creative thinking. It will be up to the junior lawyer to anticipate the change and to make a success of it.