BAR COUNCIL WRITTEN EVIDENCE

HOUSE OF LORDS EU INTERNAL MARKET SUB-COMMITTEE INQUIRY

BREXIT: FUTURE TRADE BETWEEN THE UK AND EU IN SERVICES

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Lords EU Internal Market Sub-Committee inquiry, Brexit: Future trade between the UK and the EU in services. This evidence has been prepared by members of the Bar Council Brexit Working Group and draws on the group's publication, The Brexit Papers[1].

2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

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[1] http://www.barcouncil.org.uk/media/508513/the_brexit_papers.pdf

Sectoral overview:

Please provide us with an overview of trade in your sector. Please include a summary of the significance of the sector to UK trade in services, including employment statistics (linked to trade if possible), the volume and balance of trade, value added and Foreign Directive Investment (FDI), and UK strengths and specialisations in the sector.

Economic value of the legal services sector

4. The UK legal services market is a significant revenue generator for the Exchequer, worth £25.7 billion in total, employing approximately 370,000 people and generating an estimated £3.3 billion of net export revenue in 2015. Central to this is the ability of barristers, solicitors and other legal professionals to provide legal services, including advocacy, across national borders within the EU and EEA. In 2015, of the 1,100 cases registered at the Commercial Court, more than two-thirds had one non-UK based party to proceedings. Also in 2015, more than 22,000 commercial and civil disputes were resolved through arbitration, mediation and adjudication in the UK. In 2013-14, a foreign party was involved in about 80% of the commercial claims issued, and in about 45% of cases all parties were from outside the UK

Value of international work to the Bar

5. Earnings from the Bar's international work have been rising steadily for over a decade as barristers provide specialist advocacy, legal advice and arbitration work spanning sectors including financial services, shipping, energy markets, insurance, banking, white collar crime and intellectual property.

6. Barristers are often called upon by other jurisdictions around the world for their expertise and a number of chambers have opened overseas annexes in recent years including in Singapore, Malaysia, Abu Dhabi and Dubai.

7. International work makes up roughly 30% of the total earnings of the self-employed Bar. In 2015, the Bar's international income increased by 9% by 22.8m from 252m to 274m, following year-on-year increases of roughly 10%. The number of barristers with clients based abroad has also increased by 107 to 1596. Those 1596 practitioners earn 31.32% of the self-employed Bar's income. Overseas income from international clients accounts for 11.66% of the self-employed Bar's income.

Value of legal services sector as a professional service

8. That fact that England and Wales is such a significant hub for international dispute resolution has important knock-on advantages for the UK as a whole such as in giving our exporters confidence in doing business abroad. Given the widespread acceptance

of English law as an effective law for governing commercial relationships, and the choice of the English courts as a corollary of this, UK parties can often negotiate that English law be the law which governs their commercial relationships with international parties and that their disputes will be resolved in the English courts. This gives those UK parties the "*home advantage*" of being able to use a law and courts with which they are familiar, even though they are trading internationally.

9. Legal services are a cornerstone of the broader financial and related professional services cluster which makes the UK a leading international business hub. Major global firms come to the UK to access this unrivalled breadth of services, seek advice from world-class legal and advisory firms, raise finance and insure their businesses – helping to create jobs throughout the UK. A strong, competitive and well-regulated legal services sector is essential for sustainable economic growth across the UK.

Value of international arbitration

10. Arbitration is now regarded as the principal way of resolving international disputes involving states, individuals and corporations[2]. For decades London has been a dominant seat for arbitrations in the maritime and insurance sectors, and over the past 20 years London has become one of the dominant seats for the resolution of international commercial disputes of all varieties by arbitration. Respondents to a recent (2015) survey by White & Case LLP and Queen Mary, University of London[3] revealed that London was both the most used[4] and the preferred[5] seat for arbitration.

11. The latest statistics from the London Court of International Arbitrators reveal that 326 arbitrations were referred to the LCIA in 2015. So far as the parties to those arbitrations are concerned, 25% were from Europe[6], 15.6% from the UK, 14.8% from Russia and the CIS, 12% from respectively Asia and the Caribbean[7] and smaller numbers from the US, Middle East and Latin America.

12. Figures from the London Maritime Arbitrators' Association show there were approximately 2,000 new arbitration references in 2015 of which probably no more than 100 were seated outside London. Approximately 85% of those cases are dealt with

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2 *Redfern and Hunter on International Arbitration*, 6th ed, 2015, para 1.01.

3 http://www.arbitration.qmul.ac.uk/docs/164761.pdf

4 The ranking was London (45%), Paris (37%), Hong Kong (22%), Singapore (19%), Geneva (14%), New York (12%), Stockholm (11%)

5 The ranking was London (47%), Paris (38%), Hong Kong (30%), Singapore (24%), Geneva (17%), New York (12%), Stockholm (11%)

6 For these purposes Europe includes Germany, Netherlands, Cyprus, Switzerland, Eastern Europe and other Western Europe categories. The Cypriot companies are likely to be foreign-owned

7 Most of the Caribbean companies will be foreign-owned companies

on documents alone – and European lawyers would be involved in about 50% of those cases. In about 5% of the cases that go to a hearing there will be overseas arbitrators and in perhaps 25-30% overseas lawyers will attend (often with English counsel).

EU and market access:

How and to what extent does the EU facilitate enhanced market access for your business/in your sector? Is there a harmonised Single Market framework that allows you full access to other member states' markets? If not, how (and how well) does the Single Market function in your sector?

Do other aspects of EU membership help or impede the ability of your business to operate (eg, access to justice, horizontal legal regimes, free movement of persons, mutual recognition of professional qualifications, regulation and standards)?

13. There are numerous aspects of the work of the legal services sector, and specifically the work of barristers, which are enabled by regimes relating to cross-border rights and the enforcement of judgments which form part of the UK's arrangements for membership of the EEA.

Cross-border rights

14. The importance of cross-border rights to the provision of legal services by barristers is most obvious in relation to the practice of EU law itself. Outside Brussels, London in particular has the highest concentration of lawyers with specialist EU law knowledge and experience anywhere in the world. As the examples in ANNEX 1 demonstrate, those lawyers are in demand not just for domestically-focused EU law, but also for advice and representation services on behalf of EU and third country clients, including in the national courts of other Member States, Commission investigations, and European Court proceedings.

15. Barristers also advise and represent clients across the EU in commercial proceedings under the Services Directive, for example where an international contract has an English choice of law clause, and in arbitrations conducted in English. Barristers also act as arbitrators in numerous EU Member States, an activity which in the absence of EU-equivalent guarantees could not be guaranteed to continue in any Member State which classed it as the supply of a legal service. Advisory and advocacy work across the EU in the areas of private and public international law, and in fields such as international financial services and wealth management, is also dependent on the cross-border rights that the legal profession currently enjoys. The cross-border rights of UK lawyers thus help to support the current dominance of English common law as an international benchmark, and of UK financial services in Europe.

16. All these streams of business rely on UK legal professional qualifications being recognised in other Member States and in the European Courts. These are high-profile

and lucrative activities. In EU competition proceedings alone, multinational clients who have been represented by the Bar in recent years (including some major ongoing proceedings) include Microsoft, Google, Apple, Samsung, Ryanair and AstraZeneca. In European Court proceedings, barristers also frequently represent not only major private clients from across the EU and third countries, but also the European Commission, other EU institutions such as the European Parliament and the EMA, and foreign governments (both EU and non-EU).

17. The significance of specific rights, which are enabled by the UK's current EEA membership arrangements include:

    a. Establishment on a permanent basis in other Member States – currently possible under the Lawyers Establishment Directive 98/5/EC, which allows registration with the host State Bar and, after three years of effective and regular practice in the host Member State, permits an application to acquire the professional title of the host State without any further qualification requirements. (A barrister may also requalify as a full member of the local Bar under Directive 2005/36/EC on the recognition of professional qualifications, by taking an aptitude test.) Some barristers are established in Brussels; many are employed by firms of solicitors in other Member States e.g. in Brussels, Paris and the Netherlands;

    b. Advising clients in other Member States on a temporary basis, whether on issues of EU law, domestic law (including the law of the host Member State) or international law – currently possible under the Lawyers Services Directive 77/249/EC, with no requirement to register with the local Bar. This Directive creates both substantive rights and (where local rules are obscure) regulatory certainty. Barristers regularly advise clients throughout the EU, often within the jurisdictions of other Member States;

    c. Representing clients in the domestic courts and tribunals of other Member States – currently possible under the Lawyers Services Directive, provided that advocacy is undertaken in conjunction with a host state lawyer. Again, there is no requirement to register with the local Bar, nor any restriction as to the issues on which the advocate may present argument;

    d. Advising and representing clients in Commission investigations, including in particular competition proceedings – in practice only possible for EEA-qualified lawyers, since the EU rules only recognise legal professional privilege in relation to lawyers entitled to practise in a Member State. If UK lawyers were to fall outside that principle, even UK clients would have to instruct lawyers from other Member States to advise and represent them in these proceedings.

It is for this reason in particular that hundreds of solicitors are now registering with the Law Society of Ireland;

e. Representing clients in intellectual property proceedings before the EU Intellectual Property Office – currently possible because barristers are legal practitioners established in the EEA that are entitled to act before the UK Intellectual Property Office; and

f. Representing clients in the European Courts – Article 19 of the Statute of the Court of Justice states that only a lawyer authorised to practise before a court of a Member State or an EEA State may represent or assist a party before the European Court. That extends even to being named on a pleading in the European Court. Absent a specific amendment this means that from the moment the UK exits the EU law no UK-only lawyers will be able so to act. Currently this does not also require EEA nationality, but there is a considerable risk that this too could be changed post-Brexit.

18. At present barristers who hold the nationality of an EU/EEA Member State are able to move, without immigration controls or prior authorisations, from one Member State to another for the purposes of work on a permanent or temporary basis. This free movement right is the basis upon which barristers physically move within the EU and EEA to work, establish themselves, provide services, and exercise rights of audience in courts physically located in EU/EEA Member States. It is imperative that this right is maintained, if barristers are to be able to continue to work in other EU and EEA Member States.

Enforcement of judgments

19. The current EU regime which determines the enforcement of judgments allows judgments obtained in the UK courts to efficiently be enforced and the jurisdiction of the UK courts to be recognised, throughout the EU. This arrangement is of the utmost importance in retaining the position of England and Wales as the leading dispute resolution centre in the world.

20. The enforcement of judgments across Member States also brings important, wider economic and commercial benefits. For example, if a company obtains a judgment in the English courts against an EU party, it is vital that it can be enforced against that EU party's assets abroad. International trade would be fundamentally undermined if this became too cumbersome or expensive.

21. Much of the international dispute resolution work carried out by English lawyers comes to them because the parties to a dispute (either before or after the dispute has arisen) have chosen to have their dispute resolved in the English courts. If jurisdiction clauses designating the English courts are not effectively respected in the EU, this will

make English jurisdiction clauses considerably less popular. Further, if the EU lis alibi pedens rules do not apply to proceedings in English Courts such that subsequent proceedings in EU Member States' Courts will not automatically be stayed, this will deter parties from including English jurisdiction clauses in their agreements.

22. Similarly, if the judgments of the English courts are more difficult to enforce in the EU, then jurisdiction clauses naming England and Wales will become a great deal less attractive. The same point applies to "protective measures", like interim injunctions. If it is more difficult to enforce the "protective measures" of the English court in EU Member States, or if EU Member States decline to make use of their own "protective measures" in support of English proceedings, English jurisdiction clauses will become a great deal less popular.

23. The current position is governed by the Regulation (EU) No 1215/2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('the Recast Brussels Regulation'), in force since January 2015. This applies to "*civil and commercial matters*" and provides that:

    a) Judgments of the courts of EU Member States are to be enforced throughout the EU as if they were judgments of a court of the Member State in which enforcement is sought. This includes "*protective measures*" such as injunctions freezing assets.

    b) The courts of one Member State may apply "*protective measures*" to assist with proceedings in another Member State.

    c) Subject to a number of notable exceptions, persons domiciled in an EU Member State should be sued in that Member State and where this is not what has happened courts are required to decline jurisdiction.

    d) Where the parties have specified in their contract that disputes should be heard in a particular jurisdiction (an exclusive jurisdiction clause), the courts of other Member States are required to abide by the terms of that jurisdiction clause and to decline jurisdiction.

    e) Where a person is one of a number of Defendants, he may be joined to proceedings which are commenced in another Member State where he is not domiciled if those proceedings are "*so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments*".

    f) Where proceedings have already been commenced in one Member State, the courts of other Member States are required to stay any subsequent proceedings dealing with the same subject matter until jurisdiction has been decided by the court first seized of the matter (the *lis alibi pedens* principle).

g) Clarifies the scope of the exclusion of arbitral proceedings from the jurisdiction rules.

24. There are a number of important potential consequences if arrangements are not made to secure the enforcement of judgments when the UK leaves the EU.

a) Commercial parties value continuity and certainty. The Recast Regulation confers important advantages both in terms of recognition and enforcement, which would be lost unless equivalent arrangements are entered into. If the UK becomes a 'third state' for the purposes of the Recast Regulation, the Lugano II Convention and the 2005 Hague Convention, the status of English jurisdiction clause and judgments in other Member State courts will become more open to question. It is likely that, if parties consider that the answer to the questions of "Will my jurisdiction clause be respected?" and "Will my judgment be enforced?" will involve adding time and expense as well as uncertainty to any transaction, then this may encourage them to amend their contractual clause in favour of resolving disputes before other Member State courts.

b) There is an increased risk that commercial parties' negotiated and contractually agreed English jurisdiction clauses will not be respected by the courts in Member States and that the parties are more likely to become embroiled in proceedings in a court other than the court that they have chosen. This is demonstrated by the survey conducted by members of Simmons & Simmons' offices in Germany, France, Italy, Spain and the Netherlands as to their courts' approach to English jurisdiction clauses post-Brexit which revealed that over 50% of clients were considering moving away from English choice of law or jurisdiction clauses (see the Simmons & Simmons' survey at Appendix 1 (the "Survey").

c) Competitor jurisdictions are likely to take advantage of such uncertainty but would be reassured if there was good reason to believe that continuity was likely. The Survey showed that 88% of clients thought the UK Government should make a public and early statement.

d) Further, it is likely that even where the English courts continue to respect jurisdiction clauses in favour of Members State courts under common law rules, applying the principle of *forum conveniens*, there may be increased uncertainty as to the approach of the English courts on jurisdictional issues generally.

e) There are some areas where Brexit may have a particular impact. For example, some market participants might consider moving away from English law as the governing law of asset purchase and sale arrangements in securitisation. Similarly, post-Brexit, formerly 'safe harbours' will no longer be available in the context of the insolvency or reorganisation commenced in another Member State.

f) Anecdotally, the Bar Council has heard of a number of cases where parties are being advised not to choose English jurisdiction clauses in their contracts, where previously this would have been an almost automatic choice, because of the uncertainty surrounding the jurisdiction and judgments regime. Similarly, anecdotal evidence in September 2016 suggests that cases are already being commenced in other EU jurisdictions which would otherwise have been commenced in England due to the uncertainty over the ultimate enforceability of an English judgment. Large-scale litigation would frequently take longer than two years. Therefore it is of vital importance that interim measures are put in place.

Exiting the European Union:

What specific issues does the UK exiting the EU raise for your business/sector? Please be as specific as possible.

25. The implications for the UK exiting the EU for the legal services sector depend greatly on the detail of post-Brexit agreements and the extent to which access to the single market for legal services is maintained.

26. In summary of the points made in previous paragraphs, the specific issues include:

    a) The ability for legal services practitioners to carry out work overseas (including representing clients of all nationalities in the European Courts and in European Commission investigations), to work in the UK for overseas clients, and to work for domestic clients on overseas matters,

        i. Despite the stable legislative and judicial environment for international arbitration in the UK, the attraction and success of London as a seat for arbitration may be affected by any restrictions to the ease of access to London for parties, lawyers and arbitrators from overseas, including the EU, and

        ii. The international earnings of the Bar, and of the legal services sector more broadly, will significantly be determined by the extent to which the suite of existing cross-border rights and practising rights are maintained.

    b) The success of London and the UK as a hub for international dispute resolution, including international arbitration,

        i. Much of the international dispute resolution work carried out by English lawyers comes to them because the parties to a dispute (either before or after the dispute has arisen) have chosen to have their dispute resolved in the English courts. If jurisdiction clauses designating the English courts are

not effectively respected in the EU, this will make English jurisdiction clauses considerably less popular.

ii. London is a hub not only for EU transactional work such as merger filings, but also, increasingly, for litigation in the EU courts and follow-on damages litigation related to Commission competition investigations. The same is true for complex multi-national intellectual property litigation in which London is a widely acknowledged centre of expertise with a specialist bar. Major international clients are sophisticated litigators, and are choosing to bring cases in the UK rather than in other Member States because of the critical mass of experience and expertise of UK lawyers, as well as litigation advantages of the UK courts (such as the disclosure rules). A vast amount of this work will be lost if UK lawyers lose access to the EU market for legal services. This will in turn reduce the attractiveness of London to (for example) top US law firms who currently establish offices in the UK and use these as their passport into the EU legal market by instructing or employing barristers.

iii. London's dominance as a seat for arbitration is not assured[8]. In view of the international nature of much of the arbitration work in London, it has to compete with other (often more geographically convenient) locations, including Singapore, Hong Kong and Dubai as well as with the other well-established arbitration centres in Paris, Geneva, New York, Zurich and Stockholm. There is a risk that, if barriers to entry are created (or even appear to be created) for parties, their lawyers or for arbitrators, business will move elsewhere[9].

Future UK-EU trade relationships:

What would the impact be for your business/sector of leaving the EU and operating on WTO (GATS) terms? To what extent would businesses be able to continue to trade in services as at present? How would your business adapt to this specific scenario? Are WTO terms an attractive option?

27. We refer the committee to the table in ANNEX 2 which indicates the restrictions that would be placed on the UK legal services sector in respect of access to the EU market if the UK were to rely on WTO arrangements.

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8 In the Queen Mary survey referred to above, London was identified as the least improved seat over the past five years. See also page 17 of The City UK "UK Legal Services Report 2016" at https://www.thecityuk.com/research/uk-legal-services-2016-report/

9 In this context its important to bear in mind that those advising on or agreeing to the insertion of arbitration clauses do not always consult specialists in the field and may simply take what they perceive to be a "safe" approach.

Would leaving the EU but remaining a member of the European Economic Area (EEA) retain present levels of market access for your business or not? Is this an attractive option?

28. We would, in the main, expect to retain the existing practice rights in general areas of practice as EEA free movement rights copy EU free movement rights, but we would likely lose practice rights in some specialist areas of financial services.

Is a negotiated UK-EU Free Trade Agreement (FTA) an attractive option? How confident are you that the needs of your business/sector, including but not limited to market access, would be accommodated in such an agreement?

29. A negotiated UK-EU FTA could be an attractive option if it takes in to account our recommendations below in paragraph 30.

What should the Government's key objectives be for your sector in its negotiations with the EU?

Recommendations on cross-border arrangements

30. Any post-Brexit arrangement with the EU should, at the very least:

    a) Preserve the rights of UK lawyers under the Lawyers Services Directive 77/249/EC and the Lawyers Establishment Directive 98/5/EC;

    b) Ensure that lawyers entitled to practise before UK courts may represent parties before the European Court;

    c) Ensure that UK lawyers enjoy the same rights to legal privilege under EU law as lawyers of EU Member States;

    d) Maintain freedom of movement for immigration purposes for barristers (and other lawyers), as currently provided for in Articles 45, 49 and 56 TFEU and Directive 2004/38/EC.

Recommendations on the enforcement of judgments – long term

31. In the long-term the UK Government should:

    a) Enter into an agreement based on the Denmark-EU Jurisdiction Agreement, both with the EU and with Denmark albeit with a clause providing not for interpretative jurisdiction of the CJEU but for 'due account' to be taken of the decisions of the courts of all 'Contracting Parties';

b) Sign and ratify the Lugano II Convention, to preserve the present regime vis-à-vis Norway, Iceland and Switzerland;

c) Sign and ratify the 2005 Hague Convention on Choice of Court Agreements;[10]

d) Enter into an agreement based on the Denmark-EU Service Agreement, both with the EU and with Denmark;

e) Adopt the Rome I and II Regulations (which deal with choice of law) in domestic law by way of an Act of Parliament; and

f) Adopt specific transitional arrangements to clarify the date on which various features of the above agreements will come into force.

g) Make a decision that these will be its aims as soon as possible and that is publicly stated; and

h) Ensure that these arrangements take effect immediately upon Brexit so that there is a seamless transition between the existing and new regimes.

Recommendations on the enforcement of judgments - transitional arrangements

32. The UK Government should expressly provide for transitional arrangements in any agreement that it concludes with the EU in order to prevent uncertainty. The following transitional arrangements are suggested, which should be adopted in parallel:

    a) As to the agreement based on the Denmark-EU Jurisdiction Agreement:

        i. The Agreement shall apply only to proceedings instituted after its entry into force.

        ii. If proceedings in the state of origin were commenced before the entry into force of the Agreement, judgments given after that date shall be recognised and enforced in accordance with the Agreement.

    b) As to the Lugano II Convention and the 2005 Hague Convention, the UK is limited by the fact that those treaties are already concluded, meaning that specific transitional regimes are less likely to be agreed. However, the UK might consider issuing a declaration upon ratification of those Conventions to provide for their seamless operation.

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10 As its name suggests, this Convention is concerned with one aspect of jurisdiction and enforcement: the effect of choice of court agreements. This is not a substitute for the Brussels-Lugano regime.

c) As to the agreement based on the Denmark-EU Service Agreement, no specific transitional arrangements are likely to be required, other than to specify the date of the entry into force of the Agreement.

33. Additionally, the Bar Council therefore urges the government, in formulating its negotiating strategy, to have regard to the contingent nature of much of the legal work that comes to the UK as a consequence of the UK legal profession's expertise, not least in the law of the EU. The enduring international appeal of the UK for its legal standing will depend on the ability of UK lawyers to provide legal services, including representation, to clients across the EU and elsewhere.

Opportunities:

Does leaving the EU raise significant benefits or growth opportunities for your business/sector? What are these and how can they best be exploited? To what extent do they offset/outweigh concerns about reduced access to EU markets?

The EU is currently a growing market for UK legal services. If no agreement is made for continued free movement for UK lawyers in the EU, the profession will have to reduce EU activity and look to other potential markets outside the EU. Such a shift of marketing effort would better be described as mitigating loss of business than it would as an opportunity.

Other:

Please make any additional points here.

34. A great deal of the attractiveness of the UK in general, and London in particular, as a hub for business (particularly financial services) derives from the attractiveness of the English legal sector. As discussed immediately above, this attractiveness will be considerably diminished if steps are not taken to ensure an adequate legal framework is put in place to ensure that English judgments and jurisdiction clauses are effectively and efficiently enforced.

Bar Council[11]

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[11] Prepared by the Brexit Working Group on behalf of the Bar Council

BAR COUNCIL WRITTEN EVIDENCE

ANNEX 1

Examples: in the Commission's current EIRD investigation, both JP Morgan and HSBC were represented by UK barristers. Likewise, Intel has instructed UK barristers for its European Court appeals against a Commission antitrust decision. Similar instructions will not be possible post-Brexit unless the UK either remains within the EEA or negotiates an arrangement to allow continued free access to the EU legal services market (including European Court practising rights).

BAR COUNCIL WRITTEN EVIDENCE

ANNEX 2

Cross-border rights under FTAs – CETA case study: In the case of a so-called "hard Brexit", the position of UK lawyers would be identical to other third country lawyers. The table below compares the position of UK lawyers to that of Canadian lawyers at present (pre-CETA). There are significant restrictions, in particular no rights to appear in court. Even if CETA is ratified, the position of Canadian lawyers will not change. Although CETA provides a framework for the negotiation of Mutual Recognition Agreements covering the recognition of professional qualifications, this does not improve the market access of European lawyers to Canada. It merely offers encouragement to professional regulatory bodies in the EU and Canada to agree to reduce the number of steps involved in requalification in either direction, where this is possible. Furthermore CETA does not change the fact that requalification is simply not possible in many EU Member States due to nationality requirements.

The table for ANNEX 2 is below.

ANNEX 2 table: Practical consequences of a WTO rights based Brexit solution

	Restrictions faced by an English lawyer in the EU today	*Restrictions faced by non-EEA lawyers*	*Practical Consequences of a WTO rights based Brexit solution*
Limits on ability to provide legal services without needing to open an office	None	Non-EEA lawyers must register a physical presence in Austria, Belgium, Bulgaria, Cyprus, Estonia, France, Finland, Germany, Hungary, Italy, Latvia and Spain in order to practise law.	UK lawyers could no longer provide cross border advice from the UK to clients in these 12 EU member states, including to UK citizens resident in the EU on purely UK matters.
Limits on ability to give advice attracting legal professional privilege to clients	None	Communications with and advice given to clients in the EEA by non-EEA lawyers cannot be kept private. They may be obtained and used by the European Commission in competition proceedings against clients.	Businesses would no longer wish to use UK lawyers for deals between UK and EEA businesses or proceedings arising from them.
Limits on ability of independent lawyers or lawyers under contract to obtain work permits	None	Economic needs tests apply to non-EEA lawyers working as independent professionals in Belgium, Bulgaria, Czech republic, Denmark, Greece, Spain, Finland, Hungary, Italy, Latvia, Malta, Romania, Slovenia and Slovakia.	UK Lawyers would only be able to obtain contracts to provide services in 14 Member States of the EU if no EEA lawyers were qualified to undertake the work required.
Limits on ability to open an office	Must take one of forms permitted to local lawyers (varied ability in member states to form MDPs, have non-lawyer participation – otherwise no restrictions	Cannot open a fully owned law office in Austria, Denmark, France and Portugal – must have local lawyers involved. Cannot go into partnership with lawyers from Bulgaria, Denmark, Estonia, France, Ireland, Latvia, Lithuania, Malta and Slovenia. Residency for foreign partners required in Sweden and Luxembourg.	UK law firms with a presence (branch or subsidiary) and US law firms operating under UK regulatory banner in these 15 member states would need a different regulatory authorisation and possibly restructuring to remove UK only qualified lawyers and/or head quartering in another EU member state in order to maintain a presence in those member states.

Limits on ability to acquire right to advise on local law	None	No right to requalify in 13 Member States: Austria, Greece, Croatia, Bulgaria, Cyprus, Estonia, Greece, Hungary, Lithuania, Malta, Poland, Portugal, Slovenia. Limited rights in 8 Member States: Belgium (reciprocity), Czech Republic, Latvia (language test); Denmark, France Germany, Netherlands, Spain (local qualifications or assessment required).	UK lawyers no longer entitled to requalify as local lawyers within the EU – i.e. ability to provide joined up services possible through EU membership cannot be replaced by acquiring local title in a majority of EU MS.
Limits on ability to draw up contracts	None	No right to draw up a legal contract in Croatia, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Slovenia and Slovakia Contracts drafted outside France and Denmark applying in those countries no longer valid	Provision of legal advice to UK businesses continuing to operate within the EU and across different member states could no longer be done without greater recourse to local lawyers. Advice to UK citizens and businesses will be more expensive and not subject to the protections of UK regulators
Limits on ability to represent clients in national courts	Must be introduced by a local lawyer	No right of foreign lawyers to appear except in limited and ad hoc circumstances; following application process in Bulgaria, Cyprus, Luxembourg and Poland.	Emergency representation of e.g. UK citizens arrested in EU, of children of mixed EU nationality marriages etc. no longer possible for UK lawyers, neither would be increasingly frequent co-counselling arrangements in commercial matters.
Limits on ability to represent clients in European proceedings	None	Cannot provide any representational services before the courts of the EU institutions	Any representation of UK or international clients in cases before the EU courts would go to lawyers with EEA qualifications i.e. Post Brexit litigation on behalf of UK companies not in the hands of UK lawyers