

The same but different



What should expert witnesses expect post Brexit & Briggs?
Mark Solon reports



IN BRIEF

▶ At the moment it is business as usual for experts post-Brexit and Lord Justice Briggs's final report.

▶ However there are many changes on the horizon and lawyers will need to make sure their experts are on track.

Many experts are concerned at the implications of Brexit. The good news is that, for now, it's business as usual. What we do know however is that there are 43 years of EU legislation to disentangle from UK law and many law firms are delighted to advise clients and businesses on what they should do and expert witnesses may be able to help. Lawyers are treating Brexit as the ultimate sales opportunity to gain more clients and there are hundreds of web pages offering insight for potential clients. The reality is that advice will need to be an ongoing process as negotiations proceed.

I would expect that, post Brexit, the basic court rules here will stay the same, so experts will not need to learn a new rule book. Also, the UK court and arbitration facilities are still attractive to international businesses as being truly impartial and delivering a high-quality service and we are not expecting Mrs May to implement an Ergodan judicial purge.

For arguments sake, if one starts from the construct that Brexit is the best thing since joining the EEC, we will now have direct access to other nations in terms of trade and relationship without a committee of 23? Or 27/26 others to consider. The signs are that international litigation will blossom giving opportunities for lawyers and experts. However, the actual details of law and business with the EU will depend on the next two years plus negotiations. Meanwhile, I

would invite the new Justice Secretary Ms Truss to do all she can to improve the quality and accessibility of our legal system and ensure the IT systems are the very best, and that court fees and court funding are set at appropriate levels so that we can continue to attract the world's best lawyers to work here.

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Vital

Expert witnesses are a vital and important part of the English legal system and overwhelmingly are of high quality. The court system should ensure that they are treated well both in terms of funding, complexity and convenience of the legal system. Law firms may well need expert witnesses to provide opinions on the disentanglement process and to assist in the inevitable litigation that will follow. As our justice secretary proceeds, she needs to remember good expert witnesses are part of the package to make the UK an attractive legal destination.

We may see issues around enforcement of judgments obtained in Britain when the losing party is based in Europe. The Brexit negotiators need to be mindful of this in the meetings over the next couple of years. There may be work here for experts in the future in terms of tracing assets and valuation.

Final report

Experts are also having to come to terms with Lord Justice Briggs's final report in his review of the future of the civil courts structure that was published on 27 July. Recommendations include:

- ▶ establishing an online court;
- ▶ an increase in the claim value threshold for commencing claims in the High Court; and
- ▶ transferring some of judges' more routine and non-contentious work to case officers.

One of the key findings in the interim report was a need for an online court, to give effective access to justice in more straightforward and modest value disputes without disproportionate costs and delay. It's not clear how experts will be affected by this and how their reports will fit into such a court system. There may be standard formats required and greater use of “primers” where judges use standard expert explanations of technical issues in less contentious areas.

Cases in the new online court would have three stages:

- i. an automated, interactive online process to enable users to set their case and identify documentary evidence;
- ii. conciliation and case management by case officers; and
- iii. resolution by judges (either on the documents, by face-to-face trial or by video or telephone hearing, as considered appropriate).

The recommended jurisdiction of the online court would be for money claims up to £25,000 (with exceptions including most personal injury and professional negligence claims). Experts would have to construct reports in the clearest of language as case officers would have to deal with many cases in a short time and will need all the help they can get from experts who, of course, are required to assist the court. However, the final report does stress that judicial “supervision” in this regard should involve not merely a reporting line but a relationship of close physical proximity and regular contact between the case officer and the judge. It also accepts that case officers should all have legal qualifications and experience.

So although at the moment it's business as usual for experts, there are many changes on the horizon and much uncertainty. Lawyers may need to do a little hand holding as things develop to make sure their experts are on track.

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