Implications of Brexit for the Justice System

Thank you for your letter of 6 November, following your helpful evidence to the Committee on 23 October 2018.

We welcome your statement about the priority you are giving to preparations for EU Exit. However, my Committee still has a number of serious concerns and I write to ask you to assure us of the priority you will accord to the areas we highlight below.

In our view, there is still insufficient clarity from Government about the implications of EU Exit for the legal system in England and Wales. You told us that you are “pushing very strongly for a civil judicial cooperation that is as close as possible to the one we have”. That is an ambitious and laudable vision, and we note that the draft Withdrawal Agreement sets out arrangements for continued cooperation until the end of the implementation period.

But there is little detail or certainty about how this civil judicial cooperation will be achieved from 1 January 2021. The draft Political Declaration states that “The Parties will explore options for judicial cooperation in matrimonial, parental responsibility and other related matters”. So broad and unspecific a statement provides little comfort.

Witnesses from the Law Society, Bar Council and an expert in Finance and Capital Markets at Clifford Chance have told us about the serious impact of this lack of clarity. They spoke about the fact that choice of law and jurisdiction is already intensively competitive. Their fundamental questions remain: will submission to the jurisdiction of the English courts and enforceability of judgements remain the same before and after Brexit (including the implementation period)? What will be the impact on contractual continuity? We would urge the Government to reach a position where you can give clarity and certainty on what are fundamental points.

You told us that the legal services sector employs 300,000 people and makes a £24 billion to £26 billion contribution to the economy. We all recognise the importance of protecting this, as well as the ability of law students to continue to study, and lawyers
to continue to practise, in other EU countries.

We also note your responses to our questions about criminal justice, including extradition arrangements, investigative resources and information sharing. In our report on the *Implications of Brexit for the Justice System (HC 750)*, my Committee recommended that the Government should seek to maintain cooperation on criminal justice as closely as possible. That was in March 2017. We are disappointed with progress to date.

While we recognise that the Home Office leads in this policy area, we are concerned that the loss of access to the European Arrest Warrant, the European Criminal Records Information System and the Schengen Information System II, without replacement by robust alternative arrangements post-transition, would have serious downstream consequences. It would impact on time in court, costs in court and the ability to bring justice to bear on criminals. Similar concerns would arise from the possible loss of EU provisions allowing cross-border recognition of compensation for victims of crime; protective orders and supervision measures made in relation to criminal proceedings; and the enforcement of financial penalties. These are absolutely matters within the MOJ's remit.

We would therefore ask, with reference to the post-transition period:

- What assessment has been made of the impact of loss of access to the European Arrest Warrant, ECRIS and SIS II, and other provisions relating to criminal justice, and when will we have clarity on proposed arrangements to replace them?
- How will the surrender arrangements that will replace the EAW compare with existing arrangements, and how will they differ?
- What arrangements will be made for data exchange, such as exchange of information on wanted or missing persons and objects and of criminal records (currently carried out through ECRIS and SIS II), and how far will data protection need to be aligned to enable this? What is your assessment of the likelihood of achieving sufficient alignment to make these new arrangements a success?
- What assessment has been made of the speed with which data will be exchanged under the new arrangements, as compared with the current ones?
- What will be the status of the European Court of Justice in the UK in relation to these matters?
- The draft Political Declaration states that the Parties "will...work together to identify the terms for the United Kingdom's cooperation via Europol and Eurojust." When will our criminal justice system have clarity about the UK's relationship with these bodies?

We also discussed the possibility of a No Deal outcome. We are disappointed by the decision not to issue a No Deal technical notice relating to criminal justice measures. This makes it harder for the police and the legal profession to prepare and for the public to understand the consequences.
You told us that the MOJ was preparing for No Deal, for example, that by writing to other Government departments to ask for information about how their post-exit policy might affect courts and tribunals. You also described MOJ preparations “to ensure that our courts operate, as they did in the London riots, very effectively. We are ensuring that we are prepared for any increase in volume and complexity.” The Rt Hon The Lord Burnett of Maldon, Lord Chief Justice of England and Wales told us last week that there was a “real risk of a spike in [judicial] workload”. We will keep a very close eye on this, including any MOJ guidance to justice agencies, during the weeks to come.

Finally, you also gave evidence about the Legal Services are GREAT campaign, which highlights the benefits of the UK legal services sector, for examples to Kazakhstan, Nigeria and China. You told us about the Memorandum of Understanding signed with India, which establishes a Committee which will meet annually to share expertise. What are the other concrete achievements of this campaign since its launch in 2017? Please specify the exact budget provided for the campaign since its launch. Are you confident that the MOJ is spending enough resource and departmental time on this campaign?

In view of the importance that both the Committee and the Government place on civil and criminal justice co-operation, we would appreciate a response by close of play on 10 December 2018.

Bob Neill MP
Chair, Justice Committee