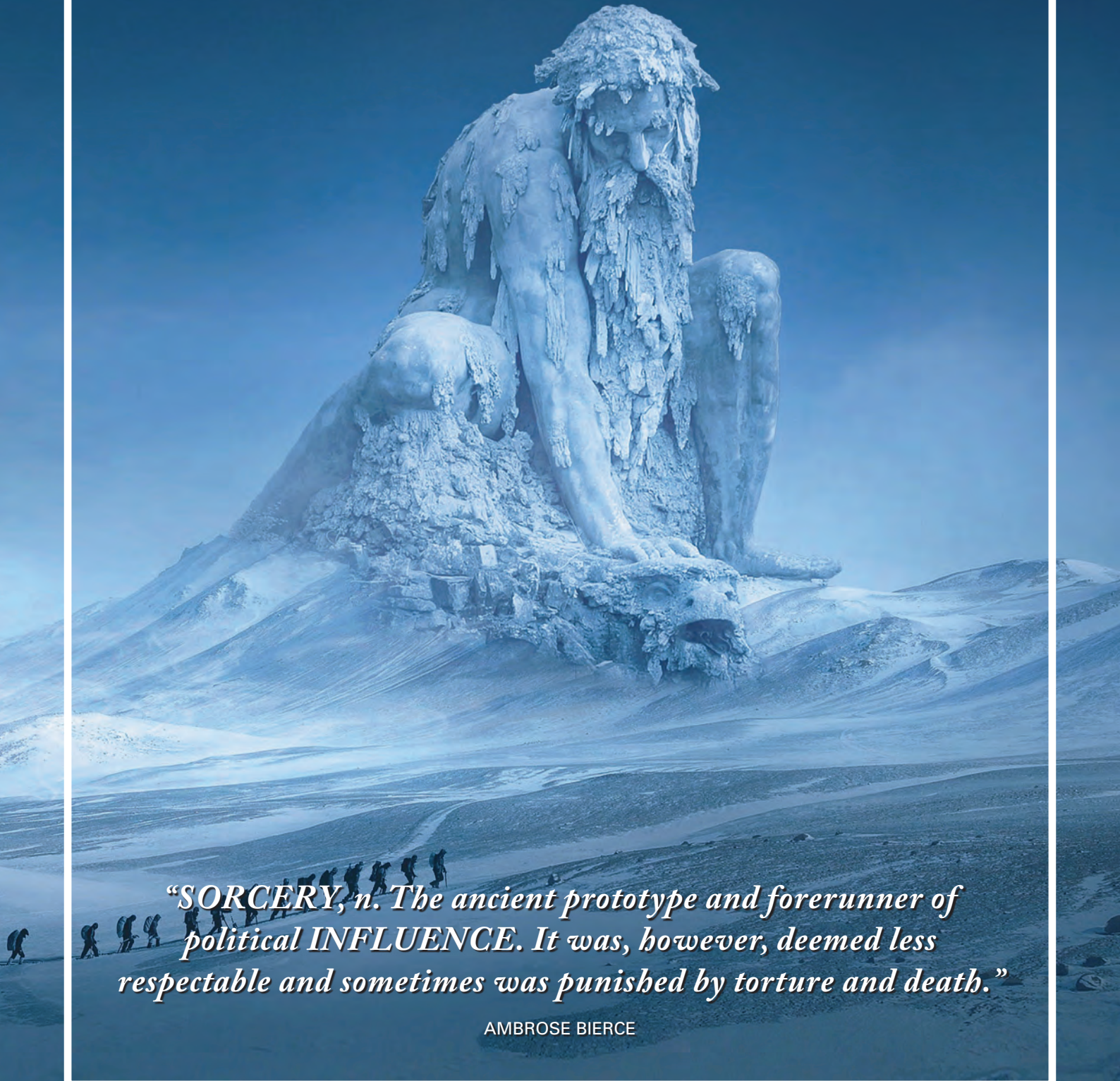


# CitySolicitor

THE MAGAZINE OF THE CITY OF LONDON SOLICITORS' COMPANY AND THE CITY OF LONDON LAW SOCIETY



*“SORCERY, n. The ancient prototype and forerunner of political INFLUENCE. It was, however, deemed less respectable and sometimes was punished by torture and death.”*

AMBROSE BIERCE

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WELCOME TO THE SPRING EDITION OF OUR MAGAZINE WHERE WE EXPLORE THE CONCEPT OF INFLUENCE.

As lawyers, we are trained to deal with the facts; with statutes, precedents and the rule of law. Through our analysis of the Law for clients and by explaining the law to others, we can influence; as we can by taking part in consultations.

Life in the 21st century is being influenced in ways that were not only not in existence but not even thought of only a few decades ago. Technology, algorithms, fake news and a plethora of other means are all influencing our thoughts and our actions with far reaching consequences, sometimes without us even being aware of it. And solicitors are far from immune to this.

No longer is it simply leaders or those in authority who have the capacity to influence. Today, the more tech savvy you are, the more influence you can exert.

Whichever side of the Brexit debate you stand on – and apologies for bringing up that subject again – nobody can deny that a large majority of voters on both sides were influenced by direct messaging into their personal news feeds, by widespread repetition of “facts” that were manufactured rather than real – and the results of this will have a far reaching effect for generations to come. Those consequences, good or bad, are not the issue here; the point is the extent to which influence was used to engineer an end.

We delve into various expositions of influence in this issue and we hope you will find the articles stimulating and thought provoking.

As ever, we welcome your input both on the topics raised in this issue and also on the magazine generally. We can assure you that your comments will influence future editions.

**Philip Henson**

Editor

[mail@citysolicitors.org.uk](mailto:mail@citysolicitors.org.uk)

*“Life in the 21st century is being influenced in ways that were not only not in existence but not even thought of only a few decades ago.”*



# WHY IRISH LEGAL QUALIFICATIONS ARE PROVING MORE INFLUENTIAL THAN ENGLISH ONES



*Who knows what stage Brexit will be at by the time you read this article?  
Will Mrs May's deal be amended and approved by Parliament? Will we have extended  
Article 50? Or will we be on the verge of crashing out with no deal?*

*Almost anything written at the moment is a bit like fiction. Without anyone knowing where  
we are going, all we can do is surmise. We do know that whatever happens will influence  
our lives for many generations. All we can do is try and be prepared for any outcome.*

*Which is precisely what many English lawyers are doing.*





Post Brexit, English solicitors have two problems facing them. Firstly, they need to protect their Rights of Audience in the European Court of Justice; and, secondly, they need to hold on to Legal Privilege for their communications and advice to clients that may be the subject of an EU investigation.

Lawyers in the UK know that their advice is privileged and personal between them and their clients. This is essential for justice and true for everything in our national law.

But when it comes to the EU Courts, different rules apply. Say Brussels is investigating a company for alleged anti-competitive practices like price fixing or monopoly for example, then communications with lawyers who are not qualified in a country within the European Economic Area are not protected. European Courts and judgments say that advice given in competition law is only privileged if the lawyer is qualified in a Member State and is not an in-house lawyer but independent. (The existence of such privilege is not legislative but was set out in the European Court of Justice case *AM&S Europe vs Commission* in 1982).

*“English and Welsh solicitors are registering as solicitors in Ireland, so meeting the requirement of being qualified in a Member State.”*

This means that post Brexit, English lawyers’ advice will not be privileged and the European Commission would be allowed to read how they advised their clients. This could obviously have very serious consequences which would make UK based law firms far less attractive a proposition than their competitors in the EU and they could suffer huge financial losses as a result.

On the face of it however, there appears to be a solution.

English and Welsh solicitors – in ever increasing numbers as the clock ticks towards 11pm on March 29th 2019 – are registering as solicitors in Ireland, so meeting the requirement of being qualified in a Member State. Figures supplied by the Law Society of Ireland show that before the Referendum in June 2016, around 50 to 100 solicitors were applying to join their Roll each year. Contrast this with the staggering 2,014 England and Wales qualified solicitors who have enrolled in Ireland since the start of 2016. Broken down by year this equates to 806 in 2016, 547 in 2017 and 688 in 2018.

These figures mean that more than 11% of all of the names on the Roll in Ireland are English and Welsh qualified solicitors who have been admitted since the Referendum.

Of these, 589 have taken out practising certificates since the Brexit vote; there were 96 in 2016 (since 23 June 2016), 245 in 2017 and 248 in 2018. In fact Freshfields, which went from having one practising lawyer in Ireland in 2016 to 69 by the end of November 2018, is now the 11th largest law firm in Ireland.

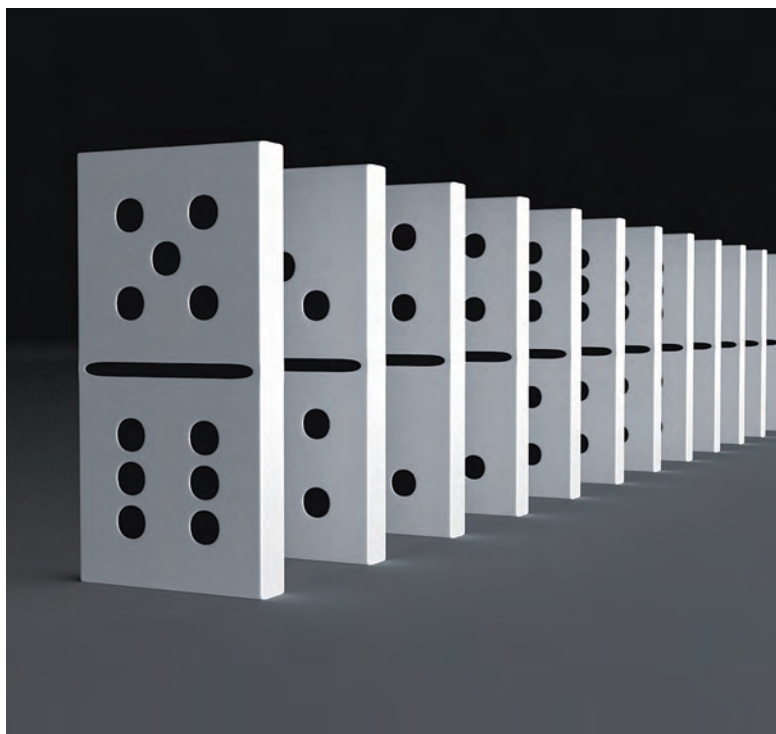
A smaller number of solicitors from Northern Ireland have also been admitted; 94 since the Referendum.



However, as with all matters associated with Brexit, it is not entirely clear what is the precise ambit of what is required to cross this hurdle. What does being qualified in a Member State actually mean? Is it enough to just go on the Roll? Do solicitors have to get a practising certificate? Or do they have to go so far as to have some physical presence in Ireland?

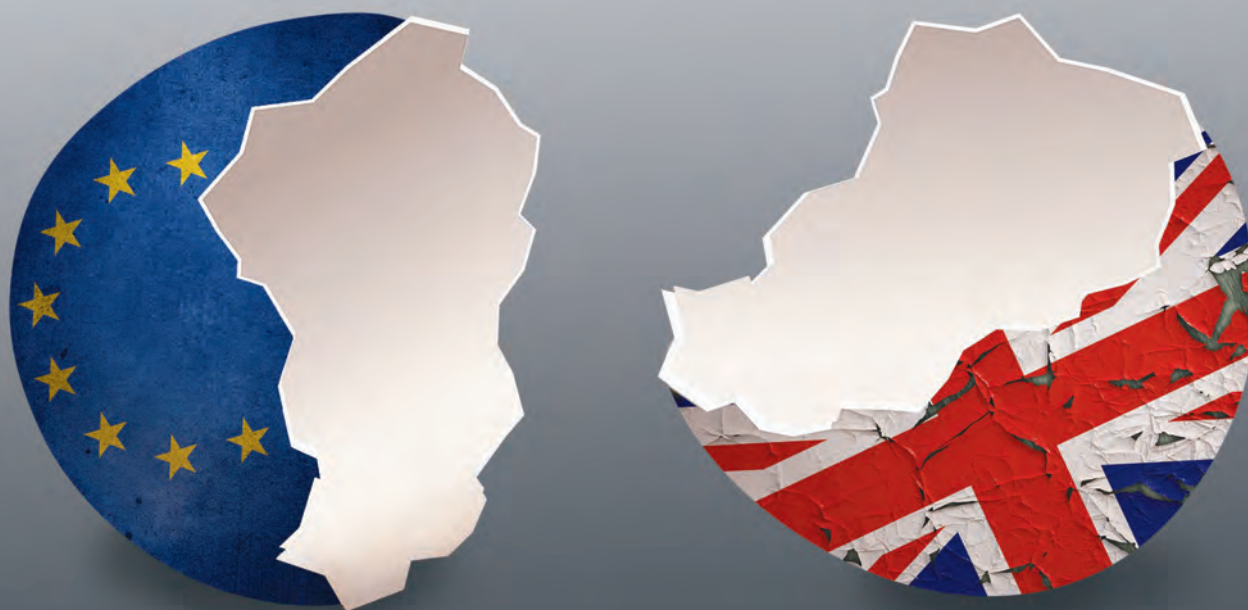
At first, simply registering seemed like a no-brainer contingency plan. A lot of the solicitors who had done so had never even set foot in the country and didn't really have any intention of doing so. But as time has passed and with no deal being agreed, more firms are taking the precaution of actually setting up offices in Ireland. Since 2016, 13 England and Wales headquartered firms have set up branches in Ireland although most of these branch offices have only a handful of solicitors. Only two of the 20 largest firms on the 2018 list have established offices; namely Pinsent Masons LLP and DLA Piper LLP.

This transfer strategy has been exacerbated by the fact that a lot of financial services companies are moving out of the UK and many of these are choosing to relocate to Dublin. Where the clients go, lawyers tend to follow so expansion into Ireland is affording more than one benefit.



TOP 'BREXIT TRANSFER' FIRMS 2017			TOP 20 'BREXIT TRANSFER' FIRMS 2018			IRISH PC 2018	
1	Eversheds Sutherland LLP	132	1	Eversheds Sutherland LLP	132		0
2	Freshfields Bruckhaus Deringer LLP	130	2	Freshfields Bruckhaus Deringer LLP	131		69
3	Slaughter & May	79	3	Allen & Overy LLP	110		16
4	Latham & Watkins LLP	47	4	Slaughter & May	109		1
5	Hogan Lovells LLP	42	5	Latham & Watkins LLP	92		6
6	Herbert Smith Freehills LLP	35	6	Linklaters LLP	53		2
7	Allen & Overy LLP	34	7	Herbert Smith Freehills LLP	44		9
8	Bristows LLP	32	8	Hogan Lovells LLP	43		23
9	Linklaters LLP	29	9	Bristows LLP	35		0
10	Clifford Chance LLP	21	10	Google UK Ltd	34		6
11	Pinsent Mason LLP	15	11	Clifford Chance LLP	28		1
12	Bird & Bird LLP	13	12	DLA Piper LLP	26		3
12	Shearman & Sterling LLP	13	13	Baker MacKenzie LLP	22		1
14	Covington & Burling LLP	11	14	Pinsent Mason LLP	19		15
14	White & Case LLP	11	15	Gibson Dunn & Crutcher LLP	17		5
14	CMS Cameron McKenna LLP	11	16	Fieldfisher LLP	15		0
17	Gibson Dunn & Crutcher LLP	10	16	Ashurst LLP	15		3
17	Ashurst LLP	10	16	Travers Smith LLP	15		6
17	Reed Smith LLP	10	16	White & Case LLP	15		3
			20	Bird & Bird LLP	13		3
			20	Shearman & Sterling LLP	13		11
			20	CMS Cameron McKenna LLP	13		0
			20	Norton Rose Fulbright LLP	13		2

Source: Law Society Gazette,  
December 2018



However, it could be that even all of this is not enough. Whilst it will be enough to maintain the right to appear in the EU courts, when it comes to the privilege issue, precedent shows that being fully subject to the ethical requirements of an EU Bar is equally important.

This “get out of jail free” card that English lawyers seem to have found has not been dealt to Scottish lawyers however. They would have to retake their exams and become an English lawyer first before then applying to the Irish Law Society.

Obviously, it is fundamental for UK lawyers to remain competitive and this would simply not be the case if their privilege was taken away. If they take the Irish solution it remains to be seen whether another foreign Bar would want to make life difficult and challenge its validity by contesting lack of privilege. It has been rumoured that the Brussels Bar is far from happy about this apparent loophole English lawyers appear to have found as they were hoping to be able to use the lack of privilege to win clients from London law firms and in so doing chip away at London’s position of being the world’s leading legal centre. They saw this as an opportunity for Brussels to become the centre of Antitrust litigation. What they will do about this remains to be seen.

Re-qualifying in Brussels (or indeed any of the other Member States) is obviously another option particularly as the Dutch have already started to hear competition cases in English. With language no longer being a barrier, requalifying in Belgium may be a better way forward.

A Ministry of Justice spokesperson said:

“The Government remains committed to securing a deal that protects jobs, security and our union. Under the Withdrawal Agreement, lawyers and law firms will continue to be able to provide regulated legal services under existing EU rules until the end of 2020.”

**Stephen Denyer** is Director of Strategic Relationships at The Law Society of England & Wales.

Denyer says that requalifying in Ireland will not bring with it all the privileges of the EU’s Establishment Directive. It will be sufficient to appear before the European Court but for full rights a solicitor would need to pass the twin tests of being admitted in an EU Member State and being a citizen. He questions whether, assuming Brexit does happen, after the transition period the Irish route will continue to be acceptable.

“Some Member States are not happy with the Irish route providing a backdoor way in. This is nothing new, it has existed since Ireland became independent but it was always low profile until Brexit came onto the horizon. It was underpinned by the fact that there were more common approaches but if there is more divergence that could throw it all into question. The problems will crystallise faster if there is no deal. If we are not a part of the Single Market for services this will generate more uncertainty.”

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*“The Government remains committed to securing a deal that protects jobs, security and our union.”*

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It seems that if English lawyers have been forward thinking enough to take the necessary precautions then they should be in good stead post Brexit. After all the US firms carry on business in the EU without having any connection at all with a Member State. If there is no agreement post Brexit then obviously this will have an effect on the EU's rights as well. The Commission will no longer be able to carry out raids nor to exercise investigatory jurisdiction. This means that a UK law firm who can advise on both may actually find themselves in a better position than before.

**Colin Passmore** is Senior Partner at Simmons & Simmons LLP a firm who have established an office in Dublin although not for Brexit related reasons but rather commercial ones. Passmore is the author of "Privilege", one of the leading textbooks on the subject of legal professional privilege. He also authors Passmore on Privilege: a blog, which reviews the more interesting cases arising under the law of legal professional privilege.

As an expert on the subject of privilege, what are his views as to whether the Irish solution is a viable one? Passmore agrees with Denyer that there is the possibility that if the UK leaves without a Withdrawal

*"It seems that if English lawyers have been forward thinking enough to take the necessary precautions then they should be in good stead post Brexit."*

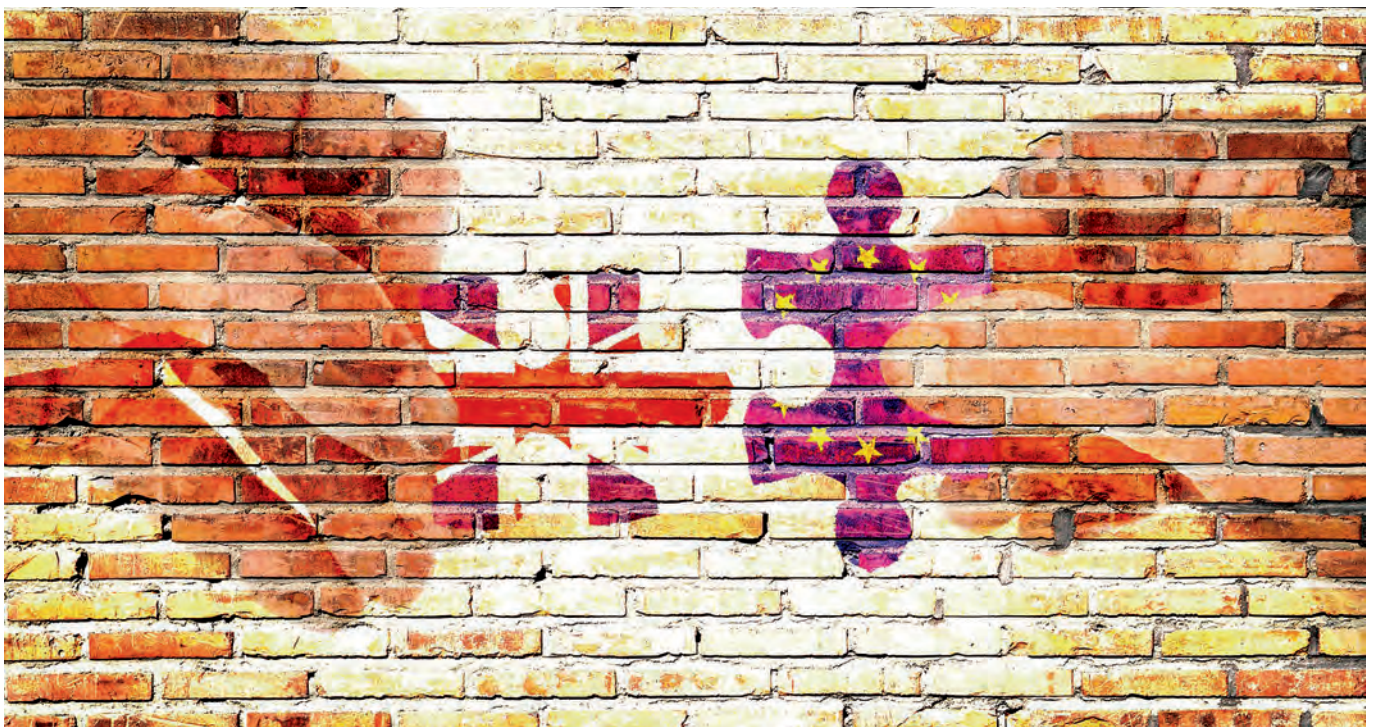
Agreement, the European Court could reconsider and indicate that in the special circumstances of Brexit, the device won't work. But he does not think this, whilst possible, is likely.

"There is absolutely no principled, logical nor legal reason for the European Court to reconsider the position. So I believe the Irish solution will work. For English solicitors to re-qualify in Eire is a sensible and viable safety net particularly for Competition Lawyers."

**As with everything Brexit related, we are in uncharted waters and whilst English lawyers may on paper have found a solution to being able to operate in the European Court as before, in reality it may be a lot more complicated.**

## STOP PRESS

**To prove that everything is changing by the second, as this article was going to print, it came to light that a recent meeting of the Law Society suggests that the Irish route seems as though it may not wash. It will not be enough for English solicitors to merely be admitted to the Irish Roll, they will almost certainly also need a Practising Certificate and the relevant insurances – not simple things to achieve. Ultimately, it could all boil down to the attitude in Brussels. Currently, Brussels is stuffed full of American lawyers and it is rare that Brussels challenge their privilege. But will they be as lenient with the English? This is a story, that like every other Brexit related one, is full of uncertainty. Watch this space.**





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# THE INFLUENCE OF THE EAST ON UK BUSINESS

*A survey recently carried out by the Institute of Directors showed that one in three UK businesses are planning to move part, or all, of their operations out of the UK if we leave the EU without a deal.*

The business that David Cameron described as a “great British success story” is now to be referred to as a “global technology company” says Dyson’s CEO, Jim Rowan, speaking about the business’s proposed plans to move to Singapore which, he also stresses, have nothing to do with Brexit.

It seems that whilst there are differing reasons why, there is an increasing trend for UK businesses to expand their horizons beyond these shores.

The East, particularly, Hong Kong, seems to have the biggest lure – especially for Financial and FinTech sectors. So, what exactly is the attraction to the East?





**Helen Colquhoun** is a Partner and Head of Employment at DLA Piper in Hong Kong. She has worked in London, New York and Hong Kong and is qualified in all three jurisdictions.

What does she think is the attraction of Hong Kong for UK businesses?

“There’s a good feeling here; a lot of energy, an entrepreneurship and a ‘can do’ attitude. This combined with its geographical location make it somewhere that is generally considered to be going places.

It’s a very diverse, mixed place. Yes, New York is also a melting pot but whilst both are truly international, Hong Kong is also a part of China and that’s very noticeable – and advantageous.

Hong Kong is very much seen as the gateway to Asia – and Asia is where there is a lot of potential for growth. But whilst it is the doorstep of China, it has the added advantage that it feels familiar and known from legal and regulatory perspectives which makes it a good starting point for doing business with the East.

A lot of businesses have plans that span Asia, not just China, so that makes Hong Kong a good choice because of its location.

When it comes to staffing, there is a great talent pool here to choose from and it’s seen as attractive by senior members of staff in the UK who jump at the opportunity to come here and oversee the expansion.

Singapore offers similar advantages making it Hong Kong’s biggest competitor when it comes to which gateway UK businesses choose. They are heavily targeting tax and investment breaks to get more business.

There are obviously challenges involved with expansion into Hong Kong and a lot of these stem from the fact that cultural differences may be underestimated.

The laws and the culture differ hugely between the different regions in Asia: Hong Kong, China, Macau, Japan. Each is different and that can cause problems particularly for businesses that come from an employer friendly jurisdiction such as the UK. Certain jurisdictions within Asia are considerably more employee-friendly.”

*“A lot of businesses have plans that span Asia, not just China, so that makes Hong Kong a good choice because of its location.”*

**Thorsten Terweiden** is the Deputy Head of Fintech at Invest Hong Kong (InvestHK) and the lead on Fintech across Europe out of the UK office in London. InvestHK is the Hong Kong Government Department that promotes the many advantages of Hong Kong as a base to locate a business; and assists overseas enterprises to establish and develop their presence





*“60% of Chinese companies actually start off in Hong Kong – proving it really is a springboard.”*



in the city. InvestHK has 30 offices around the world, with its head office in Hong Kong. Because it is actually part of the Hong Kong Government it is able to open doors and help businesses achieve what might otherwise seem like impossible requests to fulfil.

“We are seeing a lot of companies in the Fintech sector coming to Hong Kong from Europe. Transferwise, Ebury, Revolut and Checkout are just a few examples of UK companies which have recently set up in Hong Kong. Such businesses find Hong Kong attractive because of its connections with mainland China and the fact that it is the world’s 3rd largest financial centre. Even though the businesses know they are dealing with highly tech savvy customers, nonetheless Hong Kong is really conservative when it comes to, say, switching banks. So, they are being creative in developing technologies that can reach the lowest hanging fruit. Companies like The Next Generation provided a system in the 7 Eleven convenience stores so revolutionising how people pay for goods. This form of payment has only been possible since October 2016 when the stored value facility license (SVF license) was issued.

This is an example of how the regulator in Hong Kong (in this case the Hong Kong Monetary Authority HKMA) carefully develops the regulatory framework for the benefit of new market entrants.

The sorts of businesses we want to attract here are the ones who want to scale up, who have traction in their home market with a product that works, who

have the staff and funding and ambition to be global and to engage with mainland China. In Hong Kong we are in a unique geographic position and we have a bilateral free trade agreement with China so making it most favourable to anyone who wants to start trading with mainland China. Yes, there are barriers to selling services but 60% of Chinese companies actually start off in Hong Kong – proving it really is a springboard.

17.6% of Hong Kong’s GDP comes from the financial sector making it way bigger than the UK equivalent and hugely important. The car insurance industry is opaque in how old fashioned it is with how it is being sold and how claims are being settled. Tech companies could solve this and in doing so could help companies rationalise and save overheads and costs and have a better view of fundamentals.

In mainland China, there is an increasing use of AI in insurance. Ultimately an insurance claim could be so simplified that it is done through an app on a mobile device. You can simply take a photo which can then be verified and accepted as proof. This is something that is of great interest to Hong Kong right now as the new bridge that spans 34 miles and connects Hong Kong to Macau and the mainland Chinese city of Zhuhai (so covering three jurisdictions) can help a Hong Kong registered car if it is involved in an incident with a Chinese car in one of the other two jurisdictions.

The challenges facing UK businesses expanding to Hong Kong are around pitfalls if an entrepreneur uses the wrong structures; lots want to simply set up a sales office but maybe it makes more sense to



*“Hong Kong is the international window of China and has international attributes.”*

actually move their regional HQ. They need to look at their global structure overall and seek good legal advice to make sure everything is done correctly. That’s something we can help with. We can send such businesses a bespoke and dedicated list of suitable law firms ranging from the bigger players to the smaller more local firms – all firms who can help businesses reach the right decisions.

Another challenge is making sure the right staff are hired. A lot of businesses take on juniors for cost reasons but if they want to expand further they need more senior people.

The Floor from Israel set up a FinTech innovation centre with the help of InvestHK and hired an ex senior Venture Capitalist – and that proved to be a shrewd move.

There are also some challenges for FinTechs in setting up bank accounts in Hong Kong. Maybe they bank with, say, a particular tier one bank in the UK but they cannot in HK because they do not want start ups. We can provide these companies with a list of banks who are interested in onboarding new clients. Whilst we can’t guarantee these banks will open an account for the company, we can make sure they will at least look at it. Ultimately, 95% of companies manage to open an account in HK, even if it turns out not to be their initially desired bank.”

In November 2019, InvestHK is again hosting its fourth Hong Kong Fintech Week and is welcoming UK delegations. For more details see [www.InvestHK.gov.hk](http://www.InvestHK.gov.hk)

**Yi Xie** is Head of Government Relations for London Stock Exchange Group.

“When it comes to China, Hong Kong is the natural destination for businesses, not just UK ones.

With the UK, there is a more intimate connection because of the historical associations and after the handover a lot of UK elements remained in the legal and political systems. This familiarity with how things are done and with procedures is a big attraction. Hong Kong’s legal system is based on Common Law, so very similar to the UK one.

There is a good talent pool in Hong Kong of people who speak English and who not only understand international standards but who also understand the Chinese way as well. Hong Kong is the international window of China and has international attributes. The handover did not take away from those attributes but rather strengthened them if anything because China is increasingly becoming outward looking and internationally minded itself and so Hong Kong’s role of bridging China with the rest of the world has become more important; it has and always will be the stepping stone to access Chinese markets.

Currently there is a big strategic development that the Chinese Government is very focussed on – the Big Bay Development\* area which promises to be the largest high tech hub in China hosting hundreds of great innovative companies. This means Hong Kong is facing a very bright future. The Hong Kong economy is currently not very appealing by itself and





you have to smell good in order to attract others so Hong Kong is very excited about this."

*\*(In March 2017, Chinese Premier Li Keqiang announced a plan for the development of a city cluster in the Guangdong-Hong Kong-Macau Greater Bay Area. The plan is part of China's urbanisation push, to have clusters leveraging the strength of first-tier cities to boost growth in the less developed ones. The 56,500 square kilometre Bay Area encompasses 11 cities – Hong Kong, Macao, Guangzhou, Shenzhen, Zhuhai, Foshan, Zhongshan, Dongguan, Huizhou, Jiangmen and Zhaoqing.)*

Xie says UK businesses must be aware that being in Hong Kong is not the same as being in mainland China.

"UK businesses cannot take it for granted that what they do in Hong Kong will prevail in China. Some areas are vastly different, some more subtly so – so you have to be politically sensitive. Even if you have an office in Hong Kong, you might want to think about hiring mainland employees who speak the language and understand the systems of the mainland better.

Another piece of personal advice I have for UK businesses is not to get into the muddy waters of the politics between Hong Kong and mainland China. We must respect China's domestic issues. Even though Hong Kong is a part of China, there are a bunch of people in Hong Kong who do not approve of the Government. It is appropriate to stay neutral; even if you hold strong views this is not a stage to show them off."

To respond to the growing demands from Chinese companies and individuals establishing and investing in the UK, Blick Rothenberg have brought on board **Winnie Cao**, Director, who leads the China Business Group.

"If a British company is trying to do business with China, a pragmatic option is to set up in Hong Kong first. The mainland can present more barriers culturally and business-wise but Hong Kong could feel more aligned with the UK business practice so makes for a great stepping stone.

The expansion from West to East is working in the other direction too. A lot of Chinese companies are expanding to the UK; this trend includes the latest tech unicorn companies like Bytedance and TikTok for example. There are push and pull factors for this migration. The push is that the Chinese Government are encouraging businesses to go as a part of the Belt and Road Initiative. And the pull is that whilst China is a large market, the overseas market offers new potential."

**It appears that, irrespective of what is happening within Europe, UK businesses are keen to move into China and are using Hong Kong as a stepping stone to do so. And, similarly, the Chinese are increasingly looking outward and seeking to trade beyond their own boundaries and so are expanding in the UK. This can only bring profit both commercially and culturally to both the East and the West.**

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# CLLS NEWS

## INFLUENCE & THE CITY OF LONDON LAW SOCIETY



**I am sometimes asked what the City of London Law Society does – a perfectly reasonable question.**

In summary, we represent the interests of our 50-plus member law firms, who have offices in the City of London and Canary Wharf, and of the approximately 17,000 lawyers who work in those offices. What does that involve, who do we talk to and how do we persuade them to listen?

The CLLS has no automatic right to be heard. We do, however, have considerable power to open doors and to influence. This power stems from two sources. First, the fact that we represent City law firms, including a number of law firms headquartered in the United States. Those firms, in turn, represent a very important element of international business. Their voices are therefore important not only as a significant part of the UK service industry – an industry that is vital to the UK economy – but also as a mouthpiece in the UK for international business. The second source of the Society's influence is the expertise of its specialist committees. The Society has 17 committees each of which focuses on a particular area of law. Their members are drawn from our member firms, who are globally recognised experts in their fields. They respond to consultations by Government, Regulators, the EU and other organisations, make recommendations about reform to the law and publish precedent documents. Their output is universally acknowledged to be excellent. People listen to what they say.

So who do we engage with?

As I say, our specialist committees are consulted by and correspond with Government Departments about proposed legislation. This happens on an almost daily basis. Currently, some of our committees are assisting with the secondary legislation needed to implement Brexit. Others have worked with the SRA on their plans to change the Solicitors' Handbook and the Solicitors' Qualification Exams. The Land Law Committee publishes and regularly updates a widely used standard form Report on Title; and our new Data Law Committee has started work responding to consultations by the Information Commissioner's

Office. Not surprisingly, our committees are a natural source of information and comment for the legal and national press.

At the centre, the Society is in regular contact with the National Law Society, the Legal Services Board and the SRA. We also speak with the City of London Corporation, CityUK, GC100 and the Bar Council.

We regularly discuss topics of mutual interest with the Ministry of Justice. These include, of course, Brexit where we were instrumental in establishing two broad-based committees to give advice to Government about the impact of Brexit on the English and Welsh legal system and on the UK legal professions. Other topics include how to improve access to justice, how to increase social mobility in the City, especially in the legal profession, and how to improve diversity in the Senior Judiciary by increasing the number of solicitor applicants. Those same topics are among those about which we are consulted by the press.

Finally, the Society works with representatives of Bars across the World, as a founding member of the World City Bar Leaders Group and participation in the 2016 Global Law Summit, to identify and pursue topics of common interest.

In short, the Society's power to influence people and outcomes originates from the importance of its membership to the UK's economy and the excellence of the outputs of its committees. People listen to us because they recognise we are worth listening to.

**Edward Sparrow**  
Chair, City of London Law Society

*“Our committees’ output is universally acknowledged to be excellent. People listen to what they say.”*



# LIVERY NEWS

A look at what has been happening – and what is coming up.

## AN IMPORTANT FASHION STATEMENT

**We are thrilled to announce the arrival of Company's scarf.**

These beautifully produced 100% silk scarves currently come in two colour combinations. One classic (red, navy and cream) to reflect the colours of our crest, and another more playful limited edition (this time in indigo, sage and cream) to ensure we always stay "on trend". We think you'll love them both.

The design itself is a homage to traditional City tailoring. It draws upon elements of the Company's crest, ensuring it's discreetly but very definitely "ours". Note the swords which make up the stylish diamond pattern in the body of the scarf. The Company's motto, *Lex Libertatis Origo* (Freedom's Foundation is the Law), also features proudly on its border.

Our rectangular scarf measures 9 x 54 inches, which makes it completely versatile – whether your preference is a drape, a knot or a more formal bow. How and when will you wear yours? We're curious to know, so do please send us a photo.

We hope you'll appreciate too that this isn't just any old scarf – it's an important fashion statement in more than the obvious sense.

The introduction of our scarf coincides with important work we've recently done to ensure that, as often as we can, we use language which is inclusive – see the language and style guidelines on our website for further details – in anything we publish. Whilst we value and honour the past, we aim to be forward-looking too. An important part of this includes promoting a diverse membership and, in all the Company's dealings with members and others, creating a culture whereby individuals of any gender and from all backgrounds feel comfortable, welcome, valued and, above all, included. So our scarf marks a small but significant part of this commitment, and we hope this will give anyone who buys it an additional sense of pride and connection. Wearing our scarf is about so much more than just looking fabulous.

**We hope you agree the Company scarf is very keenly priced at £15 per item (inclusive of VAT and UK P&P). Please do contact the Company office at [mail@citysolicitors.org.uk](mailto:mail@citysolicitors.org.uk) to place your order, and remember to send your selfies to this address too. It would be inspiring, especially in a year which marks 100 years of women in the law, to publish a selection in the next edition of this magazine.**



## DATES FOR YOUR DIARY

### The Company's Annual Service

**Monday 13th May 2019 6.30 pm**

Join us for this year's Annual Service which the Company has been privileged to hold in the Chapel Royal of St Peter-ad-Vincula in HM Tower of London for nearly 50 years. Once again, the service will be led by the Company's Honorary Chaplain, the Reverend Canon Roger Hall MBE, Chaplain to Her Majesty The Queen and the Tower of London and will feature the magnificent Choir of the Chapel Royal.

Dating from 1520, the Chapel Royal is of huge historical importance within the Tower. Three Queens of England, Anne Boleyn, Catherine Howard and Jane Grey, and two Saints of the Roman Catholic Church, Sir Thomas More and John Fisher, are all buried here and attending the service offers a unique opportunity to visit after the tourist crowds have departed.

The service is followed by a reception and supper at nearby Trinity House and is open to all Liverymen, Freemen and their guests. If you have not previously attended, look out for details on the Company's website [www.citysolicitors.org.uk](http://www.citysolicitors.org.uk) or contact [clerk@citysolicitors.org.uk](mailto:clerk@citysolicitors.org.uk)



Photo credit © Historic Royal Palaces

### The City of London Solicitors' Company AGM & City of London Law Society AGM & Champagne Party

**Monday 17th June 2019 5.30 pm**

All Liverymen & Freemen and members of the City of London Law Society are invited to attend the CLSC and CLLS Annual General Meetings at Tallow Chandlers' Hall, Dowgate Hill, London EC4.

**Look out for details and a booking form at [www.citysolicitors.org.uk](http://www.citysolicitors.org.uk)**



# THE FINE LINE

## BETWEEN ART AND INFLUENCE



Those of us who are privileged to live in London, the cultural capital of the world, have an endless array of arts right on our doorstep. Even when we choose not to venture beyond that doorstep, the likes of Netflix, Amazon and catch up TV afford us unlimited entertainment within our own homes.

But is it merely entertainment? Is a night in front of the television, a weekend trip to an art gallery or an evening in the theatre a wonderful way to unwind – or are we being influenced without even realising?



*“It seems the drama is telling us real facts are an outdated means of influencing.”*



“**Brexit, The Uncivil War**”, is a TV drama written by James Graham and directed by Toby Haynes and which aired here in the UK on Channel 4 on 7th January 2019 and in the US on HBO on 19th January. It stars Benedict Cumberbatch as Dominic Cummings, who was the leader of the Leave campaign leading up to the Brexit referendum in 2016. If you missed it, you can stream it on All4.

At the press screening, Graham compared Cummings with Mark Zuckerberg. Both became so obsessed with what they were creating, both wanted to disrupt the status quo. And in their blinkered single mindedness, both ignored the moral ethics of their work and the power of the monsters they were potentially unleashing on the world.

On the face of it, the drama is about the Remain vs Leave campaigns but in reality it is more about the power of facts versus the power of influence. Whilst the Remain campaign are shown to have doggedly used “facts” in the naive belief that the truth would conquer, the Leave campaign turned to technology. This is not a war between Remainers and Leavers but between the political establishment that was and the new technocracy. Cummings works with data mining geniuses at AggregatIQ. They use micro targeted online advertisements to influence – and they win. It’s scary to see how through data analytics and algorithms a nation can be influenced and persuaded.

The Leave campaign did not just rely on technology. Who will ever forget the bus that brought hope and offered salvation for an increasingly crippled NHS? What greater influencer is there than playing into directly to the people’s fears and emotions?

So, it seems the drama is telling us real facts are an outdated means of influencing. Today it is about using technology and using emotions, even if that means

telling a fake story. But is it itself fact, or is it yet another means of influencing us into believing something that may or may not be true?

Obviously, one of the key political figures associated with Leave was Boris Johnson. On 9th May at the Park Theatre in Finsbury Park a new play by Jonathan Maitland entitled “**The Last Temptation of Boris**” premieres.

The play begins at a dinner party in 2016. The guests; Michael Gove, Evgeny Lebedev and the spirits of Margaret Thatcher, Winston Churchill and (the still alive) Tony Blair.

The play then moves to a future time. We are now in a post Brexit Britain. It is 2029 and, like today, the country is still divided but more bitterly than ever. Johnson, once again, finds himself at the very centre of a huge controversy.

Maitland was trying to write this drama in the midst of history in the making. With the political landscape







*“It is art that tells the truth about war,  
about poverty, about deprivation.”*

and the future of Brexit anyone's guess, Maitland was forced to make daily – even hourly – changes.

“This play is the ultimate dramatic moving target – everything keeps changing. Since the first reading in June two big plot changing events happened: Boris Johnson resigned as Foreign Secretary and his marriage ended. But after a few stressful days – and nights – I soon realised that these uncontrollable and unpredictable events were dramaturgical catnip and embraced them joyously. Anyway – unexpected political events should hold no huge fears for me, given my previous incarnation as a journalist – last-minute high-pressure rewrites were part of the job. This play will be a bit like that: we will be rewriting the show every night to keep it up to date. It's a bit scary, sure – but let's put it in context. The stress I'm feeling isn't quite on a par with that being felt by a certain Mrs T. May of SW1...”

The Park Theatre says “this timely comedy drama offers an insight into the mind of one of the most divisive politicians of our time.”

But does it really? Is Jonathan Maitland privy to the workings of Mr Johnson's mind? Is the play an entertaining piece of drama or will it influence how we (rightly or wrongly) perceive Boris going forward?

**Photographer, Sir Don McCullin** is most well known for his iconic war images from, amongst others, Vietnam, Cyprus, Northern Ireland and Syria.

In February, a new exhibit of his work opened at Tate Britain with over 250 photographs, all printed by McCullin himself and covering not just his war images but also the working class struggle in London's East End and the industrial north of England. These contrast starkly with peaceful, serene Somerset landscapes, the county McCullin now calls home.

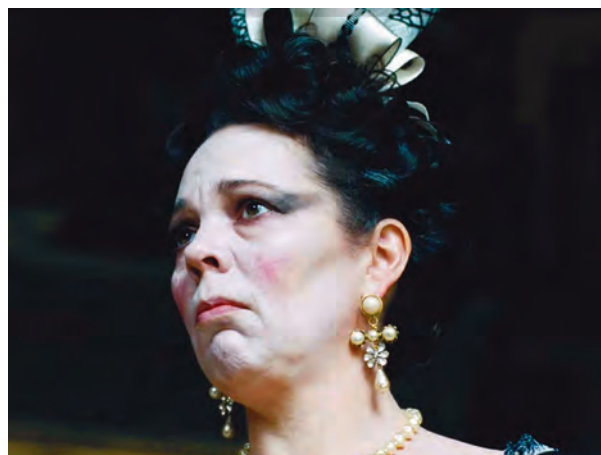
McCullin's war works are strong, harrowing, brutal. They stand alongside his own shockingly honest and distressing commentaries. There has been much discussion and controversy over the decades as to whether some of the images are true reportage or set up, but either way there is no question that McCullin was right there in those war zones, risking life and limb for the sake of his art.

This is not art made to entertain. It is not something you would necessarily want to hang in your house. It is art that tells the truth about war, about poverty, about deprivation. It informs and it influences our opinions not just of what happened but of how we should react to that.

McCullin is well aware of his influence and when he was refused press accreditation to cover the Falklands War between Britain and Argentina in 1982, he assumed it was because Prime Minister Margaret Thatcher had banned him because his photographs might prove too disturbing politically. This, however, was denied and it appeared to be a mere bureaucratic error. Or was it?

The trend of basing art on fact and mixing it with fiction has been very apparent in films this year and to great success. **Vice**, **The Front Runner**, **The Favourite** and **Mary, Queen of Scots** are all hugely successful movies, both at the box office and with film festival award panellists. They tell us of real events – but sometimes with more than a soupçon of creative license. The problem is how can the audience distinguish between what actually happened and what has been added to make for more dramatic viewing?

The team behind **Vice**, the story of George W Bush's vice president, Dick Cheney, make it clear their aim was to expose Cheney as an evil power-junkie who



*“Art is a lie that makes us realise the truth.”*

was responsible not only for the fake news that led to the Iraq War and to the formation of ISIS but also for triggering the attacks themselves. A lot of what is shown is not journalistic retelling but (very believable and chillingly scary) storytelling. Adam McKay, who wrote and directed the film describes his depiction of Cheney as “a spray paint portrait, a Ralph Steadman portrait”. The film uses different techniques to emphasise the mingling of fact and fiction; it goes from almost documentary in feel to Shakespearean dialogue, likening Mr and Mrs Cheney to Macbeth and Lady Macbeth. The opening titles stresses that the film is based on a true story, but that Cheney was notoriously an extremely private man and all the film-makers could do was their best. Yet by the end of the film, the audience is so drawn into the horrific events that it has witnessed that any idea that it may not be totally true and accurate is well forgotten.



In **Mary, Queen of Scots** one of the most dramatic scenes is the meeting between Mary and Elizabeth. But it simply did not happen in reality; the two women never met. Director, Josie Rourke, admits that turning a story into a film is already an exercise in make-believe and says that representation is an act of the imagination.

**The Favourite** tells the story of Queen Anne and her relationships with Sarah Churchill and Sarah’s cousin Abigail. It has wowed both the critics and the general public. Yorgos Lanthimos, the director has said that, whilst the film is based on historical facts, he has tried to make it more relevant to audiences today by using not just modern language but modern dance, modern materials in the clothes like denims and plastics which simply did not exist in the 18th Century. Of its historical accuracy, one critic said Mary Poppins probably had more truth in it than The Favourite!

**The Front Runner** is the story of how the Democratic front runner for the presidency, Gary Hart (played by Hugh Jackman) was destroyed by the press exposing his sexual indiscretions. Interestingly, this sort of press exposure and media frenzy was unprecedented and influenced not just American politics but subsequently world events. Had the press not intervened, would George W Bush ever have become President and would all the events associated with that, like the Iraq War, ever have happened? Reporters in earlier times had chosen to ignore infidelities – think of JFK. But times, moods and opinions changed and Hart could not escape the influence of an almost manic and ravenous press hell bent on exposing him and bringing him down and, in so doing, altering the course of history.

**The arts have forever thrilled, delighted and entertained us. But we must never underestimate their huge power to influence us at the time we are least expecting it and least prepared for it and we must always try and distinguish between fact and fiction.**

**Picasso once said;  
“Art is a lie that makes us realise the truth”**

**But is the real truth that art can make us believe us something is true when it may simply be art?**

**The Last Temptation of Boris Johnson, directed by Lotte Wakeham, runs at the Park Theatre, from 9th May – 8th June.  
Don McCullin is at Tate Britain from 5th February – 6th May.**



# All eyes on the Dukes of Hazard...

## Wondering how old is too old when it comes to senior drivers

By Joel Leigh

One of my abiding memories as a fresh-faced articled clerk shadowing one of the firm's partners, was managing a particularly challenging commercial client who had decided to vigorously contest a charge of careless driving.

Great care was taken to explain to him the importance of treating both the Magistrate and the wider Court with deference and of appearing sincere. Come the day of the hearing, one of my first, prosecuting counsel rose to his feet and theatrically enquired as to the client's understanding of the definition of a careless driver. To which he immediately and confidently shot back (paraphrased for politeness obviously) "it means driving like an effing maniac".

Needless to say, raised eyebrows, a conviction and stiff fine followed in quick succession. And for years afterwards, it was unofficial office policy to refer to clients or indeed anyone dealing with the firm who was perceived to have crossed a line in some way, as a 'careless driver'.

Jumping forward a good many years, I wouldn't dream of suggesting that the Duke of Edinburgh might have committed a similar faux pas had the CPS decided to prosecute following his recent collision on the Sandringham estate.

But having been presented with a brand new Land Rover Freelander HSE Lux identical to the one he flipped less than 24 hours earlier (a courtesy not afforded to those of us reliant on the largesse of our motor insurers), and then snapped by the paparazzi driving said new car minus his seatbelt shortly thereafter, the 97-year-old Duke was perhaps wise to avoid further adverse publicity by agreeing to surrender his licence (eventually).

Following an apology to his victims, the press played nice, reporting that the Prince's decision tied in with him stepping back from wider public life following his 96th birthday, and the CPS followed suit by announcing that a prosecution wasn't in the public interest on both counts, seemingly end of story.

However, the episode has reignited the national conversation regarding the question of 'How old is too old?' when it comes to our more senior drivers. And why, at a time when testing for new drivers is increasingly stringent, are elderly drivers arguably given an easier ride by the DVLA?

The Duke was until recently one of eleven thousand drivers over the age of 95 in the UK forming part of the community of approximately five million drivers over the age of 70, all of whom are obliged to renew their licenses when they hit their milestone birthday and then every three years thereafter, declaring any conditions which might affect their driving ability. But some think the rules amount to little more than self-certification, largely dependent on an individual's honesty to declare their own disabilities.

Further, the list of conditions such drivers are obliged to disclose is relatively limited, for example dementia, epilepsy and serious loss of sight, and even assuming such conditions are reported, loss of license doesn't automatically follow. Drivers could just face DVLA assessment and the offer of a license for a limited period of between 1 and 3 years.



One might imagine that GPs and opticians would be obliged to report unfit drivers and it's true that in 2017 the GMC toughened up its rules so that both can now report such patients without advising them first, but only if they believe there is a 'risk of death or serious harm' to others.

The rules changed following the death of 3-year-old Poppy-Arabella Clarke, who was struck on a pedestrian crossing by a 73-year-old motorist who had repeatedly ignored his opticians' warnings not to drive and wasn't wearing his glasses at the time of this tragic accident. Previously, GPs were only entitled to make a report after exhausting all avenues to persuade patients to make the disclosure themselves.

But the new rules still fall short of imposing a duty to report, possibly because of the reluctance of the medical profession to take this enormously time consuming and sensitive task upon its increasingly overburdened shoulders.

Of course, there's still the option of reporting elderly relatives anonymously if you have serious safety concerns, but aside from the potential for family arguments the reality is that the Drivers Medical Group – the division of the DVLA that assesses whether drivers with a medical condition are fit to drive – already considers between 600,000–750,000 cases a year and your call could result in nothing more than a referral to the family GP, whose options may be limited for all of the reasons already discussed.

Ultimately, the Duke's decision was simply the right one, and an easy one really given the plethora of cars and drivers on hand at the various Royal residences, including the Queen's 'daily driver' pictured above, to take him wherever he pleases.

But for anyone else over the age of 70 whose driving licence represents that final vestige of independence, the decision to stop driving remains a far trickier, emotive and potentially contentious one.

**Joel Leigh is the motoring correspondent of City Solicitor and a Partner at Howard Kennedy LLP**



## ONE LAST WORD

## DID YOU KNOW?

*Harrods on the Río de la Plata*

**The polo fields at the Hurlingham Club are immaculately trimmed. Harrods department store is an imposing landmark at the heart of an exclusive shopping district. Well groomed children attend lessons at St Andrews School and Balmoral College. You could be forgiven for thinking that you are in London.**

But look more closely at the wide, Haussmann-style boulevards, listen to the animated, strangely Italianate Rioplatense Spanish and feel the heat that surges above 40°C in a stifling summer. At almost 7,000 miles from London this is no England; this is Buenos Aires, Argentina.

Argentina was a favourite location for British investment. At one stage during the nineteenth century fully 10% of Britain's overseas investment was concentrated in the country – English gold flowed into the land of silver. By the end of the 1930s, some 40% of investment in Argentina was British. London's merchant banks and investors had long had considerable heft in the country and Argentina's elites had been inducted into the Anglosphere with English educations, sports and manners. British influence in Argentina was real and it was forged in iron and gold.

But whilst Britain built up great influence and power across Latin America, it also stoked resentment and nationalistic opposition. Argentine angst over British power was centred on its control of the railways. Thousands of miles of track were laid, paid for with loans from British banks. By 1914, the network would constitute the world's tenth largest system, and would extend far into the newly productive pampas. Money went from London to Argentina and, in return, boatloads of beef were sent to Britain.

This was known as the 'British system'; loans to build the railways were repaid at solid interest rates and the railway companies then paid regular and handsome dividends. When times were good, it was a mutually advantageous set up. But, when times were hard, it stoked a fierce nationalism. And nothing hit Argentina as hard as the Great Depression.



Against this backdrop, the sinister spectacle of el pulpo inglés (the English Octopus) was an easy target for politicians. Soon, Argentinians would be encouraged to drive out foreign and, in particular, British capital. In 1948, during the first term of office of President Juan Perón, seven British-owned and three French-owned railway companies were nationalised.

Brian Berenty, an American writer living in Buenos Aires, likens the Anglo-Argentine relationship to a love story, with Britain as the rich but ultimately jilted lover and Argentina as the high maintenance girlfriend. The end of the affair is inevitable:

"...by the time the war had ended, Perón had simply changed the names of many of the buildings and streets throughout the country to erase any vestiges of British presence. Thousands of miles of railroads became the property of the government, and many British-owned businesses were handed over to Argentines, many of whom were personal friends and family of the President.

It was as if Argentina had simply changed the locks."

This article was provided courtesy of Ian Chapman-Curry, Principal Associate at Gowling WLG and host of the Almost History podcast.  
[www.almosthistorypodcast.com](http://www.almosthistorypodcast.com)



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