



The Bar Council

Guidance in relation to cases in the Courts of the European Union should the UK leave the EU with “No Deal”

Purpose:	To draw Counsel’s and Chambers’ attention to the need to ensure continuity of lay clients’ representation ongoing proceedings before EU Courts
Scope of application:	Self-employed practising barristers practising in the field of EU law
Issued by:	Brexit Working Group
Originally issued:	October 2019
Last reviewed:	N/A
Status and effect:	Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

Introduction

1. It appears – in the absence, to date, of official published advice from the EU Courts - that English and Welsh barristers would lose their rights of audience before the Courts and Tribunals of the EU the moment the UK exits EU Membership without a Withdrawal Agreement being ratified by both parties.
2. In the current situation we would advise that barristers try to obtain an assurance from the Registry that they can rely on a *pro hac vice* call (i.e. a “one off” temporary right of audience) if a barrister accepts instructions now or has

already accepted instructions and the UK leaves the EU with “no deal” on 31.10. (or at any point thereafter) whilst their cases are still ongoing.

3. Barristers should be transparent with clients about any uncertainty in this respect, so that alternative representation could be arranged as and when necessary. Once it has been ascertained that rights of audience will end when the “no deal” situation arises, barristers should inform their professional and/or lay clients without delay so that alternative counsel that have valid rights of audience can be appointed.
4. Call to the Irish Bar (see guidance on the Bar Council Ethics Hub) may cure this situation but that will take some time to obtain and the Bar Council can give no assurance that rights of audience will not be successfully challenged, even though it appears from the wording of the CJEU Statute that membership of a legal profession of an EU Member State should be sufficient.
5. Members who have obtained membership of another Bar or Law Society within the EU should be sending certificates/proof of registration on the roll of that Bar or Law Society to the CJEU Registry to update the original practising certificate filed at the outset of the case.
6. However, those barristers who are only relying on their membership of the Bar of England and Wales may not necessarily have to withdraw from the case. It might be possible to make contingency plans by working in conjunction with someone with a relevant practising certificate (e.g. a dual qualified English barrister or a member of another EU legal profession). That lawyer might be brought into the case in good time to perform the advocacy and to sign off pleadings. There would be no bar for the barrister originally instructed to attend hearings in the European Courts even if s/he may not address the Court.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in

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