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## Brexit: UK law by UK judges?

Julius Stobbs (Stobbs IP) · Monday, August 14th, 2017

Lord Neuberger, or Baron Neuberger of Abbotsbury to his friends, has taken aim at the need for clarity around legal precedent in the post-Brexit landscape.

Having spent decades on the front line of statutory application and legal interpretation, Lord Neuberger seems well placed to comment on the legal ramifications of removing the CJEU as the final arbiter of much UK law. In his most recent role as President of the Supreme Court, he has been ideally placed to identify potential judicial shortcomings post Brexit.

Lord Neuberger is [quoted](#) as having claimed that “if [the government] doesn’t express clearly what the judges should do about decisions of the ECJ after Brexit, or indeed any other topic after Brexit, then the judges will simply have to do their best”. Given his wealth of knowledge and experience, we shall ignore the erroneous reference to the ECJ (CJEU) and instead acknowledge that this seems an entirely valid point. If the CJEU is no longer to bind the UK, there will need to be clear vision for the court’s role in extricating EU case law from the domestic legal system. At present, we do not have such clarity.

Lord Neuberger hints at another, slightly more philosophical point: the interdependence of the Judiciary, Legislature and the Executive must not be neglected. So far, discussions of Brexit have focused on the role of the Executive arm of Government, as the negotiations and the public face of the UK’s departure have been largely provided by Theresa May and her Ministers. Government, however, relies on the interplay between the three arms listed above. If the Supreme Court of the UK assumes its position as the highest judiciary power in the UK and there is no legislative clarification as to how European precedent is to be treated, there would appear to be one likely outcome. As Lord Neuberger suggests, *judicial activism* is a highly likely result if the role of the British Courts is not adequately clarified between now and March 2019.

There have been plenty of instances over the past century where law makers and the judiciary have clashed (in the passive aggressive British sense) over application of statute. Given that the courts

are charged with applying the law and interpreting statute, a strong and stable government will require clear legislative guidance, lest judges are forced to order off the menu, so to speak, and apply the law as they see fit.

As has been suggested by Lord Neuberger, if the British legal system is to avoid a European Court-shaped hole, it is vital that guidance is provided regarding the manner in which case law is to be treated by the courts charged with applying it. If the Government is to appear as a unified front, there needs to be agreement over the extrication of CJEU case law from UK courtrooms.

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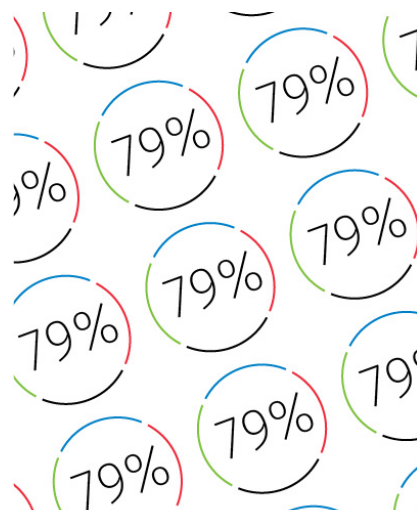
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