A View from the Managing Partner: Brexit

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Last time I was writing in the days after the referendum, when everything seemed very uncertain.

However, even now that the dust kicked up by the decision has settled, we really are not much closer to understanding the implications for the regulation of the employment relationship than we were before.

Underlying this is the reality (which did not emerge from the noise of the campaign) that whilst we knew what membership of the EU meant for employment law, we have far less sense of what Brexit means because, of course, there are many types of Brexit and it may not even happen (though that is probably a 48%er's fantasy).

At one end, there is the Gove vision of an island nation entering into separate free trade deals with the nation states of the world, wholly unconnected and unshackled by EU law (without the benefits of the current relationship with the largest trading bloc in the world) and on the other there is Norwegian style access to the single market which looks rather like "membership-lite". And, frankly, not that light; we are talking about membership of EFTA, extensive payment obligations to the EU, subscribing to much of the same law that applies to member states without the burdensome responsibility of having a say or a veto over it, with curtailed, but largely intact, four freedoms. There is probably a lot more in common between the status quo and the Norwegian model than there is between Gove's ideal and Norway. In any event, Gove is no longer in cabinet and it is unclear which model the new May government favours.

The one thing that seems certain is that nothing is going to happen very fast. We have not even triggered the two year notice period yet. Equality law is not going to be abolished, though it may be tweaked and claims possibly capped. I suspect an earlier change would be the possibility of more positive discrimination. We will not sidestep the updated data protection directive. There will be tweaks to TUPE one day, and reversals of some of the rather generous European decisions about holiday pay, but that is not earth shattering. Even keeping the bonus cap in financial services will probably end up being offered willingly if that is the price we pay for keeping passporting rights.

The rule that seemed most likely to have an effect is the law

of unintended consequences. The one thing that we do now know is that the impact of the EU referendum on domestic politics has been transformational. There is no serious question that under the Coalition both employment law itself and de facto access to employment rights were radically scaled back. There was a natural prediction that, unfettered by the restraining force of the LibDems, the Conservatives would take their deregulation agenda much further, but the reality is that the Cameron-led government had far less impact on our work than when Vince Cable occupied BIS. Whether a refreshed post-referendum Conservative Government would maintain its disinterest in such matters seemed much more questionable.

However, the rules of the political game are changing. The Conservatives have eyed up working class votes and can see that an attack on workers' rights (other than at board level) is not going to solidify that base. Employment regulations look set to stay where they are for a while longer.

Gareth Brahams, Managing Partner, BDBF

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