

Indicative List of Interview Questions for Practitioners

Civil and Commercial Matters

I. General questions

1. Is there any demand for cross-border legal advice?
2. What is your client base (eg legal entities or individuals; local or foreign)?
3. Does the prospect of *Brexit* appear to have any positive or negative impact on the number of clients that come to you to engage in cross-border litigation?
4. Roughly what proportion of your cross-border cases are: a) *contractual*; b) *non-contractual*; c) *trusts*; d) *company law*; e) *other*?
5. Roughly what proportion of your cross-border cases involve a party or parties from: a) *another part of the UK (Scotland or Northern Ireland)*; b) *from another EU Member State*; c) *from Iceland, Norway or Switzerland*; d) *from the Commonwealth*; e) *from the rest of the world*?
6. What is the type/s of legal remedy (eg financial, declaratory, injunctive) which your clients most commonly seek to achieve in cross-border cases?
7. What is the lowest value of a cross-border claim you have come across?
8. Has the prospect of *Brexit* affected the behaviour of your clients in cross-border disputes?

II. Central aspects of PIL regime and major attributes of a cross-border claim in relation to “pre-action conduct”¹:

9. Do parties consider which set of procedural rules (including evidential rules) would suit their case before deciding on the jurisdiction where to issue the proceedings?
10. What are the major attributes (eg value of the claim; facts; applicable substantive or procedural rules) which are factored in when assessing the relative strength of your client’s claim?
11. Do parties consider whether the rendered judgment will be recognised and enforced outside the country where it is granted before deciding on the jurisdiction in which to bring their action? Does the prospect of *Brexit* affect your clients’ decision-making process?
12. Which attribute (eg judges; speed; procedures; forcing a settlement; home turf), do you think, is the most important for a party’s decision to issue cross-border proceedings in England and Wales?
13. Would the response to the previous question be different, if the monetary value of the desirable remedy is high (or very high, perhaps)? Could *Brexit* make any impact in this respect?
14. Is the *court-first seised* rule (i.e. Articles 29 and 30 of the Brussels I recast) an important aspect of the current EU civil justice framework where there is not an exclusive choice of court agreement?
15. Should there be a *court-first-seised* rule post-*Brexit*? Or should the common law concept of *forum (non) conveniens* be revived?
16. What are the factors that affect the strategy of a potential defendant who is threatened with an action against him to wait until he is sued or to engage in settlement negotiations or to initiate a pre-emptive strike before a court which is more convenient for him?

¹ See Civil Procedure Rules: Practice Direction – Pre-Action Conduct and Protocols.

17. Do you often come across choice-of-court agreements? Are there ever any issues about the scope of such an agreement?
18. Do parties consider which law would govern the merits of the dispute before deciding on the place where to litigate? Why?
19. Is the fact that EU law is part of English law seen as anyhow important by your clients? Why?
20. Do parties consider what remedies they would be entitled to under the potentially different applicable substantive laws? Why?
21. Is cross-border litigation expensive? Is it more expensive in comparison with domestic litigation?
22. Do costs in cross-border cases affect the suing decisions of parties? Do your clients seek financial assistance with regard to costs from any of the litigation funders (or from any other sources, perhaps)?
23. Do weaker parties benefit from suing at their home jurisdiction? Do you think that there should be rules protecting weaker parties post-*Brexit*?
24. Do you come across cross-border cases where multiple claimants are suing? Is it common? Why?
25. Do you come across cross-border cases where multiple defendants are being sued? Is it common? Why?
26. Do cross-border disputes often settle in this country? How important is the role of parties' legal advisers in this respect?
27. Do costs in cross-border cases affect the settlement dynamics?
28. Have you come across settlements in cross-border cases at an early stage (ie even before issuing court proceedings)?
29. Have you noticed any changes in the pre-action conduct of your clients since the *Brexit* vote?

III. Litigants' strategies after the proceedings are issued

30. What are the major attributes (eg value of the claim; facts; applicable substantive or procedural rules; costs, including cost-shifting rules;) which are factored in by a defendant in terms of organising his defence in a cross-border case, once an action is brought against him?
31. Would the response to the previous question be different, if the value of the desirable remedy is high (or very high, perhaps)? Why?
32. Have you come across any delaying tactics in cross-border cases? If yes, what are the most common types?
33. With regard to delaying tactics, do you think the prospect of *Brexit* will have any positive and/or negative impact?
34. Are jurisdictional challenges common in cross-border cases? Why?
35. Does a jurisdictional challenge affect the behaviour of the claimant? How?
36. Do cross-border disputes tend to settle after a jurisdictional challenge has been dealt with by the courts in this country? Why?
37. Do you think the prospect of *Brexit* will have any positive and/or negative impact on settlement? Why?

38. Do you come across parallel proceedings? Do you think the prospect of *Brexit* will have any positive and/or negative impact in this respect?
39. Does a potential non-recognition and/or non-enforcement of a rendered judgment affect parties' willingness to continue with litigation and any settlement offers? Why?
40. Do parties often argue about the applicable law? Is a dispute about the applicable law preceded by opposing parties' assessments about their entitlement/liability under the relevant applicable substantive laws?
41. Does the application of substantive rules of foreign law increase the litigation costs and/or the length of the litigation?
42. Are disputes about the applicable law issues seen by claimants as strategically driven? If so, how do such strategies affect the behaviour of the claimant (e.g. his suing decision, and any settlement negotiations)?
43. How would the cost-shifting rules impact on the behaviour of the defendants and any settlement dynamics? Does the response to the previous question differ depending on the value of the desirable financial remedy?
44. Have you noticed any changes in the use of English choice of court and/or choice of law clauses since the *Brexit* vote?

IV. Recognition and enforcement of rendered judgments

45. Do your clients make use of the provisions on recognition and enforcement of the Brussels I Regulation and/or the Lugano Convention? Why?
46. With regard to the recognition and enforcement of EU judgments here and/or English judgments in the EU, does the prospect of *Brexit* have a positive and/or negative impact on your clients and in turn on the attractiveness of English and Welsh courts?
47. Do your clients make use of the relevant provisions of the Hague Choice of Court Convention 2005?
48. Do you know anything about the Hague Judgments Convention (to be adopted after the Diplomatic Session in 2019)?
49. Is there a case for the UK to take a lead in the development of PIL in the Hague Conference on Private International Law and/or in the Commonwealth?

V. Concluding Questions

50. Under what circumstances, should arbitration be preferred to litigation?
51. Do you have any other concerns which we have not discussed?