

Claim No.
Made on behalf of: Claimants
Exhibits: MSC1
Date: 7 December 2017

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION
ADMINISTRATIVE COURT

Case No. []

BETWEEN:

(1) GOOD LAW PROJECT LIMITED

(2) MOLLY SCOTT CATO MEP

Claimants

-and-

(1) SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

(2) CHANCELLOR OF THE EXCHEQUER

Defendants

WITNESS STATEMENT OF MOLLY SCOTT CATO MEP

I, **MOLLY SCOTT CATO** of 194 Cheltenham Road, Bristol, BS6 5RB, will say as follows:

1. I am the Second Claimant in this matter. I am a Member of the European Parliament (*MEP*) for the South West of England and Gibraltar and a member of the Green Party.
2. Except where I say otherwise, the facts and matters stated are within my own knowledge and are true. Where the facts and matters are not within my own knowledge, they are based on instructions, documents and information supplied to me and are true to the best of my knowledge, information and belief.
3. Together with the First Claimant, I made a request to the Defendants (the *DEXEU Secretary* and *Chancellor*) on 12 October 2017 for the disclosure of two categories of documents (the *Sectoral Studies* and the *HM Treasury Report*) that contain detailed analysis of the envisaged impact of Brexit on the UK economy. The background is more fully explained in the witness statement of Jolyon Maugham on behalf of the First Claimant. I have read and agree with what is said in that statement.

4. The 12 October 2017 letter made plain that the request was not being made under the Freedom of Information Act 2000 (*FOIA*), but rather was a request for the exercise of common law powers to disclose (see JMQC/WS1, para 5). In this regard, I note that on 31 August 2017, one of my employees, Poppy Leeder (who is Senior Regional Liaison Officer and so responsible for writing formal correspondence for me), submitted, on my behalf, a FOIA request to DEXEU for disclosure of the Sectoral Studies. Following DEXEU's refusal of this request on 26 September 2017, Ms Leeder requested an internal review on 6 October 2017. On 24 November 2017, DEXEU responded to say that the DEXEU Secretary had made a written statement to Parliament on 7 November 2017 in respect of the Sectoral Studies, and that they were "still processing [the] internal review for this case" (**Exhibit MSC1**, pages 1-3). There has been no further contact with DEXEU in respect of this FOIA request since 24 November 2017.
5. This application for judicial review is concerned with the Defendants' refusals of our 12 October 2017 request for the exercise of common law powers to disclose the Sectoral Studies and, if it is held, the HM Treasury Report. I respectfully ask this Court to grant our application, to agree with us that the Defendants' refusals are irrational and disproportionate, and to order them to disclose the Sectoral Studies and the HM Treasury Report (assuming the latter is held).

A. My motivations in bringing this claim

6. I am an economist by background. Before my election as an MEP in 2014, I was Professor in Strategy and Sustainability at the University of Roehampton, where I continue to hold a part-time post as a Professor of Economics. I am also a Quaker.
7. Together, those aspects of my background and my work explain my motivations for seeking the disclosure of the Sectoral Studies and the HM Treasury Report:

7.1 Accountability:

I value honesty and simplicity in private and public life and do not consider it naïve to expect the highest standards of probity and integrity amongst politicians and policy-makers. Politicians and members of the Government frequently comment publicly about the economic outlook for the UK after Brexit. The

documents I seek are essential for holding them to account as to the accuracy and plausibility of such statements, and for the quality of the analysis underpinning the Government's approach to Brexit.

7.2 Informed debate:

Evidence based on high-quality data is essential for making policy and decisions on momentous issues such as Brexit. The documents I seek are by far the best and most useful body of evidence about the likely economic impact of Brexit. I consider it to be irrational and indeed unconscionable to expect Parliament and the public to support a Brexit deal – or reach a decision as to whether they should do so – without the best possible understanding of the likely implications of Brexit.

7.3 Planning:

Brexit will have a profound impact on the economic lives of most people in the UK. There are 5.3 million people in my constituency. Many of them need to understand the outlook for their sectors of the economy as best they can, so that they can make concrete decisions about their financial projections, business models, workforce planning, investments, loans and so on. As I evidence below, I regularly receive pleas from constituents about exactly such matters.

8. I expand upon each of those three strands of my motivation below, and then provide brief evidence about the Defendants' reasons for refusing our request.

B. Accountability

9. I make two related points about the importance of the requested documents for the purposes of holding our policy-makers and decision-makers to account.
10. The first is self-evident and needs little elaboration: if official statements are made about the envisaged economic impact of the Brexit terms the public is invited to support, the public needs to be able to scrutinise those statements. Accountability means being able to check the veracity and persuasiveness of the Government's statements against the data on which those statements are based.

11. The Sectoral Studies are the best possible basis for such scrutiny of any statements made about sector-specific impacts. I know of no other source of information that would realistically help deliver accountability for sector-specific statements. I do not know what is in the HM Treasury Report (as the Defendants have refused even to confirm or deny its existence), but if it exists it is likely to provide an additional source of authoritative data which can be used to scrutinise and interrogate Governmental statements about the likely economic effects of Brexit.
12. I make a second point about accountability: as Jolyon Maugham QC explains in his witness statement, the Sectoral Studies have repeatedly been relied upon in public statements to create the impression that the Government's negotiations are grounded in rigorous and reliable analysis (see JMQC/WS1, paras 25-35). Unless the Sectoral Studies are disclosed, the public cannot hold the Government to account for the quality of the data, methodology and analysis underpinning its negotiations.

C. Informed debate

13. In parallel with the ongoing negotiating process with the EU, there is continuing public and parliamentary debate about the terms on which the UK should leave the EU. This will culminate in a parliamentary vote on the terms that emerge from the negotiations (as informed and shaped by public and parliamentary debate up until the conclusion of the negotiations). Without an adequately informed debate, there is a high risk of the UK agreeing to terms that are less than optimal from its perspective: those shaping and making decisions on our behalf will not have fully understood the economic implications of those decisions.
14. Further, as a member of the European Parliament, I will have a vote on the deal agreed between the EU and UK. The European Parliament acting as a whole has the power to reject the deal. As a UK MEP I need to balance the benefits and disadvantages to both the UK and the EU. As things stand, I simply do not have enough information to do so. I will be asked to speak and vote on the proposed terms of Brexit without fully understanding their economic implications.
15. Again, the Sectoral Studies are the best possible basis for an informed debate. The proposed Brexit terms need to be assessed not only by reference to their likely impact

on the UK's economy overall, but also to their likely impact on the constituent parts of the economy. I know of no other source of evidence that offers any comparable assistance in this respect. The HM Treasury Report may well provide an additional source of data that will supplement the informed debate we seek – but of course we know nothing of its content.

16. My views on the vital importance of these documents – in particular, the Sectoral Studies – to informed public debate are widely shared. As Jolyon Maugham explains in his witness statement, a number of MPs have expressed similar views (see JMQC/WS1, para 9), and Parliament's Brexit Select Committee is currently pressing the DEXEU Secretary to disclose to it unredacted versions of the Sectoral Studies (see JMQC/WS1, paras 14-16). Jolyon Maugham also refers to and exhibits examples of the widespread press coverage of and interest in the Sectoral Studies (see JMQC/WS1, para 48). I am also aware that numerous requests have been made under FOIA (including the one referred to above at paragraph 4 of this statement) for the disclosure of some or all of these studies, and I exhibit examples from the "What do they know" website, a prominent forum for the publication of requests under FOIA (**Exhibit MSC1**, pages 4-23). To the best of my knowledge, none of those requests has resulted in the disclosure of any of the content of the documents I seek.

D. Planning

17. My evidence above has focused on accountability and informed debate aimed at shaping the UK's negotiations with the EU. Equally importantly, however, people need to make concrete plans for Brexit. Organisations, businesses and individuals need to understand the likely economic impact of Brexit on their work and livelihoods so that they can take action. They need to understand how Brexit will affect their sector so that they can adjust their financial projections, business models, workforce planning, investments, loans and so on. They need this understanding urgently, given that the UK will leave the EU in March 2019.
18. This is borne out in my work as an MEP. I have direct experience of constituents raising with me their concerns and anxieties about how Brexit will affect them and their work. They frequently say things like "I have tried to research this for myself, but I cannot find any useful information about it". They ask me whether, as an MEP, I

have any greater insight that could help them understand how Brexit will affect their line of work. Sadly, without the Sectoral Studies, the answer is no.

19. It may be helpful if I quote from actual communications in which constituents have explained how they cannot properly plan for life after Brexit without information of exactly the kind at issue in this claim. Constituents' communications with elected representatives are of course confidential, but I have permission from three constituents to quote from their emails to me as follows, on conditions of anonymity.
20. First, a manager at an automotive manufacturer has told me why he needs to understand the likely impact of Brexit on his sector. He said this:

“The United Kingdom’s exit from the European Union will require significant changes in the way automotive manufacturers operate their businesses. As we leave the Single Market and the Customs Union, supply chains, manufacturing processes, customs clearance procedures will all require review, change and investment. These changes take time, and planning for the new trading environment (or contingency planning) will need to begin in the very short term.

However, until companies understand what impact Brexit will have on their business, and what plans the government has put in place to mitigate or manage this impact, managers will struggle to make rational, evidence based decisions.

Information is the key to sound decision-making. While companies can make best-guess impacts of various Brexit scenarios, only the government has the resource and capacity to make detailed assessments of how their Brexit planning will affect all parts of the industry – from large OEMs to SMEs in the supply chain.

It is therefore vital that Government share any impact assessment it has carried out on the automotive sector, so that government and industry can work together to address gaps and challenges – or even to take advantage of possible opportunities.

A clear view of the impact of Brexit on the sector and the wider economy is also necessary to support planning around future investment, particularly for carmakers who operate as part of a global production network. Senior managers in head offices around the world need a clear view of the future economic situation (good or bad) before they can commit to making significant investments into new models, plants or infrastructure.

Areas in which clarity are particularly needed are:

- The impact of Brexit on just in time manufacturing, particularly around the impact that leaving the customs union will have on the frictionless movement of goods across the EU – UK border.
- How will restrictions on freedom of movement affect the ability of OEMs and supply chain companies to maintain current production levels.
- What access will the UK have to international markets as it leaves EU-3rd country FTAs.
- What will be the cost of regulatory divergence between the EU and the UK, as the UK leaves the Single Market.

Getting early clarity on the likely post-Brexit business environment is vital to ensuring that international companies are able to bring investments into new technologies - such as electric, hybrid and autonomous vehicles – to the UK.”

21. Secondly, a constituent who works in finance has told me this:

“... I work in venture capital and whilst there could even potentially be benefits to the UK leaving the EU in terms of EIS rules etc., there is no certainty that we will have the freedom to act how we like and yet we will suffer from our weakened ability to

access all EU markets as well as the reputational damage of the whole process. As a firm we have contributed to the recent consultation of the Patient Capital Review but I fear our response cannot possibly be complete due to the lack of information contained in reports such as those that the government is hiding.”

22. Thirdly, a constituent who is a former NHS manager summarised conversations with current NHS managers and told me this:

“It is frustrating for managers that the government has studied the impact of Brexit on the health sector but not released the information to those who are in most in need of it. It is vital information to management at all levels and all areas of the NHS.

Within the NHS 29% of non-managerial staff are EU nationals, with the highest concentration in London where a third of these EU staff work. The effect of any Brexit-related change to do with employment and residency will have a huge impact on the NHS, as staff are the most significant expense. It is almost impossible to plan for the future of the service without detailed information of the likely effects of Brexit on employment and residency. Indeed, there has already been a surge of EU nationals leaving, with 11% of nurses leaving in 2016/17 being EU nationals, up from 9% the previous year. There has also been a decline in those applying to join, with 19% of new nurses being EU nationals in 2015/16 falling to 12% this year. This is in the context of nearly 12,000 vacancies for nurses and midwives, a rise of 17% from last year. Uncertainty around Brexit makes vital recruitment of EU staff much more difficult.

Staffing is not the only issue. The NHS is a large consumer of pharmaceuticals, spending nearly £120bn per year on drugs (around 15% of the NHS budget). There are many EU regulations and agreements that have a direct impact on the cost, with the most

obvious being leaving the free market and the associated increase in costs and/or import bureaucracy for any imported drug. There is also a huge question mark around the very availability of some drugs. For example, it is currently unknown if Brexit will take the UK out the European Medicines Agency, which speeds up drug approval for all member states. It is possible that without the EMA drugs manufacturers would not bother with a relatively small, single market such as the UK until they have worked to get their drugs approved in the larger markets. New drugs could reach the UK much later and at increased cost (thanks to the additional layer of approval), or not at all. This is much more likely for drugs for rare conditions as the manufacturers might consider the potential number of UK sales as insignificant. Even if the UK approvals agency took on the tasks currently fulfilled by the EMA, the cost to the UK would still be higher as it would have to pay for this itself rather than share the cost with 27 other countries. The UK may end-up having to lobby the drugs companies to apply for UK licensing and consequently be made to pay higher prices.

The UK has enjoyed a leading medical research position, and the NHS takes part in thousands of EU research programmes run across several member states, as well as receiving EU funds for research undertaken solely in NHS hospitals. The current uncertainly has already cut research in the UK, and with it the chances for UK patients to trial life-saving, innovative treatments. Pharmaceutical companies are growing impatient for clarity, and every week that passes results in new research projects not being based in the UK as the case for basing them in the UK with such uncertainty about the future is growing weaker.

Finally there is the issue of NHS finance itself. The NHS has benefited from 3.5bn Euros in funds from the European Investment Bank since 2001. This source of funding may cease to be available, so the NHS would be even more reliant on funding from our own

government. It is also unclear whether the UK government intends to replicate EU competition law or alter it. The outcome of this could be to open-up the NHS to enforced privatisation, with foreign multinationals taking the NHS to the WTO disputes panel if it is refused permission to buy British hospitals or other resources. This sort of uncertainty around finances and indeed the ability of the NHS itself to function without being ‘bought out’ makes strategic planning at the regional and national level almost impossible.”

23. I present these as specific examples of constituents approaching me to explain why they need the Sectoral Studies for their particular sectors, and how their planning is seriously prejudiced by the Defendants’ refusals to provide that information.

E. The Defendants’ reasons for refusing our request

24. For the reasons given above, my view is that the public interest in the disclosure of the Sectoral Studies is overwhelming. If the HM Treasury Report exists, and if it contains comparable analysis, similar considerations are likely to apply. Given the exceptional importance of Brexit for every part of the British economy, and given the paucity of any other official sources of economic analysis of this kind, my view is that these documents should only be withheld if there are exceptionally strong reasons for doing so.
25. Unfortunately, the reasons given by the Defendants thus far seem to me to be exceptionally weak. As I understand it, part of the Defendants’ case is that disclosure of these documents would harm the formulation and development of Government policy. That does not seem to me to square with the contents of the Sectoral Studies, so far as I am able to tell from how they have been described in public. I refer here to the chronology of public references included in Jolyon Maugham witness statement (see JMQC/WS1, paras 25-35). I add that I have deliberately not requested documents such as strategy papers, briefings for negotiations and so on. I seek only the quantitative and qualitative factual basis and the analysis of that factual basis.

26. The Defendants' primary concern is that the disclosure of these documents will prejudice the UK's negotiating position with the EU, by revealing strengths and weaknesses that would be exploited for negotiating advantage. This point is addressed in the witness statement of Alasdair Smith, with which I agree. I add that, from my own experience of working in Brussels, I do not believe that these documents would have any real bearing on how the EU approaches its negotiations.
27. The EU is far more likely to rely on its own analysis than that of the UK. It has also published a large number of documents that seem to me to be directly comparable to the types of document I seek. One of the best sources of such documents is the European Parliament's web page entitled "Brexit Impact Studies".¹ Jolyon Maugham and Alasdair Smith exhibit to their witness statements examples of the reports published on that page. These publications seem to me to support the point that negotiating positions are not harmed by the disclosure of factual analysis and forecasts of this kind.
28. It is also important to bear in mind that, by virtue of the UK's membership of the EU over the last few decades, the EU already has its own very detailed knowledge of the UK economy, including on a sectoral basis. I do not believe that the Sectoral Studies or the HM Treasury Report I seek will provide the EU's negotiators with helpful data or analysis that it does not already have.
29. In any event, my view is that the premise of this objection about harming our negotiating position is fundamentally wrong. The Government has consistently presented these negotiations as a zero sum game, i.e. a process in which any gains or benefits to one side necessarily give rise to equivalent losses or disadvantages to the other side. This lends itself to a narrative about winners and losers, and is the premise for the objection that any useful insight the EU might gain would translate into a detriment for the UK. I firmly believe that this approach is wrong. Based on my experience in the European Parliament, I believe that these negotiations could and should have been approached from the perspective of mutual benefit, or at least mutual acceptability, rather than an adversarial winner-loser approach. In other words, my view is that the fundamental objection behind the Defendants' refusals of our

¹ <http://www.europarl.europa.eu/unitedkingdom/en/ukevents/brexit/brexitstudies.html>.

request – namely the alleged risk of harm to our negotiating position – is not only unpersuasive as a matter of fact, but a misconception of the Government’s own making.

30. I am also aware that the Defendants have cited “commercial confidentiality” as a ground for withholding the requested documents. As I understand it, this language has emerged very belatedly as part of the Defendants’ explanations for their positions.
31. I am not a lawyer, but – based on the Defendants’ explanations to date – I do not understand how any duties of confidence are said to arise here. It is worth noting that if private companies met with Government departments in order to provide their input on Brexit negotiations, any such meetings should be a matter of public record for the purposes of transparency around private-sector lobbying of Government.
32. My view is therefore that the Defendants have provided no persuasive justification for refusing to disclose the Sectoral Studies. When weighed against the overwhelmingly strong public interests in disclosure of those documents, the Defendants’ blanket refusals are, in my view, irrational and wholly disproportionate. Their refusal even to confirm or deny whether the HM Treasury Report is held is unexplained, and strikes me as ludicrous.
33. I add also that if some or all of the Sectoral Studies paint a bleak picture of the likely economic impact of Brexit, then that is no reason to withhold them. People need to understand and plan for the likely consequences, especially if the outlook is bad. Moreover, if the quality of these Sectoral Studies is poor, that again strengthens rather than weakens the case for disclosure in the interests of accountability.

F. Conclusion

34. I make no secret of my opposition to Brexit. The points I make in this statement, however, are equally cogent whatever one’s view of Brexit’s merits. If Brexit is to happen, it is essential that public and parliamentary debate about the proposed terms of Brexit is as well-informed as possible. This is essential for ensuring that those making policies, deals and decisions on our behalf are held to account for their statements and actions, and it is essential for ensuring that the UK leaves the EU on

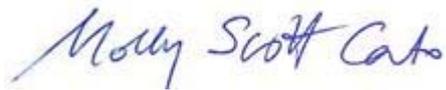
the best possible terms. It is also essential that people be helped to understand how Brexit is likely to affect the economic sector in which they work, so that they can plan for their economic futures.

35. Without the documents we seek, none of this can happen. That is why I say the Defendants' refusals are irrational, disproportionate and indeed unconscionable. I respectfully ask the Court to grant this application and to order the Respondents to disclose the Sectoral Studies and (assuming it exists) the HM Treasury Report.

36. I also respectfully ask the Court to grant our application for this matter to be dealt with on an urgent basis. There is very little time before Brexit takes effect: there is an urgent need for accountability, informed public debate and effective practical planning, and thus an urgent need for the disclosure of these documents.

STATEMENT OF TRUTH:

I believe that the facts stated in this witness statement are true.



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7 December 2017