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| <b>Institution:</b> University of Liverpool   |                        |  |
| <b>Unit of Assessment:</b> Law  |                        |  |
| <b>Title of case study:</b> The UK's Withdrawal from the European Union: Influencing Policy Making and Improving Public Understanding   |                        |  |
| <b>Period when the underpinning research was undertaken:</b> 1 June 2008 – 1 June 2020  |                        |  |
| <b>Details of staff conducting the underpinning research from the submitting unit:</b>  |                        |  |
| <b>Name(s):</b> Michael Dougan  | <b>Role:</b> Professor | <b>Period(s) employed by submitting HEI:</b> 1 June 2004 – now |
| <b>Period when the claimed impact occurred:</b> 1 August 2013 – 31 December 2020  |                        |  |
| <b>Is this case study continued from a case study submitted in 2014?</b> N  |                        |  |
| <p><b>1. Summary of the impact</b></p> <p>Withdrawal from the EU is a fundamental change in UK national policy. Dougan produced a substantial and rigorous body of analysis to inform and influence a wide range of beneficiaries. A) Dougan played an integral role in high-level policymaking: his written and oral evidence to numerous parliamentary inquiries, plus specialist advice and training for senior civil servants, exerted a clear and direct influence on major Brexit decisions. B) Dougan translated key research findings for the wider public: his "Brexit videos" were viewed over 11 million times online and his face-to-face "Brexit lectures" were attended by over 20,000 people – with extensive evidence of impacts upon audience understanding, voting choices and campaign behaviours.</p>   |                        |  |
| <p><b>2. Underpinning research</b></p> <p>Dougan is an established authority on EU constitutional law. Before the 2016 referendum, he published extensively on the legal framework governing EU-UK relations [e.g. 3.1-3.3]: including critiquing the extensive EU institutional reforms agreed by the Member States under the Lisbon Treaty 2007; and analysing the novel restrictions upon EU decision-making imposed unilaterally by the UK through the European Union Act 2011. That research directly addressed legal issues that proved central to the UK's political and public debate during 2016: for example, clarifying the contemporary meaning of and limits to "national sovereignty"; identifying the true nature and extent of EU legal competences; and assessing the scope for national input into/control over EU decision-making. As such, it provided the foundation for Dougan's impact activities in the period leading up to the 2016 referendum.</p> <p>The UK's decision to leave the EU prompted the emergence of an entirely new field of "Brexit Law". That body of law had to be created and constructed virtually from scratch, with a host of novel legal challenges and conundrums to be identified and analysed, all on an urgent basis and under rapidly evolving circumstances. Dougan is one of the chief scholarly architects of and contributors to this new branch of legal research – tackling head-on the most pressing and fundamental questions posed by Brexit [e.g. 3.4-3.6]. That research provided the primary basis for Dougan's impact activities after the 2016 referendum.</p> <p>Much of Dougan's work on "Brexit Law" concerned the EU-UK withdrawal negotiations under Article 50 of the Treaty on European Union (TEU). For instance: he published one of the earliest studies of the legal framework governing efforts to avoid a "hard border" on the island of Ireland after the UK's decision also to leave the Customs Union and the Single Market [see 3.4]. He also produced the first major academic analysis of proposals for a post-withdrawal "transition period" designed to maintain the status quo while further negotiations continued [3.5]. His comprehensive legal analysis of the UK's final Withdrawal Package critically evaluates other key questions: e.g. governance of the EU-UK relationship; the settlement of disputes and role of the EU's Court of Justice; and the future protection of existing citizens' rights [3.6].</p> <p>Another body of research focused on the implications of withdrawal from the EU for the future evolution of the UK legal system itself. Dougan's edited collection, <i>The UK after Brexit: Legal and Policy Challenges</i>, was the first major scholarly collection in this field of "Brexit Law" – laying out a comprehensive research agenda for investigating the novel phenomenon of "de-Europeanising" the</p> |                        |  |

UK legal order in both the short and longer terms [see 3.4]. Other publications (additional to those listed in Section 3) explored particular Brexit challenges in greater detail: e.g. the urgent need to preserve basic standards of legal continuity and certainty by stabilising “EU-derived law” within the UK legal system; the negative impacts of withdrawal upon the future protection of fundamental rights within the UK; and the serious challenges involved in defining and managing the UK’s own “Internal Market” in goods and services after the elimination of its EU legal underpinnings.

### 3. References to the research

**3.1:** “The Treaty of Lisbon 2007: Winning Minds, Not Hearts” (2008) 45 *Common Market Law Review* 617-703 [peer reviewed article; available on request]

**3.2:** *Wyatt and Dashwood’s European Union Law* (Hart Publishing, 6<sup>th</sup> ed, 2011) Chapters 1-5, 8 and 10 entirely rewritten by Dougan in light of the Lisbon Treaty reforms [textbook; available on request]

**3.3:** (jointly with M Gordon) “The European Union Act 2011: ‘Who Won the Bloody War Anyway?’” (2012) 37 *European Law Review* 3-30 [peer reviewed article; available on request]

**3.4:** *The UK After Brexit: Legal and Policy Challenges* (Intersentia Publishing, Cambridge, 2017) including “Editor’s Introduction” and chapter entitled “The ‘Brexit’ Threat to the Northern Irish Border: Clarifying the Constitutional Framework” [edited collection; available on request]

**3.5:** “An airbag for the crash test dummies? EU-UK negotiations for a post-withdrawal ‘status quo’ transitional regime under Article 50 TEU” (2018) 55 *Common Market Law Review Special Issue 2/1* 57-100 [peer reviewed article; see REF2]

**3.6:** “So Long, Farewell, Auf Wedersehen, Goodbye: The UK’s Withdrawal Package” (2020) 57 *Common Market Law Review* 631-704 [peer reviewed article; see REF2]

### 4. Details of the impact

Withdrawal from the EU is one of the most important developments in UK policy since 1945. The debate both before and after the 2016 referendum involved profound political contestation, prompted widespread allegations of misinformation and generated unprecedented uncertainty in almost every sphere of public life. Dougan’s research provided a rigorous body of evidence and analysis that directly informed and influenced a wide range of beneficiaries: from parliaments and senior civil servants (**Section A**); to the wider public, stakeholders and the media (**Section B**).

#### A) Influencing Brexit Policymaking by Parliaments and Senior Civil Servants

Dougan made extensive contributions to high-level policymaker understanding of the legal issues raised by UK withdrawal from the EU – directly tackling important challenges as they arose, so as to provide rapid and reliable critical analysis for use by key institutions and officials in their decision-making. Those contributions can be grouped into 3 main categories.

**First**, Dougan was called upon to provide written and oral expert evidence to numerous UK parliamentary inquiries into the UK’s relationship with the EU both before and after the 2016 referendum. This improved Parliament’s understanding of the relevant legal issues, assisted in its scrutiny of Government action and informed its decisions about major Brexit questions. Dougan’s parliamentary work included invitations to make personal appearances before the Treasury Committee (twice), Exiting the EU Committee (twice), Procedure Committee, Northern Ireland Affairs Committee, European Union Select Committee and EU Justice Sub-Committee.

Official reports evidence Dougan’s direct influence on parliamentary thinking by both MPs and Lords at Westminster. For example: the Treasury Committee explicitly endorsed Dougan’s warnings about the likely negative impacts of Brexit upon EU-UK trade in services as well as the UK’s continuing ability to benefit from existing EU trade agreements [5.1.1]; while his insights into the legal issues underpinning the management of EU external frontiers were extensively quoted in a series of key Commons reports exploring the options available to avoid a “hard border” in Northern Ireland [5.1.2]. Similarly: the European Union Select Committee directly adopted Dougan’s call for the Government properly to synthesise and publicise the findings of its own *Review of the Balance of Competences between the UK and the EU*, as one of the key recommendations from their parliamentary enquiry into the issue [5.1.3]; and Dougan’s analysis of the nature and limits of EU competence was described as “particularly helpful” in assembling the detailed evidence for, and formulating the overall conclusions of, a House of Lords investigation into the future of UK human rights protection, taking into account the legal complexities surrounding EU membership [5.1.4].

Dougan also contributed to parliamentary understanding of the challenges posed by Brexit at

the level of the European Union. He was commissioned by the European Parliament to produce a detailed study exploring the legal issues at stake in any future EU-UK trade relationship, including a critical evaluation of the UK Government's requests for privileged but essentially asymmetrical access to the Single Market. The key findings of that research report were presented in person and were subject to questioning and further exploration by MEPs at a dedicated meeting of the European Parliament's Constitutional Affairs Committee in Brussels on 24 May 2018 [5.2].

**Secondly**, Dougan engaged closely with senior policymakers across the UK to assist their understanding of key issues surrounding Brexit. Before the 2016 referendum, Dougan was appointed as an External Adviser to the Cabinet Office for the *Balance of Competences Review* – directly assisting the central Whitehall coordinating team by scrutinising and critiquing draft departmental reports to ensure their accuracy and rigour prior to official publication. He also provided extensive written and oral evidence of his own to a wide range of government departments, which was then cited throughout the *Review's* final reports: for example, Dougan's contributions explicitly informed official understanding and public communication of the EU principle of subsidiarity, as well as the domestic legal status of EU fundamental rights [5.3.1-5.3.2].

After the referendum, Dougan provided dedicated legal training in Whitehall through the delivery of cross-departmental “masterclasses” organised by the Foreign and Commonwealth Office, exploring major challenges as they arose during the UK's negotiations with the EU under Article 50 TEU: e.g. concerning the disputed scope of the European Court of Justice's jurisdiction under the draft withdrawal treaty (June 2017); and exploring the vulnerability to legal challenge of the detailed proposals for a transition period (May 2018). In 2019-2020, Dougan was commissioned by the FCO to design and deliver a bespoke training programme on the EU legal order from a UK perspective. That programme consisted of: an online module accessible to policy officers working across the UK civil and diplomatic service; a collection of podcasts synthesising the “state of the art” concerning key EU competences and policies; plus a series of face-to-face workshops for small teams of officials actively engaged in EU-UK relations and the Brexit negotiations. The Head of the Future of Europe Department at the FCO testifies that Dougan's training “played a seminal role in building the level of capacity and expertise needed across HMG both for the future relationship negotiations of 2019-20 and for managing our ongoing relationship with the EU.” [5.4.1].

Indeed, Dougan regularly provided advice and assistance directly to senior civil servants across the UK as regards multiple Brexit challenges during the formative stages of policymaking. For instance, Dougan worked closely with the Scottish Government on issues specifically affecting the devolved administrations: e.g. providing pre-release input into major publications (including the keynote 2016 *White Paper on Scotland's Place in Europe*); and producing a ministerial-level research briefing on the likely implications of both Brexit and Scottish independence for the future functioning of the Common Travel Area between the UK and Ireland (May 2017). Similarly, Dougan was invited to participate in official deliberations concerning the design and content of the UK Government's draft legislation aimed at safeguarding basic standards of regulatory continuity and legal certainty during the immensely complex process of leaving the EU – widely regarded as the most important and controversial constitutional bill in post-war history and duly adopted as the European Union (Withdrawal) Act 2018. The Director of Europe Legal Group (Government Legal Service) attests that “[Dougan's] comments and insights played a significant part in refining the legislation in preparation for its passage through Parliament” [5.4.2].

**Thirdly**, Dougan played a particularly active and significant role in shaping policy thinking about the entirely novel yet fundamental question of how to design and operate the UK's own “Internal Market” in goods and services after withdrawal from the EU. He was invited to a series of civil service-academic “brainstorm” meetings in Edinburgh (November 2018, August 2020 and November 2020), Cardiff (June 2018 and December 2018) and London (April 2019) aimed at thrashing out key issues and identifying viable options; and also engaged in his own detailed discussions with the cross-departmental policy team within Whitehall responsible for modelling the UK internal market (meetings held at the Department for Business, Energy and Industrial Strategy in February 2019, October 2019 and December 2020). The Deputy Director of UK Internal Market at BEIS attests that “[Dougan] has given us clear and authoritative advice; his contributions to our deliberations on UK internal trade have been consistently helpful, constructive, and insightful, enabling productive development in our policy thinking” [5.4.3].

Dougan's influence proved particularly strong in Scotland, where the UK Internal Market debate raised acute concerns about the potential impact on devolution. In summer 2019, Dougan provided

written and oral evidence to the Scottish Parliament – work that was then cited by MSPs both to highlight their reservations about the UK Government's current thinking and to support calls for greater engagement with this controversial issue [5.5.1-5.5.2]. When the UK Government's Internal Market Bill was published in September 2020, Dougan was again invited to provide written analysis and oral evidence. The Scottish Government directly relied on that research to support its official recommendation that the Scottish Parliament should refuse legislative consent to the draft UK legislation [5.5.3]. Dougan's evidence also featured prominently in the parliamentary assessments and recommendations produced by the responsible Holyrood committees – providing an important part of the research base used by MSPs to support and illustrate their far-reaching political objections to the Internal Market Bill [5.5.4-5.5.5]. On the basis of those assessments, the Scottish Parliament indeed voted to refuse legislative consent on 7 October 2020 – with Dougan's evidence again being cited in support, during the parliamentary debates, by MSPs opposed to the Bill [5.5.6].

### ***B) Providing Rigorous and Accessible Information to the Public, Stakeholders and Media***

Dougan created and delivered a major programme of resources and activities for the benefit of stakeholder and wider public engagement with Brexit. By those means, he sought to guide citizens and activists through the UK's extraordinary time of political change, and to challenge the frequent problem of legal and factual disinformation, by providing an extensive body of rigorous yet accessible academic insight. The resulting impacts can again be grouped into 3 main categories.

**First**, Dougan effectively harnessed the power of social media as a means of achieving mass engagement with and learning from his academic research. A 25-minute lecture (made available on 16 June 2016) criticised "dishonesty on an industrial scale" during the referendum campaign and provided a frank overview of the key issues at stake in the Brexit vote for the benefit of non-academic audiences. In the final few days before 23 June 2016, that video was watched approx. 7.9 million times on the University of Liverpool's websites alone – generating vast numbers of online comments and prompting extensive public discussion in other online fora [5.6.1]. For example, Grazia Daily described Dougan as "the expert everyone's turning to"; while his work was recommended by a string of high profile celebrities such as Gary Lineker, James Corden and Lily Allen – an example of "influencing the influencers" as a means of connecting with audiences who might not regularly follow or engage in political debate [5.7.1]. It is clear from online engagement data that significant numbers of individual citizens relied on Dougan's analysis to inform their views and influence their voting behaviour: "you are why I voted to remain", "this video... secured my vote to remain" and "I was vacillating until I saw [this video] and that made up my mind big time" are typical of the many thousands of messages Dougan himself received [5.7.2].

After the referendum, Dougan continued to produce regular updates on important aspects of the evolving Brexit debate (e.g. at key moments in the EU-UK withdrawal negotiations); and to raise awareness of other crucial issues often neglected in mainstream debates (e.g. identifying at an early stage the likely difficulties facing the Irish border). Those videos again attracted extensive public engagement and debate: combined total views on the University of Liverpool's online channels alone amount to approx. 3.6 million [5.6.1]. "[Y]our YouTube videos... turned me into a passionate pro-European. Thank you for educating me" [5.7.2]. Dougan joined Twitter in September 2019, in order to provide more immediate commentary on the Brexit negotiations as they entered their final stages: since then, his messages have been viewed over 68 million times and again generated vast amounts of public comment and debate [5.6.2]. For instance: Dougan's "step-by-step" threads (13 and 15 September 2020) explaining the serious implications of the UK Internal Market Bill, specifically for plans to avoid a "hard border" across the island of Ireland, were read over 1.5 million times within a week [5.6.3]. According to Professor Anand Menon (Director of *The UK in a Changing Europe*), "[Dougan is] having an enormous impact on the debate... He is widely respected and listened to" [5.7.3].

**Secondly**, Dougan delivered a far-reaching programme of Brexit lectures and other face-to-face events to a wide range of non-academic beneficiaries right across the UK (from Edinburgh to Eastbourne, Newcastle to Penzance) and the EU (from Belgium to Poland, Italy to Sweden). Those events provided extensive opportunities for personalised engagement with the interests and concerns of particular stakeholders as well as interested citizens. For example, Dougan's third public lecture in Stratford-upon-Avon (November 2019) attracted over 300 people – "one of the most brilliant talks I've ever heard", "[he has a] unique ability to explain complex legal issues step-by-step" [5.8.1]. Liverpool also organised its own public-facing events, working with external



partners to reach more diverse audiences: e.g. a walk-in “EU referendum Q&A” in the Black-E Community Centre, located in Liverpool city centre, was attended by approx. 50 citizens (ESRC-funded, May 2016); while lectures for the congregation at Liverpool Cathedral attracted over 200 attendees (June and October 2016): “informative, fun and provoking... provided clear informed input into a complex debate that was welcomed and respected by all” [5.8.2]. Altogether, we estimate that Dougan has engaged in such face-to-face meetings with well over 20,000 people.

Another important impact of Dougan’s activities has been to provide concrete support for the work of pro-European campaign groups across the UK. For example: Dougan gave the inaugural public lecture for *Bath for Europe* in October 2016; over 850 people attended and “as a result, we acquired a whole new band of volunteers to help with the campaign” [5.8.3]. Similarly, Dougan collaborated frequently with *Liverpool for Europe* by speaking at public debates and training cohorts of volunteers: “[he] has had an immeasurable influence upon our work... He has enabled us to acquire knowledge and grow in intellectual confidence as campaigners... He has helped to attract new members to our group. Most of all, in an era of fake news and false assertion, his work has been a reference point for us to research, clarify and confirm” [5.8.4]. After the COVID-19 lockdown, much of this public-facing work was immediately transferred online: throughout 2020, Dougan delivered regular “Zoom talks” (e.g. for *Oxford for Europe*, *Labour for a European Future* and the *West Belfast Community Festival*) to groups of citizens (often numbering 200-300 at a time) keen to learn about current issues such as the Brexit transition period, EU-UK trade negotiations and plans to manage the Irish border.

**Thirdly**, Dougan’s work has been utilised extensively by the traditional print and broadcast media. He makes regular appearances on local, national and international outlets to discuss Brexit issues: for instance, appearing as a guest on BBC World Questions’ “Brexit Special” in September 2016 (to an estimated global audience of 66 million). Newspapers frequently employ Dougan’s research to inform their coverage of Brexit developments: not only regional and national press in the UK; but also, e.g. in Germany, France, the USA, Brazil and China. Take the month of March 2019 by way of illustration: *The New York Times* reported on Dougan’s critical evaluation of the UK Government’s attempts to salvage its “Irish backstop” proposals just hours before a crucial Commons vote; *The Boston Globe* quoted his analysis of the tensions revealed by Brexit between post-truth populism and evidence-based analysis; while *Le Figaro* carried a full-page interview with Dougan explaining the legal implications of Brexit for the EU as well as the UK [5.9.1-5.9.3].

In addition, Dougan provided extensive behind-the-scenes input and support to journalists and opinion-shapers covering the UK’s withdrawal from the EU – from *Channel 4 News* to *Bloomberg*, *Al Jazeera* to *The [Scottish] National*. For example: of Dougan’s assistance during the 2016 referendum campaign, the BBC writes that it was “fantastically helpful... to have your expertise and guidance on some of the legal issues at the heart of the EU referendum. It has been of enormous benefit to the BBC’s coverage of areas such as sovereignty... Your ability to explain with real, non-lawyer-like, clarity the complexities of the issues and the detail of the treaties has been invaluable... Having access to clear expert advice makes a real contribution to the information base upon which people will make up their minds” [5.9.4].

## 5. Sources to corroborate the impact

All sources referenced in Section 4 are provided as detailed Evidence Files grouped as follows:

**5.1:** UK parliamentary reports (5.1.1-5.1.4) with references to citations of Dougan’s evidence

**5.2:** copy of Dougan’s final report, to the European Parliament, on future EU-UK relations

**5.3:** *Balance of Competence Review* reports (5.3.1-5.3.2) with references to citations of Dougan’s evidence

**5.4:** official testimonials from the Foreign & Commonwealth Office (5.4.1); Government Legal Service (5.4.2); Department of Business, Energy & Industrial Strategy (5.4.3) – **CONFIDENTIAL**

**5.5:** official Scottish Government and Scottish Parliament documents relating to the UK Internal Market proposals and Bill (5.5.1-5.5.6) with references to citations of Dougan’s evidence

**5.6:** key social media statistics relating to Dougan’s online videos (5.6.1); Twitter activities (5.6.2); “step-by-step” threads about the UK Internal Market Bill’s implications for the Irish border (5.6.3)

**5.7:** screenshots of all online quotations, comments etc as featured in Section 4 (5.7.1-5.7.3)

**5.8:** testimonials from *Stratford for Europe* (5.8.1); The Revd Canon Paul Rattigan, re Liverpool Cathedral (5.8.2); *Bath for Europe* (5.8.3); *Liverpool for Europe* (5.8.4)

**5.9:** media coverage as referenced in Section 4 (5.9.1-5.9.3) plus testimonial from BBC (5.9.4)