

Institution: University of Cambridge		
Unit of Assessment: UoA18 Law		
Title of case study: Brexit and EU Migration: Bringing legal expertise to public debate and UK policy making		
Period when the underpinning research was undertaken: 2016 to 2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s):	Role(s) (e.g. job title):	Period(s) employed by submitting HEI:
Professor Catherine Barnard	Professor of European and Employment Law	Oct 2004 - present
Period when the claimed impact occurred: 2016 to date		
Is this case study continued from a case study submitted in 2014? N		
1. Summary of the impact (indicative maximum 100 words)		
<p>Through her research on EU Law and specifically on EU migration, Professor Catherine Barnard has played a key role in informing policy makers and the public on the legal aspects of Brexit before, during and since the 2016 EU Referendum. Barnard provided legal input into a series of reports published by the ESRC-funded <i>UK in a Changing Europe</i> initiative and worked directly with MPs, policy makers, journalists, and civil society organisations to inform Brexit debates. MPs and policy makers attest to Barnard's contribution and her expertise has been much in demand on national radio and television in high profile discussions during the Brexit process.</p>		
2. Underpinning research (indicative maximum 500 words)		
<p>The research underpinning this case study stems initially from Barnard's deep expertise in EU law and trade law. Barnard is the author of two leading undergraduate textbooks in EU law [R1, R2]. The first is now in its sixth edition and the second in its third edition. In addition, she has published extensively on the impact of EU law on national law, looking in particular at labour and migration law issues.</p> <p>Barnard has also carried out empirical research on these issues under a series of ESRC-funded grants. She studied the use (or underuse) of employment tribunals by EU-8 migrant workers in the UK and the implications of the Brexit process for them and other vulnerable workers in the UK labour market [R3, R6]. She also examined the narrative of EU migrants being lured to 'honeypot Britain' by generous welfare benefits. This research drew on a range of methods including observing employment tribunals and working with the case files of the Free Representation Unit (FRU). Key findings were that there was little evidence of migrants coming to the UK simply to claim benefits, and that those appearing before tribunals were often long-term residents [R5].</p> <p>A further strand of research has looked at Brexit and trade. The ESRC-funded <i>UK in a Changing Europe</i> initiative funded Barnard to work with Emilija Leinarte on mobility provisions in Free Trade Agreements (FTAs) as a potential template for the future UK-EU trade deal. The research involved analysing the citizens' rights provisions of the UK-EU Withdrawal Agreement and the evolution of the concept of EU citizenship.</p>		

UK in a Changing Europe also supported Barnard's research on legal options for free movement post Brexit. Working with Sarah Fraser Butlin, Barnard's contribution looked at the history of the evolution of the EU rules on free movement, the origins of the idea, and how it has developed since the early 1950s [R7]. The work proposed different legal arrangements for 'managed migration' options, which included more controls for the host nation along with retaining some of the benefits of existing EU free movement rules. Most recently in the ESRC-funded *Working Hard or Hardly Working* (2019-2022), Barnard has worked with Fiona Costello and Sarah Fraser Butlin looking at the impact of Brexit on migrant communities, initially through the operation of the EU Settled Status scheme (EUSS), and subsequently through the analysis of the work of GYROS, a welfare advice charity in Great Yarmouth, tracing the evolution of claims brought and how they are dealt with.

3. References to the research (indicative maximum of six references)

[R1] C. Barnard, *The Substantive Law of the EU: The Four Freedoms*, 5th edition, (Oxford, OUP, 2016), ISBN 978-0-19-874995-0, pp626).

[R2] C. Barnard and S. Peers (eds), *EU Law* (Oxford, OUP, 2016), 356-401.

[R3] C. Barnard, A. Ludlow and S. Fraser Butlin (2018) 'Beyond Employment Tribunals: Enforcement of Employment Rights by EU-8 Migrant Workers', *Industrial Law Journal* 47, 2, 226-262, <https://doi.org/10.1093/indlaw/dwx020>

[R4] C. Barnard (2019) 'So Long, Farewell, Auf Wiedersehen, Adieu: Brexit and the Charter of Fundamental Rights', 82 MLR 350-366 <https://doi.org/10.1111/1468-2230.12407>

[R5] C. Barnard and A. Ludlow (2019) "'Undeserving' EU Migrants 'Milking Britain's Benefits'? EU citizens before social security tribunals', *Public Law*, 260-280. <https://doi.org/10.17863/CAM.39301>

[R6] Barnard and Ludlow, 'Enforcement of Employment Rights by EU-8 migrants in Employment Tribunals' (2016) 45 ILJ 1-28. <https://doi.org/10.1093/indlaw/dwv034>

[R7] Barnard and S. Fraser Butlin, 'Free movement vs. fair movement: Brexit and managed migration' (2018) 55 *Common Market Law Review* 203-226. [\[Link\]](#)

[R8] C. Barnard and A Menon, 'What would trading on WTO terms mean?' [UKCE](#) short report and longer [report](#)

[R1, 32, R3, R4, R5, R6, R7] are all published by presses and journals of international standing. [R8] is a report based on the above research.

[ESRC UK in a Changing Europe](#), Honey Pot Britain (2016) ES/N015436/1_project GBP160,000, PI C. Barnard.

[ESRC UK in a Changing Europe](#), Free movement and the EU, PI J. Portes, GBP300,000 in total ES/R000824/1.

[ESRC UK in a Changing Europe](#), Working hard or hardly working (2019-2022), GBP600,000, ES/T000716/1, PI C. Barnard.

4. Details of the impact (indicative maximum 750 words)

Advancing public knowledge and understanding

Barnard used a variety of formats (townhall events, podcasts, vodcasts, blogs as well as a film) to chart what the UK public wanted out of Brexit in respect of migration and to contribute to improved public understanding of Brexit-related issues. Prior to the 2016 referendum, she was involved in numerous 'town hall' and 'Question Time' style events (Norwich 27.01.16; Exeter 25.06.16; Aylsham 4.05.16; Spalding 23.05.16; Canterbury 31.05.16 and Belfast 07.06.16); a panel discussion at UCL, 'Brexit Divisions II' 22.03.16; and a students' mini-referendum and quick response event). The vodcast 'What would Brexit mean for free movement?' had over 11,000 views. See [S1] for further details of all the above.

Barnard also undertook extensive media engagement (see [S2], with details of over 700 interviews). These included: interview on immigration, BBC Trending/Google Trending, Nottingham (16 June 2016); interview with Time Magazine about the migration crisis (3 June 2016); interview with *Sky News* on migration and deportation (2 June 2016); interview, *ITV*

News at 10 about migrant rights (1 June 2016); 'Migrant workers – lessons from the research – and round table with EU migrant workers in the UK', Radio Cambridgeshire (31 May 2016); interview in *International Business Times*, New York, on Brexit and free movement (18 May 2016); free movement of workers in the agriculture sector, *Farmers Weekly* (6 May 2016); Migration and the EU, interview with LBC/Heart FM, (29 April 2016); Brexit and migration, *ITV news*, (13 April 2016); would Brexit make it harder to hire EU workers?, *The Guardian*, (30 March 2016); World at One, interviewed on immigration and changes introduced by renegotiation deal (20 Feb 2016). See [S3] for details of media impacts. These engagements drew directly on Barnard's migration research (in particular [R4], [R5]).

Extensive public engagement continued after the referendum. On 22 May 2017 she made a launch of a report and film on public attitudes in the aftermath of the 2016 vote. She took part in the Citizens' Assembly on Brexit, 9-10 Sept 2017, organised by UCL's Constitution Unit, which involved working closely with EU nationals contemplating the future of migration. The demographically mixed audience voted in favour of limited controls on migration. It was followed up by a briefing session for MPs in Westminster 13 Dec 2017, discussed by Polly Toynbee in the *Guardian* ([S4]).

Barnard also appeared on television (*Question Time*, *BBC Breakfast*) and radio (*Any Questions*, *Brexit for the Perplexed*, *Law in Action*, the *Today* programme, *The World Tonight*, *World at One* and regularly on 5Live). Examples of work in the print media include: *Prospect*, 2 Nov 2017, interviewed and featured in 'Can Britons keep their citizenship after Brexit?'; *Economist*, 12 Apr 2017; briefing discussion with Anushka Asthana, *Guardian*, on citizens' rights, 26 June 2017; briefed and was cited in 'Would Brexit Violate EU citizens' rights', *EU Reality Check*, BBC, 4 July 2016); NS interview with John Humphrys on *Today* and *BBC World*; interview on *Channel 4 News*' special programme on migration post Brexit with Krishnan Guru-Murthy, 22 June 2018. The Public Policy Editor at the *Financial Times* describes in his testimonial how he has 'often relied' on Barnard to inform his reporting in much of his coverage of Brexit ([S4]). In addition, the BBC Political Correspondent for the World Service has added on air and in correspondence that he and many other journalists are hugely in debt to Barnard for her willingness to share her expertise and learning, a willingness the Correspondent refers to as a 'public good'. [S5]

Barnard launched her own podcast @2903cb, made further podcasts with UKICE, and participated in University of Cambridge's *Talking Politics* podcast (REF2021 case study being submitted to UoA19).

From a listener to the 5Live, 22 Jan 2019: '*...I just wanted to say how helpful I found your explanation of the Brexit options on the Emma Barnett programme this morning. I'm just the man on the Clapham Omnibus. So nice to have things explained, not simplistically, but clearly.*' [S5]

Briefing policy makers

Barnard used research findings [R4, R5, R6, R7, R8] as well as her broader expertise in EU law [R1, R2] to advise and brief a range of politicians and civil servants, from the UK and EU, on legal aspects of the Brexit process. This included briefings to MPs in the SNP, Conservative Party, the Labour Party and the Liberal Democrat Party (see [S6]). She briefed a core group of Conservative MPs, on the day of the meaningful vote, on 'What is a Customs Union?'; briefed Rory Stewart MP on the differences between a customs union and a free trade area; worked with House of Commons library staff and MPs on the impact of 'no deal'; gave evidence to select committees, including the inaugural meeting of the Brexit select Committee, the Home Affairs Select Committee and the Treasury Select Committee; briefed the EU's Taskforce on Article 50 negotiations with the United Kingdom (TF50, led by Michel Barnier) and German Chancellor Angela Merkel's Brexit team in Berlin on the politics and policy of withdrawal from the EU in the UK; briefed the Cabinet Office and the Foreign Office on the European Union (Withdrawal) Act 2018, the Home Office on migrant rights, and the Department of International Trade on GATS; gave confidential briefings to the Bill team on the

early text of the EU(W)Bill; and took part in the Bingham Law project, led by Dominic Grieve MP, briefing, inter alia the Solicitor General on how the EU(W)Bill could be improved.

Feedback and reports from government officials indicate that Barnard's work had tangible impacts on Brexit debates. A blog post on the problems of putting a definite Brexit date in the legislation was picked up and cited extensively by the Duke of Wellington in the House of Lords and led to an amendment (which was then partially reversed in the Commons). Evidence given to the Justice Select Committee was cited by Baroness Ludford in further debates on the EU(W)B ([S7]).

Barnard worked directly with parliamentarians on what a future UK migration policy might look like. She gave evidence to the House of Lords Select Committee (Justice and Home Affairs) on Brexit, human rights, free movement of persons, and alternative remedies, on 2 November 2016. The report was published and featured in the Guardian which referred to evidence Barnard gave. She gave evidence to the House of Lords Internal Market Select Committee on GATS, 20 October 2016; to the House of Commons Home Affairs Select Committee, on the alternatives to free movement of persons with Mats Persson, 27 February 2018; and to the House of Lords European Affairs Select Committee and Justice Committee on the current state of play and the parliamentary infrastructure necessary for scrutiny post Brexit, 22 January 2019 ([S8]).

Barnard briefed a number of MPs on migration issues pre- and post-Brexit. She was instructed to draft advice for Ian Murray MP when considering an amendment to the Customs Bill (11 July 2018), having already been involved in working on and drafting the EU Citizens Right to Stay Bill prior to its first reading 12 July 2016 [S2 p. 49]. She also wrote a briefing for Yvette Cooper MP, Chair of the Home Affairs Select Committee, on options available under the EU Citizens Rights Directive. She worked with Peter Hain on the drafting of questions to government ministers on migration; for the government's non-response see. On 2 July 2019, the House of Commons European Scrutiny Committee opened an inquiry into post-Brexit scrutiny of EU law and policy and what changes would be needed to the current scrutiny system, once the UK was no longer involved in EU decision-making. Barnard was called as one of the first witnesses before the committee. [S10]

Barnard briefed Hilary Benn MP, Chair of the House of Commons Select Committee on the Future Relationship with the EU (formerly the Select Committee on Exiting the EU), on a number of occasions. She advised him on the drafting of an amendment to the Withdrawal (Amendment) Bill on 22 October 2019, spoke to an adviser to his Select Committee adviser on Brexit and higher education on 3 April 2017, and gave a keynote speech to an All Party Parliamentary Group dinner on 30 October 2017 [S2 p.47, 54, 65]. Hilary Benn writes in a testimonial:

'Professor Barnard has made an important contribution to the work of the UK in a Changing Europe project which has been immensely valuable to me as Chair of the [Select Committee] and to the Committee's consideration of the many complex issues raised by Brexit, including migration and interpretation of treaties and EU law. We have greatly benefited from Professor Barnard's testimony in front of the Committee. The fact that she has appeared before us on so many occasions is a testament to her in-depth knowledge and her ability to explain complex issues. I also know from the Committee's team of clerks how valuable they have found the opportunity to share thoughts and ideas with Professor Barnard.' [S9]

Barnard also engaged widely with civil servants on migration issues. She contributed to a private roundtable with DExEU/Home Office civil servants on the future of immigration policy (17 July 2018). She gave a number of invited lectures on migration, including to the Bank of England law and policy teams and to the Bank of England legal team on the Withdrawal Agreement and citizens' rights and dispute resolution. [S2 p. 49] In response to a lecture she gave to the Home Office Legal Advisors on migration policy: *'We have received great feedback from colleagues on your session. You managed to bring great clarity and authority to a really*

complex set of issues'. (Home Office Legal Adviser and Director General Legal Services Directorate C, Government Legal Department [S11]). Barnard was also involved in a private briefing with officials on the Immigration White Paper.

In addition, Barnard has been sought out to talk on the future of migration policy to audiences outside the UK. She made presentations to the EFTA Court, the FIDE conference, the European Law Academy (see [S1] for details).

5. Sources to corroborate the impact (indicative maximum of 10 references)

[S1] Pre-vote media engagement: ([Norwich](#) (5 Feb 2016), panel discussion at UCL, 'Brexit Divisions II' (22 Mar 2016); and a students' [mini-referendum](#) and [quick response event](#); [what would Brexit mean for free movement?](#)' (20,216 views)

[S2] A record of all media appearances (over 700), meetings with politicians and officials (around 100), evidence to select committees (around 25 on subjects such as equality, free movement, GAT, rights of EU citizens, implications of Brexit for trade).

[S3] Examples of pre vote media impact. [BBC Trending/Google Trending](#), Nottingham (16 June 2016); [interview with Time Magazine](#) about the migration crisis (3 June 2016); [Radio Cambridgeshire](#) (31 May 2016); interview in [International Business Times](#), New York, on Brexit and free movement (18 May 2016); would Brexit make it harder to hire EU workers?, [The Guardian](#), (30 March 2016); [World at One](#). Testimonial from Peter Foster.

[S4] Examples of post vote media impact. [launch of report and film](#) on public attitudes in the aftermath of the 2016 vote (22 May 2017). [Citizens' Assembly](#) on Brexit, (9-10 Sept 2017). Briefing session for MPs in Westminster (13 Dec 2017), [Guardian \(14 Dec 2017\)](#). [Prospect](#), (2 Nov 2017), [Economist](#), (12 Apr 2017); [EU Reality check](#), BBC, 4 July 2016); interview with John Humphrys on [Today](#).

[S5] Emails from Political Correspondent BBC World Service and 5Live listener.

[S6] Selected examples of committee evidence: evidence to the [House of Commons Home Affairs Select Committee](#), on post Brexit migration policy, (27 Feb 2018); evidence to the [House of Lords Justice Committee](#) on issues of enforcement after Brexit, (6 Feb 2018); evidence to the House of Lords Select Committee on the European Union, Inquiry on [Brexit Deal or No Deal](#), (17 October 2017); evidence to the House of Lords Home Affairs Select Committee on reciprocal arrangements in healthcare, (11 October 2017); C. Barnard, [evidence to House of Commons Higher Education Committee](#), (11 Jan 2017), live tweeted by the [BBC](#), reported by the [BBC](#). See also [Independent](#) [Guardian](#) [BBC](#) [Sky](#) [International Business Times](#) [Huffington Post](#) [Times Higher Education](#) [Belfast Telegraph](#) [iNews](#) [Yahoo News](#) [Cambridge News](#) , [Trinity website](#); Report published and received further coverage: [BBC](#), [Times Higher](#), (25 April 2017)

[S7] Hansard Evidence. Original blog [post](#). Citation by the [Duke of Wellington](#) and citation by [Baroness Ludford](#).

[S8] [Report](#) to the House of Lords Select Committee on post-Brexit migration policy. Featured in the [Guardian](#). Report to the [House of Commons Home Affairs Select Committee](#)

[S9] Testimonial from the Rt Honourable Hillary Benn, MP

[S10] Involvement in the EU Citizens Right to Stay Bill. House of Commons European Scrutiny Committee [inquiry](#) (July 2019).

[S11] Email from Home Office Legal Adviser and Director General Legal Services Directorate C, Government Legal Department