

Article by Julian Gibbons in Law Society Gazette – 1 December 2023:

Premium office closure is latest nail in the coffin

Post-Brexit, the government vowed to make the UK a world-class trading nation, free from the supposed shackles of European regulations and controls. Inevitably, the new global Britain would have as its centre the City of London.

The City and its surroundings are geared towards international commerce and trade. Some of the biggest international law firms have a large presence there. Part of the process of trade and commerce involves having the right documentation at the right time. In this regard, many firms of notaries are also established in the City and its surroundings, serving the needs of both international commerce and individuals by producing cross-border documentation.

The UK is a signatory to the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (1961 Apostille Convention). This convention falls under the Hague Conference of Private International Law, of which the UK has been a member since 1955. The convention has the aim of simplifying the cross-border recognition of public documents. It does this by obliging receiving jurisdictions to recognise and give effect to a document endorsed with an apostille.

In the UK the issuing authority for apostilles under the convention is the Foreign, Commonwealth & Development Office (FCDO). The FCDO operates its legalisation service through two offices. One, in Milton Keynes, operates a postal service mainly for the public and a next-day service for legalisation agents to use. The second office offers a premium (same-day) service and is located in London. This latter office deals with around 25% of all apostilles issued (approximately 140,000 of 550,000 issued per annum).

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The premium service is particularly used by notary firms in and around London. The same-day service is critical for large-value international commercial transactions. It has been open since 2008 and is relied upon by businesses and individuals for time-critical documentation going abroad.

In October, without consultation with the notary profession as the biggest single user, the FCDO announced closure of the premium office with effect from the end of December. This decision is likely to have a substantial impact on international commercial transactions which centre on the City. It may lead to loss of business to other European jurisdictions. Unfortunately, correspondence with the FCDO and MPs has been of no effect. The FCDO believes its Milton Keynes office can cope with an additional 500+ documents per day. This is against a background of the delay in processing postal-service submissions last summer of over 25 days.

We notaries who have been trying to change the FCDO's decision are cynical enough to think its optimistic statements about being able to cope with increased volumes will not be realised. None of the FCDO's current proposals for a replacement service include an unlimited same-day service. The last few years have seen general cuts to the accessibility of the legalisation service. This is the latest nail in the coffin of a service the UK government is obliged by the convention to provide.

One cannot help but contrast the government's positive rhetoric around the UK's place on the global stage with the reality. What message does this closure send? Is the UK really serious about its role as a leader in world trade? This proposal has not been thought through, and the UK and London in particular will be the losers.

Julian Gibbons MA is president of the Notaries Society of England and Wales, Ipswich