

# All bets on green—are law firms betting on cannabis?

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*Practice Management analysis: Top UK law firms are responding to growing calls to legalise cannabis, and legislative changes to allow the prescription of medicinal cannabis products in the UK. In light of this, we look at the reasoning behind the decisions of law firms to invest departments and funds into the cannabis industry, the growing interest of US firms to open UK branches for cannabis, and the risks for firms. Practitioners from CM Murray and Hoban Law Group offer their interpretation, revealing a considerable difference between the UK and US opinion on the future of the cannabis industry and UK law.*

## On the horizon

In October 2018, the UK government made the first moves to legalise ‘cannabis-based product for medicinal use in humans’ when it passed the Misuse of Drugs (Amendments) (Cannabis and Licence Fees) (England, Wales and Scotland) Regulations 2018, [SI 2018/1055](#). Under the new law, specialist doctors for the first time in the UK have the option to legally issue prescriptions for cannabis-based medicines when they agree that their patients could benefit from this treatment.

Importantly, the law will not limit the types of conditions that can be considered for treatment and doctors will no longer need to seek approval from an expert panel in order for patients to access the medicines. This could open up the potential for disputes over what conditions constitute or ‘benefit’ from these products, whether between patients and doctors or medical regulators. Further, other legal issues could arise from the introduction of cannabis into medicinal prescriptions—eg use in the workplace, driving regulations, licencing and regulating—giving a potentially new and unknown area of law for law firms to prepare for.

London firm, Mackrell Turner Garrett, seems to think such preparation is necessary, as it [announced](#) on 18 February 2019 that it is ‘looking to follow in the footsteps of law firms over in the US’ by opening an entire department to focus on the ‘rapidly growing cannabis industry’.

## Are Mackrell Turner Garrett right?

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The US perspective, according to Robert Hoban, president and CEO of Hoban Law Group and qualified attorney, says that ‘the trend of cannabis-focused legal practices is nothing new’. He claims this trend has led to the creation of global cannabis consulting and legal firms such as Hoban Law Group to ‘simply harness the international opportunities attached to the burgeoning legal cannabis industry’. Indeed, the head of Mackrell Turner Garrett’s new cannabis department, Robert Jappie, [acknowledged](#) Hoban Law Group as ‘partly the inspiration for what we’re doing here’.

On the UK side, Zulom Begum, partner, and Harriet Riddick, associate, at CM Murray are less convinced of the magnitude of cannabis business opportunity, saying ‘[w]e are yet to see any litigation activity following the change in law in the UK at the end of last year[...]and it remains to be seen how liberally specialist doctors are exercising their powers under the new legislation to prescribe cannabis-related products’. Begum and Riddick do acknowledge that there is potential for an increase in business surrounding disputes about when and how specialist doctors can prescribe cannabis-based medications:

‘Given the lack of clear guidelines on when and how specialist doctors can prescribe the drug, it is certainly possible that arguments may in due course be brought by individuals who believe that they have been wrongfully refused prescription of the drug.’

However, they do emphasise ‘it seems unlikely that this legislative change (at least alone) is going to trigger wide-spread litigation given its applicability to only a small group of individuals suffering with medical conditions that may benefit from the drug’.

The US and UK perspectives appear to be at odds, so how should UK firms be investing, or preparing for, the future of cannabis law? Hoban advises ‘this issue is not simply one of “inspiration” or business opportunity, it is one of legal responsibility and stewardship—once you have legalised the cannabis plant (or portions/derivatives thereof), what happens next?’

For UK and US firm alike, that is the question. And with some of the UK largest law firms beginning to engage with the cannabis industry—Allen & Overy’s cannabis newsletter and DAC Beachcroft’s medical cannabis department—it is obvious some firms are trying to find an answer.

### **Giving it the green light**

Jappie said the decision to open a cannabis department in Mackrell Turner Garrett came from investigations that revealed ‘there was a burgeoning [cannabidiol] industry already in existence in the UK and that positive noises were coming out of the industry regarding medicinal cannabis’.

When asked about these ‘positive noises’ from the cannabis industry, Hoban, Begum and Riddick pointed to the growing calls for legalisation, within and beyond the legal sector. In the words of Begum and Riddick:

‘Cannabis is still very much a nascent sector in the UK. However, following a trend towards legalisation globally (including the complete legalisation of cannabis in Canada in October 2018, as well as in various states in the US), the interest of investors (both in the UK and globally) has been sparked.’

However, those law firms and groups which have advocated for the legalisation of cannabis, Hoban warns, ‘are not prepared or are ill-equipped to address what comes next’. The questions firms should be asking themselves, Hoban says, include:

- how does one commercialise the industry?
- how does one regulate such an industry?
- how does one protect consumers and the public confidence?
- how does one channel these resources into a massive global cannabis economy?

That final question, Hoban says, is where ‘responsibility, stewardship, and opportunity step into the picture’ and remarks that ‘[t]he UK is poised to be a leader in the European-based cannabis industry’.

#### *Why the focus on the UK?*

The focus of US law firms on the UK market, when it comes to expanding into the cannabis industry, is on its access to markets and expanding trade opportunity in Europe, Hoban explains:

‘The UK is uniquely positioned across the EU to flex its financial muscle in attracting capital and establishing regulatory standards that the rest of Europe will follow. Numerous Hoban

Law Group clients have set up shop in the UK for this very reason, and this has attracted top-level operators and funding sources to the UK marketplace.’

Furthermore, cannabis brings into question issues on which Hoban calls the UK ‘a regulatory leader in recent years’, such as industrial hemp and its derivatives.

The amendment of [SI 2018/1055](#) will prove ‘challenging’ to implement, Hoban reasons, and predicts it could lead ‘to various forms of litigation’. However ‘the simple fact that policy makers/lawmakers have put this path in motion requires guardians, guides, and most importantly, professionals’. Embracing stricter regulatory measures, Hoban believes, will prove the ‘legitimacy’ of the cannabis industry in the UK.

Begum and Riddick, on the other hand, see the potential difficulties in implementing change—due to the lack of globe-wide legality and differing approaches of international regulators—as a good thing for the legal industry:

‘...the drug is not legal on a global basis and international regulators are adopting differing approaches to the drug, which creates both logistical and reputational risks for cannabis-related companies and their investors. This is where law firms—including Mackrell Turner Garrett—potentially see an opportunity.’

### **Risks for law firms**

The lack of clarity, guidance and uniformity in regulations and UK laws surrounding cannabis have been raised as both an opportunity and a risk to law firms. Law firms conducting business with cannabis-related organisation could find themselves in breach of UK law unless they tread carefully.

Begum and Riddick give the example that a law firm could breach money laundering legislation in the UK—specifically the UK [Proceeds of Crime Act 2002](#) ([POCA 2002](#))—by acting for a cannabis-related business or an investor:

‘[\[POCA 2002\]](#) makes it an offence to receive, deal with, or be concerned in a transaction which facilitates (by whatever means) the retention or movement of “criminal property”. [POCA 2002](#) defines “criminal property” broadly as any known or suspected benefit arising from “criminal conduct” where the latter is conduct which constitutes an offence in the UK.’

'This means that proceeds arising from the production or supply of cannabis (even where the production or supply is legal in the country in which it occurs) may constitute "criminal property" for the purposes of UK money-laundering legislation.

'There is an important exception in [POCA 2002](#) (commonly referred as the "Spanish bullfighter" exception) for conduct which is illegal in the UK but legal in the country which it occurs. However, the exception only applies to offences which in the UK would result in a maximum custodial sentence of 12 months or less—in the UK, supplying or being concerned in the production of cannabis (a Class B drug) can result in up to 14 years' imprisonment (rendering the exception inapplicable in this context).'

Law firms seeking to conduct business with cannabis-related companies have the option of requesting consent to proceed by submitting a suspicious activity report to the National Crime Agency (NCA) prior to carrying out the relevant activity. This constitutes a defence under [POCA 2002](#) to money laundering offences, however Begum and Riddick point out 'this does not provide a practical solution for law firms (particularly those with a cannabis department wanting to advise heavily in this area), as separate consent would need to be sought each time'.

As a result, Begum and Riddick assert that '[g]uidance from NCA in relation to this issue would be welcome for both law firms, and their clients'.

### **Risks for businesses**

Guidance should also be on the minds of businesses, Hoban argues, saying 'nearly all business-minded groups require legal counsel to navigate the complex patchwork of provincial, country-wide, regional, and global regulations'. This implies that this is one of the potential areas of business which some law firms are predicting will expand. In the UK, for example, recreational cannabis remains illegal while certain medicinal purposes are now legal.

The complexity of this perhaps means firms will rely on legal counsel to help them ensure they operate entirely lawfully. Indeed, Hoban calls it 'both a challenge and a professional obligation of lawyers to assist these businesses in both developing and complying with new laws and regulations governing the cannabis industry'.

This will commence a domino effect, as it will ‘instil confidence in the government, the industry’s institutional financial backers, and to protect the consumers/public as new consumer products enter the marketplace’, Hoban argues. In other words, the better advised the first businesses are, others will follow.

Lawyers cannot work miracles, however, and again the emphasis is on ensuring law firms have the required guidance and information to ensure they can advise businesses correctly. As Hoban puts it, ‘[t]o be sure, the entire process of cannabis seed-to-sale requires hefty regulation and oversight—this requires legal guidance and industry expertise’.

### **Devoting resources to cannabis**

Hoban has provided insight into some of the flags which US firms are seeing as opportunities in the UK cannabis industry. The complexity of the law causes businesses to increasingly rely upon legal counsel, the UK’s beneficial position for the European markets, and the increasing international trend to legalise cannabis are all factors. Meanwhile, Begum and Riddick raise reputational risks to cannabis-related businesses and differing regulatory approaches across the globe as opportunities which are already being responded to by some UK firms. So, should UK firms be devoting resources to cannabis?

#### *Why cannabis?*

With many controlled substances on the UK market—from alcohol, to painkillers, to ‘legal highs’—why is it that cannabis is the one getting the attention, the investment and the departments at law firms? Begum and Riddick suggest some of the drivers behind the focus on cannabis include:

- this is a new and burgeoning industry, worth a substantial amount of money, which UK law firms have not (yet) tapped into
- there is increasing demand from cannabis-related businesses and their investors (and future potential clients) for help navigating the complex global regulatory environment

These factors, and the cannabis industry more widely, Begum and Riddick say, provide ‘a real opportunity for law firms to build a new (and potentially lucrative) client base’, and advise law firms that ‘a cannabis department, from a PR perspective, sends a clear message that the law firm is an expert

and leader in the field—and is a way of differentiating the firm when it comes to competing for that business’.

A cannabis department, therefore, can send an industry message about how up-to-date and engaged a firm is with the changing nature of industry.

### *A viable business move?*

Setting the PR-related benefits aside, is a cannabis department a viable business move for law firms? This question sets the US and UK perspectives at odds with Begum and Riddick advising that firms do not need to follow Mackrell’s lead, while Hoban says ‘successful law firms recognised many years ago’ that clients appreciate industry expertise through specialist departments.

It could be argued that the reason a law firm might choose not to have a cannabis-only department, is the same reason that they do not have a department devoted to alcohol or other substances. Begum and Riddick raise the key point that ‘that the majority of what [a cannabis-only department] might deal with could be dealt with under another specialism (eg crime, regulatory, medical law, employment law)’.

In other words, law firms should think carefully before designating funding purely on cannabis, which could increasingly be relevant across multiple practice areas. Due to this, Begum and Riddick conclude ‘we don’t think that all firms need to—or necessarily will—follow Mackrell’s lead’.

From the US side, however, Hoban emphasises the attractiveness of demonstrating expertise:

‘Law firms developing a practice devoted exclusively to cannabis is no different than law firms having departments devoted to alcohol regulation, food and drug development, or digital currency. Successful law firms recognised many years ago that industry specialisation/expertise, in addition to legal expertise, is essential for delivering top-level service to clients. And it is essential.’

Hoban believes it is ‘inapposite to a lawyer’s duties’ to undervalue industry expertise before conducting business in a sector. Potential industry participants ‘must be wary and evaluate the law firms that they work with accordingly’, and if a firm can demonstrate they have a department specialising in the area, this is a good indicator.

In stark contrast to the statements of Begum and Riddick, Hoban predicts in the UK ‘law firm departments devoted to the cannabis industry will become the norm, rather than the exception’. The momentum is growing, and the focus on cannabis increasing, and Hoban says ‘the cannabis industry presents an opportunity, and a necessity, frankly, for law firms to establish themselves as industry experts first, and legal practitioners, second, and to be the “adults in the room”’. Hoban expects the cannabis trend to only continue.

### **The future UK cannabis industry**

Law firms, it appears, can choose between the cautious and bold approach. While both the UK and US lawyers in this analysis agree cannabis is a ‘burgeoning’ industry, they are largely at odds over how law firms are best to respond.

Cannabis is a double-edged sword. On one side is opportunity, increased industry appetite for legal counsel and dispute resolution between prescribing doctors and patients. On the other is lack of legal clarity and guidance, reputational risk, and uncertainty about future changes. What is clear is that—whether by opening a cannabis-devoted department, or encouraging existing departments to consider and integrate cannabis-related issues into their workload—law firms should be thinking about their approach to the UK cannabis industry. The US is interested for a reason, and as Hoban says:

‘It all starts with embracing cannabis regulation as an asset, rather than an adverse condition. And this concept has worked all around the globe.’

*Written by Samantha Gilbert.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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