



HOUSE OF LORDS

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: Follow-up inquiry on impact of the protocol on Ireland/Northern Ireland

Wednesday 25 May 2022

3.10 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Empey; Lord Godson; Baroness Goudie; Lord Hain; Lord Hannan of Kingsclere; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 4

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Questions 32 - 39

Witness

I: Matthew O'Toole MLA, Social Democratic and Labour Party (SDLP).

Examination of witness

Matthew O'Toole.

Q32 **The Chair:** Good afternoon and welcome to this public meeting of the Sub-Committee on the Protocol on Ireland/Northern Ireland. Today, we are holding the fourth evidence session of our follow-up inquiry into the impact of the protocol on Ireland/Northern Ireland. This inquiry is a follow-up to the committee's introductory report published last July and the committee's examination of individual aspects of the protocol's operation in the period since then.

Today, we begin our engagement with the five largest political parties in the Northern Ireland Assembly after the Assembly elections on 5 May. We are joined today by representatives of the SDLP, the Alliance Party and Sinn Féin, who will speak to us separately for about 45 minutes each. Our engagement will then continue on 8 June with meetings with the leaders of the Ulster Unionist Party and the DUP. Our first witness today is Matthew O'Toole, SDLP MLA for Belfast South. You are very welcome and we very much look forward to hearing your evidence.

Today's meeting is being broadcast, and a verbatim transcript will be taken for subsequent publication, which will be sent to you to check for accuracy. I refer to the list of Members' interests as published on the committee's website. As I say, you are very welcome. Thank you very much for being the first of the five party representatives who we will be speaking to over the next couple of meetings. Just to start us off, I wondered if you could set out the SDLP's overall position in relation to the protocol.

Matthew O'Toole: I am delighted to be here and grateful to all the members of the committee for their time and for all the work that this committee has done and, of course, the opportunity to give evidence. I will make some broad opening remarks in answer to your question, Chair. I would like to acknowledge the work done by this committee in scrutinising the protocol in detail. A lot of detailed work has been done, including the introductory report last July that was mentioned. It is also worth saying that your committee has been very assiduous at keeping contact and keeping up to date both politicians and Assembly committees in Northern Ireland. That has been most welcome.

I want to start by politely but firmly rejecting some of the framing of the debate on the protocol, which is, if I may say so, slightly strangely constructed around the notion that the protocol itself is *sui generis*, as if it was dropped from the sky on the UK out of nowhere. The protocol is not just a product of Brexit. To use a phrase from the 1990s peace process, it is inextricably linked to Brexit. To the extent that the protocol is a problem, the problem is Brexit, specifically hard Brexit; that is, the decision by the UK to leave both the single market and the customs union.

While I would not deny that there are new processes involved in moving goods from Britain to Northern Ireland and we want to see those

smoothed in implementation terms, there is also a vast swathe of new barriers to trade in services between north and south. Of course, the entire process of Brexit has been about erecting trade barriers, which is something that any business in England, Scotland and Wales that exports goods to the EU single market is only too well aware of. While I would acknowledge that many unionists sincerely object to the protocol, I would contend some of the claims made around the severity of the discontent, which is significantly smaller than either the UK Government or the DUP like to imply. I am bound to point out that virtually all non-unionists, whether nationalists or constitutionally unaligned, strongly oppose and opposed Brexit itself. Indeed, that represents not just the majority of people voting in 2016 but the majority of MLAs returned at the Assembly election. I will come on to talk about the questions I am sure people will ask around parallel consent. The question of unionist consent is used as an argument against the protocol's existence, but many of the people making those arguments never breathed a word about the consent of nationalists or non-unionists generally for either Brexit or the type of Brexit that has been visited upon all of the UK but specifically Northern Ireland.

I give evidence today not just as a representative of a constituency that voted overwhelmingly to remain but as someone, actually, uniquely, who was at the heart of the UK Government before and after the Brexit referendum. I was in 10 Downing Street on the night of 23 June 2016. I was vocal before and after that referendum about the impact of leaving the EU on the delicate architecture of the Good Friday dispensation in Northern Ireland, on the island of Ireland and between the islands of Ireland and Britain. I left a Civil Service career because of it, and it turns out I was right to be worried. The same people who dismissed any and all concerns about the impact of Brexit on Northern Ireland are now citing the need for the delicate balance of the Northern Ireland settlement to be respected.

Apparently, respecting that delicate balance now means unilateral abrogation of treaty obligations under the protocol despite, as I said earlier, the number of MLAs who support the implementation of the protocol actually increasing in the election. I have to say that the cynicism and hypocrisy of those now seeking to totally upend the protocol is quite remarkable. To be clear, the SDLP wants to see the protocol implemented as seamlessly as possible, and there are clear routes for that to happen. We have published a range of proposals over the past two years, including in our manifesto a few weeks ago—I am sure everyone here read all the parties' manifestos in Northern Ireland—aimed at addressing many of the implementation issues.

But that desire to see it seamlessly implemented categorically does not mean that we do not want the protocol to exist. It is frankly frustrating whenever our desire to see it implemented seamlessly is used to amplify the claim that all parties in Northern Ireland oppose the protocol. We do not. We need the protocol not just because it offers protections from the creation of a hard border in goods, and I will come on to talk about the

fact that it is just in goods, but because it offers the unique economic advantage of dual market access, from which we are already benefiting as data shows, but for which the constant threats and destabilisation are damaging that potential investment.

To repeat, there is a universe of other non-protocol Brexit-related issues, from the loss of EU funding to the cross-border healthcare directive and labour shortages, that also need to be addressed. Mr Speaker—apologies for promoting you, Chair—fundamentally, we need the UK Government to once again be a responsible actor in Northern Ireland rather than the agent of chaos that they have become. I look forward to answering the committee's questions.

The Chair: Thank you very much. Indeed, I have never been called Mr Speaker before, which is rather an honour. I am aggressively independent as a Cross-Bencher but not quite the Speaker.

Q33 **Lord Thomas of Gresford:** It was published last week that the Irish/Northern Irish economy was succeeding rather better than the British. What is your assessment of the economic impact of the protocol since it came into force? What benefits or drawbacks do you identify?

Matthew O'Toole: I am going to do this quite a lot during the session today. Whenever people ask about the protocol, I will talk about the specific issues around the protocol, but I will always take it back to Brexit more generally because those things are not just co-terminous; they are inextricably linked. Brexit is having a very damaging effect on the whole UK economy. That is what the independent Office for Budget Responsibility says. I was a civil servant back then. I know this report, which is the Treasury analysis that came out in 2016, pretty well. Broadly, it will be in the neighbourhood of correct that there will be a long-run impact of 4% on UK GDP from the new trade barriers from Brexit. It could be give or take that, but it is a significant loss.

The Centre for European Reform does a near-monthly look at impact on trade in goods between the UK and the EU, and it estimates a monthly hit to UK trade with the EU of more than £10 billion, so Brexit is clearly having a damaging impact on the UK economy. Some of those impacts are not happening in Northern Ireland. Northern Ireland is being protected from them because it has preferential access to the EU single market for goods. That has had a shielding impact and a relatively beneficial impact for the Northern Ireland economy. It appears, according to several studies, including NIESR most recently, that Northern Ireland is doing rather better than the economy in GB as a result of that.

Now, clearly, the data is still tentative, and I would not want to make any broad claims about the long-run position, but it does appear that Northern Ireland is doing well out of, specifically, its preferential access to the EU single market for goods. Now, I would acknowledge that there are issues and economic consequences of the new barriers to moving goods from GB into Northern Ireland. Unlike some of the supporters of Brexit itself, I do not dismiss those. I am not Panglossian about them. I

want to see them operate as seamlessly as possible, but I think some of the claims about the damaging economic impacts of the protocol simply have not been borne out statistically. Frankly, some of the attempts to create a narrative or any empirical evidence base around the protocol being devastating, thus far, have not worked. They have not been plausible.

Overall, Brexit is damaging the UK economy. Northern Ireland is sheltered from some of it because of the protocol, but it is still having a negative impact through a whole range of other non-protocol negative impacts, such as loss of EU labour and other economic consequences. We are having to deal with the loss of EU funding. The Department for the Economy in Northern Ireland has lost tens of millions of pounds of annual funding. There is a very experienced former Economy Minister who is a member of this committee. As part of his departmental responsibilities, he obviously would have been involved in disbursing EU funds from the European Social Fund for skills training in Northern Ireland. That is gone, so we do not have skills training any more.

Lord Thomas of Gresford: Do you see the protocol acting as a part shield against the effects of Brexit?

Matthew O'Toole: Yes, that is fair, and it has the potential for real economic opportunity. It is not just the potential. We have seen investment announcements. Packaging companies and pharmaceutical companies have announced investments that they have made as a result of our dual-market access. From our perspective, that needs to be jealously guarded. Do we want agreement on implementing the protocol seamlessly? Sure, of course we do. Why would we not? But do we want to lose any of that economic opportunity? We certainly do not.

Just to be very specific, because there have been some studies of the very specific impacts of the protocol, analytically it is problematic to separate out one consequence of Brexit and say, "This is the impact economically". To the extent that it has been done, there are some issues with the way it has been done from our perspective.

One example is the Fraser of Allander Institute, which I am sure this committee has seen. The Fraser of Allander Institute is a very serious economic think tank, and its work is clearly robust, but part of the challenge of its analysis is that its baseline is not Brexit without the protocol. It is no Brexit, so that would seem to me, as an analysis, to be fundamentally flawed. From that perspective, the Protocol is a good thing in broad terms. We want to see it implemented as seamlessly as possible, yes, but we also want to protect the economic benefits that we are already seeing.

Q34 **Lord Empey:** Good afternoon, Matthew. How would you assess the political and social impact of the protocol in the context of the 5 May Northern Ireland elections including on the functioning of the Executive and Assembly?

Matthew O'Toole: The obvious point to make is that there is no functioning Northern Ireland Assembly and Executive. The deceptively obvious answer being promulgated by UK Ministers at the minute is that, because there is no Assembly and Executive, the protocol is to blame and, therefore, we should get rid of the protocol. This is, I am afraid, a preposterous and utterly disingenuous way of looking at it.

As I said earlier, Brexit, which involves the erection of trade barriers between the UK and the EU single market, was going to have a destabilising impact on Northern Ireland, the island of Ireland and the very delicate set of relationships between Britain and Ireland. Of that, there is no doubt, and so it has proven. After a tortuous process, after other things were ruled out and taken off the table by a combination of parts of the Conservative Party and the DUP, we ended up with the protocol.

The protocol is not really anyone's first choice. It is not the SDLP's first choice. By the way, I do not want to be quoted afterwards as saying, "The SDLP does not like the protocol. We oppose the protocol". We are being honest about the fact that this is a contingent position. Our position is not that we love the protocol per se. It is that, in the context of hard Brexit with all the other risk that that entails and everything else being taken off the table, the protocol is a necessary set of protections.

Specifically to come to your question, after 5 May, we are clearly in a suboptimal position. Not only do we not have an Executive with a First and deputy First Minister but we do not even have an Assembly that can debate Motions and hold caretaker Ministers to account. That is not good.

Frankly, I do not think that the DUP's position is in any way acceptable. It is not acceptable to say that, because you do not like this one consequence of Brexit, which, of course, you championed and helped steward through, you should not allow devolved institutions to function. That is not good, but that is part of a broader consequence of Brexit.

In terms of some of the societal impacts, there has been a campaign of distortion and exaggeration, bluntly, about the protocol. I would never in any way seek to diminish or dismiss the sincerity of unionist objections to the protocol, and I never have. In a sense, I would not do that because I have my own very sincere objections to Brexit itself and to what it has done to relations between these islands and on the island of Ireland. I am really sincere about that. When I said earlier that I left a Civil Service career over it, I meant it. This is very personal for me. I am a social democrat from a constitutional nationalist background, and I worked as a civil servant in No. 10. I could not do that any more after what was happening to where I am from, so I get that borders matter to people and that these are sensitive issues for people. But with some of what the UK Government have done recently around talking up instability and the threat to the peace process, we are getting close to a self-fulfilling prophecy at times.

I do not see mass disruption on the streets of Northern Ireland, to be honest. There have clearly been demonstrations of a scale. Bluntly, they have not been anywhere near the scale of the demonstrations against the Good Friday agreement, the Anglo-Irish agreement or the Sunningdale agreement, just to be direct about it. They have not, nor was this issue raised with me as I canvassed. God knows how many doors I knocked on, but I certainly got at least 1,000 answers. As you will know, Lord Empey, South Belfast is a very diverse constituency. It contains unionists, nationalists and the unaligned, and people in Northern Ireland tend to be pretty direct with you, especially in Belfast. I did not have lots of people raise it with me. Do I want to see the protocol implemented as seamlessly as possible? Absolutely, yes, but the way to do that is not the way the UK Government are going about it.

Lord Empey: How do you think attitudes to the protocol are evolving within the communities?

Matthew O'Toole: I suppose the two sources of evidence I have are my own experience and the empirical work that has been done at QUB by Katy Hayward, David Phinnemore and their team. In broad terms, that finds that there is a small but appreciable majority in favour of the protocol being implemented, yes, in a way that works and is as practicable as possible, but that there is still an anti-Brexit majority in Northern Ireland. I am trying to think of a diplomatic way of putting it. Although perhaps stronger unionists are more opposed to it, there is, within moderate unionism, a degree of pragmatism and subtlety that comes out from the research that has been done. I do not think that people, in principle, like Northern Ireland being treated differently from the rest of the UK. Many of these people also voted against Brexit and do not like that per se. They are also pragmatists and it would appear from this that they also see some potential benefits. In my view, there are very clear potential benefits in the protocol, so the idea that there is mass societal unrest is not borne out by the empirical evidence or my experience of what is happening.

Would I rather that more unionists were comfortable with the Northern Ireland protocol? Yes, absolutely. Do I wish we did not have Brexit in the first place? Do I wish we had not been presented with this challenge? I do, but I worry about the idea that we can solve everything by upending the protocol because of one group. To repeat the point, it is not as big a group as the DUP or the UK Government would make out, which is not to diminish the sincerity of the feelings. I do not think that the way to go about building either consensus or, indeed, consent is the current approach.

Q35 **Lord Hannan of Kingsclere:** It is nice to see you again, Matthew. Thank you for being so thorough and so honest. I want to ask you a strand 3-related question, to broaden it out a little bit. You and I recently debated at Queen's University and you were very polite, thorough, sincere and honest as well on that occasion. At one point, I made the point that nationalism down the years, when it had had to choose between distance

from the UK and lowering barriers to the unification of Ireland, had tended to pick the former: removing the residual constitutional links, leaving the Commonwealth, staying neutral in the war, giving status to the Irish language and so on. You, if I remember correctly, said, "In retrospect, there are things we would have done differently, and mistakes were made".

Rather than asking in retrospect, I wonder whether I could put a similar question to you in the context of today. If I were to summarise unionist objections to the protocol in one sentence, it would be something like this. It cannot be right to say that a border between Northern Ireland and the Republic is unthinkable but that a border between Northern Ireland and Great Britain is fine. How would you, today, seek to reassure British people in Northern Ireland that their identity is respected as Brits rather than as unionist voters? If you feel like it, how, in a united Ireland, would you try to do so? How would you try to lower the barrier?

Matthew O'Toole: To question of Irish unity is slightly straying off the topic for today's discussion. This goes back to my response to the previous question. How do we build consensus among British people in Northern Ireland—we will use that as an alternative phrase for unionists? I sincerely acknowledge the fact that many unionists dislike the protocol, but it is important to say that the High Court in Belfast and the Court of Appeal have been very clear that the protocol does not affect Northern Ireland's constitutional position.

I acknowledge that it means that the EU-retained law listed in the annexes of the protocol still apply to Northern Ireland. That puts us in a different position in respect of regulation of goods and electricity in order to keep the lights on, but I do not accept that that has to, ergo, mean a fundamental fracturing of its membership of the United Kingdom, unless and until that changes. Obviously, I do want it to change at some point in the future. I would slightly reject, in part, the premise of the question, and I would respectfully say this back to you, Lord Hannan. You talked earlier about nationalism meaning Irish nationalism. You might not like the term, but I think lots of people would probably call you a British nationalist or an English nationalist. These tend to be quite esoteric. You might reject that.

Lord Hannan of Kingsclere: I am not remotely English by birth or ancestry.

Matthew O'Toole: No, indeed. You are perhaps a British nationalist then, and I certainly do not mean that as a term of abuse, but that is what you would appear to me to be. We did have a very thorough debate at Queen's a few months ago. How has your British nationalism ameliorated to take account of the fact that there is a permanent treaty obligation to Irish people who live in the UK? I would ask you that question, and I would say that I do not see anything in the hard Brexit process, which people in your party from your perspective championed, that protected the rights of Irish people who live in the UK now.

Lord Hannan of Kingsclere: If you have me in a committee in Stormont and put that question, I will gladly answer it.

Matthew O'Toole: If we have an Assembly, I will invite you.

Lord Hannan of Kingsclere: Since we are sitting this way round, I am just asking you. I am not trying to be clever. You are thoughtful and sincere. You have obviously given it some thought. What, practically, can be done to reassure people that there is not some loss of their identity?

Matthew O'Toole: First, it is being honest with people about the consequences of hard Brexit. There are loads of consequences on the island of Ireland. You made an argument today along these lines in your "ConservativeHome" piece, which I read, that this was part of a plan to create a kind of economic united Ireland, which is frankly fanciful to me. Most developed economies these days are about 80% services. Northern Ireland and the Republic of Ireland are moving further apart in services terms because we are outside the EU. We know that Dublin has a booming tech sector. A French lawyer employed in Dublin cannot now go and work in Belfast. There are now fewer guarantees about how data can move across the border. Financial services cannot operate in the same way. One of the great survivors post partition of the all-Ireland economy was the banking sector. Bank of Ireland, Ulster Bank and AIB were all-Ireland banks. That sector is withering in real terms because it is too hard to do financial services in a meaningful cross-border way.

There is a huge range of impacts for people who are Irish-identifying nationalists, if you want to call them that. Yes, there are impacts for people who are British-identifying unionists from the provisions of the protocol. To build their confidence, first, as I said, I would be honest with them that, unfortunately, this is what Brexit means in part. Secondly, I would be honest with them in saying, as the High Court and the Court of Appeal said, "You are still in the United Kingdom". I am someone who aspires to change the constitution, but Northern Ireland is still in the United Kingdom. That has not changed and will not change unless and until there is a referendum and the people in Northern Ireland vote to change that. I hope they do at some point in the future, but we are clearly not there yet.

In my remarks at the end, I talked about the UK Government being an agent of chaos in Northern Ireland, and I used that phrase deliberately because they are at the minute. As I am not a unionist, I cannot speak on their behalf, but you have asked me to do a bit of supposition. If I am a unionist in Northern Ireland, in a sense, the UK Government are telling me that I am being ripped off here. At the minute, the UK Government are telling me in every utterance, "God—Brussels, the Dublin Government and a load of ill-begotten nationalists and liberals are taking away your Britishness because they want Northern Ireland to be subject to the EU customs code and in an SPS area". At a certain point, the UK Government will have to say, "No, that is not what this is. We need to have particular arrangements for Northern Ireland because it is on a different land mass and has a unique context". They flirted with doing that after they signed

the withdrawal agreement and then quickly dropped the idea. You can speculate as to the reasons why they have dropped the idea. I personally think it has much more to do with the internal politics of the Conservative Party than with the interests of anyone in Northern Ireland, unionist, nationalist or other, but that is how I would do it.

Part of that confidence building has to be done by the UK Government because, ultimately, they are still the sovereign Government in Northern Ireland and the Government to whom unionists and not just British-identifying people but British people in Northern Ireland owe their allegiance. They owe them a bit more than they are giving them at the minute.

The Chair: I suspect this discussion will continue elsewhere.

Q36 **Baroness Goudie:** Hello, Matthew. It is nice to meet you again. What is your response to the Foreign Secretary's announcement of her intention to introduce legislation in the coming weeks to make changes to the protocol? As we know, we have only seen it in outline. I have not yet been able to find any detail anywhere.

Matthew O'Toole: Obviously, I disagree with the substance, and I will come on to explain why I disagree with the substance of unilateral legislation. The way it has been handled and briefed has been unsettling in Northern Ireland in and of itself, because people, including unionists, who want to see the protocol changed or abandoned, which I do not want, have had the Foreign Secretary briefing someone in the *Telegraph* and then the Prime Minister writing an article in the *Belfast Telegraph* saying one thing to party leaders in Belfast. Then it looks like the domestic legislation might come in a wee while. She has given a statement to the Commons where she says, "I'm here today telling you that there will be legislation at some point in the future", and now it is being briefed that it is going to come within weeks. All that is an irresponsible way to do any of this, but is par for the course unfortunately. It comes back to what I said to Lord Hannan. This is more about the internal politics of the Conservative Party and what flies on any given morning in the pages of the *Daily Telegraph* or what goes down well in ERG WhatsApp groups than what actually matters to people and businesses in Northern Ireland, bluntly. That is what I think is motivating a lot of this, possibly including her own leadership ambitions. She is entitled to have them, but people in Northern Ireland do not have to be part of her ascent, as it were.

To come on to the substance about legislation, what are we trying to achieve? This is again a challenge. I have seen some of the headlines, and I think she said today that the UK does not want to completely scrap the protocol. What does it want? Does it want to agree mitigations in the implementation? Does it want fundamental amendment to the protocol? It is not clear. If you seek smoother implementation of the protocol, it would seem that the last thing you do is threaten a treaty partner with unilateral abrogation of that treaty. The fundamental basis of international trade, international law and agreement between sovereign

states and economic blocs, in the case of the EU, is that you operate on the basis of trust and that agreements will be implemented. If you want the agreement implemented in a smoother or slightly different way, you use the agreed channels to make that work.

It is also important to say, and we might come to this later, that the EU has published a pretty ambitious set of proposals in terms of where it sees improvements to implementation of the protocol. It did not say, "These are our ideas. That's it. You have to agree to them". It said, "These are non-papers for discussion", as they were called. It does not appear that the UK has engaged seriously with those, and it is now unilaterally threatening to legislate. Again, it just feels irresponsible. I am not sure what outcome is being sought, but, whatever it is, this does not seem like a responsible way to seek it.

Q37 Lord Hain: Welcome, Matthew. It has been good to hear your evidence. Do you think the EU's proposals you have just mentioned go far enough in smoothing out the operation of the protocol and getting rid of some irritating and, for particular businesses, such as pharmaceuticals and agriculturalists, difficult problems? Do you think Brussels would go further if Brussels trusted London?

Matthew O'Toole: The answer to the latter one is yes. There is a fundamental and almost conceptual question here about what the UK is seeking and what the UK wants. Does the UK want a process whereby it builds trust with the EU to have a more fruitful relationship generally post Brexit between the UK and EU and, as part of that, to implement the protocol in a smooth way? Does it want to have more coal for the steam engine of grievance with Brussels? I am afraid, at the minute, it appears to be the latter.

In terms of the four or five non-papers that were published last October, they are pretty substantive in terms of where they go. There are areas where we want to see more, and that should not come as a shock horror. Again, me saying that I want to see more work done on these things should not be interpreted as me saying, "We don't want the protocol". We very much want the protocol, but it was designed to be a work in progress in a sense. It was designed to be improved upon, with discussions happening at joint committee level on the basis of what was agreed. The protocol exists in international law, and it is there to be worked on. There are processes. There are fora. There is a specialised committee under the joint committee.

Lord Hain: I am sorry to interrupt. Where would you like to see the EU's proposals modified through negotiation, if you were negotiating?

Matthew O'Toole: One very particular example I would give you—and it was in our manifesto, which I am sure everyone here read—is around democratic structures and visibility for Northern Ireland stakeholders in Brussels. We, for example, would like to see observer status for Northern Ireland politicians, specifically MLAs. Whenever relevant legislation is debated in the European Parliament, we would like to see representation

in the Committee of the Regions. That would enhance Northern Ireland's visibility in Brussels and be a way of ensuring that people in Northern Ireland could see that their voice was being heard. I should say that I do not think that would jeopardise Northern Ireland's constitutional position in the UK unless and until that was to change, but it would allow people to see that their voices and their representatives were being heard. That is one area.

To give you an example of why there is such a challenge between the UK and the EU, one of the big arguments has been about medicines. That was, in a sense, the big flashpoint last January, where there was a near triggering of Article 16. It did not happen, but it nearly happened. That was a mistake, but the EU, in relation to medicines, went away and changed its own law. There was barely any acknowledgement from the UK that it had changed its own law. Indeed, I have seen some of the correspondence to this committee over the last few weeks, including one in the last week or two, which is almost a grudging acknowledgement that, yes, pharmaceutical stakeholders are broadly happy with the EU's solution.

Think of that as an example. How does that incentivise the Commission and other member states to go further in taking risks around negotiation concessions? Whenever they make a substantive concession, they do the work, they get EU law changed, and it is either ignored or diminished by the UK Government. I have raised this with UK Ministers—I am not breaking any big confidence—and they were not even aware that this had even happened. At a certain point, we have to get real about all this.

Lord Hain: I do not know if you saw the article on "ConservativeHome" by my colleague Lord Hannan, but, for him, the EU is the villain in all this. What is your take on that?

Matthew O'Toole: We covered this earlier. Lord Hannan and I are not going to agree that the EU is the villain. Lord Hannan has been a very prominent and, to give him credit, persistent arguer that the EU has been the villain over the last few decades. I just do not think it is, in relation to this. I am very strongly pro-European; I make no bones about that. My party is the party of John Hume. Pro-Europeanism is core to who we are, and how we view the settlement in Northern Ireland on the island of Ireland between the islands of Britain and Ireland is totally bound up in European integration. We think it is a huge progress for our island and for these islands. We think that relations between Britain and Ireland were an example of the achievement of European integration. John Hume made the point repeatedly in speeches and, famously, his single transferable speech that the UK is one of the most successful peace projects in history. I know there are people on this committee who do not agree with that. My party and lots of people in Northern Ireland—

Lord Hain: Sorry, on the protocol specifically, is the EU at fault?

Matthew O'Toole: No, it is not. Has the EU moved substantively? Clearly, it has. It published, as I said, four or five non-papers last year

that involved specific movement on medicines, democratic engagement and trusted trader. It is clear that that was not just a "take it or leave it" set of papers. Those papers were designed to facilitate further discussion.

To give one example, one of the outcomes that the UK Government say they seek, and one of the things that Lord Hannan mentioned in his article today that Liz Truss had asked for, is the green lane or the express lane. In my understanding, the EU has not ruled out that being an endpoint. The EU is happy to engage on that as an endpoint, but the question is whether you are serious about engaging in the discussions, practicalities and modalities of that. That would involve live data sharing, for example, and that is something that the UK Government have not done as yet.

The EU is not saying, "It's our way or the highway. We've published these non-papers, and you have to live up to it". It has said, "These are the broad outlines of where we want to go. Let's sit and discuss how we deliver them". Ahead of those non-papers being published, Lord Frost, who is no longer in post, poo-pooed them and pre-briefed that he did not think they would go far enough.

In actual fact, the EU was saying, "Here are our proposals. Let's sit down and discuss how we implement them". Yes, that is within the confines of the protocol as agreed, but it should not be unreasonable for any sovereign state that signs an international agreement that its partner says 18 months or two years on, "Can we just stick to what we have agreed? We will discuss how we implement it, and we're happy to discuss how we implement it. In fact, we broadly share some of what you want, but we do insist that, for example, if you want to get to something like an express lane or green lane, you give us live data". I do not think that is that unreasonable.

This is part of what I want to do today. Unfortunately, in Westminster, particularly in certain quarters in London, we have got sucked into this discourse that the EU is being unbelievably unreasonable and that this has all been inflicted on the UK. It is, I am afraid, just not true. There has been movement from the EU. I am not just coming here as someone who is being blasé and saying the EU is a perfect organisation. It is not, but it is not reasonable to say that it has not moved.

Q38 **Baroness Ritchie of Downpatrick:** Matthew, you are very welcome. I suppose it is a bit odd for me to be asking you questions. As I understand it, central to the SDLP philosophy are reconciliation, co-operation, partnership and consensus. In that vein, how can the divergent concerns and priorities of all communities in Northern Ireland as well as London, Dublin and Brussels be reconciled? I suppose, at the end of the day, that is what has to happen.

Matthew O'Toole: Yes, absolutely. Importantly, though, we have to be honest with people in Northern Ireland, of all communities, traditions and viewpoints, that Brexit means change. Brexit has meant change for Irish people, nationalists and the constitutionally unaligned in Northern

Ireland, and it means change for unionists in Northern Ireland. These are changes that affect everybody. To give you an example of changes on the land border that are not covered by the protocol, there are new burdens around mutual recognition of professional qualifications. That has created challenges for healthcare staff who work on both sides of the border and for people who travel either side of the border to seek healthcare, which is a pretty routine part of all-Ireland life. That is a new barrier not just to trade but to life on the island of Ireland that has been thrown up by Brexit.

I mentioned earlier the loss of EU funding. Tens of millions of pounds of the annual budget to the Department for the Economy have been lost. Those things are not covered by the protocol. Those are damaging effects of Brexit on Northern Ireland not covered by the protocol. Under the protocol, yes, in the regulation of goods and customs processes, Northern Ireland is being treated slightly differently from Britain.

The point I am making is that, in all these areas, we have to be honest with people that Brexit has consequences. We are not going to be in the same situation we were in pre 2016 because that choice has been taken out of our hands, so we have to build consensus and realism among groups and communities about the world we are in post 2021. The world we were in pre the end of the transition period is, I am afraid, not coming back unless and until the UK Government decide that they want to rejoin the EU. Sadly, I do not think that is going to happen any time soon.

The other broad point is about relationship building. Key to what happened in 1998, and obviously both you and Lord Empey were there, were relationship building, trust and people feeling that they owed one another something more than just shouting at them and stating a position. There does have to be trust, but a lot of that comes from acknowledging that there is a degree of interdependence and co-operation that we need. Do you know what? I am afraid some of that has to come from the UK acknowledging that it needs a fruitful relationship with the EU.

Not to go back and labour this point, this is why Brexit was a bad idea in the first place. It has put London and Dublin on opposite sides of a table, and that has had an impact on how parties and communities in Northern Ireland are able to interact with one another. Unfortunately, we need to recommit to those principles of interdependence, but core to that is the UK Government understanding their own responsibility in all of this and being honest with people that, sadly, although I wish it were otherwise, things cannot be exactly as they were before Brexit.

As someone who strongly opposed Brexit, there are one or two opportunities from Brexit, but they are only for Northern Ireland and they come from the protocol. They are not, largely, for England, Scotland and Wales economically. Northern Ireland has access to both markets. Can we take advantage of that duality? Part of the reason why we are what we are, a contested society, is that we are both British and Irish. In acknowledging that we are both British and Irish, there lie the roots of

the arrangement that we have. If we can embrace it and make it work, I hope, on the basis of trust, we can build confidence among communities.

Q39 Lord Thomas of Gresford: The trade difficulties arising out of the protocol can be resolved by discussion and by working through the mechanisms within the protocol itself. A pillar of the DUP is that laws are made in Northern Ireland over which they have no control, and that Brussels can pass its legislation and you have no voice. What is the SDLP approach to that?

Matthew O'Toole: The first point is that there is a huge democratic deficit in Northern Ireland now because the DUP will not let the Assembly and Executive sit. We have no voice at the minute because the DUP is not allowing our institutions to sit. If you are frustrated about democratic deficit and there not being governance, allow our institutions to get back to work.

That is a fair question, Lord Thomas. As I said earlier, this committee has been one of the most assiduous in updating Northern Ireland Assembly committees where it sees issues in relation to protocol-related EU legislation. I go back to this point that we need to be serious about what we have signed up to and implementing it.

None of this is insurmountable, but we need to have agreed and approved processes for, for example, signposting when changes to EU legislation are going to affect Northern Ireland. One part of that, which was covered in an EU non-paper, involves better and more visible engagement from Northern Ireland politicians, business stakeholders and affected groups. That is sensible. It is not a huge democratic outrage, and how you make it work is by building trust between parties, working the provisions already in the protocol and improving upon them where you can. That should not be impossible.

At its best, when Northern Ireland has worked post 1998, the duality of our set-up has not been a problem for people, unionist or nationalist. To give an example, in Washington DC, the Northern Ireland Bureau, which is operated by the Northern Ireland Executive, operates seamlessly with both the British and Irish embassies when it comes to selling Northern Ireland, whether it is inward investment, tourism or anything else. That duality is possible and does not need to be a barrier.

Lord Thomas of Gresford: You say the democratic deficit is not unsurmountable. Supposing that it is and you cannot ultimately solve that problem, would you say to the Northern Irish people, "That's the price you've got to pay. You can get great advantages on access to both markets. The price that you pay is that you don't have democratic control over laws that are made in Brussels"?

Matthew O'Toole: Part of the way the question is framed, with respect, Lord Thomas, is that the specific bits of legislation represent something fundamentally objectionable. I do not hear from people in Northern Ireland that they think the EU laws contained within the annexes of the

protocol are, in principle, deeply objectionable to them. Bear in mind that other jurisdictions, such as Norway, follow EU law in certain areas and derive an economic benefit from them.

If you make what is in the protocol work and you build on what was in those non-papers, you can get to a place where you have greater visibility, greater stakeholder engagement and greater representation of Northern Ireland views when legislation that is relevant is being developed. It should not mean turning round and saying to people in Northern Ireland, "Lump it because you're getting this economic benefit". I am sure a unionist would not put it this way, but, to be candid, the idea that our voice is heard in London is, I am afraid, pretty preposterous.

On this idea of a democratic deficit, we just returned an increased majority of MLAs who support the protocol, and the UK Government are saying they are going to abrogate the protocol. On the idea that it is deeply, profoundly and forevermore democratically awful that a discrete list of EU legislation will continue to have legal effect in Northern Ireland while the UK Government can just do what they like and it does not matter what people in Northern Ireland vote for, I am afraid that the latter is a slightly more democratically objectionable thing, to be perfectly honest.

Lord Thomas of Gresford: You should understand I come from Wales, so I follow that. If the actual legislation that is imposed on the people of Northern Ireland is not objectionable to them, can you not just face the problem and say, "That's the price we're paying"?

Matthew O'Toole: I said earlier that we need to be honest with people about it, and I am being honest. There are ways that you can enhance our representation. I have talked about the proposals we have made, what is in the non-papers and all the ways that are already in the protocol. Look at, for example, Article 14 of the protocol. I forget which subsection it is, but it talks about representations being made to the joint committee from the North/South Ministerial Council. The joint consultative working group is the opportunity for a vast range of business, civil society and trade unions, theoretically, to have their say.

There is a huge, expansive amount of representation that can happen, so it is not a case of simply saying to people, "Lump it". It is being honest with people about the consequences of Brexit and doing what I talked about before, which is building relationships and trust by having all these things in place. To go back to my last example about the lack of trust in the UK Government, if you look at some of the research done by the QUB academics, the actor in Northern Ireland that is least trusted is the UK Government, by an enormous margin. I am of course obliged to say that our party is the most trusted according to the research. The Alliance Party might look at it slightly differently. Jointly, the two of us are the most trusted. The least trusted is the UK Government.

In years gone past, when the UK Government had a slightly more mature approach to managing issues in Northern Ireland, some of the questions

around democratic deficit about the UK Government in Northern Ireland were less of an issue because there was more broad-based trust for the UK Government operating either as the sovereign Government or in tandem with the Irish Government. There was more trust there, so that is how you overcome some of these issues. You build trust.

The Chair: Building trust is a good point at which to call this session to a halt. Thank you very much indeed for giving evidence to us. We will send a transcript for you to look at, to make certain that we have recorded you correctly and for you to correct any mistakes that there are, but thank you very much indeed for giving evidence to us. On behalf of all of us, thank you.