HOUSE OF LORDS

Select Committee on the European Union

Sub-Committee on Justice

Corrected oral evidence: Consumer protection after Brexit

Tuesday 11 February 2020

10.45 am

Watch the meeting

Members present: Lord Morris of Aberavon (The Chair); Lord Anderson of Ipswich; Lord Anderson of Swansea; Lord Dholakia; Baroness Goudie; Baroness Hamwee; Lord Polak; Lord Rowlands.

Evidence Session No. 1	Heard in Public	Questions 1 - 8

Witnesses

I: Matthew Upton, Director of Policy, Citizens Advice; Sue Davies, Head of Consumer Protection, Which?.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Matthew Upton and Sue Davies.

Q1 **The Chair:** Welcome to this evidence session. A transcript will be taken and made public, and witnesses will all have a chance to view it before it is published. The session is being broadcast live and will subsequently be available to view on the parliamentary website. Any Member should declare any relevant interest.

I welcome both of you here. Mr Upton and Ms Davies, you have distinguished careers in this field and we are very grateful to you for being here. I ask that you speak up, as the acoustics in this room are appalling. I am trying to have this fixed—I will be having a meeting with the experts very shortly—so that certainly I, and maybe others, can hear better. If you will do what you can to speak up, I will not complain if you shout.

I will ask the first question. The Political Declaration looms large in the assessment of the sections that you are dealing with—namely, consumer protection. What is your assessment of that part of the Political Declaration?

Sue Davies: Good morning, Lord Chairman, and thank you for inviting us to give evidence. The Political Declaration makes a really strong commitment to consumer protection at a high level. It also makes some reference to consumer protection in relation to specific sectors such as financial services, aviation and data protection.

At this stage, it is not clear exactly how far that will go in the ultimate agreement or trade deal that we might reach with the EU. We think it is absolutely essential that consumer protection is at the heart of the future partnership. We have had a very integrated approach to consumer protection in which the UK has played a leading role in driving a lot of those provisions, whether in relation to consumer rights—when we are shopping, for example—or in relation to things such as food standards. We would like that to be embedded in any deal or future relationship that we have with the EU, but at the moment it is not clear in the Political Declaration how far that would go.

Matthew Upton: I echo everything that Sue has said. Obviously we welcome the statement that the Government are determined to work with EU partners to safeguard consumer protections. That was good to hear and, as Sue said, it is an incredibly high-level commitment. This might sound like an obvious thing to say but clearly we will now have the autonomy to increase or decrease levels of consumer protection—a subject that I am sure we will get into during the morning. That could be interpreted as a positive or a negative, depending on which way it goes. We will obviously also be free from the limits of things such as maximum harmonisation and, again, there will be debates about whether that is a positive or a negative thing.

Beyond the Declaration, thus far we have taken a lot of solace or confidence from fairly high-level statements from government about the importance of maintaining strong consumer protections. It is something that we would like to hear reiterated because, to be honest, some of those statements were made under previous Administrations in previous times, and a lot has changed over the last two to three years, especially since we gave evidence here in April 2017. The Declaration is a statement of intent, but we would like to hear that backed up by stronger words from Government.

The Chair: Does the statement by Mr Gove this morning about customs and various checks affect your views?

Sue Davies: It is all about the detail and how that would be carried out. We have to get the balance right. We need to make sure that we have free and frictionless trade to the greatest extent possible so that consumers are not affected by unnecessary price rises and do not have their choices restricted in any way, but we also need to make sure that we have effective controls over imports. That extends to any trade deal with the EU as well as to wider trade deals. We need to make sure that we do not compromise on consumer protection, particularly in areas such as food standards or consumer product safety, because we know that some countries with which we might want to seek trade deals have different levels of consumer protection.

We obviously want to see a strong commitment to food standards. As Matt said, it was encouraging to see the announcement from the Department for International Trade last week saying that the Government will uphold food and animal welfare standards. That has to be key; we know from the consumer research that we have been doing that consumers expect food standards to be maintained. If anything, they expect we will enhance those after leaving the EU. We certainly do not want them to be undermined in any way.

Matthew Upton: Another thing which the comments this morning show is how complex this is going to be. So far, there have been just high-level assurances that consumer rights will be protected. There has been some acknowledgement of the complexity that underlies that, whether that is the regulatory bodies we will need to stay part of or equivalent to, the agreements that we will need to make with other countries, or the lifting and shifting across of laws. However, it is another example of the complexity that exists when you get into the reality.

The Chair: What form of high-level assurances would you expect?

Matthew Upton: We would like to see them come from a high level. We would like a continuing statement that consumer protections will not be watered down, particularly in pursuit of trade deals with other countries. That is important from our perspective because, although the devil lies in the detail with a lot of this stuff, it gives Which? and Citizens Advice, as consumer bodies, something on which to hold government to account if and when those standards start to be compromised. It is important that those high-level assurances are given again and again. As I said, one of my slight worries is that some of those assurances were given in different political times and things are changing very quickly. That constant assurance from a high level is useful in itself.

Lord Rowlands: Reading the briefs and things, I was astonished by the sheer amount of European legislation. There is a huge bulk of it and it is all now being transferred into retained law. Do you have any thoughts about how that retained law should be handled? Do you want it all to be retained for ever, or is some of it less, or more, important?

Sue Davies: We have been really pleased that that law has been retained—we see it as a really important baseline—and any changes to legislation should go beyond that and look at ways in which we can modernise and improve our current consumer protection system.

One area of weakness where we have an opportunity to make sure that we have a world-leading system is the consumer enforcement system. Over the years, we have all put a lot of effort into looking at the detail of legislation but, at the same time, we know that we have problems with the resourcing of trading standards. In some cases, it is questionable whether consumers can rely on the enforcement system, so we need to really look at how we can modernise it.

However much of the legislation we transpose into national law, in debates about food standards, consumer product safety or consumer rights, particularly when looking at trade deals with other countries where we might be under pressure to change those things, the Government need to stand firm and recognise that consumer protection and confidence is important as an end in itself but also important for confidence in businesses and to support responsible business.

The area which the transposition of legislation has not addressed is the cross-border rights and protections that consumers have become used to. When the Government published the contingency no-deal notices, we saw that if that area was not included in any deal it would create quite a complex system for consumers in everything from having to get an international driving licence when you want to travel to the fact that your European Health Insurance Card might no longer apply. Also, if you bought a faulty good online from a Member State, for example, or if you booked a holiday with a company based in another Member State and it went bust, that would all become a lot more complicated because consumers would potentially have to resolve the problem in the country in which it originated rather than, as is the case at the moment, being able to go to trading standards here.

Whatever pressures there might be on trading standards, it is still much easier to resolve those difficulties at the moment. It is those sorts of arrangements that we think it is really important to build into the future relationship.

Q2 **Lord Anderson of Ipswich:** As you pointed out, Sue Davies, the Political Declaration makes reference to particular sectors where the parties will try to negotiate arrangements dealing with consumer protection. You gave the examples of financial services, aviation and data protection.

First, in those sectors, do you think that we should aim at dynamic alignment, where we try to keep up with everything that the EU does in the future, or is it enough to settle for the situation as it is now?

Secondly, are there other sectors where the Political Declaration does not say that it is an objective to aim for consumer protection but where you think that perhaps it should? You mentioned food standards and animal welfare, and perhaps there are others.

Sue Davies: When it comes to alignment, it is really important that we take what we have now as a baseline and do not drop below it but build on it and go beyond. We would not want to see the Government restricted in their ability to legislate to protect consumers. It is important that that is built into any deal so that the UK, as well as the EU, has a right to regulate in the way that it wants to protect consumers.

The areas that are outlined are obviously key: financial services protections; aviation—flight rights, for example, have been an important area for consumer protection; and data protection. Reference is also made to digital services, an important area where the EU and the UK have been looking at how we can regulate in quite fast-moving markets. That is an area where we can co-operate and learn from each other, but we need to make sure that we move as quickly as possible to protect consumers. Which?, for example, has been doing a lot of work on product safety and online marketplaces. We feel that there is a gap in the regulation there that we need to address as quickly as possible.

We know from research that we have done that consumers feel really strongly about issues such as food standards. Ninety-three per cent of people tell us that they expect food standards to be maintained and, ideally, people want them enhanced. That is another area where the UK has had a lot of influence over the current approach and the principles that underpin the system. A lot of that evolved after the BSE crisis, for example, and was updated after the horsemeat crisis. We need to make sure that we maintain that overall approach, but there might then be opportunities in areas such as improving food labelling where we want to go further.

The Chair: Have you made any assessment of the possibility of success in meeting such arrangements?

Sue Davies: We think it is absolutely key that the Government—this is about having a cross-government commitment—are clear that we will maintain food standards. A statement from the Department for International Trade last week was positive in that it made it clear that food standards would be maintained, but that needs to apply to imported food as well as to food produced domestically.

We know that some of the priority countries for future trade deals have very different systems and many more problems with food safety. They do not have the same sorts of enforcement systems that we have had in place, so the Government need to make sure that they prioritise consumer protection issues when looking at some of the trade-offs and pressures that they might be under in the wider trade deals, as well as in terms of the relationship with the EU.

Lord Anderson of Ipswich: As you probably know, we are quite preoccupied in this place with online harms, which I suppose could be seen as a form of consumer protection, but it is an area where in this country we seem at least to be trying to work out our own way of tackling the problem. Are you saying that in that specific area we should seek, or be bound, to align ourselves with the EU after Brexit, or is it an area where we should be at liberty to find our own way in tackling the problem?

Sue Davies: In the past few months, some updates of EU legislation have tried to tackle aspects of that. In relation to product safety, there have been some improvements in some of the market surveillance requirements concerning fulfilment houses, for example. That is something that we would like to see transposed into UK law.

Both the EU and the UK are looking at what wider controls we should have. It is important to co-operate with and learn from each other, because we are dealing with potential global markets and global players, but ultimately we want to make sure that we move as quickly as possible to get the right sorts of protections in place that will work for UK consumers. Co-operation will always be essential on things like market surveillance and early warning systems so that we can make sure that consumers are protected as quickly as possible.

Baroness Hamwee: In response to what Lord Anderson raised, public morals appear in the same list as consumer protection and climate change. When I saw that, I struggled to align them.

You mentioned trading standards and enforcement. Neither of those are new issues because, as you said, we are in a global environment. Can you unpick the differences that are coming out of the EU? Is it a matter of quantity? Will the tools that are relevant to a large part of the market not be available to us? Is it simply quantity that will be different? As I said, local authorities have needed more money to support trading standards for as long as I can remember, and enforcement must have been an issue for online purchasers for quite a long time.

Matthew Upton: You are absolutely right that, in many senses, these are not new changes. However, they put additional pressures not just on trading standards but on, for example, the Competition and Markets Authority, with new expectations around dealing with large mergers—expectations that perhaps were not there before in the same way. You are right that there is nothing new here that will potentially be a larger problem, but resourcing for enforcement has been a problem for a number of years.

It is really clear now that, in a sense, the UK is completely in charge of its own destiny when it comes to consumer protection. We should take the opportunity to have all those levers and not look to the EU. Nor should we sometimes, rightly or wrongly, say that we were restricted in acting in certain ways as a result of membership of the EU—I know we might come to that later—but we should look at the funding of the whole enforcement landscape and at whether we have the right institutions in place to protect consumers. We should take that on as a challenge. In a sense, this does not really change matters, but psychologically it might give us a new willingness to tackle some of those challenges.

Sue Davies: I agree. The system is under pressure for various reasons. The way consumers are shopping and buying products has changed significantly; a lot of people are buying online, the supply chains are increasingly globalised, and it often requires a different skillset and different tools and powers to enforce these evolving marketplaces for consumers. That is a challenge in any case, and at the same time we know that local authorities have more limited resources to deal with that.

We think there needs to be a better balance between central, local and regional enforcement, and we need to think about some of the powers that are needed within that system. The CMA, for example, said that if it had fining powers in relation to consumer protection it would have a much better deterrent against some of the practices that it deals with.

If we do not address this, leaving the EU might mean that we have to deal with more complex trading arrangements, particularly if we are seeking trade deals with other countries that might have quite different systems, and we need to be careful about how we judge any equivalence of those systems when we are deciding how we establish those deals.

We also have reciprocal arrangements with the enforcement bodies in EU Member States through the Consumer Protection Cooperation Network. That means that if a consumer is ripped off when hiring a car in Spain, for example, they can get that sorted out here, and vice versa. That is the sort of thing that would change and could be more complicated, and which we need to make sure we have bilateral agreements in place for.

We have also left some of the early warning systems that we are part of, such as the Rapid Alert System for Food and Feed, and the Rapid Alert System for dangerous products. We have put additional measures in place to try to replace that, but we still need to try to have access so that we know that if a safety issue arises in Italy, Denmark or wherever, we can have that information very quickly.

Baroness Hamwee: That is very helpful. Thank you.

The Chair: Will the deregulation of standards of consumer protection be a body blow against unanimity and continuation?

Sue Davies: We really hope that will not happen. Given the greater flexibility that we will have, it is really important that that is used to enhance consumer protection and the standards that people rely on, rather than to deregulate and remove those protections. That would be very short-sighted; we know that responsible businesses also want a level playing field.

I mentioned the consumer research that we have been doing into food standards. When we asked people about consumer rights, we found that they also expect those to be maintained and enhanced. So we need to make sure that any flexibility we have is about modernising what we have and improving protection, and certainly about making sure that we do not strip away protections which the UK has largely had a lot of influence over in any case.

Matthew Upton: I agree. I do not see it heading in that direction. Clearly, that is technically a risk, but if you look to history you can see the UK's strong record, strong commitment, political statements. I am always slightly worried when I see things coming out like the ‘Brexit red tape challenge’ and deregulation is talked about in quite broad and sometimes simplistic terms. However, the deregulation of consumer protections is things like taking away people’s right to a refund, their right to high food safety standards, their right to the ability to complain to a third party if the trade does not give them a satisfactory outcome, taking away protections for vulnerable consumers when things like their energy supply is interrupted, and other things like that.

There is no groundswell of opinion among people for taking these things away. If anything, there are lots of frustrations about the way they are dealt with as consumers, and there is a groundswell of opinion about improving consumer protections. As you say, it is technically a risk, but hopefully it will not happen.

Q3 **Baroness Goudie:** Good morning. Do you anticipate a period of deregulation in the standards of consumer protection in the UK as a result of Brexit? And do you think that the section of the Political Declaration dealing with the level playing field will protect us against all eventualities?

Sue Davies: It depends how that is applied. A lot depends on the approach that we take domestically. We need to make sure that in our future relationship we in no way inhibit our ability to improve consumer protection. As was just said, we would be very concerned about any deregulatory drive. Such a drive is often narrowly focused and fails to recognise some of the longer-term benefits of consumer protection both for consumers and for businesses. Consumer protection is obviously essential for consumer confidence, which is essential for the growth of the economy. So we need to be careful about how we make changes, and we need to make sure that they are focused on making regulation more effective so that it works for consumers.

Baroness Goudie: That is what is worrying me: we will get tied up in the regulation so that nothing is missed out, but at the same time we will not be looking to the future of better consumer regulation, and those who have sharp practices will try to go against regulation and red tape, saying, “We thought that once we left Europe there would be no more red tape”. I am worried that that will become the reality and everything else will be a distraction, instead of there being better and future consumer protection, and law.

Matthew Upton: That is a real risk, as you say, because on the one hand we are trying to say very clearly to government, “Make sure that things don’t fall between the gaps, make sure that we tie everything up, make sure that we take care of things like the cross-border arrangements that we need to have in place”.

The conversation that we are trying to make sure progresses is about what kind of consumer protections we want in the future. A number of areas of potential domestic reform are being looked at at the moment, whether it is the review of digital regulation, whether we have the right regulators and institutions in place, whether the competition landscape is right. We hope that the Government take the opportunity to look at things like that and, as you say, not fall behind.

As an example, we think that in essential services there are still too many vulnerable consumers being ripped off by their providers. The whole debate about EU law could crowd that out and mean that we do not tackle things that take hundreds of pounds out of people's pockets every year. So I completely agree.

Lord Rowlands: What role has the European Court of Justice played in the whole area of consumer protection? Has it been in its landmark judgments, or has it been influential in any way?

Sue Davies: As things operate now, it provides the case law that has underpinned the way consumer law has been interpreted, so it has played a fundamental role up to now. It is important that we make sure that there is a clear understanding that we are not rolling back some of the important protection established in that case law.

This goes back to Matt's point about the complexity. We have a body of legislation that has evolved over a long time. We also have the associated case law, which we have relied on. We have had a massive transposition of legislation, and as consumer organisations we have been trying to scrutinise that as much as possible, but it has been very difficult to read all the nitty-gritty of all that legislation and what it might mean. We need to make sure that we are not missing anything or losing anything in the process.

Also, as we have just been saying, we also need to look to where we can improve and modernise it. Sometimes when we talk about better regulation it tends to be about stripping away legislation rather than making sure that it is more effective and works better for consumers, and can be effectively enforced.

Lord Anderson of Ipswich: Can you say whether, in your experience, there are areas of EU consumer regulation, or perhaps areas of EU case law on that regulation, which you think, frankly, have not been very successful and could be done better, were we to have the opportunity to think again? I declare an interest as someone who has represented airlines in a number of cases concerning the Denied Boarding Regulation, which would be on my personal list although I appreciate it might not be on yours.

Sue Davies: We see the need for simplification in a few areas. We also need to make sure that legislation keeps up with the evolving way in which we shop and the changing markets in which we operate. You asked earlier about the whole digital markets area. Whether in relation to competition or consumer protection, this is an area where some of the existing legislation assumes that we are dealing in much more traditional markets. We need to update and modernise regulation, and recognise that different actors will potentially come into play and have a crucial role in and influence over consumer choices.

We need to maintain some of the important rights and protections that consumers have. You mentioned flight rights. There are questions about how they are enforced in practice—an area that we talked about before—and there is now a real opportunity to look at whether we can have a much better system. The alternative dispute resolution system is another area that, based on the Government's consumer markets Green Paper published last year, we hope can also be simplified so that people have a better option in privately enforcing some of this legislation.

Therefore, there are some areas where the legislation can be improved. There are no obvious areas where we think there is completely unnecessary legislation that needs to be stripped away; it is just a question of looking at how things are evolving and whether the legislation can be better applied.

Matthew Upton: There are two areas that I would point out. To echo the point about the alternative dispute resolution, at the moment it is a bit of a mish-mash and consumers are incredibly confused. When they make a complaint and are pointed towards the alternative dispute resolution to settle it, there are bodies that exist to support them to varying degrees. Where ADR exists at all, I think people find it incredibly confusing and it is not particularly satisfactory for consumers.

A second area that we are focused on is prices and the protections that are in place, particularly for more vulnerable consumers, in essential markets such as telecoms. For a long time in markets such as energy, broadband, mobile, insurance and so on, we have seen consumers effectively exploited by prices being whacked up by hugely excessive amounts at the end of their contract period. That is difficult and annoying for all of us, but it is particularly challenging for some of the more vulnerable consumers whom we see, whether they are elderly, people with mental health problems or those on much lower incomes who struggle to switch. The costs of that are huge for them.

There have been various arguments about whether EU law prevents us taking stronger action in some of those markets. For example, you might want a particular tariff in the broadband market that offers a lower price to a subset of, say, lower-income consumers, but there is a big policy debate about whether that is a good or a bad thing. There are questions about whether that is currently permitted, and we would hope that the Government could look more closely at that in the future.

The Chair: Baroness Hamwee has a question before we come on to Lord Dholakia. I am sorry; I missed out Lord Dholakia's question. Can we have a brief comment before we move on?

Baroness Hamwee: This ties up with what I think Lord Dholakia might be going to ask. In the Political Declaration, the paragraph that says, "The parties will retain their autonomy … to regulate economic activity according to the levels of protection each deems appropriate", ends by saying, "The economic partnership will also provide for appropriate general exceptions"—in other words, continued partnership. In your area, are there obvious appropriate exceptions, or do we just pick that up generally from the range of your comments?

Sue Davies: There are no obvious ones that come to mind at the moment. The consumer protection landscape is such a vast area that I think the same principle would apply—we would want exceptions if we felt that we needed to go further to improve the protections that consumers have.

Obviously legislation will evolve within the EU as well as here. We work a lot with our sister organisations across Europe and we want to make sure that consumers are protected both within the EU and in the UK in any trade deal. We want to make sure that no limitation is set out in any deal that limits our ability to go beyond our current protections where we feel that that is necessary for consumers.

Baroness Hamwee: But there is no subject area there.

Sue Davies: If you do not mind, perhaps we can think about that and come back to you if we think of any specific areas.

Q4 **Lord Dholakia:** Following on from Baroness Hamwee's question, that section of the Political Declaration says that each party "will retain their autonomy and the ability to regulate economic activity according to the levels of protection each deems appropriate in order to achieve legitimate public policy objectives such as … consumer protection". It would be very helpful to know your views on this section. First, is it likely to cause more problems than it solves, as far as you are concerned? Secondly, are we moving towards minimum standards in some countries rather than observing the best practices available?

Sue Davies: Because the Political Declaration is at a relatively high level, it will depend on the detail that is included in any future agreement. As I mentioned before, we have to be careful about what is included in the agreements with other countries and what pressures might come from them. I talked about food standards, but there are also issues such as data protection. We know that they will have very different approaches to wider consumer rights.

There might also be opportunities to expand some of the protections that we have here, such as cross-border shopping rights, into other jurisdictions. That could be a really positive thing. However, in terms of the agreement with the EU, as I said before it is very important that any autonomy goes beyond we have at the moment and that it is clearly established that this is a baseline upon which protections can be built rather than there being a deterioration in protections. It is more about the future direction of domestic policy and what we decide to do, and how important consumer protection and associated issues such as food standards and product safety are seen to be by the Government as they look to change or modernise legislation. We will obviously make a strong case for making sure that we build on existing standards.

Another important area is making sure that we stay linked to some of the standards bodies and that we feed into international standards. We should try to drive those to make sure that they provide the best level of consumer protection rather than seeing them as a lowest common denominator-type approach that could undermine some of the important principles that we have applied until now.

Matthew Upton: I echo that. Autonomy can be good if it strengthens protections but bad if it weakens them. We as a body will seek to influence government to regulate other such bodies in the area of consumer policy. There is something quite interesting about the simplicity of knowing exactly who we ask for change. We might ask government to eliminate subscription traps or curb some of the harms in the broadband market. It will become increasingly clear that government and the regulators have the levers to pull and it is their responsibility to make those changes. In a sense, that makes it easier to push for that change.

On the other hand, it is worth bearing in mind that, for us, it is not simply whether our standards are better or worse. There is a slight risk in difference. For example, if we and, say, our EU neighbours have different standards, whether they are better or worse, anything that adds to consumers' confusion about what they are entitled to in effect undermines their rights.

Often, the biggest problem arises when consumers do not know their rights and are confused, and therefore they do not enforce them. At the moment, one strength is that you know that when shopping online anywhere across the EU you are entitled to the same base rights—certain things if things go wrong and certain rights to a refund. The more you diverge, the more that confuses things for consumers and they just stop acting in their best interests, which is a risk in itself.

Lord Anderson of Swansea: This could obviously work both ways, but do you have any fears for the future of the quality of consumer protection in this country arising from the fact that courts down to tribunal level could in future disregard the case law of the European Court of Justice?

Sue Davies: We were concerned to see that as a proposal, because we felt that it could lead to a very chaotic situation where it was not clear exactly how different law was being interpreted. We think that needs to be scrutinised so that we can have the confidence that it is very clear what particular case law is still applicable.

Building on what we just talked about, the overall framework in place in the UK, the role of the regulators in place in the UK and their focus on consumer protection relative to other priorities will be really important. There are capacity issues in leaving some of the EU agencies and bodies, and we have needed to boost some of our own infrastructure. The Competition and Markets Authority, for example, is taking on a much bigger role in relation to competition cases, so we need to make sure that it has the capacity to be able to do its consumer enforcement role. The Food Standards Agency will be doing a lot more assessment of the safety of products. That was previously done by the European Food Safety Authority.

Part of the issue is the relationship with the EU and the relative priorities in deciding how important the consumer protection bodies in place for consumers are and what their overall statutory duties are to make sure that there is a clear focus on consumer protection as well.

Q5 **Baroness Hamwee:** You just mentioned agencies. In previous evidence, we heard about the importance of membership of the EU regulatory agencies as a priority for future arrangements. Do you still regard it as a priority, and which agencies should we look at?

Sue Davies: We think it is very important to continue to have co-operation with key agencies. In the political declaration, only three are picked out: the European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency. Those are obviously really important ones, but we think there are others: I mentioned the European Food Safety Authority, which is also important; co-operation on telecoms issues, for example; and cybersecurity, which will be important.

As we are dealing with these very complex global marketplaces—and we know that consumers will continue to buy an awful lot of products or services that originate from the EU—it is really important that we continue to co-operate to make sure that we are working together and sharing expertise and intelligence, so we would like to see developed some way of staying part of those key agencies.

Baroness Hamwee: Even if not as a full member? Is that what you are saying?

Sue Davies: Yes. It depends on what is feasible and possible. A lot of UK experts have sat on those agencies, and that exchange of expertise and information is important, as is some of the intelligence sharing that comes from being part of those bodies, and some of the more formal early warning systems, which I mentioned and which are linked to those bodies. Those systems include the Rapid Alert System for Food and Feed, as I said, and Safety Gate, which is the Rapid Alert System for consumer products. There are two levels at which they operate: one is the publicly available information; and then there is the sharing of information, which sits underneath that and is done on a more confidential basis.

Another area for co-operation relates to competition authorities. We need to make sure that we have the right mechanisms in place so that we can share information that will obviously be highly sensitive and confidential but where we will still be very close to the EU and potentially affected by decisions that it makes about particular markets, as it will by decisions taken by us. We need to make sure that we co-operate where we can.

The other area is the standards bodies. The British Standards Institution is part of the European standards bodies CEN and CENELEC, and staying part of those bodies and influencing those standards, which feed into the international standards, will be important.

Matthew Upton: The only other agency I would mention is the Agency for the Cooperation of Energy Regulators. Citizens Advice has a particular role as a statutory advocate for energy consumers. As people may know, our energy network is incredibly integrated across Europe, and membership of bodies like these is important for the continuity of supply, price and so on. So it is hugely important from our perspective.

The Chair: Thank you very much. May I welcome members of the public who are attending this evidence session and explain that this sub-committee is questioning Mr Matthew Upton, director of policy at Citizens Advice, and Ms Sue Davies, head of consumer protection at Which? We are about two-thirds of the way through our programme today and will finish at about 12. I thought I should let you know that. The next question comes from Lord Polak.

Q6 **Lord Polak:** It should be no surprise that we may come out of these agencies, which we have been part of for so long. Back in 2017, we suggested that the Government did not appear to have a plan to secure the UK's continued participation in these agencies, mechanisms and infrastructure, which police, secure and develop consumer rights across the single market. I presume you think that such a plan is important. We are now in 2020 and have moved on. Do you think the Government have a plan?

Matthew Upton: Yes, we absolutely do think that a plan is hugely important. It was really good to see that the Committee recognised back in 2017 that consumer protection was not just a case of lifting and shifting laws across but was much more complex. That was incredibly helpful.

From speaking to individual organisations—the CMA, for example—we know how seriously they are taking their planning to make sure that they plug some of the gaps and stay part of some of the bodies that Sue talked about. The Government have been engaging in a positive way; they have been asking the views of organisations like us about which networks it is important to stay part of, and so on and so forth. Obviously they are much better placed than I am to say whether they have a sufficient plan in place, but you are right to make the point that we do not have long left; the implementation period is relatively short, and the matters that we are talking about are complex, so a plan remains incredibly important, and further reassurance from government would be helpful.

Sue Davies: I agree with everything that Matt has said. It is important that we stay linked in with the agencies. It is unclear whether the Government have particular priorities, because certain agencies are referred to in various documents but not the whole breadth of agencies that we have just talked about and which we see as important. In this transition period, we may have a different relationship with those bodies, so it is important that we continue the formal but also the informal networks that sit behind those and which can give access to a lot of important information for consumer protection.

It is also important that we look beyond the EU and make sure that we make the most of wider networks that are really important for consumer protection. The CMA has always played an active role but is playing an even more active role now in the International Consumer Protection and Enforcement Network, which brings together regulators from across the world that enforce consumer rights legislation. The OECD has a lot of work going on on consumer protection and is looking at consumer product safety, for example.

There are initiatives that will also be interesting. There is an EU-US-China initiative on product safety, and in our testing we have identified a lot of issues with unsafe products that are coming from China through online marketplaces, for example. We think it is important that the UK stays part of those sorts of tripartite initiatives as well and works with the regulatory authorities in those wider networks.

Lord Polak: It is a two-way process, one presumes, and you have connections with these agencies. Are they saying that it is important for them and for the people they represent that the UK is brought in and plays a role? In other words, are we moving away from the politics of this and actually looking after the consumers? Will those agencies themselves want to ensure that the UK plays a role?

Sue Davies: Probably in an informal sense; a lot of our experts have sat on Scientific Committees and therefore have fed into that, but we will be limited in that we will not be able to participate in the same way. Those informal networks will be important. Even if we want to, we cannot formally sit on some of the groups or networks that already exist without a bilateral agreement being in place.

Lord Polak: I just worry about cutting your nose off to spite your face. It is important for the agencies, too. They should also want to keep playing with us.

Sue Davies: It is a reciprocal thing where we definitely need to share our expertise.

The Chair: Your views are very valuable on this aspect, given the past criticism. Perhaps I may just ask for further precision. Is the plan comprehensive? Is it easily available? How far is it in document form, or are we talking about some vague and nebulous thing?

Sue Davies: It is at a relatively high level. For example, reference is made in the Political Declaration and in other statements from the Government about working with or maintaining links to particular agencies. The list that is shown tends to be indicative, so its exact scope is unclear. I think that is why all the agencies that we have been talking about need to be built into the arrangements that we have with the EU going forward. They need to be included in the trade deal so that we have formalised bilateral working arrangements.

Q7 **Lord Anderson of Ipswich:** It is said by some that we are aspiring, at best, to a Canada-style trade deal with the EU. Do you happen to know whether Canada has representation on any of these agencies and, if so, what is their nature?

My second and horribly specific question relates to areas of institutional co-operation other than the agencies—in particular, Regulation 2017/2394 on co-operation between national authorities responsible for the enforcement of consumer protection laws. That Regulation is obviously designed for authorities that apply Union law, as I read it, so the political appetite for participation in that may not be very strong. In your view, would some measure of participation in that mechanism be desirable, and are there other mechanisms that we should look at that do not qualify as agencies?

Sue Davies: We are starting from a very different place compared with, say, the Canada agreement, in that we have been very integrated. We have worked as part of these agencies and have been working with experts across the EU for some time. We hope that it will be possible to reach an agreement that enables co-operation to continue on a bilateral basis.

In terms of co-operation, following the Canada agreement, for example, there have been various mechanisms to set up committees for regulatory co-operation on a whole range of issues, although a lot of the detail is still being worked out. One mechanism that evolved from that was that the EU and Canada agreed to work on the Safety Gate rapid alert system, sharing information about consumer product safety.

In terms of participation with agencies, the one I am most familiar with is the European Food Safety Authority, because I chaired that for four years. Canada is not part of that. There is an advisory forum made up of Member States, as well as Norway, Iceland and countries that are part of the EEA, for example. Maybe we can develop some more unique participation arrangements depending on the scope of the deal that we agree, but as part of a normal trade deal I think it would be unprecedented.

The CPC Network—the Consumer Protection Cooperation Network—currently does not apply to third countries. However, again, we would hope to work very closely with the EU. Our regulators have good working relationships with regulators and enforcement bodies across the EU, and it would be in our mutual interest to try to set up some bilateral arrangements, even if they had not been in place before, to enable that to continue.

Q8 **Lord Rowlands:** What advice would you give the Government as they approach their negotiation about the future relationship with the European Union? What would you tell Ministers that they should do?

Sue Davies: At a really basic level, I would just say that consumer protection really matters. It is the sort of thing that can sometimes easily be taken for granted. However, as well as in wider trade deals, the way we deal with the EU will be judged by how it affects people in their day-to-day lives. It is about being really clear that we will maintain existing standards and protections and will look at how we can enhance and build upon them. From talking to people about consumer protection during all the consumer research that we have been doing, we know that they want that to be the case and believe that it will be.

Another aspect relates to the cross-border co-operation issues that we have just been talking about. Shopping has become incredibly complex—it is globalised and online. Products come from many different parts of the world. We need to make sure that we have continuing arrangements so that consumers' rights can be protected, similar to the way they have been over the last few years, if they buy dodgy products or if something goes wrong with their holiday in EU Member States.

The third main area that we really want to emphasise is that we should see this as an opportunity to transform our own consumer enforcement system. However good the laws that we have in place, people and businesses need to have confidence that we have an appropriate and modern consumer enforcement system that will be able to enforce those laws and make sure that they are properly protected.

Matthew Upton: I have three quick examples to pick out. One is the importance of consumers. It is worth reflecting that consumers shop with confidence in this country because of the protections that exist. If that confidence wobbles or is rocked in any way, that could have serious knock-on effects for the entire economy. In a sense, so far one of the successes has been that there have been no panics. We have not had those moments—whether it is people rushing to cash machines to take money from Northern Rock or people queueing at petrol pumps—and that is a huge success. If things had been handled badly, there would have been no reason for those moments not to have been created. Therefore, one message to government is the need to reflect on and understand the importance of consumers.

The second example is transparency about how consumers are involved and engaged in the future. When the Government are negotiating trade deals, it will be very easy for them to get the views, for example, of employees through trade unions or the business community through some of the groups that exist. However, consumers are such a big, amorphous body that it is slightly more difficult to get their views easily. That is where organisations such as ours come in. Sue gave an example earlier. We are trying to represent consumers on this, but it is incredibly challenging and difficult for relatively poorly resourced organisations to do that as effectively as we would like. Therefore, being transparent and collaborative with organisations such as ours is another bit of advice that I would give.

The third example goes back to the conversation that we had earlier: that the easy thing for government to do would be to put their head down and just focus on basic consumer protection over the next couple of years and not get things wrong. However, that would be to miss the huge opportunities which we know people are hungry for. They are sick and tired of being ripped off by their bills and they feel that better protections could be in place. That is the challenge that the Government need to take on.

Lord Rowlands: Alongside this negotiation, the Government obviously have an ambition to negotiate a major US-UK deal. Do you think that could impact on the existing system? How do US protection laws compare with the current EU and UK laws?

Sue Davies: They are quite different in many areas. We work quite closely with Consumer Reports—the equivalent of Which? in the US. The current issue of its magazine is all about the food poisoning outbreaks across America that have been caused by contaminated salad vegetables. Consumer Reports has been campaigning to try to improve the food safety system. That is one example of a very different system. There are other agencies there that we also need to work with closely, such as the Federal Trade Commission. That has been established for a while and is looking at issues similar to the ones that we are looking at, such as online harms.

But, overall, whether it is in relation to food safety or issues like data protection—and just looking at some of the negotiating objectives that the US has already published—it is clear that some important areas where we would want to see protections enhanced are areas where the US Government will be trying to make sure that we do not regulate.

Within that, we have the online marketplace, which we see as a really positive area for co-operation with US regulatory bodies. However, in its negotiating objectives, the US does not want to place any extra liabilities on online marketplaces—I can send you the precise wording. We need to be really careful about how we negotiate, whether it is on online harms, safety and standards or labelling, where there are quite different rules in place, to make sure that we are in no way inhibiting our ability to regulate in the way we want to for UK consumers.

Which? is about to hold some public dialogues around the country, talking to people about the different issues there could be within trade deals and getting a much better understanding of what people see as some of the priorities, both in terms of the opportunities that could be included—such as better access to digital content or enhancing consumer rights more widely, as well as cheaper products—and where standards and rights fit within that. It is absolutely crucial that, as we reach deals with the US but also with Australia, New Zealand, Japan, where they have quite different protection regimes in place, we in no way undermine the protections that we have here and what we know consumers want.

Lord Rowlands: I understand, but is the US protection system stronger or weaker than that of the UK or the EU?

Sue Davies: Looking across the piece, it is weaker. Looking at specific issues, there might be some areas where we could learn from them and could look to improve on some aspects. Overall, the US has been trying to modernise its weaker food safety system; it is still implementing a lot of food safety legislation that was trying to update inspection and traceability requirements.

With regard to consumer product safety, the US has a very complex system compared with what we have in the UK and the EU. Rather than having a single standards body, there are multiple bodies that set standards for different consumer products. It is possible that some are stronger than our standards, but there is no national standard for particular products—there is no national standard for fridge-freezers, for example.

There are hundreds of different standards bodies. As we work through the complexity of what applies, we need to make sure that we do not get distracted and that we stand firm on the standards that we know will maintain consumer protection.

Lord Dholakia: Have Citizens Advice or the Consumer Council been in touch with similar organisations in EU countries to determine the present political stances that are being taken, or are they more or less expecting adequate standards? Are they adequate, or do they need improvement? What efforts can we make at this stage while the negotiations are taking place?

Sue Davies: We are a member of the European Consumer Organisation and we have been part of its task force looking at what leaving the EU might mean for both EU and UK consumers. That has been a really useful forum for exchanging information, and we have published a set of principles about making sure that we maintain effective protections, particularly when talking about cross-border rights and protections, whichever way round it is. So we work closely with it.

Citizens Advice is also a member of BEUC. It is something that we are continuing to talk about, and as we get into the details of the trade deal we will obviously work with them on making sure that we get the best outcome as well.

Matthew Upton: To go back to a previous comment about the reciprocal nature of some of this stuff, we know that colleagues from European countries hugely value our involvement and expertise in organisations and groups such as BEUC, so that is something that we will look to continue.

Lord Anderson of Ipswich: You made the point that detailed consumer protection standards are not the subject of a normal trade agreement. You have had no notice of this question, but I wonder if you happen to know anything about the position of Switzerland, which is obviously outside most of the central EU mechanisms but which we think of as a country with quite high standards of consumer protection. Do you know how closely it is integrated into EU mechanisms, and are there any lessons there for how we might hope to do it in the months and years ahead?

Sue Davies: That is probably one that we will have to come back to you on. We do work with the Swiss consumer organisation on some issues, and I think it is variable; in some areas they might be aligned, but in other areas they have been looking to campaign for tighter controls on particular issues. It is difficult to say without coming back to you.

Lord Anderson of Swansea: You have obviously worked with your European counterparts over a long period and you have mentioned the good will that they have towards you. Is it your hope that this good will can be translated into special arrangements after departure?

Sue Davies: We will continue to be a member of the European Consumer Organisation after we have left the EU, so we will continue to feed into those discussions. It will be interesting to see how that evolves, because it will obviously be focused a lot on influencing EU legislation, and we will want to co-operate with it to make sure that we are advocating for the best outcome for UK consumers. We would hope that the UK sets a gold standard, as it has done for many years in the influence that it has had on EU legislation up to now.

The Chair: Thank you. Is there anything that you would like to add that we have not covered in what I think is a very broad range of questions? May I say how valuable your evidence has been? I tell the members of the public who have come in fairly late in the day that we are discussing consumer protection after Brexit. We have had two distinguished visitors who are experts in their fields—Matthew Upton, director of policy at Citizens Advice, and Sue Davies, head of consumer protection at Which?

Sue Davies: I would just reiterate Matthew's comment earlier about the importance of effective consumer engagement as we look at how the future domestic landscape evolves and as part of the negotiations, whether on the trade deal with the EU or wider trade deals. We are doing our own consumer engagement to understand what people think about different issues, but if the Government can be transparent about what the different impacts might be for people, it would be really valuable.

There has been a large transfer of legislation, which it has been difficult to scrutinise, and consumer organisations may not necessarily have the resources to focus on and scrutinise everything in detail, so the Government need to make sure that they focus on consumer protection. We can help with that, to some extent.

Matthew Upton: To build on the point about taking the opportunity to look to the future, some of the specific questions the Government are addressing at the moment are whether bodies such as the Competition and Markets Authority have the right funding, expertise and so on to do the job they need to do. They have had increases in their funding to cope with things like their additional mergers roles.

Simultaneously, there are conversations going on domestically about whether bodies like the CMA have the right duties to protect consumers, whether the appeals processes are in the right place or are too balanced towards the needs of businesses rather than consumers, and whether the right powers are there. It makes sense to look at all these things at the same time rather than looking at one, waiting a couple of years and then looking at another. There is an opportunity to look at the institutions and whether they are right at the moment, and we hope that the Government take that opportunity.

The Chair: Thank you very much indeed. I am sure that HMG will want to explore the issue of who has the right to do what.