

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: The Northern Ireland Protocol Bill

Wednesday 9 November 2022

3.30 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 O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 11

Heard in Public

Questions 86 - 93

Witnesses

[I](#): Dr Tom Kelly, Columnist, *The Irish News*; Ben Lowry, Editor, *News Letter*.

Examination of witnesses

Dr Tom Kelly and Ben Lowry.

Q86 **The Chair:** Good afternoon, and welcome to this public meeting of the sub-committee on the protocol on Ireland/Northern Ireland. We are today holding the 11th, and final, evidence session of our inquiry into the Northern Ireland Protocol Bill. That inquiry follows the publication of our follow-up report into the economic and political impact of the protocol on Ireland/Northern Ireland in July.

We are joined today by two leading media commentators: Ben Lowry, editor of the Belfast *News Letter*, who is joining us remotely; and Dr Tom Kelly, columnist at the *Irish News*, who is joining us in person, and whom we welcome back to the committee following his appearance before us last year. You are both very welcome and we much look forward to your evidence.

Today's meeting is being broadcast, as you will see, and a verbatim

transcript will be taken for subsequent publication, which will be sent to you to check for accuracy. Could I refer to the list of Members' interests as published on the committee's website and ask that questions and answers should be concise as we have other business as a committee to do? Thank you both very much indeed for being with us.

I will ask the first question and perhaps you could introduce yourselves for the benefit of our listeners before you answer. How would you characterise the political, economic and societal impact of the protocol as it is currently operating on Northern Ireland? Who would like to go first? Perhaps, Tom Kelly, as you are here, you could go first.

Dr Tom Kelly: I was going to defer to the editor. I am a political commentator and columnist at *The Irish News*, and a former business and finance correspondent in Dublin. I declare that as an interest as well.

In societal terms, you have to distinguish between the political bodies in Northern Ireland and those who are living day by day and struggling with the cost of living allowance—people who are getting on with their lives, who are working in communities, who are working with voluntary groups, who are working in co-operatives, and who are in manufacturing. For those people, the priorities are economic well-being.

The political classes, and I write a lot about them, have a much deeper and ingrained position on the protocol, which is not necessarily reflected in the broader two communities. It is certainly not something that I pick up. In the past few weeks, I have spoken at events to do with community development and mental health, and the interests and the priorities of those people are not the Northern Ireland protocol. You get that back very strongly.

I am sure you appreciate that no matter what paper you write for the most popular pages in a newspaper are the letters pages, and, again, this is not reflected in the letters pages. People continually refer to struggling with the economic crisis that is faced here in Britain and in Northern Ireland, but there is no doubt that the protocol has exacerbated political differences within Northern Ireland in the political classes.

The Chair: Thank you very much for that as a start. Ben Lowry.

Ben Lowry: Thank you, and thank you for having me. I am editor of the *News Letter*, or, as we still informally sometimes call it, the *Belfast News Letter* for people who are outside Northern Ireland. We are a unionist paper. I will try to give you a general perspective at times, as well as a unionist perspective. Your question is about the political, economic and societal impact.

We know that the political impact is huge. The political impact is the reason why we do not have Stormont. We hardly need to say how massive the political impact is. The economic impact is potentially ultimately huge with regard to the Irish Sea border, but for various reasons, from unilateral extension of grace periods to not knowing the extent to which the United Kingdom and the European Union will diverge

over time, we do not yet know the economic impact. The least impact is the societal impact. I might share some of the observations that Tom Kelly is making, but I do not reach the same conclusions from that.

As it happens, in our letters page a very significant number of the letters relate to the Northern Ireland protocol. It is something that agitates unionist people who take an interest in current affairs, but I admit that very many people on both sides of the community do not take an interest in current affairs, so letters pages are of themselves not representative, and letters are something of a dwindling tradition, even though at the *News Letter* we are careful to keep the letters page going and we have a pretty vibrant letters page.

The Northern Ireland protocol is a slow burner. It is a slow burner because of its complexity. A major aspect of the Northern Ireland protocol—the complexity—is something that people have not wanted to admit, whether they are politicians, commentators, journalists, or businesspeople. Most people in their daily lives, even if they are businesspeople, have narrow levels of interest. Given that the protocol happened and the people who were most likely to understand it were trade experts, and although there were lots and lots of us, of course, who instinctively had grave concerns when so much as a regulatory border was first discussed, if you go back to the backstop, the number of people who really understood it was gradual.

Then, of course, with time as the protocol proceeded, whether it is importation of seeds, or in so far as it pertains to pets or medicines or various aspects of it, the impact has become greater, even though initially the lowest end of the spectrum is the societal impact, for the very obvious reason that there are huge swathes of people—many people who do not vote, and even many people who vote but are less concerned about it—who will never care even if the constitutional position changes.

The Chair: Thank you very much both of you for those first remarks.

Q87 **Lord Dodds of Duncairn:** Welcome, Tom and Ben. Coming more specifically to the unionist community, the nationalist community and those who do not identify as either, looking at each of those three groups, what do you think the attitude is at the moment in the unionist community, in the nationalist community, and in those who do not identify as either? Where do you see they are at, given all that has happened with the protocol and with Stormont being down and so on? What is your assessment within each of those sectors of our community?

Dr Tom Kelly: Nigel, thank you. We have an Irish saying, which is that people live in the shelter of each other, and I think we have secured peace in Northern Ireland because people have, by and large, respected that over the past 25 years. There is a polarisation going on at the moment that is not helpful to community relations in general. It is actually quite a threat to stability in Northern Ireland. We do not have a Government, which is essential if you want to attract inward investment

to a country. You have to have political stability, and businesspeople look to politicians for that.

I would not be widely critical of the various Administrations since 2002 because I think that people have worked hard. Unfortunately, the really worrying aspect, Nigel, is not the people who are nationalist or unionist, or non-aligned, because that is only 13% allegedly, but the nearly 40% who do not vote. We are in real danger of marginalising huge sections of the community that we will not be able to bring back to the political process and to have confidence in the political process. Those people are literally voting with their feet and not going to a polling station because of the current instability and the seesaw-type approach to our politics where somebody has to win and somebody has to lose.

The Good Friday agreement was to try to create consensus. We get hung up on the word "consent", but the reality is that the key pin in it was consensus. If you can govern by consensus, people will naturally be together and will arrive at the same space. If you talk about consent in Northern Ireland terms, what you really mean is veto, and that is not helpful on either the nationalist side or the unionist side. There has to be a rethink about how we get back to consensual politics.

The Good Friday agreement established a consociational government, so it was always based on a blueprint of people working together. We have not had people working together, and that is sad. We have had a stop/go-type approach, and that has a deep impact. It is great if you are the follower of a political party; you will be geed up by whatever side is doing the cheerleading, but every politician should be concerned about the 40% of the public who are walking away.

Lord Dodds of Duncairn: You talk about bringing the 40% back, but has it not always been the case that a substantial section of even the Northern Ireland electorate, who may be more politically tuned in than others, do not vote? Do you think that has increased dramatically?

Dr Tom Kelly: Since your time and my time, I think it has. It has gone from about 25% up to nearly 40%, and that is really worrying. We had a reputation that even the dead voted in Northern Ireland, so you can have a turnout in Fermanagh of 110%. In large sections of the community, you have to look at the people who are walking away. The people who should actually be stakeholders and the people who are most vulnerable are the people we are not reaching, and something has to be done about that.

Lord Dodds of Duncairn: Thanks. Ben, on attitudes in the unionist community, which you can speak to very directly as well as the other issues that were raised, where do you see things?

Ben Lowry: I want to pick up on what Tom said about turnout. It is a very important question. It is sort of true and not true. I do not have figures to hand immediately, but I have been following election results since the early 1980s, and certainly there has been a lessening in

constituencies, often west of the Bann, that had extraordinarily high turnouts, which were unmatched by anywhere in the UK, approaching 80% and sometimes higher, and places like North Down, affluent, prosperous places, which reflected often affluent, prosperous places in Great Britain, where turnout was lower. Actually, often the turnout in the east of the Province has edged up, and that has benefited the centre ground. As the Troubles have receded, in some of the more bitterly divided places the turnout has come down.

We have quite a good gauge of public opinion, which was the Assembly election this year. Of all the elections, the general elections or the main elections, the Assembly elections since 1988, or the Belfast agreement, the new dispensation, the recent election had one of the highest turnouts. There is no question but that unionism has declined from being a narrow majority position to, in the most recent election, 42% of the overall vote, but that is still ahead of the nationalist bloc of 40%. It is a minority—we talk about everyone being in minorities now—but it is still the largest minority, so there is a protection of rights issue when it comes to the unionist position.

To go back to my first answer about the slow-burning effect of the protocol, about the complicated nature of the protocol, about the different signals that were coming from the UK Government on the protocol and so on, there has been a gradual but more or less unanimous movement within that very large bloc—the largest bloc even though it was the smallest vote it has had—against the protocol and a realisation that the protocol is a damage to the principle of consent. I am not sure whether I misunderstood Tom's use of consent and consensus. I am talking about the principle of consent in so far as it pertains to the constitutional position.

There has been a realisation. Of course, within unionism there is a spectrum of people in response to polls, which can sometimes be misleading if they ask golden questions and almost invite people to say that they rate health more highly. Of course, people can have a degree of doublethink where they might answer in a particular poll that this issue is more important or that issue is more important, but we cannot get away from the fact that, even in this recent election, one of the best canvasses of public opinion there has been, 82% of people who cast votes did so primarily on the basis of parties that defined themselves on the constitutional question, and still that middle ground that we hear a lot about was not able to reach 20%.

Within the unionist community, there is a growing understanding of the massive problems with the UK having lost control, essentially, of such a central plank of sovereignty as trade relating to part of its territory.

Lord Dodds of Duncairn: Thank you very much indeed, gentlemen.

Q88 **Lord Empey:** I am glad to see you, Ben and Tom. What is your overall assessment of the UK Government's position in relation to the protocol?

Dr Tom Kelly: I find it difficult to find and define the position of the British Government, because things here seemingly change week to week and you change policies as much as you change Prime Ministers. I am not hugely sure exactly what direction the UK Government are going in at the moment. My overall feeling is that they have drifted.

One of the things I am sure some of the Members here will appreciate, depending on their length of time of service, is that there is not the same buy-in from the Conservative Government to things Irish/Northern Irish. I do not think there is the same appreciation of the historical ties or the full-on commitment that previous Governments, both Tory and Labour, have given to Northern Ireland, and that has allowed things to drift.

Sometimes, perhaps, things could have been handled better. There are times when the British Government did not openly communicate well enough with the two main parties in Northern Ireland, and certainly did not communicate well enough with the unionists to bring them on board for what they were doing. At times, the unionists were on board with what the Government were doing and then they changed their mind.

The Government have been very erratic in how they have dealt with this. There has been no consistency from the Government in the years from 2016 to now. It is very difficult to get consistency when you do not actually have people who stay in office for any length of time. I was in a quiz the other night and they asked us to name all the previous Secretaries of State of the past 10 years, and it was a real struggle to get all the names.

The Chair: I am sure you got Peter Hain.

Dr Tom Kelly: Peter was before the last 10 years. It helps when you have stability and you have a Secretary of State who is in Northern Ireland for more than six months or a year. The Government's attitude to Northern Ireland has been that only when it flares up do they give it attention. I still regard Northern Ireland as very much a fledgling democracy, in that the seeds have not been fully sown in all places, so that requires continual nurturing and attention. It does not necessarily mean that you have to go in and bail out politicians to solve their problems for them, but you have to be aware of where the fault lines lie within the two communities and the two traditions, and see how you can best manage that process forward. I certainly think that previous Secretaries of State did a much better job, prior to 2016.

Lord Empey: Thanks for that, Tom. I may come back with a supplementary. Ben, what is your assessment?

Ben Lowry: If I was to be unkind—I have said this occasionally in broadcasts and things that I have written—I would be concerned that at times the Government have seemed, with regard to the Northern Ireland protocol, to be all over the place. If I was to be more generous about what has happened, a big moment, as I think was apparent to all of us when we really thought about it, was the night that Theresa May failed to

secure an overall majority. Later that year, the backstop came in and there have been problems ever since.

There was turmoil with Boris Johnson coming to Northern Ireland in 2018 and making various promises. Both Boris Johnson and Theresa May talked in terms of things that a UK Prime Minister could never accept. There was the complicated nature of the various iterations of the backstop, as it then was, and the difficulty in following it, but those of us who were following it closely were concerned about the UK Government position. I am not trying to give a history, because you all know this better than I do; I am trying to explain why the very concerning perception for unionism is the changing UK position.

Then, of course, there was wariness about what Boris Johnson was saying. In 2019, Boris Johnson came to the hustings here with Jeremy Hunt. Then there was the first iteration of the protocol after the Tory party conference and then the second iteration of the protocol. Anyway, forget all that.

There was a sort of phony war period after October 2019 when there was not the opposition to the protocol that there would have been because there was a feeling that maybe it was not that bad and the Government were denying it. Even in the early months when the protocol came in, it still took time for people to realise the implications. Then, of course, the Command Paper was a sudden change from the UK Government, and then they seemed to be retreating from the Command Paper, if I have my chronology right, late last year; they seemed to be drifting away from it. Then there was the Northern Ireland Protocol Bill, and at times the varying emphases on the protocol Bill.

I realise that the Government have been in a difficult place and they have been dealing with all sorts of turbulence, particularly since the 2017 failure to get an overall majority. If I was to come back to the perception at times of the Government and the Northern Ireland Protocol Bill, the thing that really encapsulates the ambivalence, the uncertainty and the concerning nature for the many unionists who follow things closely is the Government's approach to the court case, which, of course, is coming up very soon in the Supreme Court.

I actually asked Lord Frost at the Tory party conference 14 months ago about the ambivalence of the UK position with regard to the court case and some of the hoops that the UK was getting into, on the one hand through the Command Paper and later through the Northern Ireland Protocol Bill, showing that they shared concerns, fuelling and reaffirming the sense for unionists who say that this is a profound matter that has constitutional significance, and then continuing to defend their position in court. There was a brief period about a year ago when the whole case was suspended. It seemed like maybe there was a rethink from the UK Government with regard to the court case.

The progress of that court case and the different things that the Government had been arguing and the different signals we got have gone

on right up to the current day. Remember the near hysteria about Chris Heaton-Harris and Steve Baker becoming Northern Ireland Office Ministers and people talking about an ERG takeover of the NIO, which some of us thought was completely implausible and assumed, as events this very day show, apart from anything else, not to be the case. That is why, in a way, I find it difficult to answer your question.

We accept that the Government have had turbulence. We accept a degree of argument that they signed the Northern Ireland protocol under a degree of duress with the utter stalemate in Parliament, and that there is a context to all this, but it is really unclear where the UK Government are. To be more generous about it, when Governments are divided on how to go forward, these things happen.

Lord Empey: Are you sharing Tom's view a bit that it is partly related to the churn of personnel, or do you think that government plc just has not worked things out and actually does not have a coherent strategic position at all?

Ben Lowry: I think that the churn of personnel, incidentally, is a very big problem with regard to Northern Ireland. Nationalists would certainly have their own problems with the churn of personnel. Unionists have problems with the churn of personnel, feeling that there is no culture of unionism within the Northern Ireland Office. I think the greater thing is government plc, as you talk about it.

There is no agreement in this. The very profound problems and divisions in the Tory party are also manifest in the approaches to Northern Ireland. There have been external impediments to the Government's ability to act when they want to take a unionist position, and there is a lot of disagreement in it. Particularly at times when things are difficult, Northern Ireland falls off the radar.

Lord Empey: Tom, would you accept what Ben is saying: that the analysis is not so much the churn of personnel, but that there is no thought-through strategic position from which policy derives?

Dr Tom Kelly: Dare I say it, I never thought Brexit was a fully thought-out position for the British Government to take, and I have not changed from that. In fairness to any Secretary of State, at some stage they are all going to rub somebody in Northern Ireland up the wrong way, otherwise they are not doing their job. You will never get a great love-in between politicians in Northern Ireland and any particular Secretary of State, but we would like them to sit in the chair of Secretary of State long enough to get to know the place. If they do not want the job, they should not take it. We have had Secretaries of State who clearly did not want to be there and did not like coming to the place. We would be better off without a Secretary of State if that is the kind of personnel we are getting, and if we are not going to get one who will be relatively permanent.

Q89 **Lord Hain:** Welcome, Tom and Ben. Perhaps, Ben, I could start off with

your perception of the European Union's stance and particularly some of the issues of deep concern, which I fully understand, to the unionist community on the democratic deficit in Northern Ireland, and not being consulted over single market issues and rules that could apply in the future—customs stuff and so forth.

Those are questions we have put to others who have given evidence. Could that be resolved by direct representation by Northern Ireland Ministers to Brussels and the joint committee, or the Assembly having representation through the European Parliament in the sub-committee and those kinds of ideas, in the way that Norway is always consulted? Norway is not in the European Union but it is in the single market.

On the democratic deficit and on the Court of Justice, could there be a bespoke solution that would give Northern Ireland the reality that actually it was being consulted? I am not talking about London-Brussels; I am talking about Belfast-Brussels. I am interested to know whether you think that would go a considerable way to meeting legitimate unionist concerns about the protocol.

Ben Lowry: Can I go back to the start of your question? You seemed to be starting to ask about the approach that the European Union has taken, but you are not really asking about that, are you?

Lord Hain: I am in the sense that, if the EU conceded in those areas, would it make a material difference to the whole perception of the unionist community that this was being done to them in a way that was very damaging to the unionist cause?

Ben Lowry: I do not want to sound negative if there were attempts to resolve difficulties with it. I think we could get into difficulties in constitutional matters in terms of the democratic deficit. I sometimes get concerned about the way some people talk about the democratic deficit. You are not suggesting, for example, direct representation from Northern Ireland and MEPs or anything like that—

Lord Hain: No.

Ben Lowry: —because that would have constitutional implications. Obviously, if there was an attempt to resolve the democratic deficit in ways that did not have constitutional harm, it would be a welcome development, but that is secondary to the problem with the framework of the protocol and what the protocol has done and how it has effectively removed Northern Ireland from the UK in trade of material goods, although not for services. That is such a profound problem and such a major issue that it is the fundamental difficulty with it.

Lord Hain: Do you think that Northern Ireland should not be in the single market?

Ben Lowry: Ultimately, yes, that would be the ideal. There is a very interesting thing that has not been said.

Lord Hain: It should not be in or it should be in?

Ben Lowry: No, it should not be in. What should have primacy with regard to Northern Ireland is the UK internal market, and that was the slow burner release aspect of this. Probably the most interesting evidence you have heard was from Peter Summerton, a haulier. When you heard from various people engaged in trade, there was a range, a spectrum, with regard to trade. The problem with that is that if you fine-slice it and say, "This category of people in trade do not have a difficulty, this category of people have a second-hand difficulty from people they are dealing with, and this category of people might have a difficulty", and then you get down to Peter Summerton, who talks about the immense difficulties that exist already even with extension of grace periods, that is the difficulty you have to look at.

Yes, in an ideal world we would only be in the UK internal market and not in the EU single market. There were some of us—we cannot go back over this—who advocated Norway as a route for the UK, where all of the UK would have been in the EU single market. I am not just throwing out easy suggestions with that because that would have meant a customs border on the island of Ireland, and I am not resiling from that.

In answer to your question, the primary thing is that Northern Ireland should not be in the single market. Given that it is, effectively, in the single market except for services, what has happened with the Northern Ireland Protocol Bill is significant. Most unionists are not calling for the scrapping of the Northern Ireland protocol in its entirety, which in itself is a massive concession; they are calling for an overhaul of the protocol. When I say in answer to your question that, ultimately, Northern Ireland should not be in the single market if it causes disruption to the UK internal market, which it obviously does, I am not trying to be difficult and I am not trying to walk away from the problem of that or answering on a scenario that is not on offer.

In answer to your question, I suppose it is a matter over and above the democratic deficit, which is very important; it is primarily a matter of minimising the constitutional harm from the fact that we are in the single market, and one approach to that is the Northern Ireland Protocol Bill.

Dr Tom Kelly: I welcome anything that involves creativity and ingenuity. You guys are involved in the art of the possible, and that is, in my mind, what everybody should be working towards. There is obviously democratic deficit as it stands, but that said, the majority of people in Northern Ireland did not want to find themselves in this position, and therefore they find themselves in a democratic deficit of their own; having voted to remain in Europe, they found themselves outside it.

The one thing I always say is that Northern Ireland is in a completely unique place. Dervla Murphy, the author, said way back in the 1970s that it was a place apart. It is certainly a place apart. Everything that we have had to create in Northern Ireland to create stability means that we have to reflect diversity. Martin McGuinness and the former First Minister, Arlene Foster, reflected it in a letter they sent to a lot of the Tory

Government in August 2016, only months after Brexit. That was the basis on which all this should have moved forward.

In fairness to former Prime Minister Mrs May, she attempted to reflect that letter in its entirety when she set out on her journey to negotiate with Europe, I think in good faith. There has to be compromise, and there has to be compromise from Europe as much as there has to be compromise from the British Government. Every successful thing in negotiations in business or whatever is built when you have mutual benefit, not when you impoverish everybody to make things equal. That is the real danger in saying that Northern Ireland should not be in the single market. Good God, do we actually have politicians who are seeking to impoverish their own citizens?

In relation to the democratic deficit, there is another thing. It was inbuilt that the Assembly could have a say in 2024. It does not look as if this Assembly will reach 2024; it looks like we are going to have elections much sooner than that. The Assembly will have a say on the workings of the protocol, but let the protocol work. Let us see how it actually effectively works without grace periods or whatever, and if some of the allegations that have been made that our economy is going to collapse because of it are the case, let us see it.

I keep pointing out that Irwin Armstrong was the chair of a business for Brexit group in Northern Ireland. I debated with that man throughout all of 2016. He now welcomes the protocol, because as a businessman he actually recognises that it is doing the business for his business and his employees and the growth and expansion of his business. That is really the problem.

If you take Ben's thing about always trying to identify, you will never get a deal that covers everybody. We saw that in the Covid compensation for businesses. The Government had to stretch themselves to try to support the self-employed, people who were in business, and people who were not covered by insurance. They had to go out of their way to be creative and ingenious in getting money into people's pockets. They did not cover everybody. It was impossible to cover everybody. Whatever deal comes out of Europe and the British Government will not cover everybody, but it will be the best deal, hopefully, that will cover most people.

I would like to see flexibility on the European side. We should be using some of the structures and the east-west relationships that we have. This is the first Prime Minister in 15 years to go to the intergovernmental council. Something has gone seriously wrong in British politics in relation not just to Europe but to its closer neighbour Ireland, where it has shared interests in Northern Ireland.

Q90 **Baroness Ritchie of Downpatrick:** Tom and Ben, you are both very welcome. What is your overall assessment of the political, economic and legal impact of the Northern Ireland Protocol Bill? What do you consider to be the significant elements of the Bill from your perspective?

Dr Tom Kelly: Regarding the legal implications, lawyers are like economists; you put two of them in a room and you will get two different answers. I will not go down the legal route in relation to this.

In many ways, having been a former adviser, I can understand the tactical implications or why you would do a protocol Bill, but I think it should be slowed down. The idea of rushing it through in some way would only further antagonise relations with Europe, and that is a mistake. If we are trying to get everybody into the same room to try to arrive at a solution, it does not do well that you have a Sten gun already loaded and say, "We're going to do this no matter what you do". Effectively, that is what the protocol Bill is saying.

My attitude is slow things down, hit the pause button and allow the Prime Minister to do his job and inject some common sense back into the actual process. I do not see the benefits of pushing forward with the protocol Bill at this stage or at a speed that will create problems for people going forward, because, going back to the very first question, it does not look as if there is a strategy. It looks like a reaction, but it does not look like a strategy for dealing with Europe, and that is really worrying. It is in our interests to maintain relationships with Europe. A lot of us appreciate the free movement of people. We like a lot of the benefits that Europe gives us and we would like to maintain some of them.

I do not think it is the way to conduct negotiations. There is no merit in megaphone diplomacy. Too often, as I am sure Nigel and Reg know, too much of our own politics is debated live on air, where there is no space for compromise. We need to move away from that and move back into the space where you do serious negotiations between serious politicians.

Baroness Ritchie of Downpatrick: That is a two-pronged process, Tom. You talked about serious negotiations. Are you saying, therefore, that there is a need for a successful outcome and an acceleration to political negotiations between the EU and the UK?

Dr Tom Kelly: Yes. Everybody in this room knows that you never ask a question if you do not already know the answer. In some ways, if you sit down to negotiate a solution, the people coming round the table should be oriented towards that solution, not trying to get one over on each other. I think there is an opportunity for people to approach this in a much more mature way, which has been missing from the process to date. Sometimes, I think some of these things are above the pay grade of the people who are actually doing the negotiations.

Civil servants get a rough deal these days. I am sure European diplomats get the same. In reality, to use an expression from a book on mental health that was launched last week that I spoke about, they know their onions. Let them get on with doing the spadework. At that level, the relationships are quite good. It is taking political responsibility that moves it to the next level. Having arrived at a solution, you must own the process and deliver on the process, and that has been missing from this as well.

Baroness Ritchie of Downpatrick: You said that you did not really want to get involved in the legal because there are different interpretations of the legal process, and lawyers, like economists, can have different opinions and convey those. What is your assessment of the Government's legal justification for the Bill around the doctrine of necessity?

Dr Tom Kelly: There are very few occasions when you need to engage with that approach to government, and certainly not at this level of negotiations with the EU. I do not understand the basis of their legal opinion. A lot of far more qualified people in Parliament and outside Parliament who are constitutional lawyers have said, "This was not necessary". Dominic Grieve was one of those people. I heard him in a recent programme. There are people better suited to answer that question. For me, it was not a very convincing argument, but again, nothing has been hugely convincing from the Government over the past number of years.

Baroness Ritchie of Downpatrick: Thank you. Ben, what is your assessment of the political, economic and legal impact of the Bill. What are the significant elements of the Bill from your perspective and the legal justification for the Bill around the doctrine of necessity?

Ben Lowry: Let me go a bit wider before I come to the Bill. The UK Government approach, beginning approximately 18 months ago—I was saying that it fluctuated back and forth—has changed, as indeed has the hardening of unionist opinion. That has unquestionably moved the baseline so that the parties that were calling for rigorous implementation of the Northern Ireland protocol are not doing that any more. Nobody is calling for that. The European Union is not calling for that.

The idea that we remember that the Northern Ireland protocol is not fully in force, and the idea that it would come fully in force, which would have been grotesque—I go back again to the evidence that you heard about the impact on trade—has really changed the mood and has put the European Union on the back foot. The political is inextricably linked to the economic because it is the economic and constitutional implications that have driven political concern among unionists in Northern Ireland and the concern of the UK Government, from what they have said.

I believe in the doctrine of necessity in this instance. The one thing that is not unreasonable for the UK Government to argue is that they signed under duress in a paralysed Parliament at the end of 2019. I do not think that that is an unreasonable point.

The most important point, which has come back slowly, is the idea that the Belfast agreement was only something that gave assurances to nationalists and was only something that could be cited by nationalists, the Irish Government and Irish America. By the way, I specify Irish America. There are very many politicians in America who take a close interest in Irish matters and Northern Irish matters from essentially an Irish nationalist point of view. I specify that in contrast to the US

Government position, which is much more nuanced. The US Government talk of the need for an agreement between both sides. They do not come down to saying that the UK is behaving disgracefully.

Let us not forget the reason why the Belfast agreement clearly had majority unionist support. We obviously do not have a breakdown of the referendum after 1998 and exactly who was voting where, but we have a pretty good idea of what it was. If you get into that large number of pro-union people in the east of Northern Ireland we were talking about and who often did not vote but did vote in 1998, among that community the principle of consent was absolutely central to the Belfast agreement.

The other crucial legal argument in defence of a response akin to the Northern Ireland Protocol Bill, or a response that means that there need to be serious changes to the protocol, is the pre-existing international agreement, the first of the international agreements, which was the Belfast agreement of 1998. I talk about the principle of consent and the protection of minorities, unionism being, as I said earlier, the largest minority. I do not think it is a minority in terms of people who would vote for the union or not in a referendum, but in terms of people who identify above all as unionists it is the largest minority of the political blocs.

On the principle of consent and the Belfast agreement protecting minorities, there is no question but that there is a legal justification for radical change to the Northern Ireland protocol, and that is pretty much widely accepted now because of the moving of the baseline and the realisation that there is a very serious problem. I happen to think that the Northern Ireland Protocol Bill is one important way of going about it.

Baroness Ritchie of Downpatrick: Thank you.

Q91 **Lord Godson:** Thank you to both our distinguished witnesses. We had testimony last week from Peter Sheridan of Co-operation Ireland, who was well known as a policeman in the Province during the days of the RUC and of the subsequent PSNI. The question I had for him was about the invocation of instability. I was interested in his erstwhile professional assessments of that. He said that there was no appetite among the vast majority of people in the Province from any background for any kind of instability. None the less, small numbers of activists can of course cause instability.

One or two speakers, including Baroness Ritchie, referred to that testimony in Committee on the Bill in the Lords last week. I am interested to know from both of you—first Dr Kelly and then Mr Lowry—as you have your ear close to the ground in Northern Ireland, your assessment of the danger of instability if we get contradictory testimonies and invocations on what exactly the nature of the danger is if the protocol is not resolved.

Dr Tom Kelly: I share a lot of the views that Peter Sheridan has. I spent seven years on the Northern Ireland Policing Board at the start. Over the years, fairly proactive efforts have been made at community level to de-escalate people who would try to disrupt life in Northern Ireland, whether they be dissident republicans or loyalist groups, who I think should have

been dealt with much more strictly over the past number of years. There is an element of the tail wagging the dog at this stage in Northern Ireland with some of those groups because they are gaining a prominence that they are not entitled to. They do not have a democratic mandate, and I have issues with that no matter what the paramilitary group would be.

I would say exactly the same of the dissident IRA. I said the same when I worked for Seamus Mallon of the people who were in the IRA when they were running their campaign of violence. If it does not have a democratic mandate, it has no place in a democracy, full stop. Northern Ireland needs to take a stronger line on that. There are enough articulate voices within unionism and nationalism who are committed to peace and democracy in Northern Ireland to articulate the views of those communities without giving space to people on the fringes to wind things up. It is important that a harder line is taken in relation to that.

There is always potential for danger, especially if you actually give it a vacuum into which it can move. One of the things we need to do is to make sure that there is no political vacuum. That is the downside. When people see that there is no Stormont, there is a political vacuum, and the people on the margins can exploit that for their own advantage. A lot of those groups in Northern Ireland are not actually activists in the political sense; they are criminals. There are high levels of criminality, which Peter Sheridan and the current chief constable point to. They have privatised their paramilitarism, in many ways, for commercial benefit.

There is always the potential in Northern Ireland for a small spark to light a big fire, but it does not have to be that way. We have proved in the past that the community overall is quite united against that. Over the years, the unionist community has never shown any great appetite for loyalist paramilitaries. You can see that result in the votes. When they have stood for election, they have not had support. Although you try to be as inclusive as you possibly can, there comes a stage sometimes when you just have to say, "We can't go any further, because we have to look at the interests of the overall majority of people in Northern Ireland—Catholic, Protestant, unionist, non-aligned, whoever they are". Those interests have to come first.

Ben Lowry: I agree with an awful lot of that. This is very important to perceptions of violence and understandings of whether or not violence has worked. It is important not to lose sight of the fact that Sinn Féin did, and does, defend the IRA campaign. When Sinn Féin began contesting elections from the early 1980s right up until 1998, it was generally getting a third of the Catholic vote. I specify Catholic rather than nationalist, because there was always a small Catholic Alliance vote that increased the overall total and decreased the percentage that Sinn Féin got.

In the Republic of Ireland, support for Sinn Féin was between 1% and 4% in all the elections until the end of the 1990s. There would be a perception in unionism that the fact that unionists did not support violence—they did not and they do not—meant that there was no

significant political support for loyalist paramilitaries, but, to be blunt, that has reduced leverage, as is widely accepted. Many people accept that.

This is where I would get concerned about violence. Northern Ireland is a wonderful place to live. I am not trying to issue platitudes. Arguably, since lockdown, the regions have become more attractive places to live. In that sense, when you look out and when you walk down the street and do all sorts of things and travel in ways that you could not previously, whether it is driving down the motorway to use Dublin Airport or ever easier connection to the rest of UK, it is hard to think that there is any appetite for violence.

I am hesitant on two scores. The first is the levels of anger. I think there are significant levels of anger on both sides of the community. Nationalists would say that it was because of Brexit, and unionists would say that it was because of the relentless but imperceptible march of concessions to nationalism, the most obvious of which is the Northern Ireland protocol, but it is not the only one. The levels of anger would concern me. Maybe that is not so significant. There is anger in America. There is anger all over the place, as we have seen in the last 24 hours with regard to America and the divisions. I do not believe that any of the mainstream groups have any interest in violence.

The other thing that would concern me is this. Not having been alive in the run-up to the Troubles before 1968, depending on what your starting point is—I was born in the very early 1970s—I am aware of the fact that they were seen to have come from nowhere, and that in Northern Ireland, in many respects, people were integrating more and enjoying the 1960s and so on. There is a third thing that would trouble me about the level of anger within unionism. By the way, I emphasise that I am overwhelmingly talking about unionists who are angry about this but are not even thinking of turning to violence.

There is a feeling that violence was invoked, which is the word you used, or suggested, and that the UK Government were so weak—this is something I have said a lot; we can talk about the context of 2017—that they would even have ruled out CCTV at their own frontier, so determined were the UK Government to placate the voices that talked about violence. By the way, no one is thinking that CCTV on its own would have resolved the problems of the Irish land border, but the Government were so weak that they ruled that out.

There was a very important survey by Queen's University in early 2018 that asked many questions of many different people. They asked nationalists whether they would find CCTV impossible to accept or almost impossible to accept, and that was 20% of nationalists. Half of them would have supported the vandalism of CCTV. I do not think we can escape the fact and the understandable anger among unionists who would never think of going to violence that the UK Government back then, essentially, conceded a dissident republican position because only 10% of nationalists had any appetite for vandalising CCTV cameras.

There has been a lot of talk about Leo Varadkar, which I think is justified, showing highly misleading pictures of the bombing of a customs post. I understand the justifications that are made for the use of that imagery and showing up a newspaper. None the less, it was highly misleading about an attack that was nothing to do with customs but was about a violent attempt to remove Northern Ireland from the UK, and the violence did not have popular support.

I do not believe there is an appetite for violence. I believe there is a lot of anger and division, and it is the latter that concerns me. There are people who have far better intelligence on this interest in violence, but what do younger generations feel? I do not know.

Lord Godson: For younger generations and the Republic question, a key dimension in the impact of the perceptions in the Province is the potential of a Sinn Féin Government in future. Unionists were vexed recently by the Irish women's football team doing IRA chants. To what degree does that increase the sense of embattlement in both communities?

Dr Tom Kelly: I can understand completely the nervousness and anxiety within the unionist community because of changing demographics. It would be a fool who did not see that and how it creates instability. There will obviously be a worrying aspect for them if Sinn Féin gets into government in the Republic, but that is democracy and that is what happens. In some ways, Sinn Féin being in government in the Republic of Ireland is part of the normalisation process of how you transform into a fully democratic party and operate within the system.

I wrote about the IRA chanting. I do not believe for one minute that that young ladies' team felt they were being sectarian. It is part of the problem in glorifying the IRA. They are completely out of the zone where we were. Ben talked about growing up then. I remember the customs house being blown up on the border. I was born in the 1960s. I am from a border community, and I understand that all the good work that went into building up relationships with young people in a community that was estranged from policing could be very much undone if there was monitoring infrastructure that people are fearful of at the best of times.

I do not want to be disparaging of young people, but I do not think they give an awful lot of thought to it. Ben mentioned earlier that young people do not necessarily engage. They engage around issues. They understand campaigning for equal rights or campaigning for the environment, but when it comes to the history of politics in Northern Ireland or where Fine Gael, Fianna Fáil, Sinn Féin or the SDLP come from, it is not relevant, and you can see that.

I was here the other night when they unveiled the portrait of John Hume, who was lionised in many ways by young people as the Martin Luther King of Northern Ireland, but at the same time if you went out and asked them to identify with the SDLP they would not. Young people are just not switched on as much as we think they are, and we may attribute too much significance at times to small sections of them who do something.

It is like everything else. There had to be equality training brought into the Ulster rugby team after an event. There has to be some sensitivity training brought in so that young people realise that they could be causing offence even if they did not mean to cause offence, but I do not think it is on their radar.

Lord Godson: Mr Lowry, a final thought.

Ben Lowry: I am very concerned about the retrospective justification of violence. I have written a lot about legacy. Tom talked about young people not knowing and not being interested and so on. I am hesitant in a short space of time about making big generalisations. There is no tendency among unionists to talk about the past and defend the past. I attended two very British schools. I did not even think of them being British or not, but when I look back, they were probably about as culturally British as you get in Northern Ireland. One of the two schools did not start until age 13.

I began to see, when I was getting interested in politics, how history was taught, and I thought, even in that environment, that some of the local history was taught in a slanted way. There was a very big emphasis on gerrymandering, civil rights, fiery unionist fundamentalist politicians and Bloody Sunday, and that was almost 40 years ago. I am talking about the mid to late 1980s. I did my GCSEs in 1988, and I remember very clearly a particular textbook that would concern me very much. I wish I still had a copy of it. I do not think there has ever been a pushback from unionists on this. It is different cultural thinking.

I talked earlier about how republican violence had significant levels of support north of the border but was still comprehensively rejected by the nationalist community, let alone anyone else. The fact that there is no unionist interest in talking about it has created a situation by default where we have 70% of nationalists in Northern Ireland, according to that recent poll, saying that violence was justified, and we have people instinctively erupting into a deeply offensive song that was, effectively, venerating the IRA.

I said this point in an RTÉ broadcast recently. Did people think that there would be unionist support for a new Ireland if it is going that way? That is one of the things that you would hope people advocating a united Ireland and using all those soft terms like "new Ireland" would be concerned about. It is terribly serious. It adds to the sense in unionism of concern and frustration, and even at times anger, that things seem rapidly to be moving in a direction.

The way legacy has been approached, the way the Irish Government have approached legacy and the grotesquely unbalanced focus on wrongdoing by UK state forces in proportion to the statistics of the Troubles have helped create a disastrous situation in which part of the island is becoming more and more supportive of the idea that the IRA campaign was justified.

Q92 **Baroness Goudie:** Good afternoon, Ben and Tom. It is nice to see you here with us, as I have read you regularly in many ways. My question has three parts, but because of the time I will put them all into one. What is your assessment of the Government's argument that the Bill is necessary to safeguard the Belfast/Good Friday agreement? Does the protocol engage the agreement's provision on cross-community consent? What impact has the protocol had, and what impact will the Bill have, on the three strands of the Belfast/Good Friday agreement?

Dr Tom Kelly: Peter Mandelson said it quite well in Belfast a couple of weeks ago: there are elements of the protocol that do not rest easily with the Belfast/Good Friday agreement. He also said, which was missed by some of the papers in Northern Ireland—not ours—that overall the benefits of the protocol outweighed any difficulties that it had in relation to the Good Friday agreement. We need to approach it and some of the stuff that Ben has talked about and some of the questions in that way. The British Government, the Irish Government and the European Union have a responsibility to reassure unionists more forcibly about the constitutional guarantee in the Good Friday agreement.

A couple of weeks ago, I said that the reality is that the Good Friday agreement secures the constitutional position of Northern Ireland until the people of Northern Ireland determine otherwise. That is not said often enough by enough people to drive it home; it is a salutary lesson both for people who want to demand a united Ireland tomorrow and for those who feel that links with the union are insecure. It is not insecure. It has probably never been more secure in some ways because of what Ben describes as the three minorities in Northern Ireland now. It means that the arguments that have to be made to stay in the union or leave the union have yet to be made to the people of Northern Ireland, and we are very premature in precipitating any damage to the union from the protocol or any undermining of the Good Friday agreement.

The Good Friday agreement, as Peter knows, was ultimately a peace agreement followed up with a blueprint for government. That does not mean that you cannot change it. It had review built into it, so nobody should claim a review of the Good Friday agreement as a win for one side or the other. It is probably overdue after 25 years, but the principles of the Good Friday agreement remain because it underpins everything else. Nigel's party renegotiated elements of the Good Friday agreement at St Andrews, so as to the notion that it has not been changed, it was changed, and in that case it was changed by the two largest parties over the head of minority parties.

Ultimately, the safeguards are there, but for some reason the hugging that needs to be done has not been done between the British and Irish Governments and the European Union with unionism in Northern Ireland to make them feel that they are secure there and that the only change that can be impacted in Northern Ireland is when the people of Northern Ireland decide it for themselves.

Ben Lowry: I know that there is a shortage of time, so I will just answer the first part of the question. I think it is welcome that the UK Government have made clear in various ways, including at the G7 and in their general rhetoric, the importance of the Belfast agreement in all its elements.

You mentioned the three strands. I have been very concerned about the strands for a long time. This was not a point that many other people made, so I want to make it. I was concerned that the New Decade, New Approach of early 2020 intruded on the strands, and in strand 1, regarding internal matters of Northern Ireland, it delved very deeply.

I will keep it short, but, first, there is a long story about the problems with negotiations that delve very deeply into matters when they should just be more basic agreements to get Stormont back. It delved very deeply into internal Northern Ireland matters and was presented by Julian Smith and Simon Coveney as if the two Governments were jointly delving deeply into matters that pertain. I am concerned about the long-term implications of that. We as a newspaper are concerned and other contributors are concerned.

There has been less focus on that than on the other part of the three strands that you are referring to, which are essentially east-west. The Government are belatedly defending east-west—I have not heard them talk about internal matters of Northern Ireland—and showing very clearly that they will not have the Irish Government. That is not an aggressive thing, it is just what we agreed in 1998; internal matters in Northern Ireland were decided internally. Unionists who follow things closely would welcome that the Government in various forms, including on the Northern Ireland Protocol Bill, have begun to cite the Belfast agreement in the way that the Irish Government did from the start.

Q93 **The Chair:** Thank you very much for that. I have a final question that tries to look slightly forward. The talks are now going on. They are technical talks as far as we understand. From your own experience and background, do you think they are likely to lead to an agreement? What sort of an agreement might they lead to? Do you have any thoughts on that? Do you feel optimistic? Do you feel pessimistic?

Dr Tom Kelly: I support Spurs, so I am always optimistic.

Lord Hain: Why is he giving evidence?

Dr Tom Kelly: I always take the glass half-full approach. You have to be optimistic that, when the Government approach the negotiations seriously and take responsibility for the process, there will be a positive outcome at the end of that process.

Ben Lowry: Again, I am just trying to express unionist concerns as the editor of a unionist paper with many unionist readers. A concern would be that a deal would be reached potentially quite quickly because of the UK's bandwidth to deal with this, given the immense other issues, ranging from Ukraine to inflation-related issues such as the cost of living, and

that that deal would not match the rhetoric that I just talked about with regard to protecting the Belfast agreement. I do not think that the prospect of a deal is unlikely at all; the question is whether it is a deal that can command support among the largest minority bloc, unionists, still the largest one but none the less now a minority bloc—unionists with a capital U.

The Chair: Thank you both very much. That has been extremely helpful to us in our final evidence session. I am very grateful to you for having spent time with us today, one online and one with us here. Thank you very much indeed.