



HOUSE OF LORDS

Select Committee on the European Union Justice Sub-Committee

Corrected oral evidence: Brexit: citizens' rights

Tuesday 22 October 2019

10.45 am

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

Evidence Session No. 6

Heard in Public

Questions 45 - 58

Witnesses

[L](#): Jeremy Morgan QC, British in Europe; Adrian Berry, Garden Court Chambers.

USE OF THE TRANSCRIPT

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

Examination of witnesses

Jeremy Morgan and Adrian Berry.

Q45 The Chair: I remind the Committee that a transcript will be taken and made public. Witnesses will have a chance to review this before it is published. This session is webcast live and subsequently made available to view on the parliamentary website. If any member has an interest, this is the opportunity to declare it now. Having said that, may I welcome you two gentlemen to the meeting? Thank you very much for coming. We have read the papers prepared for us, and they were fascinating, interesting and very informative. I am sorry that Ms Harrison is not able to be here; she is unwell. Mr Morgan, your paper is interesting and we have looked at it, as is the one from Mr Berry, with Ms Harrison and David Neale. Having been in your profession, I suspect some of the heavy work has been done by Mr Neale as well, so I want to mention his name.

Adrian Berry: Yes, indeed.

The Chair: Thank you very much. The questions that we want to ask have been set out and I will deal with the first. If the United Kingdom were to leave the European Union without a Brexit deal, what would your principal concerns be? That opens the field fairly widely.

Jeremy Morgan: They are myriad and you will find them set out more fully in the paper we prepared for the House of Commons committee in July, to which there is a link in the paper I put in for this Committee. That paper is about 40 pages long, so I have spared you the length of that and will briefly summarise it.

Our main concerns are these. The first is lack of certainty. It is true that the UK is well ahead of most other countries in its procedures for Brexit, deal or no deal, largely because it has a far larger population of EU citizens in its shores, compared with British citizens in European countries, so it has to prepare. Almost all the countries have now legislated, but the legislation varies significantly from one country to another, as to both content and certainty.

I will give you the example that I know best, which is Italy. In a decree that has about 20 articles, as they are called in Italy, largely concerned with financial services and other economic matters, we have three articles dedicated to us, which take up less than a page. That compares with many pages of legislation in Spain or France, where much more detail is gone into. That is one concern. Even in countries where detailed legislation has been passed, there are many questions to ask. We are a coalition and there are three groups in France that work together on this. They have submitted over 30 questions to the French Government on the meaning of their legislation. This is all for a no-deal scenario.

The second principal issue that runs across this, which is related to the first, is reciprocity. As I said in the paper, it is hard to overstate the importance that EU countries give to ensuring that their citizens have reciprocity, at least with any rights that are conferred upon British citizens in their country. Their first concern is to see

that they do not give anything that is not being given over here. They have secured that, in some countries, by specific provision. In Spain and France, for example, there is provision in the legislation that, if they are not satisfied as to reciprocity, the rights conferred by the legislation can be rescinded. I forget whether it is in Spain or France where reciprocity is expressly wider than simply on citizens' rights but, if on matters of transport, planning and the other contingency measures they are not satisfied, they can rescind the rights conferred on British citizens.

Another way in which it is done is by not legislating at all. We would have thought Germany would be a highly efficient country keen to get on with things, but its legislation is only now going through the Bundestag, which has left an opportunity to tailor it to what is happening here. Denmark has deliberately decided not to legislate at all until the grace period that will immediately follow a no-deal Brexit. Some other countries have made clear that they reserve the right to change rights, depending on what happens.

Another factor that worries us is the variation from one country to another, which itself is not good, because it means that citizens from this country living in various different EU countries will have different rights. But it is also hard to give a uniform description of the rights that we will have post Brexit. Almost all countries have legislated for a grace period during which, by and large, our rights will continue as present, to give them time to regularise our position, to get us permits under a new scheme, et cetera. The rights that we have in the grace period are not always clear and, in the period following the grace period, we effectively move to national legislation, although there is an overarching provision for those who have been in the country where they are now living for at least five years, where EU law gives third-country nationals a certain set of rights. The application of those rights varies from one country to another.

To give an example, Estonia, by and large, has a very good system for no-deal Brexit. It requires those who have been in the country for less than five years at Brexit who wish to apply for a more permanent status to go through a language test in Estonian. You can imagine that that situation is not straightforward. I give that one example because it is a country that clearly prides itself on its language but, equally, is being as generous as possible, subject to national requirements. Running throughout these pieces of legislation, matters that matter to a particular country are given a prominence that is not necessarily matched by what is done in this country.

Another worrying thing that can happen is this. As a British citizen who has been resident in another EU country for at least five years, at the moment you have the right to EU permanent residence. That is very important, because none of the conditions you would have had to achieve to get that residence and be allowed to live there in the first place—such as income requirements, health insurance and work—will apply after you are entitled to permanent residence. You can then live quite happily, free of conditions, as many have. Where I come from, in Italy, there

are people who have been there for decades and have this condition-free right to live there.

The new provisions for absences, in order to get the new post-Brexit long-term status, are more restrictive than those that applied to EU permanent residence. Many people who had permanent residence under EU law and regarded Italy, say, as their home and were entitled to do so, travelled a bit, maybe for work, to look after a relation or just because they wanted to. By those absences, they have taken themselves out of the new long-term residence regime. It is retrospectively saying that something you could do at the time is now having a very deleterious effect on you.

The other main problem with the new schemes, again dealing with absences, is that you can lose all rights to be in the country where you are by absences beyond a permitted minimum. In Holland, it is six months. If you go away from Holland for six months, for whatever reason, you lose your rights and have to apply as an American, Australian or whatever you might be. In the EU generally, it is leaving the EU for 12 months. For example, if you come back to Britain to look after a relative and stay away for 12 months, you lose all your rights and have to start again.

Lord Wasserman: Is it cumulative?

Jeremy Morgan: I am trying to think about which one I am looking at. In Holland, it is just a period of six months. The one year is a continuous period. It is continuous.

Lord Gold: Is it sufficient if you go back for a day?

Jeremy Morgan: Who knows? I defer to Adrian Berry on this, but there have been issues about people with indefinite leave to remain in this country, who come back for a very short period, and whether that counts as breaking it.

The Chair: Thank you very much. It was a very broad question.

Jeremy Morgan: I am sorry to have gone on for so long.

The Chair: We will have to move on, but I am grateful to you. Mr Berry, do you have a comment to make on this?

Adrian Berry: Yes, briefly. Broadly, I have four concerns. First, the principal problem at the moment is about what will happen to those either moving after the exit date or paying national insurance contributions in their state after the exit date for the first time, in the event of no deal. There is no proper provision for that. There is no co-ordination. At the moment, co-ordination of social security and healthcare works because there is a directly applicable rule. There is no treaty, and no treaty is being contemplated, so there will be huge divergence.

The second concern is that there will be no rights in the UK for EU citizens, as opposed to the permission to remain here indefinitely under the settled status scheme, which is a statement of executive policy and not law. The third connected

problem for British citizens in the EU is that there will be no intra-EU mobility for them and no provision for them to move, aggregate national insurance contributions and pay into healthcare and social security schemes when moving for the first time.

The fourth concern is the impact on British businesses. Companies with branches in the UK and in the rest of the EU will have British citizens, EU citizens and third-country nationals on their payroll. Currently they all, including third-country nationals from outside the EU, can be insured under the co-ordination of social security regimes and aggregate those national insurance contributions to get social security and healthcare entitlements when they move to branches in one or more other member states. The London or UK branch of that multinational company with offices in EU states will become less attractive as a centre for staff from all those backgrounds: British citizens, other EU citizens and third-country nationals. The tendency will be to recruit and retain people in the branches that remain inside the European Union.

The underpinning of the regime will work for people who are employed and remain in the EU, so that you can move staff around easily; their healthcare and social security co-ordination rights are preserved. Any time you move staff to the UK, it becomes a problem, because you have bilateral treaties with different provision between different countries, you do not provide for third-country nationals under a particular bilateral treaty or you have a multilateral treaty of limited application. It becomes an administrative headache for a company that operates in more than one member state. The impact on business, which has been grossly underplayed by the Government, is the most serious concern. Co-ordination of social security and healthcare is the unseen guts, the internal working, of labour mobility in the European region. If you mess around with that, you take away the attractiveness of the UK as a centre of business in Europe.

The Chair: We are in your debt for your comprehensive answers, but we have to move on to a whole series of questions. We will have to be briefer in the future.

Q46 Lord Wasserman: The deal on citizens' rights is clearly very complex. As you pointed out, it ranges across both countries and rights. A deal has now been agreed between the UK and the EU 27, has it not? There is a deal on the table. What happens if there is no deal? Is it possible for these arrangements in the withdrawal agreement somehow to be ring-fenced and retained so that, if there is no deal, we still have the citizens' rights bit?

Adrian Berry: The citizens' rights section of the withdrawal agreement is divided. The first part is preserved free movement rights for those who were here before exit date or in a transition period, which would not apply, as there would be no transition period in the event of no deal. There is a second part to it, which deals with the co-ordination of social security, and a third part dealing with recognition of professional qualifications, so it is not just about free movement per se. You can implement the immigration or migration element unilaterally. Whether other member states do so is a matter for them.

Where it goes wrong is in the mutual recognition of professional qualifications, which is another part of the withdrawal agreement on citizens' rights, and the co-ordination of social security and healthcare for those who have already moved across the border on exit date or before the end of the transition period. That is also in the withdrawal agreement and it applies to third-country nationals, not just EU citizens or their family members, who have been insured in one member state for social security and health, moved across borders and ported social security and healthcare rights. You cannot implement that unilaterally, because it requires co-ordination, just as mutual recognition of professional qualifications requires mutuality by definition. We end up in a situation where aspirant, wishful thinking on a unilateral basis does not replace the pragmatic machinery of multilateral co-operation.

Jeremy Morgan: The other thing that unilateral legislation, which is the process going on at the moment, cannot achieve is international enforcement. Rights can be changed by the Government of any country at will, in accordance with their own constitutions, but they would not be in breach of an international treaty. That concern is held by the 3million, which is the coalition representing EU citizens in the UK, and by us, the coalition of UK citizens in Europe. It is a very real concern, because that is the only way that you can guarantee our rights against future actions by Governments.

Another practical thing is that both groups have been fighting for ring-fencing since the beginning. We saw there might be problems at the end of the road and, two and a half years ago, put in our first bid for ring-fencing. The House of Commons was supportive in a Motion that was passed on the initiative of Alberto Costa, a Conservative MP of Italian parentage, which recommended that there should be ring-fencing. The European Union has been very reluctant to agree to that, because it is concerned that it will lead to a chain of mini-deals, with Britain asking for exceptional minor deals without agreeing the broad arrangement.

Q47 Lord Anderson of Ipswich: I will ask a couple of questions on the basis that we activate the withdrawal agreement and do not find ourselves in a no-deal scenario. First, are either of you picking up any practical difficulties with the application of that? I am thinking of a series of tweets last night from Mr William Tomaney, who is a Briton living in Warsaw. He had been to what he described as a very helpful event organised by the British Embassy there but, while there, heard some horror stories, including one of a 99 year-old British woman. She had lived in Poland for 50 years and she had already had a letter from the Polish authorities informing her that healthcare was going to be withdrawn. As far as you are aware, is that a common problem or a one-off?

The second question may be rather unfair, because we have not had it for very long. Looking at what the Government aspire to negotiate after the transition period or period of grace, do you have any concerns about the political declaration and anything in it?

Jeremy Morgan: I will deal with the healthcare issue first. One of the difficulties with the withdrawal agreement is that, for the last year or so, everybody has been focusing on no deal, because that seemed to be the major risk. Coming to this Committee, I had to brush up on what the withdrawal agreement said about citizens' rights, even though it has not changed. The rights conferred under the withdrawal agreement are good, as far as matters such as healthcare are concerned; they preserve our existing rights. I do not know why she was told that. You would have to know more about her individual situation. For example, if she is a UK pensioner in receipt of a UK pension living in Poland, there is a reciprocal arrangement whereby the UK pays for her healthcare, because it pays for her pension.

Lord Anderson of Ipswich: She was a UK pensioner, but her UK pension was not paid into her Polish bank account.

Jeremy Morgan: I do not think that matters. As a UK pensioner, she is entitled to this reciprocal healthcare, if the withdrawal agreement is made.

Adrian Berry: The problem I see with the political declaration is that it lacks ambition about a future mobility regime. Presumably it reflects internal political compromise. If you look at what is being done in legislation at the moment and then the withdrawal agreement, you see a couple of things. The Healthcare (European Economic Area and Switzerland Arrangements) Act was passed in March and provides a framework giving a domestic statutory setting to future arrangements for healthcare treaties that are yet to be negotiated. That is on the statute book. The prospective Immigration and Social Security Co-ordination (EU Withdrawal) Bill provides primary legislation for the social security element. The problem that already exists is that, at domestic level, they split health and social security into two bits of primary legislation. That is not necessarily a problem, but they are integrated in the co-ordination regulation.

Then you look at the ambition of the political declaration because, without this underpinning, there is no proper labour mobility regime, between the UK and the European Union, for businesses. You can see nothing about this at all. That is a problem because, in UK public policy, healthcare and social security are already being split into different statutes domestically, when they are in one regulation. The idea is that they might be different. But, as we have already heard, you might be insured under a scheme because you have pension entitlement from having paid your national insurance contributions.

Take the example of a Danish citizen who has a Danish disability pension. They come to the UK with that contribution-based pension, having been insured. At the moment that gives them healthcare entitlement, because they have a pension from Denmark and the bill would go back to the Danish Health Authority. It also gives them access to a cash benefit due to being disabled, the equivalent of an attendance allowance in the UK. That situation, where you get cash benefits, which are social security, and healthcare benefits in kind, relies on cash and healthcare

benefits being integrated, and healthcare and social security regimes being integrated, on the basis that you are insured. The political declaration has no ambition to maintain that at all, and the primary legislation we are seeing, sponsored by Government, suggests they see the two things in separate silos, when they are not.

None of this should be controversial, because you are dealing with schemes people have effectively paid into for entitlements. This is not a means-tested welfare benefit or social assistance regime. We are talking about social insurance schemes that people pay into. Quite why you would wish to move to a suboptimal level and impair labour mobility for people who are lawfully present and resident in countries—because you can only ever take advantage of these schemes when you are lawfully present and resident—is hard to fathom. In the political declaration, it ought to be neutral and non-political to have commitments to maintaining the intestines, if you like, of what makes the body work in mobility terms. There should not be an issue. This cheese-paring approach to it and the lack of detail in the political declaration represents a non-tariff barrier, I suggest, to British commercial prosperity.

Q48 Lord Rowlands: When I read the submission you sent, paragraph 16 struck me most forcefully. You said, “The loss of comprehensive entrenched social security/healthcare co-ordination will introduce potential chaos into the lives of British citizens”. You go on to say that you cannot replace, easily or with any meaningful timescale, the 2004 regulation that governs all these arrangements. Could you elaborate on that?

Adrian Berry: At the moment, the co-ordination regulation co-ordinates national schemes. It is already ferociously complicated, and there is an administrative commission that makes decisions underneath it, at an EU level, to try to fit together the ways that contribution-based schemes for social insurance work in the different member states. After Brexit, if the withdrawal agreement goes through, there will be no obvious consistency for national insurance contributions paid after exit date, either for people who have moved and are covered by the withdrawal agreement or for new people moving across borders after exit date. If you aggregate your national insurance contributions together to be entitled to a pension, will it port you into having healthcare? Will you be able to access further benefits on that basis? There will be divergence at national level, with unilateral choices made by member states.

At the moment, you have an administrative body underneath the EU regulation, which looks at what is going on in the different member states. If it sees problems in the way that these schemes, which are co-ordinated and not harmonised, fit together, a steer can at least be given. Rulings can be made about how to co-ordinate things. Here, you will have states going off in different directions doing things unilaterally, with no surveillance authority or dispute settlement mechanism. You will have people who have paid contributions before and after Brexit date.

Lord Rowlands: What is the answer to this problem?

Adrian Berry: I have thought about this. There are alternative regimes. Look at schemes such as the one in which Turkey participates, to a limited extent, in the co-ordination of social security, through article 39 of the additional protocol to the Ankara agreement. It is not perfect, but it shows how a third country can participate in the co-ordination regime. It shows that you can negotiate the limits to that. It is in a multilateral setting because Turkey is participating in the co-ordination regime, but the ambit and scope of that participation is defined by the additional protocol to the Ankara agreement. The Euro-Med agreement between the EU and Morocco also has very limited co-ordination of social security provisions.

What you need fast is to negotiate those sorts of commitments. Given that we know the nuts and bolts of how co-ordination works, although it is complicated, it is not novel and it could be done. It is a multilateral relationship between the UK and EU that understands that British citizens will move across one or more member states, and EU citizens moving here from other member states may have moved through more than one state as well. We have the technology in legal terms; it is just a question of political will.

Q49 **Baroness Deech:** This is a fairly broad question. So far in our deliberations in this Committee, we have been very worried about EU citizens here. We regard it as 100% the British Government's responsibility to sort them out. For problems abroad, I am not clear whether Britain should be going in there fighting for your rights or whether we should be calling on foreign Governments to do something. Where does the buck stop?

Adrian Berry: At the moment, if you have a UK pension and are living in Spain, your healthcare is free at point of receipt, but the bill would come to the UK. If you go to Spain and say, "You ought to pay for it", they would say, "That is a bit different. In the past, of course we would treat you, as a UK pensioner, but there was a co-ordination regime". The question of who pays is not the same as who provides the treatment. It may be that you have to go to both to answer your question.

Baroness Deech: My question is on whose job it is to sort it out.

Adrian Berry: My view is that the Commission ought to lead on this question of co-ordination in a multilateral setting, because you cannot have endless bilateral treaties. Look at the difference between the UK/Swiss and the UK/Ireland arrangements on social security in a post-Brexit environment. It is ridiculous for two financial centres, Dublin and Switzerland, where people might move between one and the other, and back to the UK, to have different levels of entitlement. When we said in the paper it is a recipe for chaos, it was because you end up with complications that become barriers to mobility. The Commission is the only body with the expertise to lead on this issue, corralling member states.

Jeremy Morgan: I slightly disagree there. It is this country that has decided to leave the European Union and this country whose citizens are affected, in so far as they live in EU states. It is not sufficient for this country to say it is all for the Commission to sort out. It is clearly a matter for both sides, with the Commission leading for

Europe and the United Kingdom on behalf of itself and its citizens. They need to initiate a discussion. As Adrian has said, it is obvious that matters such as this cannot be dealt with successfully unilaterally and, therefore, there has to be discussion. The onus is on both sides. Britain cannot just wash its hands of its citizens abroad.

Baroness Deech: It still leaves us with a dilemma. I can see a role for the EC and for this country. We have heard about some EU countries that are handling issues relating to their British residents efficiently, so there is still a split of responsibility. Things may fall through the cracks; that is what worries me.

Adrian Berry: I would not want to say that the UK has no responsibility. I was simply thinking that they would not be an evangelist for this approach. They will need to be brought along and inspired to join in but, yes, the UK bears a burden. It is particularly difficult to understand why the UK does not wish to continue this regime. It is not about giving things to people that they are not entitled to. These are insurance-based schemes that people have paid into.

The Chair: I fear we only have until 11.45 am. Perhaps we could bear that in mind, in the questions and answers.

Q50 **Baroness Goudie:** Good morning. What evidence is there that British people living in Europe are able to apply for residents' rights and so on, before Brexit happens? Are they being helped to do this?

Jeremy Morgan: There is a deal scenario and a no-deal scenario.

Baroness Goudie: Many people may want to stay and become residents there. Some have probably already done that.

Jeremy Morgan: Few European countries have legislated for the withdrawal agreement yet, because they take the view, having generally much smaller populations of British citizens within their territory, that they can deal with it during the transition period. One or two have; for example, Luxembourg has, but most countries have not, even some of the quite big ones.

For no-deal planning, in almost all cases, as I said earlier, there will be a grace period, which is the name for the non-withdrawal-agreement transition period. The lengths of those periods vary enormously from three months in Austria, which is the shortest, to three years in Hungary. Spain, for example, with a large UK population, has 21 months. Some countries have permitted people to start registering already. Most have not. The country where things have started, because they had to, is France, because France did not previously require EU citizens exercising freedom of movement rights to be registered there. Most other countries did. They have started the ball rolling and people who get a carte de séjour under the existing scheme will be able to carry it forward to the new set of rights post Brexit.

Q51 **Lord Rowlands:** Are the UK Government co-ordinating and communicating effectively with their UK nationals with advice? I do not know if you have seen the

ministerial letter that we received, which describes the various approaches the Government have taken. Do you think they are satisfactory? How are they working out?

Jeremy Morgan: I dealt with it in the final section of our paper. It is a great improvement on what they were doing before, but this campaign has started to involve a lot of expenditure and effort, too late, in our view, given the task that had to be achieved. For example, although British citizens living in a lot of countries other than France have been obliged to register their residence as EU citizens, they have not always done so. They have muddled through happily enough without doing that. To bring this up to a high point, an advertising campaign reminding people who are sometimes very hard to reach to register just a few weeks before a likely Brexit date is much too late.

You have to remember that many people are vulnerable in a sense that we would all understand: they are disabled, alone, old or have dementia or something like that. A lot of these people have lived in Europe for a long time. Others are hard to reach, in the sense that they have lived in a country for 20 or 30 years and feel it is their home. It never occurs to them that they need to do anything to regularise their position. All these people have to be reached and, although things are much better now than they were, our main complaint is that it has come very late.

There is also a patchiness. The Foreign Office has appointed people especially to deal with citizens' rights awareness in various countries, who tend to cover more than one country. Some of them are very good indeed. We have a very good such person in Italy, covering six countries, of which Italy is one. Recently, they sent out posters, in English, for British citizens who they knew about to put up in a shop, or somewhere they might be seen by others who are hard to reach. My understanding, from others who have been more politically active in Italy than I ever was until this came on the scene, is that you need permission to put up a poster and you have to pay a small tax, a stamp duty effectively. This was not mentioned in the letter. It was not terribly well thought through, if I can put it that way.

Lord Rowlands: As you say, we have started too late, although we are now doing things we should have done earlier. Are there any measures we can now adopt to accelerate the process, in any way, or to catch up, as you claim we are late?

Jeremy Morgan: For things such as registering your presence legally, as an EU citizen, before Brexit date—in 10 days—it is very late. The greatest thing now is to move on and ensure that people register under whatever new regime comes in, in the country in question.

Lord Rowlands: Are the consular services up to this in your experience?

Jeremy Morgan: As I say, the quality is variable, but some of them are very good at this. The Foreign Office has stepped up its interest and effort in that respect.

Q52 Lord Anderson of Swansea: The consular services network has been reduced substantially in recent years. I think of Bordeaux, for example, the part of France I

know. It must be extremely difficult to encourage certain people to register for the first time. You say that there are some additional people in Brussels spread out among the EU.

Jeremy Morgan: No, these are Foreign Office employees.

Lord Anderson of Swansea: Are they based in London?

Jeremy Morgan: No, they are based in the area they serve. For example, the one who covers six countries around Italy—I know she does Slovenia and Malta as well as Italy; I am not sure of all her countries—is based in Rome. It is that sort of thing. There are people based in various centres throughout the EU.

Lord Anderson of Swansea: How long has she been in post?

Jeremy Morgan: She has been in post for about a year now.

Lord Anderson of Swansea: That is rather late.

Jeremy Morgan: Absolutely, I am not singing the praises of the Foreign Office, but one must give credit for the efforts it has made, albeit much too late.

Q53 Lord Dholakia: Can I ask about the matter of local voting rights? The British Government have been involved in bilateral discussions with a number of countries and have secured arrangements with Spain, Portugal and Luxembourg. Are you satisfied with the arrangements that are being made? A problem I find is how much we should now proceed with other countries to secure such rights. If I may put a scenario to you, Mr Morgan mentioned that such rights have no legal treaty status at all. You mentioned that rights are not written in a treaty. What would happen, for example, in France, if Le Pen's party were to get into power and say it intends to take away the rights of UK nationals who are settled? Can you break away those sorts of arrangements, if they are not part of a treaty but simply an agreement between two countries?

Jeremy Morgan: If there is a treaty between two countries, those rights are guaranteed in international law. To be honest, the view that British in Europe has taken is that we have much greater problems than local voting rights. As someone who has been lobbying on this, we face a particular problem. There is a wave of nationalism and anti-Europeanism sweeping across Europe. Whether or not it is the majority feeling in the country in question, it is still something about which almost all European politicians are concerned. They do not want to feed it. To create British exceptionalism on voting rights would not play well in most countries.

I can give you the example of Italy, where we were specifically told, "Look, do not go near that". I would be horrified to give the impression that there is any anti-British feeling in Italy on any part of the Italian political spectrum. There really is not, but it would not go down well to try to create a special demand for us. In Germany, to give special rights to us that are not given to the very large working population of Turkish citizens would not go down well, so we do not think this is a realistic demand, if I can put it that way, at the moment.

The Chair: Lady Deech, this is really the reverse of the question I tried to ask of the Secretary of State yesterday at the main Committee.

Q54 Baroness Deech: I am interested in what our Government are doing to support UK nationals abroad. As you know, these are these well-trawled issues of student finances, rights of return and rights to receive UK benefits in the EU. As a former university person, I am particularly interested in reciprocal university arrangements. I believe our Government are going to allow, at least for a limited period, British students who have been living in the EU to come here and study at home tuition fee levels, but there is a real problem. I do not know what the reciprocity is and, if this concession goes on for a long time, it will be extremely expensive for our universities. I used to have the figures, but there are something like 10 times as many EU students studying here as there are British students studying abroad. Can you shed any light on how reciprocity might work for university finances?

Adrian Berry: At the moment, they are effectively home fee rates, so that you do not discriminate on grounds of nationality. That comes from the Treaty on the Functioning of the European Union, so the regime is tough. You have to pick up the bill. You can charge only home fee rates, in order to avoid the principle of discrimination between citizens of different member states and the home state.

If you arrange a new reciprocity treaty, the question is about who pays. Compare it to the co-ordination regime, where it is obvious: that always specifies a payer, regardless of where you get the treatment. It is agreed by negotiation. You would need a treaty or arrangement that says one of two things. First, you do as you did before. Any British citizen going to Maastricht University pays home fees for the Netherlands, whatever they are, and you carry on the existing arrangement. That is the least disruptive thing to do. The other thing is to say that the home state pays, but that has tax implications and therefore requires parliamentary approval in each member state. That would change the position radically, so the light-touch approach is to say, "We know that this is all affordable because we are doing it anyway. Let us make an arrangement".

The political declaration does nod towards mobility for the purposes of study. It is not sketched out in any detail, of course, because it is only a declaration, but it may be something on which to build to put into effect the continuity of current arrangements. I can understand why the British Government may have concerns about paying for British citizens in other member states or people coming back here, but it would be much easier not to disrupt what works.

In terms of where students are attracted to, a lot of European universities now offer undergraduate-level education in English, especially the Netherlands. The fees are very low compared to UK institutions. There is a risk, even at an undergraduate level, of brain drain to institutions if there is disruption to the field of education. We have to be careful to think through what we would like from first principles.

Jeremy Morgan: I will just pick up on that, focusing not so much on a citizen born and bred in Britain, living in Britain and moving to a European university sometime

after Brexit, but looking at the group of British citizens living in Europe now who want to come back. They were probably born in Europe, but their family is British and they have always felt British. From the moment the children were born, they thought, “My kids will go to a British university”.

At present, the Government’s proposal is that British citizens living in the EU will enjoy home fee status for seven years after Brexit. Our request, based on the same notion that this was the regime in force when people moved, is for that period to be extended to 15 years, because anyone born in that 15-year period was born while Britain was still in the EU and parents planned on that basis. One of the co-chairs of British in Europe has two children. One is at a British university at present and the other is much younger. She says, “I started a savings plan for my daughter as soon as she was born”. That is what people do, because fees in this country are not cheap.

Lord Rowlands: Is there any hope that we could re-join Erasmus? Everybody agrees it is a good thing. Would it be difficult to do so?

Adrian Berry: It would be an administrative arrangement. It is difficult for third countries to participate without some kind of basis. It is possible, but would require some will.

Baroness Deech: Several non-EU countries are members.

Adrian Berry: They have actively made that choice. When it was removed, I could not understand why, but it requires will. The answer to your question is yes, it is possible, but that is a technical rather than political answer, because that is our scope.

Jeremy Morgan: It is one of the greatest losses of Brexit.

Lord Rowlands: Everybody agrees with that.

Adrian Berry: It creates a metaphorical insularity to go with our literal one. It shuts people off from exposure to the local region and neighbourhood, effectively.

Baroness Deech: It ought to work. Again, I do not know the exact figures, but many times more European students come here under Erasmus than ours go to Europe. The loss would be Europe’s if it does not include Britain. Our universities are at the very top of the rankings, and most European universities are way down so, if it stays like that, the desire will be to come here.

Adrian Berry: There are two things about that. Our universities are at the top, partly because we attract a lot of research funding from around the world, including from the European Union region. Our soft-power influence would also be lost by losing those people coming here. What we get back from those Erasmus students is immeasurable. I know of several people, friends of mine who are European Union citizens, who have gone back home and then come back here to live and work. The

association with the UK and affection towards it is hard to replicate in any other way.

- Q55 **Lord Gold:** To some extent we have dealt with this already, but some aspects of co-operation, such as reciprocal healthcare, cannot be protected unilaterally. What risks do UK nationals face if they remain in the EU? Have any particular measures been taken bilaterally, for example the arrangements with Spain you mentioned earlier on reciprocal healthcare, that you would like to see rolled out more widely?

Jeremy Morgan: I mentioned earlier the EU concern about mini-deals. It is difficult for the UK to talk to any EU member state or the Commission itself about bilateral arrangements, because they are frowned upon. For example, the agreement with Spain, as far as I know, is not an agreement; it is simply a mutual understanding to do the same thing, without actually making an agreement. I may be wrong about that, because I have struggled hard to get to the bottom of what has gone on there, but I believe that is the case. Some of these things can be achieved by mutual understandings of that sort, but one of the difficulties is that this has all been left terribly late. The Spain agreement, if it is an agreement, is very recent. The unilateral proposals made by the Secretary of State in September come very late for this to be done, but I hope that will be the result.

Lord Gold: If we leave without a deal and are in a grace period, albeit that period changes from country to country, at that point each country will know it has to do something to protect its own citizens in the UK. That will give encouragement to everyone.

Adrian Berry: You do not get uniformity of provision in that situation, and it is arbitrary. There are two things going on. With such an arrangement as Spain's at the moment, it is one thing to taper exit from the EU; it is another to make a bilateral arrangement for decades ahead. On the latter, almost no thinking is going on. On the former, the problem is that it just kicks the can down the road for the people living in the countries. British citizens in Spain will face a choice in five years' time, as opposed to the end of October. When it has lost its political visibility, the pain will be felt by expatriate residents in Spain.

Lord Gold: I see that entirely. Let us hope it does not happen but, at that stage, I would have thought the EC would step up to the plate to try to achieve some sort of uniformity.

Adrian Berry: It is a competence question, because it is co-ordinating national regimes. I take the point. All the Commission has been able to do is to encourage member states to make provision in their national healthcare systems, and that is all it can do. It cannot do things with the UK such as the co-ordination regulation, because that requires law. Yes, the Commission says, "Do your best", but it is up to member states.

- Q56 **Lord Anderson of Ipswich:** I have a quick factual question for Mr Berry. You said in your helpful note of September that the healthcare arrangements Act of 2019 gives

the Government unilateral powers to fund healthcare abroad but, at the time you wrote your note, they had not passed the regulations necessary to put this in place. They would need to be in place by 31 October to avoid protection gaps. Can you give us an update on that? Do the regulations exist?

Adrian Berry: There are two sorts of government regulations being made at the moment. There are those that are behind glass, which can be tacked on in the event of no deal, and then there are other regulations. No regulations provide for movement after exit date for the first time in order to insure yourself, so unilateral practical commitments would have to be made to patch that. That is partly because anything that exists is only about temporary patches for those who have already moved. The problem is what happens if a UK worker wants to move to France, for the first time, on 1 November. What regime applies? It is the same if you retire and settle in Spain on 1 November. That is the difficulty. The Act itself is a muscular provision, in effect a muscle without any limbs to move at the moment. You need both treaties and unilateral regulatory provision.

Lord Anderson of Ipswich: Do those provisions not exist, even behind glass?

Adrian Berry: From what I have seen, no. There are some aspirations to do things unilaterally, but nothing to co-ordinate them. You get only so far down the road. It is all very well saying you can draw down your national insurance contributions to aggregate a pension, so you become entitled to a pension in the UK. The question is which contributions you are going to aggregate. You need to know that as well. You might be one contribution short of an entitlement but, if that pension contribution was paid on 1 November, you would be entitled. The question is how you sort that problem.

Q57 **Lord Dholakia:** I will take the question of uprating UK state pensions. One of the problems we face is that the Government have already stated that they will not uprate them after 2023. One of the biggest grievances of Commonwealth citizens who worked in this country and retired in their own countries is that they had no uprating whatsoever. We will see, after three years, British expats suffering from pension poverty if their pensions are not uprated. What are your views on that?

Jeremy Morgan: Can I deal with that? If there is one message I hope this Committee passes on, it is this. It does not help with the situation for Commonwealth citizens, because underlying this is a British policy not to uprate pensions for its pensioners who live in another country, unless there is a reciprocal agreement with that country. Within the EU, it had to uprate, because there is an anti-discrimination provision in the EU treaties.

As our paper makes clear, there was a British woman who went to live in South Africa as a pensioner, who brought an action against the United Kingdom to secure equality with British pensioners in the UK and in countries where there were reciprocal agreements. She failed. She failed in the House of Lords and at the highest level of the European Court of Human Rights. The arguments were quite technical, but basically the comparison that she attempted to draw between herself

and British pensioners living here or in countries where there were reciprocal arrangements was not held to be fair.

This is a message that British in Europe has been given again and again, on all the issues that are now within the gift of the British Government: if we give you what you want—if we give you a guarantee that we will uprate your pensions for life, if we give you the right to bring back spouses, if you are a citizen living in the EU now but you need to come back in five years to look after your ageing parent, if we give you any of those things—someone will sue us and claim discrimination. I urge this Committee to reject that. It is said to be legal advice, but we do not know from whom it has come. It is a message put out consistently by both Ministers and civil servants.

Our view is simply this. To bring a successful discrimination claim of that sort against the Government, so the Government here would be the defendant, you would have to show that they are not treating like as like. The simple answer to that is that, where British citizens moved to Europe when Britain was within Europe, they had a certain set of rights, such as the lifelong right to pension increases. That is being taken away now with Brexit. If someone is living on little other than a pension, which is being depreciated by the depreciation of sterling and is very low compared to other countries anyway, and they have planned on the basis that they would get pension increases for life, they are surely entitled to do so. If the British Government said, “We accept that distinction and that we should continue to do what the EU regulations required”, no claim brought by someone who had moved to a country where there were no such rights would be likely to succeed. In our submission, the Government need to come up with much better reasons if they are not going to pay pension increases. Frankly, we do not think there are any.

The Chair: Thank you both for those particular answers to those questions. They are the nitty-gritty really. When I meet people abroad, they are the issues of fundamental concern to them and have need to be resolved, one way or another. Lord Anderson wants to make a brief intervention.

Q58 Lord Anderson of Swansea: My experience of south-west France is that many Britons are of a certain age and are living in more straitened circumstances because of the euro exchange rate. If their pension is not uprated, it might cost the Government more, because many would be tempted to come back. There would be housing and health costs falling on the UK, and I suspect the economics would be against not uprating. May I have your comments on that?

Jeremy Morgan: I entirely agree. There is real hardship. An impression is sometimes given by the tabloid press in this country that everyone over pension age living in the EU is supping prosecco on a terrace in Tuscany, or something like that. There are huge numbers of people who made a rational decision to move some years ago, because they could afford to make their pension go further in rural France or Spain. They are in desperate straits as a result of this.

Lord Anderson of Swansea: They might be encouraged to return, adding more

burdens to the state.

Jeremy Morgan: Healthcare is interesting, because the statistics are that, if Britain pays for the healthcare of its pensioners abroad, it costs roughly half of what it would cost if they were to come back here and be treated by the NHS. It is an extraordinary figure, but there it is.

Baroness Goudie: If people came back, they would be unhappy and more likely to be a further burden on the health service. Do you know what I am saying? When people are not happy, they get ill or other things happen.

Jeremy Morgan: Coming back is not easy anyway, because house prices in most of Europe are very static or have gone down.

Baroness Goudie: I understand, but it would have a terrible effect on people to come back and live where they do not want to live.

Jeremy Morgan: It is a panacea that does not exist.

Baroness Goudie: I agree entirely.

Adrian Berry: The other benefit to keep an eye on is state pension credit, which is means-tested. If you come back to the UK, you are eligible to apply for that, whereas if you are just drawing a contribution-based state pension in Spain you are not. There would be a burden there as well. If people were coming back because they were in or near to penury, the state pension credit bill would go up considerably.

Lord Anderson of Swansea: Potentially housing would too.

Adrian Berry: Some of these things get folded into universal credit now, but that is correct for any means-tested benefit. Often if you are eligible for one, roughly speaking, you will be eligible for the other as well.

The Chair: Thank you both very much for attending. It has been a very informative session. At the end, we were touching on issues that involve people making lifelong decisions. Anyone who has talked to them—Mr Morgan, in particular, living in Italy now—knows of people's concern first hand. We have to look at that and will study your observations very carefully, coupled with the unfortunate lack of information or detail from the Secretary of State yesterday, at the full meeting of the main Committee. We are grateful to you. Thank you very much for the papers, which were very informative and brought me up to speed on the real issues, which I knew in part in some areas, but not more generally.

Jeremy Morgan: Thank you very much for hearing us. It is a very important Committee and we are extremely grateful for the opportunity to appear in front of you.

Adrian Berry: Thank you for the opportunity.

The Chair: Thank you very much.