

Justice Committee

Oral evidence: [Pre-appointment hearing for the role of Chair of the Independent Monitoring Authority](#), HC 954

Tuesday 24 November 2020

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Members present: Sir Robert Neill (Chair); James Daly; Miss Sarah Dines; Maria Eagle; Kenny MacAskill; Dr Kieran Mullan; Andy Slaughter.

Hilary Benn MP, Chair, Committee on the Future Relationship with the European Union, attended the Committee.

Questions 1 - 55

Witness

I: Sir Ashley Fox, preferred candidate for the role of Non-Executive Chair, Independent Monitoring Authority.

Examination of witness

Witness: Sir Ashley Fox.

Chair: Good afternoon and welcome to this sitting of the Justice Committee. I welcome Sir Ashley Fox—to whom I will turn shortly—the Government’s preferred candidate for Chair of the Independent Monitoring Authority.

We also have with us the Chair of the Committee on the Future Relationship with the European Union, the right hon. Hilary Benn, who is guesting under the provisions of the Standing Orders. It is very good to see you, Hilary. We invited the Chair of the Public Accounts Committee, but she was not able to be with us.

We will now move through the formal procedures of Members giving their declarations of interests. I am a non-practising barrister and consultant to a law firm.

I ought to say that Sir Ashley and I know each other from our past work—he in the European Parliament and me as a Member of Parliament here. We never had any business or professional work together; it was our political activities that brought us together in the past.

Let us start with the declarations of other Members who are in the room.

Miss Dines: I am a barrister but I have not taken on any cases since my election last December.

Andy Slaughter: I am a non-practising barrister.

Chair: And those who are joining us remotely.

Maria Eagle: I am a non-practising solicitor.

James Daly: I am a practising solicitor.

Q1 **Chair:** Sir Ashley, welcome: we are grateful to you for coming. We have seen your CV and the other details that are set out. We have made our declarations of interest. Are there specific declarations of interest that you think relevant to this role that you should tell us about for the record?

Sir Ashley Fox: I do not believe so, Sir Bob. I am a former solicitor, but I have not practised for more than 10 years.

Q2 **Chair:** Did you do any work in relation to citizens’ rights? I think you were largely an insurance specialist.

Sir Ashley Fox: Yes, insurance litigation.

Q3 **Chair:** You have been a Member of the European Parliament for a number of years, which is the context in which we met each other. What prompted you to apply for this role?

Sir Ashley Fox: It is my deep interest in Britain’s future relationship with the EU and, in particular, the necessity—indeed, the moral necessity—



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that EU citizens' rights are upheld, that British citizens' rights in the EU are upheld, and to play my part in ensuring that the United Kingdom and the EU have the best possible relationship going forward.

Q4 Chair: You note in your CV, very properly, that you currently work as an independent business consultant offering strategic advice on the European Union. One might wonder whether any potential for conflict arises. Will you help us a little more by telling us what that work involves and why, in your judgment, there is no risk of a conflict, because that will come into any observer's mind?

Sir Ashley Fox: I do not believe there is any conflict. My consulting firm is registered with the transparency register operated by the European Commission. I have a web page that says how you can access that information. I have two main clients and I provide strategic advice to both of them. That tends to be of a more general nature. Perhaps I could give you an example.

One piece of work I was asked to do was to analyse the 27 candidates who had been nominated for the new Commission last year, and to identify the strengths and weaknesses of those candidates and of any candidates who were likely to be rejected by the European Parliament. I prepared that report. I am pleased to say that I identified six potentially weak candidates and, of the three candidates who were eventually rejected, they were all on my list of six. Sometimes the advice is more specific, but I do not see any grounds for believing that there would be a conflict of interest.

Q5 Chair: Does any of the work that you or your clients do have any financial or business interests in any of the matters relating to this, such as the work and other rights of EU citizens in the UK, UK citizens in the EU or the position of frontier workers?

Sir Ashley Fox: No, not at all.

Q6 Chair: I will make another declaration of interest as chairman of the APPG for Gibraltar. One of the areas that we will have to look at is the question of frontier workers. I know you were one of the MEPs for Gibraltar in your region and that you are aware of that issue. Does any of the work you do in any way impact upon the situation in Gibraltar or on any work that you might be asked to undertake either for the overseas territories or the Crown dependencies?

Sir Ashley Fox: No, it does not—not in any way.

Q7 James Daly: Sir Ashley, I do not wish to labour the point that the Chair has made, but I have to put it in this sense: conflicts of interest are either real or there is a perception of a conflict of interest. You have a company that you say offers advice regarding various matters related to the European Union and how people interact with it. If a person suggested that there would be the perception of a business advantage by holding the position that you have, making your company more attractive



to clients, what would your answer be?

Sir Ashley Fox: I would say not at all. I tend to give advice on how the institutions of the European Union—the Commission, the Parliament and the Council—operate, how they are likely to react in certain situations and how that might affect commercial clients. That is completely distinct from the obligation of the United Kingdom public authorities to uphold EU citizens' rights in the United Kingdom and Gibraltar.

Q8 Andy Slaughter: It is a matter of public record who your two main clients are. How would you prevent any conflict from arising in the future? How would you prevent any knowledge or view you were taking in this role from conflicting in any way with your private income work?

Sir Ashley Fox: I am struggling to hear what Mr Slaughter is saying in the House of Commons. He is the one speaker I am finding it difficult to hear. I think he asked me to identify my two clients.

Chair: Yes, your two main clients, and how you would avoid any conflict that might arise in relation to their interest, the interest of your work and the particular work that you would have to undertake here. I hope that summarises it fairly, Mr Slaughter.

Andy Slaughter: Yes.

Sir Ashley Fox: My two main clients, as declared on the European Commission transparency register, are EUTOP, a German government-relations firm in Munich, and APCO Worldwide—I do some work for their Brussels office.

I do not foresee there being a situation in which there would be a conflict between my role as chair of the IMA and my commercial work in Europe. If ever that did arise, I would simply turn down that piece of work. In my former life, I was a solicitor. I am used to the roles of conflict of interests. Therefore, I think I would be aware if one arose, and I would turn down the project or the piece of work to which that related.

Q9 Chair: Do you think you will have to change in other respects your working arrangements to add this to the work that you are doing? You are down to do two days a week, roughly. Does that seem to be adequate to do the tasks?

Sir Ashley Fox: Consultancy work is about two days a week. That is normally fairly flexible so it can be done when it is convenient to me. If, for example, the IMA demanded more time in the early weeks, which is entirely possible, then that consultancy work can be moved to the evening and weekend. I do not foresee any conflict of interest or, indeed, any time conflict arising.

Q10 James Daly: Sir Ashley, the job description for the role seeks a good board-level track record at a senior level. Which part of your experience demonstrates that track record?



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Sir Ashley Fox: I have served on the board of the Conservative party for five years. I no longer serve at the moment. It is important to note that that is not a political decision-making body. Rather, it receives accounts, it scrutinises the actions of the chief executive and the chairman, it provides advice, it looks at staff and discipline, and scrutinises decision making.

In addition, as leader of the Conservative MEPs, I chaired a body called the Delegation Bureau, which was made up of five MEPs and senior staff. They were responsible for the delegation's financial management, recruitment of staff and ensuring that Members complied not only with European Parliament rules on the use of expenses and allowances but with our own additional and stricter rules.

Finally, as a councillor, over a four-year period, I chaired three different committees, scrutinising the decisions of officers and the cabinet, challenging them respectfully but ensuring that every voice around the table was heard. That is the important role of a chair: to ensure that every member is heard and contributes, and that when executive members are challenged it is done in a constructive and respectful manner.

Q11 **James Daly:** Sir Ashley, I appreciate the comments you made regarding the board of the Conservative party, but do you have any example you can give us—I might be unfairly characterising this as of a non-political nature—of your life outside of politics?

Sir Ashley Fox: For example, I also sit on the leadership nomination committee of the Royal Institution of Chartered Surveyors. The purpose of that committee is to scrutinise candidates putting themselves forward for election before the membership. It is not the board of the RICS but a sub-committee. I serve on that as a non-chartered surveyor. I have done that for five years.

Q12 **James Daly:** The job description also requires management of organisations through periods of change and the ability to understand and oversee compliance with expenditure controls. Can you identify which parts of your experience demonstrate your capabilities in those areas?

Sir Ashley Fox: When I was practising as a solicitor, I was recruited to work for a firm called Badhams Thompson. This was specifically to head up the litigation department in Direct Line in Bristol. At the time this was a brand-new way of providing insurance services. In other words, I would go in as a private practising solicitor, establish myself in the office in Bristol, and work with and supervise Direct Line staff.

I was working in-house. We introduced a case-management system. At the time—some 22 years ago—this was a very different way of providing legal services to a customer. My firm also had offices in Manchester and Croydon. I was responsible for that contract operating in Bristol, for managing that change and for making those client relationships work. I



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like to think I was successful because three years later that contract was renewed and I was made a salaried partner. In that commercial aspect, I was successful in managing that change.

More recently, I have had to manage the change in my own personal career, because I have known since the date of the referendum that my career as an MEP was going to come to an end. That involved doing some research, planning what I would do in the future and coming to the conclusion that I was going to set up my own business, which I started in July 2019. So far, it is going well. I am pleased with the change that I managed.

Q13 James Daly: What are the most important provisions in the withdrawal agreement Act for EU and EEA citizens in the UK?

Sir Ashley Fox: Of course, the Act sets up their rights under the withdrawal agreement. That relates to rights of entry and residence, professional qualifications, social security and equal treatment. Of course, the withdrawal Act also sets up the IMA as a body to monitor and ensure that those rights are promoted.

Q14 Hilary Benn: May I thank the Committee for generously inviting me to guest in today's proceedings?

May I ask you, Sir Ashley, about how you see the role? It could be reactive, where you just deal with cases that are brought to your attention, or it could be more proactive in looking at what is happening and trying to anticipate problems. Where do you see the balance of the job?

Sir Ashley Fox: I think the IMA will do both because we have the duty to monitor and we have the duty to promote. The first job of the IMA will be to reach out to stakeholders so that they know we exist, chief among whom will be EU citizens, but also to public authorities across the United Kingdom, including the Governments and Parliaments of the United Kingdom. I would want to reach out to embassies and groups that represent EU citizens.

We want to encourage EU citizens to report to us when they encounter problems, because we need that data to identify whether there is a systemic problem with some part of the public sector in the United Kingdom. That data will help to identify a pattern or a cluster of behaviour— that there is a problem.

Equally, it is important when we communicate with EU citizens that they do not view us as a complaints-handling body, because we are not.

We also need to be mindful of the fact that, while we look for systemic issues, behind each systemic issue is an EU citizen with a potential problem. We need to have a human face as well.



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It is going to be a balance of proactive and reactive. The proactive part will come from promoting good practice. It is inevitable as time progresses that we will come across those parts of the public sector—public authorities—that are doing better than others. Hopefully, through our network of engagements we will be able to encourage those parts that are not doing so well to do better.

Q15 Hilary Benn: Let's take some specific examples. The settled status scheme overall has been pretty successful because more than 4 million people have applied. Many people have settled status, but plenty only have pre-settled status. They need to apply, as you will know, for settled status at the right point finally to confirm their permanent right to be in the UK and to enjoy all the rights that come with that. Do you see a role for you in ensuring that all those who have pre-settled status know when they have to apply to turn it into settled status?

Sir Ashley Fox: I do not think it is going to be the role of the IMA to undertake that task, but it is going to be our role to monitor those parts of the public sector whose responsibility it is and to ensure that that job is done correctly. That is how I would describe our role. We will watch the different organs of the state and ensure that that duty is done properly and efficiently.

Q16 Hilary Benn: But you would accept that the powers that be have a responsibility to remind those with pre-settled status of what they need to do by when.

Sir Ashley Fox: Yes.

Q17 Hilary Benn: Good.

Let me take a second group: EU citizens who have not yet made an application. One of the problems you will face in this job, and we all face, is that nobody knows for sure how many EU citizens there are in the country. There may be children in care, people who are elderly, people who are not digitally savvy and people who are still blissfully unaware that they need to make an application. Again, do you see your role as ensuring that the Home Office and others are communicating with all those groups to make sure that they apply in time to secure their rights?

Sir Ashley Fox: It is, potentially, the role of the IMA to examine how the public sector behaves. It is clear that ordinary EU citizens, by which I mean those who are not vulnerable, have a duty to apply by 30 June for settled status or pre-settled status. That is an obligation under the terms of the withdrawal agreement. Equally, the United Kingdom and the various public authorities have a duty to ensure that vulnerable individuals, whether they are in a care home or, as you suggested, they are elderly and incapable of applying, are aware of their rights. I am encouraged by the fact that the Government have already said that if EU citizens miss the deadline of 30 June, they will allow them to apply out of time if there is a good reason. That assurance will, hopefully, prevent there being a big problem after 30 June.



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Q18 **Hilary Benn:** On that last point, Sir Ashley, do you think that the IMA will have a role in judging whether the Government's interpretation of a good reason is in your view a good reason?

Sir Ashley Fox: No, I am not sure that that is our role, Mr Benn. Our role is to ensure that EU citizens' rights are monitored and promoted. We will watch what the public authorities do, but we are not going to do their job for them. We will examine the attitude of the public authorities at the time.

Q19 **Hilary Benn:** I have one final question. As you know, the form in which EU citizens receive their settled status is a digital document.

Sir Ashley Fox: Yes.

Q20 **Hilary Benn:** Do you foresee any difficulties that may arise from it not existing in paper form? You may be aware of the recommendation that the Select Committee I have the honour to Chair has made twice to the Government on this matter. Do you think that that might be a problem and, if so, what is the answer?

Sir Ashley Fox: I do not think it is the role of the IMA to prescribe the manner in which rights are protected. The Governments of the United Kingdom have a duty to ensure that they are respected. Under the terms of the withdrawal agreement, the British Government are entitled to use an electronic form of identification. It specifically says so in the withdrawal agreement. We just need to wait and see if that works in practice.

I will admit to having a little scepticism, perhaps like you, about whether an all-electronic digital system is going to work. I have some sympathy for those EU citizens who say that they would like a piece of paper or a plastic card as physical evidence. If I was in their position, I would want the same.

Q21 **Hilary Benn:** That is very helpful. The reason I asked the question, Sir Ashley, is that, as all Members of Parliament will know, we have constituents who have had leave to remain from non-EU countries, the leave has run out, they have applied for renewal and during that time they have all the rights that they held previously. But I have known constituents come to my surgery and say, "I'm afraid my employer has just sacked me because they said, 'Show me a current visa. If you can't show me a current visa, I'm not taking the risk because the penalties for employing someone unlawfully are very severe.'"

If that happens to an EU citizen—an employer says, for whatever reason, "I'm sorry. I'm not going on this website. I don't know whether it's a genuine one. I'm not sure the code you have given me is legitimate and I am terminating your employment"—do you think the IMA would have a role in standing behind the rights and interests of an EU citizen who found themselves in that position?



Sir Ashley Fox: I am keen not to get involved in hypothetical questions, Mr Benn. The Government have a duty to ensure that EU citizens' rights are protected. They have opted to use this electronic system. Let us see how it works. It is absolutely essential that it does work properly because, if it does not, the IMA has powers to ensure that they do introduce a proper system. We should give the Government the benefit of the doubt. They have set up this system and they have said that it is going to work. Let's see that it does. Clearly, if you are going to have an employer who ignores the system, that is wrong, and that employer is not respecting the rights of the EU citizen.

Hilary Benn: Thank you very much indeed.

Q22 **Chair:** Sir Ashley, you mentioned that the IMA is not a complaints-handling body. You will be aware, of course, that the withdrawal agreement Act sets up the IMA as the independent authority for the purposes of the withdrawal agreement. Article 159 of the withdrawal agreement, as well as saying that it is the monitoring body, says that it has powers equivalent to those of the Commission to conduct inquiries of its own initiative concerning alleged breaches of part 2 by the UK administrative authorities and to receive complaints from EU citizens for the purpose of conducting those inquiries. It also has the right to bring legal action before a competent court or tribunal. That hints, perhaps, at a potentially proactive role as well as one that is entirely monitoring. How do you envisage that being dealt with?

Sir Ashley Fox: Clearly, when EU citizens report their complaints to the IMA, we will review those complaints. We will need to distinguish between those citizens who are, shall we say, the unfortunate victims of maladministration, which happens from time to time. It happens to constituents of yours, I am sure, and it happened to my constituents when I was a councillor as well as an MEP. We need to distinguish between simple maladministration and something that is systemic that prevents EU citizens as a class from enjoying their rights under the Act. It is more likely that this will take a number of months, if not longer, to emerge. This is why we are dependent on EU citizens reporting their complaints to us.

I don't know, for example, whether when collecting complaints different Government Departments identify the nationality of the complainant. The IMA will wish to look at that. Ultimately, we will hold inquiries and use the power of judicial review if we find a pattern or a cluster of cases that does not respond to persuasion. In my experience, when citizens are badly treated by the state, it is almost invariably the result of some sort of cock-up. It is rarely the case of a malevolent conspiracy. I am hopeful that the IMA will speak to the public authority involved and say, "We've identified this problem. Can you explain why?" One hopes that they will respond in a generous and compassionate manner, knowing that if they do not, we have the powers necessary to make them change.

Q23 **Chair:** You do not see any difficulties in using those powers from a



practical or other point of view.

Sir Ashley Fox: No hesitation at all. I am aware, for example, that a judicial review can be quite a time-consuming process. If we can get a quicker result through being persuasive, so much the better. The objective is to protect EU citizens' rights.

Q24 **Maria Eagle:** Sir Ashley, you seem to suggest that your role and that of the IMA is not to take on individual complaints. In my experience in politics, constituents who bring complaints to me expect me to do something to resolve their individual complaints. Do you see that as a problem, if what you are doing is taking the experience of individuals who come to you to try to see whether there is a generic issue, but you are not then taking up their individual complaints? Is that not going to leave those who complain to you—EU citizens whose rights you are supposed to be monitoring—feeling let down?

Sir Ashley Fox: That is a challenge that the IMA faces. From the very start, we need to explain to EU citizens, to representative bodies and to their embassies that we are not a complaints-handling service, but that we rely upon them to report the complaints that they have made to other bodies. For example, if a constituent of yours has a problem with the Department for Work and Pensions, they will pursue that through the normal channels. We would very much like them to tell us as well. One complaint from one EU citizen in your constituency does not identify a systemic issue, but if we start getting a pattern or a cluster of those complaints that bring up a similar issue, that is the point at which we say to the DWP, "We think your system is causing problems or discriminating against EU citizens." At that point, we will become involved.

Q25 **Maria Eagle:** But an individual who has to take the time to set out all the details of what has happened to them and why they feel that their rights have been infringed is not, necessarily, going to do that if they do not think you are going to do anything about their individual case, are they? How are you going to make sure that you hear if people don't think that taking the time to set out their experience and problem is going to lead to any chance of it being resolved for them?

Sir Ashley Fox: This is the job that we have of explaining the role that we are performing: that we are not a complaints-handling service, and that our role is to ensure that EU citizens' rights are monitored, promoted and that they play an important role in providing that information to us.

It is equally important that we do not raise hopes because it will be an impossible situation if you ask every EU citizen who complains to every public authority in the United Kingdom to copy that complaint to us and expect us to investigate it as well. We will certainly review each complaint that comes to us, but our job is to identify patterns and clusters. That is how we will most effectively protect and promote EU citizens' rights.

Q26 **Maria Eagle:** If I were to ask you what you consider to be the main purpose of the IMA, what would your answer be?



Sir Ashley Fox: It is to uphold EU citizens' rights as set out in the withdrawal agreement. That is the job that Parliament has given the IMA. You have given us a variety of weapons to achieve that: the ability to hold an inquiry and the ability to launch a judicial review. I should add that all public authorities have a duty to co-operate with us. I do not envisage any problems in getting that information.

Q27 **Maria Eagle:** May I ask you one or two questions about your political experience? There is a broad concern with some public appointments at the moment—I am not suggesting this applies to you—that those who know Ministers and were in the same political party as Ministers are getting appointments. A broad issue exists, particularly related to some of the covid expenditure that has been going on, and it is important to have an understanding about the process. You have, obviously, been substantially involved in the Conservative party. Indeed, for your example of board-level experience you cited the Conservative party board that you have served on. Are you still very active in the Conservative party and do you intend to remain so during this public appointment?

Sir Ashley Fox: I have no position in the Conservative party at all now and have not done since I stood down as an MEP in July 2019. I am an ordinary paid-up member but I have no office at all.

Q28 **Maria Eagle:** Have you sought office? Are you continuing to seek office?

Sir Ashley Fox: No. I have not sought any office since July 2019. I want to assure you, Miss Eagle, that before I was an MEP I practised as a solicitor for 15 years. I understand the legal duties of the IMA, and I take them very seriously. I am also mindful of the code of conduct for board members of public bodies. I have read that document. I assure you that I will abide by that code. The code enshrines the seven principles of public life, and I will abide by those principles.

Q29 **Maria Eagle:** Sir Ashley, I am right, am I not, that you were knighted for political services in the resignation honours list of the previous Prime Minister?

Sir Ashley Fox: That is correct, yes.

Q30 **Maria Eagle:** Am I also correct—I don't know if this is true—that you sought to stand for Parliament as a Conservative parliamentary candidate in the last election, and that you were short-listed, were you not, for a seat that is Conservative held?

Sir Ashley Fox: I was short-listed in Devizes, yes.

Q31 **Maria Eagle:** Indeed. Does that not count as seeking to take a political position? You have just told the Committee that you had not sought to do that since you stood down in July of last year, but that is not entirely accurate, is it?

Sir Ashley Fox: Forgive me. You are correct. I was assuming you were referring to an office within the Conservative party. However, you are



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correct in that I did seek to become an MP for Devizes, yes, and I was short-listed for that seat.

Q32 **Maria Eagle:** Is there anything else that you would like to reveal to the Committee about your activity in the Conservative party since you stopped being an MEP, or is that complete?

Sir Ashley Fox: I applied for the seat of West Dorset and I didn't get that seat either. That was before the seat in Devizes.

Q33 **Chair:** Do you intend to apply for any political office, Sir Ashley, while holding the post of chair of the IMA?

Sir Ashley Fox: No.

Q34 **Miss Dines:** Sir Ashley, you have been probed on issues that might go to your integrity. Of course, integrity is a very important part of your job going forward. Have you, first, been used to balancing those difficult issues in your life as a solicitor; and secondly, while on the board of the Conservative party were you able to withstand attempts at soft political pressure when they were not appropriate?

Sir Ashley Fox: The answer is yes to both questions. As a solicitor, I am used to issues of integrity, balancing the issues of clients with my duty to the court. I want to make it clear that I am not afraid of delivering uncomfortable political messages when that is necessary.

Let me give you an example. In 2018, when I was leader of the Conservative MEPs, I went to see Theresa May to discuss the withdrawal agreement. This was about two years ago. I had the fairly uncomfortable task of telling her that two thirds of her MEPs, including me, did not support that agreement, and why. That was a difficult message to give the Prime Minister, but I did so courteously. I was relieved that that discussion did not leak into the press. My colleagues back in Brussels were quiet about it. That is evidence that I am not afraid to confront power and to deliver an uncomfortable message when it is necessary to do so.

Q35 **Andy Slaughter:** I have a few questions. The IMA is being set up at a pretty busy time for it. We have heard that a large number of people have applied for settled status. I guess the ones that are straightforward have gone through. Several hundred are still outstanding. The problems you are likely to encounter are either that people do not know what is happening and need to be pushed a bit further, or people who are in difficult or vulnerable circumstances. What is your game plan for dealing with that?

Sir Ashley Fox: As I explained in response to Mr Benn's questions earlier, I see the role of the IMA as monitoring what the public authorities are doing across the United Kingdom and to ensure that they are upholding the rights of EU citizens. It is not the role of the IMA to encourage people to register. In fact, those EU citizens have a duty to



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apply before 30 June of next year. As we approach that deadline, I would expect the British Government and other public authorities to make efforts to contact those vulnerable individuals and ensure that they register as required to protect their rights.

Q36 **Andy Slaughter:** You seem to be taking a rather passive view of this situation. I take it that you are monitoring rather than doing, but nevertheless you must have an understanding of what needs to be done.

Let me declare an interest: I am one of the people currently setting up an APPG for citizens' rights. Through other APPGs—for example, the APPG on Gypsies, Travellers and Roma—we are looking at groups that might be excluded from the process. Do you have an understanding of that position? How are you properly going to represent the rights of people who may be in difficulty as we come to the end of the transitional period or the grace period?

Sir Ashley Fox: Chair, forgive me, but I am finding it very difficult to hear Mr Slaughter.

Chair: Sir Ashley, we are going to move round. That might make it a bit easier for you. It may be the microphone is difficult for you. In fairness, it is difficult at our end. It is our problem. Miss Dines and Mr Slaughter are going to swap round.

Q37 **Andy Slaughter:** I will try to speak up a bit. We are now in this rather difficult and complex phase—we have settled status and pre-settled status, and the grace period to deal with—and the people who have not yet applied or been successful are likely to be the more difficult cases. They may be from excluded groups—I used the example of Roma groups—or they may be people having difficulties for other reasons, such as health reasons. How are you going to ensure that those groups are fairly dealt with?

Sir Ashley Fox: The role of the IMA will be to monitor how the Government act. In other words, are they making a reasonable effort to encourage those vulnerable groups to register? It is not—repeat, not—the role of the IMA to do that job.

Q38 **Andy Slaughter:** If you are looking at the progress that is being made, alarm bells should be ringing. You should, perhaps, be taking a proactive or inclusive view rather than sitting back. Is that how you see your position?

Sir Ashley Fox: I do not see us as sitting back. I see us as fulfilling the mandate that Parliament has given us. Of course, the withdrawal Act says that EU citizens have six months from the end of the transition period, until 30 June 2021, to register. A significant period of time remains for EU citizens to register. I am comforted by the fact that the Government have given the assurance that if EU citizens do miss that deadline, provided they have a good reason, they will be able to apply afterwards. The role of the Government is to ensure that vulnerable people apply and are aware of their rights.



Q39 **Andy Slaughter:** You have, I think, because of your political background, something more to prove before taking on this role. One looks at Windrush over the past few years, and at the very fact that by leaving the EU, although there are clearly protections, the objective over time is not to allow free movement and more EU citizens to be resident in the UK. Do you not think, therefore, that your political background is relevant to that and that you need to be standing up more for the rights of those people who have not yet been able to register who are in the UK?

Sir Ashley Fox: If I am appointed, my role will be to chair the board of the IMA. I will be one voice of 10 on the board that will set the strategy. I am not sure how my personal political background should affect how the IMA will act. That job will be to monitor and promote EU citizens' rights, to ensure that they are effectively implemented and the withdrawal agreement is applied.

Q40 **Andy Slaughter:** Let me be clear. I emphasise that this is nothing about you personally and it is nothing about people having a life after politics. That would be a strange attitude for MPs to take. You have held very senior positions. The example you gave of leading a lobby to the then Prime Minister, rather than showing your independence, suggests that you have been operating in the higher echelons of the Conservative party and were doing so until a year ago, and you have sought to get into the UK Parliament since then.

Do you think it was wise to make this application given the fact that this is quite a political role on a highly contentious political subject, and you come, in the same area of work, from a very high-profile political position? Can you understand why for some of us that creates some doubts?

Sir Ashley Fox: I applied for this role, as I said at the beginning of this session, because I want to play my part in ensuring the best possible relations between the United Kingdom and the European Union. It is incumbent upon the United Kingdom to respect the withdrawal agreement and the rights of EU citizens as part of that agreement. I believe I have relevant political experience in ensuring that we play our part in doing that. The IMA is an important body set up under the withdrawal agreement. It has been given serious powers by Parliament. Its independence is enshrined in the withdrawal Act and I want to play my part in ensuring that those rights are respected.

Q41 **Andy Slaughter:** I will have one more try, Sir Ashley. You come from, perhaps, the most senior political position in European politics in the Conservative party. You are now going into a position that is going to be quite important in ensuring fairness for millions of EU citizens in the UK. Do you feel confident, given that you presumably supported the Conservative party's policies and still do in relation to Brexit, that you are the right person to do that?



Sir Ashley Fox: Yes, I do believe I am the right person to do that. My experience is of working in the European Parliament—of working with people from different countries and cultures. As a student, I spent 12 months living and working in France and I learned French. I think I am the right person for this job. I have a lot to offer and contribute and I want to do so.

Q42 **Andy Slaughter:** But you want us to be out of the EU and in the future for EU citizens not to have the same rights as people who are protected by settled status.

Sir Ashley Fox: Forgive me, I campaigned to remain in the European Union.

Chair: You were not the only one as far as that is concerned.

Sir Ashley Fox: I lost, but I am not sure that that is strictly relevant to this appointment. I took the view, when the referendum was held, that politicians should respect that result. Once the result was known, I worked to make sure that the referendum decision was respected. I am sorry you think that that is a problem.

Chair: As Chair, I do not regard that as a relevant issue to raise, Mr Slaughter. How people voted in the referendum cannot be a relevant issue in relation to the decision that we make now.

Q43 **Andy Slaughter:** I have one other separate issue. You mentioned judicial review; you are aware that quite a lot of constraints on judicial review have been introduced in the past 10 years. Currently, a review is ongoing—it is fairly clear from what members of the current Government have said—to further restrict the ambit of judicial review. Are you in support of that, and would that compromise your ability to exercise that important function in this role?

Sir Ashley Fox: It is not my role to become involved in that discussion. That is for Parliament to decide. Parliament has given the IMA certain powers under the Act. If I am appointed as chair, I shall use those powers to ensure that the rights of EU citizens are monitored and promoted.

Q44 **Andy Slaughter:** If there were, as there may well be if you are successful, during your tenure a limitation—perhaps a severe limitation—to the application of judicial review, which would constrain your ability at the IMA to enforce the rights it has, would you be happy with that because the Government have made that decision?

Sir Ashley Fox: I did not say I would be happy, but I do not want to get involved in hypothetical questions about what the Government might propose and what Parliament might legislate. I am not sure that that is terribly helpful or constructive.

Chair: We are both lawyers, Mr Slaughter. I suppose we used to act with the law as it was, whether we liked it or not, when we were doing that



work.

- Q45 **Dr Mullan:** Sir Ashley, at present the role of monitoring the uptake of the scheme has fallen under the Chief Inspector of Borders and Immigration. How do you envisage the role differing when the IMA takes over?

On a related note, many people agree that a lot of this stuff will sit under the Home Office, bearing in mind its success in delivering on this. Your sponsoring Department will be the Ministry of Justice; how do you plan to manage your relationship with the Home Office, given that the Ministry of Justice will be your sponsoring body?

Sir Ashley Fox: The IMA will be wholly independent of Government. You are correct that the MOJ will be our sponsoring Department, but it will be for the board of the IMA to decide our procedures. That is part of the Act that Parliament has passed.

I do not want to become too fixated on one issue. I know that many Members have raised the issue of registering the right to settled status. The role of the IMA will be to monitor how that procedure goes and to respond to any complaints that are reported to us by EU citizens. We will do that. We will use our powers to ensure that their rights are monitored and upheld.

- Q46 **Dr Mullan:** In your monitoring activities, you may well encounter challenges that relate to the performance of the Home Office. You will have a role in raising issues. As it is not your sponsoring Department, how would you plan to approach that?

Sir Ashley Fox: The IMA would regard each Government Department with which we have a relationship, which will include the Home Office, as one of our stakeholders. We will want a good working relationship with them, just as we will want a good working relationship with the devolved Assemblies and the Government of Gibraltar. We have many stakeholders. It is through collaborative working that we will best ensure that EU citizens' rights are protected.

As I said earlier, our aim should be to promote good practice. There will be some parts of the public sector that do this better than others. There does seem to be an assumption on the part of the Committee that the Home Office will not be the best performing Department, and perhaps you are right but perhaps not. In any event, if we come across problems, we will go to the Department and explain how we think the situation can be improved. We will be mindful of the fact that we have the power of inquiry and judicial review to back us up, if necessary.

- Q47 **Dr Mullan:** My initial question—I appreciate it was a question in multiple parts—was about the independent chief inspector's work to date. Have you seen any of the work he has done to date, and are there any learnings you can take from that?

Sir Ashley Fox: No—forgive me, I am not familiar with that work but I will make myself familiar with it if I am appointed.



Q48 **Dr Mullan:** How quickly do you plan to appoint a permanent chief executive, and what will be the key qualities that you will look for in the person you will ask to fill that role?

Sir Ashley Fox: Appointing a permanent chief executive will be one of the very first duties of the newly constituted board. What qualities will I be looking for? It will be someone who is objective, independent minded and driven by the evidence. Given the number of stakeholders that the IMA will work with, it needs to be someone who has a record of collaborative working and of building and developing good relationships. That will be the key to fulfilling our role well.

Clearly, it will be for the six non-executive members of the board to describe the criteria. I have given you my thoughts at the moment, but those are the talents that I will be looking for.

Q49 **Dr Mullan:** How quickly do you think, from your experience, you could appoint somebody, and what are your ambitions for that?

Sir Ashley Fox: I would hope within three months. I know the public sector sometimes moves rather more slowly. Indeed, my own appointment seems to have taken rather longer than that, and that is not a chief executive position. I would hope it would be within three months of the start of the year.

Q50 **Dr Mullan:** Have you been advised of how well advanced recruitment is to other significant roles in the organisation, given that it is supposed to be operational in less than six weeks?

Sir Ashley Fox: There is an acting chief executive at the moment. She has worked with MOJ officials to ensure that by the time we get to 1 January we have our full complement of 65 staff—or that is what I am informed.

Q51 **Chair:** Three months is quite ambitious. What makes you think you can be fairly confident about that, Sir Ashley?

Sir Ashley Fox: I would put it the other way around, Sir Bob. Why not three months? It has always been a mystery to me why some of these positions take so very long to fulfil. Much of it is waiting for somebody else to comment on it and for it to be passed through different committees. Hopefully, this appointment will be dealt with by a fairly small board and we can get a move on.

Q52 **Kenny MacAskill:** My apologies for my late arrival. Can I ask what your initial thoughts are about how to reach out to potentially vulnerable EU citizens in applying for settled status? What do you see as the role of the IMA in that procedure?

Sir Ashley Fox: I do not think it is the role of the IMA to directly engage and involve EU citizens in applying. We have two functions. The first will be to monitor how the Government and the devolved authorities act in that regard. We also have a role to play in engaging with stakeholders—



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the embassies of the different EU countries, citizens advice bureaux and, in relation to older vulnerable people, with charities like Age Concern and so forth—setting out the rights that EU citizens enjoy and their duty to register by 30 June. Of course, it is comforting that the Government have already said that if people miss that deadline and they have a good reason for doing so, they can apply late. That should give some comfort.

Q53 **Kenny MacAskill:** What are your thoughts more widely about the role of the organisation and the expectations of EU citizens in terms of how you react to them?

Sir Ashley Fox: As I explained earlier, the role of the IMA will be to monitor and promote the implementation and application of EU citizens' rights, but we are not ourselves a complaints-handling body. We will ask EU citizens to report their complaints to us. The reason for doing so is for us to identify clusters or patterns of problems. Then we can identify whether there is a systemic problem that is causing difficulty for EU citizens. That is the main role of the IMA. It will also be to work collaboratively with public authorities across the United Kingdom to ensure that we promote good practice.

Q54 **Kenny MacAskill:** Finally, do you intend to consult stakeholders on your strategies and priorities? If so, which organisations?

Sir Ashley Fox: Yes. That process has already started. I know the acting chief executive has already reached out to the Scottish Government, the Welsh Government and the Northern Irish Executive. A trip was planned to visit Gibraltar, but unfortunately that has been postponed. They have met some of the EU embassies and they intend to meet as many as possible, and to meet representative groups—for example, the Three Million Group.

One idea for ensuring that stakeholders are fully consulted is a citizens forum. It is not decided on but it is an idea that is being discussed at the moment. The idea is to have a permanent standing body of 150 EU citizens so we hear from their ordinary experience of how they get on with public authorities across the United Kingdom.

The job of the IMA is not to deal with every issue of maladministration, which occasionally will, unfortunately, affect constituents, as you will be aware. We want to ensure that EU citizens, our neighbours and friends, are treated equally—in other words, that there is no systemic discrimination towards them as a result of their citizenship. I see our role as being to ensure that our neighbours are treated as we are ourselves.

Q55 **Chair:** Thank you, Sir Ashley. This meeting has been very helpful. Is there anything else you would like to add or to elucidate before we finish?

Sir Ashley Fox: No, thank you. I am very happy, Sir Bob.

Chair: Thank you very much for your time and your evidence. As you know, Sir Ashley, we will later this afternoon consider and draw up our



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report. Thank you for your time.