

European Affairs Committee

Windsor Framework Sub-Committee

Corrected oral evidence: Strengthening Northern Ireland's voice in the context of the Windsor Framework

Wednesday 8 May 2024

3 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Empey; Baroness Goudie; Lord Hain; Lord Lexden; Baroness O'Loan; Baroness Ritchie of Downpatrick; Lord Thomas of Gresford.

Evidence Session No. 1

Heard in Public

Questions 1 - 13

Witnesses

[I](#): Professor David Phinnemore, Post-Brexit Governance NI Project, Queen's University Belfast; Professor Simon Usherwood, Professor of Politics and International Studies, Open University; Anton Spisak, Associate Fellow, Centre for European Reform.

Examination of witnesses

Professor David Phinnemore, Professor Simon Usherwood and Anton Spisak.

Q1 **The Chair:** Good afternoon, everybody, and welcome to this public meeting of the Windsor Framework Sub-Committee. We are today holding the first evidence session of our inquiry on strengthening Northern Ireland's voice in the context of the Windsor Framework. We are joined today by three academic experts: Professor David Phinnemore from the Post-Brexit Governance Unit, Queen's University Belfast; Anthony Spisak, Associate Fellow, Centre for European Reform; and Professor Simon Usherwood, Professor of Politics and International Studies at the Open University.

You are all very welcome and we much look forward to the evidence that you will give us this afternoon. We would be grateful if you could introduce yourselves briefly the first time you speak. We know who you are, but not all our listeners may know who you are, so that would be a

help. Today's meeting is being broadcast and a transcript will be sent to you to check for accuracy before publication.

May I also refer to the list of members' interests, as published on the committee's website, and ask members to declare any interests they may have the first time they speak? We need to end this session by 4.15, which gives us an hour and a quarter to get through a number of important questions, so let us see if we can do that satisfactorily.

Could you assess for us the extent to which the voices of Northern Ireland politicians, officials and stakeholders can be heard in the context of the Windsor Framework? I ask you to give a general answer to that and not get into some of the more detailed questions, which we will get into later. As part of that, perhaps you could say how effective the various engagement structures and mechanisms that have been established under the Windsor Framework are.

Professor David Phinnemore: Thanks very much for the invitation to appear before you today. I am Professor of European Politics at Queen's University Belfast. Along with a number of colleagues, I have been running a post-Brexit governance project looking into the implementation of the Protocol on Ireland/Northern Ireland and the Windsor Framework, particularly its implications for issues of governance in Northern Ireland.

There is certainly potential for Northern Ireland's voice to be heard. If we look at the types of arrangements that the EU has with third countries as part of its relationships, there are some fairly novel elements in the Windsor Framework. That said, clearly there are concerns about the extent to which the voice has been heard to date. This could just be a consequence of this being the early stages in the implementation of some fairly novel arrangements, particularly against the backdrop of a fairly troubled start to the implementation of the Protocol. That may develop positively in the future. We will have to see. There is a lot of monitoring to be done.

So there are a good number of structures in place, some of which are fairly novel, but we are still very much at the early stages of implementation. Indeed, some aspects have yet to be tested. The democratic consent vote, for example, will be held at the end of this year.

The Chair: That is a very good start. We will come later to some of the points you have raised about the potential for a voice to be heard and the novel elements later.

Professor Simon Usherwood: Thank you for the invitation. I am a Professor of Politics and International Studies at the Open University. I am also a senior fellow of the UK in a Changing Europe initiative. My work has been concerned with the general development of the relationship between the UK and the EU beyond the TCA and the withdrawal agreement, so my interests have been broader than specifically Northern Ireland.

I will pick up on David's opening thoughts. The structures and systems that we have in place are still more at the stage of potential than of realisation, partly because much of the discussion so far has been about the status of the protocol and the framework. It is only as we have started to come out of that that we can get a sense of the "normal" operation of the system. We are starting to get there, but one thing we will perhaps develop further in this session is the notion of whose responsibility it is to do what.

There are a lot of moving parts on the EU and the Northern Ireland side, but also here in London. I am not sure that we yet have a full sense of who will be pulling what part of this process along to achieve the necessary representation, transparency and accountability of those processes in the coming years and, potentially, decades. There is a broader picture, within which the structures will, I hope, provide solutions or will open up ways for doing that, but we are not there yet.

Anton Spisak: Thank you for the invitation today. I am an Associate Fellow at the Centre for European Reform. By way of introduction, I would like to take us back in time a bit, not to revisit any of the painful years of the Brexit negotiations, but to provide a bit of context for this discussion. When the original protocol was agreed, its governance looked quite different from what we have at the moment. It is a useful backdrop for the discussion we will be having, because in the process of negotiating the Windsor Framework, which came into effect last year, a number of improvements were made that improved the opportunities for Northern Ireland stakeholders—that is, elected representatives sitting in the Northern Ireland Assembly, but also the Executive and Northern Ireland businesses—to express their concerns and views on the implementation of those arrangements and to be more closely involved.

There are a number of deficiencies with the current arrangements as they stand. The big distinction I would draw—this speaks to your question about the effectiveness of the current arrangements—is between pre-legislative and post-legislative involvement of elected Northern Ireland representatives, MLAs. There are very few opportunities to be involved in the pre-legislative process. There are some opportunities through the joint consultative working group, which is a technical group made up of UK government representatives and the European Commission, where the European Commission has the obligation to inform the UK side about any planned EU legislation, but that obligation is quite constrained. It falls short of other precedents that the EU negotiated in the past and is not sufficient to the degree required. Perhaps we can get into the detail of that question later.

On the post-legislative side, on the other hand, those arrangements have been strengthened significantly with the introduction of some of the legislative and institutional arrangements that have been put in place, most notably the Stormont brake and the applicability Motion that is now in place in the Assembly. Perhaps I can pause here and we can get into the detail later.

The Chair: Thank you all. That sets us up well.

Q2 **Baroness Ritchie of Downpatrick:** You are all very welcome. Could I declare my relevant interests? I am a member of the board of Co-operation Ireland and the Veterinary Medicines Working Group, and an associate member of the EU–UK Parliamentary Partnership Assembly.

Bearing in mind what Anton just said about the lack of pre-legislative scrutiny, MLAs therefore do not have a direct input there. In view of that, to what extent do you think the Windsor Framework's engagement structures enable the relevant stakeholders in Northern Ireland—MLAs but also probably councillors, because they can be involved in it; the business people who are impacted by this; and others in civic society—to engage with EU legislation at an appropriately early stage of the legislative process? That very much falls into the particular issues that you have just raised, Anton, so could I start with you?

Anton Spisak: Your question speaks exactly to one of the deficiencies in the current governance arrangements of the Windsor Framework that I can see. Of course, there is a mechanism in the international treaty, the withdrawal agreement: the joint consultative working group, which should, at least in theory, provide that channel between the European Commission and the UK Government. There are two caveats. That relies on the good will of the European Commission to get involved in that technical working group and to be sufficiently advanced in its notification of those planned EU legal acts, and on the willingness on the part of the UK Government to get Northern Ireland's Executive involved in those structures and discussions. That in itself is not a clear-cut arrangement.

However, that group in itself falls short of some of the other arrangements that the EU has with other countries that also take on EU legislation with respect to the single market in goods, most notably the EEA agreement, which offers countries like Norway opportunities for decision-shaping. The EU has a closer process for involving experts for example from countries in pre-legislative stages. Also, importantly, it falls short of the negotiations that the European Commission undertook with Switzerland. That is very important, because those negotiations took place at the same time as the EU was negotiating with the UK on the withdrawal treaty, and it was the same team in the European Commission that conducted those two negotiations.

The offer of the European Commission to Switzerland at that time was far more generous. There was a promise to involve Swiss experts in pre-legislative stages, in consultations. There were also opportunities to consider the views of the Swiss authorities in drafting the European legislation that would apply to Switzerland. That package was more generous. I regret that that is not the case for Northern Ireland, not least because that precedent was already set by the European Commission lawyers at the time of that negotiation.

Professor Simon Usherwood: I would go even further back in the pre-legislative process. In terms of the representation of Northern Irish

interests and positions in the policy environment—so even before we get to specific proposals or discussions about legislation—we also need to think about the capacity of Northern Irish institutions to be present in the Brussels bubble, for want of a better expression. That also has to be part of the calculation. Being aware of where discussions on specific policy areas are going, of what is being advanced by European associations or European sectoral interests, is a key part of that process.

Even with the arrangements that we are starting to see there—I would pick up on Anton's points that those are limited and could be more generous and ambitious—it is already potentially late in the game to be engaging with shaping agendas. Once we start getting to texts, as you will know better than I do, it becomes harder to amend existing texts rather than embed your ideas in the discussion from which they go.

Q3 Lord Hain: What do you mean by presence in the Brussels bubble? It is an important point.

Professor Simon Usherwood: That is partly about a physical presence. Northern Ireland has representatives attached to the mission.

Lord Hain: Do you mean the UK mission?

Professor Simon Usherwood: Yes. It is also about business interests, business associations and civil society groups having representation in Brussels. It is in that milieu of having the discussions, people exchanging ideas, people deciding that they will work together to lobby the Commission or member states to advance particular items of legislation where you will need and want to have some voice for Northern Ireland as it goes.

It is partly, and in many ways a lot, about having bodies on the ground, but it is also about being visible. This may be a theme that I come back to. Northern Ireland is important, clearly, but it will not be the largest voice in any debate on European legislation formation. There needs to be as much representation as possible at every stage, so that at the point at which you come to the post-legislative aspects, which we will talk about later, you have hopefully avoided any of the kinds of problems that require more drastic action and are trying to funnel everyone to a mutually acceptable place.

Q4 Lord Thomas of Gresford: Do I understand from Mr Spisak that Switzerland has that presence?

Anton Spisak: The institutional framework agreement that was negotiated between the European Commission and Switzerland never came into force because it was rejected eventually by the Swiss Federal Council, I believe. In any case, it was the text that was endorsed at the time by the European Commission and the European Council, I believe.

From my understanding of the Swiss physical presence, it is quite active in Brussels precisely because it voluntarily copy-pastes quite a wide body of EU *acquis* into its domestic law. It tries to have an early sight of that

legislation and to work with the European institutions, often informally, in shaping those rules.

Professor David Phinnemore: To pick up on a point that Anton raised there, it is often quite impressive how sizeable third-country missions are in the European Union and the amount of resources they put in to try to influence the EU. Like the UK, they are outsiders. They are not part of the formal structures and they have spent a lot of time looking to find informal ways of influencing the Commission at least, as well as the European Parliament and some of the member states.

If I could just add a few things to some of the comments that have been made, I would go back to the very first draft of the protocol back in February 2018. That included, instead of the joint consultative working group, an arrangement that would have seen the UK in respect of Northern Ireland being able to attend, as if it was an EEA or EFTA state, meetings in the European Union on draft legislation.

Baroness Ritchie of Downpatrick: What happened with that?

Professor David Phinnemore: That was rejected in the EU, because it was only a Commission proposal, but the principle was established that there should be a mechanism that would allow early engagement. What came out of that was this joint consultative working group, which is fairly unique.

I noticed last week, and this is also interesting, that there is a new agreement between the EU and Andorra and San Marino, which involves similar sorts of arrangements as exist in the European Economic Area agreement. It states that, for delegated and implementing legislation, those particular countries should be involved as fully as possible in the drafting of proposals. That obviously sets a precedent, assuming that agreement comes into force. There is an indication that there might be other ways in which you could enhance the involvement of the UK in respect of Northern Ireland in the process of providing input into the drafting of legislation.

I would also flag the new arrangements to which the Commission has committed for annual consultation on its work programme—those were set out in the Windsor Framework; were implemented last year, I understand; and provide an opportunity to engage—and the formal arrangements whereby consultations are open to inputs from Northern Ireland. There is a commitment on the part of the Commission to respond on how it has taken on board, or not, the various suggestions that have come through from Northern Ireland. We are yet to see how that rolls out.

Baroness Ritchie of Downpatrick: There was some very interesting stuff there.

The Chair: It was very interesting.

Q5 **Lord Empey:** Good afternoon. It is nice to see some of you back again,

and Professor Usherwood's first occasion, before the committee. As has just been said, we are drilling down very quickly to the core issues. It seems to me that it proves that Northern Ireland is neither in nor out and is in a very difficult position. How would you assess the potential of the new measures announced in *Safeguarding the Union* Command Paper, such as a new working group with the Northern Ireland Executive, the UK East-West Council, to enhance Northern Ireland's voice? How do these bodies fit in with existing structures established under the withdrawal agreement, the Windsor Framework and the Good Friday agreement? What progress has been made—this is a separate issue—on actually establishing these bodies?

Anton Spisak: To step back from this question to the overall picture of governance underpinning the Windsor Framework, before this session I went through all the different bodies and institutions that have been set up or have some kind of input into the process. It is extraordinary. I counted 30 different bodies, and I may have missed some.

The Chair: Could you send us a list of the 30 that you have so far discovered?

Anton Spisak: I can even name them, but I will spend a couple of minutes on them. Of course, there is a range of bodies at the international level—the joint committee, the specialised committee, and the working group that we talked about; a number of new bodies have been set up, which we can get to in a second—and a number of bodies and working groups domestically that have been set up under the Windsor Framework and the subsequent Command Paper. Then there are existing bodies, such as the North/South Ministerial Council, the implementation bodies, and of course the human rights commissions.

All of them form the picture of governing this extraordinary new arrangement that is in place. It is fair to say that what we now have and what has emerged is a picture of extraordinary complexity from an administrative point of view and of real difficulty in navigating for people who are not closely involved in managing those processes. Even for those who are involved on an everyday basis, navigating just the operational aspects is tricky.

On your specific questions about the bodies that have been set up, new structures have been created between the UK Government and Northern Ireland institutions, including a new working group between the Executive and the UK Government. I am not aware of any meetings that have taken place in this group, but others may have more up-to-date information.

A number of new bodies were going to be established, such as the East-West Council, and the first meeting of that took place, I understand, in March. A couple of others, such as the independent monitoring panel, have not been established to date, according to my information, including InterTrade UK, which was a new trade promotion body between the UK Government and stakeholders in Northern Ireland. Progress needs to be

made to meet some of the commitments that the UK Government set out in the Command Paper in January.

As I said, the overall picture is one of complexity and increasing difficulty in navigating. A lot of the institutional mechanisms that have been put in place have a very concrete and specific purpose. That is not to diminish the responsibilities and mandates that they have, but the question is whether anybody in this whole new set-up is looking at the relationship in the round and having an overall picture of the difficulties that a lot of the stakeholders in Northern Ireland are facing.

Professor Simon Usherwood: I would preface my comments by thinking about this in more structural and systematic terms. One weakness of the original arrangements was that insufficient attention was given to UK-wide co-ordination, particularly around the protocol and the Windsor Framework. The framework and subsequent Command Paper have done a good job in establishing the kinds of things that are needed, but at this stage we are still very early in bringing that into effect.

It is partly about the complexity of these different bodies, but you need to have that complexity. One challenge is that a lot of our attention so far has been about the EU's legislative pipeline. The EU is moving, which creates consequences for Northern Ireland under the terms of the protocol. Also, the UK itself is moving or not moving, and that similarly has effects. We have, perhaps understandably, tended to focus more on the EU side than on the UK side. These bodies are really important in flagging up issues and enabling people to understand what is going on. It is hard to say how meaningful they are and how much they address cross-cutting issues that go beyond the remit of individual bodies.

Lord Empey: Are you saying that they could be firefighting rather than getting in on the ground floor of a proposal?

Professor Simon Usherwood: They could be. I do not know. I am not sure that the historical record of co-ordination of Northern Irish interests with the rest of the UK gives me great optimism, but it is not to say that this situation might not allow for some more positive developments. There is an awareness that you need to do that. The messages that we got from the East-West Council back in March were positive. There was a degree of frustration about the lack of substantive power of that body, but at least having an opportunity to have representation and a connection to senior Ministers is positive.

Lord Empey: David, how do you see it? Are you on the same page?

Professor David Phinnemore: I am very much on the same page, particularly on the point about complexity. The UK is a complex entity. Northern Ireland is complex. Then you have the protocol and the TCA and their interrelationship. Going back to one of Anton's very early comments, I do not think that people at the outset really thought through how to manage this complexity, which has arguably become greater

because of the differences between the UK TCA and the UK's relationship with the EU in respect of Northern Ireland.

That said, over the last three or four years, interestingly there has been an acknowledgement that there are challenges and complexities here and that the structures are inadequate or suboptimal, so you need to innovate. We are going through an almost unprecedented process, and it is good to see that, both at the EU level and in the UK, there is reflection here on the way you may need to adapt processes, practices and procedures and to innovate.

One key thing I would welcome here, which goes back to Simon's point, is the interaction between the UK's commitment vis-à-vis Northern Ireland with the EU and UK internal policy-making. If we look back at the process, one gap was a structured mechanism for ensuring that Northern Ireland voices are systematically fed into the development of UK government policy and the implementation of that policy in the relationship with the EU.

Lord Empey: Would it be fair to say that Northern Ireland is gradually being dug into a different structure with different links to either Great Britain or the European Union with regard to how it will conduct its business, rather than, as some people would have preferred, that everything is done via London and Northern Ireland as part of whatever it agrees? We are building an entire separate structure with links over time.

Professor David Phinnemore: Yes, to a small extent. When one looks at the formal relationship around how you manage Northern Ireland within the context of the protocol and the Windsor Framework, it is always through the UK Government. There is no direct interaction between Northern Ireland at the official level—MLAs and the Northern Ireland Executive—and Brussels. It is always part of the UK.

The question then is how that is managed. This is where I come back to the creation of the Northern Ireland Executive-UK Government working group, which could be really important in ensuring that the UK Government are fully cognisant of the needs and interests of Northern Ireland. That can then be represented through to the EU. It is still early days. This could then be supplemented by arrangements, generally informal, which provide for the Northern Ireland voice to be represented directly to the EU. Ultimately, anything that will be binding on the UK will only ever go through the UK Government.

Q6 **Lord Hain:** Could I begin my question by picking up on the last point by Professor Phinnemore, which seems to be crucial? I sense a resistance in London, and maybe also in Northern Ireland in some political quarters, to Northern Ireland's voice being heard directly in Brussels. You have devolution to Northern Ireland over a wide range of areas from the UK, but then, in respect of its linkage into the single market and the customs union, it seems that all has to be handled through the UK.

I would be interested in your take on that—and whether I have got that

right or wrong—especially on the opportunities for official engagement. It was my experience as a Minister that if your officials were in at an early stage—this picks up on Simon’s earlier point—they had the opportunity to influence things before stuff was put in draft. Then, of course, people are into negotiating from their fixed positions. I would be very interested in the degree to which officials were involved, but bearing in mind that EU, UK and Northern Ireland three-part conundrum.

Professor David Phinnemore: There has been resistance in London to the Northern Ireland voice being heard at times, because clearly there are different views, as there are in different parts of the UK, about how the UK-EU relationship should evolve. Over time, as the UK has come to terms with being on the outside of the EU and in a relationship with the EU where the EU expects obligations to be fulfilled, we have seen that the situation with regard to implementation of the protocol on Northern Ireland cannot simply be ignored. Therefore, if there were interests in Northern Ireland that were at odds with the UK Government, they might need to be accommodated.

Over time, the UK Government have recognised that how you ensure effective implementation of arrangements agreed with the EU will be critical to the development of the wider UK-EU relationship. That has happened over time, hence there has been a willingness to listen more to what is happening on the ground in Northern Ireland. One would hope that that would continue and that the structures would help to facilitate that over time. This comes back to the point that we are at the early stage in this process. Certainly at the moment there is a willingness to listen to Northern Ireland to ensure that there is no further disruption to the UK-EU relationship.

Lord Hain: Do you mean by London and Brussels?

Professor David Phinnemore: Yes, by London and Brussels. There is a pragmatism there that recognised fairly early on in the supposed implementation of the protocol that certain aspects were going to be very difficult to make workable and that you needed to show flexibility and some workarounds. Therefore, there has been a certain amount of innovation in the Windsor Framework.

Lord Hain: Such as what?

Professor David Phinnemore: The various easements with regard to the movement of goods, so what was the green lane. Those arrangements are unusual in EU external relations agreements. There is a flexibility there. It is not as much as many on the UK side would like, but in relative terms it is a flexibility. The challenge ahead will always be to ensure that a sufficient level of trust is being developed on both sides so that any potential for further easements and flexibilities can be maximised.

In the language over the last couple of years we also have a shared commitment to look at what has been included in the preamble to the

protocol and Windsor Framework about ensuring as limited disruption on the ground as possible. Brexit means disruption, but the commitment there seems to be to find ways of minimising it. One way is to engage with stakeholders to find out what the issues are on the ground. In some respects, that is positive. For many people it will probably lead to a suboptimal solution, but it is probably a better solution than we would have had if we had just stuck with the original framework. I think both sides are now keen to engage on this.

Lord Hain: Is that at official level as well?

Professor David Phinnemore: Yes, at official level.

Lord Hain: Would that be Northern Ireland officials as well as UK Government officials?

Professor David Phinnemore: Looking back over the last number of years, there has always been an interest on the part of a lot of Northern Ireland officials to try to see a relationship established that minimises disruption in Northern Ireland and can be implemented. I am not too sure that they always felt they were necessarily listened to, but I certainly get the impression now that we have a relatively settled set of arrangements. There are still problems with those arrangements. People are dissatisfied with certain elements of them, but a more constructive approach seems to be being adopted and there seems to be a willingness on the part of all interlocutors to try to make these arrangements work.

Anton Spisak: One difficulty in the current arrangements is that they do not make a distinction between devolved matters and reserved matters. A number of policy areas fall within the scope of the protocol—namely, regulation on agri-foods and energy, which are almost entirely devolved matters. Even in those areas, there is no direct link for the Northern Ireland Executive and Northern Ireland Assembly to feed their views and concerns into the existing structures as set up under the withdrawal treaty, the joint committee, the specialised committee and the working group. That is a problem, because there will always be the need for the intermediary in the form of the UK Government.

There are, however, some matters, such as product standards, that are reserved matters for the UK Government. It makes sense to have the UK Government involved in facilitating those discussions. The current arrangements do not make that kind of distinction, which is a problem to an extent.

Lord Hain: That seems to be an important point. Could you clarify that distinction between reserved and devolved?

Anton Spisak: Yes, certainly. The single electricity market, for example, is a big component of the protocol—or the Windsor Framework now—and, under the Windsor Framework, Northern Ireland has to comply with the single electricity market regulations. That is a devolved competence in Northern Ireland. In instances where energy and electricity regulations

are discussed, in any case Northern Ireland officials and Assembly Members would have to go through the official channels of the UK Government to be able to even raise those concerns. I do not believe that that kind of arrangement is necessary. There should be more direct links for those issues that involve only purely devolved competence.

Lord Hain: Do you mean between Belfast and Brussels?

Anton Spisak: Yes, between Belfast and Brussels. It should not apply as a blanket rule, but issues can clearly be identified where more direct links should be provided.

I have a comment on the very specific, but important, question of the Office for the Internal Market, an important body that was set up under the United Kingdom Internal Market Act and which has responsibility also with respect to the Windsor Framework. I believe the Government committed to broadening the mandate of that body in the Windsor Framework but also in the subsequent Command Paper, to include monitoring of potential regulatory divergence between Great Britain and Northern Ireland. I have seen a number of documents that try to clarify the position that the Government have taken. I have seen no concrete evidence yet that the remit of the Office for the Internal Market has been revisited to take account of those commitments. It is a big problem. I believe I previously highlighted this issue to this committee. In the absence of that, there is a potential for adverse effects on competition in Northern Ireland arising from potential changes on the side of GB.

There are some deficiencies still in the way the Government have implemented, or rather have not yet implemented, some of the commitments they included in the Command Paper and the Windsor Framework. Partly because it is such a complex picture, it is difficult to keep track of what has been done and what has not, but it is really important to keep track of all these different things.

Professor Simon Usherwood: There is also resistance to contact between Brussels and Belfast, or Belfast and Brussels. Part of it is that the treaties are between the UK, as David says, and the EU. On both sides, as much as there is a desire to make sure that the range of interests are represented in some way, at the end of the day the signatories are the signatories, so you have to come back through that. That is partly also an echo of the historical model that the UK has had for managing its EU affairs. Historically, it was one of the more centralised and co-ordinated models through the Cabinet Office during the period of membership.

Lord Hain: Do you mean compared with other member states?

Professor Simon Usherwood: Yes, so there was a high degree of co-ordination. Although you had things like the Scottish government officials representing the UK in fisheries councils and working groups, because that is where the bulk of the industry is located, it was still the UK

Government who were making the decisions. You have some precedents for ways of doing this, but you come back to the legal reading.

To some extent, the experience of the negotiations of the withdrawal agreement were helpful in building some links, in that the Commission was keen to hear directly from officials but also civil society in Northern Ireland to understand how they read the situation. That was part of how we got to the formulation of the original protocol and the subsequent developments that are there.

There is a genuine willingness on the EU side to engage and understand, but that sits in a legal framework that will always impose a degree of limitations, which London will also have a view on and make sure that it knows what is going on. Part of its co-ordination across Whitehall also requires it to make sure that there is co-ordination with Belfast, so that everyone is speaking about roughly the same priorities as they go.

The Chair: There were some very important points there.

Q7 **Lord Thomas of Gresford:** There are mechanisms to allow the Assembly to have oversight of EU law or even opt out of EU law, such as the Stormont brake and applicability Motion procedures. How effective do you think those mechanisms are under the Windsor agreement?

Professor David Phinnemore: Echoing a point we have each made, we are very much at the early stage of these mechanisms. The Stormont brake mechanism has not yet been applied. As far as I am aware, there has not been a move to apply it. My view on the Stormont brake is that the potential for its use was possibly overstated in the selling of it, because it has a very strict set of criteria that need to be met for it to be potentially triggered. In order to trigger the brake, MLAs—Members of the Legislative Assembly—in Northern Ireland also need to demonstrate that quite an extensive set of procedural requirements have been met.

Moreover, as a consequence, when we did an analysis of the legislation that the EU adopted in 2023, we identified very few pieces of legislation to which it could legitimately be applied. That was just one year, but it is unlikely to be a regularly used means of opting out of EU law. Moreover, there has been an overselling of the Stormont brake in so far as all you opt out of, or no longer apply, is the change to the EU law that has been introduced, not the original piece of EU law that is being changed.

The applicability Motion is quite interesting. We have had two examples of its use to date. The applicability Motion is required when the EU proposes that a new piece of EU legislation is added to the protocol and the Windsor Framework, and the UK Government have to agree to that addition in the Joint Committee. The UK Government have decided that they will normally not proceed to agree the addition of that piece of legislation unless an applicability Motion is adopted by cross-community consent by the Northern Ireland Assembly.

It is important to note here that ultimately the decision rests with the UK Government as to whether they agree to include the piece of legislation

in the protocol. However, they have indicated that they will follow due process. Depending on one's reading of the piece of legislation, the normal position is that it would not proceed unless there was an applicability Motion.

Two pieces of legislation that have come before the Assembly so far have seen the Assembly not approve or approve the applicability Motion. There was a majority in favour, but not a cross-community majority, on a piece of legislation regarding geographical indicators. The more recent piece of legislation on labelling organic pet food was passed. An applicability Motion was passed by the Assembly, essentially because the view taken among those sceptical of the legislation was that it would keep Northern Ireland aligned with the rest of the UK and there would be a very limited impact, if any, on the movement of goods from Great Britain to Northern Ireland. The expectation is that different views will probably be taken. Whether applicability Motions are adopted or not will probably depend on the case in question.

We still do not know the UK Government's position on the applicability Motion that was not adopted and whether they might take the view that the disruption to the movement of goods from Great Britain to Northern Ireland will be such that it will be limited and therefore the legislation can be agreed to. Equally, they may take the view that they will simply respect the absence of an applicability Motion. It is early days. It provides the Assembly and the MLAs with an opportunity to have their views heard and to guide UK government policy, but the use of these will, I think, be quite limited.

Lord Thomas of Gresford: There may be an embryonic convention growing up with regard to applicability Motions: that the UK Government will not approve them unless they have the go-ahead from the Assembly.

Professor David Phinnemore: That would be an assumption, but equally there is the option in the legislation for the UK Government to decide that the disruption will be minimal, so they may decide to agree to the application of that new piece of legislation. We are yet to see.

Lord Thomas of Gresford: The jury is out on that one.

Professor David Phinnemore: At the moment, yes.

Lord Thomas of Gresford: Again, the final decision as to whether the Stormont brake should be applied rests with the UK Government. We have not had any instance of that happening as yet.

Professor David Phinnemore: No, we have not.

Lord Thomas of Gresford: Do you think something similar will grow up, and that the UK Government would pay attention to the view of the Northern Ireland Assembly if a Stormont brake Motion were passed in the Assembly?

Professor David Phinnemore: I do not think they could ignore, a decision taken by Assembly members with regard to the Stormont brake. Whether they would agree with the outcome and think there were sufficient grounds to trigger the Stormont brake will, I think, be taken on a case-by-case basis.

Professor Simon Usherwood: Apart from agreeing entirely with everything David said, the design of the brake is that it is an exceptional measure in the context of the Windsor Framework package. To come back to an earlier discussion, it is the enhanced engagement in the pre-legislative phase that should obviate the need to use the brake, because there should be sufficient understanding and awareness of positions before you get to a piece of legislation, so that, at the point that the Assembly considers its situation, its interests and requirements should be sufficiently addressed by that.

That makes it harder to use the brake, because the conditions that would need to be satisfied would be that the EU had to have railroaded through some very obvious barriers to get to the level of severity of impact that would merit the use or satisfy the conditions of the use of the break. Although it looks and sounds good, the important and essential work for securing Northern Irish interests is in that much earlier phase.

London has made commitments, not least in the Command Paper, about amending things that it had agreed to previously. Given parliamentary sovereignty, Parliament can change its mind again. I am not sure how robust that backstop is at this stage. The intention of the structure of the overall system is that we should not be getting into questions about the brake, because we should have addressed that a very long time ago.

Lord Thomas of Gresford: It looks and sounds good, as you put it, but is essentially a selling point.

Professor Simon Usherwood: It is, but it also provides a degree of protection, through whatever set of circumstances we are in, should we have got to a point where there is a clear problem. It is not pointless. It is not simply window dressing. In the selling of the package at the time, it was oversold, but it does not mean that it does not have any value in that process.

Anton Spisak: There is just one additional point from me on the process for triggering the Stormont brake. We have had some early indications of how that process works, or maybe how it does not work well in practice. A couple of pieces of EU legislation were published by the European Commission in the official journal. As far as I know, the new committee set up in the Assembly, the Windsor Framework Democratic Scrutiny Committee, did not have sufficient time to consider those Acts. It was not notified by the Cabinet Office in time to be able to meet the—I believe—two-month window to hold an inquiry, publish a report and potentially trigger the break. Quite a lot rests on the process in practice and on the good working relationships between London and Belfast in this case, or some of that process may be derailed.

Lord Thomas of Gresford: We were impressed by the shortness of the time available to the Windsor Framework Democratic Scrutiny Committee.

Q8 **Lord Dodds of Duncairn:** One thing that has struck people is that, despite all the talk about the Stormont brake in the run-up to the restoration of Stormont, there was little talk about applicability Motions, yet it is applicability Motions that have featured and there has been very little talk of the Stormont brake.

Professor Phinnemore, you mentioned the paper on the operation of the brake, or the brake had it been in place last year. I think you looked at over 600 or 700 pieces of law or delegated legislation. Given that we are roughly three months in from the restoration of Stormont, how much legislation has been produced? If there were 700-odd last year, there must be a considerable number thus far this year. Have you looked at that. Will you be doing a similar piece of work for 2024?

Professor David Phinnemore: It is certainly work that we could do. We have been looking at the legislation that has been coming through. As we noted in the original report, a lot of it is delegated and implementing Acts, which by definition should be in the scope of the original Act. A lot of them are highly technical. Indeed, a good number do not even pertain to Northern Ireland, but the fundamental issue is that they apply automatically to Northern Ireland because the parent Act applies.

On your point about the applicability Motions, one reason why it was given little attention was that the number of pieces of EU legislation to be added to the protocol and the Windsor Framework, according to the EU, is anticipated to be fairly low each year—probably low single figures; a couple have appeared on the agenda this year in the very early days of the Assembly—because the amount of new legislation coming through regarding the free movement of goods is not particularly substantial. That may change over time. A lot depends on the legislative programme of the Commission.

This goes back to Simon's point. If there is going to be influence and we are going to ensure that Northern Ireland's voice is represented there, very early engagement is needed at the pre-legislative phase so that we do not get to a point where there is new legislation coming through from the EU that has significant implications for Northern Ireland and therefore runs the risk of being rejected through the absence of an applicability Motion in the Assembly.

Q9 **Baroness O'Loan:** I am just contemplating, having listened very carefully, that we are nearly an hour into the evidence and the words that I am hearing repeatedly are "potential", "opportunity", "early days", et cetera. Listening now to what has just been said, it all seems fairly speculative, especially as we have talked already about the Stormont brake and the applicability Motions. Does the return of the Northern Ireland Executive and Assembly create potential for further engagement at a political level?

Anton Spisak: I believe it should, not least because it provides a vital political link between the UK Government and the Executive. Also, a new working group should be set up under the Command Paper that should facilitate some of that work. I am not aware of any meetings of that group taking place to date, but perhaps the Government will be able to clarify that. That should certainly provide one important channel for discussing some of those arrangements in practice.

Baroness Ritchie of Downpatrick: There is a working group on veterinary medicines, and I am a member of it.

Baroness O’Loan: It has met twice.

Baroness Ritchie of Downpatrick: Yes, and it is due to meet again on 5 June, by way of information.

Baroness O’Loan: I do not like to provide evidence to the witnesses.

The Chair: We try to do our bit.

Professor Simon Usherwood: It is a very positive development, not least because it provides the democratic representation that was absent for so long. One challenge is that the Assembly and the Executive have a degree of catching up to do from their period of non-operation generally, which reduces the capacity for doing this work. The other is that, because the system has had to operate, we have had to create ad hoc arrangements and, in some cases, workarounds. Now we can bring the Assembly and the Executive back in more fully, it is about readjusting those systems, rather than them being embedded from the start.

It comes back to the earlier discussion that it is easier to start with the people in the room who you want in the room, rather than other people making some decisions on their behalf and representing them. As time goes on, I think we will see more and more of that coming through, not least as we get towards the consent vote. There will, understandably, be a lot more focus on the operation of the arrangements in the broad sense, but also in more operational senses. That will be a cause for more reflection in Belfast, London and Brussels.

Professor David Phinnemore: I welcome the return of the Assembly and indeed the subsequent creation of the Executive. There is clearly opportunity, because there is a question for the Assembly as to how it wishes to engage on the question of the UK-EU relationship and Northern Ireland’s position in it. It has mechanisms that we have just discussed—the Stormont brake and the applicability Motion—but is there more that it wants to do? To what extent does it want to have some sort of engagement with the European Parliament so that there is an EU-Northern Ireland engagement, plus with the UK Parliament here, discussing how the future of the relationship or the implementation of the relationship is proceeding and how the future might look?

There is also the extent to which it wants to try to scrutinise what is happening under the protocol and the Windsor Framework. I remind

everybody that, in earlier days, we had the negotiators from the UK and the EU, Lord Frost and Maroš Šefčovič, appearing before committees of the Northern Ireland Assembly. Is there some way in which they want to further their engagement and call the chief interlocutors between the UK and the EU to account before them? There are questions there.

The return of the Assembly and the Executive also opens up the role of the Executive, which formally, being part of the UK delegation at meetings of the joint committee, will have the First Minister and deputy First Minister participating, but also in the operation of the North/South Ministerial Council. That offers another means of trying to influence the EU side through the Dublin Government. There is then the extent to which the north-south institutions are fit for purpose in this post-Brexit world where you have the protocol and the Windsor Framework. Does the way in which they can engage primarily on the north-south issues in the implementation and monitoring of what has happened need to be revisited? At the end of the day, the North/South Ministerial Council can make recommendations and proposals to the specialised committee in the Windsor Framework.

Q10 **Baroness Goudie:** What opportunities are available for Northern Ireland businesses and civil society stakeholders to engage with the UK or the EU under the Windsor Framework—for example, through relevant meetings of the Specialised Committee’s Special Body on Goods and the Joint Consultative Working Group’s thematic sub-groups? How would you assess the effectiveness of these and other relevant structures? How could they be improved so they could be practical on the ground? At the moment, there is a lot of talking but there is no real substance happening.

Anton Spisak: I believe one innovation that was brought in by the Windsor Framework and the Command Paper was the creation of five specialised subgroups reporting to the joint consultative working group. As part of the mandate or the rules of procedure of the working group, they can invite representatives of business and civil society to those meetings. That is a really important channel that can help to build up the evidence base for the workings of the Windsor Framework and its practical operation.

I do not know whether there is a systematic process for involving businesses and civil society as part of that arrangement, but it seems to me that there should be one so that the relevant representatives are involved in the occasional meetings of those groups and the information can be fed back into the specialised committee and other structures. There is a really important mechanism there.

On the European Union side, there is a commitment to involve businesses and civil society more closely in the consultations about new legislation coming down the line and so on. As far as I can see, that is quite informal. There is no concrete structure, and perhaps there does not have to be one as long as the representatives are invited to those meetings.

Thinking ahead to what might happen in the European institutions, there is a real question about the degree to which those questions will be accounted for as part of the new Administration in Brussels and how they will see the importance of some of these questions. Clearly, there was a lot of momentum in the run-up to the Windsor Framework being agreed. I hope the momentum will carry on, but that is an open question for now.

Lord Hain: Do you mean because there is a change of personnel in the Commission and so on?

Anton Spisak: I believe so, yes.

Baroness Goudie: There will be quite a change, although not a full one, throughout the Commission to an extent.

Anton Spisak: Yes. One important aspect of all this is that relations with the UK, including on the Windsor Framework, have been led from the centre of the Commission, the Secretariat-General. It is unclear whether that will be the case in the future. That is a really important variable. If you sit in the centre of the Administration, you have a direct line to the President of the Commission and so on. That really helps. It is not clear if this will continue.

Baroness Goudie: That is the real problem. Will it continue? Otherwise, Northern Ireland will be left out there.

Professor David Phinnemore: Anton is right. In the early stages, so much relies on personalities. They have invested a lot of time and effort in this. There are questions as to the future, but we will have to see.

On the stakeholder engagement, looking back at the statements on the Windsor Framework, it has been interesting to see the extent to which both the UK and the EU signalled the value of engagement, and they have both committed to continuing that engagement. Reflecting on some of the challenges, what is interesting is that the UK and the EU have agreed to joint engagement with stakeholders in Northern Ireland. As I indicated earlier, the Commission has committed to engagement at least in consulting on the annual work programme. One of the challenges, which goes back to an earlier point I made, is how the UK Government engage with stakeholders.

Baroness Goudie: That is the issue.

Professor David Phinnemore: It is all about forming UK government policy and what role there is for stakeholders.

Baroness Goudie: People in Northern Ireland will make sure they know who the people are in Brussels, even the new people, and the new people in Brussels will want to know them. How do the UK Government fit in with that?

Professor David Phinnemore: Ultimately, the UK position will be determined by the UK Government. One issue we have found in some of

the polling work we have been doing as part of the project is that levels of trust in the UK Government are not particularly high in Northern Ireland on the Windsor Framework. There is probably a need for the UK Government to try to improve their standing there. Part of that comes from better consultation and from ensuring, as has been said by a number of people, that whatever happens under the Windsor Framework is done with Northern Ireland, not necessarily just to Northern Ireland.

Professor Simon Usherwood: Your concern about resilience and durability is well founded. That will be a concern. The solution—it is a general issue in many different ways—is that one should not be relying on other people. This is about the self-organisation of voices in Northern Ireland in being proactive and engaged in London, Brussels and Dublin. That is an obvious place to be building on links.

Similarly, there is the issue of the UK interest more generally in the relationship with the EU. I have the concern that, as we have taken some of the heat out of relations in recent years, it becomes less salient, less pressing and less visible to policymakers. That is a good thing in a way, because I am not sure that that model was good for anyone's health, but it poses a problem: how do you not assume then that, because it is not on the headlines, everything is fine?

It is about finding a balance. The flipside of the complexity is that, as long as we are providing many opportunities for everyone to talk to as many different people as possible, although it will be messy, it reduces the risks of an accidental issue floating up. That is the problem. I hope we are beyond the phase of intent to cause issues in the relationships involved, but it is more likely that, as we get a churn of personnel at the political and the technical levels, somebody will not realise that this is an issue because they have not had the conversation and it is not on their list of things to think about.

Baroness Goudie: Thank you. You have answered the questions very well for us and mentioned some of the thoughts that we have had on these issues. That is really helpful.

Q11 **Lord Lexden:** The final question relates to the annual presentation of forthcoming policy, in particular the legislative proposals for Northern Ireland stakeholders, including engagement on the commission work programme. As you have constantly told us, these are early days. What is your impression so far of the effectiveness and extent of this engagement? You have just returned once more to the annual presentation. I would like your answer particularly on that. More generally, how effective have these arrangements been so far, and how effective do you expect them to become, particularly with regard to business and civil society?

Professor Simon Usherwood: Again, it has the potential to be useful, but importantly a presentation is information sharing rather than consultation per se. The value of the presentation will be that it will

concentrate minds on the European side that there is a need to collate this information and pull it together from across the Commission.

This is the problem. Issues will be floating up from the full range of the Commission's DGs in different ways, obvious and less obvious. The information presentation is good, but information in and of itself does not solve the problem. It merely flags, "Here is a thing". It does not say, "What are we going to do, should it turn out that Northern Ireland or London have concerns of some kind?" That will be the issue.

There are echoes of that difference between information and engagement in the Command Paper as well. We just do not know. Optimistically, these things will be of a piece. That document on enhanced engagement, which talks about that official presentation, talks about structured and specific consultations, but we need to think about the general culture of consultation that needs to underpin that presentation process.

Anton Spisak: Speaking of complexity, which is one of my criticisms of the current arrangements, there is a role for a bit of horizon scanning in this, not only on the EU's side but on the UK Government's side. There is real value in trying to foresee some of the legislative and regulatory changes that may be coming down the line. For example, we already know that the carbon border adjustment mechanism that the EU will apply may or may not apply to Northern Ireland, depending on the views of the European Commission. Some of the work that relates to that can be done now so that it is front-loaded and so that the institutions in Belfast and London can get the right information, do the right consultation and engage with stakeholders to prepare for these things.

There is a formal process that can be done in Brussels by the Commission by showing up to meetings and presenting its work programme, but a lot of very useful informal work can be done here in London by the UK Government being proactive about the things that they know will be coming down the line and engaging with people in a more systematic way about the impacts of those.

Lord Hain: Can you give us an example?

Anton Spisak: An example is the CBAM, the carbon border adjustment mechanism, as I mentioned. It is a really good example of how important early engagement is and how quite a lot of the issues can be avoided if sufficient time is given to those issues in advance.

Lord Hain: What kind of issues?

Anton Spisak: A concrete example is what kind of goods will face customs duties as a result of the CBAM being applied to third countries and potentially to the UK in this context.

Lord Hain: And therefore to Northern Ireland.

Anton Spisak: Yes. At the same time, the UK is having its own consultation at the moment about its own version of CBAM. Quite a lot of these issues can be front-loaded in those existing mechanisms.

This speaks to my earlier point. A lot of these issues are taken as stand-alone issues by different institutions and bodies. I would ask whether there is a single view in the UK Government that considers some of those impacts in the round and takes a proper comprehensive view of the implications for Northern Ireland.

The fundamental point is that we are in this place of increasing complexity, administrative complexity and complexity for businesses because of the absence of regulatory uniformity between Great Britain and Northern Ireland and Great Britain and the EU. That is an issue that will have to be addressed in the future so that these arrangements can be a durable basis for long-term relations. That is my personal view. The current arrangements are simply a reflection of that absence of regulatory uniformity between GB and NI and GB and the EU.

Lord Lexden: David, do you have any last words?

Professor David Phinnemore: I am afraid I will reiterate something that we have said on numerous occasions so far. It is still early stages. The consultation mechanism that the Commission has committed to has not run its full course, because there is still a need for the EU to respond to any comments made by stakeholders in Northern Ireland and to report back on that, which it has committed to do.

Equally, we do not know whether the stakeholders in Northern Ireland have taken up the Commission's offer to have a further workshop on particular issues, which raises the whole question of the extent to which stakeholders are in a position to engage. There is an issue of capacity and resourcing there. Northern Ireland is a relatively small place.

Presumably, the UK Government will be interested in the response to the consultation. What capacity do the Government have? What resources are they dedicating to finding out what those issues are and then taking them forward in the development of the UK's engagement with the EU?

Q12 **Baroness O'Loan:** You were just talking about consultation on issues and whether Northern Ireland industry had the capacity to engage. We have heard a lot of very specific evidence with very specific recommendations and ideas, which suggests to me that very elements of Northern Ireland industries are ready. What kind of issues might they be talking about? What kind of issues do you expect there to be?

Professor David Phinnemore: It depends on what comes through in the Commission's work programme and what the legislation entails, but concerns will be raised by some business interests if the legislation is going to disrupt the movement of goods between Great Britain and Northern Ireland. Equally, if a piece of new EU legislation coming through is not necessarily given approval by the Assembly, that might create

disruption north-south. It will depend on what legislation is coming through.

Going back to Anton's point, CBAM is a real issue of concern, because it could have significant implications. We all know there is a possibility that it will be applied, but what mechanism is there at the moment to sit and think through the implications and how the UK and the EU systems might interact? There is a strong interest in getting some resolution so that businesses can plan.

Lord Dodds of Duncairn: It is interesting to hear you talk about the engagement of the stakeholders and all the mechanisms that have been set up. Anton referred to 30 bodies in total and the complexity of it all. One thing that was pointed to was the Windsor Framework Democratic Scrutiny Committee in the Assembly itself. These are lawmakers, elected representatives. This may be more of an observation than a question at this stage, but its powers are being denuded.

We have not mentioned the Windsor Framework implementation order, which allows the UK Government now to step into Executive departments and make decisions in areas that are, strictly speaking, devolved. Powers of examination in the Windsor Framework Democratic Scrutiny Committee have been removed. On one hand, we are talking about how to make North Ireland's voice heard. To me, it sits very oddly that at the same time the UK Government are implementing measures that remove the little scrutiny there is at a democratically elected level.

Q13 **The Chair:** There is one final question from me. You have talked about things being at an early stage and a lot being uncertain, but if you were asked to recommend one thing to increase or solidify Northern Ireland's voice in the present moment, what would you recommend?

Professor David Phinnemore: It is about trying to map where the opportunities for their voice are and how they can be expressed. As we have indicated, there are lots of mechanisms in play, but where can their voice be heard and what is the best way forward on that? We need clarity.

Professor Simon Usherwood: The flip side of things being at an early stage is that they are not set or formed. This is the point at which Northern Ireland has opportunities to make the most of these incipient situations. Coming back to the question about capacity, London also has obligations. It also needs to be stepping forward to help support this and to make sure that Northern Irish views and interests are supported, heard and encouraged. It is about making sure that there is a push to start off well rather than let things drift and hope something turns up.

Anton Spisak: The single most useful thing that could be done is more clarity from London and from the UK Government on areas of regulation where the UK Government expect continued voluntary alignment with aspects of the EU acquis. Providing clarity on those aspects of the EU acquis, especially on product standards, would make a real difference not

only to businesses on the ground, to traders, but to managing those arrangements, because it would provide real stability. In many of these areas where divergence happens passively because of minor revisions to laws and so on, this could be avoided simply by the UK Government being more proactive about those areas where it envisages continued de facto alignment.

The Chair: Thank you very much to all three of you. That has been a very good start and first session to our inquiry. It has given us a great deal to think about and we are extremely grateful.