European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: Introductory inquiry on the operation of the protocol on Ireland/Northern Ireland

Wednesday 9 June 2021

4.15 pm

Watch the meeting

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

Evidence Session No. 4 Virtual Proceeding Questions 39 - 49

Witnesses

I: Dr Esmond Birnie, Senior Economist, Ulster University; Professor Katy Hayward, Professor of Political Sociology, Queen's University Belfast; Professor Peter Shirlow, Director, Institute of Irish Studies, University of Liverpool.

Examination of witnesses

Dr Esmond Birnie, Professor Katy Hayward and Professor Peter Shirlow.

Q39 **The Chair:** Good afternoon, and welcome to the fourth public meeting of the European Affairs Sub-Committee on the Protocol on Ireland/Northern Ireland. We are continuing our introductory inquiry on the current situation in Northern Ireland as it relates to the protocol. We continue our work today through an evidence session with a panel of distinguished academic experts: Professor Katy Hayward, Dr Esmond Birnie and Professor Peter Shirlow. You are all extremely welcome and we look forward to what you have to say to us. I would be grateful if you could introduce yourselves briefly the first time you speak.

Today's meeting is being broadcast and a verbatim transcript will be taken for subsequent publication, which will be sent to you to check for

accuracy. I should refer to the Register of Members' Interests as published on the committee's website. We aim to finish by 6 o'clock today, which should give us plenty of time. There are some important questions later on in our agenda that I would prefer not to curtail, but I am sure we will manage that.

I will ask the first question. What do you identify as the main technical, economic or political issues that have so far arisen from the protocol's operation? How significant have these problems been and what practical impact have they had? It would also be very useful for us if you could outline any positive impacts that you feel the protocol has had on Northern Ireland so far. I will ask Katy Hayward to start.

Professor Katy Hayward: Thank you very much, Lord Jay, for the opportunity to present this afternoon. I am professor of political sociology at Queen's University Belfast and senior fellow in the UK in a Changing Europe think tank, working full-time on a project on the future and status of Northern Ireland after Brexit. I am also a co-investigator on an ESRC-funded project with my colleague Professor David Phinnemore, looking specifically at the post-Brexit governance of Northern Ireland, particularly on the protocol and monitoring the protocol.

I am delighted to be able to give you a little insight into some of our latest research findings on the protocol and political opinion in Northern Ireland. I thought it might be useful to do that to start off, because it is important to think of the context for the technical and political issues that are arising from the protocol.

Tomorrow I will be sharing the findings of the Northern Ireland Life and Times Survey that was conducted at the end of 2020. That is a rigorous social attitude survey in Northern Ireland, and we asked some questions on the protocol in it. Of course, this was before the operation of the protocol, but it is worth recognising that at that time 46% of respondents were saying that they thought that the protocol was a mixed bag. Either side of that were more or less equal numbers of people saying that they thought that the protocol was a good or a bad thing. When we started off, when the protocol came into effect, the majority of people were thinking that the protocol was good or that they were going to make up their minds about it as it went along. That is probably a wise approach to take.

More recently, we have had a LucidTalk poll, which was conducted in association with the project with Professor David Phinnemore that I mentioned. We asked very specific questions about the protocol and people's experiences of the protocol. This is a different type of survey; it uses an opinion panel.

From this, if you take the disagrees from the agrees, we see that the majority of people think that particular arrangements for Northern Ireland were necessary as a result of Brexit. Everybody is agreed that something needed to happen. However, you will not be surprised to hear that people disagree about the protocol itself and in more or less equal

numbers; there is a more or less even split between those who think that the protocol is appropriate and those who disagree with that, those who think it is a good thing and those who disagree. Notably, there are significant age differences: the younger you are, the more likely you are to think that the protocol is a good thing; and the older you, are the less likely you are to think that it is good. That is probably worth mentioning.

This is all coming into play, of course, in a context of perpetual uncertainty. Again, that is important to remember if we are trying to analyse the technical, political and economic issues around the protocol. Bear in mind that we did not have a proper transition period. We did not have enough details or clarifications of what the protocol would mean. We had no details on whether there would be a trade and co-operation agreement, let alone the details of that, until Christmas Eve. That is a far from ideal context within which the protocol comes into play.

Also, there was a lack of preparing the ground politically for the protocol. There was a lack of information and detail given to businesses, despite their requests consistently for information. Then, when the protocol came into play, the grace periods were welcome. There was very short notice on those, and, indeed, people immediately pointed out that they were too short.

Another initial element to bear in mind is that even by the time the protocol was coming into force we had had legal proceedings beginning against the UK from the EU over the issue of the protocol because of the United Kingdom Internal Market Bill. Again, that was not ideal for the commencement of the protocol.

Given all that, it is worth recognising what is working with the protocol. For the most part, after the initial issues at the beginning of January, some of which were compounded by Covid and the consequences of that, the supermarket shelves are not empty. People would not necessarily recognise a significant adjustment in their shopping experience, and this is due in no small part to the fact that the new systems for operating the protocol, the new IT systems that involved considerable adjustments, are working. The support schemes which the UK Government have implemented at considerable expense are also working and are improving over time as the UK Government respond to concerns raised by businesses and others. The UK trader scheme could be improved, as I will go on to talk about, but that is working and is making a positive difference.

On the technical issues, the consistent matter that arises is, unsurprisingly, what friction means in real terms—ie paperwork. Businesses that want to import goods from Great Britain are experiencing a huge burden that was not there before. One of the issues is that the systems are completely unfamiliar to many people having to use them. Again, they were implemented at short notice with a lack of time for people to familiarise themselves with them or for technical glitches to be addressed. Also, people felt that the information that was necessary to have in advance was not there.

More generally, there are concerns about getting necessary support and advice on operating the systems. A particular issue has been that suppliers into Northern Ireland have not been aware of the requirements. This, too, has caused considerable problems.

All this adds up to the greatest cost for most businesses being staff time. Part of this is because of people not being familiar with the systems, but also there are the problems with the systems themselves. There are concerns about that particular cost. Other costs with certification, tariffs and so on tend to be greater in specific sectors, but the general concern about costs is that if these are not addressed that affects either the competitiveness of the companies or the prices they are charging.

The political problems are immense, of course. This centres on the tensions in the UK-EU relationship, which then has negative impacts on the British-Irish relationship, which is absolutely fundamental to the peace process in Northern Ireland. We see even today that we have separate statements and quite forceful statements of criticism on both sides emerging from the joint committee.

This reflects the poor state of trust and co-operation between the UK and the EU at the moment and inevitably has a negative effect on politics in Northern Ireland. In the LucidTalk poll that I mentioned at the beginning, we asked people about their concerns about the current impact of the protocol, and the greatest of these was the effect on politics in Northern Ireland. This, of course, is because the British-Irish relationship and the UK-EU relationship have a very direct effect on people's confidence about where this may be leading and what it means longer term for Northern Ireland stability.

The Chair: Thank you very much indeed for that. That has got us off to a very good start. Esmond Birnie, do you want to comment on that or comment on the question?

Dr Esmond Birnie: Yes. Thank you very much, Chair. I am currently senior economist at Ulster University. I have been there since 2016. I had done various things before that, including being Northern Ireland's chief economist for PwC. I was an Assembly Member in Northern Ireland between 1998 and 2007, but today I will be focusing mainly on the economics, in so far as you can disentangle the economics and the more political. In answering your first question, if you do not mind I will probably stray a bit into the second question, or at least the start of it, about trade flows.

You quite properly asked about costs and benefits. Undoubtedly there are, both in economic and technical terms and in costs to businesses in particular, which Katy was alluding to. I would be very confident in saying, although there can be no absolute certainty at the moment because we are in something of a statistical fog, that the balance of probability is very strongly that the economic costs will, and do already, outweigh the benefits. I will explain the evidence base, albeit that it is

perhaps a limited evidence base at the moment—it may improve and we will get more data over time—for why I think that.

Let us consider two things. First, there is the scale of the cost impact—Katy referred to the extra paperwork, and in some cases actual requirements to pay tariffs—and certain products are no longer available in Northern Ireland, or at least they are no longer available from GB-based suppliers.

The second reason why I think the costs are likely to exceed the benefits is the scale of the input into the Northern Ireland economy from goods imported or brought in every year from Great Britain. The most recent data we have for this, although I concede that it is quite out of date, is 2018; I am told that we will get 2019 figures later in the summer. That flow of goods from Great Britain to Northern Ireland was £10.4 billion every year, which conceivably, to a greater or lesser extent, depending on sector, is impacted by the trade frictions that the so-called Irish Sea border has created. To put that into context, the same data source gives the annual inflow of goods from the Republic of Ireland into Northern Ireland—the north to south or south to north flow—as £2.4 billion. The flow across the Irish Sea is between three and four times bigger than the flow across the land border.

As I say, we are in a bit of a statistical fog, because we do not have official monthly trade data for Northern Ireland in the same way that the Office for National Statistics publishes for the UK; we have that data up to March of this year, I think. But I am basing an estimate of what the protocol may have done to the costs of businesses in Northern Ireland in bringing in that £10 billion or so worth of goods every year on two datapoints. Obviously it would be much better to have a lot more datapoints but two is better than none.

The first data observation came about two weeks ago. At the end of May, Marks & Spencer published its annual report for its operations in the most recent financial year, 2021. It said that the workings of the protocol had added approximately £30 million to the costs of doing business in the combination of its retail operations in Northern Ireland and the Republic of Ireland. Its operations in the two Irish economies are of roughly similar scale. Based on certain other data and estimations, I would estimate that that additional £30 million for Marks & Spencer, which is obviously a significant retail business and will be bringing food products, clothing and so forth across the Irish Sea, is probably equivalent to about 6% of its annual buy-in of goods from Great Britain.

An additional data observation comes from an article published by the BBC—you can get it on its news website—on 1 April this year, called *Counting the Cost of Brexit*. It investigated a logistics, or haulage freight, company, called Allen Logistics, operating in Northern Ireland. According to Allen Logistics, for a typical freight pallet of goods put in the back of a container lorry and so forth, the normal transport costs from Great Britain to Northern Ireland would be £100. With the bureaucracy, time delays,

time on the telephone of staff, the need to hire trade experts and so on, it worked out the cost to be between £50 and £350 per pallet.

Given what we know generally from other data sources about the relationship between transport costs and overall costs of raw materials and inputs for businesses, including businesses in Northern Ireland, I think it is reasonable to extrapolate that the additional cost of up to £300 or so per pallet would, again a bit like the Marks & Spencer figure—this is, of course, a worst case scenario—be up to 6% or maybe 7% of the cost of goods brought over the Irish Sea. Remember that in 2018, and I assuming the figure is roughly the same now, the baseline level of goods being brought across the Irish Sea was £10 billion, so 6% of £10 billion is of the order of £600 million per annum.

What we do not know is the downstream full economic consequences of that, and much depends on how businesses react to a rise in costs: how far do they pass it on in prices to customers, and how far do they accept or how far are they able to squeeze their profits? If they face a higher cost on goods imported from Great Britain, how far do they pass that on in the product prices of the goods they are making in Northern Ireland and selling back to Great Britain or the rest of the world?

However, I think it is a reasonable deduction that the implications of a £600 million hit to business costs will be a considerable reduction in output in the Northern Ireland economy, perhaps up to a similar figure of £600 million per annum, allied to fewer jobs. It is early days and it is too early to observe a hit to output and a hit to jobs directly in the economy and in the statistics. There is so much else going on with Covid and the general effects of Brexit, quite apart from the Northern Ireland particular effects.

Moving on to the benefits side, it is important not to neglect that certain business opportunities may be created through the working of the protocol, although I feel very strongly that the data suggests that on balance the costs will outweigh the benefits. The benefits can be subdivided into two groups. There is the short to medium term, about which I think we can speak with more firmness. This is the benefit of Northern Ireland businesses being able, for example, to displace GB businesses that had formerly been selling into the EU 27 or, more especially, into the Republic of Ireland. We are already seeing that particularly in the food processing sector. As we will no doubt discuss more later, under the terms of the protocol Northern Ireland businesses remain within the EU's SPS veterinary, food standards and so on regime.

Of course, that has certain cost implications and bad implications, but in this respect the good side, or the upside, is that businesses in England, Scotland and Wales, which had hitherto been selling into southern Ireland, are finding it much more difficult. We are observing some of this already. In the data comparing January to March of this year to January to March of the previous year, the level of sale of food products from Great Britain into the Irish Republic declined substantially by about €400 million. There is a market that is opening up for displacement.

There is even an element of displacement within the Northern Ireland local retail market. Katy implied this when she referred to supermarket shelves having filled up to a great extent—initially, in January, certain product lines had been absent from them—although the big multiples like Marks & Spencer and Sainsbury's are to some extent now sourcing within Northern Ireland for fruit and food products more generally. That could be advantageous to Northern Ireland businesses, although what customers really feel about the change in product choice is a moot point.

Lastly, on benefits, there has been much speculation, and some commentators have been brave enough to state quite dogmatic views about it, although arguably not views that have the full support of an evidence base, that because, as some people put it, Northern Ireland is now in the best-of-both-worlds scenario of so-called unfettered access into the GB market—we can argue about how far that is true in practice, given that the material inputs from GB are so much more expensive, allied to continued membership of the customs union and single market—Northern Ireland may be a particularly attractive location for international and mobile businesses because of foreign direct investment, and indeed inward investment from perhaps GB-based firms.

Time will tell, but it is important to stress that, in the first two decades of this century, Northern Ireland was relatively successful in rates of jobs created from inward investment. A lot of credit should be given to the local business agency, Invest NI, for its promotion work, but that success was very much concentrated in the service sectors, not in manufacturing. Of course, the service side of the economy does not fall within the scope of the protocol, so I do not think that the advantages of the protocol—or the disadvantages, although not entirely, because there are issues with mobility of labour, especially highly-skilled labour, which may come up later—bear that strongly on the attractiveness of the location in the long run and hence on inward investment. Thank you very much, and I will leave it at that point.

The Chair: That is very helpful. Thank you very much. Peter Shirlow, do you have any comments on those points?

Professor Peter Shirlow: I have a few things that I would like to add on to that. I am from the University of Liverpool Institute of Irish Studies.

I think the protocol is symbolic in practical terms. There are clearly difficulties, but there also are advantages, to the protocol, and it is very important that we go through some of those. On the one hand, we know that there was a lack of advance planning and preparedness, together with the strict risk-based attitude of the EU, and that has created bureaucratic and logistical burdens on business and trade east-west.

On the other hand, necessity is the parent of invention, and it has compelled new thinking and innovation. For example, the case that Esmond just raised of Marks & Spencer and the £33 million has led to thinking outside the box. It has led to alternatives, and the alternative for Marks & Spencer has been the local sourcing of goods from businesses in

Northern Ireland, which is predicted to yield dividends. So part of the problem is also finding solutions, and we should always remember that businesses find solutions in market attractiveness and costs.

Also, as has already been mentioned, and Aodhán Connolly from the Northern Ireland Retail Consortium has also pointed this out, in retail the average supermarket has between 40,000 and 50,000 product lines, of which only a few hundred were ever missing.

On the manufacturing question, Manufacturing Northern Ireland's recent survey shows a different series of findings. There is the 77% of businesses which state that the transition period was negative, and there is the 36% that are struggling with new processes, which they say are likely to persist. But you get the same share for finding solutions; you get the same share for finding other ways to source goods and materials. Clearly some businesses, especially smaller businesses, are finding suppliers unwilling to engage, but larger businesses have the scale and capacity to cope much better and are finding suppliers that are prepared to bring forward the new requirements.

That shift, businesses locating other supply chains, has been reoriented. In that survey, around 20% are no longer taking goods from GB but are sourcing them in Northern Ireland, around 20% are sourcing goods in Ireland, and around 16% are sourcing goods in the EU. It is a combined model of NI, Ireland, EU, new ways of sourcing goods. I am not saying that there are not cost implications in that, but clearly, despite the lack of preparedness, there is also capacity within business.

One of the things that has come out of that survey is a negative impact on sales to GB and a negative impact on sales to the EU, so we are in a period of flux and transition.

The political impact has been to raise the constitutional and the political boundary. Not everybody in Northern Ireland subscribes to these politics, but we have ended up with a growth in demand for a border poll and that Brexit is the game changer within nationalism and republicanism, and of course there is the call to remove the protocol within sections of unionism. Brexit and the protocol have created this friction and this tension, and it is really important to think about this as a reset moment. The protocol has shown us how critical economic issues are to the peace process and how we sustain and build the economy, which was improving; there has been significant growth since 1998 in wages and a nearly 60% rise in employment. But the impact has obviously been deleterious in certain ways.

What happens at the negotiating table now must be understood as the link between the economy and the question of the binary between nationalism and unionism. If the Northern Ireland economy is weakened, that emboldens the argument that Irish unity is the only answer. If the Northern Ireland economy is weakened, unionists see an objective of the protocol being to drive Irish unity.

So it is really important that we understand that the protocol it is not just about flow and access and impact on prices and so on, but that this is at the heart of a very significant process in which the settlement that had come about in Northern Irish politics is slowly being impacted upon in a negative way.

We have to understand that the protocol is not an event, it is a process, and framing it as that is really important in that there are ongoing opportunities for practical, flexible, creative and positive development. This is a process in which we have to understand how we respond politically, civically and in business to these ever-evolving realities. It is also important to place Brexit and the protocol. Despite many of the challenges that we face, as a society since 1998 and before, we need a reminder that we have challenged and resolved even bigger tensions. Delivering the peace process was a major lifting process, and this is nothing on that scale.

We have to understand that there have been negative social and economic impacts, but it is really important to remember, in the negotiations and elsewhere, that we cannot patch this up. This is a reset moment. This is the issue and the time where we cannot apply short-term fixes. We cannot kick this can down the road. There is a bigger question here about the peace process and, therefore, the peace dividend.

We started this process with the threat of republican violence, and we are now near the end of this process with the appearance of loyalist violence and protests. Problem solving has actually ended up at the beginning of the Brexit process, and now at the end of the protocol process, embroiled in identity and constitutional issues, when in fact what Northern Ireland needs is to be having a conversation about skills gaps, knowledge gaps, investment, training. That is why I started this off by saying that it is symbolic. We have ended up having the wrong conversation. That is the reality of what has evolved, but that is what I mean about practicalities and so on: how do we change this conversation into a conversation about economics?

On the other question about companies not trading with Northern Ireland, in talking to some of those there is misunderstanding of the rules, there is a prioritisation of the EU market—Northern Ireland is a smaller market, but we will come to that at another stage—and a combination of both. It is imperative that the UK Government promote better understanding of the protocol, especially among GB businesses.

One of the places where there has been a success is the significant growth in trade between Northern Ireland and Ireland. You can see that Article 11 and the intention of the protocol, which was to protect the north-south dynamic, has actually worked, and I hope we will come back to that in other questions. We also have to understand that this is a grace period. We need to understand that companies are starting to react but we do not know what is happening.

What is important here and sits at the heart of all this is that so much of the protocol was based upon protecting and extending the north-south dynamic. I have no problems with that, even as somebody from a pro-union background. I see north-south trade and north-south development as key to building peace and stability, but clearly we have ended up in this position because less emphasis was placed on the east-west dynamic. As Esmond said, the east-west dynamic is the primary part of our economy, and resolutions around it are critical, not just to the success of society but to pouring oil on troubled waters in terms of the constitutional issues that have arisen.

The Chair: Thank you very much. Thank you to all three. That has been a really good start, covering the economics and the politics of the protocol. I fear we will have to speed up a little bit as we go through the next round of questions. Not everybody has to answer everything if you feel that what you wanted to say has been said by those before. But thank you very much indeed for that. I understand that Lord Empey has joined us. Welcome to you. I cannot see you, but I am sure you are there. We will move on now to Baroness O'Loan.

Q40 **Baroness O'Loan:** I think my question been addressed to a certain extent, particularly by Dr Birnie and Professor Shirlow, but it is as follows. What impact has the protocol, and UK withdrawal more broadly, had on trade flows between Great Britain, Northern Ireland and Ireland, and the rest of the EU? That is the first of three parts.

The second is: will the protocol enable Northern Ireland to fully participate in any free trade deals and, if so, what opportunities will that provide?

The third part is: what might the impact of the protocol be on the economy in Northern Ireland? Dr Birnie, I think you have talked quite a lot about this, but if there is anything you would like to add in any of those spheres, I would like you to start, please.

Dr Esmond Birnie: Thank you very much. It is good to see you again, Baroness O'Loan. I should have added when I was talking to the first question that the data from the Irish statistical authority, the Central Statistics Office in Dublin, shows a €230 million increase in Northern Ireland exports to the Republic of Ireland, comparing the first three months of this year to the first three months of 2020. On the face of it, that is very encouraging and it somewhat balances the increased costs in the GB direction, but there have to be some questions at this stage, given that the trade data from the Republic is so early. It will almost certainly be revised, and historically often these figures are not reliable. It is the first cut, as often happens with other statistics across the board.

Also, I should have added when I was talking about the costs in answer to the first question that there are the public expenditure aspects of the protocol. We tend to neglect this point, perhaps because it is so obvious. There are two principal ones—at least at the moment; there may be others in future. One is the Trader Support Service, which I think Katy referred to, with £100 million per annum for two years, although one

wonders whether it will have to be extended beyond that. That is £100 million that could have been spent by the UK Government on whatever—health service, education and so on. There is a real opportunity cost to such monies.

At the Northern Ireland Government level, principal opportunity costs have been the additional spending on vet services, the vet checking, which I am sure we will come back to in a later question. According to the Northern Ireland Department of Agriculture, Environment and Rural Affairs, that was £25 million in the first financial year of the protocol, so up to April of this year. Of course, if the grace periods end and we get a multiplication of the checks, that figure could double, triple or whatever. It is a considerable deduction, in effect, from the Northern Ireland spending power and spending block.

Baroness O'Loan's first question was on free trade agreements, FTAs, and Northern Ireland's ability to access the benefits of them. The UK Government have stated quite emphatically that Northern Ireland will have full rights and access to them, but I genuinely wonder if that will prove to the case.

Let me explain why. Northern Ireland is still to be part of the EU system with respect to animal and food standards. Let us imagine—it is obviously hypothetical, and there is much debate about how likely this is in practice in the near term—that there is a United States-UK free trade agreement, some aspects of which include the Americans being successful in getting much more access to the UK market for American food products, which of course, as we have all been told, often operate under a different system of standards for food production and so on.

Northern Ireland will not be able to reciprocate with any access to its goods going into the United States by opening the Northern Ireland market to American chlorinated chicken, hormone beef or whatever. I should say that I am not making any comment on the various views expressed about the quality of food products from the United States. There are obviously a lot of perceptions here, and the reality is quite complex.

The way it was put to me by an informed American source was that, as ever, when the United States is dealing with Northern Ireland, they will do their utmost to give us favourable treatment, but, at the end of the day, the United States has its trade imperatives. It has been extremely successful in promoting its exports around the world, particularly as we often think of the United States as an industrial economy. In some ways, it is, but it is a huge producer of primary commodities and agriculture. I think it will be quite piqued if it cannot sell its food products into Northern Ireland because Northern Ireland is still part of the EU food standard system.

Your second question was about the structural effect on the Northern Ireland economy. This is a very interesting one that may not get enough attention. It is more about the long-term effects rather than the short-

term, but it could be very important. In a sense, the protocol helps some sectors in the Northern Ireland economy and disadvantages other sectors. That is almost inevitable. My concern is that the bias being created is in favour of the food processing sector in Northern Ireland, for example. That is clearly an important sector, but it is also a sector that has relatively low levels of productivity and wages, so it might not be the best sector to grow in the long term, but there is some evidence that the working of the protocol will disadvantage sectors such as electrical engineering, which has much stronger integration into the GB economy as opposed to food processing's integration into the southern Irish economy.

The evidence for this was based on economic forecasting modelling done by the Fraser of Allander economic think tank based in Glasgow. In 2019, it modelled the effects of what was then termed a Northern Ireland-only backstop, which in a sense approximates to the effect of the protocol. It showed that some sectors of the Northern Ireland would do better in a Northern Ireland-only backstop—ie something like the protocol—but that parts of engineering, advanced manufacturing, electrical engineering in particular, would do less well. This is because of the costs being added on to their inputs being brought in from Great Britain.

One thing that is relevant to the structural question is, in some ways, a question in its own right and not one that you have listed here, but I will just flag it up. It is the impact on Northern Ireland's ability to engage in, for example, a reduction in corporation tax or, indeed, tax devolution variation more generally. Under the protocol, Northern Ireland is still to a great extent, maybe to an entire extent, liable to European Union state aid rules and competition law and so forth.

That means that precedents set in the European Court of Justice, like the Azores judgment about what happens when a country creates a subregional lower level of taxation, still apply to Northern Ireland. In practical terms, it means that if Northern Ireland goes for a lower rate of corporation tax than the UK average, under European law the Treasury or the UK Government would be obliged to deduct a certain sum of money equivalent to the revenues lost from the block grant transfer to the Northern Ireland or Stormont Government. You could say that Treasury would wish to do that anyway, because it would see it in its own vested interests to try to make Northern Ireland make some contribution to any tax advantages that it gets from the UK system. The protocol arguably removes any discretion that the UK Government might have if they did wish to show some degree of forbearance or fiscal generosity to Northern Ireland.

The Chair: Would Peter Shirlow like to comment on that?

Professor Peter Shirlow: It is important here to look at the structure. We have to understand that Northern Ireland is uniquely placed in three important economic interdependencies: the UK, Ireland and the European Union. If we look at those interdependencies we will see what happens with the protocol and what the next generation of the economy will be.

Northern Ireland is a site of investment. Already, former Economy Minister Diane Dodds, in a Written Answer to the Assembly confirmed that Invest NI was dealing with 30 live enquiries from companies wishing to take advantage of the unique status of Northern Ireland under the protocol. Business in Northern Ireland is clearly well positioned to benefit from change by providing the legal opportunity for moving or producing goods to operate in the UK internal market and the EU single market. This will especially be the case when a business simultaneously trades with Great Britain, Ireland and the EU.

There is a way to think about this that is critically important, which is not just about the present negotiation but the general wider thinking about what you do with these new and unique relationships within which Northern Ireland is placed. Northern Ireland businesses have an advantage trading with the EU compared to those in GB. Firms have already started talking about potentially moving their supply of goods. There is evidence coming through that companies in Britain are aware that if they locate in Northern Ireland they will not have the same regulatory checks and will avoid additional costs, and that the demands of regulatory compliance control will not operate in the same way. It also provides reassurance for consumers, customers and business partners about single European market standards.

These things are very important. Post Brexit, Northern Ireland finds itself in a unique position with access to the UK and EU markets. Going back to Invest NI, it states: "This dual market access position means that Northern Ireland can become a gateway for the sale of goods to two of the world's largest markets and the only place where businesses can operate free from customs declarations, rules of origin certificates and non-tariff barriers on the sale of goods to both GB and the EU". Also firms operating in both markets simultaneously face the cost of compliance in both jurisdictions, and that way there are circumstances that could be advantageous for high value-added activities such as medical devices and pharmaceutical manufacturing.

Clearly under Article 11 of the protocol there is a big opportunity here to leverage the economies of scale and proximity in the south-north dynamic and especially within the indigenous sector. The growth already in north-south trade relates to 7,000 companies. We should not underestimate the scale of what that protection north-south was able to do, so protection east-west will obviously have the same benefit.

To finish off, one of the first things that happened in the Brexit negotiations was the common travel area. This creates synergies of movement and capacity and protects freedoms and rights of residence, rights to work, employment, healthcare and so on. One of the big problems we have is that versions of political and media discourse, the practice of rhetoric, have undermined this wider appreciation of the interdependencies that exist and the opportunities that lie within them.

The Chair: Thank you very much. Katy Hayward, do you have anything to add on this or can we move on?

Professor Katy Hayward: I have one sentence on Baroness O'Loan's second question. In the UK-Japan FTA there is a potential for inconsistency with the protocol. To underline the importance of impact assessments conducted by the UK Government, they must consider in detail the potential impacts on Northern Ireland in light of the particularities of the protocol.

The Chair: Thank you very much.

Q41 **Lord Caine:** Before I ask my question, I want to respond. Esmond, on your last point about corporation tax, I was heavily involved in getting the legislation to transfer responsibility for corporation tax on the statute book in 2015. Everything you said about Northern Ireland still being subject to state aid rules I had confirmed in a Written Answer from the Treasury a few weeks ago, so everything you said on that one was absolutely spot on.

Moving on to my question, for Professor Shirlow in the first instance, I want to go back to the violence that we saw before and around Easter in Northern Ireland. When it happened, the great chorus was that this was all down to the protocol and Brexit and, "Isn't it all a complete disaster?" One or two of us were saying at the time that it might be a factor but that loyalist disaffection with the political process in Northern Ireland goes back some time before the protocol was ever even thought of and probably goes back to the early 2000s. In my time in the Northern Ireland Office, we had to deal with things like the flag protests in 2012-13 and trouble around Twaddell Avenue, Ardoyne, and so on.

I want to get the assessment of the witnesses. To what extent do you think that the protocol was a contributory or dominant factor in the recent disturbances within the community? As a final add-on, and you touched on this earlier, what impact has the protocol had on political and community relations?

Professor Peter Shirlow: I think that the protocol was only one part of the violence that arose. It is also important to understand that the rioting was pernicious and difficult in the Shankill-Springfield Road area. It was not just loyalist kids who were rioting. That is important to know, although I do understand that there was loyalist violence in the week before that. I think this is tied up in other issues to do with poverty and the wicked problems of feeling excluded within society, and we need to take that on board as well.

You will have seen some groups in loyalism use social media and other means to discourage violence and made it very clear that violence was not an alternative, and yet again we get a representation like this, which of course is not good for investment or building political stability. In the violence in the Springfield Road-Shankill interface, the vast majority of kids in those areas were not at the riots, and it is very important that we understand the scale of the violence. Most certainly this is nothing compared to the violence we had before 1998.

It is really important to consider how the mood was set around Brexit. Republicans and nationalists at the start talked about a hard border, the undermining of the Good Friday agreement and the denial of rights. We are trying to change the mood in Northern Ireland. The UK Government acted very much through good will by Article 2 of the protocol in terms of amending the Northern Ireland Act in a positive way and progressing with it. They worked to maintain the common travel area. It is really important to understand that through Article 11 they also extended a strand of the Good Friday agreement. I have not heard anybody in nationalism or republicanism who created that heat at the start of Brexit acknowledging that good will, so there is a wider question and not just for loyalism and unionism, which is important.

We have to be clear that there is definitely a sense that sections of unionism and loyalism have misread the protocol. When there is a shortage of food materials or Radio 4 this morning talking about the British banger and whether people in Northern Ireland will get their sausages and cold meat and so on, that feeds into a populist political understanding.

Not only was there not good will in nationalism or republicanism, but there was no understanding of some of the really practical and good will things that the British Government did with the EU. It is important to get out the message that Northern Ireland has not been annexed in any way within the UK. It clearly remains part of the UK under both international law and domestic law. The UK Government, whether we like it or not, exercised their proper constitutional power and decided to ratify this international agreement with the EU. Articles 16 and 18, which have been voiced as a way to get rid of the protocol, are no such thing. It is a completely inaccurate description of either. Article 16 is not a unilateral mechanism in any shape or form.

In the survey we did at the University of Liverpool for the Westminster election of December 2019-January 2020, 67% of people stated that they did not want any checks on goods going north-south or east-west. That was across community consensus. It is critical to understand that a fifth of people who support a united Ireland voted Brexit; 53% of people who are pro-union voted "remain" or did not vote. It is critical that we do not view this as an orange and green issue. There is a lot more nuance within this.

Quite a lot of people in the surveys do not really care about the protocol and are not angered or enthused by what is happening. We have this high level of toxicity, and I think it fits into this constitutional crisis problem. Intercommunity consensus was very clear in that Liverpool survey that the vast majority of people who expressed an opinion did not want any checks on goods north-south or east-west. We should be building on that cross-community consensus and understanding as opposed to constantly putting our efforts and energies into those who engage in violence and other activities.

Lord Caine: That is very helpful, and I could not agree more with you

that this is much more nuanced than is often characterised. Professor Hayward, do you have anything to add to that?

Professor Katy Hayward: Thank you, Lord Caine. I will be as succinct as possible. Like Peter, I will refer to survey data. The first is the LucidTalk-Queen's poll that was conducted in March, that I mentioned. What was striking when we were looking at whether people think the protocol is, on balance, a good thing is the difference between those who are strongly unionist and others. Of those who are strongly unionist, nine out of 10, or more indeed, are saying that they disagree that the protocol is a good thing. But if you look across the piece, even those who are slightly unionist are not so strongly against. About one in two say they disagree but not so much strongly disagree. There is a more differentiated picture there.

For those who are neither unionist nor nationalists and who constitute the majority of the population in Northern Ireland, again there are mixed views. On the nationalist side, those who are strongly nationalist and slightly nationalist are more or less of a piece in thinking that the protocol is a good thing, and that is about eight in 10 of them. As Peter was saying, it is a more diverse picture than we often see, and the views of those who are strongly unionist are very much opposed to the protocol, as he said.

The other point to draw upon is the Northern Ireland Life and Times Survey that we will be releasing tomorrow. This is conducted by ARK, which is a joint Ulster University and Queen's University institute. That helps to put all this in the context of how people are responding to Brexit in light of the constitutional question, as Peter mentioned.

We have asked them for several years now, since 2017, how they see Brexit impacting on the likelihood of a united Ireland and their views on a united Ireland. We have seen a steady increase in those who think that a united Ireland is likely. Without giving too much away, we saw a huge jump between 2019 and 2020—by almost 20 points—in the number of those who are saying that they think Brexit makes a united Ireland more likely. Where do we see that coming? Among those who are unionists. Whereas before they were saying it makes no difference, by the end of 2020 they were saying that they think it makes a united Ireland more likely, or more of them were saying that.

That helps us to understand why strongly unionist people are responding in this way. Unsurprisingly, nationalists think that Brexit makes them want a united Ireland more. If you look at leavers and remainers, we see remainers—not a majority of them—saying that it does make them want a united Ireland more, and leavers saying that it makes them more opposed to a united Ireland. You can see that tension there and why we are seeing a sense of polarisation on these issues in Northern Ireland.

Lord Caine: Fascinating stuff, and we could probably explore this for hours and hours on end. Esmond, unless you have anything burning to add to that, I propose that we move on to the next question.

Dr Esmond Birnie: Yes, that is fine by me, thank you.

Q42 **Baroness Goudie:** Good afternoon. My first question is to Professor Hayward. How would you assess the impact of the protocol on the peace process and on the Belfast/Good Friday agreement? As part of that, is the protocol compatible with the Belfast/Good Friday agreement? As we know, there are a number of people these days saying that, so I would like to hear your views.

Professor Katy Hayward: This is obviously a matter that is under legal scrutiny at the moment. I am no lawyer, so I will confine my remarks to those based on my analysis as a political sociologist.

We cannot understand the impact of the protocol on the peace process and Good Friday agreement without understanding the impact of Brexit on that. Without wishing to get back into that cyclical debate, I do think it is important to recognise the challenge that Brexit has posed to the three strands of the Good Friday/Belfast agreement. That was unavoidable in many ways. The British-Irish relationship has changed. They are on different trajectories now and they are in a completely different context to the context within which the Good Friday/Belfast agreement was negotiated. North-south relations are changed.

Peter mentioned Article 11 in the protocol. Maintaining the conditions for north-south co-operation will be extremely challenging, and that challenge will increase over time as the consequences of Brexit come to pass. Within Northern Ireland we are seeing the effects of that, not least in relation to the inequality in British-Irish citizenship, not necessarily as British citizens feeling second-class in the UK—I know that is a concern expressed by many—but in the fact that obviously Irish citizens continue to be EU citizens and British citizens are not. There are also concerns about the environment for the continued protection of human rights in Northern Ireland, given the importance of the EU context for that.

We recognise that one of the stated objectives of the protocol was to protect the Good Friday/Belfast agreement in all its parts—an extremely ambitious objective and one that is particularly difficult to achieve, given that the UK and Ireland are in a different context now for that relationship. I will not deign to go into the question of whether it is compatible with the Good Friday/Belfast agreement, except to underline the fact that the intention of the protocol is to protect it.

Professor Peter Shirlow: I think we need to understand the peace process as something that is quite embedded. In 1972, the security forces seized 20,000 kilograms of explosives. Last year, they seized less than two. We have had since 1998 a nearly four-fold fall in unemployment. We have had a 78% increase in wages. We have had a nearly 60% rise in employment. Katy can speak to this through the Life and Times Survey, but in the most recent survey that Katy was involved in around 22% stated a desire for Irish unification, so there is still a section of the population who wish to remain in the union.

I see two problems in the peace process. Many people who would see themselves as culturally Irish who are ambiguous on the union may, if there are deleterious impacts upon the Northern Ireland economy, start to think that it would be better financially and economically to join a united Ireland. That will create a constitutional crisis, which could lead to violence.

Obviously, we have created a society of greater employment, equality and so on, but there is one thing we need to be careful of here and that we need to watch. Loyalists who are pro-peace process, pro-conflict transformation are presently being put under a great deal of pressure from groups that have re-emerged on social media, like the Orange Volunteers and the Red Hand Defenders. Within sections of loyalism now it is their moment, it is their time. I fear that there would be some young people in those communities who missed out on the conflict and see it as something that they would want to engage in. We need to be very careful here, because the section of loyalism that has called for the non-use of violence and for dialogue and debate on the protocol is under a great deal of pressure from the regressive, negative elements of loyalism. That is something that we should be very minded to take forward in future conversations with that community.

Baroness Goudie: Esmond, do you have anything you would like to add?

Dr Esmond Birnie: Yes, very briefly. I guess I am probably referring back more to my political time and experience than economic theory as such here.

On the effect of the protocol, whatever its intentions, it is hard to say that the effect has not been a bad one on the stability or progress of the so-called peace and political processes. Is it compatible with the 1998 Belfast agreement? There is obviously an important distinction here with the letter of the agreement. It is probably just about compatible with the letter of the agreement, and for some of us there is a very strong sense of déjà vu about this. We were always told that the whole problem of decommissioning, of the IRA in particular but also of other terrorist arms after 1998, was not in the letter of the agreement.

There is also the issue of the spirit of the agreement. The spirit of the agreement is about balance between the three strands: Northern Ireland's internal affairs, east-west, and north-south. The damage being done to Northern Ireland's east-west relationship is highly disruptive to the overall architecture of the 1998 Belfast agreement and, therefore, very disturbing.

Baroness Goudie: Thank you very much.

Q43 **Baroness Ritchie of Downpatrick:** This question has been partly answered, but I will ask it anyway. What is your assessment of the UK Government's approach to the protocol and its engagement with Northern Ireland stakeholders since it came into force on 1 January 2021? Do you

believe that the Government are doing enough to take account of the full range of views of the communities in Northern Ireland? Going first to Professor Hayward, you have already mentioned the results that are coming out shortly from the Life and Times Survey and the LucidTalk poll, and we had the evidence that you provided in relation to that. Could you elaborate on that, Professor Hayward?

Professor Katy Hayward: A good place to begin to answer your question is to share the headline findings of that LucidTalk-Queen's University poll from March, which asked: "Who do you trust to handle Northern Ireland's interests in relation to the protocol?" What came through very clearly from that was that the only people most people trust to handle Northern Ireland's interests are business representatives in Northern Ireland, and the people they trust the least are the UK Government, closely followed by Whitehall. Indeed, 86% of people say that they do not trust the UK Government, and only 4% said that they did trust the UK Government to handle Northern Ireland's interests. This is a startling finding.

Then the question arises: why is that the case? If we look in more detail at those results, we see that across the board, so people of all backgrounds and from across different parties, very few have trust in the UK Government. That includes the unionists. This is different when it comes to the Irish Government; nationalists are more inclined to trust the Irish Government, you will not be surprised to hear. Unionists and loyalists distrust the UK Government, which is why the findings are so bad for them.

Why do they distrust the UK Government so much? When we asked about how responsive they see the UK Government being to Northern Ireland's interests and needs, we see that 75% of respondents say that the UK Government are not responsive. Only 10% think that the UK Government respond to Northern Ireland's interests and needs.

On what basis do people have that opinion? Well, in some ways it is with respect to the UK Government's approach to the devolved regions and nations more generally. We must never lose sight of that. It also relates to the UK Government's presentation of the protocol, right from the beginning downplaying the significance of that protocol and its potential implications. Of course, we could not measure or predict what that might mean in full until we saw the hardness, if you like, of the Brexit that was being achieved through the future relationship. It is in relation to UK Government decisions. It is domestic policy with respect to enabling divergence from EU rules. That is what is at the heart of the consequences with respect to the checks and controls and, therefore, the costs associated with the protocol on GB to NI movements.

That is the broad picture in relation to why the UK Government are viewed in such negative terms when it comes to the protocol and why people are wary.

On your question about engagement, the Northern Ireland Office has made efforts to engage with civic society. There are always questions as to the purpose and the outcome of that engagement, and I think there is a real sense that in some ways the UK Government and the EU are still in an acrimonious relationship at the moment. There is a sense of continued bargaining and negotiation, and there is a concern that what is shared with the UK Government can be used to add fodder to whatever they might be saying publicly in criticising the EU. That is okay up to a point, but there has to be the sense that both the detail and the spirit in which people are sharing these concerns are recognised.

Putting it very simply, the hostility in that UK-EU relationship and the aggravation of anxieties and tensions with respect to the protocol are not a means of meeting people's needs and concerns when it comes to civic society and people who are concerned for the peace in Northern Ireland. It simply is not helpful. An alternative way needs to be found—in other words, one that is about dedramatising, to coin that phrase, and reassuring, not in a glib way but in a way that follows up with action.

My final point is about people's understanding that this is about the UK Government's priorities in all this. Where we are now is a real test for the UK Government's priorities in the UK's post-Brexit status: that is, to what degree they are prepared to align with the EU in order to reduce the significance of that Irish sea border and to reassure unionists about the value of Northern Ireland in the union.

Q44 **Baroness Ritchie of Downpatrick:** Further to that, do you think that the Government were dishonest in their dealings with the communities in Northern Ireland in relation to this particular issue, as was suggested yesterday by Lord Barwell, a former adviser to Theresa May, in order to get Brexit done?

Professor Katy Hayward: I think that there have been several examples of what was publicly stated by government Ministers about what the protocol meant and the implications of it and what they were prepared to do for Northern Ireland and those statements being disproved by actions later, which, as I say, only go to increase people's sense of betrayal, as we have seen the withdrawal agreement described as, and the sense of particular concern and anxiety among loyalists and unionists.

Baroness Ritchie of Downpatrick: Thank you. Esmond, do you have anything to add?

Dr Esmond Birnie: Not very much. I agree with a lot of what Katy has just said. My assessment of the UK Government's approach is that there are signs of improvement but from a very low base. The evidence I would point to is Lord Frost's article, which I think was in Monday's *Financial Times*. He did at least admit that hitherto the UK Government had underestimated particularly the economic costs of the protocol, so I see a little bit of progress in that at least there is now an admission of problems, whereas at times in the relatively recent past—I think you

alluded to this in your supplementary question to Katy—spokespersons for the UK Government tended at times to argue incompatible things about what the protocol meant.

Baroness Ritchie of Downpatrick: Peter, have you anything more to add?

Professor Peter Shirlow: I do not think so, no, thank you.

Q45 **Lord Dodds of Duncairn:** I will begin by referring to my entry in the register of interests on the Committee's website.

My question is the mirror image of the question that Margaret has raised about the UK Government's approach. Mine is about the European Union's approach to the protocol and its engagement with stakeholders in Northern Ireland. What is your assessment of that and how they have played it? This touches on what Esmond was saying in answer to a previous question. Do they grasp or do they have sufficient understanding of the balance in the Belfast agreement and subsequent agreements, such as the St Andrews agreement? Do they get the importance of east-west as well as north-south relationships? I would be interested in your views on that. Peter, could you kick off on that one?

Professor Peter Shirlow: What you are hinting at is very important here, which is the point I made earlier. In our report *The Contagion of Uncertainty* we mention that not enough emphasis was being applied to east-west, which is a critical primary economic relationship and critical constitutional and identity relationship.

One of the issues for the EU is that it is approaching this from a very legal and technical, or market protection, approach and the mechanisms therein and is not understanding, or maybe does understand vaguely, those constitutional and identity issues. I think the EU thinks that if it puts technocratic laws and rules into the political machine, out comes compliance. Of course, in Northern Ireland what comes out is identity issues. It is not the same as negotiating with Switzerland; it is a completely different constitutional identity dynamic.

Of course, the EU has been a very welcome sponsor of peace and reconciliation and I think it is aware, but there are a few points that need to be made about this. If the intention of the protocol was to protect the Good Friday agreement, and most certainly the north-south dynamic of that was achieved, surely for the EU the same attention should be applied to protecting and developing the east-west. There is a circle there that has to be squared, and it has to understand that. I understand that rules and regulations have to be put somewhere, but it seems that they have been put at the site that is the predominant economic relationship. Clearly, that will cause issues and difficulties.

The EU also needs to understand the question of risk. There is a really important question here about Northern Ireland's infrastructure. We have a limited air, road and port infrastructure and, of course, it is very easy to monitor the east-west movement of goods. It is a small place. If goods

at risk are at the heart of the EU's understanding, surely it must understand infrastructural scale. Instead of having rules and regulations you can understand infrastructural scale.

The analogy is like a kettle. There is only so much water you can put into it. If the question is about the intention of moving goods east-west in order to then access the EU, the capacity is very, very limited. Any common-sense understanding of that would be that the movement of goods from GB to Northern Ireland has a known or generalisable scale. If you ended up in a few years' time with six or five or three times more movement of goods, you would know that somebody is linking that or trafficking that into the EU. The question of scale is very important.

Another really important thing goes back to what Esmond mentioned at the very start. Northern Ireland sales and exports are worth £68 billion, according to NISRA, of which 10% is the EU market. So 83% of all sales and exports are west-east, compared to 10% that goes to the EU. It is reminding everybody of the centrality of the east-west relationship. NISRA has also estimated that, for every job related to EU sales, five are related to Northern Ireland and GB markets.

If you look at this the other way, the GB-NI value of NI purchases and imports—we are discussing imports here—we find that £13 billion of that is the east-west movement of goods compared to £4.8 billion, which is the EU, and £2.5 billion of that £4.8 billion is with Ireland. That means that 79%/80%, of our purchases and imports are based on the east-west import, so goods, taking out services, are 82% of the value of that market when we compare it to Ireland.

There is something really important to say to the EU here, and it is this. If we take that £13 billion, which is what will fall under the protocol—the movement of goods from GB to Northern Ireland—and we measure that as a share of the EU's GDP, that is 0.0008% of the value of the EU's GDP. If the concern is about 0.0008% of the EU's GDP in terms of movement of goods from Great Britain to Northern Ireland, and if we imagine that maybe just 20% of that is at risk, that falls to 0.0001%. The question has to be asked: why is this being so overengineered? In terms of risk mitigation and as a share of the EU's GDP, this is tiny. This is the economy of a medium-sized city in Europe and the movement of goods into it.

I am a remainer, do not forget, but I am also practical. There are questions here that are very much about the constant rhetoric about the EU and negotiations protecting the Good Friday agreement and the peace process. I do not understand what that means. I do not hear any practical examples of what that means. If you want to support the peace process, you will have as much frictionless movement as you can on the east-west chain of movement of goods, especially from Great Britain. The EU has to remember the scale of this.

Ultimately, if the EU is about responding to the outcomes of Brexit and it wants to remove uncertainty, I would ask it this question: can you

guarantee that the protocol is a formula for job creation and growth within the Northern Irish economy? It cannot just be a process of looking at rules and regulations. Will this aid the economy of Northern Ireland? If the EU is telling us that the protocol is important for the economy of Northern Ireland, it cannot simply be about rules and regulations.

I would like to hear from the EU what the protocol does practically to build and sustain the economy of Northern Ireland, build a peace dividend and respond to the constitutional issues in Northern Ireland by ensuring that the east-west dynamic is as protected as that of the north-south dynamic, both of which I support for the future development of the island and these islands. If we go back to that data, 0.0008% of Europe's GDP falls under the protocol. That is overengineering.

Lord Dodds of Duncairn: Thanks very much, Peter. There are some very telling points there, absolutely. I appreciate that. Esmond, do you want to comment next, and then Katy?

Dr Esmond Birnie: Yes, thank you very much, Lord Dodds. My assessment of the EU's approach is that I believe it has been poor. I base that on at least two points of evidence. First, as far as you can judge from the outside—of course, the meetings are not in the public domain—the EU's position in the Withdrawal Agreement Joint Committee has not really shown any of the types of flexibilities that Peter referred to. By this stage, much more progress could have been made in developing so-called trusted trader schemes or defining the so-called at-risk category of goods coming from GB to NI with a risk of moving on into the Republic of Ireland and the EU 27. The EU could have chosen to adopt a fairly loose definition of what sorts of goods would be in that, but it did not. It is true, if the newspaper reports are correct, that for this morning's meeting of the joint committee the EU did propose certain flexibilities in at least four areas: medicines, steel, guide dogs, and VAT on second-hand cars. Of course, that is welcome as far as it goes, but I have a strong sense of it being too little, too late.

The other bit of evidence that I think is relevant in assessing the European Union/European Commission approach over the last year or more is particularly that episode, at the end of January I think, when the EU came very close to triggering Article 16. We have had various references to Article 16 so far this afternoon, largely in the context of why the UK Government should not use it. We need to remember that the European Union came very close, within a knife edge, of applying it with respect to preventing movement across the Irish border of pharmaceutical products in the context of Covid.

Subsequently, the European Commission defended what it had done by saying that it was simply an oversight, but that in itself I find a very concerning explanation, because I suspect that is precisely the problem. Northern Ireland is now aligned for regulatory purposes, customs union purposes, with the European Union and hence its population of 450 million people. Northern Ireland has a population of 1.9 million. Obviously, our GDP or the size of our economy, as Peter was referring to,

is tiny in relation to the EU 27. Going forward, as indeed has been shown over the past year, is there any strong reason why the EU would care about Northern Ireland's particular circumstances and interests? I rather fear that the near triggering of Article 16 was indicative of that.

Professor Katy Hayward: In terms of EU engagement with civic society and stakeholders here, as a small anecdote, a group of 15 civic society organisations wrote to various important players not 10 days ago requesting meetings discussing the protocol, reflecting the fact that people are anxious about the situation at the moment across many matters, including rights. Within a very short space of time meetings have been arranged with the European Commission, the European Parliament and several member states. They are still waiting to hear back from the UK Government or even to receive an acknowledgement of the request for a meeting. This is not an unusual situation.

Referring back to survey data, I mentioned it briefly but it is notable that Northern Ireland voters' trust in the UK-EU joint committee to handle Northern Ireland's interest with respect to the protocol is far higher than it is in the UK Government. As I mentioned, to be fair, that is probably a reflection of trust in the Irish Government or more broadly in the EU, but anyway, that is quite a notable finding, too.

I could talk a lot about what has been said by Peter and Esmond, but I will just make a couple of points relating to the reason why the EU is acting the way it is at the moment. I do not want to rehearse debates that have gone around and around for a long time, but the new phrase "legal purism" has been quite prominent recently as an accusation against the EU. Obviously, the EU is a law-based organisation, and part of what it is doing with its requirements vis-à-vis checks and controls at the border is a reflection of the fact that it has entrusted the enactment of the protocol to UK authorities. This is extremely unusual, of course, so it has to have a level of trust in that and it has to have evidence that the protocol is being implemented. It does not have that evidence at the moment with respect to matters that it is most concerned about, most particularly SPS, of course. You see this reflected in the statements from the EU issued after the meetings today setting out that it is still waiting to have those border control posts built and so on.

More broadly, of course, the EU hears just as much as everybody else does the UK Government's apparent willingness to breach the protocol. Even in the statement from the Government today on the conclusion of the joint committee, and I will just quote it here, "The UK will continue to work actively to find solutions. If solutions cannot be found, the Government will of course continue to consider all options available for safeguarding peace, prosperity and stability in Northern Ireland". We know that they mean potentially Article 16 or further unilateral action. How that can build stability in Northern Ireland when you are undermining an international agreement that you yourself negotiated is a pertinent question, I think.

In relation to the calls for pragmatism and realism on the side of the EU, again we see some progress, thankfully, in recognising from both the UK and the EU in the statements today what pragmatic solutions are potentially there. The biggest question about UK alignment to the EU remains, however, and the degree to which the question of pragmatism comes in here should be contrasted with the highly ideological approach being taken by the UK Government.

A pragmatic approach, not just for Northern Ireland but for all the UK if you are interested in the UK's economy and trading with its nearest neighbour, regardless of how you view that neighbour, would reduce trade frictions—that is, for alignment with very specific measures, guillotine clauses or whatever it might be to reassure the UK on that front.

That is just to add a slightly different perspective to the one that has been articulated so far.

Lord Dodds of Duncairn: Thank you very much.

The Chair: Thank you very much. I think that we can go on until 6.15 pm and then we will be cut off by the technicians, so we have to speed up a little bit, but that was a very interesting series of answers to Lord Dodds's question.

Q46 **Lord Thomas of Gresford:** I got involved in these issues when Geoffrey Cox issued his critique of Theresa May's proposals for Northern Ireland. I thought then and I have thought since that there is a great prize to be gained by Northern Ireland out of the interdependencies that Peter Shirlow talked about. There is a possibility of real prosperity, which would bring communities together. My experience of terrorist violence is limited to defending in the Brighton bomb case, but that was before the agreement.

In view of the different perspectives on the protocol that have been expressed by Professor Hayward, what baseline requests might be made should the parties represented on the Northern Ireland Executive agree to put to the UK Government and the EU in relation to the protocol? Conversely, what steps could the Irish Government take to help address the concerns about the protocol? As I see it from the evidence today, there may be a price to be paid in the paperwork and additional time and all that, but the prize is there to be grabbed if the two parties can come together and project their demands clearly and concisely to the Government. I will ask Professor Hayward, first, to give a view.

Professor Katy Hayward: This is a very important matter, because we know that if the Northern Ireland Executive manage to have a unified position it should have a significant impact on the decisions being made by the UK and EU. We rely on that UK-EU relationship, because the joint committee, of course, has such huge responsibilities in making decisions that directly affect Northern Ireland's future, yet Northern Ireland's voice is not well heard in those discussions.

Rather than getting into the technicalities of specific requests that the Executive might make, I would just make a couple of headline points. One is the need for democratic representation from Northern Ireland to the work of the joint committee and more broadly into the EU, recognising that Northern Ireland will be dynamically aligned to the EU as a result of the protocol. Several suggestions could be made in relation to this. It will require a certain generosity on the part of the EU to allow a sub-state region to have such a position, but offices in the European Parliament, for example, would be useful. In particular, recognition of the Office of the Northern Ireland Executive in Brussels would be practically useful, as would access to EU committees, agencies and bodies that are relevant to the work of the protocol and representatives from Northern Ireland having a seat there, just as the UK continued to have such seats during the transition period. This, too, would be more than a gesture; it would have a practical effect on good governance in Northern Ireland in light of the protocol.

Another request that should be made is in relation to transparency, communication and scrutiny. The work of your committee is obviously vitally important in that, as would enabling the scrutiny of what is happening with respect to the protocol in Northern Ireland. Notably, the Joint Consultative Working Group has been designed in such a way that it is quite limited. It does not draw upon a broad range of expertise, including from business and civic society in Northern Ireland. That would be quite useful.

In a similar way, too, notably Article 15(7) of the protocol places an obligation on the union to communicate the information and the views shared in the Joint Consultative Working Group to the relevant institutions, bodies, offices and agencies of the union without undue delay. There is no similar obligation on the UK, and this is a real concern, particularly for Northern Ireland. The UK Government should make a commitment to share what is exchanged in the Joint Consultative Working Group, which exchanges information every week, with the component parts of the UK but obviously most directly with Northern Ireland departments. That would be useful. I will leave it there in the interests of time.

Lord Thomas of Gresford: Would it not be direct representation in the committees of the EU for Northern Ireland? Peter Shirlow, would you not agree with that as a sensible way to go forward so that there is at least some voice to be heard there?

Professor Peter Shirlow: Under the terms of the Good Friday agreement, the Executive can go and speak to the European Union and the European Commission. That is well within their rights to do that.

Clearly, there are issues of voice and representation, but what is important here goes back to the question about interdependencies. I really do not want to see the Executive going off to find a voice and representation. Obviously they should voice and find help and assistance within the EU and Britain as well, but yet again I really do think that this

is a reset moment. This is about the totality of the relationships that are the Good Friday agreement and, through the protocol, the three interdependencies I mentioned earlier.

I think that the Executive should be mapping out those interdependencies and looking at their development and their progression. They should be developing a relationship with the EU with maximum creativity and common purpose. They should be mapping out those interdependencies, how relationships with the EU, Ireland and predominantly the UK will build RDI, productivity growth, market astuteness, the role of our universities in skills and technological development.

Part of this has been achieved with fintech and cybercrime, but it is about how you get realpolitik here within the Executive that looks at deliberative democracy. It is too loath to come to academics, business people and others to seek advice, work with civic society, get civic knowledge, and get the capacity and the ideas that are needed for economic prosperity and social justice.

They should look at the business sector responses that map every day east-west, north-south, NI-EU—those three interdependencies that are now critical to us. They should promote their relevance and future workings. They should be supporting and learning more about business sector alliances across those interdependencies. Most of all, they need to sit down and understand what it means to be in the EU customs code and EU-UK customs territory.

To be an open and successful society, ultimately the destiny of Northern Ireland lies with the Executive and it is at the Executive where you have the capacity to build a politics that is about the totality of those relationships, and how we work strands one to three through the reinvigoration of political and civic society alliances.

These things are critical. Too much of what happens in Northern Ireland is based upon an external agency, the Irish state or the British state. Perfidious Ireland/perfidious Albion have undermined us when we have much of the capacity. We have universities, we have high-tech sectors that are emerging now, and it is how that is driven by the Executive that is the best response to the protocol, a practical, pragmatic reaction to the protocol—strategy, innovation and practice.

The Chair: I am sorry, Dr Birnie, but we have to move on to Lord Hain now if we are to finish by 6.15 pm.

Q47 **Lord Hain:** Can I ask specifically about the flexibilities that exist within the protocol through the joint committee and the specialised committee to mitigate its impact of the kind that we have seen on people and businesses? What practical difference would a UK-EU veterinary SPS agreement have? Given the UK's stance, how likely do you think it is? Can a sufficiently flexible SPS agreement be achieved, given the likely shape of the Australia trade deal and what the UK Government have said about their stance on these matters, in agriculture especially? Could I

start with Katy, please?

Professor Katy Hayward: There is only one key point that I would like to make in relation to that. It has been reiterated today in the statement from the EU in particular that the veterinary agreement would reduce 80% of the checks. What is interesting in the comparison with Switzerland is the notable Swiss presence in Brussels to try to influence the EU regulation process and the decision-shaping role for Switzerland with respect to that. I will not go into the details of what that means, but it is notable that what the UK has been asking for with regard to equivalence does not go as far as a veterinary agreement would and it does not mean the absence of checks.

Lord Hain: Do you think that there will be sufficient flexibilities on the SPS agenda to resolve some of these problems within the protocol?

Professor Katy Hayward: There is the big picture context of what the UK-EU relationship is like more broadly and then there are the specifics about what the joint committee can negotiate and navigate. It has huge capacity for making decisions that have consequences for restrictions, as are being experienced by businesses in Northern Ireland and GB at the moment. Defining at-risk goods could be adjusted. That would make a huge difference in relation to the operation of the UK trader scheme. The joint committee can work to make that more beneficial for Northern Ireland and other things in relation to the application of that for the technology and automotive sector.

It is clear that the joint committee does have decision-making capacity, as Peter mentioned before, in relation to the process of the protocol and not just the event. Ultimately, the impact of the protocol depends on that UK-EU relationship, of course, and most particularly on the degree of alignment or otherwise between the UK and the EU. The approach at the moment, as has been indicated by the UK Government, including Lord Frost, is away from such alignment.

Q48 **Lord Hain:** Thank you. Peter, followed by Esmond, do you think that you could specifically address the degree of flexibility—as briefly as you can, I am afraid, given the time?

Professor Peter Shirlow: I am sorry, but I do not know enough about it, so I have to admit to ignorance.

Dr Esmond Birnie: I am tempted to follow Peter. It is a very specialised subject. Undoubtedly, many of the checks are related to food products. I do not know if the deputy president of the Commission is right to say that it is 80%, but certainly it is a large percentage. If you had alignment and those checks were not there, it would help, but there would still be issues. Katy referred to some of this in relation to customs duties and country of origin checks.

As to the associated question of the implications of proposed free trade agreements between the UK and the United States or Australia or whatever, that remains to be seen. I think there is a lack of clarity on the

part of the UK Government on where they are going in their agricultural policy. Do they wish to substantially depart from current food quality standards and production standards, and what standards will relate to the environment and so forth in the future? Until we see where that will land, it is not clear how far they could align with the European Union, with the consequent effects on Northern Ireland in particular.

Lord Hain: Thank you. Katy, you spent some time answering this question in detail, so if you have time could you write to us about where you think the scope for the flexibilities are? That would be very helpful to our work as a committee and our recommendations.

The Chair: That would be very helpful, Katy, if you were able to do that.

Q49 **Lord Empey:** The perceived democratic deficit at the heart of the protocol has been referred to already. In view of the combined dynamic application of significant areas of EU law to Northern Ireland in the absence of UK participation in EU institutions, how significant are these concerns and are they capable of being addressed? I will kick off with Professor Shirlow.

Professor Peter Shirlow: I assume the answer to this is the UK Parliament exercising its constitutional authority to sign an internationally agreed arrangement with the European Union. Whether we question that in terms of a deficit or otherwise, it has the legal authority to do that. Within that, clearly some EU laws under Article 2 and so on that are automatically applied to Northern Ireland will still be applied automatically, and some will go forward to the committees and so on to check their validity and appropriateness. You could perceive that as a democratic deficit, but I suppose a constitutional lawyer would tell you that it is not a democratic deficit at all.

Professor Katy Hayward: As briefly as possible again, with respect to the democratic deficit question, the EU law that is applicable in Northern Ireland under the protocol was, of course, agreed by the UK when it was a member state. The UK has also agreed in the withdrawal agreement to the institutions of the EU exercising certain powers with respect to the implementation of the protocol, including the jurisdiction of the Court of Justice of the EU. However, as already mentioned, the protocol will evolve as applicable EU law is amended and potentially as new EU law is added that appears pertinent.

This goes back to the point I made before about representation and voice from Northern Ireland with respect to that. There are inadequacies at the moment, and these are not just symbolic ones but very real ones. Bear in mind that Northern Ireland has to navigate the evolving EU single market for goods anyway, as well as north-south co-operation as it is affected by divergence between the UK and EU, which will have a negative impact on north-south co-operation, and, of course, the UK internal market, which I have not mentioned yet. What happens in that respect Northern Ireland will have to navigate, too. That is a whole different sphere, which I will not go into now.

All this points to the importance of proper representation and, indeed, communication between the relevant departments and Ministers with respect to Northern Ireland. On that point, in Lord Frost's letter to the devolved Administrations on 1 June he emphasised that the UK Government will be aware or will be made aware of all engagements between senior officials in the devolved Administrations, Ministers in the devolved Administrations, and EU bodies and member states.

That is sending out a wrong message. I can understand why he says it, but we need to recognise the unique situation in which Northern Ireland stands. Putting any constraints on that communication, bearing in mind that the overarching objective is to have stability and protect good governance in Northern Ireland, there should be a recognition of the importance of upholding devolved capacity and, in such a way, enhancing the legitimacy of these arrangements in Northern Ireland.

Dr Esmond Birnie: I think there is an actual democratic deficit. It is very serious and I do not think it can be resolved in any practical or helpful way. Why do I say that there is a deficit? There are at least three dimensions. First, this is a classic problem in that we have tension now without representation and, of course, there have been revolutions over that in previous centuries.

Secondly, there is the case study of the European Commission getting so close to using Article 16 to the detriment of Northern Ireland's interests, particularly in terms of public health. Why might that not happen again in the future?

Thirdly, and lastly, this in a sense is very similar to something that Peter said at the end of one of his answers. I really do think as an economist that Northern Ireland suffers from a political economy of dependency. From the 1970s and 1980s onwards, we have been very reliant on outsiders often to take critical decisions on our behalf, and we have been reliant on outside money, principally subsidy from the UK Exchequer. Here we are, and we are going into a future where, for regulatory purposes, Northern Ireland will be increasingly a sort of protectorate of the European Union, without democratic legitimacy or accountability or control over that. I do not think that will be helpful. Quite apart from any political aspects, it will not help the development of the competitiveness, the productivity and the growth and efficiency of the economy going forward.

The Chair: Thank you very much. Lord Hannan.

Lord Hannan of Kingsclere: My Lord Chair, I think that all the points that I wanted to raise have already been covered, so in the interests of time let me just, as the last participant, thank all three of our witnesses for such an extremely comprehensive tour d'horizon.

The Chair: Thank you very much. I never expected to hear you at such a loss for words. May I echo what you have just said and thank all our witnesses? That has been an extremely helpful set of answers, and a set

of answers that we shall much look forward to reading in greater detail. There is one piece of information that I think Professor Hayward was going to write to us with. Thank you, all three of you, very much. It has been extremely helpful and we are very grateful to you.