HOUSE OF LORDS

Common Frameworks Scrutiny Committee

Corrected oral evidence: Post-Brexit common frameworks

Tuesday 16 November 2021

10.30 am

Watch the meeting

Members present: Baroness Crawley (The Chair); Lord Bruce of Bennachie; Lord Foulkes of Cumnock; Lord Garnier; Lord Hope of Craighead; Lord Keen of Elie; Lord Murphy of Torfaen; Baroness Randerson; Baroness Redfern; Baroness Ritchie of Downpatrick; Lord Thomas of Cwmgiedd.

Evidence Session No. 17 Virtual Proceeding Questions 216 - 229

Witnesses

I: Jonathan Scott, Non-Executive Director and Chair, Competition and Markets Authority; Rachel Merelie, Senior Director, Office for the Internal Market.

Examination of witnesses

Jonathan Scott and Rachel Merelie.

Q216 **The Chair:** Good morning, everyone, and welcome to the 17th oral evidence session of the Common Frameworks Scrutiny Committee. The session is being broadcast on parliamentlive.tv and a full transcript is being taken, which will be made available shortly after the meeting for any corrections.

We are delighted to have with us this morning Jonathan Scott, who is chair of the Competition and Markets Authority, and Rachel Merelie, who is senior director for the Office for the Internal Market. As the parliamentary committee dealing with scrutiny of common frameworks, we are extremely interested in the new Office for the Internal Market and its relationship with frameworks and the frameworks programme. You are both most welcome.

Perhaps I can kick off with a couple of very general questions, which are open to both of you to answer. I would be interested to know how you see the role of the Office for the Internal Market, what your organisational structure is and how you see your mission, going forward.

Jonathan Scott: I think we view the office as being tasked with supporting the effective operation of the internal market after leaving the EU, where we had the single market. For us, an important element of that will be shining a light on how it is operating, and that is not something that we are totally unfamiliar with. In some of our work on market investigations, the most important thing we sometimes do is use our powers to shine a light on areas of the economy that are perhaps not as well known and on how they function, et cetera.

As I set it out there, it seems a very simple task, but we are aware of the challenges ahead. We have given a lot of thought to how we have set up the Office for the Internal Market and the governance of it. For us, issues of even-handedness and independence are critical, because we have built our whole reputation on our independence, so taking on this role will bring challenges and risks that we will have to continue to be alive and alert to. We appreciate that you have invited us today, because it is a learning process not only for you but for us, and we are very much at the beginning of that process.

Just a word or two about how we have set up the Office for the Internal Market. It is part of the CMA, but it is separately staffed and has its own identity. Once the panel chair has been appointed, they will lead, supported by a panel. We have worked with that structure before: we have the panel system in our merger control and markets functions. Put another way, I am used to chairing an organisation where I am answerable for decisions over which I have relatively little impact—I have none on the day-to-day decision-making. I see the plus side to this being that although the OIM, which Rachel leads, is a dedicated unit, it has access to the wider resources of the organisation, such as to the larger legal and economics teams and, ultimately, to what the board can bring standing back at arm's length, as we do in many of the functions of the organisation.

I have probably gone on for too long, but I hope that gives you at least an overview of where we are coming from.

The Chair: Could you give us an idea of when the panel will be finally appointed?

Jonathan Scott: When one talks about government appointments, I hesitate to look too far into the crystal ball. All I can say is that the process for appointing the chair is advancing. The panel process is a little behind, but the applications have come in, and the next stage will be the shortlisting and then the interview. I would hope that the panel would be in place by next Easter at the latest. I hope it will be earlier, but I am afraid it is beyond my control. I can simply say to you that I will continue to press to move it forward as quickly as possible.

Rachel Merelie: I think Jonathan has described that very well. I just emphasise the fact that we have a small, dedicated team of policy and project-delivery professionals who worked hard to set up and launch the Office for the Internal Market in late September. As Jonathan says, we are very fortunate to be able to draw on resources from across the CMA, and we have lawyers, economists, business analysts and others who are able to support our work. That is crucial and is a real plus in bringing together well-evidenced documentation on the internal market, which is not yet very well understood, and we see improving understanding of it as a key part of our mission.

The Chair: Thank you very much, both of you. You have been very clear and done exactly what I asked you to do.

Lord Thomas of Cwmgiedd: Good morning. Might I take up something that Jonathan said in his evidence, and the last point that Rachel made, by asking you first what, in general terms, you see as the main challenges you face? You say that you have given some thought to this. I have one specific question I want to ask thereafter.

Jonathan Scott: The challenge with any new function is, first, to make people aware of it and, secondly, to build confidence that it is fair. I suppose that for us that has two elements, from a chair's high-level governance perspective. The first element is our independence. Our function potentially places us, as an unelected body, in a slightly uncomfortable position between Westminster and the devolved Administrations. We have existed for some eight to 10 years and have worked very hard to build our reputation for independence, so I would be very concerned if the work that we did around the Office for the Internal Market challenged that.

That takes me to the importance of even-handedness and being seen to be even-handed in dealing with the devolved nations. We were ahead of the game in the sense that we already had a significance presence in

Edinburgh and we are growing that presence. We had much smaller presences in Belfast and Cardiff. But, for me, there is a very big challenge in building trust in the organisation so that it is seen to be fair, independent and even-handed. Sorry, that was probably a very long answer.

Lord Thomas of Cwmgiedd: Not at all. Rachel, do you want to add to that? Then I will ask a specific question.

Rachel Merelie: Very briefly, in addition to building trust between the devolved Administrations and the UK Government, which Jonathan has talked about, we also want to ensure that we can engage effectively with business and consumers. One thing that we have done is set up a web form where people can report any issues they have with the internal market and send those to us as part of any evidence-gathering that we do on the functioning of the internal market. We are keen to publicise that, and we are keen that people are aware of it and start to use it in order to report any issues that they might be experiencing.

Q217 **Lord Thomas of Cwmgiedd:** My specific question is about agricultural subsidies. It is possible that there is a view that Welsh sheep—as I sit here in Wales, sheep come to mind—get more subsidy than people who inhabit parts of England. How do you see your role in relation to what may be tensions between the four Governments as regards agricultural subsidies? We could easily do plastics or the environment, but I just want to see how you see yourself investigating, consulting on and then operating that?

Rachel Merelie: Perhaps the first thing to stress is that we look at the regulatory provisions and regulatory divergence between the four nations. Questions on subsidies will be looked at more properly under the subsidy control regime, but it is a very pertinent question, Lord Thomas, and we will doubtless refer to this.

We will need to look at each potential regulatory divergence on a case-by-case basis. We will need to gather evidence from a devolved Administration or from the UK Government about the provisions that they are putting forward and to talk to affected businesses, and we may need to carry out surveys in order to gather evidence. Then we will need to bring that together in a way that shines the light that Jonathan referred to on the impact that that regulatory provision might have on the internal market.

It also worth remembering that our role is purely advisory, so we will report back to the relevant national authority from the aspect of the economic impact which that regulatory provision might have on the internal market.

There may well be broader, policy-related reasons for going ahead with a particular regulatory provision, and we are very aware that there will a balancing act for national authorities, not only in taking on board the economic impact that we are drawing to their attention but in thinking about any broader policy-related issues that they might need to take into consideration.

Lord Thomas of Cwmgiedd: Presumably, as Jonathan said, your position is to remain independent and not to get caught up too much in the battles that may or may not lie ahead. Is this therefore to be done with very wide consultation and close involvement with the devolved Administrations?

Rachel Merelie: Absolutely. That is really important. At the CMA more generally, we have a strong policy of openness and transparency. In order to shed the light that we want, it is important that we are able to consult widely and gather evidence in an efficient and effective manner. Yes, consultation is very much part of our DNA.

Jonathan Scott: Can I just put one gloss on that, as the CMA's chair? In terms of the tone from the top, if you like, I would be very much of the view that where we have a clearly very sensitive issue like that, we do not storm in wearing our size 10 boots and cause mayhem. We stop, listen, move forward and give our advice, not just independently but thoughtfully looking at the issues in the round. I hope that that will give at least some reassurance as to our overall approach. We know that these are difficult issues and we are going to approach them sensitively.

The Chair: It is very heartening to hear about the work that you are doing on strengthening consumer protection, which means a lot to us because we are very interested in ensuring that consumers are protected in the new internal market through the operation of our common frameworks. All power to your elbow on that.

Q218 **Baroness Redfern:** The Office for the Internal Market says that it will "ensure that it demonstrates transparency, independence, analytical rigour and even-handedness and works to become a centre of expertise on internal market matters". Perhaps you could respond to that as the first part of your answer.

Secondly, although you touched on this in answer to Lord Thomas's question, could I tease out what role you see common frameworks playing in your work on ensuring that businesses and consumers in one part of the UK are not favoured over others, as well as minimising trade barriers throughout the UK, which is going to be very difficult, particularly in investment and labour?

Rachel Merelie: Perhaps I will kick off on the "centre of expertise" point. When we went out to consultation on our operational guidance, many of our respondees flagged up the fact that the state of knowledge at the moment about the UK internal market is relatively low. People have not been used to thinking about the internal market across the UK, and they see an important role for the Office for the Internal Market in becoming that centre of expertise that you mention.

There are a number of ways in which we are doing that. One is to work with our analytical colleagues across the various nations and at the Office for National Statistics to get further information about trade flows and other relevant economic indicators about how the internal market is operating. That is one piece of it, but we also expect to undertake surveys and have launched a first survey of businesses, which I think helps to answer the second part of your question.

We are undertaking a survey of businesses across the UK, in all four nations, to understand how easily they can trade with other parts of the UK and to understand any barriers that they might experience, and that survey data is another area, I guess. Obviously, we will undertake relevant desk research and get information through bilaterals and other interactions with business-representative organisations—trade bodies and so on.

The other area, which I referred to very briefly at the start of this session, is that we have our web form—we are putting this out and publicising it on as many websites as possible—which allows individual businesses, business associations, consumers and others to register with us any issues that they are experiencing with the way the internal market operates.

Baroness Redfern: I want to come back to the surveying, because this is really important. How quickly will the reporting come back to you?

Rachel Merelie: That is a very good question. We are undertaking the work in the field at the moment—or at least a company is on our behalf. We have already done the pilot stage of the survey, and most of the fieldwork is taking place over the next month. We are aiming at putting out a first report in the spring on the state of the UK internal market. As you will be aware, we have a statutory duty to put out an annual report and a five-yearly one, and the first of those is due in March 2023.

We felt it would be really useful before that to put a stake in the ground, if you like, by pulling together the report on the state of the UK internal market in March, or at least the spring of 2022, which will draw on the survey and all the other information that we are able to gather from our colleagues across the nations, from the Office for National Statistics and others, about how trade is operating between the nations and about the experience of business operating within the internal market as we currently stand.

Baroness Redfern: I am pleased that you are coming back with that next year. I thought you might say that it would be 2023, which seems a long way off. I am really pleased about that coming in earlier. Jonathan, would you like to comment any further?

Jonathan Scott: Just to pick up on your comment on timing, we took the deliberate decision that it would be good to report sooner rather than later, partly because we do not at the moment have live issues coming to us and we have a team that is ready and waiting and wants to go, but also because we know that in truth there is an awful lot for us to learn and that the discipline of doing this will show that there are many gaps in our knowledge. I say “in our knowledge”, but I think there are gaps in the wider knowledge, too.

We have all lived through the single market for as many as 40 years. Therefore, there are going to be tensions and issues in leaving it, especially given the structures that the devolved nations have built up in the background. It goes back to the “throwing a light” point. I fear that it will throw a light on some of our ignorance as well, but I think that will be helpful.

Baroness Redfern: Jonathan, we know that businesses cannot wait; they need answers as soon as possible for their work procedures. Thank you very much.

The Chair: Thank you, Baroness Redfern. That was an excellent set of questions.

Q219 **Lord Keen of Elie:** Good morning, Rachel and Jonathan. Could you, perhaps within one or two sentences, define what you mean by an internal market?

Rachel Merelie: The internal market is the way in which trade operates between the four nations of the UK, and one thing we look at is the extent to which there are barriers to trade. The internal market provides businesses with the ability to sell their products across the UK.

Lord Keen of Elie: Could you briefly explain the importance of market access principles to the functioning of the internal market?

Rachel Merelie: Yes. As a bit of context, it is important to recognise that the policy is very much not ours. It is devised by UK Government, but we are of course the implementers and it is important that we understand the market access principles and the implication of those for the internal market. There are two market access principles: mutual recognition and non-discrimination. Mutual recognition means that one nation is able to draw on the regulations present in that nation to trade in one of the other nations even if that has divergent regulations. In a sense, it does not need to adhere to the regulations in that other nation to sell its products. The non-discrimination side means that an individual nation cannot discriminate against products or services coming from one of the other nations.

Lord Keen of Elie: If some common frameworks agree exemptions from the market access principles, is that liable to harm the operation of the internal market?

Rachel Merelie: That is a very good question. This is something that we are going to need to look at, in reality. One of the things to be very clear about is that it is obviously early days both for the common frameworks and for the operation of the internal market. As Jonathan referred to earlier, I think we all have a lot to learn. We recognise that common frameworks are the very important mechanism that has been set up to reach agreement on managing potential regulatory divergence in devolved areas of competence across the nations. Of course, some common frameworks might choose to have alignment of regulation, but there is the potential for divergence. The fundamental economic principle is that there are some additional costs associated with divergence between nations, but, as I say, we recognise that that is only one consideration when you are looking at whether regulations should diverge.

Lord Keen of Elie: You seem to be implying that it is a matter not just of economics but also of political policy.

Rachel Merelie: Yes, absolutely.

Lord Keen of Elie: You have a variety of evidence-gathering powers. Are you confident that you will be able to relate the product of those powers with the operation of particular common frameworks?

Rachel Merelie: We are confident that we will be able to ask for the information that we want and that we have the necessary information enforcement powers if we need to use them to ensure that people give us the information we ask for. That said, we would not expect to use our formal powers very often. With our other CMA work, we have often found that having the formal powers gives us the credibility that means that people will come back to us when asked. It is always going to be challenging to relate the specific instances of regulatory provisions or individual common frameworks to overall measures of trade in the internal market, and we are going to need to look at that once we have some real examples to deal with. I guess we are confident that we have the toolkit at least to start to tackle the problem.

Q220 **Lord Keen of Elie:** Finally, I have a question for Jonathan if I may. It has been suggested that, with the protocol in place, Northern Ireland is simply not a part of the internal market. What is your view on that?

Jonathan Scott: I think we are excluded from looking at quite large chunks, because of the impact of the protocol, and that is within the statutory framework we are operating in. This is clearly an issue that we will have to be very sensitive about as we move forward.

The Chair: Thank you very much, Lord Keen. I think you have brought to light the problem of squaring the circle when it comes to the interaction of the protocol with all this, which is going to be a big problem.

You talked about how it is early days for the operation of the internal market. I am old enough to remember the early days of the operation of the European single market and the amount of political and economic argument right at the start about whether it was going to be a good idea. Of course, 30 years on, it is a bit of a no-brainer that it was a good idea. There are bound to be many teething problems at this stage.

Q221 **Baroness Randerson:** This has been fascinating evidence so far. Jonathan has already said that you are in a slightly uncomfortable position between the UK Government and the devolved Administrations, and Rachel has said that the UK Government devised the policy. I rather think that Jonathan's phrase "slightly uncomfortable" could be the understatement of the year.

It is really important to try to concern your institutions in understanding devolution. Can you tell us what interaction you have had so far with the devolved Administrations, and what input they have into the governance of the Office for the Internal Market?

Rachel Merelie: You are absolutely right that we have been working hard to ensure that we are even-handed in our approach to the UK Government and the devolved Administrations, and we have had quite a number of meetings with officials from the four Governments. In the CMA's wider capacity, we already have strong working relationships with Governments across the four nations, so I guess we are starting from a reasonable base there.

In relation to the Office for the Internal Market, we had a number of bilaterals and couple of wider meetings in the run-up to the launch of our function, because we were very keen to ensure that we took on board their comments, inputs and expertise when we set out our operational guidance and our information-gathering powers.

Post launch, we are continuing those working relationships. In the past couple of weeks, we have had a round of bilaterals with each of the four Governments. Then we discussed the launch and what we have been doing on stakeholder engagement. We talked a bit about the annual report that I have just referred to and the business survey that we have kicked off, because obviously that will affect businesses in each of their nations. Also, we started to talk in more detail about how we might work together, going forward.

I should say that this is all at the official level, where we are having good discussions. We have written to Ministers across each of the nations, and we stand ready to have conversations with them as appropriate.

Jonathan Scott: Just building on that point about standing ready, we have made those offers of conversation, including to the parliamentary committees in the devolved nations. Certainly, we as the leadership of the CMA have identified as a priority more widely to make ourselves available for those interactions as we go forward. One of the roles of the chair of the panel is to communicate what it is doing and to be the touchpoint between the organisation and the devolved nations. In fact, we had hoped to be having our monthly board meeting in Edinburgh tomorrow, but restrictions have again meant that that is not the right thing to do. More generally, we do take the board out to support that interaction.

To some degree, OIM's independence is enshrined and reinforced by the independence of the board. Importantly, Rachel and her officials and the panel members know that the board will stand foursquare behind them if, as is inevitably the case, they come under pressure, whether it is from

Westminster or from the devolved nations, and we have to stand up and be counted at that stage. We have a reputation for that already and we will have to maintain it.

Q222 **Baroness Randerson:** My understanding is that you are appointing panel members at this moment. Are you ensuring that some of them have expertise and a background in the constitutional arrangements of the UK, so that there is an understanding of the sensitivity of the situation?

Jonathan Scott: I hesitate to say what the qualities were that we set out. Regardless of that, I will take that away, if I may, as a very helpful suggestion. I am on the panel and will be part of the selection process. Can I note it and say that I will definitely take it away, because I do understand? We will obviously be looking for a mix of skills on the panel, including legal skills. We perhaps could have been thinking slightly more about people's regulatory backgrounds, but I think your point is very well made and I would like to take it away, please.

Baroness Randerson: I am grateful for that. There is the point that your intentions not only have to be good but have to be seen to be good.

Jonathan Scott: Yes.

Baroness Randerson: You refer to the fact that you are in the process of boosting your presence in Wales and in Northern Ireland. You described your presence in Scotland as significant. I would be grateful for just a little more information about what you regard as a significant presence and what your presence will move to being in Wales and in Northern Ireland. There is an argument that Northern Ireland is going to be extremely complex, but the Welsh market will be just as complex and vigorous as the Scottish one.

Jonathan Scott: I think that our headcount in Scotland—in Edinburgh—is now 50, and we hope still to add to that. I hesitate on the numbers in Cardiff and in Belfast, but they would be in single figures. The challenge is also quite often whether we can recruit people with the skillsets that we are looking for. Certainly in our discussions with government more generally about becoming less London-centric, we have identified that there is scope for further growth and recruitment in both Cardiff and Belfast. I hesitate to try to do the numbers, because I think I will get them wrong.

Rachel Merelie: From the Office for the Internal Market perspective, I could add that we have core team members who have experience of working in each of the devolved Administrations. Of our 20 or so policy project professionals, at least half a dozen are based either in Edinburgh or in Belfast, and that is really important part of this. We definitely have a pan-UK presence and are probably the most pan-UK part of the CMA, and although that is what you would expect, I just want to reinforce that.

The Chair: You have given us a good amount of fascinating information on your intentions as far as the devolved Administrations are concerned.

Strengthening the relationships with the devolved areas is very important to us as a committee. The more you can do in the people you appoint, the better.

It is now Lord Hope's turn to ask questions. He was very influential, particularly in the amendment that he put down to the internal market Bill, as you probably know.

Q223 **Lord Hope of Craighead:** Good morning to both our witnesses. I was involved in solving a problem that we identified very early in our work on this, which began while the internal market Bill was passing through Parliament. For most of its passage through Parliament, it was obvious to us that unless an amendment was made, the internal market principles which you have explained would simply eclipse any possibility of regulatory divergence. Eventually, at a very late stage, the Government agreed to put into two sections of the Act a power that enables the Secretary of State to exercise a discretion to exclude internal market principles from a common framework that has been agreed by all parties and provides for regulatory divergence.

That is a rather lengthy introduction to my question, which is directed to Rachel. I would like to pursue a little further how the process is going to work. Let us assume that one of the devolved Administrations has obtained agreement for a regulatory divergence. The question is then where the process begins. The Secretary of State has to exercise the power. Where does that process start and where do you come in, in your particular position as a provider of advice and the product of research?

Rachel Merelie: This is clearly a very important question. Any decisions about exclusions that might be made from the market access principles because of the existence of regulatory divergence in a common framework would of course be a matter for the UK Government working with the devolved Administrations. Our participation in any of that is very much secondary. We understand that there have been some pretty productive conversations between the UK Government and the devolved Administrations about the interaction between common frameworks and the internal market, which hopefully will help answer the question about the overall process.

We remain open to supporting any of the national authorities when they are exploring how the common frameworks process might work and what its interaction is with the internal market. We can provide advice on a case-by-case basis using some of our broader powers if we are asked to do so. We certainly would be able to gather evidence on the operation of a particular regulatory provision and feed that into the process. We probably need to see how the way this fits into the process is articulated before we are in a good position to judge, and I think it will be for the national authorities to work out how best to use us, but we are very much ready to assist in whatever way works best.

Lord Hope of Craighead: It is possible that access to your assistance would come at a relatively early stage, before the final agreement is reached before the four parties to a regulatory divergence. If the UK Government were to agree to a divergence, it would seem very odd that it would not be a simple step for the Secretary of State to exercise the power, but we are not very clear about how this process is going to develop. Can we take it that we are open to providing advice at the request of a devolved Administration before the framework has been agreed?

Rachel Merelie: We have a number of different powers. I am sure you are aware that we have our powers under Sections 34 to 36, which allow us to look at a regulatory provision either before it is passed or made or after the effect, or when there is a disagreement between more than one nation. Those are the specific powers under which we look at a particular provision, either ex ante or ex post, if you like.

We have also some broader powers, under which we can choose at our own discretion to look at the functioning of the internal market, so we could potentially pick up questions in that space. We very much feel that it is for the UK Government and the devolved Administrations to say, "Follow the process", and obviously for the relevant Minister to make the decision on any exclusion, but we have some expertise and some information-gathering powers that we could bring to bear if that is requested of us.

We have a prioritisation process. We have only limited resources, despite having the weight of the CMA behind us. We would obviously have to look at the extent to which any request fitted with our prioritisation principles. That is another clarification that I would want to bring to this.

Lord Hope of Craighead: How quickly do you anticipate your getting the information that might be needed? I suppose this is a very open question, but its background is Baroness Redfern's point that businesses cannot afford to wait. They have a really important planning process to carry out and they want to take advantage of the prospect of the divergence, which has been designed because of the particular conditions in a particular devolved Administration's area. In a way, it could be said that speed is of the essence. Would you be able to measure up to that?

Rachel Merelie: It is a very good question. I think there is always a balance between the speed at which we can undertake something and the rigour with which we can do so. In our operational guidance, we have set out an expectation that any reports that we publish would be done within 26 weeks—a six-month process, essentially. We expect to be able to carry out some of our work more quickly than that, and we understand that on certain occasions that would be necessary, but I suspect that we are talking about months rather than weeks in order to be able to gather evidence appropriately, analyse it and produce a reasoned piece of advice.

Lord Hope of Craighead: I appreciate that it is not much good if it is not sound, properly researched and correctly expressed. I follow all of that. Jonathan, I wonder whether you would like to add anything to what

Rachel has said about this problem.

Jonathan Scott: On the last point, this is a challenge, but if the information comes quickly, we can deal with it quickly. My experience in other regulatory areas is that if people think they are not going to get the right answer, suddenly it all becomes a lot more complicated and it takes a lot longer. We are familiar with these issues and dealing with them.

There will be challenges around this. The other side of the coin is what the Chair was talking about earlier. Many of us grew up with the single market and almost take it for granted that you can move goods and services around almost seamlessly, and although the divergence will create opportunities for some businesses, we will also have to be alive and alert to the fact that divergence can be exploited by businesses in a way that is adverse to consumers, so there is a lot of balancing for us to do there. However, I think we have gained from our wider work the skills to be able to assess those sorts of issues.

The Chair: That was a fascinating exchange. Can we move on now to Lord Garnier, who has an issue about reporting?

Q224 **Lord Garnier:** Thank you both very much indeed, both for coming and for your very clear answers that we have been listening to this morning. Forgive me if you are now going to face questions that you think you may already have answered, because you rather intelligently anticipated most of my questions before they were asked. Under Section 33 of the Act, you are required to prepare a report, to the timetable that is set out therein, on the effectiveness of the provisions relating to goods, services and professional qualifications and regulations and on their impact. I will not ask you about producing something earlier than March 2023, because you have already answered a question about it, but would I be right in thinking that, if necessary, you will produce reports more often than every five years—at shorter intervals? Perhaps you could comment on that.

Could you give us some hint about the extent to which your obligation to report is going to interfere with your obligation to monitor? How will you prioritise the work that your teams will need to do to prepare the reports without diverting resources away from looking at and measuring the provisions' effectiveness? And how do you measure those things?

Perhaps I could put a little gloss on that. I think this is implicit in some of the answers that you have given—Jonathan, I gathered that from your Brussels experience you have some understanding of the nature of the politics of all this—but to what extent do you think the office will be able to anticipate and to prevent political interference in your work? We have already mentioned Northern Ireland, which just reeks of problems in terms of the protocol and the wider internal market.

I am sure that the devolved Administrations and the United Kingdom Government will want to be extremely helpful in persuading you that the report should look this way or that way and they will try to suck the independence out of you. Are you expecting to employ a political adviser?

I am certainly not volunteering. Are you expecting to draw upon your own Whitehall and Brussels experience, to fend off helpful suggestions, or are you hopeful that you will be left just to get on with the job that the statute requires you to do?

Jonathan Scott: We would be delusional if we thought that we were going to be left to get on with the job that we have been given to do, because some of the issues will inevitably be politically very sensitive. We have to be alive and alert to a risk—I think this is a very real risk—that in being lobbied we will be weaponised. Having said all that, we have lived and worked with government in Westminster and in the devolved nations throughout our existence, and I think that one of the important roles of the board and of the chair is to hold those sorts of pressures at bay. I do not view this as an advantage or not, but we view it as being helpful that although we are part of the BEIS family, our funding comes not from BEIS but from the Treasury, which has also helped to reinforce our ability to stand our ground. Independence is absolutely critical to all that we do. We are used to being lobbied, normally by private parties. I will not say that we relish this position and say thank you for having been put in it, but I think we have the experience and the skills to be able to deal with it.

That is the general answer, but I think there was a much more specific question, on reporting and its timing, and the balancing of resource. Just before Rachel answers that question, I think that being part of a larger organisation means that we can move a bit of resource around. For example, if we are very busy with mergers work, we move some resource from our markets work to our cartels work. At pinch points, Rachel will be able to call down additional resource. The accounting officer will be watching probably very carefully, but we have a bit of scope to at least balance out periods of hyperactivity and lesser activity. Rachel, do you want to deal with the more specific questions?

Rachel Merelie: Certainly. Thank you, Jonathan. It is reassuring to hear that we will have the ability to balance resource from across the organisation. We will hold you to that.

Lord Garnier, I think you are absolutely right that it will be important to get the balance right between monitoring and reporting. As you say, we have both an annual and a five-yearly requirement to report. I think that one of your specific questions was about the extent to which we might report more frequently than five yearly. The first thing I would say on this is that it is early days. Obviously, we will have to see how it works out in practice, but our initial thinking is that you need a certain period of time over which to look at the health of the internal market and the trends that are developing, so it is quite important to put a stake in the ground but not too frequently. That does not stop us doing other reporting. We would obviously pick up some issues through our annual report, and we have the ability to carry out some reporting on our own initiative. Our initial thinking on this is that there will be five-yearly stakes in the ground, if you like, but with more frequent reporting, both through our annual commitment and any other own-initiative work.

The only other point I will add, if I may, is that one of the benefits that we feel we can bring to this slightly politically charged area is that we are trying to be very factual, very economic and very evidence based. That is a really important underpinning for our function. Our focus will be less on opinion and more on gathering the relevant economic evidence and using it to report back in a relatively factual way. I realise that that can take you only so far, but I think it is a really important part of our credentials, if you like.

Lord Garnier: Do you think there are lessons to be learned from the work of the OBR? Every Government and Opposition will pick the bits out of an OBR report that are relevant to making their own political case. Is that a danger that you need to think about as well?

Rachel Merelie: The presentation of our reports and the way in which we express ourselves will be incredibly important. There is no doubt about that.

Q225 **Lord Bruce of Bennachie:** Good morning to you both and thank you for your very interesting answers. You have an obligation to review the interaction between the common frameworks and the internal market and how they impact on each other. This committee has been involved in a dynamic in which the common frameworks took a lot longer than anticipated and in which some issues have been thrown up, not least of them being the internal market Act—it created you, the OIM—which many regarded as driving a coach and horses through the workings of the common frameworks.

As you review that interaction, do you think you could see a situation where you might be able to comment not only on the effectiveness or otherwise of common frameworks but on whether there are areas that have hitherto not been identified as suitable for a common framework but where one might be appropriate? At the start, we were given the impression that this is a fixed, finite process that goes from start to finish and that is that, but I think everybody has now accepted that it is a dynamic process and it will continue, not least because we have not reached a dispute resolution in any of them; we have not gone far enough to know how it works.

Do you see a situation where the workings of common frameworks will be an important part of the development of the internal market, and might you identify areas where new common frameworks are appropriate?

Rachel Merelie: It is a really important question. I want to underline that, as you say, we will be looking at the effective operation of the internal market. You are quite right that we have been asked that in our five-yearly reports we look at the interaction between common frameworks and the market access principles and at the impact of the common frameworks on the internal market. We will be doing that as part of our factual reporting back on the way in which the internal market is operating.

Our view is that it is not for us to advocate the adoption of common frameworks. We would try to flag up how the internal market is operating, using our evidence and our independent analysis, and then it would be for Governments to work together to agree how to resolve those issues, which might be through the adoption of further common frameworks. I think that would be a question for them rather than for us.

Jonathan Scott: I do not think I can usefully add to that.

Lord Bruce of Bennachie: I accept what you are saying about it being a matter for government, and I am not suggesting that you are passing the buck, but would there not be a situation, given that you are involved in the dynamics of talking to the devolved Administrations, where you might be able at least to advise—that is all you can do anyway—that there is an area where it might be worth considering a new common framework? Or are you suggesting that you would not do even that and that you would simply allow the relevant Administrations to make their own decisions?

Rachel Merelie: That is a very good question that we will need to look at as we go forward. Certainly, we would be very happy to look at the evidence, carry out the analysis and try to understand what is going on. I think there is a question about the extent to which we make recommendations on that back of that, which might be something that we could consider, but I think it is early days to commit to that at this stage.

Jonathan Scott: Just to reinforce that, I think we would hesitate to commit at this stage, when we have not yet given any reports. However, that does not mean that we are saying that it could never happen. We are probably just being a little cautious and cagey, as we set off on a journey that, as you have identified, has a few possible things on the way.

Lord Bruce of Bennachie: I appreciate that you are keeping an open mind.

The Chair: It is good to know that the door is a bit open there, as you say, but it is early days. Now we come to Baroness Ritchie, who would like to talk about the protocol and some of the issues in Northern Ireland.

Q226 **Baroness Ritchie of Downpatrick:** There has already been some discussion about the interaction between your organisation and the devolved Administrations, and reference has already been made, by Lord Keen, to the Northern Ireland protocol. The UK internal market Act sets the remit for the OIM, establishing that it produces reports and advice on regulatory provisions, but it includes a carve-out that "a provision is not a 'regulatory provision' so far as it contains anything that is necessary to give effect to the Northern Ireland Protocol". Also in your guidance, you state that you "will not review the impact of the Northern Ireland Protocol (or legislation necessary to implement it) on the operation of the UK internal market". It is unclear how far this exemption applies. How does it apply, and could you illustrate that by way of example?

Rachel Merelie: Yes, of course, and thank you for the question. As you know, this is a difficult area, but let me try to shed some light on it if I can. You are absolutely right that the protocol is outside our scope and so we cannot produce reports, at the request of any national authority, on the effects of regulatory provisions that give effect to the Northern Ireland protocol. Nor can we look at the operation of the protocol or review it under our broader monitoring functions. But that does not mean that we ignore it altogether, because obviously the protocol is a very important part of the factual context that we would be looking at.

I can illustrate three areas where we might look at how the internal market is working for Northern Ireland, which I hope might help a little bit. First, and this is a slightly specific point, if the Northern Ireland Assembly passes any legislation that goes beyond any provisions that are required for the implementation of the Northern Ireland protocol, we could look at those—that is, if there is any gold-plating or any additional legislation that is in excess of that required to implement the protocol. Secondly, the protocol applies only to goods, so trade in services or any matters relating to professional qualifications are potentially within our scope. Another interesting area is that we can look at trade in goods between Northern Ireland and GB, rather than the other way round - at any effects that relate to the sale of qualifying Northern Ireland goods as they move between Northern Ireland and GB. Those are areas that we could look at in relation to Northern Ireland.

Jonathan Scott: On this, I cannot usefully add to what Rachel has said so far, but I hope it will be clear that we have given a lot of thought to some of the practical issues that will arise.

Q227 **Baroness Ritchie of Downpatrick:** Further to that, with the Lord Chair's permission, will you provide advice on the way the regulations that the protocol requires are implemented and on the relevant decisions that the Northern Ireland Executive and other UK Administrations make? Maybe you could say what interaction you have had so far with the Northern Ireland Executive on any particular issue to do with the Office for the Internal Market.

Rachel Merelie: We would not give advice on any provisions that implement the Northern Ireland protocol, which relate to the interaction between Northern Ireland and Ireland. That is definitely outside our scope.

We have talked before about the interactions we have had with the four nations as we have been setting up our function, and we have been talking to officials within Northern Ireland Executive departments as part of those meetings, so we have had a number of sessions with Northern Ireland. Obviously, the protocol is very important context but is rather outside our span of control, if you like, although we are very sensitive to it, and we understand the need to articulate the extent to which we have powers.

One of the things that we have discussed with them, for example, is the extent to which we can look at trade between Northern Ireland and GB for which Northern Ireland needs to adhere to a regulatory standard as part of aligning to the EU single market. In GB, new regulatory provisions might be put forward as GB diverges from the EU single market. Depending on the facts of the case, that is something that we could look at.

The Chair: It is very interesting that you are thinking through how you will look at the protocol and that you are not ignoring it altogether, setting out very clearly those three areas. It is for us as a committee to think about that and how it will affect common frameworks that interact with the protocol. Thank you very much indeed.

We move now to Lord Foulkes, who is going to talk about intergovenmental relations.

Lord Foulkes of Cumnock: You mentioned earlier that you can provide guidance to the devolved authorities. When you get to dispute resolutions, will you be providing guidance and maybe evidence in relation to them?

Rachel Merelie: The OIM is not involved in dispute resolution. We are here to provide advice to government, using our economic and technical expertise. We understand that disputes will be managed through intergovenmental relationship procedures that will be agreed between the four Administrations. It is of course possible—I think this is what you are alluding to—that our reports are considered in some shape or form as evidence in support of that process, and we remain open to being used in that way.

Q228 **Lord Foulkes of Cumnock:** That is very helpful. Can I raise a wider question that arises from all the evidence you have given? The Office for the Internal Market is clearly a huge new responsibility for the CMA. You have described what you are going to be doing and your work with the three devolved authorities and with the UK Government. Jonathan, I had a look through the membership of your board, who are all from the south of England. Given all this new responsibility, is it not about time that you had a look at the structure of your board, taking into account that, for example, the BBC has board directors from Scotland, Wales and Northern Ireland to look after those nations' interests? Would it not be much better and would you not have much more authority if you had a wider representation on your board?

Jonathan Scott: I completely understand what you are saying. Obviously, my ability to control the composition of the board is limited, because these are public appointments. That said, I have already indicated to BEIS that it will be very important when the new chair is appointed—we have a number of other people whose terms are coming to an end—that we seek to widen the board's pool in a number of ways. I personally would not support having one member from each devolved nation, but I completely agree that we need to have greater representation from across the UK.

I think that too much of the board comes from the competition and regulatory bubble. You need a certain amount of that expertise, but you might argue that there is insufficient representation of the consumer, given the amount of work we are doing in the digital space. Hopefully, we will be able to attract people to the board who tick more than one box.

All I can do is say that, as chair, I have signalled that it will be important for the incoming chair to have regard to that, and I will continue to press BEIS on that front.

Lord Foulkes of Cumnock: That is a very helpful reply. As a supplementary question, would it help you if we were to make a recommendation somewhat along those lines?

Jonathan Scott: I am very keen on anything that will help with that. This is an issue that I have identified, and any support will be welcome.

Lord Foulkes of Cumnock: Certainly I think it would increase your authority and your acceptance around the whole United Kingdom if you were more representative. When I saw the limited geographical spread, I was really quite taken aback. Thank you very much for your helpful answer, Jonathan.

The Chair: It is good that that is being raised and that Jonathan is willing to look at this and perhaps take it forward as best he can.

Q229 **Lord Murphy of Torfaen:** I thank Lord Foulkes for the very interesting point he has just made with regard to representation north of Watford on these bodies. I speak as a Welshman, so it is west as well.

My questions are quite straightforward. What are your plans for future parliamentary engagement? Do you see a role for your organisation in better informing scrutiny on the internal market?

Jonathan Scott: We are open to engagement. We have certainly found today's session very helpful. We would not want there to be any perception that we think the Office for the Internal Market is operating in a vacuum or a bubble, so interaction with your committee is very important. More generally, we hold ourselves open in all our activities to scrutiny by Parliament and we welcome that; it is an important part of our legitimacy. It probably reflects my lack of experience of dealing with Parliament that I would not invite myself along, but I am very happy to accept an invitation. That may be a reflection on me rather than on the organisation.

Rachel Merelie: We have written to the relevant committees in each of the four legislatures, and we are happy to engage with them to the extent that they want to do so. Once we have our chair and our panel in place, we will have a number of other senior individuals who will be interested in engaging more widely, I think, with Parliament, which will help us as well.

The Chair: If no one else has any further questions, we have probably come to the end of our session. I want to thank our witnesses very much for their time with us this morning. It has been an excellent session, with clear responses, a frankness and a willingness to examine and to pore over with us these often quite difficult and complex issues, which is gratefully accepted.

Jonathan, at the start of this session, you talked about shining a light on the effectiveness of the internal market, and I think the light has gone both ways in this session. We have certainly learned a great deal, and I hope you have an idea of our aspirations as far as both the internal market and the common frameworks' place in it are concerned. You are always welcome to engage with us—it is an open invitation—and we will no doubt hear from you, and you from us, in the future. We will of course read your evidence very carefully.