HOUSE OF LORDS

Select Committee on the European Union

Services Sub-Committee

Corrected oral evidence: The future UK-EU relationship on professional and business services

Thursday 4 June 2020

10 am

Watch the meeting

Members present: Baroness Donaghy (The Chair); Lord Bruce of Bennachie; Lord Cavendish of Furness; Baroness Couttie; Lord Davies of Stamford; Lord McNally; Baroness Neville-Rolfe; Baroness Prashar; Lord Sharkey; Lord Thomas of Cwmgiedd; Viscount Trenchard; Lord Vaux of Harrowden.

Evidence Session No. 1 Virtual Proceeding Questions 1 - 17

Examination of witnesses

Sally Jones, Sam Lowe and Shanker Singham.

Q1 **The Chair:** Good morning. Welcome to the EU Services Sub-Committee's first public evidence session as part of its inquiry into the UK-EU future relationship on professional and business services. The session is being broadcast on parliamentlive.tv. A full transcript is being taken and will be made available to you to make any corrections shortly after the session. It goes without saying that this is not a confidential session.

We are enormously grateful to you for coming to our first session, and we hope that you enjoy the series of questions that my Committee will ask. Perhaps each of the witnesses could say a few words about my opening question. Could you start by providing an overview of professional and business services in the UK? What are the main similarities and differences between the various sectors that fall under that broad heading?

Sally Jones: Thank you very much for inviting us. The professional and business services sector is critical for the UK economy. We had a trade surplus of £12.4 billion with the EU in 2019; a trade surplus of £10.6 billion with the US for the same year; and a £31.8 billion surplus for the rest of the world. So you can see that we are a great contributor as a sector to the UK economy.

Our point of similarity is that we provide information to clients, both people and businesses, that helps them trade and live their lives more efficiently and better. Our sector is characterised by a need for professional qualifications so that our clients can be certain that we are giving them the right information to a high standard. There is significant information asymmetry between the advice we give and the baseline knowledge that our clients typically have, which means that, when coupled with a profound delay between us giving advice and the outcome of that advice being understood, it is important that we get it right first time.

We are soft power exporters as well as actual exporters. Our professional qualifications are recognised around the world, and PBS concepts are exported, together with people, around the globe, but primarily we are a sector made up of very small businesses. There are more than 600,000 PBS businesses in the UK, and the average number of employees is fewer than four. Although people often think about huge firms such as EY, PWC, Freshfields or McKinsey, on the whole we are a micro-industry.

Sam Lowe: The only point I would make to supplement Sally's is that, when you start to think specifically about what the different types of industry do, it is quite a broad categorisation. It covers legal services, but also advertising. Market access issues are obviously not the same for lawyers as they are for someone selling advertising, so sometimes it is quite difficult to talk about it in the aggregate sense; it requires getting into the specifics of each sub-sector of that quite broad categorisation.

Shanker Singham: My only comment to supplement the previous comments, with which I agree, is that, overall, the services exports of the

UK are about £300 billion or so, of which about 20% is financial services and 32% or so is other business services, which include all the categories that Sally and Sam alluded to.

Because of the importance of financial services—not just banking but the whole realm of financial services—a lot of other professional and business services are related to the provision of those services. That is particularly true of City of London law firms, accountants and business consultancy services. A lot of their services ride on the back of financial services. The ecosystem for financial services is not just banks and investment houses; it is also lawyers, accountants and related professionals. There is significant interaction between them.

Q2 **Baroness Neville-Rolfe:** Welcome to you all. Could I ask each of you to talk in turn about the key areas of strength and innovation in the UK's professional and business services industries? For example, some people do not always associate the legal profession with innovation, but I, knowing it well, am aware that there is rather a lot of innovation. It would be good to try to tease that out for our inquiry.

Shanker Singham: Following my previous comment, the power and strength of the ecosystem in the City of London in particular, consisting of financial services, lawyers, accountants, et cetera, is incredibly innovative and world-leading. I use that as an example, but there are lots of professional and business services all over the country in lots of areas unrelated to financial services.

One of the issues with the provision of such services is how you measure them. It is quite difficult to measure them because frequently lawyers, accountants and consultants in those areas do work for clients all over the world; they service deals that are global, but often the transaction itself is booked in London. Services numbers are self-generating in the sense that you self-certify; you say how many services you provide that are international, cross-border or whatever.

Services numbers in relation to the importance of the sector are often underestimated. Actual cross-border services consumed abroad, when a lawyer represents a client from another jurisdiction but provides those services in the UK, are also an export of services. Even education services, which are not part of the specific remit of this Committee, are a massive export for the UK. Every time a foreign student comes to a UK institution, that is an export of services, but it is not often regarded in that way.

The numbers are much lower than the sector itself merits. It is much more important than even the numbers suggest and, particularly with respect to London, it is among the most innovative sectors in the world. It is a great gem that we have in the UK.

Sam Lowe: Thinking about why the UK has been successful in the sector and has managed to be so innovative, I would emphasise that it is the UK's ability to attract people from all over the world. Getting the best and brightest from wherever has been hugely beneficial to the sector. It also

allows the UK to export, because we have expertise from other countries. Those people are able to operate in those countries because they know the language and the local context, and they can do so from the UK or from a UK base of operation.

I do not have much to add to Shanker's point. I re-emphasise the data issue. He is completely right to say that services exports are probably undervalued in the numbers on paper and we probably do quite a bit more, but it is very difficult to estimate it correctly. The UK and the US have had projects trying to sort it out, because we think we have a surplus with them and they think they have a surplus with us. How do you work it out? The ONS is talking to them about it, and they concluded they were not able to resolve the problem. It is difficult, but it is important to emphasise that the numbers are probably much greater than we traditionally understand.

Baroness Neville-Rolfe: Sally, perhaps you could comment on the role of small and medium enterprises, on which I know you are a bit of an expert. You mentioned them at the beginning. We are very interested in the combination of innovation, small business, regional spread across the country and spread in services, not only the big or small city firms but advertising, architecture and lots of small things across the country.

Sally Jones: If I were to call out a strength of the sector, it would be its professional bodies, with the chartered status that is conveyed to their members. A chartered accountant from the UK is recognised as an expert in financial matters around the whole world. Likewise, a lawyer regulated by the Law Society or the Bar Council is recognised around the world as an expert in his or her field. That is down to the strength of our professional bodies.

I have a couple of points about smaller and medium-sized firms. The first is that, although I agree with Mr Singham about the strength of the City, more than two-thirds of people operating in professional business services are not found in London and the south-east at all; they are truly spread around the whole country. They are the high street lawyers who do your probate or conveyancing, or the high street accountants who sort out your annual accounts when you turn up with a shoebox full of receipts that you tip on to his or her desk. Those are the people who make up the vast bulk of our sector. Without them, the entirety of the UK economy does not get lubricated; it does not flow in the way it needs to in order to be of relevance and for the rest of the country to have a sense of security that things are working in the way they should.

You mentioned advertising, Baroness. The Advertising Association estimates that, for every £1 spent on an advertising campaign, a business will get £6 back in increased revenue and profit. We see ourselves as an enabler of the whole of the UK economy, from the high street all the way up.

Baroness Neville-Rolfe: That is very interesting. Sam or Shanker, would you like to come in on the small business angle?

Shanker Singham: I echo what Sally just said. There is a whole range of service providers, particularly small and medium-sized providers, who are not really engaged in the export of services around the world; they are very focused on the domestic and local economy. They are a significant number.

The professional and business services' relationship with financial services out of the City of London is a unique ecosystem for the UK and is very much a gem that needs to be protected and advanced.

Q3 **Lord Sharkey:** Can you help us to understand a bit more about the scale of things? For example, how important are EU markets to the UK's different professional and business services sectors? Are any of those sectors or sub-sectors particularly reliant on trade with the EU?

Sally Jones: It is a really important market for PBS; it is about a third of everything we do on an international basis. It would be unfair to say that it was anything other than a critical market for us.

As to which sectors are most reliant on the EU market as opposed to the rest of the world, I would call out, in particular, audit and accountancy and legal and management consulting. That is not to say that others do not have an equal stake in the EU market, but for various structural reasons oftentimes they have other interests too.

To take advertising as an example, adverts tend to be written on a global basis, because something that resonates with a British audience oftentimes resonates with a Japanese, American, or Australian audience and so on. About a third of global adverts are written not just in London but in Soho, because it is such a hip, trendy and exciting place to be. I would not like to overemphasise the importance of the EU, because there are all kinds of global businesses that are critical for our sector as well, but I would not like to underplay it either.

Shanker Singham: We have to distinguish the services that are purely domestic. Some of the ones Sally talked about are focused not even on the UK market but on the locality in which they operate. Within the 32% of the export of UK services that constitutes professional business services, which is the biggest sub-sector—bigger than financial services, for example—the biggest export market is the US. Obviously, the EU is a very important market for those providers as well. If you break down the European Union, Germany is probably the biggest market for the export of UK services within the EU. Switzerland is a very important market for the export of services. EEA members are important too.

Sam Lowe: It might be useful to elaborate on some of the benefits to services providers of being in the EU, over and above trading outside the EU framework or trading under a free trade agreement framework. The No. 1 benefit I would identify is freedom of movement, in that it removes a load of concerns about what you are able to do when you fly into a country to deliver a service. If you are an engineer and you are flying from the UK to work on a product in, say, Valencia for Ford, your qualification is

recognised. You do not have to worry about a work visa, or whether you are covered by a temporary business visa or the like. You can deliver.

There are also positives on the right to establishment. It is much easier to set up in another EU member state than it is from the outside. The EU does not put up too many barriers to doing that from outside the EU, but there are some member state-level reservations.

The other big benefit, although it is not very well defined, is temporary cross-border provision, whereby your professional qualification can be recognised temporarily if you are providing a service from the UK in another member state. That does not exist very frequently, at least in highly regulated services, if you are trading from outside.

A point to add to the general discussion on SMEs is that a lot of smaller SMEs do not think they are linked to the broader global market, but they are. A lot of them service local manufacturers, and because they are servicing local manufacturers their value is, I suppose, generated ultimately through a manufacturing export. The value added from services embodied in manufacturing exports is significant. It has been estimated that it is similar to the financial services in value. That will capture quite a lot of smaller SME services providers. They may do the accounts for a local manufacturing firm, and do not think they have any link to the outside world, but if barriers to trade were to go up, in that instance on manufactured goods, it would impact their business too.

Sally Jones: Perhaps I could make one minor point of clarification. Mr Singham said that the US is the single biggest export country for PBS. That is correct. It was about £27.7 billion in 2019. However, the EU as a collective bloc is bigger; it was £39.8 billion last year. I wanted to make that clear.

Lord Sharkey: Bluntly, what benefits has the single market brought, and to whom? Sam may have answered some of that.

Sally Jones: I absolutely echo what Sam said. To take a step back, as a sector we are just two things: people, and knowledge and data. Those two things bring all the value we have. Being able to move the right people to the right country to service the right client in the right way at the right time is critical to our success. What enables that from the EU? First, it has been the free movement of people; secondly, it is making sure that we can identify the right people to do the tasks that largely, but not exclusively, are done through professional qualifications.

For my sins, I am twice chartered; I am both a chartered tax adviser and a chartered accountant. If I want to ply my trade in a European country at the moment, my professional qualifications will be largely recognised. I may have to do some small additional pieces of work to demonstrate local knowledge, but, on the whole, the vast majority of my qualifications will be recognised in that overseas country, which makes it vastly easier for me as an individual, or as a member of my firm, to go overseas and work.

Shanker Singham: It is clear that deeper integration, in the agreements that the UK has through the EU in the single market, has contributed to creating a pooled market that has greater opportunity for service providers in the UK. We have to be specific about exactly what the benefits are and how they can be replicated in other ways. The UK is now negotiating a free trade agreement with the EU, and the services negotiations will include a number of things that are critical to the UK. We will have a very different approach in the agreement, as opposed to a single market. The single market is much more of a harmonised set of regulations; a free trade agreement looks at the barriers and tries to reduce them, so it is coming at it from a different perspective.

While the single market has been advantageous, in services in particular there are many areas where member states are different with respect to the rules that underpin regulation and so forth. It is not that everything is exactly the same in every European member state. That is particularly true in banking with respect to how the regulators operate. It is important to understand that the single market does not mean that it is completely homogeneous, and that is especially true in the services area.

Sam Lowe: A useful comparator is that, at least on paper, the EU approach to mutual recognition of professional qualifications is more effective than the approach of the US in recognising qualifications within its own territory and between its own states. I say "on paper", because, in practice, language causes quite a lot of difficulty within the EU, in that your qualification might be recognised but if you cannot speak the language— *[Inaudible]*

Lord Sharkey: That will be dealt with in later questioning. As a former advertising man myself, I would like to conclude by thanking Sally for her endorsement and her remarks about Soho. How true they were.

Q4 **Lord Cavendish of Furness:** The future of the EU-UK relationship on services, including professional and business services, seems to receive less attention than the arrangements for goods. Do you agree with that assessment? If so, why do you think that is the case? In answering, is trade in services receiving enough attention in the current negotiations?

Sally Jones: I should first explain that my cat has managed to open my kitchen door and is trying to get on to my lap. It may be easier to let him do that rather than for me to try to bat him away. I am really sorry. Please forgive me.

Lord Cavendish of Furness: Welcome, cat.

Sally Jones: To answer your question, it is fair to say that, so far, goods have had more attention than services. That has been for very valid reasons, not least because goods are far more relatable for most people. Everyone goes to the supermarket. They buy a packet of grapes and see that they have come from South Africa; they buy a bottle of wine and see that it comes from France. People get the international nature of goods very readily and in a very relatable way.

Services are slightly different. Part of that is a combination of the fact that services that people consume on a daily basis are often not things they pay for—for example, the National Health Service does not automatically feel like something they are buying—or they are not international services. When you get your hair cut, it is a service, but it is not international, so you do not think of it in the context of cross-border trade. It might be something that you do not do every day. You go on holiday, which is a tourism service, but it is a once-a-year thing and therefore not something people tend to think about on a day-to-day basis. I think that is one of the reasons why goods have had more attention in the debate than services.

The officials we deal with at the Department for Business, Energy and Industrial Strategy and the Department for International Trade are very much on top of their brief. They truly understand the importance of services in the context of both the EU negotiations and the rest-of-world negotiations. It is more that the public debate has not had quite the same level of attention.

Sam Lowe: It is a very good question. I have three reasons why services might not have received the same attention as goods. First, I believe that, on the future relationship, the British Government accepted the trade-off on services much earlier in the discussion than when it came to goods. Right from the beginning, once the UK voted to leave the EU and discussion was beginning, the talk was, "Well, we don't want freedom of movement and we understand that means we cannot be in the single market for services".

Once that trade-off was acknowledged, all of a sudden there was some implicit acceptance in the sector. Of course, people got a bit annoyed; we had lots of discussions about mutual recognition in financial services and the like, and lots of dead ends, but a lot of people understood at least the basic parameters of what was going to be discussed and that it was going to be very difficult to budge the Government on that. In my opinion, the argument on freedom of movement was lost prior to the referendum, and it would have been difficult to win it afterwards.

Secondly, the political optics of putting up barriers to trade in services are not the same as putting up barriers to trade in goods, by which I mean that you do not get the first slot on the "Ten O'Clock News" if you put up barriers to trade in services, because if they were going to try to film it they would have to film some lawyers requalifying in Ireland or the like. It is not quite as exciting as filming trucks backing up from Dover, and because of that it just does not cut through to the public as readily.

The third reason is that it is very difficult to discuss trade in services. We are not talking about a tariff. We are not saying, "Well, if we do this, there will be a 10% tariff on me going to talk to someone in Belgium". We are talking largely about regulation, very often local regulation and qualifications. We are also talking about an area where there are a lot of workarounds, to varying degrees, depending on the sector, where you do not necessarily need to do something in a free trade agreement. You might

be able to do it by talking to the local qualification body or the like. It becomes much more convoluted and complex very quickly.

Lord Cavendish of Furness: Shanker, do you agree with those assessments?

Shanker Singham: Yes. There was a reason why, in the UK, we used to call such things British invisibles. It is very hard for people to see what is going on. As both witnesses said, when a good crosses a border, a tariff is applied or not and it is very obvious what is happening. With services, it is about the regulatory system you operate under and about requalification, if you have to requalify. I am qualified as a lawyer in both the UK and the US. I had to go through an elaborate, very painful, and wholly unnecessary requalification process in the US, but that is the sort of thing you have to do to avoid those kinds of services barriers.

Services have attracted less attention because there are very obvious conflict points in the negotiation between the UK and the EU on goods, from things such as fisheries, which we all hear about every day, to issues with customs and border controls and so on. If you are a manufacturer and a very high tariff means that you cannot run your business economically, you have to move factories. Major decisions would have to be made, but for qualifications, while it is an impediment—certainly, it was for me when I had to requalify in the US—it is much less insurmountable. With respect to legal services, most of the major legal firms, if not all, that have significant European trade have ensured requalification for their lawyers either in Ireland or in other jurisdictions. There are workarounds you can do in services, and because of that there is less focus on them.

To go back to the City of London ecosystem, a lot of financial service providers have already made their arrangements; they have already assumed that there will not be an agreement between the UK and the EU. Their timelines are quite long. They cannot wait until two days before the negotiations are concluded; they have to plan before that. Having made their plans, the trade agreement is of much less relevance.

The trade agreement is of great relevance to a service provider experiencing barriers and restrictions among EU member states. They will want the trade agreement to deal specifically with those barriers. I think we will come on to talk about the various WTO and other frameworks that operate to do that.

Lord Cavendish of Furness: Shanker, my time is up, so we will come back to that in injury time.

Q5 **Lord Thomas of Cwmgiedd:** Could I ask you about the barriers that may be put in place if we fail to reach an agreement with the EU in relation to services? I do that in the context of what was said by the Professional and Business Services Council in October 2016. It suggested that in many cases professional and business service providers "may face an absolute barrier to trading" under WTO rules. Do you agree? Could you give us some examples, contrasting what happens in the absence of an agreement with

the EU covering services? Could we start with you, Sally, because you are on the body that made that statement?

Sally Jones: I am indeed, and I stand behind it. There are parts of services provision that would be absolutely prohibited absent a free trade agreement. I will give a couple of examples. I emphasise that in giving these examples I am not commenting on the likelihood or otherwise of them being included in a free trade agreement.

In the audio-visual sector, which includes advertising, if a channel is broadcasting content to the EU market, it must be EU resident. That means not only the entity that holds the broadcast licence but the controlling minds that determine the content that is to be broadcast. Those individuals must themselves be physically resident in the EU. To take an illustrative example, if the BBC wished to broadcast content to the EU, it would need to have both establishment and editorial content providers based physically in the EU.

Another example is legal services. Although Mr Singham rightly said that most law firms are looking to have people requalify with Irish qualifications, that is not always enough. Greek shipping law has an associated nationality requirement. One must be an EU national in order to practise Greek shipping law. You would be perfectly entitled to say that Greek shipping law does not sound that important, but for the fact that it is the shipping law that governs the containers that flow goods all around the world all the time, and, for historical reasons, London is the leading centre for Greek shipping law. It does matter and requalification is not always sufficient. There are some things that will be absolutely prohibited when we leave the single market absent a free trade agreement.

Sam Lowe: With the caveat I made earlier that it is difficult to talk about the sector in the aggregate, when you look at how the EU deals with services imported to its territory from outside, it is fair to say as a rule of thumb that it makes cross-border trade quite difficult, but it is quite open to establishment, so it tries to incentivise companies to set up within its territory. If they set up in one member state, broadly speaking they can trade across the entire EU, but it puts up significant barriers to cross-border provision in the regulated sector, more than, say, in advertising or management consultancy. To give an example, building on legal services, most member states make commercial presence or establishment a condition of access. They include Austria, France, Germany and Ireland.

When it comes to establishment, there can be other issues. Denmark requires that 90% of the shares of a law firm are held by an EU resident or someone qualified in the EU. These things pop up out of nowhere. As Sally recognised, sometimes there are nationality-based requirements. In order to deliver a service, you have to be an EEA national, and sometimes Switzerland is included. For example, for legal services Belgium and Cyprus place nationality-based conditions on representation in domestic courts and membership of the domestic Bar.

Those can be significant hurdles for some people in certain circumstances, and they point broadly to the issue that the UK will face when it is outside the single market. There will be quite a few new barriers to trade and cross-border provision of services, so it will become much more difficult to do things from the UK. However, it will still be fairly easy for companies to operate as long as they set up a subsidiary within the EU 27.

Shanker Singham: The other witnesses have talked about two sorts of barriers basically. The EU-wide barriers that have been suggested are also domestic member state barriers. My point about the single market is that a lot of member state restrictions are limited purely to those member states, in local content, local presence, performance requirements and that sort of thing.

It is important to look at the WTO floor. There are disciplines in the WTO that cover all four modes of service provision: cross-border supply, consumption abroad, commercial presence, and movement of natural persons. The WTO commitments are pretty thin. The built-in agenda in the WTO needs a lot of work, which is one of the things that I think the UK as a major service exporter should be pushing. In the trade agreement itself you want to build on that; you want disciplines on national treatment and market access to ensure that those barriers cannot apply vis-à-vis the UK and the EU.

In default of an agreement on any of those, there are workarounds you would have to do, but they increase your costs and will have an impact on the efficiency of UK services provision. That is why I think a trade agreement with a strong services chapter is necessary for the UK.

Q6 **Baroness Couttie:** I would like to build on some of the points you made earlier to try to understand how effective the EU's current trade agreements covering business and professional services are in removing barriers, and how that dovetails with the ability of individual EU states to overlay those agreements with their own domestic policy, which sometimes can have some protectionist-type impacts. How is it working overall, and is it as effective as perhaps we like to think?

Shanker Singham: Looking at all the trade agreements, I mentioned earlier that you start with the WTO as the floor and the GATT agreement back in 1995 when it was put into practice. It is a very thin agreement. It was the beginning of the introduction of services in the WTO system. At the same time, NAFTA had extensive services provision by the standards of the time. Because it is a major services exporter, the US has very much included services in all its agreements.

Baroness Couttie: I think you may have slightly misunderstood the question. I was thinking of EU states that, on top of the EU agreement that apparently allows the free flow of services, overlay that with their own domestic policies, which then shut out certain services.

Shanker Singham: That is right. I was going through the whole global context. I think the EU's agreements on services are somewhat behind

where the US is on services liberalisation, but they are catching up quite quickly. That is not surprising. There are the EU-Canada and EU-Japan agreements. EU-Canada was the first agreement with a positive services list approach, which means that everything is covered unless it is specifically exempted. Japan was the first agreement with a regulatory co-operation and co-ordination mechanism. The EU is moving forward in that way to get deeper and deeper into the kinds of barriers and issues that you raise, but it is certainly true that there are many restrictions between member states in the services context, with respect to national requirements, local content restrictions and those types of things.

In the negotiation with the EU, the UK will need to address those issues; they are not just EU-wide barriers but specific member state ones. They are usually addressed in the context of specific annexes that deal with those things.

By analogy, if you look at the WTO schedules of countries, you see that countries and the EU make binding commitments, except for certain areas. They might make a binding commitment in a market access area and then specifically call out internal rules or member state rules where those commitments are not applicable. Because the WTO level involves countries affirmatively putting their services schedules on the table for negotiation, the agenda in the WTO is relatively thin. It will be very important in the UK-EU agreement to ensure that the UK captures all those domestic member state barriers as much as it can.

Sam Lowe: The impact of EU free trade agreements when it comes to services, over and above the impact of just trading on the basis of the GATT commitment, practically speaking is not much. However, one of the benefits is that they succeed in locking in actual levels of access beyond that which is committed to as a floor under the WTO/GATT.

Those commitments are a floor. Lots of member states go beyond the commitments in the access they allow. Some EU free trade agreements have succeeded in lifting the floor, locking it in and making sure that in the context of a free trade agreement between, say, the EU and Japan, the EU and that member state cannot row back below that. The issue is that there are EU-wide commitments and then all the reservations made by different member states. Those vary quite widely. You have to go through the schedules to work out what they are.

We have to understand what trade agreements focus on. They do not focus on the regulatory side; they do not focus on issues such as licensing and the like. That is largely untouched, as it is in the WTO context. There are vague commitments about not being deliberately discriminatory or something like that, but it is not very well understood or enforced. What they focus on is market access in the sense that, "We commit not to put limits on the number of your companies selling into our territory", or, "We commit not to put limits on the value of trade done with us", or, "We commit not to put limits on how you invest in this country", as in whether you have to enter into a partnership or the like with a local partner. Those are the sorts of issues. They do not deal with the regulatory space.

That points to the issue that free trade agreements struggle to unlock further liberalisation because of the difficulties inherent in liberalising services: "You have to trust that I in country Y"—say, the UK—"am qualified to give you the advice I am giving and that, if I give you bad advice, I can be held to account for it". That is difficult to do without recreating institutional frameworks similar to those that exist in a national setting at supranational level. It has been attempted within the EU but, as has been discussed, has got only so far. Even with the recreation of the legal system, and having enforcement at EU-wide level and all the overarching architecture, the single market in services is still not as developed as the single market in goods.

Liberalising services is very difficult. A good free trade agreement at the end of this year is preferable to not having one, but it is not going to save the services sector. It is not that different from trading without one, except in a few specific areas. You can look outside PBS, at telecommunications and the like, where maybe it does a bit more.

Sally Jones: I would probably take a much more practical perspective. I agree entirely with what Sam said about locking in certain levels of access in theory, but in practice it does not work through free trade agreements, certainly not the EU ones. As Sam says, it is a combination of reservations that are, effectively, situations where a country says, "We will commit to this level of liberalisation, except for this thing that we carve out as a reservation". The EU has a number of reservations. You can look at the EU-Canada deal and how many reservations the EU has in place. If we had those reservations in the UK-EU deal, it would be pretty catastrophic for services.

Often, the commitments are to set up a framework for co-operation that is not in itself forcing co-operation on to the regulators. CETA and EU-Japan both include frameworks by which regulators from each side can mutually recognise the other's qualifications, but in practice not a single qualification has been mutually recognised under any of those deals, because the regulators cannot come to an agreement. In practical terms, it does not really work.

Baroness Couttie: Those are for free trade agreements with the EU outside, but, within the EU, the EU nations have various criteria by which they stop other EU nations being able to perform services in their countries.

Sally Jones: Not as much as you would think.

Baroness Couttie: The country I know most about is France. I can think of a number of areas where it is quite difficult to set up a service there.

Sally Jones: It is. One of the problems that any service provider has to deal with, as Mr Singham said, is whether the domestic regulation prevents you doing what you want to do. If it does, is there an EU directive or regulation that eases the situation?

In my field of audit and accountancy, the statutory audit directive goes some way towards helping to ease domestic regulation that would otherwise prevent somebody from the UK going to Germany, or wherever it might be, in order to ply his or her trade. It is the multiple levels of review that are needed before you can establish whether or not you are even able to provide the service that cause the issue. That is why, when Sam says that the single market for services is not as liberalised as the single market for goods, I would have to agree with him, but there is definitely some scope there.

Q7 **Baroness Prashar:** What is your assessment, and the assessment of the UK professional and business services sectors, of developments in the UK and EU negotiations so far?

Sally Jones: Three rounds of negotiation have been concluded so far, and the fourth round of negotiation is taking place as we speak. My understanding is that services have been discussed, but neither side has had a great deal of opportunity to explore more broadly areas of co-operation and disagreement between them, so it is not possible at this stage to say to what extent the EU negotiations have gone well or otherwise when it comes to services.

We are very clear on what we want from those negotiations. We want minimal market access restrictions, particularly around establishment. We want a mobility framework that gives a broad definition of short-term business visitors, because the EU standard definitions would not really work for us. On a slightly technical point, we want accession for the UK to the Lugano convention so that legal decisions are binding on both sides. We want the adequacy and equivalence decisions that are taking place outside the framework of the free trade agreement negotiations to proceed at a similar pace. Those are our four big asks of the negotiations, but, as far as I am aware, significant progress has not been made on any of those points.

Sam Lowe: It is interesting to think about the UK's proposal and identify areas in which it is asking more from the EU than it normally offers in its free trade agreements, rightfully so. I have even advocated in the past that it asks for those things, but we have to acknowledge that the political narrative around that is not necessarily quite correct.

On mutual recognition of professional qualifications, the UK is proposing a framework in which, the moment a UK-registered professional applies for their qualification to be recognised in an EU member state, the default is that that recognition is granted, subject to an aptitude test. What would be different from what exists now is that there would no longer be temporary recognition of that qualification if you were selling cross-border. That would go. That is how it differs from being within the EU single market.

That goes beyond what the EU normally offers, to go back to Sally's earlier point, because usually when the EU talks about mutual recognition of professional qualifications in the context of EU-Japan or EU-Canada, it discusses establishing a framework in which the regulators are encouraged to discuss it with each other and, hopefully, ultimately get to a place where

they recognise each other's qualifications, and it does not work. The UK has looked at that and said, "How about we design something that works?" Will the EU go for that? It is a subject for negotiation. It certainly will not discuss it now, but I hope it might discuss it if some of the more politically contentious issues are resolved.

The other area where the UK has made a proposal that could be beneficial for UK exporters of professional business services is in what is known as mode 4 services—the temporary movement of people to deliver a service. Here, the UK has increased its ambition over and above what it historically offered in its free trade agreements. To give an example, when it comes to intra-corporate transferees, the UK is proposing that the EU and the UK agree that that could apply for five years, so people could move for five years with the possibility of an extension. The normal EU proposal is three years in that instance.

The UK has upped its offer on the movement of contractual services providers and independent professionals. I think it is now up to the EU average, but I can come back to you with the exact number. I have to check it, because I do not want to mislead the Committee. The point is that in some areas the UK is proposing some ambitious provisions, but there are still a lot of questions. We are still unsure about what categories would apply to short-term business visitors. What would you be allowed to do while you were there? The UK proposal has been left blank at the moment, but I expect it to be filled over time.

Shanker Singham: This relates to the last question as well. I think the way to look at these trade agreements is that they are not set in stone; they are evolving. There has been a gradual evolution of the EU's agreements, for example, towards where we are with the EU-Japan agreement, which is the most recent. The mandates of the two sides are quite encouraging with respect to regulation, because they are both committed to good regulatory practices, which is a term of art in trade negotiations. I think the US has been a bit more advanced than the EU, but the EU has now accepted that good regulatory practices would be part of the UK-EU free trade agreement, and domestic regulation would be part of the agreement. That is where, certainly from the UK side, we would want an agreement that is much more comprehensive than what has gone before. Logic would take you to that because of the interconnected nature of the services.

With respect to the negotiations and all the things that the UK has rightly asked for, we have to remember that a lot of these things are not just what the UK needs on access but what the EU itself needs. A number of service providers in the EU very much need access to the UK market, and to be able to travel to the City of London and meet people in the UK jurisdiction. We will have to get through some of the more contentious bits of the negotiation that are being discussed in today's round in order to get to the other side, where we can have a sensible services conversation. The hope is that we will get there and will start having that services negotiation.

When we start having that negotiation, I think we will find that there is more alignment of views because of the interconnected nature of the UK and the EU in services provision. A lot of business and professional services firms have pan-European networks. They all want the same thing; they want their people to be able to travel freely between the UK and the EU 27. They will bring their negotiating leverage to bear when that aspect of the negotiations is taken forward. A lot depends on how well individual business associations and businesses negotiate those things with the EU and the UK.

Baroness Prashar: Given the very compressed timeframe, what do you see as the priorities? You listed what you would like, Sally, but what should the priorities be?

Sally Jones: For me, it would be the minimum market access restrictions and the Lugano convention. As Mr Singham says, the mobility frameworks are within the constraints of member states and therefore are quite difficult to manage absent a good free trade agreement, but there is some domestic regulation scope. The adequacy and equivalence decisions that I mentioned before are outside the terms of the free trade agreement in any case. It is up to each side to make its own determination of those. In our world, there are five different places where audit equivalence is needed to continue to manage the level of regulatory burden that exists now.

Shanker Singham: The whole process of regulatory recognition and mutual recognition is ongoing, and it is very important to see the negotiation not as the end of the relationship between the UK and the EU but as an ongoing mutual recognition process. Regulatory barriers between regulatory bodies tend to be improved, and you get better access and better rules, when there is a high degree of trust between those regulatory bodies, and you allow them to come together to determine the conditions for mutual recognition agreements. That is where the UK and the EU at sectoral level and at the level of the individual regulatory bodies need to make progress.

The agreement will create the framework; it will create the regulatory co-ordination committees and the framework in which one can do that. At the same time, the individual regulatory bodies need to be meeting each other and talking about frameworks—groups of accountants, lawyers and so forth—because they will come to agreements more quickly than the trade negotiators will.

Sally Jones: I want to emphasise that is already happening. For example, architects have already come to a pan-European agreement of mutual recognition of their professional qualifications. I think that is because, in the UK as well as in Germany, a house will stand up if it is built correctly. The laws of physics are standard across Europe and, indeed, the globe.

One of the very few areas where a bad deal is worse than no deal is when the level of regulatory co-operation is lifted to Commission level without allowing member states to come to their own bilateral negotiations. That is one of the important things we will be looking out for.

Sam Lowe: To restate the point, there is only so much you can do with a free trade agreement. We have decided to extricate ourselves from the regulatory architecture of the EU, and that has consequences, particularly for cross-border trade. A free trade agreement can be useful, but it can only go so far.

You asked about timing. My working assumption up to now has been that the EU's offer on services will match very closely its offer to Japan. That is how you do it quickly: you copy and paste the provisions.

Q8 **Viscount Trenchard:** Both sides in the negotiations have said that they want an agreement that covers all modes of trade and services, including cross-border supply, establishment of a commercial presence and the provision of services by people travelling on business trips. How far apart are the two sides' positions on those three areas? In the past, Sam, you have argued that leaving the single market would result in UK service providers moving jobs and revenue generation to the EU. Is it not also possible that we will see an increase in GATS mode 2, consumption abroad, where business is offered by UK-based suppliers to EU clients?

Sam Lowe: That is in reference to a paper that I wrote in 2018, when I looked at how the UK sells services to the EU versus how it sells services to the rest of the world. With the UK and the rest of the world, as is true of nearly everyone, if the UK wants to sell services in a new territory, it sets up an office there. The UK-EU relationship is slightly different in that there was much more cross-border trade, with economic activity happening in the UK being sold directly to the EU.

However, when I looked at other business services incorporating professional business services and asked what would happen if the UK sold services to the EU under similar terms to which it sells to the rest of the world, I saw that there would be a 10% drop in exports directly from the UK. Under the model I was using, it would shift to those services being provided locally within the European Union, which has knock-on consequences for jobs and revenue in the UK. I would stick by that; 10% is not that large. That is predominantly because, in the professional business services space, services sold across the EU now are still largely sold via local offices, due to the need for local knowledge and the fact that the clients like face to face. We are not talking about a huge drop.

On your question about whether it can be mitigated somewhat, we are leaving the EU and the single market, and even under a free trade agreement there will be new barriers to trade when it comes to cross-border provision, and the EU will remain fairly open when it comes to establishment—the ability to set up a subsidiary there. To prevent the drift away from the UK of some degree of economic activity—I do not want to overstate it, particularly in this sector—you ensure that the cross-border provisions are really good. However, because most of the barriers are in the regulatory space, it is very difficult for a free trade agreement to address them.

Viscount Trenchard: Sally, do you agree with that?

Sally Jones: Yes. I generally agree with everything that Sam has just said. On a couple of specifics, on modes 1 to 3, the reservations are missing from the published EU text, which makes it very difficult to understand exactly where in the detail the devil might reside.

On mode 4, the mobility provisions, we still desperately need to understand what the definition of short-term business visitor will look like before we can truly understand how generous or otherwise the mobility offers are from both sides. The UK includes in its text a definition of investor, which goes quite a bit further in creating a framework—I do not like that word, but hey—by which mobility provisions might be allowed to work. Absent an understanding of exactly where the reservations, carve-outs and definitions are going to land, it is hard at this point in time to say how good or otherwise the two sides' offers might be.

Viscount Trenchard: Shanker, do you agree with those two witnesses?

Shanker Singham: A lot of what you have talked about is already happening or has already happened. With respect to mode 2, consumption abroad, it is analogous to the situation with financial services and reverse solicitation rules, where there is a significant amount of European trade. Where you are the market leader—where the UK is the market leader, as it is in some areas—basically your clients will come to you. They will come to London and take delivery of those services in London. That certainly is happening.

The establishment that Sam talks about is already happening. People are setting up operations in EU member states or strengthening the operations they already have in EU member states. A lot of that has either already happened or has been baked in by service providers.

In some specific areas, it is important to look at these agreements as evolutionary, as processes. I would be loath to describe any kind of EU FTA in terms of another country. I would never refer to Canada-plus, or anything like that, because it will be a sui generis agreement. It will be sui generis because of the nature of the services provisions between both sides. As I said before, a lot of these things are subject to negotiation. It is normal in a trade agreement to have placeholders. Normally, at this point in a trade negotiation, you would not be publicly showing your text to everybody; you would share it with the other side and negotiate the square-bracketed text and the placeholders.

The UK has a clear interest in a very strong cross-border delivery mode 1 offering. It has a very strong interest in mobility and ensuring that there is a very easy road for temporary business visas and that sort of thing. But the EU has similar interests. EU firms and deals will require servicing by the City of London, by financial institutions, law firms, accountancy firms and consultancy firms, and they will want access to that large ecosystem.

Lord Vaux of Harrowden: Sam Lowe, you talked about a potential loss in tax revenues. Have you been able to quantify what it might be?

Sam Lowe: No, and I have not attempted to. It is quite difficult, because you have to make assumptions as to where the profit is banked. Just because the economic activity might take place somewhere else does not necessarily mean that the profit is banked in that country; it could still be done in the UK. There is some further work that I probably need to do, but I have not done it yet.

Q9 **Lord Vaux of Harrowden:** I should declare that I am a chartered accountant.

To go back to the point about mutual recognition and dig a little more closely, how important is mutual recognition in practice and reality? In theory, it sounds great, but in my experience I do not think I ever used mutual recognition doing stuff throughout Europe.

Sam, you have already touched on this. The Government's proposal to have British qualifications recognised by default does not come from precedent in other FTAs. What are the benefits and drawbacks of that approach against the approach preferred by the EU, and how likely is the EU to agree to it?

Shanker Singham: You make a very good point. When I was doing international trade legal services work for clients in Washington, London and Brussels, as a matter of practice I worked with qualified people in those jurisdictions. I would not seek to try to provide all the work myself through a mutual recognition mechanism. The real issue is whether you can do that and have a flexible and efficient system whereby you can operate as a firm in all those different jurisdictions.

With respect to mutual recognition and professional qualifications, there is no doubt that what the UK seeks is more advanced than has generally been agreed. Mutual recognition of professional qualifications obviously exists in CETA, albeit in a fairly framework fashion, but the Australian and New Zealand mutual recognition provisions are probably the most advanced mutual recognition provisions of any agreement anywhere in the world. I think that is a clue to where we are going. They exist in that way because of the incredible interconnectedness between the Australian and New Zealand economies. We have a similar situation, whereby the UK and the EU 27 are very interconnected. As I said, pan-European law firms regularly do work that involves parties from all their office structures, and they want to continue to be able to do that.

I come back to the point about mobility. As you said, you did not use the mutual recognition provisions especially; you used qualified people in that jurisdiction, and they would probably be in your office in that jurisdiction. The ability of partners and professional services providers to travel from office to office is actually quite important, although we are seeing with some of our approaches as a result of Covid-19—today, for example—that there will be greater use, even after the pandemic, of these kinds of mechanisms. Where you might previously have got on a plane or a train to meet at your office in a particular jurisdiction, we may not do that as much. We will certainly do it a bit, and we certainly want strong mobility provisions, but we may not do it as much.

Sally Jones: There are some professional qualifications where mutual recognition is almost seamless, if not actually seamless. In engineering or architecture there are universal laws, and medicine is another one that is pretty good. There is decent mutual recognition, with very few requalification requirements.

On the specific example of accounting, it becomes an issue if you do not have mutual recognition of professional qualifications when a partner signs an audit opinion, as opposed to more junior members of staff who might be involved in the consolidation of a subsidiary's audit results in the head office results. That kind of work is more about audit working papers and regulatory matters.

At the moment, the EU uses a framework by which audit working papers prepared by a firm in one country can be relied on by a firm in another country without adverse regulatory impacts. That is a separate matter; that easement would go away if there was not some form of regulator-to-regulator level recognition between the UK and the EU. There are all kinds of separate layers of regulation that matter in different professions in different contexts, and unpicking those very complex interrelationships is what makes it so difficult, as Sam says, to liberalise the services market.

Sam Lowe: Part of the question was implicitly about whether the UK offer was a good thing. I think it is pretty good; it is better than what exists in the EU free trade agreement, and I hope it could be negotiated. It is not out of the question that it could be negotiated, subject to the big political thorny issues being resolved. Of course, those are discussions for another day.

On how useful it is, Sally alluded to this earlier, but it is worth reiterating that we have to be careful, in that a very bad agreement on mutual recognition of professional qualifications could create issues if it removed the ability of member states to resolve issues with the UK bilaterally. That could pose a particular problem in Ireland, in that there needs to be mutual recognition of professional qualifications between the UK and Ireland because of Northern Ireland, to ensure that issues can be resolved there. If the framework took that ability away from the member state and leveraged it up to Commission level, it could cause some problems there—if the framework was bad; if it is a good framework, excellent.

Q10 **Lord McNally:** I am glad that Sally is still doing her Blofeld act.

We want to talk about most favoured nation provisions. Sam, first, for me and many others who will be listening, what are most favoured nation clauses in a treaty or trade agreement?

Sam Lowe: Usually, most favoured nation in a trade context relies on the notion that, in the absence of a free trade agreement, the UK, in this example, has to give the same trade treatment to every other country. However, for the purposes of this discussion, I believe that we are talking about forward-looking most favoured nations. That is where there are provisions in a trade agreement that if, in future, the other partner country

offers greater access to its market in a trade agreement with another country, we get that too.

It specifically applies largely in the services sector; sometimes it applies to goods, to a degree, as it does in EU-Japan, but mainly it applies to services. There is a question about whether it means that if the EU is doing an agreement with the UK in which it grants more ambitious services provisions to the UK, it will automatically also have to offer them to Japan, for example. That could lead to the EU not wanting to grant them to the UK, because of issues with Japan.

My line on it is that I am not convinced that it is the biggest problem, because there are quite a lot of caveats to the provision. To go through them, the provision does not apply if you are creating an internal market; of course, that does not apply in the UK's case. It does not apply if there is right to establishment; we will see with the UK. It does not apply if it requires approximation of legislation. That is quite vague. My view is that if the ultimate UK-EU relationship is plugged into a broader association agreement, you could probably claim that it is not qualified or covered by MFN.

As for what the UK has asked for in areas where it might cause problems, it does not apply to regulatory matters. It does not apply to qualifications licensing, and the like, so the UK asking for more mutual recognition and professional qualification does not pose a problem; the EU will not have to offer that to Japan immediately.

I have questions about the UK's offer on mode 4, the temporary movement of people to provide services. This is my interpretation, and I definitely recommend that you get a second opinion. It is quite convoluted and I admit that I might have misunderstood and got it wrong. I want to caveat that, because I do not want to mislead the Committee unknowingly.

My view on mode 4 is that the UK is recommending that the UK and the EU agree longer lengths of stay—for example, intra-corporate transferees being able to stay for five years, with the possibility of extension. This is more than the EU has offered Japan, which is three years, and I do not think that is covered by the most favoured nation principle in the agreement.

One thing that could be covered is the list of accepted activities for short-term business visits. I caveat this, because I could be wrong. It might be covered, and if it is covered it could create a problem if the EU and the UK want to expand the list to be more expansive than it is in EU-Japan, because the EU would then be bound to offer it to Japan as well. Taking all the caveats into account, none of that might apply if the agreement between the EU and UK was comprehensive enough.

Lord McNally: Shanker, in both the EU and the UK Government's legal texts, there are placeholder provisions for most favoured nation treatment. What do you think will go in those placeholders? Do you have any speculation?

Shanker Singham: With respect to the MFN provisions, there are two issues to think about. First, there are the provisions in the placeholders themselves, and Sam touched on a lot of that. It is very important to note that, with services provision, generally parties would accord service providers of the other party treatment no less favourable in like situations for service providers of a third country. That is the sort of threshold first of all, before you even get into the specific exemptions that might exist in the agreement itself. Like situations do not always apply, and that has to be considered.

The second element, as Sam said, is that MFN-type provisions do not generally apply to mutual recognition and regulatory recognition-type arrangements. That is partly a legal matter, because it is very difficult to see that they are in like situations, so they would not generally apply.

The third piece, which has attracted quite a lot of attention, is the impact of the existing EU MFN provisions and obligations, which the UK and EU will have to think about. Those are the CETA and Japan MFN provisions. They are quite nuanced. There are specific exemptions in audio-visual services and air services, as well as services normally provided by Governments. There are the annexe 2 exemptions that Sam referred to, the approximation of laws and all those things.

The CETA MFN provisions were put in place very much because the Canadians were conscious that the EU and the US were negotiating a TTIP at the same time, and they wanted to make sure that the Americans did not secure greater benefits from the EU than they did. Domestic regulation is not subject to the MFN provisions, and there are exemptions for investment chapter provisions.

On mobility, my view on mode 4 is that generally it does not apply to movement of low-skilled workers, but there may well be an issue with respect to higher-end workers. It will depend largely on what the parties actually negotiate. Clearly, the EU will not want, and I do not think that either party will want, their MFN provisions to open the door for other negotiations with other parties to have equivalent commitments made through the back door of MFN.

On the CETA MFN applications, the Committee might be interested to know that, two years ago, we got a legal opinion from Canadian counsel as to their full effect. I can share that with the Committee if it would be useful in your inquiry. It is a very complex and nuanced area, so it will very much depend on what is in them and what the parties say. It will be driven by the services providers, which are generally pan-European in the sense of being UK and EU 27. They will want certain things from the agreement; they will want certain things on mobility that they do not necessarily need for the rest of the world. It will be up to them to ensure that there are appropriate provisions in the placeholders.

The Chair: Sally, I am going to have to ask you to be rather brief on this question, because we are starting to run over.

Sally Jones: No problem. I have nothing to add to Sam's erudite comments.

Q11 **Lord Davies of Stamford:** I am most impressed by the extremely detailed knowledge that our three guests have displayed this morning. We have had very good value, and I am sure that we are all very grateful to them. The question that I was going to ask has been rather overtaken by other answers.

I would like to focus on what actually happens on 1 January if we do not have an agreement and we have not extended the transition period. To take first of all the case of regulated professions, such as chartered accountants or architects, somebody might have been perfectly legally advising and helping a confidential client on 31 December, but if they carry on doing the same thing on 1 January they will be committing a criminal offence. Is that right? That is my first question.

Secondly, are those in non-regulated professions, such as headhunters, management consultants and so forth, in the same position? Would they be in the same position if they did not actually travel to the country where their client was located, so that they delivered their services entirely electronically, by telephone or what have you? Would that make a difference?

Sally Jones: As to whether it is a criminal offence, you would need to look at the domestic regulation of each country involved, but, potentially, yes. For unregulated professions, it will depend again on domestic regulation and whether there is any form of sanction available. Recruitment consultants will tell you that we have a fairly high level of professionalism in recruitment consultancy in the UK, and they would quite like increased regulation in other countries to create more of a level playing field—excuse me, I hate to use that phrase—between the high levels of UK professionalism and the lower levels of professionalism that you might find elsewhere. It would be wrong to think that regulation is always a bad thing for our professions.

We would look for the easements that both sides accepted were necessary before 31 October and 31 January, and for similar easements to be agreed unilaterally by each side in the event of no deal, with application from 1 January 2021 equally. In the case of the UK Government, we would want continuing recognition of EU qualifications post 1 January 2021 for a period of time, so that there was not the cliff-edge problem. We would look to have ongoing recognition in the UK of EU judgments for a period of time.

Lord Davies of Stamford: That is a sensitive matter.

Sally Jones: It is indeed a sensitive matter, but, frankly, it is to avoid clients being hit by the absolute prohibition that you have just described. It is one thing to say that we would have an issue with it, as of course we would, because we will always meet our regulatory requirements; but it would be more a commercial concern for our clients that we would be most concerned with.

Lord Davies of Stamford: It is obviously a serious situation. I quite understand that a lot of firms like to have regulation, because it raises the threshold of cost of entry into the activity, for one thing. That is a traditional characteristic of regulation.

Sam Lowe: Your question is a very good one. The line I use on this is that I assume in the event of no deal that there will be quite a lot of accidental illegality—people breaking the law without necessarily realising that they are doing so. The question that then arises is what the enforcement regime looks like. How do EU member state regulators or the UK regulator go about ensuring compliance? Is it, as you said, by locking people up? Probably not. Is it by, say, fining people, or is it a process by which they say, "We have identified that you are all no longer compliant with this legislation. This is how you become compliant and this is the pathway to becoming compliant"? We do not really know the answer.

Where the non-regulated professions could trip up is when they move to see clients; again, it is accidental illegality. If they go to the EU on, say, a temporary business visa or just fly in as a tourist, what activity do they do there? Are they allowed to work? Maybe they are allowed to have meetings, but are they allowed to make phone calls from an office there? Those are the sorts of questions that people do not know the answers to, although they can find out, if they look at the individual member states.

They might break the law, but will anyone care? Is anyone going to stop them at the border for doing so? My working assumption is that lots of people who go to the US break the law in what they get up to when they are there. I am not advocating that; I just think it is probably the case.

This point may be a bit broader, because it relates to the negotiations. There is asymmetry in the negotiations in outcomes, in that the UK is unilaterally quite open to the rest of the world for services, which is not necessarily the case with each individual EU member state. I do not think it is actually a problem, in that it is a good thing that the UK is like that, but people operating out of the EU could still continue doing a lot of things in the UK, and that might not be true of UK businesses going in the other direction. That feeds into the negotiation on the trade agreement itself.

Shanker Singham: First, you have to differentiate between highly regulated and unregulated sectors. Generally, the rule, subject to immigration law, which as Sam suggested is a different issue, is that, if no rules apply on local content, certain ownership, performance requirements or other things in the domestic law of the member state, people should not be afraid of doing things. They should be doing things. On the other hand, if it is a regulated sector, without any kind of mutual recognition or other provisions in the trade agreement, a lot of those things would not be authorised under the law of the particular member state concerned.

I tend to agree with Sam that it is a bit of a spectrum. There are service providers and people all over the world doing business right now, as we speak; perhaps not now, but in a normal world they would be travelling all over the place on a tourist visa, or not the correct visa to be doing exactly

what they are doing. I suspect that the way to look at it, if there is no agreement by December 2020, is not as a hard edge but more as a blurred boundary where people will be trying to figure out what is authorised and what is not. Firms will make their own judgments on what they can and cannot do.

Between now and then, and beyond then, the most important takeaway with respect to ensuring that business and professional service providers can operate properly is the idea that it is incredibly important that the UK's regulators and the regulators of member state professions can talk directly to each other about the conditions for recognition and for working together, and that it is not, effectively, done at EU level. It will have to be done member state to the UK.

Q12 **Lord Bruce of Bennachie:** Thank you very much for what you have given us, although you have given us a heck of a challenge as a Committee. It is such a complicated area, is so wide-ranging and covers so many things, that it is difficult for us to identify where the key pinch points are for getting the right agreement and what the consequences would be of no agreement. If you can pick up one thing that you think might be crucial, that might be helpful.

Could I address specifically the implication for digital services and intellectual property? In the UK, we are very good at invention, but we are not terribly good at protecting our inventions or developing them, and we have an awful lot of areas where intellectual property in the UK is crucially important.

To what extent are there barriers that may emerge, which do not exist at the moment, that are particularly concerning or threatening for the digital economy or for IP? You mentioned that a bad agreement is worse than no agreement, which I think Theresa May said at one point. In what areas would a good agreement matter, a bad agreement be a problem and no agreement be particularly problematic?

Shanker Singham: I can take the digital and intellectual property question. One of the advances in free trade agreements is in the whole area of digital trade and services. The most recent and newest trade agreements have extensive digital services and digital trade chapters. In the mandates for the UK and the EU in the trade agreement, there is provision for digital, and in the mandates for the US and the UK agreements, there is a pretty extensive digital chapter. That is obviously very important.

An area that comes out of that which is worth bearing in mind is that we often talk about goods and services as if they are completely separate things. The reality is that a lot of services and goods are blurred. There are services provisions that accompany goods trade and there are commoditised aspects of services.

It is very important to the UK, and to its advanced manufacturing and manufacturing sectors, to have strong intellectual property provisions. Service providers particularly benefit from strong intellectual property

provisions—across the board. It is not just trademarks and brands and so on; it is even the case with patents, which ordinarily you would think of a manufacturer benefiting from. Business process patents and all sorts of other digital-type patent applicability are very significant.

In those areas, I do not see that there would be a huge difference in approach between the EU and the UK. What is true of the UK is also true of the EU, and I would expect any agreement that the EU signs with anyone to have relatively strong intellectual property provisions and a relatively strong digital trade chapter at that point. That would be true of the UK as well.

Sam Lowe: I do not think there will be so much of a problem with intellectual property, because the EU and UK approaches are broadly aligned. It is interesting that the UK has proposed a digital services chapter that is much more akin to what you would see in the USMCA or CPTPP than what has traditionally been included in EU free trade agreements. It is largely about commitments not to put duties on digital flows, accepting e-signatures for legal documents and no forced onshoring of computing.

The broader issue on digital is the adequacy decision and how that feeds into the UK's discussions with other third countries. To put it crudely, the EU's approach to data privacy and personal privacy sort of allows for forced onshoring of that data; for example, personal data of EU citizens has to be based in the EU, unless there is an adequacy agreement in place. The US approach, as defined in CPTPP, although of course the US pulled out of that, is less fond of that, and would like to put rules in place that you cannot do it.

There is a question as to whether the UK can do both. The answer from a technical point of view is yes: Japan has an adequacy agreement with the EU, and it signed up with the CPTPP text. But the political question is slightly different in this case. As we know from discussions so far, the EU sees the UK as a special case. Whether we could straddle both horses, US and EU, on data privacy is something I am still unsure about.

Sally Jones: The .eu domain names are a particular issue from a practical perspective. UK companies and individuals can no longer hold them post 1 January, which means that there has to be some form of restructuring for groups to continue to operate .eu domain names.

The Chair: Thank you for being so brief, Sally. We will try to give you a bit longer for the next one.

Q13 **Lord McNally:** Yesterday, very unusually, a former Prime Minister, the Prime Minister's immediate predecessor, intervened at Prime Minister's Questions to warn that leaving the EU without data adequacy would imperil health data and, more importantly, security data. Are any of our panellists worried about the warning that Mrs May gave?

I know that the tradition of the EU is to negotiate until midnight, stop the clock, sit through the night, and suddenly it is all sorted in the morning. I was Minister for data protection in the early part of GDPR, but this is high-

wire stuff without a safety net. Are you concerned about data adequacy? In the previous Committee I was on, it was said by Minister after Minister that it was a shoo-in and there was no problem. If there is a threat, how can business prepare for such a devastating outcome?

Sally Jones: This is another of those circumstances where there are multiple levels of answer. On the one hand, a lot of UK businesses, including in PBS, were relaxed about data adequacy, initially because they said that the UK and the EU were entirely aligned so it should be very straightforward for the EU to grant the UK data adequacy, and vice versa.

The problem is that in GDPR different tests are applied for third countries compared with member states. The real question is whether the UK's legislative framework in the round, not just GDPR but as a collection, ensures that EU citizens have the same level of protection over their personal data post the UK leaving as they do afterwards. The answer in the round is that, arguably—I am not making any kind of political point—no, it does not. It is not a slam dunk that the UK will get a data adequacy ruling, and it is certainly not a slam dunk that we will get a data adequacy ruling by 1 January.

In and of itself, that is not necessarily a crisis, because there are any number of countries around the world that do not have data adequacy rulings, such as the US. That is generally solved at government-to-government level by a separate agreement. In the case of the EU and the US, the Privacy Shield agreement does something similar, in that it allows data to be shared. The problem with the government-to-government level solution is that it takes time to achieve.

If we do not get an adequacy decision, what happens next? We have seen circumstances where the EU decided not to apply its own legislation for a period of time to avoid a cliff edge, most notably when the previous version of Privacy Shield with the US, Safe Harbor, was struck out as an effective agreement by the CJEU. Something broadly similar could happen now.

On the whole, my clients are applying self-help, which means that they are taking unilateral measures as businesses to ensure that they can demonstrate that they are looking after and holding private data, and using it sensitively and correctly in accordance with the law, so that they as a group or as individual businesses will be able to demonstrate satisfactorily to the Commission that they were behaving correctly. None of them wants to be on the hook as the company which the EU takes as a test case to demonstrate the problem.

Lord McNally: Shanker, are you advising clients to prepare?

Shanker Singham: From a business perspective, the issue is much more along the lines of ensuring that data can flow in the various networks. There was a positive aspect to the discussion when the EU's mandate for the UK agreement was published, because it included specifically that there would be adequacy, and the approach to data would be an adequacy agreement. That was clearly the UK's preferred approach as well. There is

certainly opportunity for a negotiation. As Sally said, there are many other examples of other non-EU members that have arrangements with the EU on data, such as the US through Privacy Shield, and so on, and Japan, through the Japan-EU FTA.

There is a solution that can be applied. In the context of the UK's other agreements and arrangements around the world, an issue in the background is the GDPR provisions and the EU's desire to have the rest of the world adopt the GDPR-type legislation or approach to data privacy versus the adequacy-type arrangements favoured by other countries around the world. There will be some element of the EU preferring to ensure that the UK remains completely under the GDPR framework, if it can, because it is part of the expression of the GDPR system externally.

The UK is in negotiation with countries that certainly would not accept that kind of approach, so it will have to find a way of bridging the gap between countries such as the US, the CPTPP countries, and to a lesser extent Australia and New Zealand, and whatever it does with the EU. Adequacy is the way you would go about trying to find that ground. It will be a tough negotiation, but the bigger problem was whether the EU would accept adequacy as part of its negotiating mandate, and, since it has done that, there is a pathway to a solution.

Lord McNally: Last night, in preparation for this meeting, I had a look at the 1971 negotiations. Geoffrey Rippon confessed that the reason why the Government sold out the fishing industry was because they were working to a 31 December deadline and in the end they had to either sign up or sell out. Working to deadlines on an issue such as this can be very dangerous. Discuss.

Sam Lowe: Deadlines create problems, but they also focus the mind, so you can argue it in both directions.

Data adequacy, financial service equivalence and other adequacy issues should, technically speaking, be completely unrelated to the negotiations on the free trade agreement. They should and could be agreed independently of that, and could be put in place in the event of no deal. Politically speaking, my analysis is that that is not the case. There could be an arrangement still in place or it could be rolling, but for us to get the adequacy decision or equivalence decision fully in place requires a UK-EU free trade agreement, solely because of the politics. I am not making a technical argument there.

The Chair: Thank you very much. I am conscious of the time. I think the broadcast finishes at 12 noon. If we have time for a few supplementaries, would our witnesses be able to stay? We will probably be left with only two minutes per question, so it may not be possible for all three witnesses to answer each supplementary.

Q14 **Lord Vaux of Harrowden:** In financial services, the industry has been preparing for no deal from the beginning. Assuming a worst-case scenario, it has set up offices everywhere and is effectively prepared. What is the

state of readiness for the professional business services industry? Shanker, I think you have already touched on this, so perhaps Sally could answer.

Sally Jones: As Shanker said, some parts of the PBS are unregulated, where the main issue is movement of people. The preparations being undertaken are around working out who you need in which country at which time and, if they cannot be in that country, how you are going to make it work instead. The regulated professions, generally speaking, are looking at either bumping up their presence commercially in other territories where they need to, where they can no longer provide services—from the UK to Germany, for the sake of argument—or they are looking at restructuring their business operations so that the right people are in the right place at the right time.

There is a reasonable degree of preparation. The large firms, as across all sectors, are well prepared; small firms, as across all sectors, may not have an enormously international business. Medium firms that have an international presence but not so much resource to handle it are the most likely to run into problems.

Q15 **Viscount Trenchard:** I want to ask a little more about mutual recognition of professional qualifications. Especially given what Sally said about UK qualifications being so well recognised all over the world, it seems that it would be a pretty pointless and futile gesture if the EU was to try to deny recognition of UK qualifications. It would be cutting off its nose to spite its face, would it not?

Sam Lowe: The issue for the EU when negotiating mutual recognition of professional qualifications with third countries is that it is not necessarily full EU competence. Those qualifications are largely given out at member state level and often not by Governments; it is often by private bodies that have been given the authority to grant them in those member states.

As is the case with lots of other sectors, often those bodies are quite protectionist. Why would you allow someone else to grant a qualification that is recognised in your country? If you do, they might not come to you; they might not pay you to do it. It becomes tricky for the EU to navigate those different layers; it has managed to do so within the EU single market, but it has struggled to do so externally, which is why it has created those framework-type approaches in CETA and EU-Japan and the like, to try to encourage those bodies to do so, but it gets a lot of pushback. Protectionism exists in all walks of life, even if you are wearing a white collar.

Shanker Singham: That is particularly true in legal services, all over the world, and is why it has to be done on a UK to member state level. As Sally suggested, there is a spectrum; it is a lot easier to do in areas where hard physical rules apply universally across the board. Where laws are different, people can rightly say that someone is not qualified to practise their law. Again, it is an issue where the regulators in the UK and in member states should get together.

There is no reason why mutual recognition agreements cannot exist separately, as a matter between regulatory bodies. There is no reason why that cannot be pursued aggressively. It is more likely to be achieved if groups of architects or accountants get together and say, "These are the core requirements for our profession, and we agree that they have been satisfied in the UK". As Sally noted, the quality of the UK's regulators in a lot of professional business service areas will stand it in good stead when having those conversations. It is an ongoing process, and not just for the EU; it is an ongoing process around the world.

Q16 **Lord Cavendish of Furness:** I want to ask about lobbying and lobbyists. I declare an interest as having run an export SME all my adult life.

I would like to ask Sally if lobbying is embraced in her council. It is estimated that there are between 20,000 and 30,000 lobbyists in Brussels, compared with an estimated 15,000 in Washington DC. It seems to me that the activity of lobbyists favours big corporations at the expense of small companies. Furthermore, as lobbying is so central to EU decision-making, is that influence likely to continue?

Sally Jones: I find it quite difficult to comment on lobbying, for the simple reason that my firm does not do it, and I believe that none of the big four accountancy firms has any lobbying operations, because we are prohibited from doing so by our audit independence regulations. I do not have personal experience of it, which makes it quite difficult for me to answer.

Some of the law firms have lobbyists in Brussels, but I would hesitate to say anything meaningful to you about that. They are not my firms and I do not want to say something that turns out to be misleading to the Committee. It would probably be more sensible to find different people to express an opinion, perhaps when the legal services or other groups give oral evidence. I am sorry; I know that is very unsatisfactory, but I cannot think of a better answer for you at the moment.

Shanker Singham: I think the question is whether the presence of lobbyists favours entrenched incumbent interests over small businesses or new entrants to markets. Generally, it does. Regulation is often used by entrenched incumbent interests to increase the barriers to entry for other people and new entrants. That is generally true.

Particularly with respect to services negotiations, there is an advantage for UK firms that have a pan-European set of operations. If they can convince both London and Brussels of the rightness of their arguments about a particular provision in the agreement, whether it is on mobility services or the interpretation of a short-term business visit, that will carry a lot of weight and help to lead to an agreement. In that respect, having those voices will be helpful to get to an agreement.

My experience is that, when businesses lobby London, they tend to be quite adversarial with the Government. Lobbyists in Brussels tend to be much more deferential to the Commission. It is not exactly an identical arrangement, and that would probably have to change.

Q17 **Baroness Neville-Rolfe:** I want to follow up on innovation and SMEs, and perhaps you could write in. We are very keen to have examples. Legal or digital innovation has been very apparent in our sector. On AI, I think our creative industries are world-leading. We talked about advertising, but it goes much more broadly than that, to broadcasting and other things. Then there are the mixed goods and services, which Mr Singham mentioned, where the car is partly the service, not just a manufactured good.

On SMEs, we have talked a lot about the City and the bigger firms that have scope to put people into other capitals, but what about the average firm, the one with only four employees, as I think Sally said? What will the loss be if we cannot get a deal or a preferential side deal for professional services? That is what we are trying to measure. Would you be kind enough to think about that question and write in?

Sally Jones: Yes, absolutely.

The Chair: That would be very helpful, rather than answering the question. If it is possible for any of the witnesses to write in on that, it would be most appreciated.

With only two minutes to go before the broadcast ends, all I can say is thank you so much for coming along today. It has been interesting and enlightening. I think that all the Committee has benefited tremendously, and it has got us off to a good start. Shanker, you indicated that you might send in a legal judgment about most favoured nation.

Shanker Singham: Yes, I am happy to send that. It is a legal opinion on the impact of the CETA MFN clauses on the UK-EU FTA.

The Chair: That would be a great help. Thank you very much for coming. You will receive a copy of the transcript to ensure that, from your point of view, it is accurate.