HOUSE OF LORDS

Select Committee on the European Union

Sub-Committee on EU Services

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

Thursday 11 June 2020

9.55 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 Prashar; Lord Sharkey; Lord Thomas of Cwmgiedd; Viscount Trenchard; Lord Vaux of Harrowden.

Evidence Session No. 2 Heard in Public Questions 18 - 30

Witnesses

I: Edward Braham, Senior Partner, Freshfields Bruckhaus Deringer LLP; Simon Davis, President, Law Society, and Partner, Clifford Chance; Audley Sheppard, Chair of the Board, London Court of International Arbitration; David Joseph QC, Vice Chair, Commercial Bar Association.

Examination of witnesses

Edward Braham, Simon Davis, Audley Sheppard and David Joseph QC.

Q18 **The Chair:** Good morning. Welcome to the EU Services Sub-Committee's second public evidence session as part of our inquiry into the future UK-EU 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, and to the Committee, shortly after the session to make any corrections.

I welcome our four witnesses and thank them very much for sparing the time to come along. The session is entirely about the impact on the legal profession, and your expertise will be much appreciated. I gather that you may have already decided on the order of answering, but I will leave it to you, and if members of the Committee want to ask a specific question of somebody afterwards, I am sure you will be okay with that.

My question is: could you outline the main trade barriers which the UK legal sector would like to see addressed as a matter of priority in the future UK-EU relationship?

Simon Davis: Good morning, everybody, and thank you very much indeed for inviting me to this session. I am the president of the Law Society of England and Wales. We represent some 180,000 solicitors, but, particularly relevant for this Committee, some 10,000 of those solicitors practise outside the borders of England and Wales, and some 1,700 are practising within the European Union.

Relevantly, I hope, for the purposes of this session, I also sit on the international law committee—the Law Society is the secretariat—which is co-chaired by Robert Elliott of Linklaters, and Alex Chalk, Under-Secretary of State for Justice. The judiciary also sits on that committee: in particular the Chancellor of the High Court, Sir Geoffrey Vos; Nick Hamblen from the Supreme Court; David Joseph, from whom you will be hearing later; and representatives of the Ministry of Justice, TheCityUK and GC100. I mention the last one, because it is very important that one voice is always heard in this kind of discussion: that of the client. These are the individuals and the businesses without whom we are nothing—and, indeed, those who will be most affected by what we are about to talk about.

Briefly setting the scene before I talk about the trade barriers, the starting point, very much unlike for the financial services industry, is that there is no overarching series or set of regulations across Europe. There is no kind of regulation that we are seeking to improve by leaving the European Union. Instead, there are, to the extent that until recently we were part of the European Union, 32 different regulatory regimes that govern who is able to practise what law, in what court, permanently or temporarily.

The essential barrier for us at the moment is that whereas right now there is a very carefully put together network of directives that enable solicitors in the UK and lawyers from the EU to practise in each other's jurisdictions entirely freely, under whatever law they want, and to appear in court,

permanently or temporarily, when we leave, by which I mean after the transition, we will be exposed to having to sort out the regulatory position in 31 different countries—including, of course, EFTA.

The immediate barrier is that we need to achieve some kind of an agreement that does not leave us at the mercy of having those individual discussions. That will be a thread that will run throughout my evidence, and I suspect that of others. The immediate barriers that we need to deal with are the rights for UK solicitors to advise on English and Welsh law, and international law, temporarily or permanently, and to maintain the kinds of structures that presently exist across Europe. At a romp, I hope that sets the scene for the Committee.

David Joseph: Perhaps I could give the perspective of the Bar. I echo what Simon Davis said: that we are very grateful for this opportunity to appear before you today and give this evidence. We thank you for your questions, your exam paper, which has given us a bit of head scratching.

I will give a very short introduction. I am the vice-chair of Combar. We represent 1,600 or so barristers, many of whom have a practice predominantly with an international focus, which will be relevant to some of the things we will talk about today. I send the apologies of Sonia Tolaney QC, the Chair of Combar, who was invited to give evidence today but unfortunately was not able to.

Relevantly, I also sit on the international law Committee with Simon Davis, and I have headed up the sub-group on civil judicial co-operation, which is one of the subjects we will come to a little later. I have also, for my sins, sat on the Bar Council's Forward Relationship Working Group, and I assist on the Lord Chancellor's Private International Law Committee, so I am fully "committeed up" in relation to these matters.

I will not repeat what Simon has said in relation to the overview, because that is a very good introduction. From the wider perspective of the Bar, as no doubt you would expect me to say we are perhaps less focused on questions of establishment, because essentially we practise here in these courts, and the great majority of barristers are practising exclusively in the courts of this jurisdiction. Nevertheless, it is important for this Committee to understand the perspective of the growing and successful Commercial Bar of England and Wales, and to understand quite how international that client base is.

To give a little colour, the great majority of the cases before the Commercial Court—70%—involve one or more foreign party, and a large proportion, just under 50%, involve no English party whatsoever. As a result, barristers today find themselves increasingly representing clients from the EU and further abroad, and the priority and focus of the Bar for a future relationship would be to address questions of the right and the ability to provide cross-border services—in other words, advice—and to fly in and fly out as independent professionals. These, I think, will be referred to as GATS Mode 1 and 4, and that will be the primary focus of some of my later remarks.

Audley Sheppard: I am chairman of the London Court of International Arbitration and a practising arbitration advocate. I believe much of your interest will be in the ability of UK lawyers to work within the EU after the end of the year.

May I add another dimension? This relates to your question about EU advocates, EU arbitrators and their clients coming to the UK, in particular London, after the end of the year. We might come to this later in relation to your question, but London is the—or one of the—most well-respected arbitration hubs and seats for disputes governed by English law and many other legal systems, and people come to London. In particular in relation to the focus of the EU, while you are most concerned with UK lawyers working within the EU, our concern is also for UK arbitrators working within the EU and EU lawyers and arbitrators coming here.

The Chair: Thank you very much for that. Lord Vaux will ask the next question.

Q19 **Lord Vaux of Harrowden:** I want to touch on existing EU trade deals. How effective do you think any existing trade deals with other countries such as the EU-Canada deal have been in supporting trade in legal services?

Simon Davis: The very short answer, and I will expand upon it, is not very much, in that the free trade agreements have not been effective in opening up markets for legal services, and with the possible exception of Korea, which I will talk about in a moment, I am not sure that was ever their purpose.

Indeed, the one that is probably easiest to talk about, which we refer to as CETA, the Comprehensive Economic and Trade Agreement, between the EU and Canada, is a good example of the challenges ahead in the discussion we are about to have. Certainly, as we understand it, it has never purported to be ambitious in any event. Indeed, the European Commission itself has acknowledged that CETA's provisions on services generally "merely reflect the current state of openness applied (but not guaranteed) to all World Trade Organization members".

To that extent, although you will see within CETA the ability for lawyers to practise home country law—their own law—and international law, one hand giveth and another taketh away in the detailed appendices, where each of the EU countries is given the ability to reserve certain exceptions. In other words, they have the ability to say in relation to the general overarching gift that those will not apply in those jurisdictions.

As you will know from some questions in the previous session, this is how the agreements work in terms of reservations. Particularly relevant for this Committee, and the kind of reservations we will need to address, is the need for there to be the physical presence of foreign lawyers on a temporary or permanent basis, the need for some nationality requirements, some residency qualifications and restrictions in relation to working with local lawyers, and, important in the context of establishment,

restrictions on what kind of partnership can exist in a particular country. Most relevantly, obviously, there will be those in countries across Europe who will be very interested in ensuring that their firm conforms with the local rules and laws and therefore has local partners within it. Indeed, as we will hear a bit later, a number of countries across Europe have all kinds of different restrictions.

The one that is slightly different, and I think might be characterised as more ambitious, is in relation to Korea, where from the EU side you see more the ability of EU lawyers to practise in Korea, either on a temporary-ish basis as a foreign legal consultant, or more permanently, sharing profits and having joint ventures. That is a long-winded answer, but the short one is they have not been particularly effective.

The last point I should mention now, because I think we will talk about it later, is the mutual recognition of qualifications. CETA does not purport to have anything other than what we might call loosely an agreement for professional associations to agree, and nothing has ever been agreed. I hope that answers the question.

Edward Braham: May I introduce myself? I am the senior partner at Freshfields. I have also been chairing the international trade group for the Professional and Business Services Council and, unlike your other three witnesses, who are all in the disputes resolution field, my core practice is in mergers and acquisitions.

Might I step back and give a little more context to some of the debate we are having, because we rapidly get into modes 1 to 4, and all that stuff? The context to this is real businesses and real consumers, as Simon said. The legal services framework market across Europe has evolved in response to client demand. Perhaps one of the reasons we do not see so much movement with new trade agreements is because business needs to evolve in a way that creates the demand—and perhaps more will happen in time, who knows? Some think about law as being infrastructure and other people talk about it being the oil in the economy. Whichever analogy you prefer, damaging it, or putting grit in it is not a good thing, so I really hope for the sake of all our clients in the EU and here that somehow this manages to be sorted out.

Secondly, this is about individuals in the EU and the UK. There are a lot of successful EU lawyers who do not have any connection with English law, and they are successful because, first, most legal issues are under local law and, secondly, their clients like what they do. However, there are other lawyers who want a connection with English law; indeed, 45% of our firm is made up of partners who are on the continent. Among that group, only a tiny number have English law as their primary qualification.

Much is made of secondary qualifications. The truth of the matter is that in most cases none of us would dare practise under the secondary qualification, because we are not sufficiently expert in it at the level we are operating, and we will always work with people who are sufficiently expert.

If English law gets damaged in the course of all this, it impacts on real lives on the continent, and here, in a way that does not help anyone.

Thirdly, it is sometimes said that this is a zero-sum game, where a win for the UK is a loss for Europe, or a win for Europe is a loss for the UK. At least in this context, that is not the case. If English law is used for something outside the UK, which it very often is, it is because it is one of the two international laws people reach for if they want to do something otherwise than under their domestic laws. If English law is damaged, the overwhelming likelihood is that the other international law, New York law, will be chosen instead; I think it is unlikely that one of the EU 27 laws would emerge as a new international law. Again, it is in the interests of everyone that we find a way through all this.

Audley Sheppard: For the arbitration community, it is most likely to be around mode 4, and the ability to go to Paris where the ICC is based, or any of the cities of the EU 27 where arbitrations can be seated, without professional restriction or reservation. If there is no trade agreement, we will need to fall back on WTO and GATS and the various commitments that can be made but may not be made.

It would certainly be advantageous for travel, and for professional arbitration, for that to be cleared up in a trade agreement, and of course the reciprocal rights of EU lawyers coming back to the UK. We have a very liberal regime here. Anyone can come here and argue in an arbitration on any law, and indeed English law, as long as they do not purport to be a barrister or a solicitor. We are very open, and it would be nice to see a free trade agreement that was equally open for UK lawyers going to the EU, without having to fall back on the patchwork of multiple negotiations that would have to take place in a no-deal scenario.

Lord Vaux of Harrowden: Do you agree with Mr Davis that there is not a lot in existing agreements that helps us here?

Audley Sheppard: That is right, and to the extent that Korea is the most liberal, that may be the starting point. Other than that, if my understanding is correct, CETA and Japan tend to fall back very close to existing WTO rules, so it does not advance the matter very far, at least as far as lawyers are concerned, so something more ambitious would be worth while if that was possible.

The Chair: Lord Cavendish has the next question.

Q20 **Lord Cavendish of Furness:** Although the issue of establishment has been touched on by Mr Davis, I will stick to the question, and I think you will arrange between yourselves who responds.

What type of provisions on establishment rights would you like to be included in a future UK-EU agreement? What is your assessment of the Government's and the EU's respective proposals in this area?

Simon Davis: Perhaps I will start and then hand over most naturally to Edward Braham.

As a starting point—I was going to interrupt but did not—and to follow on a very important point that Edward made and which we certainly bear in mind in our discussions with our European counterparts as it is a very important theme, we are not talking about here anything analogous to the supply of goods to the European Union. We are not talking about something going from the United Kingdom into Europe, being sold there and profits being repatriated to the United Kingdom. We are talking about many of the firms based in Europe often following UK LLP kinds of models.

To come back to your question, they are firms in which often, principally, the partners are local lawyers, very major employers in the relevant jurisdictions, taxpayers, with their profits going into the local jurisdictions. Many of those firms in Europe would regard themselves as European firms. Sometimes in the discussions that have happened out there, services and goods are often regarded as if we are exporting services to Europe and bringing money back. No, we go there and we become part of the European patchwork, and that mutuality will be important.

The short issue in relation to establishment rights is that presently, under the various directives, we are able to have offices across Europe that conform to the UK limited liability partnership model without having to conform to any regulations that might apply to non-EU firms, such as ensuring that you have a cap on the number of partners from overseas, the amount of profits and the like. What we are looking for in relation to establishment rights is the ability to have a corporate structure of some kind that matches the way in which we are presently established.

In terms of the way in which the EU and the UK have set out their negotiating positions, at present I would say that these look positive, particularly in the context where both have broadly put in provisions that would prohibit restrictions on the limit of foreign capital, restrictions on shareholding requirements and restrictions on legal form. In relation to establishment rights, it looks, fingers crossed, as if what the UK is asking for, the EU is aligned with.

Lord Cavendish of Furness: It is in the interests of all concerned, is it not, that there is a happy outcome there?

Simon Davis: Absolutely. The mutuality aspect is so important in the discussions we have across Europe, and indeed outside.

Edward Braham: Perhaps I could jump in with a practical example. Our Austrian lawyers will not be able to operate under the English LLP, which is effectively the holding partnership of the group. Instead, we will have to set up a locally compliant subsidiary partnership for them to operate under. It is that sort of practical issue, where you are not allowed to employ people locally, they are not allowed to be employed by us and we are not allowed to form partnerships with them.

The only thing I would add to what Simon said about the trade agreement is that we have not seen the reservations yet, and until we do we do not really know what each side is pushing for.

Lord Cavendish of Furness: Does anybody else want to add anything? Mr Sheppard, do you have anything to say?

Audley Sheppard: No, thank you, sir.

Lord Cavendish of Furness: One of our witnesses recently said that, arguably, the limited restrictions on the ability of services and providers to establish a commercial presence in the EU in mode 3 would attract businesses and investors from third countries. To what extent is this true of the establishment of lawyers and law firms?

Edward Braham: It comes back to the point I was trying to make earlier, which is that the legal services market has evolved, both in terms of demand and where the capability lies, in response to client demand. One element of that may be inbound investment, but in today's complex world there are all sorts of other things that flow because there are multinational groups and there is trading going on, all of which create legal challenges. The make-up of law firms, and where people work as a human matter, has evolved in response to that client demand.

Q21 **Lord McNally:** Between 2010 and 2013 I was Minister of State at the Ministry of Justice, and one of my first jobs when taking office was to look at the sparkly new Rolls Building, where I was told what a wonderful asset it was to London. I noticed in reading up for this meeting that the Rolls Building is still the destination of choice for eastern European oligarchs.

Simon Davis mentioned the importance of mutual recognition of professional qualifications. What is your assessment of the Government's proposals on mutual recognition of qualifications? Also, we heard from witnesses last week that mutual recognition is an area where a "bare bones" UK-EU agreement may prove particularly problematic. Would you agree with this view? Why might this be the case?

Simon Davis: You would be more than welcome to accompany David and me any day of the week, during the week, to the Rolls Building to see some of the Russian oligarchs, who are indeed regularly using our courts. That is a tribute to our courts and the fact that they consider that they will get justice here, and because they know they will get justice here they invest and spend lots of money, so it is a good thing. Thank you for your interest. Come and be our guest—absolutely.

This part of the story, as we speak—subject, of course, to the question earlier about reservations—is an exciting one, and one where we see this Government trying to achieve something quite different from what you see in CETA, getting back to Lord Vaux's question. In reverse order to your question, the previous answers were absolutely bang on, because all CETA does is say that it would be a good thing to have some kind of mutual recognition, but it then leaves that open to the professional bodies to get on to try to sort something out. It says, "If you sort something out, we will make that law", but nothing has happened. Those are nice warm words. What the Government are trying to say is that that is not good enough and they want a clear way forward for a solicitor or a barrister from the United Kingdom to be able to requalify in the EU without having to go through all

kinds of individual processes with individual regulators, be subjected to language requirements, and the like.

That is important, and it was not so important before, because if you were a UK lawyer you were a European Union lawyer, so you could practise throughout Europe without any problems and without any need to requalify. However, now that we have left, something that at the moment we are not asking for—I can understand this, because it is not realistic—is the right to advise under EU law or the right to appear in the European Court. Those are steps too far.

That means that there is likely to be a greater appetite on the part of solicitors from the United Kingdom to requalify so that they can start working more freely across Europe. So to the extent that the Government are going further and saying that they want a route through for mutual qualifications to be recognised, so we could seek to requalify, and to ensure it is very easy for anyone in Europe to requalify, it is a very welcome step forward.

David Joseph: Could I jump in here to expand a little on what Simon has said? The offering on the UK side and the EU side under the principal areas in Chapters 9, 11 and 13 of their respective drafts, as have been presently shared, are not, in fact, very far apart, and we should all feel very positive about that.

There is an area of mutual recognition of professional qualification, though, which may stand between the parties, and Simon is absolutely right to point this out. Prior precedent does not require the parties to conclude an MRPQ but makes general provision a statement of good intention in that direction, which has not proved to be enforceable or, indeed, practical or realistic. This offering from the UK side seeks to go further than that and actually impose an obligation to conclude MRPQ.

The key relevance of it is this: even without mutual recognition, you could have English lawyers advising on what we call home state law, their own law, or public international law. The relevance of MRPQ is to allow recognition of qualifications so that, for example, an English lawyer could be part of a team advising on complex cross-border insolvency or EU provisions in relation to competition, and so on and so forth. That would not just apply for UK lawyers; it would be done mutually. Since an enormous amount of M&A work involves cross-border issues, we would see this as very much for the mutual benefit of all lawyers across the area.

To finish that point off, it is important to understand that all the leading Spanish, French, Dutch—I could go on—law firms have a presence in London precisely because they want to be able to advise on these valuable cross-border transactions for the benefit of their clients. Echoing people's previous remarks, this is a good and worthwhile objective to benefit the interests of our clients.

Lord McNally: Audley, does arbitration get covered by this?

Audley Sheppard: It does to a certain extent, Lord McNally, because in some ways one is looking at the various sectors of arbitration. David and I might go to Paris and do an arbitration governed by English law, and there may be some sort of visa or other restriction, and that is all fine, but at my firm I have a number of common law and English law trained lawyers who have gone to our offices in Paris, Frankfurt or Amsterdam and who will conduct English law arbitrations but who also want to conduct arbitrations governed by French law or Dutch law or German law.

There are a lot of arbitrations where the law is terribly important. There are quite a lot of disputes—I am thinking of construction and engineering disputes—that are often very much driven by the facts. Therefore, a lawyer who is expert in construction and engineering is more important than someone of that particular legal system, so having mutual recognition is very useful. Quite often, and it is a point that was mentioned earlier, one does not want to venture into unfamiliar territory without local lawyers, which is professionally very wise. We just do not want to have these difficult restrictions and get to a point—to take one extreme, Nigeria—where it is unlawful and one could be subject to various serious sanctions if one's name even appears on an arbitration document that is governed by Nigerian law. That would be most unfortunate.

To pick up on a previous point, I have just been watching three days of a virtual hearing in the Rolls Building between two Russian oligarchs, while the judge was there, so the wheels of justice are continuing to turn with virtual hearings from there.

Q22 **Baroness Couttie:** You have been talking in some of your answers to previous questions about the reservations across the EU with the member states that in some ways may limit what organisations are able to do within those countries. To what extent are those limits an issue in different countries? Could you give some specific examples? Is there any chance that in the trade agreements we are negotiating at the moment we may be able to have some easement of those limitations, or to phrase them in a way that may help address some of those limitations? May I start with Mr Braham?

Edward Braham: I was hoping you would start with Simon! If I may, I will frame my answer by saying that I am not a trade expert, but I understand that nationality restrictions are very common in trade agreements. There are several reasons for the decision not to push for continuing to advise on EU law. One is that there is a citizenship requirement to follow through and be able to represent clients in front of the EU institutions, so it is a significant risk.

Baroness Couttie: Mr Davis, do you want to add to that? I am particularly interested in whether there are national requirements that make it hard in certain jurisdictions to practise as you would like, and if there is any possibility, and I realise the challenges of this, of ensuring that any agreement we reach with the EU will soften some of those requirements.

Simon Davis: I was looking forward to saying that I agree with Edward, but for some further detail it is perhaps easiest to take a couple of examples of the kind of reservations that are very commonly present, as you will see, in CETA and the other free trade agreements, and explain how that might impact.

I will start with the reservations that require there to be some nationality requirements. We know that in Belgium and Austria there is a requirement to be a citizen of the EU or EFTA in order to practise, so it goes broader than just appearing in the courts. We were talking earlier about establishment and the great importance of that for the law firms that will go into Europe, but, most importantly, let us focus on those that are presently there and which otherwise would have to restructure. The kind of reservation we may see relates exactly to the point about how you are structured that we talked about earlier.

If we take a few examples, there are restrictions in France, Spain and Portugal on the amount of foreign ownership and the kind of structure you can have. There is then the concern about whether you can partner with non-EU lawyers, which of course by then will be us and Norway. Each of the countries has its own particular requirement. That is not to say—this is an important point—that these problems would be insurmountable, although it would involve a great deal of local good will, time, and possibly cost.

The problem is if we leave without any kind of arrangement, or we leave with reservations that are so broad that in effect they mean that we will have to negotiate with each individual country. That is at the heart of the real problem facing the legal sector and, importantly, its clients as we go forward. That is a long-winded way of saying that the reservations I have just outlined are there and are writ large most frequently. The challenge in the very short time available is how the UK Government, in their discussions with the EU, will be able to limit the kinds of reservations we normally see.

David Joseph: I just want to make one correction to whathas been said. As far as I understand it, the nationality requirements that we have been talking about in relation to reservations operate at a national level. Different considerations apply for appearance in the CJEU. That is quite important for what we have been discussing. However, it is absolutely correct that different countries have different requirements operating at what might be described as a national level. Ireland, as I understand it, has a residency but not a nationality requirement. Belgium has a nationality requirement for admission to the Bar. France has a nationality requirement for admission as a French lawyer. Different countries pitch it ever so slightly differently.

Coming right back to the beginning of this piece, all this is important, because hopefully, with a measure of co-operation, good will and agreement, we will reach one level platform for how all this is to be treated across the piece with all the EU 27. To reiterate what Edward and Simon said at the very beginning, that is for everyone’s benefit. These nationality

requirements on an individual level operate as barriers and they are not very helpful at all.

Audley Sheppard: In a way, arbitration, with its fly in, fly out arrangement, is for the most part below the radar and is not picked up at borders particularly, especially if it is done in collaboration with local lawyers, but there is the risk that there could be a change in mood and that the economic needs test could become prevalent. I cannot give you a specific example at the present time, because of course it has been relatively collaborative. Just as an example, Hungary has made itself unbound in the most recent free trade agreement; I think it was CETA. That is not to say that it will make life more difficult, but one can see that there could be a mood against openness in some of the countries. That goes back to the problems associated with a patchwork negotiation with every single one of them.

Q23 **Baroness Prashar:** My question is about mobility. Mobility provisions under a future deal are of importance to most UK professions and business services. I want to understand this morning the key priorities of the UK legal profession in the UK-EU arrangements on the mobility of the profession. How far do the Government's and the EU's proposals meet these? In that context, the statements made by Mr Barnier and Mr Frost in May were very interesting, because Mr Barnier said that the UK is seeking complete freedom, while Mr Frost said that what the EU is offering is less generous than what is offered under CETA. I will leave it to you to determine who wishes to answer first and in what order you want to go in.

Simon Davis: There is a stunned silence, which means that I will have to fill in, with Mr Joseph hovering at my shoulder.

It is important to focus on the text as it appears, because what we may be hearing, although I do not want to jump to conclusions, is the difference between what the text looks like on its face and what possible reservations may be coming around the corner that we have not yet seen. That may explain the difference in approach.

Picking up the points made by Audley Sheppard, we want to ensure that we do not find ourselves in a situation where we have all kinds of positive-looking rights to practise law—focusing for the moment on UK law and international law—but then find that we have inadvertently left a lacuna and our lawyers cannot travel freely backwards and forwards to Europe; or worse—to the extent that we do travel backwards and forwards, and of course the same point applies to the EU—that there is some kind of visa requirement, or we have to give some kind of notice to someone before we arrive and we find that there is some bureaucratic impediment to exercising the rights we think we have been granted.

At the moment, again fingers crossed, the asks and negotiating positions look as if there is to be that kind of mobility, which will cover visa and travel facilitation. On the face of it, it looks, again consistent with previous agreements, that the intent of both parties is to allow mobility without undermining the ability to provide a good service. At the moment, it is

fingers crossed, but in the public arena it might not be entirely visible to us looking at the text.

Edward Braham: May I underscore the importance of mobility? There is a good reason why parliamentarians do not want to see Parliament go entirely online for ever, because there are certain things where face to face is quite different. In our context it is things like building client relationships and times when really critical decisions are being taken when people like to see a face, and when things are moving very fast, whatever that might be. Some of getting the right people with the right knowledge in the right place at the right time requires mobility. Will there be a little less mobility post Covid? I am absolutely sure that is the case, but I think there will be a continuing need for it for the very long term.

Baroness Prashar: Mr Sheppard, what about arbitration?

Audley Sheppard: I would simply echo the points that have been made by Simon and Ed about mobility from here into the new EU. I would also mention, and am very conscious of, mobility into the UK, as London in particular competes with the other cities of Paris, Amsterdam, The Hague and Frankfurt as they grow their arbitration hubs.

We can look as an example to the most recent success story, which is Singapore. Of course, it attracts arbitrations from the Asia-Pacific region, but it is also attracting a great number of arbitrations from India where the parties and their lawyers might have previously come to London. That is for a number of reasons, which we could discuss later, but one of them is access and being able to fly in and fly out of Singapore relatively easily. I know that we are not talking about the world in this discussion, but likewise if it was made more difficult, in some sort of tit-for-tat argument or otherwise, for us to come in because of mobility difficulties, that would certainly harm the arbitration community here in the UK.

Baroness Prashar: Mr Joseph, you mentioned priorities in the earlier discussion. What do you see as the priorities for the legal profession in terms of mobility?

David Joseph: I do not have much to add to what has been said. To preface this, there has been progress and the two drafts are not that far apart in this area, so we should view that positively. The focus for the Bar has been to ensure that we have good provision for mode 1—in other words. cross-border advice—and mode 4, the ability to fly in and out as independent professionals. If that was secured, that would certainly meet the key priorities of the Bar.

Q24 **Viscount Trenchard:** My question is in two parts and relates to the witnesses' engagement. First, do you feel sufficiently engaged with the development of the UK's negotiating position? Is that directly with David Frost's team or is it more remote, and do you feel you are close enough to the process?

Secondly, how closely engaged are you with your counterparts in the EU, for example the Council of Bars and Law Societies of Europe, and to what

extent do their priorities align with yours? Far be it from me to suggest this, but might they be considering that to reach a restrictive agreement with the UK might assist their position to attack the domination of London, and indeed provide reasons for them to encourage their clients to use contracts under law other than English law, even if that were New York law?

Simon Davis: If it suits you, it might help if I deal with the second part of your question and Edward the first. In relation to the CCBE, the United Kingdom is a member of the council of the European Bar and a strong contributor to it, not just financially but in thought leadership, brain power and sitting around tables and helping. It is not just the Law Society of England and Wales. We are there with our counterparts from Scotland and Northern Ireland and it is a very close-knit team. The relationships at the individual level of the CCBE are excellent, because we have a very good track record of getting stuck in and not just talking all the time about the interests of the United Kingdom. We are there as a team to try to sort out pan-European problems. The reality is that the CCBE will follow the lead of the European Commission. I do not think it will really have any choice about that.

In relation to your very fair point about competition, we are in a ferociously competitive market, as John Thomas will know almost better than anybody in this session, and to that extent it would be naive if I did not proceed on the basis that within the CCBE there will be those who consider that there is a competitive advantage to be gained by making life difficult for the United Kingdom, just as much as the United Kingdom is working extremely hard to ensure that us leaving the European Union does not damage the attractiveness of the United Kingdom as a place for dispute resolution.

I will give one example of where that competition is particularly acute. It had, by the way, started before the whole discussion about us leaving Europe, but it has been exacerbated and heightened. It is the existence now of courts across Europe, an obvious example being Paris although the same could be said about Amsterdam, Frankfurt and Brussels, which will be willing to apply English law, and willing to have the hearings conducted in English. The point there, at the risk of getting a little bit micro, is that a party's choice of the laws of England and Wales will have to be respected by the European Union whatever happens, because the Rome treaties that apply oblige them to apply the laws of non-European countries. That is applying the laws.

The flexibility comes within the choice of jurisdiction. It is unsurprising that those nations should say, "Okay, you can choose English law, but you do not have to choose the jurisdiction of the English courts now. In fact, it is quite tricky if you choose the jurisdiction in these courts as we might not necessarily enforce their judgments, so why don't you come to us and we will apply your law, and you won't have problems with jurisdiction clauses being chosen or enforcement of judgments?"

That is an area that shows vividly the ferocious nature of the competition, and to the extent that those courts are within the countries of CCBE

members I am sure there will those who will be thinking about competitive advantage. I am going to sound naive, but on the other hand I think that the members of the CCBE value very much their close relationship with the United Kingdom legal profession. We are part of one fabric.

The last point in answer to the question about mobility is that the reality of life now is that when we are sitting in Europe—by that, I mean UK solicitors—we are regularly advising, in combination with local lawyers, local clients, and it is very much in their interests that the whole system is not suddenly disrupted.

I hope that answers the second part of your question, and if it is all right with you I will now hand over to Edward for the first.

Edward Braham: I will look at it from a personal perspective. The Government are not in an easy place, because they are running a highly sensitive negotiation, and if you were to tell me as much as I would love to know about that, that would become very difficult. That is the framework for my answer.

From my perspective, the Government have been very open all along. The topics we are talking about today are partly under the jurisdiction of the MoJ and partly under the jurisdiction of BEIS, and the two have been co-operating seamlessly throughout this. At various times, we have had meetings in No. 10 and with BEIS and the Ministry of Justice. I was invited to the DExEU meetings at Chevening, and I was on the Prime Minister's Financial and Business Services Council when that was in existence. In the course of this year, the Government's focus has clearly been heavily distracted by the need to deal with the virus, but the officials have continued to keep close to us, and I would commend both the quality of the officials we have been working with and the extent to which one and all of them have been really strongly across their brief. They have served us very well.

Viscount Trenchard: Mr Sheppard, so far as arbitration is concerned, do you think that London's position as the leading global centre is threatened in any way by what is going on?

Audley Sheppard: Yes, sir, I think it is threatened. If I could give you a couple of statistics, in 2018, my organisation, the LCIA, had 340 new cases; in 2019, it had 406. In 2018, the London Maritime Arbitrators Association had 1,500 new cases; in 2019, it had 1,750. If you look at those bare statistics, you would think that things are going very well, but the reality is that we are threatened. We are threatened by the other cities that see the benefits of having arbitration seats there. We are threatened by Singapore, which has been very successful, as I mentioned earlier.

While it is too early to say, there is some anecdotal evidence that there is a shift away. David mentioned the negotiations that might take place that say, "All right, you can have English law, but we want the arbitration in Frankfurt". There is certainly anecdotal evidence from transactional colleagues at my law firm that, for bond issues from European companies,

they are under quite a lot of pressure at the present time to choose a Euro law, because the Euro central banking system will only allow those loans to be used as collateral if they are governed by a Euro law.

I do not think it will happen overnight on 31 December, but if we are not careful, the perception will be that the UK, but more particularly England, d Wales and London, has become less attractive. What this largely comes back to, which Ed and others have already mentioned, is that we must be extremely vigilant in protecting English law, because once English law stops being the law of choice for international commerce, along with New York law and many other laws, that will certainly lead to the demise of London courts and to London arbitration and London arbitrators being as attractive.

Q25 **Lord Bruce of Bennachie:** I think the trend of the last couple of questions is leading to a suggestion that the Government have been very balanced, open and reasonable, but, as Mr Barnier said yesterday, that is interpreted by the EU as cherry picking and wanting the best of all worlds. You have identified that there will be winners and losers. Who will lose if we do not get a deal? How will it impact particularly on small practitioners? Will we still give open access to UK courts to EU lawyers even if we are denied reciprocal rights? I do not know whether that is for you to start with, Simon.

Simon Davis: Thank you for sharing it out, I hope appropriately. Could you repeat the last part of your question?

Lord Bruce of Bennachie: It was about reciprocal rights. Would we continue to offer access even if we did not have reciprocal rights?

Simon Davis: I am cherry picking myself. In relation to reciprocal rights, the position as we speak, and it was touched on right at the very beginning although I was focusing on what life looked like going into Europe, is that for European lawyers coming in to the United Kingdom we are an extremely open jurisdiction, and have been for a long time. It is for that reason, among others, that there are now 200 overseas law firms based in our jurisdiction, 40 of which are from the EU. We have 3,000 European lawyers in our jurisdiction, and it is all because they can come to our jurisdiction permanently, share profits with locals, and practise English and Welsh law, European law, whatever they want. That is open, and after the transition that position will not change. The only slight tinkering may be in the ability to requalify, let us say, as a solicitor of England and Wales. At the moment, it is relatively automatic. You are here for three years and, hey presto, you qualify—without an exam. Now they will have to do some kind of qualifying examination, but it is all very easy.

At the moment—and I stress at the moment—there is no signalling from the United Kingdom that it will in any sense change that, whatever deal is done or not done with the European Union. To that extent, as has often happened in the past, we are likely to proceed on the basis, although I am going beyond my brief, of not doing tit-for-tat things if we do not get what we want. It is more that we are trying to lead by example and say, "We think it is absolutely right for citizens and corporates to choose the lawyers

they want without somebody putting up barriers. Why do you want to do something different?"

David Joseph: Would it be possible to add a couple of remarks to that?

Lord Bruce of Bennachie: Before you do, may I ask a supplementary, which is if we are open and they are not, will they not have an incentive to encourage practices to relocate within the EU?

Edward Braham: I do not want to get drawn into the politics, I hope for obvious reasons, but both sides have said that they were going into this negotiation wanting to reach an agreement, so I think it is reasonable to conclude that, if no agreement is reached, the chances are that things will become quite fractious. If I try to put myself into that environment, I am in a classic crisis management mind-set, where the first thing you do is stabilise, and then you start to make some progress.

When it comes to stabilising, it will be very important to do everything on our side to make London, and the UK generally, a place that is seen to be good to do business. The long-term success of the UK will be linked significantly to the degree to which the UK is seen to be a good place to do business. An example was given earlier of India, where it is extremely difficult to do business as a lawyer. The result is that transactions are negotiated in Dubai, because it is easy to get to, or London, which is the main place people come for international transactions because of the fact that India is a very difficult place to do business. It sounds odd, but I would strongly encourage making the UK generally, and London in particular, the best possible place to do business in what could be a very difficult environment.

That means things like ensuring that we have our immigration policies in place, ensuring that the system works, and being clear that we will carry on recognising EU judgments. It sets the example. Why hurt the UK by not doing that? We should continue to recognise qualifications, to the extent that they need to be, and continue to push for equivalence decisions on data and the other key areas.

Lord Bruce of Bennachie: Do you want to pick up on the issue about encouraging people to relocate? You have just made a very interesting point, but the EU might say, "Why don't you come and register in the EU? You won't have a problem; you will have both ends met".

Edward Braham: Part of the problem with law is that relocating does not solve very many of your problems. It solves the problem of being close to your client, but you are left with all the problems we touched on earlier—qualifications, the ability to establish, and so on. It is one of those areas where I cannot solve the problems of our firm by moving large numbers of people from London to the continent. One of the strengths of the firm is the strength of our continental practice, because it gives us a lot of flexibility as to how we can support our clients. This is not the same as your manufacturing problem, where relocation is quite often the fix.

David Joseph: Mr Braham mentioned civil judicial co-operation and recognition, and I would like to deal with that later, but may I touch on the present landscape in relation to disputes, because it is important to separate out arbitration on the one hand and courts on the other?

In relation to arbitration, the present landscape consists effectively of no regulation at all as to who comes into this country to advise, appear, represent and so forth. I do not think that is likely to change any time soon. Whether there is a deal or no deal, I think London will continue to be a very open and attractive place. It is one of the world's leading seats for arbitration. That is not to say that we do not have competition. Of course we have competition, but that is probably a good thing rather than a bad thing. That is the position on arbitration.

The courts are slightly different because, as matters stand now, a French lawyer cannot simply appear in court without some further qualification and so on, so whether an open future will look radically different from the position now is highly debatable. You then come back to questions about how attractive England will be as a choice of court in jurisdiction agreements. There again, of course there is competition, but I think we can make a pretty strong case, a solid case, for the attractiveness of England as a choice of jurisdiction.

To make one final point, the judgments that would be rendered in these courts, pursuant to an exclusive jurisdiction agreement, which is a particular category that we are talking about here, would continue to be recognised and enforced abroad.

Q26 **The Chair:** The next question was going to be asked by Lord Sharkey, but he has been called away to deal with a Question in the Chamber. I will pick up the issue of how prepared legal services providers in the UK are, in particular small operators, for the post-transition period. What support, if any, is the industry receiving from the Government?

You have all referred to this already in some of your answers, but I would be interested to know about the smaller operators in particular and whether there is any expectation of some easement on the part of the Government to assist in any difficulties or barriers which the legal profession might face after the transition period.

Simon Davis: One of the challenges, not just for the legal profession but more generally, is the push me, pull you messages they have had for a long time. It is quite hard to advise firms, as the Law Society has tried to do, on what to do in circumstances if there is no deal, but at the same time to reassure them that there will be a deal. The only way to cope with the kinds of problems we have talked about—in other words, if you were to proceed on the basis of no deal—would be to start expensively re-organising your offices across Europe, and perhaps incurring expense quite unnecessarily.

This is really challenging in relation to the small businesses, and it is the same point made by Lord Bruce, because these are the kinds of small and

medium-sized firms that do not have offices in Europe. These are the ones that are having to travel in and out sporadically.

May I give you a real-life example of Bordeaux in France? It was drawn to my attention a little while ago that many United Kingdom families come to France to live the dream, but it does not work out and one of the parties comes back to the UK. There are then hearings, either in the UK or in France, and quite well set-up arrangements for who is allowed to appear. Many English solicitors work in that area and look after English families. What happens now is a bombshell of uncertainty. Are they allowed to appear any more in front of the French courts? Are they able to represent the wife? What laws will apply?

It is that kind of firm that will find workarounds—to use a terrible word—very hard. You will find that for many of those firms there is not a great deal of preparedness. They will not have the resources to relocate, which is another point made by Lord Bruce. They will have to cope not just with the uncertainties and the costs but with the inevitable loss of business. The Government can assist by seeking to achieve some kind of free trade agreement within the timescale, reducing the reservations as far as possible. I do not think that there is any suggestion at the moment by the Government that, to the extent that those firms start to suffer, the Government will step in and supply any kind of economic support.

Edward Braham: I do not have anything meaningful to add. That was a very moving story. If I could talk personally, we would have to do one of those very expensive reorganisations. We have been ready to sign it twice before. We are resigned at the moment to signing it this time round. That is not a good thing, because when you create silos within an organisation it is very hard to prevent culture being affected by that. The success of the firm lies in being a global firm able to deliver global service, and if you start separating out parts of the continent into separate units it will require a lot to keep that culture going in a way that both we and our clients want us to keep it going.

Regulation and tax, for example, were never designed for any of what is happening. We are taking our regulatory system back broadly to where it was in the 1970s. People have not looked at these laws for a very long time, so you are bound to find uncertainties there. Again, it is easy to say, but it is true: it really would be very helpful if an agreement could be reached that takes these problems away as far as possible.

David Joseph: I do not have that much to add, except possibly this observation, which is that we have all been living with a considerable amount of uncertainty for a number of years. As we approach the final stretch, I have come to the conclusion that the best service we can do in our profession is to try to ensure as far as possible that the best arrangements are concluded that would allow the interests of the clients to be well served in the future.

Q27 **Lord Davies of Stamford:** I understand that the British Chamber of Commerce has suggested that it would be very helpful if an agreement

included some provision for the mutual recognition and enforcement of judgments. Are you aware of that? Do you think that is a feasible and desirable objective? Do you know which organisations may be doing anything to try to bring that about?

David Joseph: It might be appropriate for me to lead off on that. I saw the Chamber of Commerce paper and I was very pleased to see that it focused on the importance of the Lugano convention on the mutual benefit for consumers and SMEs right across the EU 27 and the UK. I hope that the UK's application on 8 April to accede to Lugano will be positively received. The international law committee, which I sit on, and likewise the Bar Council group, have very closely focused on this for the last three or so years.

I want to add a couple of words on two points that are quite important. When we are talking about mutual benefit, what are we talking about here? We are talking about small businesses, consumers, employees, victims of car accidents, perhaps people who have had their holidays cancelled as a result of Covid, and so on. It must be to the mutual benefit of each and every one of those categories, if proceedings are brought in what is today a member state court, that they are recognised and enforced in this country—and, mutually, the exact same provision vice versa—and if proceedings were brought here they would be enforced in Europe.

I want to take up two points which I think are quite important to focus on for our work here. First, a point that some members of the EU 27 have taken against the UK in this approach is that it is seeking to obtain a benefit for itself that is reserved to those in the single market. In my view, that is not correct and not tenable. It should not be seen as a benefit to one nation and a disadvantage to another. It is not an instrument of the single market, but it derived in its origin, as you may well know, from the Brussels convention and international treaty in 1968. The Lugano convention is itself in its text derived from the Brussels convention. It is not just for the UK's benefit but for mutual benefit, and it assists businesses of all sizes large and small, as I have said.

The second point that is taken in some quarters against the UK's application is the fact that there are alternative instruments which the UK could accede to. The most commonly mentioned is Hague 2005—I will call it Hague '05—which relates to exclusive choice of court agreements, which I mentioned just a moment ago. In my view, that, again, is not a tenable point to take. You cannot say that Hague '05 is an alternative to the Lugano convention, because they are completely different instruments. The Lugano convention is what we call a dual-purpose convention, a dual-purpose treaty, which makes provision both for enforcement of judgments and for allocation of jurisdiction to avoid parallel litigation. Hague '05 is a single-purpose instrument. It only recognises and enforces jurisdiction clauses and judgments; it does not allocate jurisdiction. It is narrow in its scope. I would say to those who advance these arguments that we should be looking to the mutual benefit of the clients we serve, and I am hoping that the Lugano application will be seen in that light, and positively received.

I have one last comment, which follows on from something Ed Braham said, and I apologise for taking up time. There was a suggestion that we should do this unilaterally, irrespective of what the EU does. I do not think that it is possible unilaterally to accede to Lugano. Quite a lot has been written about this. It is quite a technical area, but there are quite a lot of barriers and obstacles to making that either attractive or workable. It should be done mutually rather than unilaterally.

Lord Davies of Stamford: That is a very helpful and full response. Do you regard Lugano as an entirely adequate and full solution to the problem?

David Joseph: It is adequate, but it is not entirely adequate. In essence, improvements were made to Lugano and that is now called Lugano II. Improvements were made to Lugano II, which is called the Brussels Recast. It is a little like my wanting to buy a computer, but ending up with the model that was in circulation three years ago rather than the bells and whistles version that is out there today. The very best instrument and provisions are those contained in the recast, mainly because it has increased and enhanced protection for avoidance of parallel litigation in the context of jurisdiction agreements.

Q28 **Lord Thomas of Cwmgiedd:** You have touched on the question I was going to ask about the overall status of London. I would like to pick up two specific points. First, is there any evidence of a change in the status of London that is about to happen or is happening as a result of the current position? Secondly, looking at longer term, do you see a risk of the shift in focus particularly of UK-established partnerships and firms towards becoming more US based and/or continental based rather than London based?

Edward Braham: It is very difficult to disentangle long-term and short-term effects. There is no doubt that the political uncertainty of recent years has had an international impact and, at least in the short term, that it has made people think quite carefully about whether they want to invest and do business in the UK if they have a choice where to do business. I would hesitate before concluding that those short-term effects were a clear indicator of the longer term. We shall see, but, again, if we wind up with a fractious environment because these negotiations have broken down in a bad way, I think we can expect at least a short-term impact while that happens.

Having said all that, I believe strongly in the global value brought by the UK, and the London financial markets in particular, and I would like to think that, if we look after that ecosystem carefully, and people continue to be as entrepreneurial and ambitious as the UK has historically been, London will continue as a major financial centre in the world and the UK generally will continue to be a very successful economy.

Regarding shift of focus, I can certainly speak for our firm. We see a need to be much stronger in the United States than we have been in the past, and that reflects client demand. To be able to look after our clients, our ability to serve them in the United States is very important, because they

themselves have a lot of legal issues in the United States reflecting their wish to do business there.

Similarly, we serve a lot of American clients in the UK, and generally around the world, and being able to serve them in the United States is important to that overall client relationship. For the benefit of our practices in Europe, the UK and Asia, we are growing our practice in the States, but it is in response to that client demand rather than because London has in some ways ceased to be such a successful place to do business.

Lord Thomas of Cwmgiedd: David Joseph, what, if anything, would you like to add to that?

David Joseph: The principal point I wanted to make is about London being seen as a global centre for disputes. It is quite important to focus on this, and it chimes with what Ed has said. The patterns most likely to affect us are what is happening in China, the United States, India and Russia and the CIS. Europe, of course, is a part of the equation, but it is by no means the entire picture. We are buffeted by world events, everyone is buffeted by world events, but it is a much wider picture than what would happen as regards leaving the EU. I do not think we can be complacent. Once the transition period ends, more courts and tribunals will be established in continental Europe and they will provide some more competition for us.

Audley Sheppard: I mentioned earlier that the bare statistics at the present time would not bear out the concern that London is losing its lustre, but, as I said, one can see trends towards other arbitral centres that are very likely to continue. If the perception in its broader sense is that the UK is not quite as reliable as it was on the world stage—and we know what happened at the International Court of Justice, where other countries wanted their seat at the table—there will be that drift away from English law.

I keep coming back to English law, which Ed and his transactional colleagues have mentioned. It has come through several times. We cannot be complacent, but it is not simply about not being complacent, and, if I may suggest, we need to do much more. Singapore, for example, has a centrally controlled campaign to ensure that the arbitration centre, the commercial court, which has given its name to the new mediation treaty, is effective. The GREAT campaign has been useful, but I would respectfully suggest that, if there is any space within the government bandwidth, there is much more that we can and must do to sell English law, and then other things will follow.

The arbitration community does not need to be separately represented, as the Royal Society and the Bar Council are doing that very well, but everything needs to be co-ordinated. A committee called Legal UK, which is chaired by Dame Elizabeth Gloster—I think, Lord Thomas, that you sowed the idea and held the first meeting—brings together quite a number of stakeholders once a month: the Law Society, the Bar Council, the City of London, the LMAA, the commodity exchanges, the Chartered Institute of Arbitrators and the Ministry of Justice. Through the adversity of Brexit it

has created much better communication than ever existed before, which is certainly a very good thing, although there is much more we can do.

Finally, we have been thinking about and discussing mobility and the physical movement of any of us to the EU, or vice versa. We have seen, certainly as disputes lawyers—I mentioned the courts before—certainly in arbitration, as Ed probably has in doing transactions, what our job will be like online coming out of the present crisis, with the emphasis on sustainability and the green movement and just not wanting to travel as much, and that will be very interesting for the provision of legal services.

I do not have an answer to that, but I am not sure that there has been the opportunity to get that taken on board in the present FTA discussions, because that FTA—to pick up David's point—is more of a mark 2 FTA, and what we really need is a mark 5.

Simon Davis: The core of this is what is happening right now. When people are about to sign a contract and would normally put the choice of law and jurisdiction as England and Wales, are their pens now hesitating as they think, "Shall we put somewhere else?" Not too long ago, I was in Madrid in a room full of in-house lawyers, largely from multinationals based in Spain, and I said, "Hands up who is looking at their jurisdiction clauses and trying to work out whether it should still be England and Wales for law and jurisdiction?" About 60% of the hands went up. I would say now that almost every hand would be up. The next question was, "Which of you has decided that you will no longer apply English and Welsh law in the jurisdiction?", and every hand went down. The question now is how many more hands would be going up.

Getting back to the whole theme of this session, it is enormously helpful for those who are contemplating any kind of a change to know that the Government have said that we should accede to Lugano for the reasons gone into. It is enormously helpful telegraphing that we still want to have this. You might pause and ask why somebody would want to choose somewhere else. English law, as we all know, has all kinds of strengths, but sometimes the word not used often enough is "familiarity". People are familiar with English law, because either they have come from a common law jurisdiction themselves—the United States, Australia, New Zealand, India, Singapore—or, very importantly, they came from civil law jurisdictions to study it at our universities.

It is not within your remit, but it is extremely important that, whatever happens over this next period, we ensure that we encourage overseas talent to come into our universities, because when they are in our universities studying English law, either at undergraduate or regularly at postgraduate level, they go back to their jurisdictions and are thoroughly familiar with it and very happy to see it being chosen as law. It comes back to Audley Sheppard and David Joseph's point that it is all about English law, and that so long as we can ensure that its strengths are understood, the fact that our courts will not start trying to bring in all kinds of terms about good faith and the like, and so long as our courts are seen to enforce English law with rigour, as they are doing, all will be as well as it can be.

Regarding New York and the alternatives, the question about those who could easily choose New York law at the moment goes hand in hand with the New York jurisdiction, which brings with it juries and a whole system, and, at the moment, when there is a choice of jurisdiction, most would choose the jurisdiction of England and Wales over that. If we do not get Lugano, if we get no deal, if we start telling people not to come to our universities, if we get all these things wrong, you can start to see that pen hovering over the jurisdiction clause going another way.

Viscount Trenchard: Yesterday, Mr Barnier said in a speech to the European Economic and Social Committee, "Do we really want the UK to remain a centre for commercial litigation for the EU when we could attract these services here?" He based that on a claim that, because of its 47 years of membership, the UK has built up a strong position in, among others, legal services, made possible by the fact that the UK was an EU member state. However, as Mr Joseph said, London is successful as a litigation centre because it is open and it is an attractive place to bring actions, not because we have been an EU member for 47 years. Is Mr Barnier's claim in his speech believable? What do the witnesses think about it?

David Joseph: I do not think it is credible. It is regrettable that there has been over-politicising or a tendency to resort to soundbites in an area where we are serving the interests of millions of clients right across the EU and the UK. I do not think it is helpful either. If you look at the historical position—this year is the 125th anniversary of the founding of the Commercial Court—it is the single busiest commercial court in the world. That has nothing to do with our membership of the EU. Likewise, Audley will talk about the history of the LCIA. It is, I think, the single biggest arbitration centre in Europe. There is a strong history and tradition here. I do not think it is helpful to say that we have built our position on the back of 47 years of membership of the EU.

Audley Sheppard: I have one headline answer to that: the English language. That contributes so much, because it is the language of global commerce, which of course brings in the US and New York law. However, the fact that we see, in our arbitrations and in the statistics of the court, two parties, and English is not the first language of either of them but they conduct their business in English, of course points one in the direction of English courts and English arbitration.

I do not think that one could, and I am sure no one would suggest that Monsieur Barnier is wholly wrong, because one might say that the fact that London is the world's largest or second most important financial centre with its banking community here has contributed to the success of English law. Has that grown and thrived because the UK has been part of the EU? I will leave that to economists to take a view on.

So, as with most things, there is no absolute answer, but I would say that there are much more important things than having been part of the EU.

Q29 **Lord Davies of Stamford:** You have given us, and through us interested members of the public, a very full impression of the work being done by

the professions you represent in guiding the hand of the Government and ensuring that they are fully briefed on this. Are you going further and thinking perhaps of drafting clauses that might appear in an eventual agreement covering the subjects we have talked about this morning?

Edward Braham: The Professional Business Services Council group that I have been chairing has a subgroup of trade experts who have been helping the Government with specific questions they have been asked. So in that sense yes, but we are very much offering a consultancy service to the Government rather than going beyond that, because the Government have their own people who are doing good work in this area.

David Joseph: The same applies to the forward relationship working group of the Bar Council that has been giving quite detailed wording on the different annexes and so on that would apply to the latest draft of the FTA, but, as Ed says, it is purely when we are asked to help. We do not foist it on them.

Lord Davies of Stamford: So the Government are getting some very valuable free advice.

Edward Braham: Correct.

The Chair: Lord Davies, are you content with those answers?

Lord Davies of Stamford: Very happy.

The Chair: Lord McNally has the final question.

Q30 **Lord McNally:** The private international law Bill, a government Bill, is before the House again next week and has been debated at length. David Joseph gave a strong endorsement to the Chamber of Commerce view that Lugano was a kind of get out of jail card. In his interventions in the debates thus far, Lord Mance has given some very powerful warnings against seeing Lugano as such an option. It is as much to my colleagues on the Committee as to the evidence givers that I say we should revisit what Lord Mance has said in the House about Lugano, because I think he raises some very serious questions that have to be answered.

David Joseph: First, I hope you do not think I was suggesting that Lugano is a get out of jail card. It is better seen as part of a successful international order. There are many other elements to it. We have not mentioned the New York convention, for example, but the New York convention of 1958, on the recognition and enforcement of arbitration agreements and awards, is probably the single most important international instrument in our area of disputes. I do not know the precise percentage, but perhaps 70% to 80% of the world's commercial disputes now are resolved through arbitration as opposed to litigation in court.

Is Lugano a get out of jail card? No, but it is helpful as part of a solution to one of the single biggest problems we face, which is the disease of parallel litigation, if I can call it that. In high-value disputes it is incredible how often parties commence proceedings in more than one country. The Lugano

convention provides solutions to that, and they are valuable solutions, for mutual benefit.

Lord McNally: I suggest you look at House of Lords *Hansard* of 3 June, and if you have any comments on Lord Mance's criticisms we would be interested to hear them. I think that is it, Chair.

The Chair: Thank you very much, Lord McNally. I would like to add to that if any of our witnesses have any additional thoughts that they would like to send in on paper that would be very welcome.

This is the conclusion of the questions from the Committee. I would particularly like to thank Lord Thomas for his assistance in organising such high-quality witnesses. I have thoroughly enjoyed this morning. We have had some very clear answers about the current state of play, and I thank the witnesses very much indeed for their help and their time. This public evidence session will end and the Committee will resume in its private session. Thank you very much to the witnesses. We will send a transcript for you to look at for any corrections.