

Home Affairs Committee

Oral evidence: [The work of the immigration directorates](#), HC 151

Tuesday 12 July 2016

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Members present: Stuart C. McDonald (Chair); Tim Loughton (Chair); Victoria Atkins; James Berry; Mr David Burrowes; Mr Chuka Umunna; Mr David Winnick.

Questions 141–248

Witnesses

[I](#): Gregg Brain and Kathryn Brain.

[II](#): The Right Hon. James Brokenshire MP, Minister for Immigration, Mandie Campbell, Director General, Immigration Enforcement Directorate, and Mike Wells, Chief Operating Officer, UK Visas and Immigration.

Written evidence from witnesses:

– [Home Office](#)

Examination of witnesses

Witnesses: Gregg Brain and Kathryn Brain.

In the absence of the Chair, Stuart C. McDonald was called to the Chair.

Q141 **Chair:** A warm welcome to this meeting of the Home Affairs Committee. You will have gathered that our regular Chairman is not here. He is unavoidably detained on pressing business; but thank you for travelling today to meet us. Am I right in saying that you have come from Dingwall, and that is where you live now?

Gregg Brain: Approximately, yes.

Q142 **Chair:** Just outside Dingwall, but originally you are both from Brisbane in Australia.

Gregg Brain: That is correct, yes.

Q143 **Chair:** And when did you first think about making the decision to emigrate to the United Kingdom, and in particular to Dingwall?

Gregg Brain: 2001.

Kathryn Brain: Well, 2001 was the original trip.

Gregg Brain: In 2001 we came here on a belated honeymoon, fell in love with the place—my wife's maiden name is Munro and her family is originally from not far from Dingwall. My family have McKinnons and McMillans from the Isle of Skye. We just fell in love with the place and wanted to come here and live long term if we could. We came over in 2005 without the holidaymakers' glasses on, just to see if we could physically make it work, and decided on a path of—well, other things, including a house fire, got in the way, and after being told that it was essentially impossible for us to have children we had a very late and welcome surprise—

Chair: He is here today.

Gregg Brain: So there were delays there, but eventually we came over in 2011 for Kathy to study.

Q144 **Chair:** So when did you finally make the decision that you were going to emigrate?

Kathryn Brain: Soon after the 2001 trip.

Gregg Brain: The 2001 trip, the decision was made; 2005 was really to make sure it was possible. At that point we had decided it would happen. It was just a matter of finding a pathway. If the panel would like, I would actually like to read a statement, which I hope covers some of the areas that we would like to cover—if that is permissible.

Q145 **Chair:** If you don't mind, we will run through some questions and if there



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are remaining issues and information that you want to clarify at the end, that will be very welcome as well. When you made the decision to come to the United Kingdom, what was your state of knowledge about the immigration rules and what the possibilities would be, longer term, for making it permanent?

Gregg Brain: If you will forgive me for being a little fuzzy on the details, while the intent and purpose of the policies remained largely the same up until about 2011-12, they were under a variety of different names—the Fresh Talent programme, Highland Homecoming, post-study work visa. Essentially, the intent of those policies was that we could come to the UK as a family—

Kathryn Brain: Scotland.

Gregg Brain: It was a Scottish programme, you are thinking. We could come to Scotland as a family, one of us could study here and on successfully completing the course of study we would be able, as a relatively straightforward matter—compared to, say, a tier 2 visa application—transition into what I will call for the sake of discussions here today a post-study work visa. It had various names through 2007 onwards, I think. We would both be able to live and work essentially unrestricted for a further two years. It would give us the opportunity to establish our value to an employer, such that they would be willing to take on the headache and expense of sponsoring us through a tier 2 visa process.

Q146 **Chair:** For the sake of clarification, that was originally the Fresh Talent visa for Scotland.

Gregg Brain: I think it was originally called the Fresh Talent programme; yes, I think so.

Kathryn Brain: Yes.

Q147 **Chair:** You arrived, I think, finally, in June 2011, and I think what the Immigration Minister has pointed out before is that at that stage the post-study work group had pretty recently been closed. Were you aware of that when you travelled?

Gregg Brain: I would like to clarify a point there. The Immigration Minister made a lengthy statement in an Urgent Question on, I think, 26 May, when he set aside—I am glad that he did—the usual convention of not going through individual details, and gave a lengthy chronology of almost every transaction that we had with the Home Office. He omitted one, and repeated twice—he said three times in *Hansard*—that the announcement of the discontinuation of the visa happened in March 2011 and that we arrived in June 2011, some three months after the announcement. Now, this is true. The one transaction that was omitted—by a gentleman who demonstrated that he was extraordinarily well briefed on our file—was the one transaction that would have completely undermined the argument, which was that our visas had been applied for and granted in 2010, the year before the announcement was made.

Kathryn Brain: By then we'd sold the house.

Gregg Brain: In fact, the application occurred even before the consultation period on these changes had been announced.

Q148 **Chair:** Were you aware of the changes by the time you made the journey?

Gregg Brain: No. We became aware of it when it came up in the press in 2012, shortly before it came into effect. With my knowledge of fundamental legislative principles from my Australian public service experience, I was very quick to reassure my wife that it would not apply to us—that it would not be applied retroactively; that as a matter of natural justice it must surely be applied only to people who arrived after the date of the discontinuance.

Q149 **Chair:** So when your studies came to an end—and it was you, Mrs Brain, who were the student—

Kathryn Brain: That is correct, yes.

Q150 **Chair:** What options were you left with, in the absence of the post-study work group, and what difficulties have you had in trying to follow these up?

Kathryn Brain: That has been the issue; as a new graduate it is very difficult to meet the tier 2 work visa requirements, because you have certain income streams that you have to meet, as well as a certain amount of experience and qualifications. Now, the qualifications I had were not yet backed by experience, which would have been gained through that two-year post-study work visa, and I would then have more easily transitioned to a tier 2 work visa. I am effectively a fresh graduate with no experience in the industry yet, having to apply for a position—

Gregg Brain: A relatively senior position.

Kathryn Brain: Yes, which would qualify for the tier 2 work visa. I have been very fortunate in that an employer has come forward and offered to sponsor me, but we are having to go through that process now and it is still not very clear.

Q151 **Chair:** So, in terms of applying for jobs, you are talking about trying to find a tier 2 job. Is that right?

Kathryn Brain: That is correct, yes.

Q152 **Chair:** So there is a salary threshold of £20,800.

Kathryn Brain: Well, £20,800 is the minimum for certain classifications, and that is the lower income. If I was to apply for a more senior position, of course the income goes up, but £20,800 is quite a healthy income for the Highlands. That would suggest a lot more experience than a new graduate would have, so, yes.

Q153 **Chair:** You say you have an employer who will offer employment that



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would meet that threshold.

Kathryn Brain: He is happy to meet that threshold on the basis that he is getting—he has also applied for a graduate scheme through the Highland Council, who will substitute—

Gregg Brain: Subsidise.

Kathryn Brain: Subsidise my wages for the first 12 months for 50% of the income, so he will not be having to come up with the £20,800. He effectively has to pay only £10,400.

Q154 **Chair:** And what is your employer? Is it a distiller?

Kathryn Brain: The GlenWyvis distillery, that is correct.

Chair: And are they able to sponsor you?

Kathryn Brain: They are in the process of getting the sponsorship certificate at the moment.

Gregg Brain: The application has been submitted.

Kathryn Brain: Once that is through, we can put my work visa application in, but we are just hoping that it all comes through before 1 August, which is our deadline.

Q155 **Chair:** Okay, so why is 1 August your deadline?

Gregg Brain: That is the grace period that we've been provided by the Immigration Minister—until 1 August—to submit a valid application.

Kathryn Brain: Yes.

Q156 **Chair:** So given the difficulties you had about tier 2, in the meantime you applied for and sought an exercise of discretion. Is that correct?

Gregg Brain: That is correct, yes.

Q157 **Chair:** And what was the argument you were making to the Immigration Minister?

Gregg Brain: The argument we were making was the one that we have made from the start, which is that this, for us, has been of necessity a seven-year exercise in the planning and the execution. Once we decided we had to do it and found out the way forward, it took a year for us to plan and execute a move across the planet, selling our house, selling property, moving our furniture and freighting it over here and extricating myself from a position I held in the Queensland Government. It took 12 months to achieve all that. Then, there would be the four years for Kathryn's study followed by the two year post-study work visa. This was as would have been envisaged by the Home Office in the Home Office back programme. They had to envisage that people would have to plan that far ahead to be able successfully to execute a programme that they provided. That is why I felt it was a rather extraordinary breach of trust when we had a letter from Mr Brokenshire that said—if you will excuse me, I am



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just trying to find the paper. Mr Brokenshire's letter to us of 12 April this year said, "Applicants should never assume the provisions in place at the time of their initial entry to the UK will continue to be viable options in future years." To be chided for our naivety in believing that we would be dealt with honestly and integrity by the Government, having been required to plan this far ahead, was, we felt, an extraordinary betrayal of trust.

Q158 Chair: And in your application for an exercise of discretion, I think you also mentioned Lachlan and his circumstances. How would he be affected by it and how has he been affected by it?

Gregg Brain: Do you want me to field that?

Kathryn Brain: Yes.

Gregg Brain: Lachlan is in Gaelic medium education, and again this seems to be a source of continued misunderstanding between ourselves and the Home Office. The original refusal letter for the further leave to remain application acknowledged that, "Your child has received some Gaelic education". In Gaelic medium education, the lessons are taught in Gaelic—there is no English taught. Orthography, spelling and grammar are all Gaelic. Lachlan would, in the ordinary course of events, have English introduced effectively as a second language study in Primary 4.

Q159 Chair: I'll need to stop you there, unfortunately. We have a vote that MPs have to attend, but we will be back in about 10 minutes or so to finish off. I apologise for the interruption.

Sitting suspended for a Division in the House.

On resuming—

Chair: The meeting is resumed. Before I come to my final couple of questions, do any of my colleagues want to ask Mr and Mrs Brain a question?

Q160 James Berry: May I ask three questions? You say that the decision has been retroactive. For the purpose of that argument, are you taking the relevant date as the date on which your application was made or granted, rather than the date of your arrival?

Gregg Brain: I'm taking it on the basis that we had been in the country for the best part of a year before the decision came into effect. As a natural justice issue, the decision was announced when there were already people such as ourselves who, on the date it was announced in March 2011, had sold their house. We had exchanged letters on our house. Our furniture, such as we kept, was in a container halfway to the UK at that point. We had booked and paid for non-refundable flights. We were simply waiting for the earliest day that we could arrive under the terms of our visa before the study commenced. We had well committed even on the date of the announcement.

Q161 James Berry: So you are taking it as the date of your application being granted, rather than the date of your arrival in the UK.



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Gregg Brain: My argument is that according to natural justice, to deny the path of that visa would be appropriate for people who were to arrive after the date on which the decision came into effect in April 2012. People who had come before that date had, in many cases—ourselves included—made significant, life-changing commitments based on the programme that was offered.

Q162 **James Berry:** You also said that the letter you received showed an extraordinary lack of trust. If the application form said pretty much what is in that letter, that is “The law may change to your detriment”—much like when you buy shares you are told, “These shares may go up or down”—would you not have gone ahead with the move?

Gregg Brain: I seriously think it may well have changed the decision we made. I guess I can make the glib comment that that was not in the prospectus. It was offered on the basis that you were studying for three or four years and then the programme was available to you at the end of that study. We are talking about asking people to make a commitment for years before being able to take advantage of what was offered back in 2010-11. To make that decision and commitment, and then be gently chided for assuming it would still be in place once we had reached that point is—well, as I have said to other people and will say again here, in a country that prides itself on being the birthplace of the rule of law, in these halls, to be able to assume you will be dealt with ethically and honestly by the UK Government should simply be beyond question.

Q163 **James Berry:** Finally, I take it from your previous answers that, had the route you took not been available to you, you probably wouldn’t have met the tier 2 visa requirements at the time you left. Would you have been working towards meeting those requirements before deciding to move, rather than coming on a student visa?

Gregg Brain: We probably would have planned differently. As I said, it might well have changed the outcome of our decision as to whether to come. There is no way of knowing. I cannot tell you what might have been in our minds had a different set of circumstances applied. I’m not sure.

Kathryn Brain: Your work experience and skills would have qualified for a tier 2 work visa when we were looking into it, but that has changed since as well.

Gregg Brain: Indeed. I have the best part of 15 years of health and safety experience. I have recently, at my own expense, got the locally recognised accreditation for that—

Kathryn Brain: With distinction.

Gregg Brain: Yes, with distinction, only to have, not long after that, the—

Kathryn Brain: SOCs.

Gregg Brain: Yes, the standardised occupation classifications changed such that a health and safety officer would no longer apply. I would like to



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state before the Committee that in no way am I arguing that Governments should not be able to change immigration policy to suit an evolving national interest. What I am saying, though, is that there is an issue of national justice. The deal that you have offered people, who have then made commitments and come in on that deal, should be upheld for those who have come.

Q164 **Tim Loughton:** Mr Brain, I am not a lawyer, but clearly how you interpret natural justice is always open to all sorts of hurdles. Nevertheless, setting aside whether your predicament is down to miscommunication, misinterpretation or misplaced trust, your case has been held up as a bit of a cause célèbre. Do you think there are many other people in similar situations or similar versions of your situation?

Q165 **Gregg Brain:** That is an excellent question.

Q166 **Tim Loughton:** Thank you. You will go far.

Gregg Brain: Which is always what's said just before you get shot down in flames. But it is a good question.

Kathryn Brain: Given the six months or so.

Gregg Brain: We have been told that many other students have left before us.

Kathryn Brain: Or gone on to other visas.

Gregg Brain: Or gone, and if they have meekly accepted what I understand is open to argument, but what I would describe as an injustice, does not make it right. We are probably the last ones left in the UK in this predicament. It does not mean we are too few to deserve justice. Reluctantly, we have become a cause célèbre. We did not move to a small village in the Highlands with a view to becoming the centre of worldwide attention. With global media attention, and with the instant communication of social media, friends have set up support pages for us and have been contacted by people who have had visa troubles. I am aware of not one other person who has come forward and said that they are in the same situation as us. As far as I am aware, and with all the communication opportunities that have been made available, there is no floodgate of cases waiting behind us.

Q167 **Tim Loughton:** Right. So you have not been a magnet to other similar cases. As far as you are concerned, you could be unique.

Gregg Brain: As I understand it, we are. I am obviously willing to stand corrected if someone were to come forward. To my knowledge, to this point, that has not happened.

Q168 **Tim Loughton:** So you do not think you will be setting a precedent if the Home Office changes its view?

Gregg Brain: My view on a successful pathway forward from here is that our further leave to remain application—I will refer to my statement so I can get it correct—referred to statements we did not make. It erroneously



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described Lachlan's education as being a piecemeal affair and then used that false assumption to discount it. It made several references to determinations about our intentions and expectations that were, apart from being wrong, quite simply beyond the decision maker's competence to make. My suggested pathway forward is that if this FLR(O) decision were to be reviewed, we would be happy to provide detail of the errors that were made. I cannot see a difficulty for the Minister who has the right under the FLR(O) applications rules. I understand the Minister cannot provide a post-study work visa because that no longer exists. They could provide, for the sake of argument, a further leave to remain of two years with the right to work, which is not a post-study work visa, but it has the same effect.

Q169 **Chair:** As time is marching on, I will ask you, if you can, to submit your statement to us.

Gregg Brain: Certainly. We have actually covered a fair bit of it.

Q170 **Chair:** If you submit that to us, we can publish that as part of our inquiry.

Gregg Brain: No problem at all. I will do that.

Q171 **Chair:** As a final question, can I ask how much in total you have spent on visa fees and legal fees during this time?

Gregg Brain: The legal fees have been over £10,000, simply because of the application process. We had one potential sponsor lined up with Kathryn. She was a principal of a law firm of many decades' experience. Unfortunately, due to a tragic change in her health, she had to pull out of the process as a prospective employer. She said that she would not touch an immigration application with her experience; it would be far too dangerous. She needed an immigration specialist lawyer. We have spent over £10,000 in legal fees so far. We will be spending another £4,000 on our current application in application fees. Sorry—we will be spending approximately £2,000 to £3,000 in legal fees on this next application, which is coming purely from charitable donations. We do not have this money ourselves.

The application fees we have paid are probably in the order of another £10,000, I would estimate. Maintenance funds and other commitments we have had to make would be another £25,000 or £30,000.

Q172 **Chair:** Finally, in the meantime, because you are in the grace period, rather than any extension of an application, you are not entitled to work.

Gregg Brain: That is correct. We are currently under our fourth roof in as many months, with friends providing us with accommodation. We have a member of the Church who owns a large estate that has a recently refurbished worker's cottage, and he has allowed us effectively to do a snagging check for him through the summer. We are not allowed to work, so we cannot pay for accommodation. We were evicted from our first home, which we were renting in Dingwall, by a landlord who said he would not be part of our criminal activity. I am sure Mr Brokenshire would be able to correct the record and say that that law does not apply in Scotland



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and that we were not criminals because we still had leave to remain—he had given it to us. However, I would point out that that sort of ostracising is exactly the intent of that particular law with landlord checks. It is designed to make things difficult for people who are having visa troubles. If Mr Brokenshire was honest with himself and this Committee, I think he would say that that eviction was a success for the legislative design.

Chair: Thank you both for taking the time to come and speak to us today. I am sorry it has been cut short. Do submit your written statement. Thank you.

Gregg Brain: We will. Thank you very much for having us.

Examination of witnesses

Witnesses: The Right Hon. James Brokenshire MP, Mandie Campbell and Mike Wells.

In the absence of the Chair, Tim Loughton was called to the Chair.

Q173 **Chair:** Minister, welcome. Thank you for waiting through the delay, the reasons for which you know. You also know that I am not Chairman Vaz, who is detained on urgent business with the Labour party at the moment, so we are unlikely to see him. The Committee has asked me to stand in. This could well be your last appearance before this Committee before you go on to greater things. We have heard it touted that you may be the new Home Secretary. I do not know whether you want to advise us of any intelligence on that.

James Brokenshire: I have learnt in so many years of being a Minister and also an MP not to believe much that you read in the newspapers around all this.

Q174 **Chair:** So you're not going to tell us. Right. We have just had the Brain family in front of us, who are something of a cause célèbre. I think you might want to read the transcript from that hearing when it is published.

We have a number of areas we want to cover today. We are running a little late, and we have one of your colleagues from the Home Office coming after you, and I am aware that we do not want to keep her waiting. We will try to get everything in within an hour or so. We want to cover a number of issues around Brexit and in particular the English language testing issue, of which you have been advised.

Can we start with Brexit? You obviously took a contrary view to the majority of the British public, although it was certainly one in keeping with that of the Home Secretary. There has been a theme since the referendum as to whether the status of EU nationals currently and about to be in the United Kingdom should be protected and whether we should declare that at this early stage or whether it should be contingent on the rights of UK nationals elsewhere in the EU. What is the settled view of the Home Office and the about-to-be Prime Minister?



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James Brokenshire: The view of the Government is that we want to protect the rights of the EU citizens who are here in conjunction with the rights of British citizens in the EU. We are confident that we can do that. We want to act reasonably and appropriately in relation to that. That is why we think that this will be achievable, but we think it is important to do both together. To be clear, that is not about bargaining chips. It is rather to ensure that we are doing both in parallel to avoid that. To give assurance, however, we have published guidance on gov.uk on the rights of EU citizens now. While we remain part of the European Union, rights will be unaffected. It is only once we leave that things might change.

Q175 **Chair:** Do you not think it might be a gesture of goodwill for the forthcoming negotiations, which may be long and arduous, if we were to say that the rights of EU nationals already settled in the UK would be guaranteed?

James Brokenshire: We think it is right to do this in conjunction with the rights of British citizens overseas. We must remember the 1.2 million British people who are living in EU countries at the moment and ensure that their rights are equally protected and respected. But we will act reasonably and appropriately. If we take that approach, we are confident that other EU member states will, equally, act in that way. My worry is that if we acted—with the best of intentions as to what people are trying to do—there is a risk that British citizens abroad would then become the bargaining chip, because we would effectively have to resolve their rights in isolation, whereas we think it is better to do this in the round, to give that assurance to EU citizens now.

Q176 **Chair:** I understand that you want to make EU citizens here and our citizens there part of a negotiation, but the question was whether there are attractions in setting out now the terms on which we would guarantee the rights of EU nationals in the UK as at a certain date, before we start those negotiations, which may make the negotiations for the status of those 1.2 million or more UK nationals rather easier to undertake. Or is that just completely off the table?

James Brokenshire: It is difficult to be that prescriptive. It is a complicated issue, for a number of reasons that I have already set out in the House: not just the right to reside, but also other rights in relation to welfare and rights relating to other family members who may not be EU citizens. We therefore think that the strongest approach for both—to get the best arrangements both for EU citizens here and for British citizens overseas—is to ensure that this is done in parallel and that it is viewed in the round.

Q177 **Chair:** I don't think I am going to go any further on that. What is your estimate of the number of EU citizens in the UK at the moment?

James Brokenshire: The current estimate is that there are around 2.9 million EU nationals in the UK.

Q178 **Chair:** And how sure can we be of the accuracy of that?



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James Brokenshire: That is, obviously, an estimate. At the moment, EU nationals do not need to prove their right to be here. Indeed, when you look at the right to permanent residence, which people can get if they are here lawfully for five years, they do not actually have to do anything to assert that right. You can obviously make an application to formalise it, and some people do, but it is normally for the EU citizen to evidence it in that way, to show—if they want to—that they are entitled to that permanent residence.

Q179 **Chair:** Right. So it is entirely based on the intelligence about people coming into the country—about incidents in which they present themselves to various official bodies for official functions while they are here. But, of course, we do not have a rigorous and thorough record of people leaving the country, which is something that this Committee has queried before, because we do not have rigorous exit passport checks. That is one of the reasons why this estimate of 2.9 million, which varies from any other estimate we have had, is quite a sketchy one. Is that fair?

James Brokenshire: It is an estimate, because there is no formal registration process; naturally, because of free movement, there is no visa that would be applied for in that way. It is, therefore, an estimate, but obviously we have the exit checks that have been introduced from last May, which at this stage are primarily focused on matching data in relation to those who have visas. It is how we use our advanced passenger information—where people are contacting the Home Office to register and formalise their arrangements, they will provide a whole range of different evidence to do that. But you are right to say that the 2.9 million is taken from the ONS data on population by country of birth and nationality. It is an ONS estimate that I am referring to.

Q180 **Chair:** Finally, what would a Brokenshire Home Secretary points-style immigration system look like?

James Brokenshire: It will be for the next Prime Minister to decide on policy in that respect.

Q181 **Chair:** What would you advise her, as the expert on this?

James Brokenshire: The Home Office is engaged with the current process that has been started through the Cabinet Office to assess the range of different options and permutations that may exist. I am certainly not in a position to announce the result to the Committee today—you may summon back whomever is Immigration Minister or Home Secretary in forthcoming weeks—but we are looking at that assessment and work carefully. But obviously the Home Secretary herself has stated that she sees that the existing movement cannot continue as it has done; the British public have said that we want more control over that free movement.

Q182 **Chair:** Okay, but given that there is a sense of urgency about the triggering of whatever procedure will herald the beginning of negotiations for us to come out of the EU, for which free movement and immigration is a core issue, how much longer will it take for the Home Office to do some



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crucial work to come up with a robust points-based system—if that is to be the solution—so that the Prime Minister and the chief negotiator, whoever he or she may be, know what they are negotiating for as regards free movement?

James Brokenshire: It is rather to look at the various different options; it is not necessarily that a points-based system is the right way forward or the right option. That will be for the new Prime Minister to determine. That is certainly one arrangement. Other arrangements could obviously be considered.

I suppose that one of the equal challenges in negotiation is what you are able to say publicly and what you need to keep in reserve as your red lines in your negotiation tactics. I suspect that there may well be, in the months ahead, frustrations from different Select Committees and others, about what the Government are able to say so that we are able to get the best possible deal.

Q183 **Chair:** That is a good get-out-of-jail answer. From that, we could conceivably assume that work secretly may be going on within the Home Office that will enable your successor and the negotiation team, at a very early stage, to present EU partners with the basis of what our immigration system should look like post-Brexit. Is that a fair hypothetical assessment?

James Brokenshire: I can certainly assure the Committee that work has commenced on those options in order to present information to the new Home Secretary and to assist the Cabinet Office under Oliver Robbins, who was the second permanent secretary at the Home Office and is now based at the Cabinet Office and is seeking to produce dispassionate advice for the new Prime Minister.

Q184 **Mr Umunna:** Just going back to the question that the Chair asked, you have said that you will not guarantee the rights of EU nationals who are here now to stay in the UK. What do you say to the parents and families of children at Streatham Wells Primary School in Streatham and St Mary's Roman Catholic Primary School in Clapham—both of which I visited on Saturday for their summer fairs—who asked me, "What is going to happen to me and my family? How is this going to impact on whether I can stay in the country or not?" These are worried and stressed people. What do you say to them?

James Brokenshire: First, nothing changes while we are a member of the EU.

Mr Umunna: They know that.

James Brokenshire: Therefore, if they have been here for five years, lawfully, they will be entitled to permanent residence. Secondly, the Government are approaching this with the intent of guaranteeing the rights of EU citizens and—parallel to the rights of the UK citizens who are in the EU—we will act in good faith, reasonably and appropriately, recognising the contribution that EU citizens make to our public services,



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economy and communities.

Q185 Mr Umunna: But if you have not met the criteria that you just set out, the fact is that you have absolutely no idea what is going to happen to your family at the end of the two-year process after article 50 is invoked. That is correct, isn't it?

James Brokenshire: That is the position but we want generally to guarantee those rights as part of the process that I have outlined.

Q186 Mr Umunna: But you are refusing to guarantee that now. In my area, 79.28% of my constituents voted to stay in the EU. In my borough, we had the strongest remain vote in the country. In essence, the Government are using people and families as pawns in the negotiation of a process that they, frankly, did not vote for. That is unforgiveable, Minister, is it not?

James Brokenshire: I entirely disagree, Mr Umunna, with the way in which you have characterised this. I campaigned for Remain in the same way that you did. I respect the view of the voters and the decision they have taken. Brexit means Brexit, and we need to ensure that we give effect to that. But no, this is not about playing games. It is not about using people as pawns. Rather, it is about getting the best possible arrangements for EU citizens in this country, as well as for our British citizens abroad, and there is a duty on the British Government to get the best arrangements for our British citizens abroad as well.

Q187 Mr Umunna: There is a duty to treat people as human beings and not pawns, and even—

James Brokenshire: Yes, and we will not do that.

Mr Umunna: Minister, let me finish my sentence. Even one of the leading Vote Leave campaigners, Andrea Leadsom, who everyone knows of right now, is saying that EU citizens who are currently here should be guaranteed their status going forward. So why are you persisting in maintaining the position that you are, when even someone who is a leading Vote Leave campaigner—Vote Leave having basically taken the current Government prisoner, and probably the next one too—is saying, “Give these people the right to stay here”.

James Brokenshire: First, those people who have been here for the five years have the right to stay here. Secondly, there is a duty to get parallel arrangements for British citizens abroad and we judge that it is appropriate to do that in conjunction with securing the best possible rights for EU citizens too. I worry that the perverse outcome from what is being suggested here is that British citizens abroad would then become pawns in a negotiation because, effectively, you would then have to seek to negotiate their rights in complete isolation. This is a priority for the Government, and the Home Secretary and others have made this clear. This is a priority for us, in terms of regularising this position. It was a point I made to the heads of EU missions at a meeting yesterday to give that sense of reassurance.



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Q188 **Mr Umunna:** Can I just ask you—

Chair: This is your last question, Mr Umunna.

Mr Umunna: I just want to ask a question relating to various commitments that have been given by those who wanted to take us out of the European Union, to basically get a yes or no answer from you. Is there going to be an Australian-style points-based system in respect of all immigration into this country going forward, yes or no?

James Brokenshire: I cannot give you an answer—

Mr Umunna: You cannot give an answer.

James Brokenshire: That will be for the next Prime Minister.

Q189 **Mr Umunna:** Will you be ending the automatic right of all EU citizens to come and live and work in the UK, yes or no?

James Brokenshire: If you are implying whether that would be maintaining the existing freedom of movement, the Home Secretary has indicated that she thinks that that is not something that can be maintained.

Q190 **Mr Umunna:** Is it your belief that those seeking entry for work or study should be admitted on the basis of their skills without discriminating on the grounds of nationality?

James Brokenshire: Again, I think that the sort of questions that you are putting to me now, Mr Umunna, will be for the next Home Secretary and the next Prime Minister. While I am not trying to be difficult to the Committee—I appreciate that you are trying to get as much clarity as possible—I am sure that there will be plenty of opportunity for the Committee to cross-examine. It is for the next Prime Minister.

Chair: Mr Umunna, that was three last questions.

Q191 **Mr Umunna:** Can I just ask my final last question? Isn't the point here that a whole load of commitments were given by Vote Leave campaigners who are currently Ministers—Chris Grayling, Theresa Villiers, John Whittingdale, Andrea Leadsom, Michael Gove and many others—

Chair: Mr Umunna, we do not have any of them in front of the Committee today—

Mr Umunna: Is it not the case that right now you cannot guarantee that any of those commitments that were given to the British people are going to be followed up on?

James Brokenshire: I did not campaign for the Leave side—

Mr Umunna: I am just asking you a factual question. There is a whole list of—

James Brokenshire: To be honest, we cannot rerun the referendum campaign. I do not think that would be right—



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Mr Umunna: No, but we can hold people to account for promises they made. I am just asking you whether they will be keeping them.

James Brokenshire: And different views were expressed as to what would happen following the referendum, following the UK leaving the European Union. My focus, in supporting whoever becomes the new Home Secretary, is to get the best possible deal for the United Kingdom, to get the best possible deal for EU citizens being here, and to get the best possible deal for British citizens within the EU, and therefore it is with that approach that we take this.

Q192 **James Berry:** It is right, isn't it, Mr Brokenshire, that members of the Remain campaign, including you, made it clear that the statements made by Vote Leave campaigners were not statements by Government but by campaign organisations?

James Brokenshire: There were different views, absolutely, that were expressed during the campaign, but the public spoke loudly and clearly in terms of the outcome of the referendum, so we will follow and execute their wishes.

Q193 **James Berry:** Just recapping on the rights of EU migrants currently living in the UK, no EU migrants' rights are affected for the next two years at least, until we leave the EU, and nobody who has been resident here for five years has their rights affected because they have the right to remain. Does it follow from that that someone who has been living here for three to five years at the time we leave the EU will also not be affected, because they will have been here for five years at the time we come to leave the European Union?

James Brokenshire: Obviously, if someone is here for—we continue to follow the EU law in respect of this. Obviously, we cannot guarantee rights fully moving forward, because of the fact that we will be leaving the EU at some point following the triggering of article 50 and the time period that we know is there. We will need to consider all these issues very carefully. Those who have been here for five years obviously have the right to remain, if they have been here lawfully, and we will continue to follow our obligations under EU law.

Q194 **James Berry:** So the group potentially at risk are those EU migrants who have been living here for one to two years. Have any other EU member states, their Heads of Government or your counterparts given the clear commitment that British citizens living in those countries will have all the rights that they currently enjoy? That is being quite angrily demanded of you at the moment.

James Brokenshire: No, they haven't. We have indicated that we would be prepared to have discussions around this. That point has been made by the Foreign Secretary. Equally, I have made it as well. We want to see this resolved as an urgent priority item, in the best interests of EU citizens here and of our citizens within the EU.

Q195 **James Berry:** Forgive me for repeating a question I have asked you on



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the Floor of the House. I entirely accept your point that this is a complex bundle of rights and responsibilities that needs to be unpicked and translated into domestic law, but would you agree that there is certainly a strong case for this being hived off from the main negotiations and dealt with on a Head-of-State-to-Head-of-State basis for Brits abroad and EU citizens here, before the main negotiations take place?

James Brokenshire: We think this is something that needs to be a priority. That has been a very clear message that the Home Secretary has given, but we need equally to understand that this is complex. It touches on things like pension rights, entitlements to benefits, employment rights, running a business and a whole host of other things. I think that there is a sense from the Government that we see this as a priority issue, for all the reasons that have been set out by the Committee and other Members over the last couple of weeks.

Q196 **James Berry:** Finally, with respect to the points-based migration, isn't it right that with respect to non-EU migrants, we already effectively have a points-based migration system? One option available going forward would be for EU migration simply to be treated in the same way as non-EU migration is at the moment. I'm not asking you to confirm whether that will be the case, but I certainly—

James Brokenshire: We do have the various tiers of the points-based system for non-EU. I would not wish to suggest whether that was appropriate or not in relation to EU citizens. It is precisely these issues—free movement, practicalities at the border and a whole host of other things—that will need to be considered very carefully.

Q197 **Chair:** Minister, before I hand over to Mr Winnick, I notice that Ms Campbell and Mr Wells are happy to let you do all the legwork so far. Perhaps we can ask them for their comment. Earlier this year, I asked every Department of Government what contingency plans were being made for the possibility of a Brexit vote, and every Department of Government, with the exception of the Church Commissioners, responded that nothing was being done, so perhaps Ms Campbell and Mr Wells can tell us what is now—presumably frantically—being done, from their respective parts of immigration offices, to advise the Government, and how that is being incorporated into whatever proposals go forward to negotiation. Ms Campbell first.

Mandie Campbell: As the Minister said, we are now discussing the potential changes that may come about over the coming years. There is a Cabinet Office group headed by Olly Robbins that has been put together to negotiate the Government position, and we will be feeding into that process. It is very early days in the process, and we are just starting to consider all the implications for the—

Q198 **Chair:** And what officials from the Home Office sit on that Cabinet Office group?

Mandie Campbell: There is a steering group that has just been established. I am not aware of the representation from the Home Office at



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this stage. It is a very, very new group that is just being brought together at the moment.

Q199 **Chair:** So, almost three weeks since the referendum decision, we don't know who from the Home Office will be on a crucial Cabinet Office committee that will urgently advise the new Prime Minister on how to start the negotiations?

Mandie Campbell: The permanent secretary from the Home Office will be the main member of the group, but there will be other supporting members of the Home Office who will be added to that group as necessary, as the negotiations unfold.

Chair: Mr Wells?

Mike Wells: Ms Campbell has given most of the answer, I think, but more generally of course I am responsible for the operational part of UK visas and immigration, and we are working with our colleagues on the policy side of the Home Office to give whatever advice they need on the operational impacts of different possibilities as they develop them, and of course more immediately making sure that our operations run effectively and efficiently in the meantime.

Q200 **Chair:** And you can confirm that ahead of the referendum you were not given any instructions or requested by Home Office Ministers to provide any contingency arrangements or proposals in the outcome of a Brexit vote?

Mike Wells: We followed exactly the same requirements as all other Departments in that regard, as far as I am aware.

Q201 **Chair:** So that's a no?

Mike Wells: As I say, we followed exactly the same requirements as everybody else.

Q202 **Chair:** So, with all the other Departments the answer would be no?

Mike Wells: My understanding is that the Government's position in the referendum was clear and as civil servants we follow the Government's position.

Q203 **Chair:** I am still not clear I've got an answer. It sounds a quite simple one: you, in your position, in common with any other Department—

Mike Wells: In terms of me personally, certainly I followed that position to the letter, so, no, I was not involved in preparations for an outcome other than the one that the Government were campaigning for.

Q204 **Chair:** Thank you. We got to a "no". Can I ask Mr Winnick to carry on?

James Brokenshire: Can I just add something to clarify matters? The Home Office has a team leading the Department's work on all aspects of Brexit, which has been led by our international immigration policy group. So, while you were questioning as to the inter-relationship as to whether there is a formal person who is at the Cabinet Office, it is rather that we



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have been doing that work already ourselves to inject into that process at the appropriate time, and I believe the Permanent Secretary has been invited to give evidence to you next week to set out some more of the detail in relation to the Home Office structure and processes.

Chair: Okay. That will be helpful. Thank you, Minister. Mr Winnick.

Q205 **Mr Winnick:** Minister, you say that the question of the status of British citizens in EU states is one for negotiations, hence the reason why EU citizens in this country are not being told whether they can stay regardless of our leaving the EU, if that is to be the position. Can I put it a different way? If EU citizens living in this country—quite lawfully, and there is no question about that as they came under the treaty regulations—were given the right to stay now, wouldn't that be a very strong point in negotiations, because it would surely be very difficult for the 27 other countries to say, in effect, that British citizens cannot stay?

James Brokenshire: Well, it goes to the point that I have already made, Mr Winnick, that the outcome that we want to achieve from these arrangements is to guarantee the rights of EU citizens. Therefore, we would expect other EU partners to act in a reasonable and appropriate way in respect of our British citizens, too, which is why we are confident that we will be able to achieve that best outcome. So, it is rather the reasonable approach—the measured approach—that we will take to this, recognising the contribution that EU citizens make to our country.

Q206 **Mr Winnick:** Yes, but if a decision was taken along the lines I have indicated, which is not the line of the British Government at the moment—what I am saying, by way of a question, is that it would be almost impossible for the other democratic states to say, in effect, "Despite what Britain has done, we will not give British citizens the right to stay in our country".

James Brokenshire: That is to be seen and we think the stronger position from a negotiating perspective is to go in with that intent to guarantee, and therefore to seek that positive deal for British citizens abroad. Therefore, we do this in parallel—taking this together—and we think that is the strongest means to achieve that outcome for both sides. As I indicated in the Opposition day debate last week, I don't think we are poles apart in terms of what we want to see as the outcome. It is rather that we think that this is best way to achieve it.

Q207 **Mr Winnick:** Would you also accept that there is cross-party support? I mean, even those who took the leading role in the Leave campaign—Boris Johnson, for example, and no doubt others—have made it perfectly clear that they don't wish other EU citizens now in this country to be forced to leave under any circumstances.

James Brokenshire: To be clear, again, in terms of what we want to get from the outcome of this: we want to be able to guarantee the right of EU citizens living here. That is absolutely the outcome that we believe that we can achieve. Again, I think it is rather—



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Q208 Mr Winnick: If you could answer my question, Minister, with the greatest respect: do you accept that there is a strength of opinion in Parliament along the lines that I have indicated?

James Brokenshire: Mr Winnick, I responded to the Opposition day debate last week and I know that there are opinions that have been expressed in a number of different ways. But equally, as the Government, in seeking to get the best possible outcome for EU citizens as well as British citizens abroad, we have to look at the most effective way to achieve that. That is why we think that doing this in parallel with that positive approach and that sense of what can be achieved is the best way.

Mr Winnick: I think the two words that I would put to you as the views of so many in the country, including a good number involved in leaving the EU, are fairness and justice.

Chair: Thank you. Victoria Atkins, you are now ready for your killer questions, I believe.

Q209 Victoria Atkins: Thank you, Chair. London is said to be the sixth largest French city in the world and presumably it follows therefore that the French Government are going to be keen to look after those French nationals in the event of our leaving the EU. Does that follow, Minister?

James Brokenshire: I would certainly expect that to be the case, but the indications that we have been given thus far are that member states do not want to get into that discussion at this point in time.

Q210 Victoria Atkins: But there have been adverts, I think, from France, appealing to their French colleagues to come back from London and return to "Gay Paris".

James Brokenshire: I reiterate what I said about the strength that we gain as a country from so many people from the EU and elsewhere, who contribute to our country in so many different ways and make it the vibrant, outward-looking nation that I think we are. It is precisely those values that I want to see continuing into the future, while we of course recognise, respect and give effect to the vote that has taken place.

Q211 Victoria Atkins: And alongside the many cultural and community benefits that those French nationals bring to London, they also bring cold hard cash—don't they?—because a lot of them tend to be employed in the financial sector and they are paying their taxes here in London and therefore contributing towards the NHS and everything else.

James Brokenshire: No, you are right. We know that there are many EU citizens—French and others—who are treating patients in the NHS, looking after our elderly and contributing to education as well. Absolutely we recognise that and that is why we make the points in the way that we do, and want to go into this to guarantee the rights of EU citizens alongside our British citizens as well. It is that outcome that we want and believe that we can achieve.

Q212 Victoria Atkins: And so, coming to the issue of the Le Touquet



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agreement—which I know is a favourite topic of the Chair—is it right that the British Government are going to have to negotiate very carefully with the French to ensure that that bilateral agreement stands and the border is kept in Calais rather than being moved to Dover?

James Brokenshire: The Le Touquet treaty is important for both France and the United Kingdom. The comments that have been made by President Hollande, who said that it would make no sense to use Brexit as a pretext for opening up Le Touquet, and Monsieur Cazeneuve, who stated that Le Touquet is not being called into question, have certainly given a strong message from the French Government. But it is important that we continue to underline the benefits to the UK and to France, recognising that the treaties were put in place in the first place to deal with previous migration pressures in and around Calais and recognising that there are Opposition politicians who are taking a contrary view. We need to keep close to France and to reiterate the benefits of these arrangements for both countries in order to ensure that the position maintains. The strong indications from the French Government are that they recognise that and that they recognise the benefits. We continue to work closely with them on the continuing challenges in relation to our juxtaposed controls in northern France.

Q213 **Victoria Atkins:** But the reality, and you have just referred to it, is that the French Government are under some pressure at home in relation to the agreement. The French presidential candidate Alain Juppé has stated that, if elected, he will be likely to scrap the agreement. The French Minister of the Economy and the mayor of Calais, from whom the Committee heard last summer, have also made it clear that they would like the arrangements to end. With the EU national issue, there are many, many tensions pulling the Government every which way. There are the very understandable tensions that Mr Umunna has raised, but there is also the cold hard politics of what is happening in Europe.

James Brokenshire: The relationship with France is a key one for the reasons I have explained in terms of how we manage our controls in northern France and what that gives both our Governments. That is the point that we will stress, and this Committee has previously heard evidence, including in answer to the questions I have taken from Mr Umunna and Mr Loughton in relation to the Le Touquet treaty, that we see this as significant and important for our relationship. We are clearly continuing to work closely with the French authorities in respect of the security situation there, with the Home Secretary making a commitment in Amiens on 3 March to spend a further £17 million during this financial year in respect of security arrangements around Calais. We will maintain that close contact with the French Government but, again, we will underline more clearly the benefit that France gets from this. The Le Touquet treaty came about because of the congregation of migrants around Sangatte and all the challenges and issues that were faced there. There was therefore a sense that you could not simply make it across to the UK by getting to northern France. Those messages remain, and they remain as relevant for France as they do for the UK.



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Q214 Mr Burrowes: Two months ago, the revised Dubs amendment to the Immigration Act was passed. Lord Dubs has since said that, following the Brexit vote, Britain has become less tolerant to refugee children. Do you agree with his assessment?

James Brokenshire: I don't agree with that assessment. The Government's priority remains to give effect to the Immigration Act. We continue to work to see children and adults transferred under the Syrian vulnerable persons resettlement scheme—let's not forget that around half of those people are children. We have put in place new arrangements for the dispersal of children who arrive spontaneously in the UK from Europe and elsewhere so that they can be looked after and cared for appropriately—there were around 3,000 of them last year. There is continuing recognition of the role that the UK has in supporting vulnerable people and refugees. We have a part to play in this. Although, yes, we have made a referendum decision to leave the EU, I think that that sense of who we are as a nation remains unchanged.

Q215 Mr Burrowes: Following the promise in relation to the VPR scheme in September 2015 that, by Christmas 2015, 1,000 relocations would take place, where have we got to on the children at risk scheme for Syria in terms of numbers? What about the revised Dubs amendment relocation scheme for children from Europe? Where have we got to?

James Brokenshire: On the arrangements for the Immigration Act provisions and the amendment that was proposed by Lord Dubs, our commitment absolutely remains. A great deal of work has taken place from what was effectively a standing start at that point, in terms of work with local authorities. We have been consulting with local authorities to confirm capacity, which was a core part of the provision that was passed in the Immigration Act. We have been in discussions with the UNHCR, UNICEF, other NGOs and the Italian, Greek and French Governments to strengthen and speed up mechanisms to identify, assess and transfer children who meet the necessary criteria to the UK, where it is in their best interests.

This is not a simple task. We are having to work through the complex legal and safeguarding systems of those countries, because it is a different arrangement, contrasted with the vulnerable persons resettlement scheme from the regions around Syria. Equally, we have to ensure that we are respectful of the domestic provisions that apply in those countries.

It needs to be seen in that context. It is certainly not through any lack of will or work in respect of this. We are continuing to see children transferring from France under the family reunification arrangements and the Dublin arrangements that sit within that. Therefore, we intend to continue the work and meet our commitment to bring vulnerable refugee children from Europe to the UK.

Q216 Mr Burrowes: When can we expect the first children to arrive from the Syria scheme and the MENA region relocation scheme for children at risk?



James Brokenshire: Again, separate work has been undertaken on that. I would certainly expect the first children under the children at risk resettlement scheme to arrive before the end of the year. We have been in active discussion with the UNHCR about the children at risk criteria, looking at the middle east and north Africa region.

In some ways, because there are established structures that sit around this, which we have worked through with the vulnerable persons resettlement scheme, it is about how we mirror that and look at a slightly different cohort of vulnerable children. We are proceeding with that and working closely with the UNHCR to identify cases suitable for resettlement under that scheme. That is progressing, and that is the timeline that I think we will have.

Q217 Mr Burrowes: Can you give any estimate of the timeline for the European relocation scheme? When do you expect everything to come together? That is my first question.

My second question is this. Councils have been in the news saying that are concerned about the lack of assurance about long-term funding. Can you address that point as well?

James Brokenshire: If I can briefly turn to the position on children from Europe, we have had a steady process in relation to children who have a connection to the UK—those who have a family or other connections. Since Royal Assent, 21 cases have been accepted from France and 17 people have been transferred, but obviously we want to look at establishing connections with Italy and Greece as well. We have put someone into the Dublin unit, as it is known, in Athens to ensure we are getting the link-ups between all the different parts of the Greek system, and to ensure that we are able to move quickly there. That work is ongoing.

Your second question was about the funding issues. We have put in place revised funding from 1 July for unaccompanied asylum-seeking children. There has been a 20% uplift for children aged under 16 and a 28% uplift for 16 and 17-year-olds. That relates to unaccompanied asylum-seeking children who simply arrive here. We are looking at that funding model in respect of children who are unaccompanied and come under the children from Europe arrangements, or children arriving under the separate scheme. Clearly, the Syrian scheme has its own funding arrangements—you are talking about family groups there—but for the funding for children on their own, we have revised the arrangements and uplifted them. We believe that those are fair funded arrangements and we therefore think that that should assist, alongside the new dispersal arrangements that we have established.

Chair: Last question, Mr Burrowes.

Q218 Mr Burrowes: A two-part last question. Is any review taking place in relation to the different routes that are now in place for relocation schemes—VPR, children at risk, Europe—and those coming in regularly? There does not appear to be a discrimination on the funding and integrated package of support that can lead to a cliff edge, where, once



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indefinite leave to remain has been granted—for example, to someone from an irregular route—they have a very short space of time to get appropriate housing and other packages of support. Is there some wide review to try to harmonise this?

James Brokenshire: I would say two things to that. First, we in the Home Office are looking at how we can streamline some of these processes so that there is, in essence, a clear front end between the Home Office and local authorities, to respond in that way. We are also using the strategic migration partnerships, which are effectively regional groups of local authorities, to respond and work through all these different arrangements. We have given some additional funding to strategic migration partnerships as well, to assist them with that process.

So we are looking at this, to streamline it and to ensure that, with all these different arrangements, it does not become cluttered and things do not become at odds with one another. It is precisely that approach that we are taking.

Q219 **Mr Burrowes:** When will we—

Chair: Is this your final, final question?

Mr Burrowes: This is the very final question. Separately, when will we expect the publication of your strategy for the immigration detention estate?

James Brokenshire: As you know, that is work that we have been looking at carefully, working with Ms Campbell who, through immigration enforcement, has been closely involved in this as well. We are making good progress on it, but at this stage I cannot confirm a timeline. Mr Burrowes, you will be well aware of various other things that we have been doing in respect of the detention of pregnant women and the vulnerable adults policies that are being put in place. We are now taking a number of different steps. We are putting that sequencing in place on the caseworking, on the whole front end of this, and as part of that we are equally looking at the impact in terms of the overall immigration detention estate.

Q220 **Chair:** But, Minister, that is a pretty long-winded way of saying that you do not know when you are going to be producing something, for an issue that has been ongoing for quite a while and that this Committee has looked at and questioned you about in the past. We have had the author of the report here and we have visited Brook House, among other things.

Can Ms Campbell, perhaps, give further estimates on when that work will be forthcoming, because of course, your time at the enforcement agency is limited now; do you expect to have that work finished before your departure?

Mandie Campbell: As the Minister said, we are in the process of making a number of changes, following Stephen Shaw's report, so there are lots of pieces of work under way. We have been piloting a range of measures that we said we would fulfil, as part of implementing the recommendations. We



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have case progression panels to look independently at people who are detained, to progress their cases forward rather than simply review their detention. Detained adult safeguarding teams are being piloted again, to provide a degree of independence to the decision to detain. We published the adults at risk policies in draft at the end of May; again, we hope those will be confirmed in Parliament later this month. We are also putting in place a single gatekeeping team to make sure that anybody who goes into detention is properly and independently assessed before their entry into detention. So a whole range of new measures are underway, following Stephen Shaw's report, that will be implemented in full over the coming months.

Q221 Chair: Okay, but given that the time in which announcements can be made to Parliament is now very limited—given that recess is next week—are you saying that probably most of this work will continue to be in the form of pilots before you have any firm proposals to be confirmed to the House?

Mandie Campbell: We expect the proposals relating to the adults at risk policy to be confirmed in the House before recess. That policy has already been published in draft and we have already been taking views and comments on it, but obviously very many people were involved in its creation before it was published in draft.

Q222 Mr Burrowes: With all this good work, there was always an expectation that there would be a local strategy, so that you would be able to assess not least the numbers but the expectation as to those who would be in the detention estate and the wider strategy going forward, notwithstanding all the other work that is taking place. What is the timeline for that?

Mandie Campbell: I think that will be a matter for the incoming Home Secretary, because as you say, it is not just a matter of following an assessment of the various ongoing pilots and pieces of work, but a consideration of the size and shape of the future detention estate.

James Brokenshire: As you will appreciate, Mr Burrowes, it is a question of how we can harness the processes in community. This one building block is part of a much bigger whole, with the implementation of the new Immigration Act provisions on when someone becomes appeal rights exhausted, how that interfaces with immigration enforcement, and therefore the hand-offs between UK Visas and Immigration and immigration enforcement. We are maximising that effort. A great deal of work is taking place on how we assess the overall need in terms of numbers and the shape of the estate. We want to get this right for a host of reasons: to optimise the bed numbers within the detention estate; to make that that number is sufficient; and to meet the efficiency challenges that we set ourselves. That is obviously determined by throughput and how we are using the beds in the immigration detention estate to ensure that the number of bed nights is falling. We are working through all those factors.



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Chair: I want to pass on quickly to David Winnick, who has a question on Northern Ireland, and then to Mr McDonald who will ask about English language testing.

Q223 **Mr Winnick:** Leaving the EU will create certain complications in terms of Northern Ireland, because there are no border controls between the Republic and Northern Ireland. That is the situation, is it not, Minister?

James Brokenshire: That absolutely is the situation. However, we have the common travel area, which I believe dates back to 1922. That absence of immigration controls was in place prior to our joining the European Union.

Q224 **Mr Winnick:** But as I understand the position, if we leave, the border would become an external EU border.

James Brokenshire: Our intent is that the common travel area arrangement is preserved. We have the full support of the Irish Government to work to preserve that. It is notable that the Irish Justice Minister, Frances Fitzgerald, has said of the border, "However ours will be geographically isolated from the rest of the European Union and in particular it will be outside the Schengen area so the integrity of the border controls of the Schengen area will not be affected in any way." It is a question of understanding that distinction and appreciating both that these arrangements pre-existed our membership of the EU and how we working with the Irish Government to maintain them.

Q225 **Mr Winnick:** May I clarify the position? As I understand it, and given what you have just stated, leaving the EU would have no impact whatsoever on the present arrangements relating to Northern Ireland.

James Brokenshire: We obviously wait to see the approach that the Commission and others may take on the matter, but I emphasise the good close contact that we have had with the Irish Government and the conversations that I and the Home Secretary have had with Frances Fitzgerald, the Irish interior Minister, to underline our joint desire to work to preserve the common travel arrangements so that we do not see a border between Northern Ireland and the Republic.

Q226 **Mr Winnick:** That would be very desirable if indeed the UK does leave the EU. During the referendum, the Taoiseach made it clear that although obviously it was a matter for the British people to decide, a leave decision could have adverse effects on the peace process. We know of the achievements since the late 190s, the saving of lives and the ending of terrorism, by and large. Unfortunately, terrorist groups of minor significance can still take lives and injure many people, but in the main I think the general consensus is that the peace process has worked quite well. Let us hope—as I am sure you do, Minister—that it continues long into future. Are you optimistic, despite what the Taoiseach said during the referendum campaign, that leaving the EU will not have a major adverse effect on the peace process?

Chair: The Minister is always optimistic, so I am sure we will be able to have a very simple answer to that question.



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James Brokenshire: There is a strong will on the part of both the Irish Government and the UK Government to preserve the common travel area and the arrangements that pre-existed our membership of the Common Market, the EEC, the EC and the EU. It is with that intent that we will be continuing those detailed discussions with the Irish authorities.

Chair: Mr McDonald, a final question on immigration before we go briefly on to English language testing.

Q227 **Stuart C. McDonald:** Thank you very much. I just wanted to ask a question on the subject of EU nationals in the United Kingdom. A couple of times, during the urgent question and in your answers to James Berry, I have almost had the impression that you were saying that the rights of those who had been here five years and who were therefore entitled to stay permanently were absolutely protected in the event of Brexit. Previously, I would have understood that only to be the case if they had become British citizens. What are you saying? Is it five years and the right to permanent residence, or is British citizenship required?

James Brokenshire: I would point you to the advice in the statement we have put up on gov.uk on the status of EU nationals in the UK, which explains: "EU nationals who have lived continuously and lawfully in the UK for at least 5 years automatically have a permanent right to reside. This means that they have a right to live in the UK permanently, in accordance with EU law. There is no requirement to register for documentation to confirm this status", and, "EU nationals who have lived continuously and lawfully in the UK for at least 6 years are eligible to apply for British citizenship if they would like to do so." So it is those two aspects that I point to, and the clear advice and the clear statement that we have put up on gov.uk.

Q228 **Stuart C. McDonald:** With respect, I fully understand that someone who has British citizenship will be completely unaffected by Brexit, because their rights are completely distinct from European Union rules, but if someone is here and has the right to permanent residence, that is connected with membership of the European Union. Are you saying that, regardless of when and if Britain exits the European Union, that person is guaranteed to be able to stay here?

James Brokenshire: The point is that if you have been here for five years, you have that permanent right to reside—

Stuart C. McDonald: Under EU law.

James Brokenshire: Absolutely. Equally, having established that right, I think as a matter of law it would be virtually impossible—through the ECHR, article 8 and anything else—to take that away from them.

Q229 **Stuart C. McDonald:** That is close to a guarantee, but not quite one. All right, we will leave it there for now, but I do not see why you cannot just say categorically that however many thousands of EU citizens who are entitled to permanent residence are absolutely not going to be affected by Brexit. That is just a simple thing to say.



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James Brokenshire: I go back to that sense of ensuring or doing what the British Government equally need to do, which is to protect British citizens abroad within the EU. It is with that positive sense that we want to get the best deal for both. While I recognise that some would suggest a different means of achieving that outcome, the outcome we are both after is substantially the same.

Q230 **Stuart C. McDonald:** That now sounds as if you are moving away from what was almost a guarantee a few seconds ago. You are now saying that that all still has to be thrown into the mix, and even someone who has the right to permanent residence—

James Brokenshire: Various people have made different suggestions as to when cut-off points should be—whether it should be the 23 or 24 June, or the date when we trigger article 50, or any of a range of different connotations. All I am saying is that this is complicated. We need to get a settled position, and that is what we are intending to do in our discussions with the European Union.

Q231 **Stuart C. McDonald:** You have referred to a statement on the Government website. I have not seen it, but from what you say it says—after five years, you have the right of permanent residence—it is as if this is some sort of answer to the Brexit problem, but from what you are saying now, in itself that does not even necessarily guarantee that you will be able to stay here.

James Brokenshire: I have been pretty clear about what effectively becomes the rights of EU nationals, and this is over many, many years. They do have that right to permanent residence after five years. As I have explained equally, as a matter of law I do not see that that established position, for various different reasons—as I say, article 8, on the right to a family life under the ECHR would be directly relevant to the permanent residence rights. Clearly, if someone wishes to after six years, then they can move on to apply for citizenship.

Chair: May we move on to English language testing, because we have very little time left?

Q232 **Stuart C. McDonald:** We could probably have a whole session on this, but I will do the best I can to cover some of it. On any view, between 30,000 and 50,000 possibly fraudulent tests and hundreds if not thousands of innocent students caught up in it is a monumental mess. Can you give us an idea of how exactly this happened? What sort of tests are we talking about? It is an oral English language test. What was the form of that test?

Mike Wells: These are tests called TOEIC tests. They were sat by people for a variety of reasons, including for immigration reasons. They had listening, reading, writing and speaking components to them.

Q233 **Stuart C. McDonald:** On the speaking tests in particular, are we talking about 15 or 20 people turning up for one test at a time?



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Mike Wells: Yes, typically they would have been sat in a classroom and it could have been that sort of number. It could have been anything up to perhaps 50. That might be the higher number, but typically it would be that sort of number.

Q234 **Stuart C. McDonald:** So up to 50 people. In these classrooms, they were not being tested directly one on one with an individual person. There were recordings happening, is that right?

Mike Wells: That is right.

Q235 **Stuart C. McDonald:** What exactly was being recorded? Were they having to read things out or answer questions?

Mike Wells: They were answering questions from a computer-generated test.

Q236 **Stuart C. McDonald:** What happens to those recordings after they are made?

Mike Wells: Those tests, after they are made, are recorded directly on to files, and those are electronically marked and transferred to the parent company of ETS in the United States. They were password-protected, and each test taker had a unique reference number and each test taken at a different time had different questions.

Q237 **Stuart C. McDonald:** Who was involved in parcelling up and securitising, as it were, the individual recordings?

Mike Wells: They were directly recorded on to the ETS system and directly transferred electronically via that system. Someone was speaking into the system, as it were, so they were being recorded directly on to their online digital system. The speaker would log on to that when they started to sit the test, and they would speak into it, and that would be communicated directly.

Q238 **Stuart C. McDonald:** So how is it that there were between 30,000 and 50,000 apparently or allegedly fraudulent tests?

Mike Wells: What was predominantly happening was that proxy test takers were sitting multiple tests, reportedly using different identities. They were sitting the test on behalf of others, in effect.

Q239 **Stuart C. McDonald:** How on earth was that allowed to happen? What measures were in place to try to stop that happening?

Mike Wells: This was the nature of the organised fraud that took place. A number of the test centres that ETS subcontracted in the UK engaged in an organised fraud that allowed proxy test takers to carry out this criminal activity. This was a large-scale organised criminal fraud.

Q240 **Stuart C. McDonald:** How can we ensure that that large-scale organised criminal fraud did not extend to being able in some way to manipulate how particular recordings were assigned to individuals, for example? A lot of people who Members have spoken to are absolutely convinced of their



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innocence and make a very strong and persuasive case, yet they have this bit of paper that tells them, "We have found that your test was taken by a proxy." How can we be sure that the criminal element was not involved in the assignation of numbers?

Mike Wells: I have explained how the recordings were taken and transmitted electronically back to ETS, but we have also appointed an independent company called Kroll Ontrack, who are global forensic computer experts, to report on this. Their work is ongoing, but I have seen the draft of their report, and my understanding is that they have found no evidence to suggest that tests have been inadvertently swapped.

Q241 **Stuart C. McDonald:** Was that a possibility that you asked them to look at?

Mike Wells: In order to put this matter beyond doubt, we have asked for an independent comment on the matter, and Kroll Ontrack are doing that, and they will supply that further report by the end of this month.

Q242 **Stuart C. McDonald:** In the meantime, if you are concerned about restoring faith in the system, surely the last people that you would have asked to look into all this would be the very group of companies that was engaged in or allowing this sort of fraud to go on? You went and asked ETS themselves, "You find who has been cheating here."

Mike Wells: In that regard, I should say that ETS are one of the world's largest non-profit educational testing and assessment organisations. They conduct around 50 million tests per annum. They deal with the US College Board tests, for example. The fraud took place here in the UK. The testing—the analysis—was undertaken by ETS's office for testing integrity in the United States. We have no reason to doubt the integrity of their analysis but, in order to put the matter beyond any doubt, we commissioned an independent report from Professor Peter French, who is chairman of J.P. French Associates, which is a forensic speech and acoustics laboratory. He is also Professor of Forensic Speech Science at the University of York, and he has confirmed that the process used by ETS was robust and much more likely to produce false rejections than false positives.

Q243 **Stuart C. McDonald:** But neither that report, nor the report you have commissioned regarding the process for packaging up recordings and so on, have been subject to any sort of scrutiny in a tribunal or any litigation so far. Is that correct?

Mike Wells: We have made that report available and it will be considered by the courts as necessary.

Q244 **Stuart C. McDonald:** But it hasn't up until this point.

James Brokenshire: If I may—the court has upheld, in a number of cases, that our standard of evidence is enough to prove that fraud was committed.

Q245 **Stuart C. McDonald:** By the skin of its teeth in the Qadir case. That's for



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sure. Of course, in that case—

James Brokenshire: But the Court of Appeal and the subsequent judgments of Shehzad and Chowdhury equally did establish that the standard of evidence was enough to prove fraud. We are obviously appealing the Qadir and SM case.

Q246 **Stuart C. McDonald:** In that case, of course, Mr Qadir and SM were both lucky enough to have a hearing in person. The vast majority of people caught up in this are in an outrageous position. By deliberate Home Office policy, I think, decisions have been made so that they have to appeal the decision from abroad. They are then further handicapped.

If somebody said to me, “You committed fraud during your English language test”, the first piece of evidence I would want would be a copy of the two recordings—one that you say is mine and one that is, allegedly, matched up. Yet, the company refuses to make that available so that it can be challenged in any way. How can that possibly be a fair system?

Mike Wells: I will break that down into several parts. The question of people’s appeal rights is dependent on when the decision was made and the circumstances of that decision. The Immigration Act 2014 changed appeal rules. In the past year, almost 20,000 appeals in total across the immigration system were lodged from overseas. It is a well-established process. The Court of Appeal, as the Minister mentioned, has looked at the matter and has not found it inappropriate for appeals to take place outside the UK. Indeed, they have looked at that in relation to a case of deception in an ETS test.

I have also set out why we are confident that ETS undertook an appropriately robust and cautious approach to voice testing. ETS found more than 33,000 invalid tests. Clearly, it would be a large and disproportionate exercise to keep having to reaffirm that over and over again in relation to each and every voice analysis. Every voice analysis that has been challenged, where voice recordings have been produced, has always confirmed the situation as I described. The voice was not that of the person who claimed to take the test.

Chair: Mr McDonald, I think this will have to be the final question so we can move on.

Q247 **Stuart C. McDonald:** If it is too much hassle for the Home Office to allow or undertake a check on each ETS result that comes back, saying, “We suspect there might be fraud here”, why not just release it to the individual applicant so that they can carry out their own tests? Is that not a question of basic, natural justice? All that somebody appealing from abroad gets is a bundle of papers and a photocopy of a spreadsheet that says, “We have decided that your test was fraudulent.” How is anyone supposed to challenge that?

Mike Wells: I refer back to what the Minister said about what the Court of Appeal, among other courts, has said on the matter: our evidence is satisfactory to establish a presumption of fraud having taken place.



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Q248 **Chair:** Mandie Campbell, this is likely to be your last appearance in your role in the Home Office before the Committee. We are grateful for the numerous times you have come here—perhaps today has been less vociferous than some of the others. Could you leave us with your impression—just sum up in a couple of lines—of why you think you leave the immigration enforcement department in a better shape than you found it?

Mandie Campbell: Perhaps one of the reasons, Chair—this is something that this Committee has asked me about repeatedly—is the situation of foreign national offenders. I can say that in the last financial year we removed the highest ever number of foreign national offenders since we started recording the removal of those back in the early 2000s. I think that is a good way for me to leave.

Chair: Thank you very much. Good luck to you, and good luck to the Minister, with the vicissitudes of the upcoming reshuffle.

James Brokenshire: Thank you very much, Mr Loughton, and thanks to the Committee.