

Home Affairs Committee

Oral evidence: [Implications of the UK's exit from the EU](#), HC 494

Wednesday 20 July 2016

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Members present: Keith Vaz (Chair); James Berry; Mr David Burrowes; Mr Ranil Jayawardena; Tim Loughton; Stuart C. McDonald; Naz Shah; Mr David Winnick.

Questions 1–124

Witnesses

[I](#): His Excellency Dan Mihalache, Romanian Ambassador.

[II](#): Mark Sedwill, Permanent Secretary, Home Office.

Examination of Witness

Witness: His Excellency Dan Mihalache.

Q1 Chair: Your Excellency, thank you very much for coming. We are most grateful. May I start by congratulating you most warmly on your appointment as the ambassador from Romania? I am sure you did not think when you were appointed that one of your first duties in London would be to appear before the Home Affairs Committee.

The Committee today is concerned with the decision by the British people to exit the European Union, and specifically how that will affect members of the Romanian community—Romanian nationals—who are either resident in the UK or seek to come to the UK. At the moment, are any concerns being expressed to you or your embassy by Romanian people about the current position, or are they quite reassured that they know what is going to happen?

Dan Mihalache: First, let me thank you for your kind invitation. It is a very great honour for me to speak before this Select Committee, being a very young ambassador—I have only been doing it three weeks. I came to London two days before the referendum. It was a very interesting experience to follow the debates about the consequences and the results of the referendum.

Secondly, I want to convey a political message. In spite of the result of the referendum and the decision of the British people to exit the European Union, our bilateral relationship between the United Kingdom and Romania remains stable and the same. We value very much our co-operation, which is on political dialogue, external affairs, military co-operation—that is very important for us—and intelligence.

Chair: That is very helpful. I think we all want to make sure those bilateral arrangements remain the same. This Committee may well visit Bucharest in the near future to look at these very issues.

Dan Mihalache: Thirdly, we have an important community here.

Q2 Chair: Tell us about the community. How many Romanians are in the United Kingdom?

Dan Mihalache: The Romanian community is now part of British society. We assess that the community is 400,000 to 500,000 people. It makes a valuable contribution to the budget of the United Kingdom, to the economy and to the society. We have—

Q3 Chair: Your Excellency, before you go on, can I just focus these questions, if I may? You have between 400,000 and 500,000 Romanians here—

Dan Mihalache: This is our assessment. Registered people are about 150,000 to 175,000.

Q4 Chair: So where are the others, then?



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Dan Mihalache: In work in the United Kingdom as European citizens.

Q5 **Chair:** Right. So they are self-employed people, as opposed to people in employment.

Dan Mihalache: Yes.

Q6 **Chair:** But it is about 400,000 to 500,000

Dan Mihalache: This is our assessment. I cannot tell you exactly how many there are.

Q7 **Chair:** Is there any concern at the moment about their status in this country? Are they worried about this?

Q8 **Dan Mihalache:** We have had various discussions with representatives of the Romanian community here and for sure there is a concern because they need not just reassurance but some things that are very certain.

Q9 **Chair:** What is the lack of certainty at the moment in respect of their residency here? Because the Government have made it clear in statements to this Committee and elsewhere that Romanian citizens—all EU citizens—will be allowed to remain. Do you accept that, or do you think there is still uncertainty and there needs to be further clarity?

Dan Mihalache: I think the message of reassurance was helpful but there must be a little bit more because, you know, rumours are spreading. Not all of them are very high skilled. They need to know. The biggest question is: what will happen after the UK leaves the European Union? What kind of status will they have? There is some talk about, "Okay, then we have to leave the United Kingdom."

Q10 **Chair:** Let us pursue the status issue for the moment. There obviously has to be a cut-off date in respect of people being allowed to remain in the United Kingdom. Do you think this should be the day the United Kingdom exits the European Union, the day that Article 50 is triggered or 23 June, the date of the referendum?

Dan Mihalache: This is a very tricky question.

Chair: That is why I asked it.

Dan Mihalache: I know the debate about the cut-off date and I understand the concerns of the British authorities about how to manage the process and how to avoid what was said to me to be a closing phenomenon. But I think this should be addressed in terms of the European Union treaties or in terms of an agreement between the UK and the European Union.

Q11 **Chair:** So existing treaties rather than a new treaty.

Dan Mihalache: Or a future agreement. From the strictly legal point of view, it is very complicated to discuss a cut-off date with the United Kingdom still being a member of the European Union, because as a member state you cannot set another rule even though the results of the referendum are as we know. How can you set such a rule?



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Q12 Chair: Sure. When your predecessor, Mr Jinga, appeared before the Committee just before Romania had all of its restrictions raised, he talked about a certain number of Romanians coming into this country once those restrictions were raised. I have not checked what his figure was and actually whether it was right in the end, but the issue of the pull factor of Britain exiting the EU, and Romanians deciding they need to come here before exit, is serious, is it not? Do you think there might be a surge of people wanting to come in before exit day?

Dan Mihalache: First of all, I looked at the figures and probably the concerns of my predecessor were not founded. It was not proved that after 1 January 2014 there was a huge increase in Romanians coming to the United Kingdom, so I would be very cautious about a wave of Romanians coming before the cut-off date.

Q13 Chair: Sure, but we would not know. Is it not the case that, as far as the Romanians are concerned, some may have passports and others come on the basis of identity documents?

Dan Mihalache: As European citizens.

Q14 Chair: Exactly. The same thing applies for British citizens who go to live in the EU. They do not get stamps on their passports. Would you know where the Romanian citizens are in the United Kingdom? Do they all register with the embassy?

Dan Mihalache: No, because they travel freely as European citizens.

Q15 Chair: Of course. Is that a practical problem for identifying who is here?

Dan Mihalache: No. I think it would be a difficult issue for the British authorities to handle, because I do not believe that you will impose visas on tourists.

Q16 Chair: Let me ask you a final question about Moldova. There is a strong historical link between Moldova and Romania. How many Moldovans currently hold dual citizenship and are also Romanian citizens?

Dan Mihalache: If I remember the figure from when I was still in the Government, about 500,000 citizens of Moldova hold double citizenship, but there is no special regime for Moldovans. If you as a British citizen and a friend of Romania want to apply for Romanian citizenship, you can do it in the same manner as a Moldovan.

Chair: I can tell you, Ambassador, that is the best offer I have had today—and I am sure you will fast-track it for me.

Q17 Stuart C. McDonald: Mr Ambassador, just one question from me. Obviously, there were some very sad stories around the time of the referendum and afterwards about a rise in xenophobic and racist attacks. From the evidence that you have, is that subsiding, or are we still encountering those problems? Are there still attacks?

Dan Mihalache: We have had no wave of attacks on Romanian citizens. We had that incident in Norwich, in which a store owned by two



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Romanians was bombed. Last Friday, I was in Norwich with my colleague, the Minister for Romanians Abroad—we have such a post in the Romanian Government—and it was impressive for me to see the solidarity of the local community in Norwich against such attacks. There was a wall full of hearts, and the local community had raised money—more than £20,000—so there was a strong reaction, and this was nationwide. We could see that they were integrated into the British community and the British community did not want to give such a bad signal. So this was our experience; I do not have further experience of aggression, whether verbal or physical.

Stuart C. McDonald: Thank you. That's good.

Q18 **Mr Winnick:** You will know, Ambassador, that in exchanges since the referendum, there has been absolutely no disagreement—you wouldn't expect any—about any attacks, hooliganism or thuggery against citizens of other EU countries. That has not changed in the slightest. Are you perfectly aware of that?

Dan Mihalache: Yes, as I told you, I do not have data about aggression against Romanians, except that incident in Norwich.

Q19 **Mr Winnick:** We describe such attacks as hate crimes.

Dan Mihalache: Well, we could believe it was a hate crime—

Mr Winnick: —which we totally condemn in the British Parliament.

Dan Mihalache: I believe we have to work together—this is a general political message for the British and Romanian authorities—to give a message of calm and confidence, to prevent the fear that could arise in the Romanian community and the tensions that could arise against Romanians in British public opinion. I believe it will be very important to have that dialogue and to maintain things at a very rational and calm level.

Q20 **Mr Winnick:** Ambassador, you started off by referring to the relations between your country and the United Kingdom. Whether we remain in the EU or not, I assume relations between the two countries will be as friendly as now. Am I right that it will not depend on our remaining?

Dan Mihalache: I gave you that message at the beginning of my presentation. In spite of the situation of being a member of the European Union or not, I believe our partnership should remain very strong in the future. We have many common interests and common approaches, for instance in foreign policy towards the east. We speak the same language and we have the same attitude.

Q21 **Mr Winnick:** One last question, if I may. Would it be the wish of the Romanian Government for Britain to remain, if possible, within the EU?

Dan Mihalache: Okay. It is the sovereign decision of the British people to remain or to leave the EU.

Q22 **Mr Winnick:** Your country would be much involved, like the other 27, in



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the negotiations arising from Britain applying article 50.

Dan Mihalache: We said at Governmental level and at the President's level that we wished that Great Britain was still in the European Union. I remember the discussion—was it in December? I was still the chief of staff to the president of Romania—when we met Prime Minister Cameron. He came to Bucharest in December and we had very open discussions about the conditions that the Prime Minister wanted to discuss with us.

Mr Winnick: I think that is more a yes than a no.

Chair: We will take that as a yes.

- Q23 **James Berry:** If a Romanian national living in the UK had difficulty establishing that they had been living here for five years on the date at which we exit the EU, and they came to your embassy in order to seek your assistance, what advice or assistance would you give?

Dan Mihalache: To follow the rules and the laws that exist in the United Kingdom. I tell my fellow citizens every time that if they want to live in another country and not Romania, they have to live within the rules of the other country. In the negotiation process, I believe the five-year term has to be the subject of discussion and probably of legislation.

- Q24 **Mr Burrowes:** In terms of those who break the laws, putting to one side future relationships, how far does the embassy support the deportation of citizens who break the law and are imprisoned?

Dan Mihalache: In terms of the law, we have our problems with infractions but we have very good police co-operation between British authorities and Romanian authorities. For sure, there is room for better co-operation. I don't want to use the word "deportation"—it is not 21st century.

- Q25 **Mr Burrowes:** Well, it is in our law that when someone has committed an offence subject to imprisonment of more than 12 months, they are subject to a deportation order. The question is how far the embassy supports the practical arrangements for deportation. We have published a report that has questioned and challenged the fact that there are not sufficient deportations to European Union countries. I would be interested to see the figures—perhaps you have them—for how many deportations of Romanian citizens have taken place.

Dan Mihalache: I do not have the figures now. I can tell you again that I do not like the word "deportation". It is not 21st-century style. When returning them home, there was the support of Romanian authorities, and we will keep that in terms of the law and our agreements between the two states.

- Q26 **James Berry:** Is Romania a member of the EU prisoner transfer agreement?

Dan Mihalache: I would have to check that with my colleagues, but I think it is.



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Chair: Yes, it is. Ambassador, welcome to London. We hope to be in close touch with you. Certainly if the Committee decides to visit Bucharest, we will notify you of that. Please send a message from this Committee and from Parliament to the Romanian community that we very much value what they have done as citizens of this country in helping our economy. They are very valued as a community in the United Kingdom.

Dan Mihalache: Thank you very much. I believe that during my mandate we will have the opportunity to meet again.

Examination of witness

Witness: Mark Sedwill,

Q27 **Chair:** Can I welcome the permanent secretary at the Home Office and note for the record that when I was Minister for Europe, Mr Sedwill was my press officer? He did his job in an excellent way. I think it was turmoil for two years.

Mark Sedwill: It was as turbulent as now, and the policy was somewhat different.

Chair: Indeed. I am going to start, if I may, with a couple of questions about ELS and ETS. We have just heard compelling evidence from a number of witnesses. You are not responsible for this, in the sense that you were not here when this whole saga arose, and therefore you are not the lead officer; I know that Mike Wells is. We will be recalling Mr Wells to this Committee to answer more specific questions, but I will write to him first. If he satisfies the Committee on a number of points that have been raised, obviously he will not need to attend, but we hope to see him in September.

We are deeply concerned about this whole case, and I know the Home Office is, because of the amount of effort of time that has been spent on it. First, do you know factually how many Home Office staff are working on ETS-related matters?

Mark Sedwill: I'm sorry, I don't have that particular detail. I can write to you afterwards.

Chair: Will you include that in your answers?

Mark Sedwill: Of course.

Q28 **Chair:** Do you know the legal costs so far? There have been a lot of appeals, tribunals and other cases.

Mark Sedwill: The most expensive case—I think you have been written to about it—was about £30,000. Overall, we do not have an exact number. The reason is that quite a lot of the appeals are not just about English language testing; they involve other things, so it is a question of disentangling the different legal costs. There are several hundred appeals.



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The average cost is between £600, £900 and £1,000, so I would anticipate it is several hundred thousand pounds of legal costs. We will try to get a more accurate figure for you.

- Q29 **Chair:** Obviously, the Home Office accepts the rule of law. When courts make a judgment, you of course have a right of appeal, but there is an end to constantly appealing, because it all ends in the Supreme Court. In a number of these cases you keep appealing. We have had evidence from individuals who say they won at first instance, the Home Office appealed, they won again and the Home Office keeps appealing. Is that because you regard one of these cases as being a test case? We are now dealing with 56,000 cases where the Home Office could be taken to court, and that would take up the time of all your presentation officers. Indeed, you would keep lawyers in business for quite a while. Is there an end to the legal proceedings or are you just going to carry on?

Mark Sedwill: I very much hope so. Of course, it is not all 56,000 we have. There are essentially two categories in that: those where the tests were found to be clearly invalid, which was, I think, about 33,000; and then 23,000 were cases where the tests were questionable. Those 23,000 were given the opportunity to retake the test.

- Q30 **Chair:** So you are confirming to the Committee that the 23,000 people with questionable tests have been given permission to retake the tests.

Mark Sedwill: That is what I have been told, yes.

Chair: Right.

Mark Sedwill: Yes. I checked that this morning.

- Q31 **Chair:** Okay, good. In terms of the 33,000 that are invalid—again, I know you are not the expert on this, and I do not want to dwell on this for too long—a number of these tests have been said to be invalid because whole test centres have been challenged. That remains the case, doesn't it?

Mark Sedwill: I believe that is the case, Mr Chairman.

- Q32 **Chair:** Even though there are genuine cases who are—

Mark Sedwill: Each of the individual tests, I think, has been validated. There is a triple check. Again, I am not the expert on this. That forensic process has been validated by a vocal forensics expert. And as I understand it, those 33,000 tests are all tests where there was essentially a triple check or triple match and they were found to be invalid on the basis of that. If anything, we have erred on the side of the benefit of the doubt where a test was questionable. So where there were not three checks and a test was questionable, people were given the opportunity to retake.

- Q33 **Chair:** Sure. But none of these verifications have been done by the Home Office. All of the verifications have been done by the very company that the Home Office is investigating. Are you still investigating ETS?



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Mark Sedwill: There is still a criminal investigation. Of course, the Home Office does not conduct criminal investigations in that sense.

Q34 **Chair:** So who is conducting it?

Mark Sedwill: I will have to come back to you.

Q35 **Chair:** Would you? Because I have written to the head of the NCA, and they are not conducting this investigation.

Mark Sedwill: I will have to come back to you—

Chair: They wrote back to the Committee and told us that this is being conducted by the Home Office.

Mark Sedwill: It may be Immigration Enforcement, which of course is an operational unit within the Home Office that does conduct investigations. It could be them.

Chair: So you think it is them.

Mark Sedwill: I will have to come back to you just to confirm that.

Q36 **Chair:** When we write, we will write a series of questions, because we are keen to hear again from Mr Wells, rather than you—

Mark Sedwill: Just on ETS itself and the verification of the tests, ETS's parent company in America, which is the not-for-profit organisation that does, I think, 50 million of these a year around the world, is the institution that has been doing the verification. The subsidiary that was involved in the original process and is therefore part of the ongoing investigation was a subsidiary, which was ETS Global. So you are right, it is all part of one conglomerate, but there is a legal distinction between the two.

Q37 **Chair:** We have had company searches done to find out that this was actually a company operating from Holland and that the tests went from individual centres straight back to the United States. Is that your understanding?

Mark Sedwill: Again, I don't know; I would have to check.

Q38 **Chair:** Finally, two of the witnesses this morning raised the issue of CCTV being present when tests are being conducted. Presumably the Home Office would like to see that if a victim feels they have been unfairly treated by the Home Office, they call on the CCTV. Could they?

Mark Sedwill: I don't know whether the CCTV was used in all cases or whether it was just monitoring the room. That, I imagine, would be evidence that would be relevant to the actual investigation itself. I have not seen the evidence, but obviously if there is a representation on that, I will consider it.

Q39 **Chair:** Finally on this, in your long experience in Whitehall, do you know of a circumstance where a Government Department relies on evidence that is supplied by a company, whether it is the parent company or a subsidiary, that is currently the subject of an investigation? This



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Committee has written to the chief executive of ETS and asked him a series of questions. He has refused to answer those questions, so we are now officially summoning him to appear before the Committee, because we find it very odd that the Home Office is relying so carefully on the evidence supplied by a company that you yourself, quite rightly, are concerned about.

Mark Sedwill: Again, there is a distinction. We are not relying solely on that evidence, because we had an independent academic check the methodology that they were using. His name has slipped my mind. It is probably in my notes somewhere.

Chair: French, I think his name is.

Mark Sedwill: Yes, that's right. Professor French.

In terms of similar instances, in my time in this job—it is of course not exactly the same—you will recall that G4S and Serco were found to have been overcharging the Ministry of Justice on tagging contracts, and there is still an ongoing criminal investigation into that. As we went through the recovery plans with those companies, given the range of services that they supply to Government, to ensure that we could be confident that the same was not happening elsewhere and they had put in place the right internal controls to prevent it from happening again, we were of course relying on them and their auditors to provide much of the material—but again, independently verified.

In the case of ETS, they are no longer a supplier to the Home Office of this particular capability. New contracts were competed in 2014 and put in place from spring 2015, and ETS is no longer a supplier to the Home Office. So it is distinct, but there are parallels.

Q40 **Chair:** You have put in very robust inspections, with Home Office officials being present at the tests, but that was not there before, was it?

Mark Sedwill: I believe not. Fewer test centres; more rigorous audit procedures; and two suppliers—one overseas and one in the UK.

Q41 **Chair:** Okay. Let us move to familiar territory for you. When you said goodbye to the longest-serving Home Secretary in 150 years, what were her parting words to you?

Mark Sedwill: I think she said, "This has all happened rather faster than I expected."

Q42 **Chair:** She didn't say, "Because of the training I received at Home Affairs Select Committee appearances"?

Mark Sedwill: She said some very kind things about the Home Office and some very kind things to me personally about our partnership over the past three and a half years. Of course, we gave her a very good send-off, and we are delighted that she has prospered from that job.

Q43 **Chair:** Indeed. It is nice to have friends in high places. Did she say to you, on parting from you in the Home Office, "Make sure that the



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immigration target remains—that we will bring down immigration to the tens of thousands”? Almost all of today’s newspapers—I am sure you will get an analysis from your private office—talk about the target going wrong. In fact, *The Sun*, on page 2, talks about “a ruddy mess”. I don’t know what they are referring to in that. Is immigration a ruddy mess under your watch?

Mark Sedwill: No, it isn’t. I guess you were probably in the Chamber for Prime Minister’s questions. You will have heard the Prime Minister set out the position on the target itself earlier on.

Q44 **Chair:** But you are quite clear that that target remains.

Mark Sedwill: Yes, absolutely. The Prime Minister set that out earlier on. She said, “We need to get migration down to sustainable levels, and that means tens, not hundreds of thousands.” I think I have quoted her reasonably accurately—we all use our own language.

Q45 **Chair:** But you are very clear on that. The new Home Secretary did not seem to be clear when she was asked whether or not that target remains, but you are very clear, as the permanent secretary, that your task is to make sure that that is delivered, even though you have not delivered it over the past six years.

Mark Sedwill: This is a Government target, and it does not just involve the Home Office. My task is to ensure that the Home Office plays its part in achieving that target, but there are other elements as well. I am happy to run through those very briefly.

We have done a great deal both to cap the numbers and to improve the quality of immigration from outside the EU. I can run through that in more detail, but you are very familiar with it. Of course, as the Prime Minister and Home Secretary have set out, we will now have to consider what policies we put in place to restrict free movement once the UK has left the EU, and how we manage that in a more effective way, because that has essentially been a significant constraint on this.

That is the supply side. There is also an element of this that is on the demand side. You will have seen that employment figures were very high—another very strong performance for the economy on employment—but labour productivity in the UK is low, and whenever the economy is growing, there is a significant demand for foreign labour. That is what draws these numbers in. We have to address productivity and mobility as well.

Q46 **Chair:** Do you see yourself as the lead for this?

Mark Sedwill: Yes, we are. Of course we are.

Q47 **Chair:** So it is really a Home Office target, because it is immigration, but other Departments have to play their part in making sure it is met.

Mark Sedwill: Exactly.

Q48 **Chair:** Apart from what she said at Prime Minister’s Questions, is this



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written down in a memo, or is it just what she said at Prime Minister's Questions?

Mark Sedwill: It was set out in the manifesto, and the Government are still committed to implementing the manifesto on which they were elected. This was set out there and reiterated by the Prime Minister and, indeed, by the Home Secretary in the last few days.

Q49 **Chair:** Are you disappointed that, in the six years she was there, you didn't meet the target she had set?

Mark Sedwill: Of course, the target didn't apply for all of that period.

Chair: I think it did, actually.

Mark Sedwill: There was a difference of views in the coalition Government; it wasn't part of the coalition programme, but that is a technicality. We want migration at sustainable levels. We have applied all the policies we can in the areas we can apply them in, but of course there are areas we haven't been able to affect, and therefore we need to take some action in those areas as well.

Q50 **Chair:** Just to clarify, Ministers have appeared before us over the last six years and been very clear that there was a target under the coalition Government. There may have been disagreements within as to how to achieve it, but that was the target.

Mark Sedwill: The coalition agreement was to reduce immigration. I think there was just some disagreement about the exact details.

Chair: We will come on to Brexit in a second, but first we have Mr Winnick on the immigration target.

Q51 **Mr Winnick:** When the target was set, there was no question of leaving the EU, so free movement of people and labour was very much in force and remains so, as you know, until we leave. The target of hundreds of thousands being brought down to tens of thousands was set more or less immediately when the coalition Government came in six years ago. On what basis was that target reached? Presumably it wasn't just a figure out of nowhere—or was it? Did civil servants sit down and say, "By method x, a, b, y, etc., we will bring the figure down to tens of thousands"?

Mark Sedwill: Of course, the overall policy was set in the manifesto, so of course that is something in which civil servants aren't engaged. In terms of providing policy advice to Ministers on how they might achieve those goals, of course we do that. We provide them with a range of options. For quite a long period over the 2010 to 2015 Parliament, the net immigration number was coming down. It came down to 200,000 and was heading down to about 130,000 at one stage before it came back up again. The main reason for the surge was the surge in EU immigrant free movement, which was largely driven by the disparity in the economic performance of the UK and the eurozone, pockets of very high youth unemployment—particularly in southern Europe, with levels of 50% in parts—and a flexible labour market in the UK, particularly in the service sector. We don't have



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the measures to regulate those flows because of the free movement principle.

- Q52 **Mr Winnick:** The point is, recognising what you said was a surge from the EU, was that not anticipated? Of course politicians decide the manifesto, but when it became Government policy, as I indicated in my earlier question, I don't understand why, on the basis of the free movement of people, it should come as any surprise that far from the target being reached, the overall figure is higher than when the Labour Government left office.

Mark Sedwill: Indeed, although the blend is very different from what it was in 2010. If you ask the economic forecasters, there are a lot of very big and uncertain variables here. There is not a Treasury model of international immigration in the way there is a Treasury model of the way certain measures will affect the economy. There aren't obvious precedents for what happened in the eurozone. Even if you look at the academic research, there is still quite a lot of difference of view as to what exactly drove certain kinds of flows within Europe. There was clearly the very high youth unemployment in southern Europe, as I said. There was obviously the accession of some of the new member states, where average incomes are much lower than they are in western Europe. There is a buoyant UK labour market. Those are huge variables, and it is extremely difficult to forecast.

- Q53 **Mr Winnick:** Indeed, but there was such emphasis made by politicians—not civil servants, obviously.

Just tell me this, Mr Sedwill—you would know this. It may be in a manifesto, but would it be the role of civil servants—perhaps not, hence the reason I am asking you—to say to Ministers in an incoming Government, “We know what you have stated, but these are the arguments why it may be difficult and not reachable”? Or would that not be the position of senior civil servants, bearing in mind the remote chance that the Government could have reached their target of reducing immigration along the lines that they repeatedly stated they were not deviating from as policy?

Mark Sedwill: Of course, we always give Ministers completely frank advice—that is in private. In the six months before the election, as the permanent secretary I engaged with the Labour and Liberal Democrat spokesmen for home affairs, as well as the then Home Secretary. We are allowed by the rules to provide information to them on the various programmes they might be setting out in their manifesto. That can include, “Okay, if this is the commitment you want to make, these are the kinds of measures you might have to consider taking”. Then of course it is a political judgment as to whether those measures are feasible or palatable. That is the nature of a policy dialogue, including with Ministers. They then make the decisions about which Ministers they want to take.

- Q54 **Mr Winnick:** So civil servants will have told the leading people in the Conservative Opposition at the time, prior to the election, along the lines of what you think about it.



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Mark Sedwill: Of course, they were in government, but before the election, and then constantly with Ministers, we talked about their overall policy goals, the range of measures they might wish to consider if they wanted to achieve those goals, the risks to achieving those goals and the likelihood of doing so. Then of course they make the decisions.

- Q55 **Naz Shah:** We took some evidence earlier from Mr Gardner, managing director of Blake Hall College, who said that the scandal around the 56,000 students was actually about you guys missing your targets—that it was to reduce your target. Would you agree with that?

Mark Sedwill: Absolutely not—but thank you for giving me the chance to clarify that.

- Q56 **Chair:** He did say it was a theory of his, and you have obviously said it is not one that you subscribe to.

Let us move on to Brexit. Were you surprised at the result of the referendum?

Mark Sedwill: Like most people, I had not anticipated it, but I think most of us have given up our political crystal balls over the last four weeks.

- Q57 **Chair:** Was there a plan B in the Home Office?

Mark Sedwill: This is obviously a question of our contingency planning. We had operational contingency plans in place for the days immediately after the referendum, in order to deal with the potential immediate operational impact of a vote to leave. But as you know, the Government's policy was to remain, and no Department worked up policy options before the referendum for a leave result.

- Q58 **Chair:** I was in Chicago the week afterwards and was being told by diplomats there that there were no lines to take from the Foreign Office in respect of departure because nobody had prepared lines to take.

Mark Sedwill: All I can say is that, in the Home Office, I made sure that, as with previous events of this kind, that, for example, Border Force officers, who I knew would be some of the first people dealing with the public as they got off overnight flights at 5 or 6 o'clock in the morning, knew exactly what they were to say to them and what not to say. I ensured that we had resilience in the website—having seen what had happened with the voter registration website, I wanted to make sure there was resilience in our website if there was a spike in inquiries, for example, which could have happened immediately after the vote, that we had enough people in the call centres and all that kind of thing. The absence of any stories about that should reassure you that we handled it well.

- Q59 **Chair:** The Secretary of State for Brexit, David Davis, is on the prowl. He wants to get the best and the brightest from all of Whitehall's Departments. Of course, you must have some very good and bright people in the Home Office. What are you doing to fend him off—because he is coming to take your best and brightest, and you need to stop them going because you certainly need the best and brightest in the Home



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Office, don't you?

Mark Sedwill: I absolutely need the best and brightest, but I am not fending off either David Davis or, indeed, his new permanent secretary, Ollie Robbins, who was the first big offer I made to the new Department.

Q60 **Chair:** You handed him over to protect the rest of the Department.

Mark Sedwill: Not at all. I put a message around my Department a couple of hours after the previous Prime Minister had spoken on the Friday morning to say, "This decision has been taken. Our job as public servants is to make a success of this."

Q61 **Chair:** Have they asked you for more civil servants?

Mark Sedwill: My point is that it is part of my responsibility to help the new Department succeed. If that means deploying some people into it who are really good to enable them to do their job well, that is what I'll do.

Q62 **Chair:** How many people do you think you can give? You have given the permanent secretary. You have accepted the offer and you have handed over the body of Mr Robbins, alive and well and kicking, into the new Department as permanent secretary. What else are you going to give David Davis?

Mark Sedwill: Ollie Robbins and I have a dialogue going. I will agree any deployments that we make. At the moment, there are two or three senior civil servants that I have agreed to deploy there, and then we will see what they need in terms of more junior civil servants. But I do have a strong bench and I am making sure that I am replacing those people with people who have equivalent experience.

Q63 **Chair:** Are you opening your own unit within the Home Office? Although, of course, a Department is going to be established, it is important that the Home Office focuses on this very important area as well. Are you appointing a lead official? Is somebody going to be looking after this?

Mark Sedwill: The international director, Peter Storr, who has done a great many of the Home Office's negotiations, including the protocol 36 opt-out and so on over many years, remains in place. He is leading the Home Office's work on this. He is hugely experienced, has relations all round Europe and has, as you know, a very successful track record in negotiating, as we did over the protocol 36 negotiations. I have appointed a second director to reinforce that alongside him and we are reinforcing the unit there. Essentially, this will become the core business of our current EU unit and it will be reinforced as necessary, but that is a hub, because I have quite a significant immigration policy department and I have people in my counter-terrorism, policing and law enforcement areas who will be working on the policy implications in those areas, co-ordinated through the hub and then into the new Department, and of course, into the Cabinet Office and No. 10.

Q64 **Chair:** Let me explore one of those areas before other colleagues come in—that is, the status of EU citizens in the United Kingdom. There has



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been a lot of uncertainty, as we have just heard from the Romanian ambassador, despite Government statements. Indeed, the former Immigration Minister made a number of statements in this Committee, and members of the Committee are divided as to whether that was clear or not. What is their status? If I am a Romanian or Portuguese citizen, irrespective of when I arrive in the UK, am I safe, or is there going to be a knock on the door and I am going to be told I have to go following the referendum?

Mark Sedwill: There will be no knocks on the door. Until the UK leaves the EU, all EU citizens in the UK have exactly the same rights that they had on 22 June. Those rights include: if you have been here for five years, the right to permanent residence; and if you have been here for six years, and have behaved properly and so on, the right to apply for citizenship if you wish to do so. I see no circumstances in which those rules will change.

Q65 **Chair:** So that is the cut-off date as far as you are concerned, because, again, Mr Davis was quoted in the Sunday newspapers as saying that people may need to be removed—deported—from the UK. You are making it very clear that until Britain leaves the EU, EU citizens have the right to remain, to enjoy living here, working, paying their taxes, etc.

Mark Sedwill: The Government's position is that until we leave the EU, all our rights and obligations of membership continue. There is clearly a question beyond that, and that is the subject of the negotiation, just as it is a question for British citizens in EU countries as well. The issue is not just about whether they can stay or go. So much else goes with that: can they bring family members? Can they bring family members from outside the EU? Can they work? Can they seek work? Are they entitled to benefits? Can they be self-employed? Do they get permanent access to the NHS? And so on and so on. All those issues will be part of the Government's consideration as they go into the renegotiation.

Q66 **Chair:** But that is the au revoir date. That is when we say goodbye, isn't it? Before that they can bring in whoever they want.

Mark Sedwill: This is exactly the point that the Immigration Minister made last week, and I think Mr Davis has made it as well: the rights of people who are here continue until that date, but what happens beyond that date is subject to the negotiation, just as it is for British citizens. So someone who arrives the day before—on the day they arrive, they arrive as EU citizens in an EU member, but what happens thereafter will be determined by the negotiation.

Q67 **Chair:** So there is a cut-off limit in terms of timing. That is what you are saying. If I arrived as an EU citizen the day before farewell date, I would expect to enjoy the rights of an EU citizen. You are saying my rights will change the day after. Surely that would only apply to people who come after the date of departure.

Mark Sedwill: The status of people in the UK will change the day after, because we will no longer be in the EU and they will no longer be here under the free movement directive. The legal basis will in any case



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change, because we will be outside the EU. Everyone has been clear—the Government have been clear—that we do not wish to prejudice the rights of EU citizens who are here, but at the same time we have to protect the rights of British citizens overseas. There is a question—all these second order questions—about exactly what those rights entail and that will be part of the negotiation.

- Q68 **Chair:** When I said you have been very clear, actually it has become unclear to me. I would have thought that somebody who arrived the day before departure would be able to enjoy those rights. It is what happens because they are treaty rights; therefore, when the treaty is ended—the day we all say goodbye with great ceremony and wave goodbye to the EU—that is when all those rights will cease. Anyone coming after that date certainly would not be allowed to come in as an EU citizen.

Mark Sedwill: Well, it depends on the negotiation exactly what—

- Q69 **Chair:** Doesn't it depend on the law and treaties?

Mark Sedwill: Yes it does, but that—

- Q70 **Chair:** Why would that depend on negotiations?

Mark Sedwill: Mr Chairman, just let me finish the point. The legal basis will change because we will no longer be members of the EU. People will no longer be here under the free movement directive. We will need to make legislative changes in the UK to that. Their status will be that they will have arrived as EU citizens within an EU country, and after the day we leave they will be here as EU citizens in a third country. The exact basis on which they are then entitled to remain in the UK will be determined by the negotiation. The point being, does that entail a right to work, a right to seek work, or a right to permanent free access to the NHS? All those things are yet to be determined, just as they are for Brits outside.

- Q71 **Chair:** Maybe colleagues can get a more definitive answer. I would have thought that if you arrive after farewell day, there is no rights for you—at the moment, because we have not even started the negotiations. You are like a third-party citizen, aren't you?

Mark Sedwill: People would be here as third-party citizens, but it depends very much on the terms of the negotiation and the status we have thereafter.

- Q72 **Chair:** So that is subject to negotiation, all right. So you might let them stay.

Mark Sedwill: We have lots of people here from America, from Canada, from Australia and from elsewhere, and I would expect that we will have lots of people here from Europe as well. The technical question is the basis on which they are here.

- Q73 **Chair:** That is very helpful. Finally, do you think the fact that you have now said to this Committee that everyone can come and stay here, and that the really crucial date is the date of departure, may in fact cause a surge of people? We have just heard from the Romanian ambassador;



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not only are Romanians entitled to come here, but there are half a million Moldovans who have the right to come into the EU and settle here. Do you not think that is very surge that the Brexit Secretary was trying to avoid?

Mark Sedwill: To be clear, what I said was that people who arrive while we are members of the EU retain the rights of EU citizens while we remain members of the EU. What happens after we leave, including to those people who arrive beforehand, is subject to the negotiation. I think that Mr Davis was trying to address the question of whether, if there is a surge, there might need to be, as part of that eventual package, an inflection point between now and that date at which we say, "Okay, people before have got one set of entitlements and people after that date have got a different set of entitlements." It is quite clear that after we leave the entitlements change. The question is what happens between now and then.

Q74 **Chair:** I am going to bring in Mr Burrowes next. You are an expert on the EU, having worked in the Home Office, obviously for the Minister for Europe for two years and indeed as the private secretary to Robin Cook and other Foreign Secretaries. You know the EU. That is an essential part of the work of the Foreign Office; it is the biggest chunk, if you like. How easy is this going to be? It is going to be difficult, isn't it, because we are so embedded in there? It may well take longer than two years.

Mark Sedwill: It is going to be an extremely complex negotiation. How long it will take is difficult to say at this stage. I was just speaking at an Institute for Government event addressing exactly this question, and various experts set out just how complex it will be.

Now, the point I made was that, as experts, if there is a strong political will and strong political alignment to achieve something, it is our job to enable that to happen. As you know, the Prime Minister is in Berlin this evening with Chancellor Merkel. In the end, this is fundamentally a political process that will be determined by the leaders of the EU. The experts will then be required to do our very best to ensure that the overall direction that they set is achieved.

Q75 **Mr Burrowes:** I want to follow up on the point about a citizen who arrives before or after Brexit—let's called B-day.

Mark Sedwill: Maybe I won't.

Q76 **Mr Burrowes:** You could call it independence day, as my colleague said. You said that the legal basis changes. Are you saying that there are similar legal obligations towards the citizen on the day before and on the day after? Are you saying that we have a distinctive legal obligation to the citizen who arrives the day before compared to someone who arrives the day after?

Mark Sedwill: The day they arrive, they arrive as an EU citizen.

Q77 **Mr Burrowes:** So you don't think there is any difference in our legal obligation before and after.



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Mark Sedwill: No, of course there is. I'm sorry if I did not make that clear. The legal basis changes. The entitlements of an EU citizen who arrives after the UK leaves the EU will be determined by the negotiation. It could be the same as we might offer to an American, or it could be different. All that will be determined through the negotiation.

- Q78 **Mr Burrowes:** But you respect the fact that there will be legal obligations to the citizen who arrives before independence day, compared to the individual who arrives after.

Mark Sedwill: Certainly until that day, but the negotiation will have to determine exactly what entitlements they have after we have left the EU. What is clear is that if they have been here in the UK for five years, including and up to that period, they have the right to permanent residence within the UK.

- Q79 **Mr Burrowes:** I am not talking about those other existing legal obligations. I am surprised, on the basis of advice, that you are not making the case to reassure the citizen who arrives the day before that there are existing, overarching legal obligations that will be in their favour, compared to someone who arrives the day after—outwith the negotiations.

Mark Sedwill: The legal basis is different but, in the end, exactly what entitlements that person has will be determined by the withdrawal negotiation. That, of course, is what will matter to them. If they arrive the day before, on that day they would have all the entitlements that an EU citizen has to the health service and so on.

It will be for the negotiation to determine whether those entitlements continue for that person after we have left or whether there is a distinction between people who have arrived just before we leave and people who have been here for a long time. All of that is yet to be determined. I think that that is the point that Mr Davis was trying to make, as was the Immigration Minister last week.

- Q80 **Mr Burrowes:** But you have not received or imparted any advice on legitimate expectations, any issues of retrospectivity or any other overarching principles of law that you think would apply in favour of that citizen who arrived the day before.

Mark Sedwill: The legal principles are clear in that they have all the rights and obligations until then. That includes if you have been here for five years. Exactly what happens thereafter is essentially determined by the will of Parliament and the negotiation. It depends on what legislative basis is set out.

- Q81 **Mr Burrowes:** During the previous Prime Minister's negotiations, no doubt the Home Office was a key player in providing advice concerning negotiations on freedom of movement. There must have been a menu of options on the negotiation table. Within that menu of options on the reform of freedom of movement, some were not achieved by the previous Prime Minister. Was there advice within there that you would be able to



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say that if a certain scenario on the reform of freedom of movement had been achieved, it would have had these benefits in relation to our ability to control EU migration numbers?

Mark Sedwill: We looked at a whole range of police options. It is very difficult to link from a particular policy measure to a numerical outcome, unless one is talking about a quota or cap. Aside from a quantitative measure of that kind, there is no reliable analytical basis on which to say, "This particular measure will have the effect of reducing immigration by 10,000 people or whatever it might be." It simply isn't possible to make that connection. We can make some broad predictions in that we can say, as we have with non-EU migration, "If we raise the threshold on salaries, for example, this number of people who currently arrive will no longer be able to come." But, of course, we can't predict how many people would come in the new circumstances. That is the point. We can make forecasts, but it is a very inexact process.

Q82 Mr Burrowes: I appreciate that, and I accept all those caveats, but are you able to tell us the predictions for the different menus of options on reforming freedom of movement? To back you up, the Prime Minister recognised today that we will benefit from being able to reform freedom of movement in order to gain control of numbers.

Mark Sedwill: I do not have particular forecasts relating to particular measures, and I think the Prime Minister was also covering today that we will be able to strengthen the measures against what we have always interpreted as the abuse of free movement. In the Public Accounts Committee I was asked by Mr Barclay, whose constituency is in East Anglia, about, essentially, abusive free movement where agricultural workers are brought in and not properly employed, et cetera. That is the kind of benefit. We will be able to exert more control over that kind of movement into the UK than was the case before. It is qualitative, but it will have a quantitative effect. It is just not entirely predictable exactly what that effect will be in the case of each measure.

Chair: We are still on cut-off dates for the moment, and then I will go to Mr Berry.

Q83 Stuart C. McDonald: What you have said, basically, is that anyone who arrives exercising EU rights before Brexit day will carry on until Brexit day, and then, after Brexit day, it depends on the domestic legislation that we put in place, which will be determined by negotiations. But that also applies to people who have permanent residence, which is also an EU right. That disappears on Brexit day, too, and it will depend on what domestic—

Mark Sedwill: I think Mr Brokenshire addressed this point last week. Of course, in the end, Parliament is sovereign and you can change the law. There is a very strong convention, including legal convention, of not making retrospective legislation. People have had those rights, and they have that right of permanent residence. That right, of course, is associated with other international treaties of which we are members, such as human rights legislation and the Human Rights Act. As Mr Brokenshire said, and I



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think the former Prime Minister said, that he couldn't conceive of circumstances in which that would happen, and we will respect their right to permanent residence. It is under EU law at the moment, but it is a right that the UK respects.

Q84 **Stuart C. McDonald:** So why not just guarantee it now?

Mark Sedwill: In effect, we have had a guarantee for people who have five-year residence.

Q85 **Chair:** So you're giving that guarantee today? Five-year residence.

Mark Sedwill: It is not for me to do so.

Q86 **Chair:** So who will guarantee it?

Mark Sedwill: Well, Parliament does because it is set out in law. In the current law, that is clearly the case. The former Prime Minister, in his last PMQs, and the former Immigration Minister here last week essentially provided that guarantee from the Government's point of view, but of course, in the end, Parliament remains sovereign.

Q87 **Stuart C. McDonald:** They both used that word, and it is all very well sitting around here having legal debates and saying, "Almost certainly people can stay." The Romanian Ambassador said that all that people who might not be the most skilled need to hear is, "If you have permanent residence, as a Government we can guarantee your residence under domestic legislation."

Mark Sedwill: That is the position, and it is the position in law. The reason I was answering the question slightly differently was because I was being asked whether I was giving a guarantee, but I am not. That is the position in law. It doesn't matter what I think; it is the legal position. It is just worth keeping it in mind, however, that, as far as I am aware, no other European country has yet made a statement about British citizens in their country. It is very important that we maintain the principle of reciprocity throughout this entire process.

Q88 **Stuart C. McDonald:** Possibly. I know that not everyone likes using the phrase "bargaining chips," but if that is part of the negotiations, and the Government's position is pretty much, "Well, we can't envisage any circumstances in which they are not going to get permanent residence" it doesn't really help.

Mark Sedwill: I think there is a distinction here with the position of somebody who, by law, has permanent residence. That would of course be true for British citizens in other European countries as well, because they are subject to the same rule that we are, so the law guarantees their position as it stands. The different position, which is people who have not been here for five years, who are currently here under free movement rights, including some more who may come between now and Brexit day—what happens to them thereafter is part of the negotiation. And that would be true of Brits in Europe as well.

Q89 **Chair:** Indeed. So what you are saying is—in answer to Mr McDonald—



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five years and you are in, because that is the law of the land, but anything else is subject to negotiations.

Mark Sedwill: Yes, I think I have expressed something—I would express it pretty much in those terms, I think.

Q90 **Chair:** But is that the case? Five years and you are in?

Mark Sedwill: Five years—permanent residence. That is the law. It is under EU law. It applies everywhere.

Q91 **Chair:** Anything else?

Mark Sedwill: Beyond that, the Government has been clear: we want to continue to have EU nationals here, providing all the input that they do, but the exact terms of that, after Brexit day, will be determined by the negotiation.

Q92 **Stuart C. McDonald:** Two final questions. People here now who have any concerns about their status after Brexit: would the Government look at all at opening up, or making it easier for them to apply for indefinite leave to remain under domestic rules, or even British citizenship, perhaps, by cutting the fee, or making the residence period shorter, for example? Would they explore those options?

Mark Sedwill: All those issues about what happens to EU citizens after Brexit day will of course be part of the internal debate within Government, and no doubt part of the discussion the Government has with other political stakeholders in the UK, and the negotiation. It is possible that we will end up with a single legal basis for everybody, EU and non-EU; but it is also possible that there will be different legal bases after Brexit day, depending on the course of the negotiations.

Q93 **Stuart C. McDonald:** Okay. Finally, the new Secretary of State for Northern Ireland is obviously a good friend of this Committee as well. He has been pretty clear in his opening few days about the importance of protecting the open border between Northern Ireland and the Republic; but at the same time the Prime Minister has been talking about at least putting brakes or limitations on the free movement of people. How is the Government going to be able to achieve both of those aims?

Mark Sedwill: We have a common travel area with Ireland, as you know, that predates the accession of both countries to the EU. It goes back to 1922, and neither country is in the Schengen zone, so we are able, as a common travel area, to exert border controls. As the Northern Ireland Secretary has said, nobody wants to see any resumption of border controls between Northern Ireland and the Republic, either for immigration or customs. The exact arrangements will of course depend on the negotiation and on the EU as well, but the Government's strong position on this is to maintain the common travel area and free movement within the common travel area between Ireland and the rest of the United Kingdom, and we will use whatever control measures we can to ensure that is the case.



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I went to the Republic, to Dublin, myself the week after the referendum vote to discuss precisely this set of issues and how we were going to work closely with the Irish Government to ensure that we maintained our common interest in keeping that border open.

- Q94 **James Berry:** During the referendum campaign, the now Prime Minister emphasised the practical benefits of our EU membership in terms of the justice and security measures that we have chosen to opt into—as did I, as a matter of fact. I was wondering if you could tell us which of those measures the UK can remain part of without being a member of the EU and without the need for any negotiation. It might be none.

Mark Sedwill: I would have to come to you on specific ones. Nearly all of them—I think, in fact, all of them, the formal ones—are in the context of our membership of the EU, even though they come under slightly different legal bases within the EU. There are some elements of co-operation—for example, on counter-terrorism, which is done essentially within the political context of the EU but isn't actually a formal EU measure because it is in an area of national security beyond EU competence—that could continue unimpeded. In terms of things like access to the Schengen information system, the Prüm databases, things like the European arrest warrant—all of that will be subject to the withdrawal negotiations. Of course, we thought very carefully—as you did, Mr Berry—about which areas we should opt into during those negotiations because it was in the national interest to do so.

- Q95 **James Berry:** Absolutely. In terms of Europol, we know that non-EU member states have very close involvement with the US Homeland Department, as an example. Indeed, we heard that Europol very much benefits from our membership because of the amount of intelligence—a large quantum of its total intelligence is actually from the UK. It is therefore in its benefit to keep us involved. Do you have any plan for how you are going to negotiate that? Have you had discussions already with officials in Europol about how we are going to maintain our membership and involvement?

Mark Sedwill: I think we are almost the biggest contributor of intel to Europol. Of course, Europol itself as an operational body will not be involved in the negotiation, although it may well provide advice on the practical implications of it, but it is very much in our interest to maintain the closest possible operational co-operation with Europol, as with other countries outside the EU. This is an area where—at least from some of the informal conversations we have had so far, and I imagine this might well even come up at the Prime Minister's visit this evening—maintaining the closest possible law enforcement and national security co-operation will be in the interest both of the UK and of our EU partners after Brexit. We are a big investor in that; we have helped develop a lot of those capabilities and we have driven through quite a lot of the legislation—passenger name records and so on. I imagine there is a very strong common interest in maintaining that and continuing to strengthen it, as we do with America, Australia and other countries.



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Q96 **James Berry:** For my part, I would like us to stay in all the areas that we are currently members of and have opted into, but the difficulty I foresee is that under a number of those agreements the European Court of Justice has competence, and that is something that those who voted to leave the EU would particularly object to. Do you have a strategy for how we are going to maintain maximum involvement but minimise the competence of the ECJ with respect to Britain?

Mark Sedwill: It is precisely those issues that we are working through at the moment. Obviously we will talk it over with the new Home Secretary, Home Office Ministers and other Ministers across the Government, but, yes, in the end we will be a third country. The institutional arrangements will be different, but the objective is to maintain the effectiveness of the operational co-operation.

Q97 **James Berry:** Thank you. One final question: what assessment have you made of the progress of the EU prisoner transfer agreement in particular Poland's potential involvement in that agreement?

Mark Sedwill: It is mixed. As you know, Mr Berry, this is one of the few international agreements in which prisoner transfers are compulsory—most are voluntary. Having a compulsory agreement is important to enable us to remove significant numbers of foreign national criminals from the United Kingdom. Poland has a transitional arrangement until its system is ready—in 2017, if I remember rightly, but I will have to double-check and I will let you know if I am wrong.

Chair: 31 December this year.

Mark Sedwill: We would expect that to come on stream thereafter, and we would then—at least as long as we are a member of the EU—be able to continue to operate it. Again, that would be the kind of agreement, as we have with other countries, that I would imagine we would want to explore continuing after we have left.

Q98 **James Berry:** This Committee produced a report that was critical of the number of Polish FNOs still in the UK, but of course that has to be seen in the context of the fact that the most EU citizens in the UK are Polish and Poland is not currently a full member of the PTA, so you would expect that number to go down once it is a full member as of 1 January.

Mark Sedwill: Obviously there will be some operational frictions until it really gets the system going, but we would hope that we would then be able to start compulsory transfers.

Q99 **James Berry:** No welching out from other members until we actually leave the EU.

Mark Sedwill: No, the former Prime Minister and the new Prime Minister have been absolutely crystal clear: rights and obligations maintained until Brexit day.

Q100 **Naz Shah:** Mr Sedwill, you said in your evidence that 33,000 tests were invalid and that in 23,000 tests that you looked at again you offered the



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option for people to retake them. Will they be paying again? They have already paid £150.

Mark Sedwill: I will have to come back to you, Ms Shah. I am not exactly sure, sorry. Either I will write or we will write to you in detail.

Q101 **Naz Shah:** In these 56,000 cases—particularly those 23,000—given the incompetence on the part of the Home Office, will the Government be offering an apology as well as the option to retake those tests?

Mark Sedwill: I would not agree with that characterisation. This was an organised criminal conspiracy involving a large number of people and a large number of education institutions against the Home Office and the immigration system.

Q102 **Naz Shah:** What about the innocent people who have been caught up in all this—the innocent students who now, as we heard in evidence, would not encourage people from their countries to come to the UK? This has damaged the reputation of the United Kingdom.

Mark Sedwill: Of course a successful criminal conspiracy against an element of the immigration system is damaging to our reputation. Nobody wants to see that, but we have to remember where the blame lies here. The blame lies with a sophisticated criminal conspiracy trying to defraud our immigration system. There are organised immigration criminal networks across Europe that seek to get people into Europe—some of them into the UK. We make a huge effort to try to defeat them through law enforcement and immigration controls. I don't think it is right to suggest that somehow the fact that we cannot prevent every crime, when these conspiracies are mounted against us, is to our detriment.

Q103 **Naz Shah:** I am not suggesting that we have to take responsibility for all the crimes. What I am suggesting is that, as we heard in evidence today, those people who have been embroiled in this scandal are now having to pay thousands and thousands of pounds. They are remaining away from their loved ones. We had a lady who broke down in tears earlier. It is clearly through no fault of their own that this has happened. We have an organisation in America that can't give evidence. Shouldn't we have been procuring systems from closer to home in any case? Can the Home Office not accept some level of responsibility in all of this?

Mark Sedwill: Of course we accept that, in the end, it is our responsibility to run the system as effectively as possible, but this was a criminal conspiracy against our system and we made improvements to it subsequently. We have heard many individual cases. As I said, for those who were determined to have a reasonable case—23,000 of the 56,000—we actually erred on giving them the benefit of the doubt. The balance of evidence was still that those tests were not genuine, but we erred on the side of giving them the benefit of the doubt when it was not absolutely clear. They were given the chance to retake the tests and thus resume their education.

Q104 **Naz Shah:** I am really struggling with your suggestion that, in the case of the 23,000, you are giving them a chance but you are still not convinced.



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Why have you given them a chance? That's rather contradictory.

Mark Sedwill: No, it isn't. It is because, as I said, those tests were questionable; they were not clearly invalid. The 33,000 were clearly invalid, and they were triple-checked. I am not the expert on this, but they were clearly invalid. The 23,000 were questionable, and because they were questionable—it was not clear that they were invalid, although I think that many would have been—they were given a chance to retake.

Q105 **Chair:** We will be recalling Mr Wells. He is the best person to answer these questions, but I think Ms Shah is making some valid points about the overall issue that we need to look at. We will write to him first. Thank you very much.

Let's move to border security. The Ministry of Defence has now bought nine new maritime patrol planes from Boeing at a cost of £3 billion. We were concerned, in our last report, about the fact that the Border Force has only three vessels monitoring 7,700 miles of coastline. The Netherlands has 16 for 280 miles of coastline, and Italy has 600 for 4,722 miles.

Are we going to do more to help our Border Force? Migration seems to have changed now. It used to be through the tunnel. You closed down the tunnel because of the work that has been done in Calais, and it has moved up to Holland and Germany. Now the maritime issue has come into play. Are we focusing on that?

Mark Sedwill: Yes, we are. Of course, in the end we have got to deploy scarce resources in the most effective way possible. There are some upgrades to our maritime capability—we are buying some further vessels—but is still not going to be anything like the numbers you were describing for other countries, because we don't think that is an appropriate use of our resources.

As you say, the efforts to penetrate our border, because of the efforts we have made with the French and the huge police effort they have put in around Calais and Coquelles, have now moved further upstream. There are more deep concealments in freight traffic coming into the UK. That means it is more sophisticated criminal groups who are engaged in this and we are seeing a shift in the pattern of migrants using those routes because of that. We have constantly to reflect where the latest threat is. The volumes of illegal immigrants making it into the UK through clandestine means are still coming in through those routes; it is just they are coming in in deep concealments in containers and so on.

The numbers coming in through the sort of means we saw reported in the press in early June are still a very small fraction of the total number of clandestine entrants to the UK, which is considerably less than it was last summer—when we had 100 people a day for a short period managing to get through the tunnel, before the fences went up—but is still higher than it was in previous years. That is because there is a more organised effort to get people into the UK through clandestine means.

Q106 **Mr Jayawardena:** How many members of the Border Force staff are



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currently based in France and Belgium?

Mark Sedwill: We have just under 1,000—900 to 1,000 full-time equivalent.

Q107 **Mr Jayawardena:** How many equivalent staff from those countries are based here in the UK?

Mark Sedwill: It is just French in the UK. I don't have an exact number; I think it is significantly fewer. They rotate about half a dozen through each shift in each of the terminals that they operate in.

Q108 **Mr Jayawardena:** Have there been any negotiations to date between Border Force and the French authorities regarding those juxtaposed arrangements? Although they are not part of our European Union agreements, they are an important part of controlling our migration.

Mark Sedwill: Border Force liaise with their French counterparts on the operational requirements of them. Obviously, we keep in close touch with the French Ministry of the Interior, but we have no request from them to do anything other than continue and indeed reinforce the capabilities around the juxtaposed controls. They have put a huge police resource on the ground and they maintained it despite the Nice and Paris attacks and despite Euro 2016, so we are extremely grateful to them. We have spent something like £45 million, I think, or have committed to do so, on upgrading security there. There is a very strong relationship with the French Government to maintain the juxtaposed controls and improve the security around them.

Q109 **Mr Jayawardena:** Do you agree with me that it is mutually beneficial, for both the French and the British Governments, for this arrangement to continue?

Mark Sedwill: Absolutely right. If you look at what happened before the juxtaposed controls were put in place, or when last summer there was the perception that there were ways of penetrating them, you immediately saw more illegal immigrants drifting into northern France. It is in France's interest as well as ours, in order to deter immigrants from heading into the Nord-Pas-de-Calais region to try to get into the UK. That is part of what has enabled them to maintain such a high level of commitment to doing so. We have also supported them in moving and creating reception centres further upstream, in order to deal with some of the migrants who are coming into France but who we don't want and they don't want to drift up towards Calais.

Q110 **Mr Jayawardena:** That is really helpful. To pick up on one point in your answer, if the French Government wanted to terminate this agreement, it would be the French people who would have to bear more people coming through their country and arriving in northern France, which would be to the detriment of their own services and their own way of life.

Mark Sedwill: That is certainly the view of the French Government. They know this is in their interests as well as ours. We do it because we are close allies as well and it is important to the overall bilateral relationship.



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It is in both our interests to keep a control on not only those ports but the areas around them. That is very much the argument that the French Minister of the Interior makes within his own country.

Q111 **Chair:** Overall, what kind of impact is this going to make on the Home Office in terms of your personnel and your time?

Mark Sedwill: Brexit?

Chair: Yes, Brexit.

Mark Sedwill: Well, it will clearly be one of the dominant policy areas for the next few years, particularly in the areas of immigration and free movement, obviously, but also in international co-operation on law enforcement and national security. I will reinforce the teams dealing with it and that may mean that some other areas of work need to take a lower priority, but the Prime Minister has made clear that Brexit is not the only issue that she wants the Government to focus on. The Home Office has a whole range of other issues that we have to deal with too.

Q112 **Chair:** Of course. But going back to what you said about the Portuguese or Romanian who arrives the day before Brexit, if they come on an identity card you will not know where they are the day after. There are practicalities.

Mark Sedwill: There are lots of practicalities. My own shorthand for this is that the Government have to decide what is desirable. There is then the second question, which is what is negotiable, and then I need to work out what is deliverable. There are a lot of practical implications. We have 15 million non-EU citizens who cross our border every year and about 35 million EU citizens.

Q113 **Chair:** But you don't favour registration even for the people who are here for five years. We don't know where they are, do we?

Mark Sedwill: We do not have a population registration or national identity scheme in this country—that is for much broader political reasons—so the estimates of 3 million people are done by the Office for National Statistics on the basis of census and surveys. It would be a very big exercise—

Q114 **Chair:** Yes, because if you were asking people to leave—the man or woman who comes the day before—you simply do not know where in Britain they have ended up.

Mark Sedwill: We would expect, as with others, that a properly compliant environment will involve businesses checking who is working for them; landlords checking who is staying with them; and ensuring that people have an entitlement to be here if they have a driving licence and so on. All of those measures are in place.

Q115 **Chair:** So the onus will go on business and on the landlords.



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Mark Sedwill: It will have to be a partnership between government and the rest of the country to ensure that we have a compliant environment for all citizens.

Q116 **Chair:** Would you want to pilot this in a particular place, like, for example, Boston in Lincolnshire?

Mark Sedwill: I thought you were going to mention another city not too far from there. I think that is something we should explore perhaps as we get further down the process and the overall package starts to crystallise.

Q117 **Chair:** What will you miss most about the Home Secretary?

Mark Sedwill: Well, she isn't going very far.

Q118 **Chair:** But you won't see her every day.

Mark Sedwill: I didn't see her every day. This is the nature of government. I am delighted for her and that she was a success as Home Secretary and became Prime Minister. As I said, she isn't going very far. She has made it clear that she is going to continue to take a close interest in the Home Office, and I have a first-rate Home Secretary who has come in. I am very much enjoying my first few days working with her.

Q119 **Chair:** And you have another woman in your life: Patsy Wilkinson. She has joined you.

Mark Sedwill: She has. That was announced today. She is taking over from Olly Robbins as the second permanent secretary.

Q120 **Chair:** And is she going to be there longer than Mr Robbins or is she going to be poached by David Davis?

Mark Sedwill: I intended that he would be there for longer, but the referendum was one of those events that throws all the pieces up in the air. She will be with us for a full term.

Chair: I was about to end this, but Mr Winnick wants to ask about article 50, which you are very familiar with.

Q121 **Mr Winnick:** The Prime Minister has said that article 50 will not be invoked before the end of the year. Is that the position?

Mark Sedwill: So I understand.

Q122 **Mr Winnick:** When it is invoked, whenever that might be, obviously it will go before Parliament. Do you work on that understanding?

Mark Sedwill: This is very much a decision for the Prime Minister and the new Department. I am looking after the Home Office policy on this, not the overall policy. The Chair was asking me about the Prime Minister a moment ago. She has reminded me on more than one occasion—she is a parliamentarian first: her commitment to Parliament is very strong. So I would expect that that would continue.

Q123 **Mr Winnick:** It would be most unlikely without a parliamentary debate,



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but that is outside your terms of reference—I perfectly understand that. Could I ask you to speculate, if that is not unfair, on the length of time—if you had at this time to hazard some sort of guess—that the negotiations will last once article 50 is in operation? Presumably it could not be under two years.

Mark Sedwill: It very much depends on the political alignment within Europe and the overall direction that they set. There is of course a huge amount of technical detail to work through, and after we leave the EU transitional arrangements will no doubt continue for several years, just as when new members join there are often transitional arrangements for several years. That is more at the technical and operational level.

The speed with which the overall negotiation happens will very much depend on the political guidance that we get and the overall political alignment within the EU and between the rest of the EU and the UK. The Prime Minister is talking to Chancellor Merkel this evening. She is showing that she wants to engage quickly, at the highest possible level, to try to achieve what is in everybody's interests—an amicable solution. Our EU neighbours remain our closest neighbours and partners. Most of them are allies in NATO. They will remain very close partners of the UK and it is in everyone's interest that this works smoothly. But it is very difficult for me to judge the length of the negotiation, because it will depend very much on the nature of that overall political guidance.

Q124 **Mr Winnick:** But if someone said to you that it is likely to be more than two years—perhaps three or four—would you be particularly surprised?

Mark Sedwill: I would not be particularly surprised. I think the Chancellor was talking about quite an extended period of transitional arrangements. I think it depends on exactly what happens. It will clearly take several years for us to settle into a completely new set of operational institutional arrangements. New trade agreements with other countries, the way that we operate our border controls, and so on; all that will take time to implement. It is very difficult to tell, at this stage, how long it will take to reach a negotiated agreement. There are considerable complexities to it, but it is possible for experts to move quickly if they are given very clear political direction.

Chair: The very best of luck from this Committee. Thank you for giving evidence. You have been your usual open, transparent and helpful self. Please would you write to us on the various points? I will write to you on the ETS issue. That concludes the session.