

Foreign Affairs Committee

Oral evidence: [Implications of leaving the EU for UK's role in the world](#), HC 431

Tuesday 7 February

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Members present: Crispin Blunt (Chair); Ian Murray; Nadhim Zahawi.

Questions 331-368

Witnesses

Professor Kenneth Armstrong, Professor of European Law, University of Cambridge, Professor Derrick Wyatt QC, Brick Court Chambers, Emeritus Professor of Law, University of Oxford, on behalf of the Bar Council, and Hugo Leith, Barrister, Brick Court Chambers, on behalf of the Bar Council.

Examination of witnesses

Witnesses: Professor Kenneth Armstrong, Professor Derrick Wyatt QC and Hugo Leith.

Chair: Will the witnesses formally introduce themselves for the record?

Professor Derrick Wyatt: Derrick Wyatt. I am a retired professor of law at Oxford University, and a barrister at Brick Court Chambers.

Professor Kenneth Armstrong: I am Kenneth Armstrong, professor of European law at the University of Cambridge and also director of its centre for European legal studies.

Hugo Leith: Hugo Leith; I am a colleague of Professor Wyatt at Brick Court Chambers.

Q331 **Chair:** Many thanks for the informal evidence you have given the Committee, and the formal evidence that you will be giving.

May I return to the impact of tariffs on both the EU 27 and the United Kingdom? If there is no deal, one of the impacts will be on tariffs; in that respect we may want to get into non-tariff barriers and the regulatory agencies. In terms of the tariffs, however, if the United Kingdom is running a significant deficit in goods, it will end up with a substantial tariff income to the Exchequer. Given the balance of trade, that will probably be rather greater than income to the European Union Exchequers. Does that not suggest that the impact on the UK is therefore not that dramatic in terms of tariffs, if the fiscal impact of tariffs themselves on the UK will give a tariff income to spend on supporting industry or doing whatever else we want to do with it?

Professor Derrick Wyatt: That is perhaps an “every cloud has a silver lining” point. It is undoubtedly true, but we should also look at some of the accompanying factors, such as tariffs on Nissan exporting most of its cars to the EU. The 10% tariff on cars would shake the confidence of inwardly investing manufacturing companies in the UK, and while the Chancellor of the Exchequer could find some consolation, there could be some strategic industrial policy issues that come out of the situation. That is not to mention the agricultural sector, where tariffs can climb much higher—30% to 40%. That would hit both sides, and it could hit French agriculture worse than British agriculture, not least because the pound would be weak and probably weakening at this time, magnifying the impact of costs on foreign exporters. Then there would be the impact on the border between Ireland and Northern Ireland; that would be a serious test of the resolve of Ireland and the UK to maintain an open border. These are pretty significant downsides.

Professor Kenneth Armstrong: It is a bit like saying that parking fines are good for local authorities. They may be good for local authorities as a source of income, but they are not great for motorists who complain about



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the additional costs. Simply transferring those costs on to consumers means that prices and inflation will rise, with consequences for the economy. A fiscal bump may well appear, but how it patterns through the economy cannot be good.

Q332 Chair: But if one is sitting on either side of the negotiation, the impact on the 27 will in absolute terms be much greater than on the United Kingdom, given where the balance of trade sits now, so our silver lining is better than their silver lining. Is that correct?

Professor Kenneth Armstrong: It may be better. At the end of the day, both sides should have a very clear desire to at least negotiate a minimum trade agreement that would deal with that. Given that both sides are committed to the idea of global trade and reducing tariffs globally, ending up in that scenario does not make sense politically for either side—

Q333 Chair: I would certainly agree with that, but part of the function of this inquiry is for us to be able to present in understandable terms to the public who take an interest in this matter, or those who are running companies, what the predictable impacts might be. Hopefully that would then act as a spur to the decision makers on both sides of this negotiation to make sure they get a deal. However, at this stage I want to focus on what the implications of no deal are, and how much the implications around tariffs will act as a greater spur to the negotiators on behalf of the 27 or to us. Then I want to get into the implications of non-tariff barriers and the regulatory agencies as well.

Professor Derrick Wyatt: My inclination, Chairman, is to say that the pressure is greater on us. I know we're not getting into complicated numbers, so I will just give a few simple ones.

The UK exports 40%-plus of its total exports of goods to the EU. If you look at it the other way round, there are two ways of looking at the numbers. One way of looking at them says the EU exports 6% of its exports to the UK. The way that is calculated is by looking at EU exports both to each other and to the outside world, and that gives you 6%. I will come back to that. There is a second way of calculating, which on the face of it seems more sensible. That is to look at the percentage of exports that go from all the EU countries to the UK, and that takes you up to about 16%. That's still a considerable imbalance in terms of reliance.

In political terms—I have only recently thought of it this way—one might say that the 6% is a more realistic measure, because any EU country that is involved in negotiations looks at the UK in terms of whether it is a loss or a burden on its exports to the UK compared with its total exports, and if the UK is 6% of their exports to the rest of the EU and to the rest of the world, that's the political hit and the economic hit to them.

Although it obviously rather goes against the grain, I think it would hurt the UK more to have a prolonged period of trade on WTO terms. Equally, I don't think it would be for a prolonged period.

Q334 Chair: Am I right to summarise this by saying that in absolute terms the



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hit is greater on the 27 than it would be on the United Kingdom, but in relative terms it would be greater on the UK than on the EU?

Professor Derrick Wyatt: Precisely, Chairman.

Q335 **Chair:** You talked about the three deals in informal evidence: the divorce settlement, the transition arrangement, and then the long-term arrangement. If we get to the end of the article 50 period and there is no deal, that is it for the divorce settlement, isn't it? It is irrevivable.

Professor Derrick Wyatt: I don't think so. You can ask politically and procedurally whether that's it for the divorce settlement. In political terms, it's not "it" for the divorce settlement. There might be an argument about what the right procedure is to apply on the EU side, but if the EU thinks that the UK owes them €60 billion and the UK is talking about €20 billion, that will not go away simply because the two years have expired. The legal framework for arguing about it will change.

To put it briefly, if the EU and the UK go over the cliff edge, the more likely outcome would be that negotiations would continue on the divorce bill. Hopefully, they would have settled on EU citizens, but if they have not they will continue on that; they will continue on a transitional arrangement and they will continue on a future trade arrangement. The bucket of cold water of falling over the cliff edge could add urgency to the negotiations. It could also harden attitudes, and this is where it is a very dangerous thing to do. If public opinion on both sides of the channel thinks they are in a trade battle—the tendency of people when they think they are in a battle is to try to win it. The trick, in leadership terms, will be to keep the eye on the real ball, which is a successful outcome to the negotiations. I do not think we are talking about the cliff edge being the end. It will be a change of context for what is already going on.

Chair: Does anyone want to add anything?

Professor Kenneth Armstrong: I have always taken a very narrow approach to what article 50 can do as a legal basis for any EU instrument. I would tend to agree that once you are beyond that period—once the UK has left without a deal—I am not sure what scope there is for using article 50 as a legal basis for any future relationship with the UK at that point. You probably are then looking at other legal bases in the treaty to set out, as we would do with any kind of trade agreement, other provisions of the treaty. I tend to the view that article 50 does run out at the point where the UK leaves without a deal.

Professor Derrick Wyatt: I would be more optimistic about the possibility of using article 50. Why are lawyers worrying about which article? Article 50 is super-qualified majority and consent of the European Parliament. If negotiations go on to a different basis and you want a decent transitional agreement, you might be getting into the possibility of unanimity and mixity—the member states would have to be individually party to it. That is actually a reason why both the UK and the EU might think that article 50 had become attractive. There is nothing in article 50 that says you cannot conclude an agreement after exit. You can draw that



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inference, but it is not actually excluded and it might be a convenient political perception of a legal possibility. If not, another basis for agreement would be found.

Q336 **Chair:** My reading of article 50 is that the divorce agreement is by a qualified majority plus a vote in the European Parliament, and then article 218—I can't remember—is by unanimity for the future relationship. The issue for the United Kingdom is that those have to be done in parallel if we are going to have a satisfactory deal out of the European Union. By implication, the transitional deal will also be by unanimity. In effect, if the article 50 deal is the divorce settlement and that looks bad for the United Kingdom, but the balance for us is a sensible future relationship so we pay a bill up front and then get into some kind of new free trade arrangement and a transitional arrangement to that, these would have to be done together. So, in effect, this deal requires unanimity among the 27.

Professor Derrick Wyatt: I agree that that is a likely outcome, but I would not reject out of hand the possibility that the withdrawal agreement, which can be used for the transitional arrangements but certainly not for future trade agreements, even if it is concluded after Brexit, could be a legal option. I would not rule that out. It might become an attractive legal option if both the EU and the UK are over the cliff edge—I will not use the word tariff—applying tariffs to each other, there is a good deal of inconvenience and public opinion is not difficult to manage. It could be a lot more attractive to use a special super-qualified majority to get a transitional arrangement in place than getting into unanimity and potentially mixity for a transitional arrangement.

Q337 **Chair:** And you think that is possible after the period of notice has expired?

Professor Derrick Wyatt: I think it is. I accept it is controversial.

Q338 **Chair:** Right. So it is possible that it might be and it is possible that it might not be.

Professor Derrick Wyatt: Yes.

Q339 **Chair:** Who would decide? The ECJ?

Professor Derrick Wyatt: Ultimately it would, in the sense that if the UK and EU were to pull themselves back over the cliff edge with a transitional agreement based on article 50, you could have, depending on your outlook, a mischievous or law-abiding—

Chair: State.

Professor Derrick Wyatt: Institution—or state, certainly Chair—on the EU side saying—

Chair: “We are not entitled to be outvoted on this. We wish to get it right.”

Professor Derrick Wyatt: Absolutely. “We better check on whether this agreement is valid.”

Q340 **Chair:** It is pretty certain that some group of concerned citizens would no doubt helpfully seek that legal clarification.

Professor Derrick Wyatt: Again—it is very difficult to forecast these things— I certainly would not assume that if the EU and the UK pulled themselves back from the brink, made a transitional arrangement and were talking serious turkey about a future trade agreement, the European Court would unpick that.

Q341 **Nadhim Zahawi:** May I take the panel back to the disruption of no deal for the UK Government? How disruptive would it be having no deal? Would it be less disruptive than a bad deal, as the Prime Minister suggested in her speech?

Professor Kenneth Armstrong: Disruptive for who? Disruptive for Government, for industry, for civil servants, or for regulators?

Nadhim Zahawi: You could share all of that with us. Unpack all that and tell us how disruptive it would be.

Professor Kenneth Armstrong: Something that is so important about the UK’s relationship with the EU is how deeply embedded not just our law, but our administrative structures are in EU decision making. They rely on a high level of co-operation, trust, networks, committees, agencies and the whole lot to make all of that work. What if the UK leaves without a deal or anything in place to tell us how these systems are supposed to run? The great repeal Bill is supposed to leave all this EU legislation behind in the UK, but that legislation only works if you have people who can administer it and civil servants who can co-operate with one another. For industry, when things go wrong—when they have an authorisation for a product in the UK which at the moment is authorised in another member state, but that state’s authorities suddenly decide that they will no longer recognise that product—what is the mechanism for resolving the dispute outside the structures of co-operation that have grown up over the years?

In terms of disruption, there is potentially massive disruption in the ordinary, day-to-day boring business of administering legal frameworks. It is the iceberg below the top level of the legislation that we see in the great repeal Bill. We know that that will be a difficult task, to put in place the legal framework to deal with the legislation, but I think it will look like a sixth-form project compared with the task of putting in place the structures of co-operation between administrators outside the structures of the European Union.

Professor Derrick Wyatt: We have not mentioned services yet, and I think it is right to mention them. If we look at what the difference is, at the end of the day, between a good trade deal and a bad trade deal, the worst-case scenario trade deal would actually be better than WTO terms, but I don’t think we would tolerate WTO terms for long. A worst-case scenario final trade deal would probably have tariff-free trade in



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manufactured goods. There is strong mutual interest in that. Agricultural products we could not guarantee—I could not say that with the same confidence as for manufactured goods. We would be likely to run into some tariffs and quotas, because you would have countries like France and perhaps Italy that would take this opportunity to do things that they might have been wanting to do for a long time, and now was the chance.

It would be in services that we really see a detrimental impact. If we had a Canada agreement arrangement for financial services, it would not boil down to much more than non-discriminatory access. What would that mean? It would mean the same thing as trade under WTO terms would mean for financial service providers in London. At the moment, a bank or a fund manager capitalised and regulated in London can provide services throughout the EU without a capitalised and regulated subsidiary within the EU. If we clicked into trade on WTO terms, that would change overnight, which is why so many banks are making contingency plans. I can easily give you an example, although not of a bank—it has just popped into my mind. Lloyds of London, the insurers, have been looking at building upon their slight infrastructure in Malta to turn it into an up-and-running, European-facing piece of Lloyds to deal with the Lloyds business. Do we want that to happen? I don't think so.

The difficulty about it is that when we shift these jobs into other European countries, high-paid people take their salaries to those countries and pay their taxes there. That would happen under trade on WTO terms. There would be a deep shaking of confidence on the part of the financial institutions, which one would want to retrieve quickly. If one ended up with a final trade agreement of the same ilk, of course the UK would recover and London would remain a world centre, but the Europe-facing business would not be done in London anymore. If that's a hit we don't have to take, why take it? That's what City UK says, and that's what the Government says in its White Paper when it talks about elements of the single market being retained. We know from the Lancaster House speech that financial services are in that frame, and quite right too.

Q342 Nadhim Zahawi: On that point, presumably the comparative advantage in financial services, where 40% of wholesale lending in the EU is originated in London, would mean that they wouldn't want to cut their nose off to spite their face in the first place. In other words, why would you harm your own economy by hurting the City of London?

Professor Derrick Wyatt: This is one of the big economic-political issues of the day. I completely agree, with respect, Chairman, with the point that has just been made, because I am a Brit, and that is the way I see the EU. As a remainer—somebody who supported remain—I still had a predominantly transactionalist view of the EU. If I speak to friends and colleagues in other EU countries, their attitude is less transactional and much more about other aims of the EU.

Why would the EU cut off its nose to spite its face? As one academic said very passionately recently, "Because membership must matter. Those of us who are committed to the EU must make membership matter, so



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leaving the EU can't make you better off than you were." As time goes on, I think we will adjust on both sides of the Channel to a new target relationship. My hope is that if the feeling that somehow there is a kind of punishment element—if you leave the EU, you've got to take a hit—is mitigated when we are wearied by a few years of negotiations, it will be better for all of us.

Q343 Nadhim Zahawi: That brings me nicely on to my next question. In the event of no deal, would the UK still be presented with an exit bill from the European Commission? If so, who would enforce payment? Would the EU sue the UK, and if so how would that work?

Professor Kenneth Armstrong: I would have less to say on the enforcement side. In terms of the bill side of things, there are two things to be clear about. There is a difference between the UK's existing liabilities and commitments that are due to be paid and any future relationship that may involve contributions. As you say, this is purely about the liability side of things. It is clear that there are liabilities. There are liabilities that have been entered into as commitments for a variety of programmes. They exist in law as obligations and as commitments in the budget and the UK has a share of those. As far as I understand it, they don't just go up until the end of this current financial framework. As you know, the EU operates on a multiannual financial framework basis, so from 2014-20, which sets out the broad parameters of the EU budget and what the contributions of each member state are. We know that. But there are also other things and other programmes that the UK has already entered into agreements to fund, which go beyond that period. That is another side of it. The bill is yet unknown in terms of quantity, but it doesn't look like it is going to be small.

Professor Derrick Wyatt: That is an understatement, isn't it?

It was described, Chairman, as the enforcement side of it. I think the starting point might be that the UK and the EU will want to resolve the money issue, not just because the EU will want as much as it can get but because of the impact on its budget of the UK no longer being a member. That will generate some resentment in some member states and they will want to claw back as much from the UK as possible.

Equally, the bill for UK civil servants is a bill that in principle might be hard to sidestep. But the bill issue, if it can be settled, will pave the way for resolving other issues to be negotiated. The European Court can't determine what the UK owes. When the UK leaves the EU, the matter will have to be negotiated. If you ask what legal rules apply, public international law applies and EU law is relevant as a factual context to that. Is there any international court with compulsory jurisdiction? No. Could the UK and the EU set up an international arbitration? Yes, they could. They could set up an arbitration. Would they? Probably not. Again, we are speculating about difficult situations. We are looking at a long period of negotiation that has not generated an outcome and each party wishes that to be settled. The difficulty with agreeing to submit that to arbitration is that there are no bright-line rules.



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If I had to formulate the relevant principle of international law, it would be along these lines: there is a duty for the UK and the EU to negotiate about the level of the UK's share of EU liabilities; in the absence of negotiation, it is to be decided on equitable principles. Handing that over to an arbitration smacks a little bit of handing over to a third party what is essentially a negotiating political decision.

On the other hand, if you are £15 billion apart, and it is stopping you getting a transitional arrangement and it is stopping you from negotiating a future trade agreement, one likely outcome of agreeing to an arbitration is that the arbitrators will split the difference. It might be easy; it is sometimes easier to give something to arbitration and have them split the difference than to do that yourself.

I am really not forecasting that. On the contrary, I think it is more likely that the UK and the EU won't go that way, but it is possible they will go that way to break the logjam and get on with much bigger, more long-term challenges.

Q344 **Nadhim Zahawi:** Back on the WTO issue, some commentators who argue that that is a distinct possibility say the average mean tariff would be about 4.9%. Do you recognise that?

Professor Derrick Wyatt: Absolutely. That is why I think both Professor Armstrong and myself have referred to more specific examples. Mean tariffs do not necessarily tell you a lot about the way it will impact on your economy, and they tell you nothing about services, which is the UK's real strength. Take a 10% tariff on cars and a 5% tariff on parts, and think of that in terms of the inwardly investing car manufacturers that import parts and export them. You could get into inward processing relief—there would be mitigating factors—but let's not forget that, only a month or so ago, Nissan was worried that leaving the customs union would leave it with paperwork on its transactions in its supply chains and exports to the rest of the EU. What they were hypothesising was, "If you're leaving the customs union"—which to me was always the obvious course to take—"doesn't that mean we'll have to have customs checks? At the moment, we have a very easy set of commercial relationships."

So, when you read in the paperwork, the tariffs and interrelationships like that, it is hard, but I agree with what has just been said: there would be many instances where the tariffs would not really be noticeable, particularly when the UK was exporting, because we expect a weak pound and, in low tariff areas, precious little impact on the UK exports concerned.

Professor Kenneth Armstrong: It is very important to combine the tariff side with the non-tariff side and then put in the additional regulatory costs. It is interesting that the UK has pushed the better regulation agenda, the removal of red tape and the reduction of compliance costs. Of course, the big thing that will happen if we do not have a deal that manages this well is vastly increased compliance costs for businesses at the same time that they may be faced with tariffs. It is the combination of the two that I think is particularly significant.



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Q345 Chair: Before I hand over to Mr Murray, can I test my understanding of what you have just said about there being no deal around the exit bill? The Commission presents the United Kingdom with a €60 billion bill, or whatever. The United Kingdom Government, with the enthusiastic support of its parliamentary supporters, says, "You must be joking." If you listened to the questions yesterday, you will have heard that colleagues are already saying, "Never mind the liabilities; what about the assets? What is the United Kingdom's share of the EU's assets?" You can see the dynamic around this. The Government writing a cheque for €60 billion is likely to be an improbable sell in the House of Commons, if nowhere else; it would have to be writing a bill. We are then presented with the prospect that we drop out of the European Union with no deal. You have now told us that there is no international jurisdiction to arbitrate this; it would have to be established. We have the money, so it is their problem.

So, if the politics of this goes rather along the lines of what you described your academics in Europe saying, where the EU says, "There has to be a punishment for the UK leaving; it has to mean something, and it doesn't really matter if we, the European Union, bear a price. It has to be clear that we are going to cut off our nose to spite our face, because that's what we need to do; it's not a transactional arrangement in that sense," that would lead me to be increasingly pessimistic about why there would be a deal from the United Kingdom's perspective. If we do not have to pay €60 billion, which is quite a lot of money, that is a rather substantial plus.

Professor Derrick Wyatt: The difficulty about us not having to pay €60 billion is that it depends what we think the Government's position will be. I am not going to sit here and suggest concessions that the United Kingdom might or might not make. I would simply say it is unlikely that the UK would take the position that a member state of the EU can leave the EU without having any financial responsibility at all in respect of—

Q346 Chair: I agree, but if it is in the context of there being no satisfactory negotiation around the future, the United Kingdom will not even need to agree an arbitrator; we can just sit here and say, "We've got the money. How are you going to get it? We don't recognise these liabilities." If the politics of the wider negotiation goes sour, everybody starts shouting at each other and we do not escape from that, actually the British hand is rather strong, because we are the ones, in that sense, with the assets—other than whatever EU assets there might be that we could claim a share of—and it is the EU 27 sitting with the liability toward their future programmes and everything else it thinks the United Kingdom should be contributing to.

Professor Kenneth Armstrong: It is strong in the sense of "We don't care what the consequence is". It is only strong in that sense. If we don't care about having any kind of deal with the EU for the future and we don't care about having a future relationship with the EU, of course we could do that, but how is that putting the UK in a strong position? I don't know.



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Q347 **Chair:** My concern is that we get driven into that position. So the politics of it here is: we are not getting a plus side of the deal because we are not getting a future relationship established and there are no guarantees around that. And Members of Parliament might be saying to the Prime Minister "You are asking us to raise taxes to raise €60 billion to pay to the European Union and you are not getting anything back." That would strike anyone as not a great position to be in.

Professor Derrick Wyatt: Chairman, it will not be a €60 billion difference. If one were to try to look down the track—it is so difficult—as the negotiations go on, the difference will get smaller. I am completely hypothesising that there will not be concessions for the UK. Suppose that the UK were to say, "We've got an estimate of about €20 billion" and the EU says, "We have got €60 billion." After a couple of years of negotiation the gap will have narrowed. So—I am making up a number—we might be saying "How in the negotiations do we bridge the difference? We have got a €15 billion difference now. We don't want trade to go on on WTO terms" and neither does the EU, actually. But, whatever pressure we have got in public opinion and democratic legitimacy will rightly put all this under the public searchlight, and it will all happen in the same way across the channel, too.

What is the likely outcome? I am an optimist today—glass half full. We may well get a way through with the negotiation or agree to park the negotiations, with the negotiations going in parallel with transitional agreements. Least likely is arbitration. With respect, Chairman, I don't think it is realistic that we would simply sit and say, "We are happy for trade on WTO terms for as long as it takes for you to accept. We are not going to pay you a large amount of money." I do not believe that Parliament and Government will want a long period of trade on WTO terms. We will lose inward investment and we will lose the taxpayers' money that currently comes in from the City.

Q348 **Chair:** Except there are the economists who supported Brexit who will say, "Actually, never mind—WTO terms and setting our own schedule. We will go to the WTO terms and our schedule will be zero."

Professor Derrick Wyatt: That is Bootle and Minford.

Chair: Yes.

Professor Derrick Wyatt: I am not an economist—

Q349 **Chair:** My view is: the economics work, but the politics are horrible.

Professor Derrick Wyatt: Forgive me—you took the words out of my mouth. I agree. The politics are impossible. The kind of politics that people want are what the Government says it is calling for: a strategic partnership with the EU. And an economic engine room is an ambitious free trade agreement that has some elements of the single market, and the elements will be around financial services. There is no reason at this stage to think that will not be achievable or that we will not manage to deal with arguments over the money. With some leadership and keeping—



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Q350 Chair: I know that that is what we ought to do, but if we are driven into a position in which the 27 find it impossible to do a deal with us, there is a strategy for the United Kingdom, isn't there? That is to set a 0% external tariff, go for the full free trade champion option and use the economic benefit of that strategy to manage the political consequences. No doubt there would be huge difficulties for the steel industry and elements of agriculture, which would suddenly be immediately exposed, with no protective tariff barrier.

Professor Derrick Wyatt: In principle—in theory—yes, certainly.

Q351 Ian Murray: May I build on the Chairman's last set of questions and his example of Lloyd's of London and Malta? Obviously, Malta will have a say on the final deal if one is negotiated. That is one example of many; Frankfurt, as the financial centre in the European Union when the UK moves, will be another. What is your view on the other member states seeing this as a potential real opportunity for them and therefore being completely intransigent about any kind of negotiation being successful?

Professor Derrick Wyatt: The difficulty with this sort of equation is that it is a bit like three-dimensional chess, because you have different layers of interest going on at the same time in the EU. My own impression is that one of the most significant things that has happened on the European political scene in the last two months has been the increasing recognition—coming from the spokesman for Barnier on the one hand and from Germany on the other—of the importance of the City to the European economy.

I suppose, at the end of the day, I think the big interests in Europe will prioritise that continuing role for the City over the interests of particular member states that might get the odd bank or insurance operation here and there. But we are really talking about unknowable politics, and I am conscious of slipping away from my comfort zone.

Q352 Ian Murray: But that is part of the debate, isn't it?

Professor Derrick Wyatt: Yes, it is.

Q353 Ian Murray: The big pressure on European member states post-Brexit is the feeling that their own populations have been left behind by the EU. Look at the position of Greece and some of the southern Mediterranean states. If they now have an opportunity to say to their own populations, in a political sense, "Actually, this could be quite good, because we may be able to attract some of the highly skilled jobs that are currently sitting in the United Kingdom", that will put a significant political pressure on them, particularly if politics kicks in at a national level. The pressure on those Governments not to do a deal with the UK that is favourable or perceived to be favourable to the UK will be immense.

Professor Derrick Wyatt: I cannot say that that is wrong. These are political factors and overwhelmingly this will be a political exercise.

Professor Kenneth Armstrong: It will also cut both ways on occasions. You may say that Ireland has a very strong interest in having a large



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amount of financial or legal services moving to the Republic, but at the same time it also needs to think about what it is going to do about its relationship with the North and with the UK going forward. Even taking your analysis, it is not clear that a state only has one single interest instead of competing interests that may push it in different directions.

Q354 Ian Murray: You mention Ireland. What is the potential widespread public disruption? We have talked a lot about regulation in business and the economy, but what happens to a UK passport holder at the end of the two-year period if there is no deal, if transitional deals are looking quite difficult and the EU and the UK, in your words, fall off the cliff together? What happens with travel, cross-border, health cards and all those kinds of public-facing things in the EU?

Professor Derrick Wyatt: There are a couple of big questions there. Let us take first the visas and secondly the health card. The default position would be that UK tourists could travel without visas to other EU countries—we are on neither the “must have a visa” list, nor the “must be given a short-term visa” list. The effect of that is that there is no common visa policy rule for UK tourists the day after our hypothetical Brexit over the cliff.

That would mean, first, that there was some confusion. The tourist group going to France or Italy four or five days after Brexit might find puzzled officials looking at their British passports thinking, “We know what’s happened. What’s their position?” The formal legal position would be no visa requirements, unless individual member states impose them. Do I think they would impose them? No, unless the UK started imposing visa requirements on nationals of individual EU countries.

One reason why I think the UK would not want to do that is that it would complicate the border between Ireland and Northern Ireland. Another reason is that it would be interested in retrieving the position and doing as little as possible to take adverse action that would provoke retaliation against individuals who are trying to get on with their lives.

I think the European health card depends on the application in other European countries of European law. Unless immediate action was taken at the European level to extend UK rights outside the framework of the UK being a member of the EU, the cards would become worthless.

Q355 Ian Murray: So your conclusion, essentially, is that if there is a cliff edge at the end of the article 50 process, the UK borders in every sense would remain as they are today, or it would be in the Government’s interests to leave them as they are today? They would then be in complete control of what they wish free movement to look like, whether it be tourists or workers, and the border between Northern Ireland and Ireland would be part of that. Are you suggesting that it would have to stay exactly as it is today?

Professor Derrick Wyatt: I think I was very careful to say that I was talking about tourists and short-term visas. If I did not make that clear, I would do so. I am most certainly not talking about rights of newcomers to



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work and residence rights beyond short stays. We can certainly continue with our passport controls. If someone arrived from another European country, the question might be, "What are you doing? Why are you coming to the UK?" If the answer was tourism, the UK would say, "We recognise that you can stay for a short while as a tourist or to go to a business meeting." That is likely, but that is most certainly not the same as saying that the UK would be giving carte blanche to people to enter and reside permanently and look for work or be employed. These are all matters that would be part of the future position of the UK as regards—

Q356 Ian Murray: But all those matters would have to be resolved. If there is no deal, these matters would be hanging in the air until such time as a transitional or full agreement was in place.

Professor Derrick Wyatt: The UK could certainly act unilaterally as regards rights of work and rights of residence. All I am suggesting is that it might be unlikely to act unilaterally simply as regards short-stay visa-less travel. Obviously, my estimation might be wrong. It is based on a belief that imposing restrictions would have worse consequences than not doing so.

Chairman, I saw you looking quizzically at me. I admit that I have a concern about the impact on the open border in Northern Ireland. If the UK were to single out one or two European countries and say, "We require you to have visas", the likely response would be that British citizens would have to have visas for the Schengen area, and that would be an inconvenience. It would not be the end of the world, obviously, particularly as the EU is bringing in an online, pay-as-you-go advance notification of intention to travel. Even if you have got visa-free access, you will have to go online. Is it €15 that they will charge? I am not suggesting that the UK population would be irreparably damaged by having to get visas, but there would be some adverse response to that from our population and from other European countries, which would collectively require the UK to have visas for Schengen.

Q357 Ian Murray: Let us take the scenario where a plane lands at Heathrow terminal 5, albeit having circled for 40 minutes. The plane empties out and people are going through passport control. European nationals are on that flight. No deal has been struck. The passengers approach the border control officer and hand over their passports. The first says they are here for tourism and goes through. The second says they are looking for work. What happens to them? Is that all to do with what happens in the great repeal Bill and what the Government want to put in place?

Professor Derrick Wyatt: I think it certainly is. I think one would have some notice of the fact that things were not going to be agreed, because unless there is an agreement some months ahead of the end of the two-year period, there would not be time for that to be agreed by the European Parliament or the UK Parliament. I always assume that the Great Repeal Bill would be put into force in time for the unplanned Brexit. I am hypothesising, but it probably would happen as you indicate. One answer of a person with an EU passport to the question, "What are you doing



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here?" is, "I live here." We have a large number of citizens of EU countries who live in the UK—between 2 million and 3 million. Another answer might be, "I'm coming on holiday." For the person who wants to come to look for a job, the UK Government would either have given instructions that there be no admission on that—

Q358 Ian Murray: To extend the great repeal Bill issue, is there an opportunity in this piece of proposed legislation to minimise the disruption while we go through the two-year period and whatever happens after that period, whether it be transition to a full deal or otherwise?

Professor Kenneth Armstrong: I am not sure that this would end up in the great repeal Bill as such—I think we are going to have to have an immigration Bill anyway to deal with the future. It may well be that that immigration Bill would have to have contingencies within it for that point where we did not know whether there was going to be a wider settlement and what that was going to be. I think Parliament is going to be busy legislating at a number of levels. A great repeal Bill will be one, but an immigration Bill will be there. I would imagine that if one was being sensible, there would be provision within that to deal with any eventuality in which there was not an overarching framework that would tell us more about what would happen to EU citizens.

Q359 Ian Murray: In the scenario that there is no agreement, how much importance is there on this great repeal Bill? That is not just in repatriating all EU law, but in dealing with all the big issues that we have discussed this morning already.

Professor Kenneth Armstrong: More generally, the great repeal Bill is key to the idea that on day one, post-Brexit, there will be some degree of continuity as part of that continuity narrative. Of course, that could be true. In legislative terms, we need to do things like ensuring that once we repeal the European Communities Act there is still an empowerment in primary legislation for all the secondary legislation that has already been adopted and that we know that. There will also then be the need to provide a mechanism for the constant adjustment of the UK's legal framework to developments at EU level. We know that there are likely to be Henry VIII clauses that are going to allow for delegated legislation to keep that updated.

Beyond that, in terms of the wider regulatory frameworks that we have in place, what they cannot deal with are things like mutual recognition requirements, where if you are regulated in the UK and have an authorisation to do something, that will automatically be recognised in another EU member state. Actually, it works the other way around. What the UK could do is quite easily recognise in UK law all those things that are recognised in EU law already.

What we are then going to have to work out, if we do not have any overarching framework or any other agreement, is what happens to all those national authorisations that are currently in place and which benefit automatically as a matter of EU law from mutual recognition, and whether

that will be maintained going forward. I do not think that is something the great repeal Bill itself can touch.

Q360 Ian Murray: You have touched on a lot of the mutual recognition regulatory frameworks. How much disruption will there be from the UK removing itself from the huge matrix of regulatory bodies at EU level? We had the Bill in the House last night and there were amendments down that covered 38 separate EU regulatory bodies, and that is not them all. So what kind of disruption will that have on the UK and the EU? Are there particular sectors that would be hardest hit from those kinds of withdrawals from regulatory bodies?

Professor Kenneth Armstrong: I think Hugo may have something to say on that as well.

The one distinction I would make is that you have some regulatory bodies and agencies that provide Europe-wide authorisations. Post-Brexit, there is nothing to stop UK companies seeking to have their chemical authorised by applying to the European Chemicals Agency and for that to be EU-wide for the EU27. So the disruption at that level is perhaps less significant. The UK, as a matter of domestic law, could say, "If the European Chemicals Agency has provided this Europe-wide authorisation, we will treat it as being authorised in the UK as well."

Actually, EU-wide authorisations are not necessarily the norm, particularly in medicines, where we now do have a centralised medicines agency giving Europe-wide authorisations. Prior to that, many of the medicines that are one the market now were authorised by national competent authorities, including in the UK. If you take the UK outside, then the question is what happens to the status of those things.

Hugo Leith: I would just draw out that distinction between the centralised authorisations that might be given by the European agency as opposed to national authorisations.

To take national authorisation as an example, in the field of civil aviation, all air operators based in the UK are granted an air operators certificate by the UK Civil Aviation Authority. That is recognised throughout the European Aviation Safety Agency remit, which is the member states plus three other states. That status will change if the UK leaves in the event of an unplanned Brexit. The UK would effectively become a third state outside that system. Its air operators, such as British Airways and other airlines located in the UK, would have to obtain approval from the European body responsible for granting those authorisations to third states. One way that could be streamlined is if the UK enters into an agreement with the EU itself. There is provision for that to occur, but that would require some ongoing monitoring by the aviation safety authority of the UK's monitoring systems, so there would still be some interlinks at that level.

To take the medicines example that Professor Armstrong mentioned, the Europe-wide authorisations that can be given for medicines and which are



compulsory for some kinds of medicines—those for the treatment of diabetes, cancer, AIDS, rare conditions and so on—have to be held by an undertaking that is established in the EU. So if UK companies wanted to hold on to their authorisations, they would have to move or establish a place of business in another member state. That would impose some costs and challenges to their business.

Similar considerations would apply with the regulation of chemicals—an undertaking that a chemical registered has to have a representative in the EU. Either whoever is manufacturing the chemical has to be in the EU or they have to appoint another firm to do so and to carry out the responsibilities imposed by chemicals regulation on their behalf. On both levels, there are challenges for businesses at the moment that either have national or centralised authorisation.

Q361 Ian Murray: Where would you pitch the importance or regulatory harmonisation on the scale of the importance of issues that have to be resolved to the UK's satisfaction? Is it the most important issue, or does it fall behind tariffs?

Professor Kenneth Armstrong: In lots of ways it is easy because we are already in the position of regulatory convergence. That is what makes this so different from other types of free-trade agreement negotiations, where you start from a position of divergence and try to work out systems—you deal with the tariff side and then you put in place broad, horizontal structures for regulatory co-operation. We already have the regulatory convergence; it is already there and we are all operating at that level.

The question is, beyond the point of Brexit, at what point do they remain the same and at what point do they diverge. The great repeal Bill's aim is the idea that, going forward, things should be more or less the same. Of course, that does not deal with how things will change at an EU level in terms of the constant production of provisions—not at a legislative level; it is non-legislative, delegated and implementing Acts constantly coming through the Commission.

The other area that I would highlight—this seems slightly off the wall—is the guidance that is produced by agencies and other EU bodies. They are often the most technical aspects of how you ensure conformity. How do you as a manufacturer actually conform to all the details and technical rules that are coming out? Those guidance documents effectively become the blueprint for what companies should do. These do not come out of nowhere, but from expert groups and all sorts of sub-institutional level organisations. If you are not there at the table negotiating what those technical conformity aspects are like, that is where you are going to drift in the regulatory framework. You probably will not drift at a formal level of you having the same rules, but you will begin to drift away from what is happening. Certainly you will lose influence in terms of what is happening in what might be one of your key industries. I do not know the area well, but I understand that in the area of energy regulation and making the energy single market work, these technical codes are crucial to how the energy market actually works in practice.



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Q362 **Chair:** Moving on to what kind of planning the Government ought to be doing for this scenario, you have looked at the work on no deal, you are both preparing some evidence for us and we are getting useful evidence from elsewhere, piggybacking on the work of the Northern Ireland Affairs Committee on the border and other such issues. Do you think that there is a possibility of completely unforeseen problems from no deal—even by authorities such as yourselves in this area—that will catch us completely by surprise? Or are you making a reasonable fist of understanding what the implications of no deal would be?

Professor Derrick Wyatt: I think that there are unknown unknowns about the whole negotiating process. There is always the potential for an unexpected event, which will change the climate in which the parties negotiate—

Q363 **Chair:** I completely take that, but the assumption that this inquiry is based on is that there is no deal, probably because the politics has gone wrong. In that sense, it really does not matter; it means that we leave the European Union, there is no deal—we have given notice, two years happen and there is no deal. That is the basis of the inquiry. It is really trying to bottom that out, which is what we are aiming at. I guess there are always unknown unknowns, but in the sense of the work you are doing and the work we are trying to do to cover the bases, how good a job do you think we are going to be able to do at getting reasonably to grips with the scale of the implications of no deal?

Professor Kenneth Armstrong: I hope that the main parameters should be noble. Maybe this is what you didn't want to get into, but one of the issues might be that, if we leave with no deal, what does that say to other trading partners with which we might want to do a free-trade deal? What does it mean for them, in terms of what they think their strategic interests are? But I do not think you can say that that is an unknown. I would have thought that most of the parameters should be relatively understandable.

Q364 **Chair:** I put this question to the Secretary of State—the Government has declined to give evidence to this inquiry—and the explanation offered by Mr Davis was, “Even the rather stark example that my hon. Friend cites might have different aspects. He is presumably talking about the trade aspect, but there is also, for example, justice and home affairs. There are so many different things to assess that it would be, frankly, nothing more than an exercise in guesswork at this stage.”

I believe that is incorrect. I think we can do rather better than guesswork. We can get reasonably close, through the work that you and others are doing, to a reasonably intelligent assessment of what no deal looks like and the kind of things we would then have to prepare for. Who is right in your opinion—me or Mr Davis?

Professor Derrick Wyatt: Without being sycophantic, I honestly agree with you. In our draft evidence on behalf of the Bar Council, we said that there is a speculative element in the exercise, but if there is no speculation, there is no planning. There have got to be some attempts to



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establish assumptions of possibilities, and that does seem to be ascertainable.

There is one thing I am really not sure of. After the cliff edge, there will be such a strong interest in clambering back, but will that be countered by the recriminations aspect of it? That is the sort of thing that I don't think one can really know in advance, but one can point to the objective impacts on one's businesses.

Q365 **Chair:** It is possible to do rather better than guesswork.

Professor Derrick Wyatt: I would have thought so.

Chair: Right. Professor Armstrong?

Professor Kenneth Armstrong: I don't think it needs guesswork at all. I think we've very clearly tried to lay out the scenarios of what happens if there is no deal. Particularly in the area I have been looking at—the regulatory side of things and the non-tariff side of things—it becomes incredibly clear what happens. There is enormous uncertainty for economic undertakings in businesses located in this country and across the EU, as to what happens to their ability to do business and trade. A credit rating agency that is currently based in the UK and takes advantage of an EU-wide authorisation won't have that advantage going forward. Those things are all very clear. They are not speculation in any way, shape or form.

Q366 **Chair:** That is helpful. I now want you to put yourselves in the minds of the Prime Minister and the Secretary of State for Exiting the European Union. This is about allocation of resources. The choice faced is this. Is the prospect of no deal so disruptive, and is it potentially so difficult to work out what the consequences are, that you should put no resources towards working out what the consequences of no deal are and preparing to deal with that, and should all your energy go into ensuring that that does not happen because no deal would be so disastrous? Or should you be preparing for the possibility of no deal because of the likelihood of that, because the politics at this stage are uncontrollable—we cannot control the other side of the negotiation and we cannot guarantee that the 27 will be prepared to do a deal with us? How would you balance it? If you were allocating resources between trying to avert no deal and preparing for deal, where would your balance of resources sit? How important is it to prepare for no deal, in your judgment?

Professor Kenneth Armstrong: One of the difficulties will be that you will have to put in some of the same resources either way. That is to say, the deal will only be a deal at a particular level. It will only be a deal at a treaty level that will highlight the main heads of agreement. Beyond that, whether it is the Great Repeal Bill or any other aspects of the legislative and regulatory side, you will have to put in resources to prepare for both eventualities—leaving with a deal where the deal is only ever going to be a framework, and there being no deal. You will also then have to deal with the possibility that you will not have any of the capacity for co-operation or dispute resolution that you might want to have dealt with at the higher



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level. I am fudging the answer slightly, but some of those resources are going to be the same either way.

Professor Derrick Wyatt: I would put most resources into avoiding a no deal, but the mere possibility of a no deal is enough to justify planning for it. That means preparing opinion and business. We know our financial institutions are planning, in effect, for a no deal. There is the example of Lloyd's, the insurers. You could say they are planning for a not-such-a-good-future trade deal, but it boils down to much the same thing. It is too important not to plan for; that is my reaction.

Q367 **Chair:** Is there anything new you have discovered in terms of scale while undertaking this work and preparing for us that has changed your view of the impact of no deal, positively or negatively?

Professor Kenneth Armstrong: I thought I had a decent sense of how important the post-legislative administrative regulatory side of things was. Having explored in more detail individual sectors, agencies and regulatory authorisation procedures, I am surprised at how much they still rely upon the role of national competent authorities or the applicant being established in one of the member states. If you take that away, you are left with a potentially big regulatory gap that will need to be filled. That is significant.

I am also surprised at how much the regulatory side of those agencies operates within a framework that assumes there are international agreements in place, whether it is Europol or the international operation of the European Research Council and the ability of our universities to co-operate with other universities across EU member states. That works very well in certain circumstances. It works well for non-EU states if they have association agreements. If you take that away, even if you are left with a basic free trade agreement, it will not be anything like the same type or level of engagement and co-operation. If you have no deal on that front, what on earth are our universities going to do in terms of their future co-operation with European partners, unless you get a very specific deal on science and technology co-operation? You will then have to have lots and lots of different sectoral agreements at that level.

Professor Derrick Wyatt: I had never before asked myself whether no deal was recoverable and what we would do if we went over the cliff edge. I had simply taken the view that we would go on to trading on WTO terms, but I had not actually had the occasion for thinking too much about what would happen then. Doing the thinking and working for this Committee has convinced me that although it is unlikely that this will be allowed to happen, if it does happen, it will be recoverable. I think it is more likely that the position would be recovered, because the impact would be seen on both sides as unacceptable and so much less than was needed and wanted, not just by industry but in people's expectations.

Q368 **Ian Murray:** May I just ask a very quick question? I will play grim reaper for a while and say that rather than being half-empty, the glass is completely empty. In the event that everything goes disastrously wrong,



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is article 50 revocable?

Professor Derrick Wyatt: I have already expressed the view on several occasions that I think it is revocable. That is not to say that I predict that anyone will seek to revoke it, but there are two views. For about a year, I have been in the camp of those who think it is technically revocable—before Brexit.

Professor Kenneth Armstrong: I am happy to say that I appear to be in the same camp as Professor Wyatt. I do think it is revocable. Paragraph 2 of article 50 talks about a notification of an “intention” to withdraw. That would be what the Government notified once it triggered article 50. If that intention changed, up until the point at which that intention was acted upon—that is to say, we actually did withdraw from the EU—it would be possible to withdraw that notification of intent. Does that have consequences? Does it make it difficult when you have a time period? Would it require there to be something put in place to prevent the UK from simply firing the button again? Probably, but in terms of the straightforward question, “Could it be revoked?” I agree with Professor Wyatt.

Chair: Well, I think you have just closed off the possibility of an early general election. If there is sufficient doubt in the minds of the legal profession—in the Supreme Court case, I think both sides of the argument said as the basis of their submissions that it wasn’t revocable, so there are obviously different views kicking around here. We are very grateful for the evidence you have given this morning. Thank you very much indeed. This is a very important piece of work, and I am very grateful for the evidence you have given and the formal evidence that we will receive shortly.