

Justice Committee

Oral evidence: [The implications of Brexit for the Crown Dependencies](#), HC 752

Wednesday 22 February 2017

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Members present: Robert Neill (Chair); Richard Arkless; Alex Chalk; Victoria Prentis.

Questions 1 - 44

Witnesses

I: Rt Hon Sir Oliver Heald QC MP, Minister of State for Courts and Justice, Ministry of Justice; and Elaine Cobb, Head of Crown Dependencies Team, Ministry of Justice.

Written evidence from witnesses:

– [Ministry of Justice](#)



Examination of witnesses

Witnesses: Rt Hon Sir Oliver Heald QC MP and Elaine Cobb.

Q1 **Chair:** Sir Oliver, thank you very much for coming. My apologies for not having been here earlier. The Secretary of State was making an announcement in the Commons about further work that is being done on transitional relief for small businesses. As you know, that is an issue I have been somewhat engaged with, so I wanted to be there while it was done. I hope you do not think that I was being discourteous or that I am too out of breath.

Sir Oliver Heald: No. We had literally just walked in, so no worries at all. Of course, you know that Elaine Cobb, who heads up our CD unit, is here, too.

Q2 **Chair:** We are very grateful to both of you for coming along to give evidence to us. This is the last evidence session of our Brexit inquiry. As you know, we have visited all three of the Crown dependencies. I know that you are in the process of doing that, so perhaps we can come to that in a moment.

We want to start by looking at the way the Ministry's role in relation to the Crown dependencies works in practice. It was emphasised in a debate yesterday about the Criminal Finances Bill that they are not part of the United Kingdom. We do not legislate for them. It would be fair to say that the MOJ has seen itself as a bit of a facilitator of contact with the UK Government, rather than a direct provider, as it was, to a degree, in the past.

Sir Oliver Heald: Over recent years, we have been very much guided by the Select Committee reports on the Crown dependencies, particularly the report from 2013, which set out the constitutional position and encouraged the Department to be a facilitator within Government and something of a champion for the Crown dependencies with other Departments, but working on the basis that the Crown dependencies should have their own relationship with other Government Departments. We try to facilitate and champion that. When they legislate in the various Parliaments, we have the responsibility of making sure that the legislation is approved and then sent to Her Majesty.

Q3 **Chair:** That entirely reflects the written evidence that the Ministry submitted. Can you help me? Are there any particular steps that you have taken to facilitate engagement by the Crown dependencies with other Government Departments in the context of Brexit and the particular areas that arise for them?

Sir Oliver Heald: Yes, indeed. Immediately the referendum result was known, Ministers contacted all the Crown dependencies and made it clear that we very much wanted to ensure that their interests were taken into account. A process was set up to enable that to happen. When I was appointed, I spoke to the Chief Ministers immediately. The Prime Minister



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and the Secretary of State also made the point to them that it was very important that they should be taken fully into account. Since then, both the Cabinet Office and DExEU have taken steps to ensure that they are involved. I have had meetings with David Jones and Robin Walker, and have corresponded with David Davis, to make sure that they are properly championed. I believe that Robin Walker is now in touch with them on a bi-monthly basis and is putting a great deal of effort into that. Elaine may want to say more.

Chair: That would be very helpful.

Elaine Cobb: That is a fair account. In addition to the ministerial level of engagement, my team has been very keen to do a lot of cross-Whitehall engagement. We were slightly worried that the Crown dependencies would be forgotten in the process, but we were quite pleasantly surprised to find that we had a number of Government Departments approaching us. We immediately offered to meet them to explain the constitutional relationship and to provide any support they needed. That has been positive, on the whole.

Q4 **Chair:** What is the size of your team at the moment?

Sir Oliver Heald: It is fair to comment that there is a core team, which is an establishment of six. One is being recruited, so it is five at the moment and will be six again. In addition, we have lawyers in the Department, of course. There are 60 of them, and three are specialists in this area. I am also the chairman of our Brexit working group in the Department. Obviously, there is a certain amount of crossover between the ministerial working group for that and our role with the Crown dependencies.

Elaine Cobb: One of the previous team leaders of the Crown dependencies team is now heading up one of the other strands of the wider MOJ Brexit work, so there is good crossover.

Q5 **Chair:** In terms of the negotiations themselves, how would you characterise the MOJ's responsibility? Is it to put them in touch with the right people?

Sir Oliver Heald: Yes, indeed. Of course, there are five main areas where the Crown dependencies are particularly concerned. DExEU is having round-table meetings with policy experts from the UK and the Crown dependencies on those five priority areas. They are taking it as seriously as we hoped they would.

Q6 **Chair:** That is helpful. There is a final point I am interested in. You mentioned the role of the Cabinet Office as well. For the sake of clarity, how does it fit together between yourselves as the facilitators, DExEU as what it says on the tin, and the Cabinet Office?

Sir Oliver Heald: They have a dedicated official who is also helping with this. Elaine can say a bit more about that.



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Elaine Cobb: When DExEU was at the stage of being formed, the Cabinet Office constitution group was key. One of the initial things that we did was to meet them. They have now appointed a specific official with responsibility for liaising with the Crown dependencies. That official has visited all the Crown dependencies and has been in regular contact with them and with us. We work very closely to make sure that all the issues are picked up. That post was intended as a way of feeding specific concerns about Brexit from the Crown dependencies straight into the centre. He attends the DExEU cross-Whitehall meetings as well.

Q7 **Chair:** If, for any reason, one of the Crown dependencies is not satisfied with the level of engagement—there is no reason to think it would not be—is it able to come to you, Sir Oliver, as the Minister, or to the Lord Chancellor to raise that?

Sir Oliver Heald: That is very much our role in all Government matters. If a Crown dependency feels that it is not being listened to or there is a need for some intervention, that is our role, and we do that. We would do it in this instance as well.

Q8 **Richard Arkless:** Given what you said, Sir Oliver, is it fair to say that the lead interlocutor between Government and the Crown dependencies is actually the MOJ, not the Department for Exiting the EU?

Sir Oliver Heald: Not really, because when it comes to Brexit—

Richard Arkless: Is there crossover?

Sir Oliver Heald: We look at it this way. Whatever the particular issue is, if there is a Department that specialises in that area, we expect the Crown dependencies to build a relationship with that Department. If they felt that they were not being listened to or there was a concern, they would come to us and we would intervene and make the point, because we are responsible for the constitutional relationship between the Channel Islands and the Isle of Man and the UK. That is the way it works. In terms of Brexit, the main relationship in the negotiations and so on is with DExEU, but with us monitoring it and making sure that they feel that everything is being done that should be done.

Q9 **Richard Arkless:** Is it purely on a reactive basis, or is there anything that you are doing to co-ordinate, monitor and record the engagement, to make sure that it is all being done properly?

Sir Oliver Heald: That is something our team does; I will bring in Elaine in a moment. As I said, I have had meetings with Robin Walker. I regularly speak to Robin informally to make sure that he has not had concerns expressed to him that I have not caught up with. Obviously, personal interaction is useful. David Jones is a very important player in DExEU, and, although he does not concentrate so much on the Channel Islands, I keep in touch with him about it. The Secretary of State has met David Davis, and so on. I am also regularly in discussions with various leading figures from the Channel Islands about particular issues.



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Elaine Cobb: It is a fair question. I was concerned to make sure that, rather than just waiting on people to come to us, we got the information out there and made other Departments aware of their responsibilities to engage with the Crown dependencies. My team and I represent the MOJ at the cross-Whitehall meetings that are chaired by the Cabinet Office and include DExEU and all the other Government Departments that have a stake in the DExEU negotiations. We are there not to be expert on the detail or the substance, but to make sure that the CDs are remembered and taken into account.

We have created a number of resources to make sure that people who need information about the Crown dependencies have it. We have a fact sheet. It is a bit before my time, but I think it was born of a recommendation from this Committee, which asked for a statement of the constitutional relationship. That has been expanded. We have just updated it, and it is available on gov.uk. We send that around at any given opportunity—any time we hear of another Government Department that might be doing something that might affect the Crown dependencies.

In addition, we have done some “How to” notes, which are less specifically Brexit related, to explain to other Government Departments how to extend legislation, for example, to Crown dependencies. We take every opportunity we can. There are lots of different types of meetings happening. We take the opportunity to raise the Crown dependencies in those meetings, but also—sometimes more importantly—in the margins of those meetings, where we can have softer conversations and invite people to come to meet us.

Sir Oliver Heald: In fact, the Foreign Secretary was at a reception where they were also present. We made sure that there was an opportunity to speak informally.

Q10 **Richard Arkless:** Elaine, clearly you are a very important conduit between the Crown dependencies and the UK Government. Do you have any plans to visit? Have you visited since the referendum? Would you like to visit?

Sir Oliver Heald: Yes.

Elaine Cobb: Yes.

Sir Oliver Heald: We have been to Jersey, which was very productive. We had a lot of individual meetings with people like Sir Philip Bailhache and the Bailiff and so on. That was very good. The next plan is to go to the Bailiwick of Guernsey—I have been promised that I can drive a tractor on Sark—and to the Isle of Man after that. That is the order that is judged correct.

Q11 **Richard Arkless:** That is very good to hear. Part of the debate on the Criminal Finances Bill yesterday, which the Chair raised, was the distinction between Gibraltar and the definition of overseas territories.



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There was a feeling that Gibraltar might be more like a Crown dependency than an overseas territory, although, strictly speaking, that may not be correct. Is your engagement in this process reaching out as far as Gibraltar, which had a vote in the EU referendum, whereas the Crown dependencies did not?

Sir Oliver Heald: No. That is not something we are directly involved with. That would be a matter for the Foreign and Commonwealth Office. We feel that we are very actively involved with the Channel Islands and the Isle of Man.

Elaine Cobb: The relationship between the UK Government and the overseas territories is dealt with by the Foreign Office. I understand that there is a separate team that deals specifically with Gibraltar, due to its unique status as an overseas territory. My team has really good contacts with the OTs team. We keep in touch, but it is outwith our remit.

Q12 **Chair:** Can I interject on that point? The reason why Mr Arkless and I have an interest in this is that there is a degree of commonality on some of the issues, such as large financial services sectors, where Gibraltar may be more akin to the Crown dependencies and there may be some shared knowledge and shared issues.

Sir Oliver Heald: Yes. As I am sure you found out, the various external relations departments for the Channel Islands and the Isle of Man would certainly speak to Gibraltar and other places where they felt they had common interests.

Chair: That is certainly right.

Q13 **Richard Arkless:** What we have heard about engagement is very good and very reassuring. For the most part, it was corroborated when we visited the Crown dependencies. They have been at pains to stress that they welcome the engagement and want it to continue, but there is clearly a fear that, post triggering article 50, that might change in some dimension. On that point, the main message that I sensed from the Crown dependencies when we visited them was that there is no list of demands, conditions or things that they want; they just want the basic assurance that they will not be forgotten. For them, to crystallise not being forgotten is to have some formal part in the deal that is reached. In the 1970s, they were not part of the deal and there was a bit of negotiating at the 11th hour to get some kind of deal for them. What they want to know is whether, after article 50 is triggered, consultation and communication will continue in the same vein. I suppose it is difficult at the moment, because everything is up in the air, but is there any way you can commit to part of the deal specifically referring to the Crown dependencies, to give them that assurance?

Sir Oliver Heald: DExEU would be the place to go for that. Of course, at the moment they are not in a position to explain the full detail of what they are proposing, because we have not actually triggered article 50.



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Robin Walker speaks regularly to each of the Chief Ministers and is keen to have that interaction. David Davis is aware of the position as well.

Elaine Cobb: You make a good point about the situation in the '70s. The Crown dependencies have made very clear to us that it was not a satisfactory process. Lessons have been learned. That was one of the reasons why we wanted to make sure they were engaged early. We had a bit of feedback that some of the things that the Crown dependencies brought up in the formal meetings with Robin Walker stopped the problem being created in the first place, because they got early engagement and were able to make their voices heard. The early engagement was key, but I appreciate that ongoing engagement is also key. We have made that commitment in no uncertain terms, via the Minister, the Prime Minister and the Lord Chancellor, and I hope the Crown dependencies are satisfied that we will continue it.

Richard Arkless: If they listen to this, I am sure that they will welcome the commitment to keep that engagement going beyond the triggering of article 50. It is very reassuring. Thank you both very much.

Q14 **Alex Chalk:** Can I drill down a little into what the engagement means? I left the Channel Islands with two expressions ringing in my ears: collateral damage and bargaining chip. They are concerned that, in the course of this process, there will be collateral damage because they have been slightly forgotten about or that they will be traded away as a bargaining chip. If there is a sense, either from them or indeed from you, that DExEU is doing precisely those things—or one of those things—who goes in to bat for them? Who says to DExEU, “We’re concerned that the Channel Islands are being traded away as a bargaining chip in a way that is unconscionable”?

Sir Oliver Heald: We would certainly do that if we felt that it was the case. So far, I have not had any indication of that. The meetings I had with Robin Walker and all the feedback we are getting from the Channel Islands side indicate that it has been very constructive. Although they have obvious concerns, as you mention and we would expect, at the moment they feel things are going in the right way.

Q15 **Alex Chalk:** They certainly do. I want to reiterate that as well. The impression that I got is that they are very impressed. It is just helpful for me to understand who intercedes on their behalf in the event that their worst fears—as yet unrealised—come to pass.

Sir Oliver Heald: It is fair to say that would be us. Clearly, there can be issues in negotiation where there are differences between the UK and part of the Channel Islands. It is too early to say, isn't it? The Government overall have to take a view on what is right.

Q16 **Victoria Prentis:** If our interests diverge from those of the Crown dependencies, in the course of the Brexit negotiations, is there a system in place yet to deal with that? Here on the mainland, have we thought about how practically we will resolve that and how we will represent the



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Crown dependencies' interests, if necessary?

Sir Oliver Heald: From what I am told, the point is that over the years there has always been a great desire both on the UK Government's part and on the part of the Channel Islands Governments and Parliaments to reach agreement. I do not believe it has ever happened that it has not been possible, because there is huge good will. That is the main thing. It is very difficult to know exactly what issue might arise, but there are issues where we have taken up the cudgels, or at least made quite an effort on behalf of the Crown dependencies, when there was a difference of opinion. I think we would do that.

Q17 **Victoria Prentis:** Fisheries are one example where the Isle of Man's interests might be different from those of Scotland and Wales. How would we resolve those differences practically?

Sir Oliver Heald: DExEU, as part of preparing for the negotiations process, will have discussions with DEFRA. They will be aware of the views of the various parts of the UK and of the Crown dependencies. I would expect them to come to a negotiating position that was fair.

Elaine Cobb: To go back to your original question about whether there is a mechanism in place, the simple answer is that there isn't, at this time. Part of the reason for that is that it is very difficult to put a mechanism in place. As you can imagine, the nature of a dispute could vary so enormously that it would be very difficult to put a one-size-fits-all solution in place, but, as the Minister said, that is part of our role. A number of times, even since I came into post, which is not particularly long, there has been a difference of opinion between what the UK Government want and what the Crown dependencies want. We are not there to stick up for any one side—obviously the Minister is a UK Government Minister—but we have facilitated negotiations, to make sure that everybody is around the table and, importantly, that the voices of the Crown dependencies are heard.

Sir Oliver Heald: Sometimes there is a legal matter that needs to be looked into in more detail. We facilitate that. In my time and, I believe, historically, we have not found it impossible to reach agreement or at least to modify decisions and so on.

Q18 **Alex Chalk:** We do not want to see ghosts here. I am sure that, with common sense on all sides, we will find a way through that represents everyone's interests. I am absolutely sure that will be the case. I want to drill down on the point that Ms Cobb made—that it is not the Minister's job to stick up for one side or another. As a matter of law, do the UK Government have a duty to stand up for the Crown dependencies in international negotiations, even if the interests of a Crown dependency diverge and there is a conflict, effectively, with the UK Government? Do you have a duty to represent them?

Sir Oliver Heald: Yes. The way it is set out is that there is an agreement, which you may well have. It was made in 2007-08 and deals



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with the UK Government's responsibility to represent the Crown dependencies internationally. It is a framework agreement. Basically, it says that it is the duty of the UK Government to represent the Crown dependencies internationally. It is understood that the UK will not negotiate or act internationally on their behalf without consulting them, and that the UK Government recognise that their interests may differ from those of the UK and that, therefore, the UK will seek to represent differing interests when acting in an international capacity. The agreement is available to the Committee, if you would like to go through it.

Chair: That would be helpful.

Sir Oliver Heald: That is the way it works. It also has some ground rules about, for example, the duty of the UK to give "open, effective and meaningful dialogue" and to "identify its priorities for delivery of its international obligations and agreements" in advance, "so that these are understood, and can be taken into account by" the Channel Islands and the Isle of Man in developing their own positions. It is designed as a way of bringing together the interests that there are, ensuring that they are all represented. It is what it is. In a way, it is an historic association, with an unwritten constitution.

Elaine Cobb: Maybe I did not choose my words very wisely when I said that it is not our job to stick up for them. It is definitely the job of the Ministry of Justice to make sure that that international agreement is adhered to and, through our awareness raising, that other Government Departments are aware of their responsibilities.

Q19 **Alex Chalk:** I am grateful. I would not wish a Crown dependency to hear that and be concerned.

Sir Oliver Heald: That is very fair. The other point is that there is a certain amount of give and take in the whole thing. We are very conscious that, for example, Jersey wants an international profile, and we are supportive of that. Of course, the ultimate position is that the UK Government are responsible for representing the Crown dependencies internationally, so we have to have a good deal of liaison and co-operation on that. I think it works.

Q20 **Alex Chalk:** Common sense all round.

Sir Oliver Heald: It just works.

Q21 **Alex Chalk:** Let's hope that continues. On that point—just to finish it off—it has been suggested that representatives of the Crown dependencies could be included in a UK delegation in trade negotiations where, if it were not for their inclusion, there could be conflicts that were not properly represented. Is that on the menu of possibilities?

Sir Oliver Heald: I will bring in Elaine in a moment, but my understanding is that DExEU will oversee the negotiations. The individual



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Departments may well be involved, but the overall picture has not yet been outlined in detail. At the moment, DExEU is the main focus for the Crown dependencies, to make sure that all their concerns are being expressed to DExEU and are taken into account when the negotiating situation is outlined. I have not heard any suggestion from within Government that there would be a particular team with the Crown dependencies in it. The main point is to ensure that whoever is negotiating is fully aware of their concerns and takes them into account.

Q22 Alex Chalk: Can I press you a tiny bit? If there were a real *cri de coeur* from the Crown dependencies, "We really need to be in the room at this point," and DExEU said no, would the Ministry of Justice consider seeking to make representations on their behalf, saying, "Look, there is a really powerful case for them to be at this meeting"?

Sir Oliver Heald: It is a bit premature, in a way, until the structures for the negotiating teams are known. At every stage we will keep in touch closely with the Crown dependencies to see what their concerns are, but I would not want to say in advance that it would be organised in that way. We will always stand up for their interests within Government. It is part of our job to be a champion and a facilitator for them, but it is a bit too early to hypothesise about particular situations. I would not want to set hares running.

Q23 Victoria Prentis: I have asked most of what was intended to come at this point, but there are a few matters. The States of Alderney sent us some written evidence for this inquiry. They asked for direct UK Government engagement with the constituent jurisdictions of the Bailiwick of Guernsey. Do you think that would be appropriate?

Sir Oliver Heald: We certainly keep in touch with all parts—Alderney, Sark and Guernsey itself.

Victoria Prentis: You said you were visiting.

Sir Oliver Heald: Elaine may want to say something about Alderney.

Elaine Cobb: Can I clarify that? Do you mean engagement with—

Victoria Prentis: During the Brexit process.

Elaine Cobb: We are very keen to engage with all the Crown dependencies. Since I came into post, I have had monthly phone calls with each of the external affairs directors in Guernsey, Jersey and the Isle of Man. We have regular catch-ups with Sark as well. Regular catch-ups with Alderney are something that I have pursued. I have not yet been able to get them to agree to regular phone calls.

Q24 Victoria Prentis: Alderney has expressed an interest in developing its own international identity, like some of the other Crown dependencies. Is that something you are considering, or are you just finding it too difficult to get hold of them?



Sir Oliver Heald: It is actually rather early stages. I am more than happy, and I am sure the team is, to have some further discussions with Alderney about their situation. We would need to talk it all through.

Elaine Cobb: There is some progress. Only yesterday, I got an email saying that they have employed a specific person to deal with their Brexit work. We have a phone call in the diary, and we will have regular phone calls with that individual. One of my missions, as the team leader, is to secure better, more regular engagement with Alderney, but I need their co-operation in that.

Sir Oliver Heald: They do interact. I remember occasions when they interacted with other Government Departments. We really need to talk it through with them in more detail.

Q25 **Chair:** One thing that troubles us around this is that, because of the differing natures of some of their economies, for example, there is always the possibility—it may not happen—that there may be a divergence on priorities between the Crown dependencies. We talked about what happens if there is a divergence with us, but there may be a divergence between them. Have you thought—either within the MOJ or with DExEU—about how that would be reconciled, in fairness to those views?

Sir Oliver Heald: That is absolutely right. The UK would take account of all the different viewpoints. If it came to consulting on representing the interests of the Crown dependencies and they were not just different from the UK's, but different from each other's, we would represent all of them. Ultimately, there could be cases where you have to make a decision about the best picture overall for the UK and the Crown dependencies as a whole, but we certainly do our best to reflect differences.

Elaine Cobb: The Crown dependencies themselves have made a collective decision that their best bet at this stage is to come up with a shared list of priorities. I think I read in Alderney's evidence that they agreed with that approach. As we get further down the line, I am sure we might see a bit more divergence. Again, our role as the Ministry of Justice CDs team is to make sure that all their interests are taken into account, not just the shared ones.

Q26 **Chair:** That is helpful. As you can imagine, during our visits we asked a good deal about what the priorities for the Crown dependencies were—you may well have picked them up already. Some of them were pretty obvious. We have talked about the financial services sector. Others include fisheries access for the Channel Islands, and manufacturing in the Isle of Man. Established EU nationals are important, because I gather that they have issues with trying to build their populations. A number of those are probably common to us. A particular theme was stressed by all of them. On 28 June, just after the referendum, the Chief Ministers of the three Crown dependencies wrote to the then Prime Minister seeking confirmation that "the UK's withdrawal from the EU will not prevent the



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continued free trade in goods and services, the free movement of capital and the free movement of people between our jurisdictions”—in other words, continuing free trade between the dependencies and the UK. Can you confirm, Sir Oliver, that that is the Government’s intention?

Sir Oliver Heald: We are certainly not looking to change anything in the relationship, either constitutionally or in terms of trade and the matters that you raise, between the UK and the Crown dependencies. What actually happens in terms of Brexit will depend on the negotiations, but we are very conscious that the contents of protocol 3 are of importance to the Channel Islands and the Isle of Man. We are well aware of that and are representing that viewpoint where we need to.

Q27 **Chair:** Perhaps you could take that within Government. If the current Prime Minister were able to respond to the point specifically, in the terms you have, it would be a considerable reassurance to people, since the matter was addressed to her predecessor.

Sir Oliver Heald: I think it would certainly be possible to do that.

Elaine Cobb: This is something they have been discussing at the quarterly meetings with Robin Walker. I confess to not being particularly close to the detail of that. They are not meetings that we tend to attend. We will certainly take it back.

Q28 **Chair:** You understand that the ability to come and go between London and the Channel Islands and the Isle of Man is critical.

Elaine Cobb: Yes.

Sir Oliver Heald: Yes.

Q29 **Chair:** And, of course, Dublin and Belfast, in the case of the Isle of Man in particular.

Elaine Cobb: What we can say is that we do not see the referendum result as changing the relationship between the UK and the CDs.

Chair: That is important to stress.

Sir Oliver Heald: You mentioned Dublin. There is, of course, a common travel area at the moment. The Government are on the record as saying that it is very important to keep that.

Chair: That is clearly a situation where the UK view and the dependencies’ view is the same. We agree that the maintenance of the common travel area is in everybody’s interests. That is very helpful.

Q30 **Victoria Prentis:** Perhaps even more important for the Crown dependencies than the terms on which we leave the EU are the terms of any international trade deal we make following that, or concurrently with leaving the EU. Is there a process in place at the moment for their involvement in any negotiations?



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Sir Oliver Heald: The Department for International Trade has started its process of discussions about what is to happen afterwards. The Crown dependencies are involved in that. I think the Crown dependencies are having a meeting with the Department for International Trade this Friday.

Q31 **Victoria Prentis:** Do you anticipate being involved in that in any way?

Sir Oliver Heald: Only in monitoring it. It will be for Liam Fox's Department to lead on that, in the usual way we operate, but we have certainly played our part in ensuring that DIT was aware of the issue. That is part of the reason why the meeting is taking place.

Q32 **Victoria Prentis:** We all have a whole load of new acronyms to learn. Do you think it would be the position that any new trade deals we make will be capable of extension to the Crown dependencies by default? Is that an aspiration for the Government?

Sir Oliver Heald: I don't think "by default" is the way I would put it. There have been agreements in the past where we have said that so many of the overseas territories and Crown dependencies as may wish to may have an agreement extended to them. There has then been a discussion, and some have wanted it and some have not. That has been the more normal way of doing it, but it is up to DIT to decide exactly how they do it for the future.

Q33 **Victoria Prentis:** Jersey and Guernsey are not members of the WTO. Would they need the UK Government's support to become members?

Sir Oliver Heald: This is one of the things being discussed with the Crown dependencies; it is part of the discussion with DIT on Friday. The answer is that there is quite a lot of good will, but I do not know what the final result of the discussions will be. One or two issues have been raised that may be markers in that direction. There is a Paris convention that Jersey is keen to be part of. There are some discussions, which we are helping with, with the Business Department to see whether we can resolve that. It has not been resolved yet, but we are working on it.

Q34 **Victoria Prentis:** Broadly, the UK Government are supportive of anything like that.

Sir Oliver Heald: Yes. Obviously, DIT has been looking at the future and what its proposals will be. It has been taking account of the views of the Channel Islands and the Isle of Man. We do not know what the outcome of that is yet, because there are still meetings.

Elaine Cobb: It is important to say that we recognise that WTO membership is a top priority for Guernsey and Jersey going forward. In our regular engagement with them, they have made that absolutely clear to us. It is something we are very conscious of. We continue to work with other Departments. One of my colleagues has a very good contact at DIT, and he makes sure those discussions are happening. They produced a paper on all the Crown dependencies, which we had sight of in advance.



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That is the kind of thing. We are engaged, but in line with the Select Committee's previous recommendations, the relationship should be between the Department for International Trade and the Crown dependencies. We will be there, and we will monitor it and step in, if required.

Sir Oliver Heald: I do not think there is any reason to be at all pessimistic. Everybody is trying to move in the right direction together.

Chair: It is fair to say that that is the sense we get.

- Q35 **Richard Arkless:** Arguably, financial services are disproportionately more important to the Crown dependencies, in varying degrees across the different jurisdictions. There is concern that, beyond Brexit, whatever that place may look like, the financial services sector in particular may be susceptible to attack from the European Union. Beyond Brexit, to whom do you see that responsibility falling? Will the UK still act as their voice in discussions with the European Union, albeit that we will not be a member, or do you see that responsibility shifting on to the individual dependencies?

Sir Oliver Heald: From an international point of view, the UK Government have the duty to represent the Crown dependencies, albeit that we are supportive of their desire, particularly in Jersey, to have an international profile. It would be for the Foreign Office to represent them. We would want to do that.

- Q36 **Alex Chalk:** They are keen to get out the message that, contrary to myths that may be peddled elsewhere in Europe, they are very transparent and accountable. In fact, they have tax regimes that are no more favourable than those of Malta or Luxembourg, but it needs a loud voice to make those points. They will be reassured by the knowledge that the UK Government are committed to doing that.

Sir Oliver Heald: Yes. I have had meetings with representatives of the Crown dependencies to discuss this issue. I think they would say that the Treasury and so on are sticking up for them in current discussions. Of course, they have some support in arguments to do with taxation—about not relying too much on the rate of taxation, but looking at the overall picture and so on. I think they feel that they are being supported, and we want to continue to do that. Some of the other international organisations that are not part of the EU are also supportive of the overall approach we take. The OECD, for example, is supportive.

- Q37 **Chair:** That is helpful. Mr Chalk makes the point that they argue very strongly that they meet EU and international standards of transparency. That is partly because they have transposed EU law into a lot of their own law in these areas. For example, Manx company law has taken English law as its basis and, in turn, has had transposed into it the relevant EU law.



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Sir Oliver Heald: Yes. Some of the criticism one occasionally hears is very unfair. They have responded well to the calls for openness. Following the last Prime Minister's particular initiative on openness and anti-corruption, they really came good.

Alex Chalk: They have gone the extra mile, some would say.

Q38 **Chair:** That is absolutely right. It is worth saying in this context. Ironically, because they have been good and diligent at doing that, they will have to go through the same process we are going through with the great repeal Bill, making sure that they have a proper transition to incorporate in their own law what is appropriate for them to retain. The concern was raised with us that that is quite a burden for small jurisdictions to take on, purely in terms of their legislative process. Can the UK help them to any degree around that?

Sir Oliver Heald: We were very much assisted by the Committee's previous report, where you talked about the need to have a proper legislative framework at our end for getting the Orders in Council through as quickly as we can and not duplicating the various functions. We have done that. There has been rather a good improvement in the work on new legislation; for example, legislative timetables have been agreed with the Crown dependencies for critical legislation, and it has worked well. That is something that will help us in the context of Brexit, if there is a need to pass laws to repeal or amend legislation.

Elaine Cobb: Just before we came here, I was having a conversation with a colleague about that very point. Obviously, there are issues around what the UK will want to repeal. If some of those Acts are extended to the Crown dependencies, we will need to be mindful that we can support them. In some cases, they will have replicated a piece of UK law in their domestic legislation, in which case it will largely remain unaffected. In cases where the law was extended and some laws are going to be repealed, we will have to think about that. We do not necessarily have the detail of it at the moment, but we are mindful of the need to take all of that into account as we progress with the repeal Bill.

Sir Oliver Heald: It is a help that I chair the working group within the Department that is looking at Brexit generally. That enables me always to say, "Let's not forget the Crown dependencies," when we are looking at procedural issues, the need to change legislation and so on.

Chair: A happy coalescence.

Sir Oliver Heald: I think it works reasonably well.

Q39 **Chair:** It is very apparent from discussions that they are looking at their own versions of a great repeal Bill, isn't it?

Sir Oliver Heald: Yes.

Q40 **Chair:** Can I assume that there will be some discussion with them about



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the timing of our Bill and how they can be helped to be in the best place to know when to time theirs, to make sure that it all flows sensibly?

Sir Oliver Heald: That is key.

Elaine Cobb: They have already met the great repeal Bill team and started those discussions.

Chair: That is very helpful.

Q41 **Richard Arkless:** In my view, the constitutional arrangements between the Crown dependencies and the UK, and indeed between the other nations and the rest of the UK, are not always understood in the detail they ought to be understood in. We saw the shambles that was Labour's amendment to the Bill yesterday—I can say this because none of my Labour colleagues is here today—which was constitutionally incompetent in relation to the Crown dependencies. Arguably, they ditched an amendment that could have been competent and went for one that was completely incompetent. That worried me, to a certain extent. Sir Oliver, you demonstrate clearly that you understand the constitutional arrangements. How confident are you that those arrangements and obligations are understood at the highest level within Government?

Sir Oliver Heald: The involvement of the Prime Minister at a very early stage, saying that she wanted to ensure that the voice of the Channel Islands was heard, and the fact that the processes were set up in the Cabinet Office mean that there is an understanding right at the heart of Government of what the position is. As Elaine said earlier, we have a document, which is regularly updated, and which the Committee suggested, that sets out all of that. There are also documents that we do for all Departments about how to do things with the Crown dependencies; they explain about extending treaties and so on. We are doing everything we can, but I recognise that there is a job of constantly encouraging the rest of Government to understand the interests of the Crown dependencies. I would not be complacent about it, but quite a lot has been done to ensure that that is understood.

One of the best constitutional explanations of the Crown dependencies and how they work is in the previous Select Committee report, which goes back to William the Conqueror. When I went to Jersey, I met the Bailiff. He explained how much he was going to enjoy celebrating the 950th anniversary of 1066, when they conquered us. They were the traditional lands of William the Conqueror.

Richard Arkless: The Isle of Man used to be part of Alba, of course.

Sir Oliver Heald: Well, that is going back.

Richard Arkless: We have our eye on it for the future.

Elaine Cobb: Can I make one point in response to Mr Arkless's question? A lot of the work that we are doing concentrates on raising awareness of the Crown dependencies' status within Whitehall and Government



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Departments. Your point is about raising awareness in the wider Houses, I guess. Obviously, it is disappointing for us when an amendment comes in that is constitutionally inappropriate or technically deficient in that way. HMT is the leader on the Criminal Finances Bill. My team works with them to make sure that the response the Minister gives is correct and describes the constitutional issue accurately.

Richard Arkless: I thought it was, incidentally.

Elaine Cobb: It is quite difficult for us to educate people outside Government, but I take your point.

Q42 **Richard Arkless:** Obviously, you cannot legislate for what happens outside, on other Benches. The highest level of Government is the Cabinet. By definition, and as confirmation, the responsibility to beat the Crown dependencies' drum within the Cabinet falls on the Lord Chancellor, I assume.

Sir Oliver Heald: Yes.

Q43 **Richard Arkless:** I suggest that you keep her very well briefed as to the constitutional obligations, so that she understands them.

Sir Oliver Heald: She is very conscious of the importance of the role. Obviously, on a day-to-day basis, I tend to do more of it, but she has been very involved in writing to the Crown dependencies and explaining how important it is that they are involved. I brief her on it regularly and she gets papers about it. It is something that is important to her.

Q44 **Chair:** That is very helpful. We had a plug for our report in the debate, although I must confess that I don't think the person who quoted from it had read it as fully as either of you has. Thank you very much. It has been a very helpful session.

Sir Oliver Heald: Thank you very much.

Elaine Cobb: Thank you, Chair.

Chair: Thank you for your time and your evidence. I shall pop back to the debate on local government finance. It was very good to see you again.