

Select Committee on the European Union

Justice Sub-Committee

Corrected oral evidence

Brexit: consumer protection rights

Tuesday 4 July 2017

10.45 am

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Members present: Baroness Kennedy of The Shaws (Chairman); Lord Anderson of Swansea; Lord Cashman; Lord Cromwell; Lord Judd; Baroness Neuberger; Lord Oates; Lord Polak; Baroness Shackleton of Belgravia.

Evidence Session No. 2

Heard in Public

Questions 10 – 19

Witness

[L](#): Lewis Shand Smith, Chief Executive and Chief Ombudsman, Ombudsman Services.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

Lewis Shand Smith, Chief Executive of Ombudsman Services.

Q10 The Chairman: Welcome, Mr Shand Smith, and thank you for joining us this morning. We are grateful to you for taking the time to do so. Today's session is open to the public and is being televised. A verbatim transcript of the evidence will be taken and put on to the parliamentary website. You will be sent a copy of the transcript for you to check for accuracy, and we would be grateful if you could advise us of any corrections as quickly as possible so that we can release it into the public domain. If you wish to amplify or clarify any points, you are welcome to do so in written form. For the record, would you please introduce yourself and explain your role?

Lewis Shand Smith: I am Lewis Shand Smith. I am the Chief Ombudsman and chief executive of Ombudsman Services. We are probably the largest multi-sector ombudsman service in the UK. We cover the entire energy industry and communications along with the Communications Ombudsman. We provide other professional services such as the Ombudsman for Chartered Surveyors and other parts of the financial services sector that, because of the legislation, cannot use the Financial Ombudsman. We have quite a broad remit. We also run the Consumer Ombudsman, which we may wish to talk about later. The ombudsman has been set up as a requirement of the alternative dispute resolution directive 2015 where the Government are required to have a residual body, a form of catch-all body, and the Consumer Ombudsman operates as a part of that.

Q11 The Chairman: As you will know, the EU Justice Committee is a sub-committee of the European Union Committee of this House. Our role in this inquiry is to look at the effects of Brexit on consumer protection, and that is our purpose in inviting you to come before us today. What, in your view, are the most important aspects of the EU's consumer protection acquis for businesses and individual consumers that currently apply in the UK?

Lewis Shand Smith: Obviously I look at this from the point of view of an ombudsman and the redress and protections that are available through alternative dispute resolution or through an ombudsman. The Energy Ombudsman was created in the UK following the CEAR Act 2007, which is underpinned by European directives passed both before the Act and through subsequent amendments to the operation requiring alternative dispute resolution in all member states. That is enshrined in UK law through the CEAR Act. It is now well established and, I think, quite secure. Last year we carried out 46,000 investigations in the energy area, but because that is already set out in UK legislation it will not be affected by the repeal Bill.

Likewise in communications, the Communications Ombudsman exists because of the Communications Act 2003, and again there are European directives behind it and subsequent amendments to those directives. Once more, it is enshrined in UK legislation, so the repeal Act would not apply to it. Those are already very much an established part of the law.

The Chairman: So that is energy and—

Lewis Shand Smith: —electronic communications. That is how it is officially described.

The Chairman: What about other areas that will affect consumers very directly? I am thinking in particular of online purchasing. There are central distribution places in Europe for consumer items. What is going to happen in that area?

Lewis Shand Smith: That is where we need to look much more closely at the legislation and the directives to see whether they will be affected by the repeal Bill. On the directive and regulations from Europe, the ADR directive requires that wherever there is a contract for the sale of goods and services anywhere in the EU, member states must provide alternative dispute resolution for consumers if something goes wrong. That also requires cross-border alternative dispute resolution. If someone purchases something online from Spain, for example, consumers should have access to an alternative dispute resolution procedure if something goes wrong.

Likewise there is the online dispute resolution platform, which operates in every member state. Basically, if customers buy goods online and something goes wrong, they go on to the platform and from there they are directed to the relevant ombudsman. In all these cases, the first port of call, of course, is the supplier. Customers must first complain to the person who supplied the goods. This is an area that is still very embryonic in the UK and throughout the European Union. At the moment, providers only need to signpost to an alternative dispute resolution procedure; they do not have to actually engage with it. There may perhaps be opportunities in this, and it is an area that needs to be looked at more closely to see whether the repeal Bill will apply to it. At the same time, the Government are looking at whether the effects of the regulations and the directive can be strengthened in the UK. That is part of what the Green Paper announced by the Chancellor last October is looking at.

Q12 **Lord Polak:** May I push you a little further on this and perhaps push you to be slightly more specific? Are there aspects of the EU's consumer protection rules that you would like to see retained, and are there any that we in Britain now, given the decision that we have made, will be quite happy to say *au revoir* to? Which ones are you happy that we are going to get rid of, if any?

Lewis Shand Smith: In some ways, the ADR directive and the regulations do not go far enough. That legislation is actually quite weak and does not yet provide the kind of protection that I think people are looking for. Our own Government called for evidence on some aspects of it and the response has not yet been published. Is there a case for getting rid of it? Possibly not, but there might be a case for saying that we want to use this as a starting point and that this gives us the opportunity to do something much stronger that gives much greater protection to the consumers than the directive and the regulation do. Would I get rid of it? In its present form,

possibly, but I would not get rid of it entirely, because it is useful, although it is not useful enough.

Lord Polak: The average citizen watching today would have heard that, but can you make it practical for me—someone going into a shop or doing something online, and what that will mean?

Lewis Shand Smith: At the moment, as I say, it is very embryonic and has been applied in different ways in different member states because of subsidiarity. For most members of the public at the moment, if they bought something online and had a complaint they would be directed to the ADR platform, which then signposts them somewhere else and perhaps gives them some advice, and they need to know to ask the question in advance. Should customers be made much more aware that this is actually available to them? I would say yes. What is really important about it is that it gives cross-border protection and it is slowly beginning to be used. If you have bought something in Spain and something has gone wrong with it, you can come through the platform and be redirected to an ombudsman in Spain. Alternatively, if you are resident in the UK, you can be directed through us and we will deal with the complaint if necessary. We deal with domestic disputes that are UK-UK and cross-border, too.

Lord Polak: So we have a chance to make it simpler for people.

Lewis Shand Smith: We have a chance to make it much simpler, and much more effective.

The Chairman: I just want to understand. You say that it is in embryonic form and that we were in the process of engaging in seeing whether there were ways of strengthening that. Is that not one of the roles that Britain has played, because we are rather good at lawyering, and that we have been improving standards across the board, for our citizens and for citizens across Europe, relating to the sale of goods?

Lewis Shand Smith: That is very definitely the case. I was involved in the creation of the ADR direction, and the British Government played a very large part in drawing that up. It did not go as far in some areas as the British Government wanted, and at the last minute some changes were made that I am not sure the British Government were keen on. None the less, British officials played a very large part in creating that directive. British officials in other areas I work in—in communications and energy—play a major role in both regulation and consumer protection and in the development of consumer policy.

The Chairman: But before people start waving flags and saying, “Look how great we are”, the point is that you cannot do it on your own and that after Brexit people will continue to buy things from Europe. Therefore, having high standards across Europe benefits us too.

Lewis Shand Smith: That is absolutely the case. At the moment we know that because of the standards that are or should be applied across Europe, if you buy something online you know that you have the protection of those standards, and if the standards have not been met there is a route for getting redress.

Lord Cashman: Thank you for coming to see us. May I just make the point to see whether you agree with me? You talked about the ADR directive not going far enough and that we could be much more effective. Actually, it is a directive, and nothing prevents us from improving on a directive. It is not a regulation. Therefore, whether we are in or out, nothing prevents us from building on that directive.

Lewis Shand Smith: You are absolutely correct.

Lord Cromwell: Right at the top of the shop you mentioned financial services. Can you say a bit more about how the ADR's coverage and availability to retail financial services will change?

Lewis Shand Smith: In financial services—of course, I am not the ombudsman for that—exactly the same applies as it does in energy and communications. In fact, it was the first, if you like. The Financial Ombudsman is well established in the UK and in the regulatory and redress framework, and in UK legislation. So my understanding is that that would not be affected by the repeal Bill.

Q13 **Lord Judd:** Obviously the EU has had a central role in promulgating consumer protection standards. How concerned are you that so far the issue has not appeared in any detail in the Governments' Brexit plans?

Lewis Shand Smith: I am not privy to the detail of the Government's Brexit plans, just to what has been published and what one can read. It does concern me that the Government do not seem to be aware of the consumer protection that comes through our membership of the EU. None the less, I am encouraged by the fact that the Government are still proposing to publish a Green Paper on consumers and markets and on markets that are not performing well for consumers. As part of that, the Government in the UK are looking at consumer protection. That gives me some comfort in that it is certainly on the Government's agenda somewhere, and I am sure that the Department for Exiting the European Union will take that into account. I am nervous that I have not seen it, but because of the messages on the consumer Green Paper I think the Government have it in mind.

Lord Judd: You are looking to the future there, and it is very good that you are, but in the immediate situation is it not rather alarming that in an area in which there has been firm administration from Europe there does not appear to be any strategy, let alone detail, on how that will be covered in the negotiations? Do you have a view on that?

Lewis Shand Smith: As I said before, I am nervous that it does not seem to be there at the moment, but again I do not know whether it is there or not. It makes me nervous because it is very important. It is very important for the protection of consumers, but it is also very important for the effective functioning of markets.

People will engage with markets more readily if they know that there is some sort of protection if things go wrong. People will purchase cross-border if they know that there is protection if things go wrong. I am not talking about people from the UK purchasing goods from other parts of the EU; I am talking about EU citizens purchasing goods from the UK, because they need to know that those protections are there, too.

The Chairman: Do we have those protections in our dealings with China?

Lewis Shand Smith: We have protections in our dealings with China. I am not involved in them, but I know that those discussions are taking place at the moment.

Q14 **Baroness Shackleton of Belgravia:** What advice will you give the Government in their conduct in exiting Europe in relation to the consumer protection legislation?

Lewis Shand Smith: My advice would be, “Don’t forget the consumer in all this”. Our markets depend on consumers, and we ourselves need to buy goods and services in our everyday lives. So do not forget the needs of the consumer and the protection that the consumer requires.

The other piece of advice that I would give is, “Don’t withdraw from some of the developments that are taking place at the moment”. That worries me perhaps more than anything else. You will probably be aware of the energy trilemma of trying to balance affordability, sustainability and environmental concerns. You will be aware of the discussions that have been going on for years now about a single energy market, a single energy union, that can protect consumers as we face that trilemma. I am nervous of the idea that we would withdraw from those kinds of discussions.

Again, the energy industry has begun a debate on the fourth energy package. That package talks a lot about prosumers—pushing people to generate electricity locally and create local generating co-operatives to buy and sell energy. Within all that there is a real need for consumer protection, because we are in uncharted waters here. Withdrawing from those discussions could put British consumers at a disadvantage and make them more vulnerable. It is probably better for us to lend our expertise to other parts of the EU while other areas of the EU lend their expertise to us. I am thinking of things like the future rollout of smart meters. We can learn a great deal from other European countries that are well ahead of us. We can learn from their mistakes and devise ways to protect consumers. I am really anxious that we will no longer be at the table for some of these quite crucial debates. We will be trying to do it all on our own.

Baroness Shackleton of Belgravia: Looking through the other end of the telescope, in any negotiation you have to bring something to the table that other people want to give up in trade for something that you are collecting. What do you think we can bring to the table? What can we use as a bargaining chip to enhance the enforcement of rights for people buying products or using our country as their base? Is there anything else that you think the Government could use as a bargaining chip to get a better deal?

Lewis Shand Smith: There are two things. First, as I have said, we have well-established ombudsman systems for part of what we do in the UK, specifically for finance, communications and energy. Indeed, we have better systems than in many European countries. We are not as good as some but we are better than others. We have experience that we can bring to the table. Also, there has been a major development here in the UK of something known as ethical business regulation, which is an important advance in both regulation and consumer protection. In many ways, that debate is being led by the UK. Consider a body such as the Civil Aviation Authority; Ofgem is very much looking at that just now. Again, our experience and knowledge as well as the academics who are involved in the research are something that we can offer to the EU.

The Chairman: Forgive my ignorance, but do I understand that there are ombudsmen across Europe who deal with these things, and a requirement for ombudsmen to be like you on consumer protection issues in the different European countries?

Lewis Shand Smith: Yes, there is a requirement for access to out-of-court redress. Again, because of subsidiarity it has been applied in different ways in the member states, and in some ways the UK has done it better than most, but not as well as some.

The Chairman: I do not want to bang on about China, but it is a good comparator. Instead of the European Union trading as a bloc with China, we want to secure new trade deals. I assume that China does not have a consumer ombudsman, so when an online dispute arises I take it that China does not have an online dispute resolution platform. If someone has a complaint to make because they are unhappy with some goods that they have bought, how confident can we be that someone in China will deal with that complaint in a satisfactory way, in accordance with the principles that we consider that we share in Europe?

Lewis Shand Smith: That is a huge question and I do not have the answer.

The Chairman: You raised your eyebrows, although the cameras might not have picked that up. I am raising mine too.

Lewis Shand Smith: It is a fascinating question. We have had visits from the Chinese, who talked to us about setting up a telecommunications ombudsman. One of my colleagues from Oxford University has been talking to the Chinese Government about ethical business regulation, consumer protection and redress.

The Chairman: In particular about plagiarism and intellectual property issues, I hope.

Lewis Shand Smith: Probably those too. The debate is there, and at the edges the Chinese Government are aware of it. Indeed, I was surprised to be contacted by someone from the Chinese Government asking to visit our offices because they want to learn about the operation of a communications ombudsman. If we can

show the Chinese or any other state that an ombudsman can increase consumer confidence and thus the likelihood that people will engage with their market, that is to the good. Of course, if we are not part of the European trading bloc, the protections that we have as a part of that bloc will disappear.

The Chairman: It has taken us 40 years to get to this point.

Lewis Shand Smith: It most certainly has.

- Q15 **Lord Cromwell:** The previous Government promised that national legislation will “preserve the relevant EU”—consumer protection— “law to ensure domestic law functions properly after Brexit ... It will help ensure that UK consumers’ rights continue to be robust after we have left the EU”. Is that a realistic aspiration that we should take comfort from, or is it Brexit-wash?

Lewis Shand Smith: It depends on what you mean by “robust”. At least it shows that this issue is on the agenda, and in areas where it is already enshrined in UK law we should take a lot of comfort. If the Government decide to revise the CEAR Act, it will not be at the top of the list; it will be somewhere far down it. Also, if they were to say that the protections that we already have through UK law are going to be reduced, there might be a public revolt. Certainly the newspaper commentators and the media who produce consumer programmes will highlight this, and that would be very uncomfortable for the Government, particularly if they were to say that they would take action to reduce our protections. There may be lobbyists who will try to persuade the Government to go in the opposite direction by saying, “This is red tape and we do not want it. Red tape comes from Europe, so get rid of it”. Does it? Moreover, is “red tape” a decent description, because what we call red tape is often what keeps us safe? For example, it stops aeroplanes from falling out of the sky.

The Chairman: There is a new discussion in the air about precisely that: about whether the kind of disparagement of regulation that we have seen has been helpful to us, given the risks that are involved in deregulating. We have seen that with the fire here in London.

- Q16 **Baroness Neuberger:** We have already established that directives can remain in place and be built on, but are there important areas of the consumer protection acquis that are not amenable to incorporation into UK law? If we do not have alternatives in place, will that result in gaps in the UK’s consumer protection laws?

Lewis Shand Smith: I think there are gaps in UK consumer protection laws now. I am not aware of anything from the acquis apart from the cross-border part. That is the big issue: how can we develop and maintain cross-border protection? As I said earlier, we need to find ways to do that that are good not only for British consumers but for those who are selling goods and services into the UK and want to do so into other European member states.

Baroness Neuberger: And presumably added to that is your earlier point about withdrawing from developments in the process that are not yet part of the acquis

but that might eventually become so.

Lewis Shand Smith: That is my biggest concern. In the energy field, as the energy industry changes and develops—it is going through a radical transformation—the protections that are being developed within the EU in co-operation and simply utilising the expertise that is around the table might be denied to us.

Lord Polak: You said earlier that there are some gaps in our current laws. What tools do you have to raise these issues and plug them? This question has nothing to do with Brexit; I am interested in finding out how you can plug the gaps.

Lewis Shand Smith: Obviously it is up to the Government to plug the gaps, but as an ombudsman I can do my bit to influence and advise on these issues. I have been doing that regularly, and indeed more and more over the past few years. The topical area at the moment is the rail industry. There is no European legislation that I am aware of that requires alternative dispute resolution in the rail area, yet there is now all-party support in the UK to put some form of alternative dispute resolution into the industry. It is more a case of influencing, speaking to people and giving the evidence.

My own organisation responded to the call of evidence put out by BIS last year, but the new department has not yet responded to it. We have argued strongly that there should be an ombudsman for all the regulated sectors in the UK—and by ombudsman I actually mean ombudsman and not alternative dispute resolution. Alternative dispute resolution under the directive can be very basic. It is where a contract exists for the exact supply of goods and services, so it is about that contract. An ombudsman has a much broader approach. An ombudsman looks in the first place at the complaint, the contract, regulation, the code of conduct and the behaviour of both sides in the argument, and makes a decision based on what is fair and reasonable in the circumstances.

But an ombudsman also goes beyond that. An ombudsman has a duty to work with individual companies where they see something that they think is causing consumer detriment and to advise and support them, particularly on how to handle complaints. They also have a responsibility to work with the regulator in a sector and to report to the regulator if they see something happening that is causing a detriment, and where possible to try to spot in advance things that might go wrong and help the sector and individual companies to deal with it. Smart metering is an example of that. An ombudsman goes much further than basic alternative dispute resolution.

The Chairman: That is very interesting and important to know.

Q17 Lord Cashman: I am a bit obsessed with enforceability across the EU 27. Post Brexit, consumers, organisations and businesses will no longer have a right to utilise the European ombudsman, the brilliant Emily O'Reilly, who I think is still there, and businesses and citizens will no longer have access to the European Parliament's petitions committee—presumably, given the Government's reluctance to have any

engagement with the European Court of Justice, the only areas of enforceability of rights in this country into the EU 27. Given that, will Brexit, in your opinion—not that I would hold your feet to the fire in your reply—lead to a decrease or an increase in consumer protection, both for citizens and for businesses, a diminution of the standards currently operating in the UK?

Lewis Shand Smith: It certainly could. This Committee, for example, has a huge part to play in holding the Government's feet to the fire in ensuring that it does not. In terms of regulation, as you know, enforceability is quite difficult because of subsidiarity. The UK often gold-plates regulations that come from Europe, which is often a good thing; we should not decry the fact that the UK tries to go to a very high standard. Even within the UK at the moment, there is difficulty with enforceability. Trading standards in our councils are finding it difficult to provide enforcement at the moment because of cutbacks. An ombudsman is not about enforcement; an ombudsman is about redress. The regulator, enforcement bodies and ombudsmen are separate parts of a piece, and each part has an important role. I am not basing this on any evidence, but certainly consumer protection may not be as good as it could be at the moment, and after Brexit it could be worse. One of the things that we need to keep on the table is the rights and protection of consumers, but also, as you rightly say, the rights and protection of British businesses.

Lord Cashman: You referred earlier to digital services. There is a push to get agreement among the EU 28 on digital services. Are there any areas of the economy that you feel might be affected by a decrease in consumer protection, both for businesses and indeed for the consumer?

Lewis Shand Smith: The very obvious and easy one in the digital economy is roaming charges in Europe, which, after years and years of debate, have now been removed. Presumably they will go back in place, which will affect everybody. In the digital economy there are question marks about the protection of digital identity. Again, we are at very, very early stages, but how do we develop protection for digital identity? Can we as the UK do it alone? Possibly. Could we do it better if we were doing it in co-operation with the other member states of the European Union?

Q18 Lord Anderson of Swansea: We are obviously in difficulty in that we are in the realm of speculation, we can express concerns, but we do not know what the future shape of association between the UK and the remaining part of the European Union will be. I have the impression—I may be wrong—that we in the UK are richer in consumer groups and consumer pressure groups. If we are removed from the equation, will there be less pressure within the European Union that could have adverse effects on our partners?

Lewis Shand Smith: We certainly play a major role in European institutions in consumer protection and in regulation. In terms of energy regulation, for example, the UK voice is a strong voice in consumer groups in Europe.

Lord Anderson of Swansea: Stronger, you think, than other countries'.

Lewis Shand Smith: Sometimes I have that impression. It is an impression, though, and again others would and should challenge it. The UK is certainly listened to. It has had a very strong influence. Just to take energy regulation as an example, we have very much led the way through particular individuals—one is a member of this House—who have played a very strong role in leading the way in Europe.

The Chairman: Please give credit to whoever it was.

Lewis Shand Smith: Lord Mogg has played a leading role in European regulation and in the network of European regulators. In the consumer protection groups in Europe the UK is at the table and has a strong voice and has made that voice heard. Again, possibly thanks to Lord Mogg, there is a consumers' energy forum, which meets once a year in London. It is called the London Forum, and it looks at issues throughout Europe that are high on the agenda in the energy industry but from the perspective of consumers in order to make sure that in all developments the voice of consumers is heard and consumers themselves are protected.

Lord Anderson of Swansea: We sometimes forget that the very word "ombudsman" is not English. The Scandinavians got there first. Sweden and Denmark are members of the European Union. Are they first in other areas, and will they have that pressure in relation to consumer protection when the UK is not there?

Lewis Shand Smith: I will probably get shot down in flames in a minute. I am a Shetlander, so I am half and half between the two. The ombudsman model in Scandinavian countries has developed quite differently from the ombudsman model in the UK. It is more complex and possibly gives greater protection or better avenues to getting civil justice. It is a fascinating model to look at, and they still claim to be the fathers of the ombudsman movement. Whether they are or not I am not so sure, because in some ways the UK does it better. The UK ombudsman model, however, is now 50 years old, and perhaps it, too, needs to be looked at again and overhauled.

Lord Anderson of Swansea: But they were the prime movers, if not the only begetters.

Lewis Shand Smith: They were indeed. If you go back to the law book of Jutland, you get the first references to this kind of protection. But, yes, it was the Swedish constitution that brought in the modern ombudsman.

Lord Cashman: This is a small point, but it follows on from what Lord Anderson just said. Of course we had the brilliant European ombudsman, Dr Jacob Söderman, from Finland, who drove the whole transparency agenda. I have a straightforward question about British influence. Do you believe that British influence in the area of consumer protection has been a cause for good and for improvement at the EU level?

Mr Lewis Shand Smith: I would say that it has, yes.

Lord Judd: Following on from that question, I was very struck when you said that we

would do better if we were working together with other members of the European Community. Given the degree of cross-border significance for individuals, families and of course for industry and commerce, do you agree that if we are not working with our partners in Europe, we simply cannot look to the interests of the British people and that there will therefore be a complete failure to protect our people in the reality of this situation?

Mr Lewis Shand Smith: If I understand you correctly, you are saying that British consumers are engaging with markets in other parts of the EU and that we cannot offer them the protections they have at the moment. I think that is a very real danger.

The Chairman: I want to raise a similar issue. I am deeply involved in research that cuts across Europe. An area in which we are really well protected is that of pharmaceuticals. We have high standards on medicinal products that protect us all from items reaching the market that have not been properly tested and that could have dire consequences. Of course you can get involved in litigation, but that is a poor way of compensating for a failure to maintain high standards in the first place. We can ensure that we do not have drugs like Thalidomide and that we behave in a collaborative way from the very earliest stages. Are there any risks with that?

Mr Lewis Shand Smith: I would say very definitely that there are risks. Again, it is the co-operation that is so important. We are not acting in isolation, and not only can we offer expertise but there is expertise in other member states that we can use. We are not trying to find ways of dealing with these issues on our own. There are certain areas where protection is still quite limited unless you go to court. I know that discussions are under way on ethical regulation in this area, as well as on better ways to provide consumers with protection. Again, these discussions are at an early stage and we are involved with them. My colleague from Oxford University, Professor Christopher Hodges, has been very involved in some of them in relation to both regulation and consumer protection.

Baroness Neuberger: I think you are making it very clear that although the UK has often taken the lead, in a sense we can do this better together. Can you see any way in which co-operation could take place post Brexit, and what might that look like?

Mr Lewis Shand Smith: I do not see any reason why it should not take place post Brexit. Perhaps I may give two examples. There is a network of European financial regulators that is well established and in fact goes beyond the boundaries of the EU. Likewise, I was going to say something about the European energy ombudsmen network, of which I am the chair. Just a couple of weeks ago we were asked by Georgia if it could become part of that network. There are ways in which this could happen, but perhaps the UK would not be eligible to be at the table for some of the more formal committees. It is in these networks where a lot of the work is done. Again using energy as an example, there is a very formal committee of European energy regulators but also a much more informal and broader network of regulators who work side by side. There are models in this area that we could pick up on and

adapt, and from my own perspective I would argue that if we can no longer officially be part of the network of ombudsmen we would want some form of associate membership of that.

Baroness Neuberger: So we could stay together, but enforcement would be harder.

Mr Lewis Shand Smith: Unless the UK Government agreed to it, enforcement would be much harder.

Q19 Lord Oates: I want to follow on from a question put to you by Baroness Kennedy and ask specifically about the product liability directive. As you may know, we took evidence in a previous session from representatives of Which?, among others, who told us that the Government would need to be very clear about what the new arrangements would be in this regard and what rights UK consumers will have if they purchase defective goods from within the EU. Can you tell us your view of the significance of that directive and the consequent impact of Brexit on UK consumer rights?

Mr Lewis Shand Smith: Again, this is outside my comfort zone and my knowledge, but it is an important directive, which provides protection in a completely different way. My understanding is that, as with energy and communications, the directive is enshrined in UK law. When we are no longer part of the EU, how will that piece of UK legislation tie in? I am not a lawyer and I realise that there are people around the table who are much more able to answer this question than I am, but we need to look at how that UK legislation sits alongside the European legislation and the directive, and not least who at the end of the day has the last say, because we will no longer be part of the justice system in Europe. I am just assuming here because I do not know, but the appeal mechanism would be to the European Court of Justice. If that is removed—

The Chairman: The European Court of Justice keeps coming back to haunt us and will probably come back to haunt the Government. Once you are involved in cross-border issues, there must be someone who has the ultimate say. That will be a serious problem for the Government.

Mr Lewis Shand Smith: I have been interested in the comments that suggest that if we do not have the court, we will have to invent something quite similar.

The Chairman: We will invent something similar and call it by another name. We will then try to dupe the public into thinking that we have done what the Government promised.

Lord Oates: You mentioned in a previous response that Georgia will be coming in to the system. Has Georgia agreed to the jurisdiction of the European Court of Justice?

Mr Lewis Shand Smith: We are talking here about the work of an ombudsman rather than the work of the courts.

Lord Anderson of Swansea: On the European Court of Justice, are these creative

forms of association formal or less formal? Are they in any way subject to the European Court of Justice?

Mr Lewis Shand Smith: They are not subject to it. Some of them are possibly subject to the European ombudsman.

Lord Cashman: Of course, the European ombudsman will be very effective in terms of the institutions and the agencies, but beyond that I am interested in developing what Baroness Neuberger referred to. There is obviously a mutual interest in the UK working with the EU 27 to protect rights across the EU. I referred to the fact that the UK has helped to drive this in a positive way because it seems that we are giving up an opportunity to remain in the driving seat with others. You have talked about how post Brexit there could be an informal structure among the ombudsmen. However, that would be limited up to the point of dispute resolution. If there is no resolution, that is where it stops, because in the Government's mind the ECJ is outside the equation. In a way, to paraphrase, UK citizens would have limited rights of enforceability up to dispute resolution in the EU 27, but not beyond. Is that correct?

Mr Lewis Shand Smith: That is it in a nutshell. At the moment you have the right to take a complaint to the ombudsman and you have the right to go beyond the ombudsman to the courts, and ultimately if it is a cross-border issue you can take it to the European courts. My understanding is that that will go.

The Chairman: Thank you very much, Mr Shand Smith. This has been an illuminating and helpful evidence session. Thank you for being of such assistance to us. It has been very useful indeed.