

Select Committee on the European Union

Justice Sub-Committee

Corrected oral evidence Brexit: Consumer Protection Rights

Tuesday 12 September 2017

10.40 am

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Members present: Lord Cromwell (The Chairman); Lord Anderson of Swansea; Lord Cashman; Lord Gold; Lord Judd; Earl of Kinnoull; Baroness Ludford; Baroness Neuberger; Lord Polak; Baroness Shackleton of Belgravia.

Evidence Session No. 4

Heard in Public

Questions 29 - 39

Witnesses

[\[\]](#): Roland Green, Deputy General Counsel, Competition and Markets Authority; Jason Freeman, Director, Consumer Law, Competition and Markets Authority.

USE OF THE TRANSCRIPT

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

Examination of Witnesses

Roland Green; Jason Freeman.

Q29 The Chairman: Good morning. Mr Freeman and Mr Green, thank you very much for coming in. Thank you, also, for the very helpful paper that we received and have read. That was very helpful and I do not think it pre-empts too much of what we are going to say, but it is very helpful background and, in some parts, evidence. I should mention a few housekeeping points. There is a webcast of our discussion today. You will also be sent a transcript of the discussion and should you wish to correct or point out errors in it, please do. Equally, if after today you want to submit anything further in written or any other form, please do not be shy to do so; we welcome that. Those are the housekeeping points and we will proceed.

Again, my thanks to you from the Committee for coming along and giving of your time. I would like you to introduce yourselves, very briefly, because people looking in may not have the papers in front of them that we do, and then we will proceed to questions. You may wish, after introducing yourself, to make a short introductory statement, but I leave that in your hands. Who will go first?

Roland Green: I am Roland Green. I am the deputy general counsel at the Competition and Markets Authority. I am also the senior director responsible for consumer policy, consumer law and policy generally.

Jason Freeman: My name is Jason Freeman. I am a legal director and have particular responsibility for consumer enforcement cases. I have done a lot of work in the European consumer protection committee space and, more widely, internationally, and on a range of other domestic enforcement and market investigations.

The Chairman: Thank you. Could you kick off by reminding us, and perhaps those looking in, of the role of the CMA and, in particular, its role in consumer protection, which is obviously what we are looking at today, in the single market context?

Roland Green: Perhaps I will lead off on that. First, the CMA is one of a number of authorities that enforce consumer law in the United Kingdom. Our aim is to exercise consumer law powers where we have identified systemic problems with traders' behaviour in the market. Our aim is broadly to take cases that have a cross-cutting impact in a market. We aim to try to set standards of behaviour by traders across markets, and we have a particular focus in recent years on the developing digital markets where we would like to get in early and ensure that standards are set at the right level. Broadly speaking, we want to try to avoid a race to the bottom and, rather, ensure that traders recognise that the best way to deliver services is to deliver high-quality services at a good price and compete on terms that are in the interests of consumers. We see and seek to use consumer law as a vehicle to encourage high standards of behaviour. If consumers are willing to switch, that will force suppliers to adapt their behaviour and improve the product and services they supply.

It is worth saying that consumer law is not the only tool the CMA uses. I know that in the session today you want to concentrate on the consumer law powers, but it is important to recognise that from the CMA's point of view we see consumer law as one of a number of tools that we can use to improve traders' behaviour and promote competition in markets. The other tools that are particularly relevant are the market investigation powers under the Enterprise Act and powers to conduct market studies, at the end of which we have recommended or imposed a number of remedies designed to improve behaviour for consumers in a market; for example, in the recent energy market investigation. The end result of that was certain price controls in relation to particular groups of consumers and proposals for changes to the market to incentivise competition because we think, ultimately, that is for the benefit of consumers.

The last thing, I think, probably as a general introduction point I would like to make is that the CMA's role is not, as I said at the outset, to take on all individual consumer enforcement cases; it is to focus on cases where we think we can make a difference. We have various targets to deliver benefits that we seek to achieve, but the critical point is to say that we assess what action we take by reference to the output and benefit for consumers we think we can gain in a particular market. The risks of doing so and the resources required for a particular action are things we will think about before we decide to go for enforcement in this market at the moment.

The Chairman: If I may clarify one point on that: your focus is entirely on consumers rather than, for example, SMEs who might have unfair contract terms or issues out there. That is outside your terms of reference, I am assuming, but I want to clarify that. The person you relate to is the consumer, not any other.

Roland Green: No, I do not think that would be right. We relate to problems in markets, essentially, is the way I would put it. We regard ourselves as improving standards of competitive behaviour in markets. That involves promoting, where appropriate, the interests of SMEs or any other businesses, as well as consumers. It is also important to recognise that our role is very much one in which, primarily, we take enforcement action but we also give advice. For example, we have given general advice on unfair contract terms to business where we are the lead authority in providing cross-cutting, general advice for businesses across the UK.

The Chairman: In another part of my life I am dealing with the relationship between SMEs and banks, where there is a lot of discussion around contract terms, but that is outwith this inquiry, and perhaps we will speak again.

Roland Green: Feel free.

The Chairman: Did you want to add anything to that, Mr Freeman or has he covered the ground?

Jason Freeman: I think the ground has been sufficiently covered. There is always more detail one could give.

The Chairman: Perhaps that will come out in discussion. May I ask one more question before I pass the flag on? To add some colour to the very helpful general picture you have given, can you give us a couple of specific examples where your role has been improving protection rights for consumers?

Jason Freeman: Shall I address this one?

Roland Green: I can give you a general set of areas we have looked at. For example, since 2014 we have looked at higher education, cloud storage, online reviews—when you go on to TripAdvisor and you look at reviews and how honest they are—and we have also looked at the grocery market, the selling of groceries. Jason can also give you a set of examples which have been particularly internationally focused, and I think that might be helpful.

The Chairman: That would be very helpful.

Jason Freeman: There are probably five broad areas I would give examples of. First, looking particularly at the consumer protection network in the European Union, we have developed a system of working which we refer to as “joint actions”, which is where all 27 members have identified some areas which they think are important to prioritise together. Two of those areas in which we worked—and one we led—were car rental and children’s apps. If I can briefly mention car rental, this is an issue we identified across the network. If you booked a car rental when you were on holiday, for example, sometimes, in the past, the offering you saw on the internet was not necessarily quite what you would get when you went to the desk. That was a problem. We worked with the main five car rental operators across the EU to improve, particularly, the way their offerings are displayed on the internet so that you could have much greater confidence that what you saw online is what you would get when you went to the desk when you booked directly with, say, Avis or Europcar, or one of the other big companies. That was a successful joint action. It did lead to concrete changes, which we assessed the value of internally and we had peer reviewed by an economist of about £127 million of benefit to UK consumers, which was far in excess of the cost of doing the work.

Another one was in respect of children’s apps where the presenting problem was around children’s games or other apps involving children. Sometimes in-app purchases were being made and parents were complaining they had not authorised those—these came as a surprise. This related to a couple of things: one was the way these apps were described, as being free when in fact they involved in-app purchases, and the other issue was the lack of authorisation. It used to be, in the operating systems of the different apps, if you authorised a payment window to be opened you could make further purchases within 15 or 30 minutes, and parents were not aware of this. As a joint action, we set out a common position for Google and Apple and asked them to make changes to their operating systems, which they did. Again, that resulted in about £17 million or £18 million of benefit to UK consumers when we assessed it.

The Chairman: And to hard-pressed parents, who I am sure are very much in your

debt as a result. Thank you.

Jason Freeman: Yes, indeed. Those are some concrete changes. That is one area in which there are joint actions. We have a statutory function under the CPC regulation as the UK's single liaison office. As part of that we seek to ensure that the cross-border enforcement system works smoothly. That often involves us having informal contacts with our overseas counterparts and brokering the relationship, for example, between trading standards and maybe another enforcer or set of enforcers overseas. We would do that more widely than the EU; we would seek to broker relationships with, for example, the Federal Trade Commission in America and other enforcers we know.

I should have mentioned at this point that we play a lead role in a consumer enforcement network called ICPEN—the International Consumer Protection Enforcement Network—which we had the presidency of in 2015. As part of that, we seek to make sure that problems which affect consumers in the UK but have a wider than European dimension, perhaps, can also be addressed and tackled. We have worked on legislation. As European law has developed we have worked very closely with the European Commission on proposals and with the Department for Business, Energy and Industrial Strategy in the negotiation and implementation of those pieces of law. Some notable examples include the unfair commercial practices directive, which is one of the main consumer protection tools in the UK at the moment which we worked very closely on, and more recently the revision of the European consumer protection regulation which is not yet in force and is coming into force soon. We have also worked on guidance for consumers and businesses. We work very closely with the European Commission on guidance it produced for European enforcers on the meaning of the unfair commercial practices directive and how it can be applied. Those are five areas where we have sought to improve things for consumers internationally.

The Chairman: Thank you very much. That is very helpful. Lord Polak, you wanted to come in.

Lord Polak: As a consumer, when you talked about car hire, I am a recipient of that and I am grateful. Once Brexit happens will your influence to do these sorts of things to protect UK consumers be limited? What will happen?

Jason Freeman: There are risk areas in cross-border enforcement generally. We have tried to set out some of these in our note. If I can draw your attention to paragraph 13, there are risk areas which occur in cross-border enforcement. The primary one we are concerned about here, probably, is around taking effective enforcement action. There are risks, as with all cross-border enforcement; sometimes there are enforcement gaps or there are difficulties. We are saying that to mitigate those risks or to, hopefully, minimise them happening, a number of measures in respect of cross-border enforcement need to be negotiated between the UK and the EU as we seek to leave. Those we set out in paragraph 2E of our note. I will explain what those are, if I may. First, it is important that we have a clear

legal basis and mechanism for sharing evidence; things we have identified—so intelligence—here is a problem, we need to be able to talk about that, we need to have a legal mechanism to be able to do that appropriately and a set of practices so this can be done effectively. Also, we need to be confident we can lawfully share the evidence we gather with overseas enforcers and it is efficient. Of course, that is reciprocal; our counterparts can share evidence with us. One of the things we have noticed sometimes outside the European Union, where we wish to co-operate with other enforcers, is there are legal difficulties or practical difficulties around evidence sharing, and that can inhibit the effective execution of enforcement work.

The second important area is a reciprocal legal power to obtain evidence on behalf of overseas enforcers. The third area is the legal power to take enforcement action where the consumer is overseas but the trader is within your own state, and to make sure it is clear that overseas enforcers can do that on behalf of British consumers. Fourthly, there is the ability to work collectively. In the same way that we have thought about the car rental action, for example, we want to continue to do that sort of work. If those measures are in place, we will stand a good chance of preserving the effectiveness of the current regime and, indeed, maybe improving it where it still needs to be developed. We need not just to think about those in the context of the European Union but to think more broadly. When we are thinking about trade flows, if one of the dividends of Brexit is going to be greater consumer to business trade flows with countries outside the EU we need to think about how we can effectively do joint enforcement work with our fellow enforcers elsewhere as well.

The other thing to think about is what is happening within the UK. There are options we can exercise when wanting to enforce within the UK where foreign traders are affecting UK consumers which do not involve cross-border co-operation. An example I could give is something I worked on at the OFT, our predecessor organisation, involving the illegal selling of Olympic Games tickets in 2012. There was a business that was based outside the UK, had no infrastructure in the UK, selling those tickets illegally, and we wanted to stop it by taking down its websites if it did not change its practices. We were able to secure a judgment against it in the UK High Court in London, and we managed to enforce that judgment because we had an arrangement with the top-level domain name registries responsible for its websites, who were based in America, that they would voluntarily accept the authority of the UK court to take down the websites and redirect them to a holding page. That meant that the trader was no longer able to bring those tickets to market and to mislead people. It is important, as we go forward, not just in the context of Brexit but in the context of, as I say, cross-border enforcement outside the EU, that we have both the clear jurisdictional power to bring those cases, and our courts will accept jurisdiction where British consumers are being affected, and we give consideration to how we can extend the reach—in other words, how the UK court order can be given effect to through things such as takedowns and interference with money flows, et cetera.

Lord Polak: In the middle of your answer you talked about going forward and you

said, “if the measures are in place”.

Jason Freeman: Yes.

Lord Polak: What needs to be done to make sure the measures are in place?

Jason Freeman: There are probably two mechanisms we can use to put these measures in place. The first would be to seek to remain a member of the CPC network. In other words, we preserve the status quo as much as possible and the UK remains a member—maybe some kind of associate member or something. It seems to me that is entirely negotiable. The second one would be to arrange some kind of looser co-operation where both parties in the EU and the UK accept that we will continue to work collaboratively; that our law will apply to protect overseas consumers, et cetera, and that we have the power to take enforcement action but with looser constraints on how we prioritise our work so that we have a discretion, and our overseas counterparts have a discretion but they have a power. Those are the two options. One is we constrain ourselves with the duty and the other one is we ensure there is power.

The Chairman: Thank you. Lord Anderson, you were next. If you would like to ask your question and Lord Gold could ask his as well, you can tackle them both at the same time, if they fit.

Q30 **Lord Anderson of Swansea:** You mentioned two possible alternatives to the present system. Would I be correct in saying that either would be less desirable than the current system? When you have conveyed to the Government your concerns as set out in paragraph 2E, do you find they are receptive to these arguments?

Roland Green: I think it would be a changing situation. I do not think at this point it is possible for us to comment upon how effective we will be in negotiating these particular goals.

Lord Anderson of Swansea: Are the Government prepared to pick up your concerns and use them in the negotiations?

Roland Green: We are in close contact with the Government. We regularly discuss our views on matters and we have a statutory duty to advise the Government. Beyond that, I do not think it would be appropriate for me to comment on the detail of our discussions with them.

The Chairman: You do, at least, have the impression they are listening, I hope.

Roland Green: Yes, we have very good, open conversations at all levels. There is good communication, from our point of view, with different departments, because it is important to recognise that the consumer issues apply not only to the Department for Business, Energy and Industrial Strategy, for example, but to the Ministry of Justice, which is also responsible for private enforcement of rights across the Community. Obviously, in individual areas, there are laws affecting consumers that are the responsibility of a number of departments: transport, culture and

media, and whatever. We have good contacts with them all and they are certainly listening to us.

Lord Gold: I wanted to pick up on your answer relating to the Olympic tickets. I was not quite sure on what basis jurisdiction was taken in this country in the first place, because it was against someone outside. I would like to understand whether our being a member of the EU assisted us to obtain that jurisdiction or whether that is completely unrelated?

Jason Freeman: In that particular case we did not rely on any cross-border conventions or arrangements to secure jurisdiction. We did it on the basis that the UK law was being infringed. There were two pieces of law: the Olympic Games Act, which prohibited the unauthorised resale of Olympic Games tickets as a matter of law, and the Consumer Protection from Unfair Trading Regulations, which implements the EU directive but is UK law, which renders it illegal to mislead consumers about their rights, et cetera. Our case was that the trader was misleading consumers as to their rights, which gave us the standing to bring a case, and one of the reasons why they were misleading was because he was not authorised to sell and could not guarantee lawful title. We applied for permission to serve those proceedings on the trader outside the jurisdiction, that permission was granted—that was solely within the Civil Procedure Rules—then we went to court to argue why we should get the order and the judge gave us the order in that case. We did not need to rely on any cross-border conventions in that case.

I would emphasise that the reason we were able to enforce the ruling was because we had an arrangement which we had discussed and negotiated with the top-level domain name registries. If we had not had that arrangement it could have been, possibly—I do not know because we did not argue the case—that the judge might have said, “I can’t accept jurisdiction because there is no way of enforcing the order”, for example, or we would have had to have come up with some other mechanism to try and enforce the order. I think it is the case that our judges do not like to accept jurisdiction where we cannot enforce the order overseas.

Lord Gold: I fully understand that, but that enforcement was in the United States. All I am trying to get to the bottom of is whether our being a member of the EU in any way helped your application in that case.

Jason Freeman: Not in that case; it was not relevant.

Roland Green: May I add a supplementary point? I think the purpose of giving you that example was to show that it is possible to have co-operative arrangements.

Lord Gold: Of course.

Roland Green: I would not want it to be said that there are not advantages from the CPC regulation arrangements at the moment within Europe in placing obligations on enforcement authorities in other member states to assist. Obviously, that regulation is not ideal but it assists greatly on occasion with enforcement.

The Chairman: Thank you very much. I will take two more quick questions on this, from Lord Judd and Baroness Shackleton.

Q31 **Lord Judd:** Your role is acting for consumers. You say that, beyond what you have told us about your relations with government, it would not be appropriate to comment. Would you agree, if that is the formality of the situation, that the consumer is not being protected because the consumer is unaware of all the niceties of the situation and the implications for the future and how things are being discussed?

Roland Green: No, I would not agree with that. I would not agree because UK consumers are represented by the Government and I think you need to ask that question of Ministers rather than us.

Baroness Shackleton of Belgravia: Most of the power in enforcement and reciprocation lies in the European Union. Do we have a good bargaining chip when you are talking about enforcement of our reciprocal powers here—what we can offer other people—if the Europeans want to rely on our courts to enforce their problems? Do we have a brilliant reputation which they are going to want to hang on and reciprocate when it comes to the negotiations?

Jason Freeman: In the world of consumer protection the UK has a good reputation. We have played a very leading role in much European joint work, particularly in the realm of e-commerce, where we have established that we have great expertise. Some of the areas I was involved with were leading common actions where we worked on internet investigation. We continue to participate in a body called the EU enforcement expert group, and particularly the trading standards e-crime unit has been working closely with the European Commission on developing training materials, manuals and pieces of expertise on internet enforcement. In that space we clearly have a lot to offer our European counterparts. In my opinion, they would not be wise to say, “We’re not interested in that”. When it comes to enforcement, we have played a key, leading role, as mentioned in the car rental joint action, and we remain very willing to lead international joint enforcement projects. There is a lot of good will that exists, certainly at a working level, for the UK and our role in consumer protection. If you look at the more macro level, it is never a good outcome if you have two major economies where you cannot carry out cross-border enforcement. The real risk is you have businesses who operate in one jurisdiction to target consumers in another jurisdiction and that leads to bad outcomes for consumers and bad outcomes for markets—it is not a good outcome for all. I cannot imagine either party wants to achieve that outcome. Having said that, how this fits in the wider negotiating picture is not really a matter for us, but within the world of the consumer I am not pessimistic that a good outcome cannot be achieved.

The Chairman: Thank you very much. Reciprocity comes up again and again in all our sessions, and it is nice to hear that the good will and the intent is there; it is the mechanism that is the puzzle at the moment, I think.

Q32 **The Earl of Kinnoull:** I wonder if we could go back to the consumer protection

regime and the advantages on leaving. You kindly referenced paragraph 2E in your report to us and have been through it. There are a number of additional questions from me. First, with what you say needs to be retained in paragraph 2E, are there other jurisdictions in the world where we have all or part of that arrangement? You might want to talk about our relationship with the US there. Secondly, are there any non-EU members of the CPC network or associate members today? Thirdly, within the consumer protection regime of the EU, are there any aspects that you would be quite pleased to leave behind? Are there any upsides to departing?

Roland Green: Could you repeat the first part?

The Earl of Kinnoull: Are there any non-EU countries where we have in place the four things you would like retained, referenced in paragraph 2E, today, or even bits of those four? As I say, it would be helpful to talk about the US, I think. Secondly, are there any members or associate members, non-EU countries, of the CPC network today? Thirdly, are there any upsides to leaving the EU consumer protection environment?

Roland Green: On the first question, essentially, just to say that our law allows for the disclosure of any information that we obtain to overseas enforcers, whether or not they are in the EU. You asked to speak about the American relationship. I think the best thing is, Jason, if you could describe the way that works and, in particular, refer to the US statute in terms of the extent to which they are able to co-operate with us.

Jason Freeman: The example we have given is the US example because that is where we have most used the cross-border enforcement mechanism which exists. That is primarily set out in two areas. One is in respect of the Federal Trade Commission's ability to take enforcement action where it is made abundantly clear in US legislation that it is not an issue that the consumer is overseas. If a US trader infringes US law and the victim is an overseas consumer they have the power to take enforcement action. They have in place a mechanism whereby an overseas enforcer can put in a request for Federal Trade Commission enforcement, which is considered by the five commissioners of the FTC and they will decide whether or not to prioritise that enforcement work. I am not privy, obviously, to the exact way they do it but I understand that they are concerned about things such as reciprocity: to what extent has that overseas enforcer assisted US consumers and to what extent is there a good working relationship—that sort of thing—and, of course, the merits of the case, et cetera. The other thing the Federal Trade Commission is clearly empowered to do is to obtain evidence on behalf of overseas enforcers where the overseas law being infringed is substantially similar to an existing US law. That is quite a broad and open test. Again, they have a mechanism where we would put in a request for the FTC to get evidence and they would go to court, if necessary, to obtain that evidence. It is a working relationship which, in our experience, has operated well and has meant we can achieve outcomes which we would not otherwise be able to attain necessarily.

That is provided for in US law, so for these sorts of arrangements to exist with other regulators in other countries one would need to look at their law. For example, I am aware that all that exists in Canada because the Canadians have a law which mirrors the US law in this respect, and I believe it is also the case in Australia. I have not carried out an in-depth study of all the other areas of law. I am also aware of some jurisdictions where there are more difficulties; where, for example, the enforcer cannot take action where the consumers are not within their jurisdiction. That is the sort of area where there is more likely to be difficulties.

Roland Green: If I could add one point to that—if you could repeat the second leg of your question, please—when thinking about this it is important to recognise that because a lot of the substantive consumer protection law has been harmonised within the European Union you do not have to go into this exercise of, “Is the law substantially similar?” as much. At the moment, we are at a higher base with the European Union, and that is going for other member states. Inevitably, that is of importance. One of the important elements in co-operation is that it is relative when you are dealing with other authorities that there is not a lot of scope on one side to say, “We’re not sure whether or not this falls within the scope of our legislation; we need to get special legal advice”, or whatever. At the moment, the position is that the substantive law of the UK undoubtedly in the consumer field is significantly harmonised with the rest of the European Union.

The Earl of Kinnoull: There are two little things you have not quite answered. First, are there any associate members or members of the CPC network who are not EU countries?

Jason Freeman: All members of the EEA, for example Iceland and Norway, are members of the CPC network. It is possible for the EU to negotiate with other countries to become members. My understanding is there were some initial discussions with Switzerland, which have not progressed yet, but there were some scheduled. It is entirely possible. It is not as if it is outside the realms of possibility, but at the moment it is EU and EEA.

The Earl of Kinnoull: Finally—I am aware that time is running on, so a very snappy answer would be good—are there any upsides to moving out of the EU consumer protection regime? Are there things where you think, “Gosh, that’s a pity; we would do it better”?

Roland Green: That is a question that I do not really want to answer. There are definitely frustrations at times that we have with the operation of the CPC network. There is no doubt that Community law is drafted in a purposive way and at times, when you are dealing with particular problems in particular markets, it can be quite vague and uncertain. On the other hand, there are great merits in that in terms of the law being quite flexible to develop as markets develop. I do not think it is a significant problem at the moment, but it must be right that because you are dealing with legislation dealing with 27 other member states at the moment it takes time to change the law and there are certainly occasions when, in the past, the CMA

and its predecessor authorities have wanted to secure change in certain areas. If you look at payday lending, there have been particular problems at certain times in the UK market; in gambling we have slightly different arrangements from some other member states. Sometimes you want to move faster than others, but I would not want to overstate that. Going forward, I think it is important to recognise that both the UK and all the other member states of the EU are having to adapt to rapid change in consumer transactions, and in particular the new digital online market. That will, inevitably, require refinement of the law in all member states, but it will also require refinement of the law in the United Kingdom.

The Chairman: Thank you very much. Of course, in that area divergence is going to be an interesting one. Conscious of time, I am awarding points for brevity in questions and, without wanting to restrict you in any way, in answers, Lord Anderson, I think you wanted to come in with a supplementary.

- Q33 **Lord Anderson of Swansea:** Inevitably there will be frustrations in any form of international co-operation. I noted you say that there is a “higher base” with the European Union. Does that mean, for example, that in respect of your relationships with the Federal Trade Commission of the US there is a danger that they may give a lower priority to your request for co-operation than the EU?

Roland Green: No, I do not think that would be a fair comment. We have good relations with the FTC and I would expect them to give us priority. The legal system is different—that is all I will say—and, inevitably, where legal systems are different there are quite a lot of differences to consider in particular cases. In broad terms we find co-operating with the FTC very effective.

- Q34 **Lord Cashman:** I will try to be brief. May I thank you for your extremely excellent submission, which is impressive when we have legal certainty? In the absence of legal certainty, it is quite depressing what the Government will need to address. In particular, your paragraph 13 points out that the EU has recognised and sought to address the various risks. I will not go through them; they are there. Markets and trade will continue cross-border with or without us being in the European Union. We have legal certainty with the 27 other countries. That could disappear. Given the EU’s central role in promoting and legislating in the area of consumer protection, not least in terms of minimum standards and harmonisation, are you at all concerned that the issue has not, so far, appeared in any detail in the Government’s Brexit plan?

Roland Green: No is simply the answer.

The Chairman: That is the brevity we like.

Lord Cashman: Can you explain why you are not concerned?

Roland Green: Because I am aware that the Government are aware of the importance of the rights of consumers. They have recognised them in the paper they have published on judicial co-operation. I am aware from our dealings with the

Government that they are aware of the need to establish effective future arrangements.

Lord Cashman: Does the absence of detail not worry you at all? There is a vague promise, a vague remit, to replace legal certainty, the directives, the regulations, cross-border enforcement. Are you happy to go ahead with the government line without any detail?

Roland Green: How the Government approach negotiations and the timing of their discussion in public and in private is a matter for the Government and is not one that I should comment on.

The Chairman: That probably leads us on. Thank you, Lord Cashman.

Lord Cashman: I could go on.

The Chairman: I accept that and I am sure we would all enjoy you doing so, and if we have time left at the end maybe we can come back to that. It leads very neatly on to Baroness Shackleton's question.

Q35 **Baroness Shackleton of Belgravia:** What advice will the two of you be giving the Government in these negotiations?

Roland Green: We will be explaining to the Government how the enforcement system works now.

Baroness Shackleton of Belgravia: That is an educational role.

Roland Green: Yes. We will be explaining the importance of co-operation from the enforcement perspective, and we will be explaining the practical realities of the modern economy and where there are problems that need to be addressed in terms of the future of consumer law and competition law more generally. I do not think it will be for us to go beyond that remit.

Baroness Shackleton of Belgravia: In any negotiation people have to compromise. Will you not be giving them any advice as to how to get the best—colloquial—deal? I understand the educational role, because obviously they need to be educated as to what the issues are, but in a negotiation, bearing in mind they need to be educated on what the issues are, they also need to know what they can compromise, what we have to give—which ties in to the earlier question I asked—and how best to get the best outcome for us. Will you not be giving any advice at all?

Roland Green: We will be giving advice to the Government under our statutory obligations to do so. I do not think, though, it would be appropriate for me to say what the advice will be because it is important that advice is given frankly and openly to the Government.

The Chairman: I think the Committee will accept that point. Perhaps I could ask a related question. Would you expect to give your advice and the negotiations to go

ahead or would you expect the Government to be coming back to you in the sort of context that is being painted of, "There is a compromise we have to strike here, what's your advice?" Would you expect to be consulted on that or do you think they need a free hand to get on with it?

Roland Green: I do not think it is very desirable for me to look in a crystal ball as to how the negotiations are going to take place. What I can say is that the CMA is fully involved in supporting the Government in their current discussions with the European Commission.

The Chairman: Thank you. We will move on, in that case, to another question.

Q36 **Baroness Neuberger:** This follows on. Mr Green, you have been saying there are lots of things that, in a sense, you feel you cannot say to us. The Government have promised that national legislation dealing with Brexit "will preserve the relevant EU consumer protection law to ensure domestic law functions properly after exit". You are giving advice to the Government. The Government have also said, "It will help ensure that UK consumers' rights continue to be robust after we have left the EU". Can you at least say to us that you are advising government on which parts of consumer protection they must hold on to? Indeed, will you continue, in what I think the Lord Chairman has been asking about in the coming and going over the negotiation, to be pressing those points?

Roland Green: From the CMA's point of view, we are not responsible for all consumer law; as I said at the outset, there is a lot of law which affects consumers. We will, however, continue to assist to try to reach arrangements that are going to enable markets that operate within the UK to operate effectively and that consumers, when they go abroad, are effectively able to exercise rights and have protections in their transactions. I am not sure there is much more I can say. I am sorry it sounds a rather vague answer.

Baroness Neuberger: It does, but it is the robustness I think we are particularly concerned about. The Government have said they will help ensure that consumer rights continue to be robust, but we would like to know, in a sense, that you are pushing Government quite hard on that.

Lord Cashman: Hear, hear.

Roland Green: I do not think there is much more that I should say.

Lord Anderson of Swansea: The Government have promised to preserve the corpus of the existing EU consumer protection law, but that will evolve, possibly in a dynamic way, irrespective of whether we are in or out of the EU. Do you envisage the law as applied to the UK will parallel any changes in EU law? What, for you, is the appropriate mechanism to ensure that our law on consumer protection does not diverge markedly from that within the EU?

Roland Green: First, clearly the law will develop. Currently, EU law seeks to secure a high level of protection for consumers. The European Commission has recently

conducted a review of the adequacy of European consumer protection law, called REFIT, and its broad conclusion was that it was fit for purpose, but it has recently published a consultation on a number of limited possible revisions to that law to improve it. You are right, there are in contemplation and there will, inevitably, be a number of proposals to revise EU law going forward. Those proposals deal with issues which are, in many respects, issues that are of concern to us as well now.

Lord Anderson of Swansea: We should automatically adopt such new laws as they evolve?

Roland Green: The mechanism for securing that, over time, there is a degree of parallelism, if you like, in our law is one that will need to be developed. I do not see that, with the interdependence and interaction of modern economies, they all have to have laws dealing with very similar subjects. I do not see, in the short run, a particular likelihood of substantial change. As long as the two systems of law are substantively relatively similar, I would imagine that mechanisms can be established to secure that when we are thinking about changes to our law we will have regard to changes that have been made or are in contemplation in other EU member states and in the EU as a whole.

Jason Freeman: There is one thing to say on the detail of this. Although there is substantial harmonisation between the UK and the rest of the EU in consumer law, it is not a completely harmonised picture. There are lots of different areas where the UK has slightly better protections for consumers than the rest of the EU; working from a minimally harmonised base, for example, or where there are areas which are outside the scope of EU law the UK has sought to protect consumers in those areas. Clearly, cross-border enforcement has worked in that context. Where there is divergence it is clearly practicable, but also the UK Government have not given an indication, through past performance, of not wanting to protect consumers in areas where the EU has not required protection to be given.

Q37 Lord Judd: How significant do you believe the Consumer Protection Cooperation Regulation has been in promoting intra-EU co-operation? Do you feel there will be a need to ensure that activity, if acceded to as well, should be protected in the future, and how would this be done?

Roland Green: I think this goes back to what Jason said at the outset. We think that the CPC regulation has been valuable. As I said, it has had its frustrations. It involves a degree of co-operation that can slow down enforcement action at times, but at a very core level it is useful to have a mechanism where there is regular discussion and co-operation to be aware of the problems that occur in different states. In terms of the future, the substantive value of the regulation is in providing mechanisms, as we said at the outset, for evidence sharing and obtaining evidence, reciprocally and mutually, across different states and for taking enforcement action. Those three elements that are currently covered by the regulation are things that it would be desirable to put in place in any future regime, and we would expect that it should be possible to do so. There are certain elements to the regulation that may or may not be ones we would want to persist with, where we have to make certain

financial payments for common activities and things, but all of those could be discussed.

Lord Judd: Around the European debate there is a certain amount of language which is repeatedly saying there should be ways of doing things. In something so essential as consumer protection, which presumably fires your life, is it not doubly important that we begin to pin down a bit what these possibilities would be? For example, how can parliamentarians have intelligent discussion if they are not able to look at the alternatives and the pay-off?

Roland Green: The contents and scope of the CPC regulation are public, so it seems to me perfectly possible for parliamentarians to understand the issues. The actual negotiation of the new arrangements and the priorities that are given to different elements in them will be a matter for the Government. I know it is frustrating, but I do not think it would be appropriate for me to be drawn on when it is appropriate to go into more detail on the future arrangements.

The Chairman: Can I press you a little, or perhaps clarify? If we leave, I guess the question is, “Okay, the CPC is a good tool but we’ve left. How are we going to make it work once we have left?” Is your answer to that, “Wait and see” or is it more than that?

Jason Freeman: I think it goes back to the four areas we have identified that it is important are covered in the Brexit negotiations. We are very clear that those should be given a priority at the right time when cross-border consumer protection is being discussed. We are not suggesting that there is anything wrong with the timings; our belief is that there is going to be a time for that discussion, and those are the areas that it is important are covered. As with all negotiations, there is likely to be a position from the other side and the end result could be one thing or something slightly different. The important thing is that those four areas are provided for, so that everybody has certainty about what we can do and the extent to which we have obligations and duties to do those things.

The Chairman: Thank you for that. Moving on, Lord Gold, I believe you had a question.

Q38 Lord Gold: It follows on from what you have been saying. Is it right that if you achieve the four objectives set out in 2E to your note and we do not choose to change the law here, there is no reason why consumer protection should be affected at all, is there?

Jason Freeman: Broadly, that is true. Those are the key elements which the CPC regulation provides for. If that continues in place then cross-border consumer protection should not be too affected. The area not to be overlooked is the extent to which cross-border trade is developed with other states outside the EU—maybe as a result of Brexit or not—and it is important that those four areas are given consideration to in the context of developing that trade as well so you do not have a problem with people not being able to have their rights enforced. Broadly speaking,

yes, consumer protection should carry on. That is not to say that we have reached a zenith of perfection at the moment; there are always areas for future development and for us to continue to try and improve cross-border enforcement.

Roland Green: I think it would also be worth saying, although we have focused our evidence today on the CPC regulation, there are other areas. There is the enforcement of private rights by consumers as well, which the Government have already published their views on. I would not want you to take away the thought that the CPC regulation is the only thing of importance in the consumer area. Clearly, there are a lot of different areas of standard setting and other areas of law that need to be factored into the discussions.

Lord Gold: I understand that, but it seems to me that the reciprocity that Baroness Shackleton touched on earlier and continuing to develop close relationships with the people in Europe with whom you have been dealing are key to achieving much of what we want here.

Jason Freeman: Yes.

Roland Green: Yes. You asked earlier about what the CMA's contribution will be. Certainly, one of the themes that I hope has come out of our conduct so far has been we are seeking to maintain strong relations with our regulatory compatriots, both on the consumer side and on the competition side of our work, because it is critical to us that there are very close working relationships in making enforcement work.

Jason Freeman: One point of detail that may be important is the ICPEN network I have already mentioned. Many members of the CPC network are also members of ICPEN; not quite all of them but most of them are. We have that forum where we can also continue to develop and maintain our relations. That has a lot of potential for creating good will. One of the initiatives we have sought to take forward is the development of regional networks within ICPEN, so within the regional network around Europe you might include Switzerland, Turkey and other countries who are members of ICPEN and closely connected to the EU. There is a lot of scope for developing that network as well in parallel to maintaining our connections in the CPC network.

Roland Green: The last thing I would say on that is to echo Jason and add that the reality is that consumers do not simply deal with European Union member states today. It is important that we are open to enforcement and co-operation with authorities around the world. We have spoken about America. There are other trading nations with whom we have closer and less close relations, and I would expect, over the next few years, it will be important, whatever the outcome of the EU discussions, to develop our co-operation with them.

The Chairman: Is there any precedent for CPC associate membership for those outside the EEA or EFTA?

Jason Freeman: There is provision in both the existing regulation and the revised regulation for the EU to enter into arrangements on negotiations and to develop that kind of cross-border enforcement relationship. If it is not covered in the Brexit negotiation, for whatever reason, there is certainly the option to arrange under that provision.

Lord Cashman: I wanted to make a point for anyone watching or listening that when we talk about CPC we are talking about the Consumer Protection Cooperation Regulation. I am aware that when we come out with CPCs and SPJs people may think we are on another planet.

The Chairman: Thank you. A timely reminder. If there are no more supplementaries we will come to our next question, which is Lord Anderson's.

Q39 **Lord Anderson of Swansea:** It strikes me, rather like the field of defence and security, which is newsworthy today, this is a field which is mutually advantageous, and therefore presumably your counterparts in the European Union are telling the Commission, the other side of the negotiation, that they too value the nature of co-operation, enforcement and so on. Is that your judgment?

Roland Green: I think we have good relations, and I think, on a personal level, they would support positive relations for this.

Lord Anderson of Swansea: You are not aware that they are making similar priorities as you are in 2E to the EU negotiators.

Roland Green: We are not privy to that.

Lord Anderson of Swansea: One final point: I noted you said there are areas where UK law is better than EU law. Do you have any fears that if we were to detach ourselves from the European Union there would be slippage in the quality of EU law in the field of consumer protection?

Roland Green: If I go back to the answer I gave earlier on the Commission's REFIT proposals, no is the answer. Obviously, it is impossible to predict 50 years ahead, but at the moment there is consideration within Europe to limited reform of consumer law but not, I think, reforms that are significantly altering the arrangements. Different people will have different views on some of the proposals that the Commission are consulting on at the moment. If you look at them from a high-level position, some of them extend protections, some of them remove some of the current provisions that are thought to be somewhat antiquated; it is not sensible to refer to facsimiles in modern legislation, for example. The issues that the Commission are interested in the European Union thinking about, for example, the liability of online platforms for consumer transactions conducted through them, we are interested in as well. I would not say I am aware of any intention on the part of the Union to reduce protection. I am aware that it is important both for our law and that of the European Union that there is an effective balance struck so that consumer law is not unduly restrictive of effective modern business transactions. It is important that there is effective transparency, but it has to be transparency to

consumers that consumers find useful rather than unhelpful. The proposals being put forward are thoughtful and I would expect that any development of the law coming out of them would be an iterative change, but it would not necessarily reduce overall standards.

Lord Judd: I am sorry to come back to a slightly underlying theme I detect running through this session, but it seems to me that the logic of Brexit is that things are going to be better for the British people outside the European Union than within it. How soon do you think you will be able to see, in the sphere of consumer protection, how it will be better? If we care about people, we really need to be able to demonstrate what these improvements will be. I am wondering how soon you think this will become available to the British people? I also ask you, as a professional who has given a lot of service in this sphere, whether you do not think it has been a rather valuable period in British history where we have been able not only to think about British consumers themselves but how we have been able to contribute to the concept of consumer protection throughout Europe and across the world and the positive part we have been able to play in developing that?

Jason Freeman: One thing to say in respect of improvements for consumers is this is not an area in which we would say the UK has not been well served through membership of the EU and the development of consumer protection law. It is fair to say that the consumer protection measures which have been agreed at EU level, including the UK's input to that, have broadly reflected what the UK has sought to achieve, and they have therefore been positive. There may well be other areas where people would look for concrete improvements, but I do not think it would be fair to say that in the consumer protection space we have a list of significant improvements we are waiting to put in place as soon as we leave. It is absolutely right that the UK has contributed to the development of EU consumer law, has played an active role in doing so and, as I have said, achieved its negotiating objectives generally. That is not to say there are not other areas where we can continue to input. For example, in the OECD—the Organisation for Economic Co-operation and Development—the UK has also played a significant role in helping to shape recommendations for the future development of law, particularly in the e-commerce space, which go into the consideration of what European law should cover. There are plenty of opportunities outside the EU for the UK to continue to play a part in influencing the future development of law.

The Chairman: Thank you. If there are no further supplementaries, I will ask you what have we not asked that we should have asked. Is there anything you would like us to think about, before we wrap up?

Roland Green: No. Thank you very much.

Jason Freeman: Thank you.

The Chairman: In that case, thank you very much for your contribution, both written and verbal today. I think we, on the one hand, welcome the optimistic message that you give us about the good will and the underlying relationships which

will remain after the Brexit process, because there is a temptation, looking at what you are operating now, to do that thing, “If it ain’t broke, why Brexit?” However, we are Brexiting and it is good to know that underlying good will and structure is, hopefully, there. The concerns you have about the ongoing processes and mechanisms are very well set out in your paper and have been, to some extent, rehearsed here today.

You have been very careful not to trespass on the areas of negotiation. If I have detected some concern in the Committee it is perhaps you have been a little too coy on occasion in answering those areas. I guess what I am left with is a feeling that I hope you will be not just diligent—I am sure you will—but, where necessary, assertive in giving advice to the Government because this is a very vital area. I do not have to tell you that. I urge you, even if in this small, public arena you are restricted, to be fairly assertive on other occasions. Thank you both very much indeed.