

Home Affairs Committee

Oral evidence: [Home Office delivery of Brexit: immigration](#), HC 421

Tuesday 10 October 2017

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Members present: Yvette Cooper (Chair); Mr Christopher Chope; Stephen Doughty; Preet Kaur Gill; Sarah Jones; Tim Loughton; Stuart C. McDonald; Esther McVey; Will Quince; and Naz Shah.

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Witnesses

[I](#): John Vine CBE QPM, former Independent Chief Inspector of Borders and Immigration and David Wood, former Director General of Immigration Enforcement, Home Office.

[II](#): Danielle Cohen, Danielle Cohen Immigration Law Solicitors, Ian Robinson, Partner, Fragomen LLP and Colin Yeo, Garden Court Chambers.

Examination of Witnesses

Witnesses: John Vine and David Wood.

Q1 Chair: Thank you very much for joining us. Welcome to this afternoon's session. Can I thank our witnesses, our first panel, for joining us this afternoon for our evidence session around some of the practicalities, some of the Brexit delivery issues around border management and immigration? Can I ask both our first panellists if you could introduce yourselves and, also, say something initially about what you see as being some of the main practical challenges for the Home Office management of border and immigration as part of the Brexit process? Mr Vine?

John Vine: Okay. My name is John Vine. I am a former Chief Constable and from 2008 to 2014 I was the Independent Chief Inspector of Borders and Immigration. I worked to three Home Secretaries and of course to Parliament.

From my perspective, I think it is a great opportunity to look afresh at a new strategy for borders and immigration because many of the structures and policies that are in place have come about as a result of circumstances. In 2006 there was a crisis in immigration. It led to the big changes in the Home Office. That led to the creation of the Border and Immigration Agency and then the UK Border Agency.

The last time it was all restructured was as a result of the report on border control in 2012, when the Home Secretary took Border Force out of the Border Agency and then, in the subsequent year, created two more directorates around borders, UK visas and immigration and immigration enforcement.

It is a great opportunity to look afresh at the strategy, a strategy that is based presumably on whatever is agreed as part of the Brexit negotiations. That strategy should then be looked at with a view to, well, what resources do we need to support that strategy and what structures do we need to put in place to make sure we have a fair immigration system but one that consistently applies the rules, both in terms of entry into the UK but also visa applications as well? So I see it as a great opportunity to look at some fundamentals.

Q2 Chair: What would you say have been the key issues, just in terms of delivery, that the Home Office should be focusing on?

John Vine: I don't think they have changed since my last report in 2014. There are issues around consistency of approach, record keeping, ensuring that there is fairness in the system, ensuring that enforcement is carried out, that officers know their powers and they are carrying out enforcement activity consistently. The management of change was always an issue. It appeared as a theme in every one of my annual



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reports. A lot of it is about getting the basics right consistently against whatever policy that is decided.

Chair: Thank you. Mr Wood?

David Wood: Good afternoon. My name is David Wood. I had a long history in law enforcement before joining the Home Office in 2006. In 2008 I joined the board of what was then the UK Borders Agency, where I subsequently became the Deputy Chief Executive there. When that was disbanded in 2012, I became the Director General of the immigration enforcement side of the business and continued in the immigration enforcement director role subsequently. I retired from the Home Office in December 2015, so about 18 months ago or something like that.

In respect of Brexit, I think the real issue is, as fast as possible, trying to understand what the challenge is and what they have to do and then resources, quite frankly. The end game, presumably with Brexit, is that the EU becomes the rest of the world in immigration terms. Between now and then there is bound to be some sort of transitional period, one presumes, which is possibly not clear yet, but I guess the end game will be that in one way or the other the EU becomes—in relation terms—the rest of the world. That places some additional pressure on the borders in terms of the time it will take to process each individual. It is only a matter of 10/20 seconds per person wandering through but that will cause considerable pressure on the border.

In immigration enforcement terms, of course, you suddenly find that there is a whole range and group of potential illegal immigrants, which there was not before, because Europeans will come here on some sort of visa, presumably, if they are working or studying, and if they overstay those visas or if they come in as visitors they will be here for some period of time that they will be able to come. If they overstay that they go into this illegal community. That is a bit of a worry going forward because, with the pressure on resources, they will be quite easy candidates for removal from the UK, quite frankly, and with pressure on enforcement teams and removal numbers there might be an overconcentration on simple-to-remove Europeans and more harm-based cases are left. I think you are seeing over years now quite a considerable drop off year on year on enforced returns. That is certainly a worry to me about the resources if the resources are not there.

There are other important things too. There are 3 million Europeans in the UK. They need to be regularised in some way or other. I think everyone accepts—and everything you read in the Government's approach seems to be they are going to remain rightly in the UK—they will have to be regularised. There will have to be a process and that is 3 million applications. The Home Office can cope with that but, of course, there are no staff there to do that so they are going to be taken from some other things and that creates backlogs.



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There are other resource issues: immigration enforcement, for example, gets £30 million in grants from the EU at the moment in respect of charter flights and things like that. That will stop. Presumably, the UK will stop paying into Europe, so if they divert the money there won't be a problem. I think there is going to be enormous pressure on resources and the ability to cope with this, which if well planned, thought of and resourced can be managed.

Q3 Chair: We want to ask you some detail on some of the issues about the existing EU citizens' rules and staffing and so on. Can I ask you initially—obviously the most immediate issue for the Home Office will be contingency planning if there is no deal at all—in terms of the border management issues, suppose there is no deal, what would you see as being the border management issues that the UK will face and what contingency planning would you expect to be in place or you would expect to be starting now for that in March 2019?

John Vine: I would say the most significant border management issue is going to be dealing with people who, of course, cannot use quite a fast track EU citizens' lane at the border. Even though when you arrive at the border your passport is swiped—it takes a matter of minutes—it actually takes longer because the IT equipment is perhaps not quite as good as it could be. You are going to have more people to look at in more detail and that is going to take a longer time and, unless the model of border control is changed, then there are going to be greater backlogs at ports. The ability of the Border Force to deal with those backlogs is going to be fairly challenging.

The problem is that in Britain we tend to have this idea that it is all at the border, and what we need to do is look at systems where we are differentiating passengers for different checks and we are trying to take as much of the volume away from the border as we can. Other countries use technology, biometrics, to pre-clear people. For example, if you go to America you apply for a visa waiver, you then have a much easier passage through border control. Again in America they have something called one pass, I think it is called, which enables people who are regular travellers, and who are able to provide advance passenger information about themselves, to be slightly de-risked.

Q4 Chair: Should we be trying to get that in place for 2019?

John Vine: It is probably not going to be possible for 2019 but these are the challenges at the border. The problem is that at the border we have a model that is quite a manpower or person-intensive process, and so the immediate challenge, in terms of contingency planning, is that they are going to have to work out how they are going to get extra trained staff to cope with that demand.

Q5 Chair: In terms of those extra trained staff, how long does it take to train staff?



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John Vine: I really do not know. I do know that certainly staffing has been cut over the years, because obviously the Home Office has not been a ringfenced Department, and parts of the immigration border control have suffered cuts as have other parts of the Home Office. Certainly, I think there has been a diminution of some of the expertise in particular areas, like Customs, but I would imagine, if they do not look at fundamental changes to the model, it is going to mean that there are going to be greater delays at the border.

Q6 **Chair:** On that interaction with Customs and the interaction with HMRC, what would you see as being the implications for Border Force and for contingency planning that would need to happen in anticipation of if there were no Customs deal?

John Vine: I imagine that it would create real difficulties in terms of Customs declarations. I know there are plans for a new Customs declaration IT system to replace CHIEF, which is the existing system. As far as I recall when I was examining this some years ago now, the CHIEF system would be overwhelmed by the requirements of Customs declarations in that scenario.

Q7 **Chair:** Would you see the key issue on this being about technology or about staffing, if what you were doing was contingency planning for no deal?

John Vine: If there were contingency planning, they would have to look at all of these things. They are going to have to look at staffing, the capacity. Part of the problem as well is the infrastructure at ports. Immigration and Customs staff are constrained by the infrastructure.

If you go down to Dover, Dover port is built literally on a shelf beneath a cliff. There is not a great deal of space to expand anywhere. In most immigration halls they are designed in a particular way. They only have a certain amount of capacity, and so there are issues around infrastructure as well so this would have to be looked at very comprehensively in my view.

Q8 **Chair:** Based on your assessment of your long experience of the way in which the border controls, Customs and Home Office operate, what would you say would be the chances, if they were starting from scratch now, of having a system in place by March 2019 in order to cope with a no deal situation?

John Vine: I really do not know because I don't know what plans they have made already. I don't really know whether they have a team working on this at the moment, but I would imagine they must have some contingency or started some contingency planning. They are going to have to get on with it, in my view.

Q9 **Chair:** Mr Wood, can I put the same questions to you?



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David Wood: Yes. I would say the main challenge is the Customs side of it. If that would have to be up and running for March 2019 then I suspect that is near impossible. As John said—and as I said in my introduction—the volume at the border and the different types of checks there presents its challenges. There is a trusted travellers' scheme, which is in place already for certain nationalities that could probably be adapted to get trusted travellers through the border slightly quicker. There is the possibility of that, so there are things that are there to be used but, in contingency planning terms, one has to have in mind a process.

There is no process whatsoever now for Europeans declaring goods coming into the country of course. There are, however, processes for goods coming in from the rest of the world. Presumably there is a process that could be adapted. It would seem fairly impractical for that to take place, for the reasons already said, at Dover and places like that, but then there can be advanced declaration of goods coming into the UK and there can be a process put in place. It would be very challenging to get that in place by 2019, but the contingency planning has to look at the whole process of how it would be implemented, what the implications of that are in terms of Customs halls remote from places like Dover, where goods can be taken to and inspected if need be and so on. It is going to be enormously challenging.

One imagines thought is being given to this currently because it does not seem that there is any certainty that we will be part of any Customs Union in Europe, whatever the status of the deal or no deal at the end of the day. One imagines people are working on these contingencies but it is how far they have got with that and where they are with it, but it is going to be an enormous challenge.

Q10 Chair: I suppose it is based on your expertise and experience. Obviously, you are not close to the Home Office work at the moment and what is underway at the moment, and we can put those questions to the Home Office, but what would you want to be in place by now for contingency planning to be on track?

David Wood: I think an embryonic plan complete, really. Clearly there are sensitivities with this type of planning but you would expect there now to be an embryonic plan knowing precisely what they are going to do. They might not have all the resources in place. There would still be things to agree and sort out but there are only be a few scenarios to plan for in reality, aren't there? There is—I guess—having to put in place a full Customs operation in respect of Europe. There is probably going to be a hybrid type of arrangement potentially or they would be part of a formal Customs Union or free trade relationship with Europe, so there are obvious contingency plans that you would hope someone is working on.

Q11 Chair: In terms of the technology, Mr Vine, you thought that the CHIEF programme would not be able to cope.



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John Vine: It is being replaced by a new system. I think there is a question about whether the system will be ready, so presumably somebody is putting some effort into making sure it will be ready. There are other technological challenges at the border as well. A lot of the IT is quite old IT. We had an e-borders programme. I think the e-borders programme has been replaced. I am not quite sure what it is called at the moment, but it is something similar to that.

The whole idea is to try to modernise the technology to make the staff more efficient because the key is to direct the staff to the people who need the most attention, because 99% of all the travellers that go through a port are perfectly law abiding people who want to get from A to B. So the trick is to separate out the straightforward from the not so straightforward, and target the available resources to where they are needed most.

Q12 Preet Kaur Gill: My question is about the registration of EU nationals and I know, David, you touched on that. It is going to be important that EU nationals living in the UK register with the Home Office in order to regularise their status after Brexit. Does the Home Office have the capacity to register efficiently 3 million people and to enforce that system, and what specific challenges can you see in respect of that?

David Wood: The answer to the question is, yes, but only by diverting the staff. They are used to dealing with large scale applications for all sorts of immigration products but there are not the staff. This is new work in a sense, so they need more staff to do that or they will end up with backlogs or further backlogs in other areas of the Home Office.

The other thing is that currently the EU only allows for a fee of a maximum I think of £65 per application, and these might be applications that politically someone decides should not charge at all. That is a political decision but if we are part of the EU we cannot charge more than £65 anyway. These will cost more than that to process, so there is a cost to this. It is not a cost recovery situation, so there are challenges.

Clearly, you need to stage this. There needs to be some order and process put into this and reassurance to people about the timing of their applications. I would suggest that is the appropriate way to manage this. But it does need thinking about in terms of having the resources in place to do it. Again, this is a known now and it is absolutely clear—as you rightly put in the question—that the 3 million Europeans here need to be regularised. There will be anxiety for lots of them about that, so there needs to be real contingency planning about how those applications will be made.

I understand now that lots of Europeans are applying for certificates. They are meaningless at the moment. They just do not afford the European any particular rights. They just confirm the current rights. That will not prevent them still applying for the new products. It just shows the anxiety that is out there and the pressure on the Home Office.



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- Q13 Preet Kaur Gill:** Do we know what that process is going to look like? Have we started to work on it already as to what it would mean in terms of regularising their status?

David Wood: I am not part of the Home Office now so I don't know. I imagine some work has been done on that, but I guess there are minor uncertainties about it. Certainly in terms of process, the people that apply, presumably there are going to be some checks. There will need to be some political decisions made. If a European has got certain criminal convictions accumulated while in the UK or before, is that European going to be afforded the status going forward or not? There are a few questions like that that will be part of a process, presumably, when those decisions are made, so is it about all Europeans?

There is a cut-off date, presumably, to be decided. I am not sure if that is decided. Any European here before a particular date would get this particular status and what the status is called, so there are a few uncertainties yet but, thinking through an actual process and what IT you would use and how you would go about it, that contingency planning should have taken place.

- Q14 Preet Kaur Gill:** Yes. Should we not be looking at that target setting in terms of the dates of when we need to start that process and when that first process needs to have an end date by, so that people are absolutely clear in terms of what we are trying to do to set a clear process in place?

David Wood: Ideally, yes, but there seems there is still a vacuum of knowledge about what exactly the status will be. It seems very clear that Europeans currently here can stay but, as I say, are there caveats to that? Europeans who have committed particularly serious crimes in the UK, would they be allowed to stay and things like that. Behind the scenes there may have been considerations of these but they are certainly not public at this stage.

- Q15 Preet Kaur Gill:** Does the current Home Office data record when people enter the UK for the purposes of granting or disputing residency already?

David Wood: There will be a record of someone entering the UK, yes.

Preet Kaur Gill: They already do that?

David Wood: Yes.

John Vine: It is a fairly unprecedented bureaucratic task, isn't it, 3 million people? It depends what information you are going to capture about them. That depends on the outcome of negotiations. If, for example, one of the outcomes is they have to have some form of identification, then is the requirement going to include the capturing of biometric information about individuals and how is that going to be stored and how is it going to be kept by an individual? So there is a whole range of issues we could think through in terms of the practicalities of how you



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do this, and of course the more complicated it is the longer it is going to take.

- Q16 Mr Christopher Chope:** Can I come in with one supplementary? Under the existing EU law, it is possible for the UK if it wanted to do so to require migrants from the EU to register with the authorities after three months. That already happens in 12 EU countries, including Italy and Austria. So, would you advise the Home Office to start implementing something like that, which it could do now, so that then on Brexit day you would already have a large number of the current EU citizens living here already registered under this system, and do you have any knowledge as to how detailed that system is? Is it as bureaucratic as you were saying in answer to the earlier question?

John Vine: I do not know, to be quite honest. It would be presumptuous of me to advise the Home Office on anything now. But if the ability is there to capture that data it would seem common sense that the sooner you start the better. Of course, European citizens are used to keeping forms of identification. Most of them carry identification as part and parcel of the law in their own country, and very often many of them are required to produce it to a police officer, for example, if they are stopped. They use this form of identification to access goods and service.

My oldest son not long ago was living and working in Berlin. One of the first things he had to do was to go to an office at the end of a road in his suburb and register, because if he needed health care he would have to show that he had registered and they gave him some form of identification. So, I do not think there will be any resistance to this. People need to be clear about what is required and then have a plan. It is always good to have a plan, whether it is realistic enough to ensure that you will fulfil the tasks by the time you want to achieve it.

- Q17 Naz Shah:** Talking about plans, do you feel that the Home Office has the capacity to implement and enforce different immigration arrangements in time for the transition period?

David Wood: It depends on how much work they have already done. Of course, we are sitting here not knowing what contingency planning has taken place and certainly I am sitting here not knowing what the time scales are. It is presumably possible that there is going to be a transitional period beyond 2019, where status remains fairly consistent with what it is now; I guess the whole point of the transition period will be to allow time for proper planning and a proper transition to new arrangements. If that is the case, if that transition is put in place, presumably that transition would allow for good orderly time scale in order to put in place what is required.

I presume that even a no deal arrangement could come with a transitional period. The transition period leads then to a cliff edge presumably at the end of it. The cliff edge rather than March 2019 could presumably be two years later, but that is a matter for political



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negotiation and for others of course. If we assume for a moment that March 2019 is the cliff edge—that there is no deal and it is not going to go further—then it will be extremely challenging to have everything in place by then. I am assuming they have done a lot of contingency work now, things we have already talked about: putting Customs arrangements in place. The immigration status—what is the immigration status? Passing the laws for Europeans coming into the UK and then, presumably, they are tracked fairly quickly; the rest of the world type status, not a European status. The border copes with that but it will be extra pressure on the border: the Customs side of it, the 3 million already here and giving them status. It will be enormously challenging.

John Vine: The trouble is we are in a position where we are trying to guess what the Home Office is doing. The reality of the answer is the Home Office should be sat where I am sat and you should be asking them the question, but I would think it would be remiss of them not to be doing some contingency planning now. We are not just talking about Border Force. We should be talking about the whole immigration system—that is the three directorates of the Home Office—what happens in relation to visas and the amount of time that visas are checked? The border is part and parcel of immigration control as well.

I would have thought there should be some cross-departmental working within the Home Office between the three arms of the immigration system to give you some assurance that some contingency planning is underway.

Q18 **Chair:** Thank you. To clarify, then, in terms of the staffing requirements of this, UKVI currently has around 6,500 staff and the Home Office says they deal with 3 million applications a year. To do what the Home Office has currently set out that it needs to do, which is the 3.6 million EU residents will be able to apply for settled status within two years of Brexit, so that is by 2021, in order to be able to cope with those 3.6 million applications in which there would be presumably a five-year residency proof check, criminal records check and a valid ID check, with staff of currently around 6,500, ballpark, what do you think the staffing increase is that they will need to deal with that level of applications?

John Vine: There would have to be a considerable increase. I could not put a figure on it. It would depend on a whole range of things: how much technology is used. You could invite people to self-apply. You could apply online. That might cut down the work. It depends how much you use technology to support the process but I would have thought you would need a considerable number of extra staff.

Q19 **Chair:** Could you use existing technology to do it or would you need new technology to do it?

John Vine: The existing technology is about maintaining. While you are doing this, you have to still maintain border control, 100% checking,



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which is the operational requirement. I would have thought it probably needed new technology but that is a guess on my part, really, Chair.

- Q20 **Stephen Doughty:** There are obviously a number of high profile examples over the years of the Home Office wrongly deporting or directing people to be removed who actually had a legal right to be in the UK. Indeed, I had a case in the last few years of a British citizen in my own constituency who was deported to Somalia and should not have been. That was only rescinded when I engaged on the case. There have also been a number of high profile cases recently of EU nationals, perhaps with dual nationality, being directed to leave. There is a whole series of cases. Obviously, there was Holmberg case—105 people were written to in that way. She spent £3,800 challenging it and eventually that was refunded, but obviously there is worry and concern caused by these cases and we have not even got to the stage yet of the registration and the application process. Why do you think serious mistakes like that occur, from your experience in the Home Office, and do you not think that it is inevitable that those are going to increase for EU nationals, given the scale of what we are facing?

David Wood: It is a difficult question to answer and some mistakes are more explicable than others, but 105 letters is just a complete and utter error, isn't it? What you are suggesting is right because, to a large extent, I think these errors occur under pressure when there is enormous pressure on staff. When you look at the amount of time a member of staff has to check a visa it is minutes, for example. There is enormous pressure. It is quite an ineffective sausage factory a lot of it. I do not mean that in a disrespectful way but it is a heavy processing, low grade sort of staffing and that is the problem with it.

Yes, there is a risk that such errors can be compounded if more pressure is put on the system without additional resourcing in order to be able to cope with it. Certainly, in terms of removals, errors have occurred and no doubt they will in the future. There is an appeal system. There is a judicial system. There is oversight. There are lots of things that happen. There are checks and balances in those systems that should stop such errors occurring, but errors do still occur and that is absolutely correct.

- Q21 **Stephen Doughty:** Would you agree, Mr Vine?

John Vine: Yes. Quality of decision-making was always a theme when I was inspecting borders and immigration. If you went to an average visa post, for example, an individual clearance officer would probably have between 40 and 60 cases a day to look at. It was tailored to whether somebody was new in post, they would probably have fewer. A more experienced case worker would have more.

With the best will in the world—bearing in mind it is a largely paper-based system, literally these cases were wheeled around on trolleys with large wheels around the High Commission—people would make mistakes and then of course I would go in and say, “Well, you have made a



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mistake". It was understandable because of the volume and the pressure they were under. So there is that but also, obviously, you need to try to ensure that your staff are well trained and that you have some quality assurance mechanism in place. Again, that has always been a theme. There needs to be consistent quality assurance at work to ensure that that sort of thing, those errors, are picked up and they are not replicated.

Those things would have to be addressed and the use of technology to try to reduce the amount of paper as well. These things would have to be used to try to avoid that situation being replicated in volume.

- Q22 **Stephen Doughty:** What was just being said about the sheer number of new cases that have come through for EU nationals, and perhaps particularly the additional complexity of the integration of dual nationals and so on, do you think that without uplifting staffing inevitably there are going to be more mistakes made and people wrongly directed or told they do not have a right to stay?

John Vine: Let's not mix up casework decision-making with registration of people who, at the moment, basically have free access to the UK. Depending on what is required the registration might be relatively straightforward, so I think we are talking about two different things.

Stephen Doughty: Okay.

- Q23 **Esther McVey:** I am going to ask about the post-Brexit immigration and the challenges there but, before I get there, it is understanding the situation as it is now: people coming into the country. I just met with some of the aviation industry and also the technological providers who were looking at solutions globally. They said we are all pretty much digital travellers now. Information is put in in advance. You know who we are. We have booked online. Those checks have already gone ahead, so it is: how do we utilise that more to make sure that we are ready coming forward? They say they have pretty much got the technology, so where do you think then the challenges will come and how do we get around those challenges?

David Wood: The technology you describe is there and it is fairly comprehensive now on all routes to the UK, apart from perhaps the common travel area that does not use that technology of course. So that technology is there, but the challenges are that there is still the physical presence at the border where the person has to go through and then of course, as we have talked about, the Customs side of the business if there is no Customs Union or no arrangements with Europe. That is the challenge at the border.

- Q24 **Esther McVey:** We have, as you say, those physical checks at the border but what we are trying to do then is take the risk out in advance. Take the risk out before they have even got to the border. That is what we are looking at because obviously they can come through on e-passports. Frequently only half of them are open. There should be more open. They are not open after 11 o'clock at night. Well, actually, they should be 24-



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hours. That is what I am looking at: how do we make sure that the risk is not there in the physical form of the border so we have a smoother transition?

David Wood: There are risks. Some changes have to be made because non-Europeans have to give a fingerprint with their visa. That fingerprint is checked at the border. That confirms the identity. That certainly it is the person who applied for the visa that is going through the border. Currently Europeans can travel on an identity card. If you take Italian identity cards you can buy them in Italian shops for the equivalent of £10 or £15, so there are real risks around the identities of some of the travellers at the moment. Certainly the leaked paper from the Home Office, whatever status that has or has not got, was suggesting that Europeans could all be required to travel on a passport the same as others. So there are things like that that are—

Q25 **Esther McVey:** That could be easily done in advance by warning people not to travel with ID cards.

David Wood: Yes, absolutely.

Q26 **Esther McVey:** It seems to me we can start teasing out these issues in advance, so having things like trusted travellers, as you mentioned before, having more in-depth traveller programmes, advance knowledge of, so these coming back and forth Europeans we know them anyway.

John Vine: Yes. Where do I start? I think there should be more Customs presence at ports and, indeed, my successor put that as a theme in his most recent annual report. We were losing people with Customs skills, certainly when I finished inspecting in 2014. Secondly, on the EU route, if you go to the forgery unit at Heathrow Airport you will see a big pile of forged EU documentation. There has always been—and we should remember this—quite a criminal trade in stolen and forged documentation. Having immigration and Customs staff at the port, who are not just concentrating on swiping the passport but having the time to see whether the document in front of them is a genuine document or a forgery, would be a good thing to do.

Q27 **Esther McVey:** They should be doing that now. That is nothing to do with any pre/post—

John Vine: It does not happen as a matter of routine. There used to be expert forgery people floor walking behind the immigration officer, to whom the immigration officer could turn if he or she felt that they had a dodgy document in front of them. I am not entirely sure whether that is the case now.

Q28 **Esther McVey:** Do you think we are more lax now than we have ever been because we are—

John Vine: There is still a challenge around genuine documentation. I don't know the extent of it. I haven't been inspecting the Border Agency, so I cannot tell you what the extent of it is. We also now have the ability



to use not only advance passenger information but passenger name records, which is data that is kept on carrier systems about the way that people pay for tickets and what have you. There is an EU directive around PNR and that is a new powerful way of interrogating data to try to discover if anybody is travelling who should not be travelling, who might not have an obvious record elsewhere in the system.

There are lots that can be done. It just needs to be put together. These things need to be built into whatever the new strategy that supports border control is.

- Q29 **Esther McVey:** Listening to you then I could see there is a positive that could come forward as in better security checks that we have not had for a long time, and this is an opportunity to be even more secure as a country?

John Vine: I did start by saying, "I think this is an opportunity", and I think it is a great opportunity. Staff at the border work really hard. They have a very difficult job. They very often have to deal with disgruntled people in front of them, and I believe we need to support them with whatever resources they need to do their job effectively. It is rather important, isn't it, ensuring that we have a secure border?

- Q30 **Will Quince:** I have a couple of points and we come back to borders. Mr Wood, you mentioned more customers present of course. You also mentioned concerns over increased illegal immigration. We did not touch perhaps on the elephant in the room, which is Northern Ireland. It has some rather unique challenges because of the very unique situation. I would be interested to hear your thoughts on both of those.

David Wood: It would seem, politically and operationally, not ideal to have anything other than a free border between the North and South of Ireland. If there is no arrangement with Europe and there needs to be some sort of Customs checks, again I think this is an area where there are indications, from papers issued by Government and comments made in the media, that there has been some contingency planning. There has been some thought to how you would deal with Customs operation at the border by not having a hard border but having declarations of movement of goods, and those declarations and papers being done through technology. That seems quite important.

Certainly, I lived six years in Northern Ireland. I understand the politics of the situation there quite well. It would certainly seem very, very important to the whole future of the North and South of Ireland and for the UK for there not to be a hard border there. It does seem there has been a lot of work and it does seem that is an area where there has been contingency planning and thinking. So, hopefully, if there is no deal and there is no Customs Union or the equivalent with Europe, there will be a technological solution to the border between the North and South of Ireland, which would be our only land border of course with Europe.



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John Vine: I do not disagree with what David said. I do sometimes scratch my head to understand what a frictionless border is actually, but I think the sentiment is there. I understand the sentiment and I think I agree with that. It is possible to have, like trusted travellers, trusted traders. You can have people who are crossing the border on some sort of programme where they are vetted in advance.

I suppose, as a former senior police officer, I would say that people with criminal intent would probably take advantage of a frictionless border. So there are two things here, aren't there? There is legitimate trade. How do we manage that within the political context? Then there is what you might call the illegitimate trade, which might present a different set of challenges.

Q31 **Will Quince:** Chair, if I can come back on both of those but, I suppose, to the broader point, which is that you are suggesting that everything can be addressed but it all comes down to Home Office capacity, fundamentally. We constantly—well, I certainly do—have constituents on a regular basis who have been waiting long past the target date, and I appreciate they are more complex cases than perhaps most of the regularisation cases will be in relation to EU citizens, but capacity still remains a massive concern. Can you give us any confidence that the Home Office will be able to address that?

John Vine: All I can say is that, certainly, throughout the nearly seven years I was the Independent Chief Inspector, I found myself in a position of telling three Home Secretaries about backlogs that they did not seem to know about and backlogs became a feature of many of my reports. It is very difficult to strike a balance. You need to get through the volume but you need to get through the volume in a way that ensures that the right decisions are made, quality of decision-making is made. It is difficult to see how you can do that without the correct level of resources to do the job properly.

It goes back to the very point I made at the beginning. If you take a management book off a bookshelf in an airport, it usually starts where you start with a strategy, then you draw up a plan and then you resource your plan, so this is an opportunity to do all those things afresh. Then perhaps we might avoid the situation where we have backlogs.

David Wood: It is a concern. The history, going back to the UK Borders Agency and going forward, has been a poorly resourced system. The whole system was sort of managed but you felt being in charge of it at times that you were playing—what I used to call—nine-year-old football. You were all chasing the ball. You suddenly had a problem because you had to move resources to try to deal with the problem knowing that, if we have to keep them there too long, we are going to have problems with where they came from. That is a similar situation to what is being faced now with Brexit. If there is a thought that current resources can cope with everything that is coming, I think it just needs thinking through—as John said—strategy, plan, resources, and it is critical.



Q32 **Chair:** Can I press you on this? Are you saying you think it might be possible, with the right kind of contingency planning and all kinds of things that you think might be underway, to deliver this within existing resources or are you saying you think, on the basis of your experience, that in order to deliver the Brexit changes there will need to be additional resources?

David Wood: I do not think they can cope with it. When I left immigration enforcement there was a plan, which was 18 months ago, on the CSR for over £100 million to be taken out of the budget. I think that plan still exists. There are centres closing. Staff are being reduced. We all understand austerity and the requirement to reduce budgets and, to some extent, the enforcement end of the business is a discretionary activity. You decide how much of it you want to do or not do. It just means you don't remove so many people from the country.

Right across the immigration system, I do not think it was every greatly well resourced and it is becoming tighter and tighter with budgets getting reduced and reduced. So I don't think under current resources that the challenge of Brexit can be met and certainly not met smoothly. There is no doubt in my mind of that.

John Vine: I would broadly agree. I might be surprised. There might be plans underway where the resources are being brought to bear, but it is not just any resources. It is about getting the resources with the right skills, the right training, to make sure that we address quality of decision-making. If we are bringing 3 million people into some form of new status—and presumably we want them to be part of our society—then it has to be done properly.

David Wood: I would refer to what John said there because I think it is really important. It is no good thinking in two years' time we suddenly need 3,000 staff because the staff have to be trained. The staff need to be competent. Of course, when you get new staff in it has an adverse impact for a while until they are trained because your current staff have to train them, so these should be things that are being thought about now. Staff need to be brought in incrementally so they can be trained alongside others and become effective by the time they are required.

Q33 **Chair:** Based on your experience, if you have to increase the staff substantially what would you expect the normal lead time to be for that to work effectively?

David Wood: Twelve months because of the bureaucracy of recruiting into Government itself. If you decide today, "Actually I want 100 staff" the reality of it is you won't have them for at least six months; at least six months by the time you advertise, recruit and vet them and bring them in. Then there is the training, mentoring, working alongside others and gaining competence.



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John Vine: Yes. That is very important, the latter point that David mentioned. When you bring in new staff of course you are reducing your capacity for that period because you have to devote some time to ensuring that they are trained up properly. So, yes, there needs to be a long lead in time I would have thought.

Q34 **Mr Christopher Chope:** One of the reasons why people supported Brexit was that they wanted to control immigration. Obviously the key to that is enforcing those controls; you were saying how important it was that they should be fair. If one looks at the recent statistics, it seems that the Home Office is manifestly falling short in being able to control the existing system. What do you think the problems are that are causing this big backlog in removals, for example, of people who are failed asylum seekers?

John Vine: Again, I am not in a position where I am in possession of the facts, but I would have thought that the emphasis over a number of years has been from removals to voluntary returns. If you look at the figures for voluntary returns they have gone up exponentially almost in direct correlation with the fall in forced removals, which I would have thought is far better and far more cost effective to effect a voluntary removal.

Q35 **Mr Christopher Chope:** Can I just interrupt you there because I have the figures in front of me that were produced by the Home Office in August of this year? Dealing with asylum applications, it says that the number of enforced removals in 2013 was 3,148. In 2016 it had fallen to 1,133. The total voluntary returns, which you say are a very important part of all of this, 2,504 in 2013 and in 2016 only 398.

John Vine: Oh.

Mr Christopher Chope: So the voluntary returns are going down as are the enforced removals. The consequence of that is the number of removal cases outstanding in 2013 was 550 and now, at the end of 2016, it is 12,214. This is a nightmare, isn't it?

David Wood: Absolutely. There will be several explanations for this, such as there are. The first is going to be resources. The second is detained fast track was an important aspect of removal of failed asylum seekers. The courts ruled that unlawful about two years ago now and I don't think that has been put in place. The detained fast track did allow for much speedier removal, a much speedier appeal process in order to remove people from the UK who had failed in their asylum claim. That generally was something put in place for what are perceived to be fairly safe countries, for which people were claiming asylum in respect of having come from. Then they go into detained process and the whole process was expected to take 10 weeks from start to finish. However the courts have ruled that unlawful, so that has ended. One consequence of that is the removal numbers have dropped.



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Probably the other aspect of it is detention space and resources generally. That is not the only enforced returns. The other enforced returns that have increased to some extent are foreign national offenders, which was a record year last year. Again what I think helped foreign national offenders, which was the backend of my time, was the deport first/appeal later provisions that were put into law. That in itself has just been ruled unlawful by the Supreme Court, so that will see a fall off on foreign national offender removals.

Q36 Mr Christopher Chope: If one goes to the United States one hears from people that, if you offend against their immigration rules there, then they throw the book at you and you are very unlikely to ever be able to get back into the United States legitimately in the future.

At the moment we have a system where there is no deterrent, effectively, against people who are in the country illegally or seek to get into the country illegally or overstay their visas or when their applications for asylum have failed they are just left in the country, with the result we have hundreds of thousands of people here illegally. How do you think we can deal with this at the same time as dealing with the changes that will be needed when we leave the European Union?

John Vine: There is a whole range of issues there. I hesitate to reply because I was relying on historic information before and it was clearly wrong, because you have better information than I have in my memory.

Mr Christopher Chope: It was much better in your day, I think.

John Vine: It probably was actually but that is what I was thinking of. If we just take overstayers, for example, I know there has been a recent report that says that the number of overstayers is probably fewer than the Home Office thought. That is fine. But there was a point at which I had to report there was no strategy for overstayers at all. I think that was because overstayers were seen to be not as important a priority, for example, as removal of foreign national prisoners or other people in the system.

When I looked at some of the issues around removal, a lot of them were around the inability of the Home Office to find countries who would take these people back, find temporary papers for these people, and of course there were issues. There were a whole range of issues around rights of appeal, which are different depending on which category you are talking about. So there are a lot of practical issues that immigration enforcement had to deal with, which were not easily resolvable.

There was fault on the part of the Home Office. I found that very often the arrangements with different countries were based on who you knew—for example, who was in the embassy or the High Commission. It wasn't a process that was a rigorous process. It relied on personal contact and then when somebody left then that arrangement fell down. So there were things like that, but it is a very complex area and I generally found that the authorities tried their best but seemed to come up against some



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really insurmountable problems at quite a number of turns. I wasn't known for being an apologist for borders and immigration but simply reporting on some of the practical difficulties, which might explain some of those figures.

David Wood: There are enormous difficulties in removals and getting documents for people and other things. The underlying point you make is right that there needs to be seen to be a consequence of behaving in that way, whether it be overstaying I am not sure. I think it is the student numbers that have been shown to be less. Recent reports suggest that they are not the large numbers as everyone expected there to be. But there needs to be a consequence for people here legally. There are probably over 1 million foreigners here illegally at the moment. There is a large number, so no one can ever remove those but what there needs to be is a consequence. It needs to be seen that there is a risk, if you don't abide by the immigration rules and you overstay or you commit crimes, that there is a consequence and there is a real risk you will be removed. As the number drops, of course, that risk is perhaps not felt.

Q37 **Mr Christopher Chope:** Could we not introduce a fixed penalty system so that they either have to pay a fixed penalty or leave?

David Wood: That is an interesting concept, but I guess the point is that if decisions are made for someone to leave the country they should leave the country, not pay a fixed penalty and then you get into: do they pay the fixed penalty or don't they? There are a whole range of issues with that.

Q38 **Sarah Jones:** Thank you. Some of your answers might be similar to the ones you have already given, but just a slightly different angle about the problem we have at the moment in terms of immigration. The number of visa applications across all types has gone up a lot in the last 12 months. I have only been an MP since June but I get, on average, one immigration case a day, so I have over 100 so far. In the time I have been an MP, the MP Service has been reduced in terms of the times you are allowed to ring to ask for support. They are so overworked they have had to reduce the time they can answer the phone to us, so I or my staff have to stay on the phone for a long time.

The other impact that I have seen is that, when people are applying for things like leave to remain or other status under Article 8 they get a letter back that tells them, "This is a complex case and, therefore, it won't be done within the service times". I saw in January that the decision-making centre in Croydon said exactly that. That inappropriate marking is now on the increase so that they don't have to meet the six months' service standards and they can rollover. I guess it is what your assessment is of how well UKVI are coping now and what you think of that?

John Vine: I cannot comment on how UKVI are coping now. When I listen to you I do hear echoes of the past, I am afraid, because very early



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on in my time as the inspector it was certainly that recommendation that I assume my successor has made in Croydon but I haven't seen that report.

Sarah Jones: Yes.

John Vine: There was something of that going on in the past and I had to report that cases were being marked as complicated in order to give the then UK Border Agency more time to deal with them, so there was a different time scale in dealing with complicated cases as opposed to straightforward cases.

The whole visa processing process is extremely paper-based and labour intensive and it must be ripe for a fundamental review of how things are done. I can remember one of the last visa posts I inspected was Shanghai. There, about 98% of the applicants—the people who applied—were granted a visa. If they are satisfying the requirement the question is: is there a different way of doing it to make it less complicated, more straightforward and then to enable the available staff to concentrate on the more difficult cases where there is a final judgment to be made about whether somebody should be granted a visa or not? I believe there is work underway in the Home Office to look at the visa processing to see how that can be done, but I am really not in possession of the information about where they are, I am afraid.

David Wood: It is concerning if you are getting those sorts of letters. Obviously, like John, I am not currently at the Home Office but, interestingly enough, I have friends who come to me in a similar way perhaps to what they come to you with, with issues and difficulties. It causes you some embarrassment when you have been associated with it in the past.

I think there has always been these issues with the backlogs. John made a point about trying to change the system: there is an absolute ideal time now to change the system—not just to do with Brexit, but the exit check data that they now give gives a real opportunity to the Home Office to have a totally differentiated visa system, because they can check all nationalities and you can see how compliant they are with the visa system; whether they went home when they should have gone home.

You can drill that down into regions of countries, to males and females, age groups, where you can say females travelling from that country of all ages have 100% compliance, or males 18 to 30 years old have a terrible compliance from that particular country. You can then put in place a visa system that for some countries will be very, very light touch because there is 99.9% compliance for all cases.

For other countries or parts of countries or age groups within countries, you might have a very rigorous visa system at which you might charge five times as much for because it costs to administrate. You can charge more for it, have a differentiated visa system, a sort of insurance-based



system based on risk. The data is all there to do that now. If they had done that, you could release resources and you could make the UK a safer place because you would be concentrating on those who presented the most risk to the UK.

Q39 Sarah Jones: It is certainly my experience to date that a fundamental review would be good, not least on things like if you are married you are considered to be more honourable and more believable than if you are not married. There are all kinds of slightly archaic things in the system. The last question is the growing backlog of asylum cases as well, which is slightly different, and the length of time it is taking to process them. Again I would be interested personally, because we have Lunar House in Croydon and we have 450 unaccompanied asylum seekers in Croydon that the council is looking after and we take on a lot of the burden. What do you think are the main reasons for that backlog? Are they similar, resourcing, and what are the consequences for the asylum system as a whole?

John Vine: Again without looking at the evidence, I cannot really say, but I suspect that it is not dissimilar from those backlog of asylum cases in 2008. The issues there were quality of decision-making, making sure there was enough well-trained staff who knew what they were doing. Obviously it is a small cohort of the total casework that is carried out by UK Visas and Immigration but it is a very important small cohort. People who are fleeing persecution, famine, and so on, who are seeking asylum is part of our international obligations as a country so it is important that they are taken seriously and the decisions and the case-working is done meticulously. But the consequences, obviously, for people waiting are serious because people cannot work, there is potential poverty there, so it is concerning that there is a growth in that particular backlog.

David Wood: I would imagine—and I do not know because I am not there—that asylum numbers have grown in the last couple of years. Have resources grown to cope with that? My guess is because of austerity and the requirements to reduce resources, that that is not what happens. The natural consequence of that will be—again, asylum is something that could do with a review. There should be a fast track for asylum, there should be a fast-track approval system.

Quite frankly, if you are an applicant coming from certain countries in certain situations, why go through a four-hour interview, why go through a whole long process where it is quite clear that you will be granted asylum? Grant it quickly. There are things that can be done to the system to speed it up to release resources for those more contentious cases.

Q40 Stephen Doughty: One of the other key issues behind all this, of course, is the sheer complexity of the immigration rules as they stand across all forms. We are going to add an additional layer of complexity to that with Brexit. There has been some pretty serious criticism from Sir Ernest Ryder, from Lord Underhill, from others, charities. I would say something like 45% of my casework is immigration related and the vast majority of



those involve where mistakes have been made because of poor information that was given or taken from the Home Office website or that has been wrongly interpreted by solicitors advising or whatever it might be. We have probably eight immigration acts in the last 12 years, 30 statutory instruments, 97 changes to the rules. Do you think it is simply now totally unwieldy and unable to deliver good outcomes, either for Government or for the applicants?

David Wood: I think they are far too complex. It needs codifying and simplifying. Again, I regularly get friends, acquaintances—one recently spoke to me. He has married a lady from outside Europe. She is here in the country and needs to apply for a formal visa to continue living here. He got to the Home Office and they told him she had to leave the country and apply, but that is wrong, and he got told that by the Home Office. It is complex and when I look online to try to help people—which I have to be careful about, because I am not an immigration adviser, which I advised him to go and see—it is not simple to look on there. It gets quite complicated for people.

All that means is that poor people—not all immigrants to the country are poor but lots of them are and they have to find money to go to immigration advisers and lawyers in order to do something. It should not be that complicated. It needs to be written in a way—or there be a good helpline, which I guess the Home Office are not resourced for. It is complicated and it needs simplifying.

John Vine: Yes, I agree. There was an attempt to simplify immigration law many, many years ago. There is probably a draft bill lying on a dusty shelf in the Home Office somewhere. It was around 2009, I think. But I agree with you it is complicated. A simplification would help applicants but it would also help the authorities in terms of enforcement. I do think there is a need for it. I also think there is a need for a look at the bureaucracy associated with it. It cannot really be right that in some circumstances if you want to apply for a visa you have to fill in an 80-odd page form. So there is a bureaucracy thing as well. Some sort of drive against the bureaucracy associated with the complexity of immigration law I think would be welcome.

Q41 **Stuart C. McDonald:** Apologies for missing the start of the session. I want to pick up on this idea of deterrence and maybe posit a slightly different view of the effect that that has on enforcement. Over the last four or five years we have obviously had all sorts of “hostile environment” policies. There are bars on people making applications to come back if they commit what I would consider are sometimes even relatively trivial offences, such as maybe overstaying their visas, for example. New criminal offences have been created.

Is there not a danger that because there is this emphasis on deterrence and some fairly draconian sanctions for infringing immigration orders that it means people are never going to leave voluntarily because effectively they are barred from coming back for seven or eight years—I do not



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know how many years it is now? Secondly, it also means people are much less inclined to engage with authorities, so they disappear from the Home Office's radar altogether. In actual fact, this hostile environment is making it more difficult to enforce immigration laws rather than less.

David Wood: I am not sure I necessarily agree with that. Certainly in most cases the system should be set up that if you voluntarily depart from the UK, your return disqualification period will be less than if you are enforced. That is certainly one aspect designed hopefully to encourage a voluntary departure from the country rather than an enforced departure from the country. You called it a hostile environment, they call it the compliance environment now, where it is an offence to rent a flat to an illegal immigrant or to employ an illegal immigrant who cannot claim benefits, should not be able to get secondary healthcare, cannot open bank accounts, get mobile phone contracts and these types of things.

If that regime was fully implemented and worked well, it does stand a chance of deterring people. It probably encourages people to try to stay here, to apply legitimately to try to stay, or potentially leave and maybe reduce the pool factor to the UK. Because as we have discussed, there is probably 1 million illegal immigrants in the UK, so they are not going to be removed from the UK.

What do you do about that as a Government and a country? I guess trying to put in place everything that makes the life of an illegal immigrant difficult, so discouraging them, or alternatively encouraging them to apply to legitimately recognise their stay here. That is, I think, how it is designed. I do not think it works as effectively as it should work at the moment and I think there are lots of reasons for that, but the principle of having a regime that encourages compliance rather than ignores the problem is better than not having it, I suspect.

Q42 **Stuart C. McDonald:** Of course everyone would want a system that encourages compliance, but all I am saying to you is I think people are now beginning to see, or argue, that the hostile environment and these policies, for those who cannot become compliant in the United Kingdom, make it ever more difficult to enforce immigration laws against them because they just disappear from the Home Office radar altogether. They also then do not have the possibility of regularising their stay by leaving and at some point in the future applying to return to come back again. You said there is no evidence that this has worked yet.

David Wood: I did not say that.

Q43 **Stuart C. McDonald:** I think the figures that Mr Chope referred to earlier showed that voluntary returns are in decline rather than increasing as a result of the hostile environment. What do you think would have to be done to make this type of policy work better, if it can be made to work better at all?



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David Wood: I guess whole Government support for it. I do not think it is supported right across Government and I do not think it ever has been. People need to make their minds up, and I think Government and society need to make their mind up, how rigorously people want to do these things.

As an example, take the health system. I think the health service has a target of collecting from foreign nationals for treatment in the UK—which includes Europeans because they claim that back from European countries—£500 million. I think last year they collected £300 million. That includes the levy placed on visas of people coming in, which gets about £180 million. So there is actually nothing recovered from foreign nationals using hospitals in this country. Apart from identifying properly foreign nationals and should they be using our healthcare systems, making sure there is a cost to that, making sure that is recovered, is critical. I think in London there is something like over 40% foreign nationals in London. Presumably there is £1 billion or £2 billion use of health service in London alone. I think by rigorously enforcing an environment so that foreign nationals cannot just use our health service, even—

Q44 **Stuart C. McDonald:** It is not working, though? People are not leaving. Even when they cannot access the health service, they are still not leaving.

John Vine: I would say that clearly whatever changes to the system take place, what we need to ensure is that there are not any perverse incentives. What used to happen with voluntary returns is that when people are being interviewed by the caseworker, the caseworker put to the interviewee the prospect of voluntary return and explained how it would work.

What I found was inconsistency between various offices as to whether the caseworker knew about the scheme or was promoting the scheme. But the scheme was promoted and it was cost effective, although, of course, when it was first thought of it was controversial because some people said, “Why are we using public money to incentivise people to return voluntarily? They should not be here in the first place.”

With all these things there is a discussion and debate to be had and any system needs to ensure that, if what you assert is happening, should not be happening. I am sure there will be one or two of our legal colleagues who are following us here to give evidence who will have a view on perhaps why some people would say they are driven to committing immigration offences.

David Wood: A lot of migrants to this country come from such poor backgrounds that probably nothing would drive them out. The question then is what do you do. Do you then just accept that people stay here when they should not be here illegally or do you put in place a regime that makes that very difficult? I am not sitting here saying what you



should do; I am just throwing the challenge back. I guess if you have that type of compliance environment that makes it quite difficult to live here and be illegal, then that will have an effect on some. There will be some, no matter what you do here, living on the streets of London or something like that is still far better than what they go back to and I accept that.

Stuart C. McDonald: Indeed. We have to also weigh into the balance the other consequences that these policies can have.

David Wood: Absolutely.

Q45 **Chair:** On that issue of the hostile environment, I think your successor, Mr Vine, in his assessment looking at the application of the rules for banks and building societies for carrying out immigration checks, found that 10% of the cases looked at had been incorrectly included on the list of disqualified persons. Do you find that level of errors a troubling one and what do you see as the consequences if you roll that scheme out with that level of errors in?

John Vine: I have not read that report, but, yes, I would say that that is a troubling percentage. Yes, at the end of the day, I think immigration is a very complex subject and it has lots of facets, but it touches individual people's lives. When that part of Government that is responsible for managing it make errors, then we should not lose sight of the fact that it has direct consequences for people who are living in our communities.

Chair: Thank you very much for your evidence. I appreciate your time before us today. Can I thank the first panel and ask our second panel to join us?

Examination of Witnesses

Witnesses: Danielle Cohen, Ian Robinson and Colin Yeo.

Q46 **Chair:** Thank you. Can I welcome our second panel this afternoon? Can I ask you in turn to introduce yourselves and also to tell us very briefly what you see as being the key issues or challenges facing the Home Office as part of the Brexit implementation?

Ian Robinson: I am Ian Robinson and I am a partner with Fragomen, the immigration law firm. The biggest two challenges for me will firstly be putting together a policy that can be easily implemented for the registration of the 3.5 million people already here. Frankly, I think the number is doable but only if the policy works with the number, and it needs to be as simple as possible for applicants and for the Home Office.



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The second challenge is then replacing free movement with a system that enables employers to continue to access the workers that they need, albeit with the controls that are needed to reassure the public that immigration is being properly managed.

Danielle Cohen: I am an immigration and human rights lawyer of 20 years; I run my own firm. My experience with dealing with immigration cases is the day-to-day bureaucracy that we have to face dealing with the Home Office. I think the first thing to do is to look at the way that the Home Office is dealing with cases at the moment, to try to draw lessons from it and then to improve the system. I have read the White Paper and I have grave concern about the duplication in the process that my clients will have to go through. To my mind it is unnecessary duplication.

Colin Yeo: My name is Colin Yeo. I am an immigration barrister at Garden Court Chambers and I run a website called Free Movement for lawyers and also for members of the public. The main issues of the current immigration system from my perspective, and also looking at what the problems will be in the future, are around complexity, which is something we have talked about already, and just how byzantine, almost, the rules have become for individuals and the problems that causes individuals, families but also businesses and I would imagine the Home Office as well.

Coupled with that the rigidity of the system as well. The Home Office tends to, for perhaps understandable reasons, think in statistics and of generalised policies and rules rather than in terms of people and the individuals who are affected by those. Time and time again as lawyers we see the people who are not really catered for in a Home Office policy. With Brexit coming, we are expecting a substantial number of people not to be properly addressed by the Home Office and for their situation to somehow slip between the gaps.

Also again coupled with that, there is the culture of hostility at the Home Office towards immigration. It feels rather as if the Home Office sees their job absolutely as keeping people out rather than conceiving it perhaps slightly differently about facilitating lawful status for people who are eligible for it. They are not inconsistent, keeping the right people out, so to speak, but the Home Office really sees its job as just being about discouraging immigration generally. That is perhaps something that has been linked to the net migration target.

Q47 **Chair:** Can I ask you first about the proposals for registering EU nationals who are resident in the country at the moment? Mr Robinson, you said you thought it was doable but required the right kind of process. Can you please say a bit more about what you see as being the risks and the issues that need to be addressed as part of this process in terms of both procedures and capacity the Home Office might need?

Ian Robinson: Yes. First, in terms of the numbers, 3 million to 3.5 million is a very big number, but we know the Home Office can deal with



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that sort of scale. We know that they come from visa and extension applications and from passports. But to do that, first they need people to do the work. Secondly, they need a policy that is easy to implement and easy to give effect to, whether you are applying or considering the applications.

At the moment, the permanent resident application process, with inches of documents that need to be provided often with original copies, just would not work. It would be impossible for applicants, but then how could they quickly consider, knock out and move on to the next application? They just need to receive evidence that a person is European, evidence that they have lived here for five years and then do away with comprehensive sickness insurance, or even absences and schedules. There might be absences that are impossible to collate.

I am slightly concerned that we will get to September next year and this policy will be implemented with no testing or no phasing. It is really easy to test a policy. You just work out what to do and apply it to permanent residents' applications for, say, the six months before September next year.

In terms of phasing, the worst thing in the world would be that they launch the policy and within a week they have a million or 2 million applications and they cannot cope, because everybody loses confidence. They need to have the space to identify easy-win groups and push them through first. That may be public sector employees like nurses. It may be people who have lived here for 20 years. It cannot be that difficult to work out who those people are.

Then finally—and the point was made in the last session—it needs to be transparent and easy to follow. This goes to the complexity of rules but also what will be expected in good time before the policy takes effect. We need to know as practitioners but our European friends need to know what is going to be expected. It needs to be presented in very simple terms. It cannot be as complicated as the family rules, for instance. It has to be plain English and easy to follow.

Q48 Chair: Do you see signs the Home Office is on track to do any of those things at the moment?

Ian Robinson: I think that the intentions were broadly positive in the White Paper that was published on EU nationals already here. Beyond that I do not think we have seen anything in particular. My sense is that they want to be quite reasonable about it. We know from the EU negotiating brief that the cost will probably be about £80, for instance. They could charge the £2,500 that you would pay for indefinite leave to remain, which of course would be terrible.

Danielle Cohen: If I may take the time to explain the process as it works on the ground and then to explain my concerns. At the moment, to make a straightforward application, you need to complete 85 pages. If



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you are an articulate, middle class person, that would be very easy. If you are a low-skilled worker from the European Union, that would be difficult. There are ample opportunities for failure: you forgot to put the right-sized photographs, you forgot to tick a box and the application comes back as void. There is no communication between you and your solicitor or the client. The Home Office returns applications time and again. This need to look at the same pieces of paper time and time again is unnecessary.

Looking at models in other countries, usually the Home Office—in Holland, for example—can get in touch with the Inland Revenue and ask for a printout of all the national insurance contributions, as opposed to asking the client to provide all of these documents in original format. I know the Home Office can do so because if they want to refuse an application of a highly skilled migrant, for example, they get in touch with the Inland Revenue to compare what was the real level of earning declared and paid. In the proposal they suggested that will be how they will do it in the future, so the question is why are they not doing it now? If you already have the applicant, why don't you ask the Inland Revenue to provide you the printout, that I can do myself and obtain a hardcopy within 20 days, and skip the applicant's need to provide the information?

Having obtained the permanent residence, you then apply for naturalisation. It used to be, until November 2015, that you were deemed settled and you could immediately make the application for naturalisation, which is cost effective and beneficial. The Home Office says it does not want to do it because it is too complicated, so the burden was shifted back to the applicant. So now we have invented a requirement for permanent residents before you become a British national. We know that the whole point of getting permanent residence is to become a British national, so there is an application that the Home Office is dealing with now that is completely unnecessary. It could have done what it did in November 2015 and said, "You are deemed settled, you have proved you have had six P60s, welcome to Great Britain".

Having obtained the permanent residence for my client now, I will advise them that they will have to do exactly the same process again in two years' time. Why can't we recognise the very same document that the British Government issued once and say, "We have acknowledged it. Unless there has been a substantial change of circumstances, such as criminality, we recognise the status that we granted you". This idea that you have to apply three times for recognition of the very same status does not go towards efficiency of the system and it gives me a grave area of concern of how we are going to deal with new applicants if we are not already dealing with the current applicants.

Colin Yeo: I am a bit less sanguine than my colleague Ian about the capacity of the Home Office to cope with such a major task and also their capacity to design a simple system. Simple is not one of the things that the Home Office is very well known for. If we look at the annual report of



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the current chief inspector, there is no mention of Brexit in that annual report but he raises concerns around the poor capacity of the Home Office to develop and implement technological solutions. It is all very well talking about technology is going to save us, but there is not a great record of that happening in the past and we are hearing promises that just are not delivered from the Home Office on that front over and over again.

The scale of the task is not just somehow registering the 3 million people and stopping there being some sort of stampede of people who will essentially bombard the Home Office with applications. That is a big enough job in its own right. It is all very well saying that it would be helpful to deal with nurses first, but the EU nationals who are here are applying for jobs, they need to be able to apply for mortgages, they need to be able to show other people that they are secure in their status here and they need to feel secure in their status here. These are people who have been told in the past that they have something called permanent residence and now the carpet is being whisked out from under them and it turns out that permanent residence is not permanent at all. They are going to have to go through a whole new application process to get the new type of status from the Home Office.

We also need to think about migration going forward, because these things are not happening in isolation. As well as registering the 3 million existing inhabitants who are EU nationals, and their family members—and that is just an estimate; we do not really know who many there are—there is also the EU nationals who will be entering the UK in the future under whatever arrangements are made, either during the transition period or afterwards.

Everybody gets a bit obsessed about net migration, but if we look at the actual immigration numbers rather than the net migration numbers—because net migration includes emigration and immigration obviously does not—it is around 500,000 to 600,000 a year for the last 10 years. It hovers between those numbers, sometimes over 600,000. It has been falling in the last couple of quarters. About half of them are EU nationals, historically. We are talking, from the last immigration statistics, about 250,000 EU nationals who entered the UK. They have to be dealt with in future in a way that they do not at the moment. At the moment all they have to do is show an EU passport and they can come in.

Obviously some people object to that but the beauty of free movement from their point of view is that it is a thing that you do not have to have a lawyer for, for example. You do not have to pay a fee for it, you do not have to get permission from anybody. It is a right that you have and you can make use of. They will not have that right in future. They will need to apply for permission, they will need to get visas. That is a huge increase. It is basically a doubling of the workload of the Home Office at the moment, and it is not just the 250,000 EU nationals who previously could



have made use of free-movement rights, it is also the extension applications and so on.

We heard earlier the numbers of visas issued every year are around 3 million. There is only 600,000 people coming in. What is the discrepancy between those numbers? It is because the Home Office has made something of a rod for its own back by requiring people to apply over and over again for extensions before they achieve settlement. If you just went straight to settlement or if you had just one extension application—you apply when you come in and then you apply for settlement five years later—that would reduce the amount of work at the Home Office end of things and it would reduce the costs and the complexity for the applicant.

But EU nationals will probably be subjected to the repeat extension application system that other people have at the moment. It is not just the initial entry, it is also the extension and then the settlement application and then perhaps nationalisation further down the line if they do want to become British. That is a lot of extra work for the Home Office.

Q49 Chair: In terms of the extension of capacity that you think would be needed to deal with that?

Colin Yeo: I cannot estimate numbers. What I can say is that it was very predictable that after the referendum result there was going to be a large increase in the number of people who were applying for permanent residence documents. There had already been an increase leading up to the referendum because a lot of EU citizens were nervous already and they wanted to document their lives here. There was a sharp increase immediately afterwards but it took six months for the Home Office to advertise for jobs in Liverpool. In March 2017 the Home Office advertises for, I think, 240 jobs in Liverpool specifically to deal with EU applications.

Why was there that delay? They were being bombarded with applications from nervous EU nationals, why have they not responded more quickly to that obvious need? Of course it is now leading to significant backlogs. We do not know what the time is that it takes the Home Office to process permanent residence documentation because they will not tell us, but it seems to be quite substantial.

Ian Robinson: It is worth adding that they did not necessarily even need to even recruit extra staff to deal with that backlog, because, as Danielle said, if they were to remove the requirement for permanent residence before citizenship—because permanent residence is there anyway—they could quite easily have deployed people in that direction.

Q50 Preet Kaur Gill: I know you have answered the question around some of the challenges the Home Office faces around delivering subsequent enforcement. It sounds to me that there is so much inefficiency in the Home Office, that if they addressed some of that maybe they would have the capacity and we would not be talking about how many numbers they



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need to recruit. It seems very, very bureaucratic and repetitive, as you have just said.

I am going to move on to the next part of the question, which is there has been a number of recent examples in the Home Office trying to remove people who have a lawful right to be in the UK, such as EU nationals and their family members. Why do you think the Home Office is making these errors?

I have a lot of cases where one of the things that strikes me is that the Home Office, whenever they write back, seem to use on the application that this is complex and not straightforward and falls outside of service standards regularly, but nobody can tell you what complex or straightforward means. It feels like it enables the Home Office to take as long as they like to decide on a case by using terminology like that. Those are my two questions.

Danielle Cohen: What is the question again?

Q51 **Preet Kaur Gill:** My question is this thing about complex and straightforward and the delay within that. The other is there have been lots of recent examples of the Home Office trying to remove people, some of who are EU nationals and their family members, but they have made errors and they have had to come back. Why do you think that they are making these errors?

Ian Robinson: “Complex” and “straightforward” quite nicely sums up the difference in experience of Colin and Danielle compared to me. We deal with businesses and workers coming to the UK. Policy for those workers is almost entirely objective. When I speak to a client, I can say with pretty much absolute certainty whether or not their worker will get the visa. If they will not, I can tell them what they need to do to ensure that they do get the visa. It is very objective and that makes it very difficult for the Home Office to refuse them once submitted. Where an application goes in and it is refused incorrectly—and mistakes happen—there is a customer service culture that, generally speaking, you can e-mail one of their drop boxes and they will be quite helpful and help you. That is on the business side.

It is one of the best in the world. We have lots of data, lots and lots of data, and we have found that, on average, UK visas are issued within five to 15 days when we are talking about work. Only Singapore and one of either Angola or Chad can issue more quickly routinely than the UK. We are world leading on the business side. Objective policy helps because it removes any uncertainty. That is the Sheffield operation and the overseas operation, but then you move on to the human rights and family side that you will see more often. There it becomes more complex because human rights are, by definition, subjective. That is when it becomes difficult.

Q52 **Preet Kaur Gill:** Why are these cases complex?



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Danielle Cohen: I think that they are requiring a different culture, a different mentality. For example—I do it all the time—I put a case forward and I put country evidence. I work an holistic approach. I provide a psychiatrist report, perhaps, witness statements. It requires the caseworker to sit and look at the rules, the application of the facts of the rules, the guidance and then make a decision applying proportionality or any other test. That requires training and willingness to communicate with the representative or ask for further information, engage in discussion and then resolve it so it will not end up in court being won. But that is a willingness to deal with it.

If you look at the cost, my client will pay on average £993 plus £500 for the NHS. If you are an applicant with a husband and wife and two children, this is £5,000. If you break it down to the hourly rate, it is approximately £700 an hour for a caseworker to discuss the case. You would expect for this level of expenditure that we will have somebody who is trained to deal with this. If you compare it to any other service that the person will be able to get for £700 an hour, you would be expecting a certain level of service.

When we think that our applicants, our clients, have an entitlement to have service in return for the fees they are paying and they should be trained to deal with complex issues, because human rights is a complex issue, then we will have better decisions that are less able to appeal or do not have to come to court for the first time for a decision to be made. Many of my colleagues who are judges complain—and I do not know if you feel the same—that the first time a case gets a proper consideration is when it gets to court, and that is not the best use of court time.

Colin Yeo: If I can start with the question on European nationals, I am not convinced that the 100 letters that we heard about recently and other cases that I have seen as well and that we have seen in the media are entirely accidental, to be frank. The Home Office seems to be quite ambivalent about the status of some EU nationals who are in the UK. Essentially, in most cases the Home Office is quite straightforward that they are lawfully resident, if you are worker or you can prove that you are self-employed, but it turns out that since 2011 the Home Office has taken the view that EU nationals who are self-sufficient have to have what we call comprehensive sickness insurance.

A lot of lawyers and I think the EU Commission think that access to the NHS, for which EU nationals pay taxes and are allowed to access, should in law count but the Home Office disagrees. The Home Office view seems to be that people who are self-sufficient and do not have comprehensive sickness insurance are unlawfully resident.

They are very reluctant to say that in the current environment because there are hundreds of thousands of people who would be affected if that was to be the case, but the Home Office is very keen, or has been very keen, to take on powers to remove, for example, rough sleepers from



Eastern Europe, but in legal terms they are basically self-sufficient. They are not having recourse to public funds.

Yes, they are considered to be an eyesore by many people or whatever, but in EU law terms they are self-sufficient. In order to be able to get rid of them—and we have seen a dramatic increase in the number of removals and detentions of EU nationals—the Home Office has rather changed its interpretation of EU law to be able to target them. Unfortunately a lot of other people are caught in the same net, people the Home Office would not really be interested in removing or want to remove but it is now quite ambiguous or ambivalent about what their lawful status is.

On the issue of complexity, I think there are two problems. One is that sometimes the Home Office makes mistakes. The rules are very complicated and mistakes do happen and there is a reasonably high error rate. We heard about the 10% error rate on financial checks. That seems to be based on whether the Home Office thinks you are lawful or unlawful. If they are wrong in 10% of cases, that is very concerning.

The other situation that arises—and this is probably more common—is that because the rules are so complex and bureaucratic, it is very hard for applicants to make a successful application without a lawyer now. If you will allow me to be slightly tongue in cheek about it, that is great news for immigration lawyers like me because it forces people into our collective arms. It is a terrible way to run an immigration system, though. People ought to be able to understand the rules themselves and they ought to be able to make a lawful, valid, accurate application themselves but they are just not able to in so many categories of immigration law now.

Danielle Cohen: Also there is a preoccupation with templates and with formalities. For example, there was a famous case of MM, wonderfully reported in Colin's website, where it speaks about financial flexibility when you can rely on third-party support. Having practised law for many years, I can see there is nothing new under the sun. The old system of adequate accommodation is coming back through the back door to some extent. Why create a system where one group of people can provide other evidence of finance and other people cannot?

Why create a system that is so complicated, when the average person would not know what pieces of evidence he can put forward to be able to bring his wife or his child to the UK? Surely it should be, "This is the minimum income you should have. If you cannot afford it, these are the alternatives, as long as you do not have recourse to public funds." Before I know it I am back in 2012, so what was the point of the reform?

Q53 **Tim Loughton:** On what basis do you think there are 3.5 million EU citizens currently in the UK?

Ian Robinson: I read it in *The Guardian*.



Colin Yeo: It is a figure that we hear in common parlance.

Danielle Cohen: I think there is a lot more. I met Christopher maybe in another meeting, a forum about children post-Brexit. I think there a lot of British children who do not even know they are British who are in the UK. By not documenting them we will end up with a whole generation of undocumented young British children who will not have access, which will act against them as a deterrent when they are actually British citizens. For every European national, there are lots of other people, maybe European or become European later on, or might be British, for all we know.

Q54 **Tim Loughton:** The reason I ask is this figure is bandied around. I think it is probably a big under-assessment. You have the grey area of people who have dual citizenship potentially, or actually, and we have been very bad at registering who leaves the country over many years. Those people who are not known to the tax authorities or others are probably those who want to remain unknown to the tax authorities and therefore do not get counted in the census and things like that as well. Your voices of doom, with which I do not demur, may be underestimating the actual problem.

What would you do if you were tasked straightaway with making sure we had a system that is fit for purpose by March 2019, or is it going to be essential to use the transition period, whatever that is going to look like, in order to put something in place that might be halfway workable to get a proper handle on the situation that you describe?

Danielle Cohen: Don't you think it is common sense for the Government to get in touch with the Inland Revenue to find out once and for all who is working and contributing to the UK economy over the last five years, and then put a big tick next to it and say, "We do not have to deal with these people. Do come in and get your permanent residence."

Tim Loughton: The problem is that the Government, and Governments in this country, are very bad historically at talking to each other between Departments.

Danielle Cohen: There is no willingness for one Department to discuss it with another Department and exchange information.

Q55 **Tim Loughton:** Exactly, so the obvious thing to do—and we as individual Members of Parliament will constantly have people coming to us to say, "I have made all these declarations to various Departments. I now have to do it again to another Department. Why can't the two just talk to each other?" It is usually the tax authorities and various others. So the mindset is not there and the infrastructure is not there. How feasible is it to try to change that?

I was taken by your comment, Mr Yeo, and again I think it has echoes of what we have seen in the past, where the Home Office seems to be there to desperately try to get numbers down regardless rather than facilitate



those people who we most need post-Brexit to keep things chugging along nicely. Is this doable? Just to take in the transition period as well, should we now plan for an overhaul of the immigration system that has to take in the transition period, therefore as of 1 April 2019 things will not have changed properly?

Colin Yeo: I do not think it is possible, even perhaps within a two-year transition period, to properly document everybody who would need to be documented. The problem is—because free movement is so enabling for the individual because you do not need to be documented and it is an inherent right that you have, you do not need to do anything except show your passport—there is no register and there is no way of registering those people at the moment.

The problem is that if we simply impose—let us go back slightly. If nothing happens, when Brexit occurs all EU nationals become unlawfully resident. That immediately makes them criminals. It also immediately means that their bank accounts will be closed down by the Home Office and they will be turfed out by their landlords and they will be subjected to the hostile environment.

Nobody wants that to happen and I am sure it will not be allowed to happen. But either there would need to be a transitional arrangement with the EU by agreement with the rest of the EU or the UK would need to unilaterally legislate to say, “You might not have a ‘leave to enter’ or a ‘leave to remain’ stamp in your passport but you are here lawfully”. That would at least give the UK time to try to sort out the problem. I am very concerned that the Home Office is not going to be able to cater to all the variety of situations that arise in everyday life. I think there are going to be a lot of small situations, in percentage terms, that arise that affect tens of thousands of people, potentially.

Just to give one example of a client I met the other day whose husband is a seaman. He works on cargo shipping and so on and he has been outside the UK for more than six months out of 12 since he first came to live in the UK about 10 years ago or something, so he has never acquired permanent residence. He is clearly not going to qualify for what the current UK offer looks like it is going to be to EU citizens. He has been living here with his British wife for a long time when he has been not at sea, and he is here for tax purposes. But unless some sort of arrangement is made for those what I think the websites call educated scenarios, slightly unusual situations, of which there will be a quite significant number just because of the scale of people that we are talking about, then there is going to be a really disastrous effect on a lot of people’s lives.

Q56 Tim Loughton: To your point, Mr Robinson, which I think you, Mr Yeo, rather disagreed with, in terms of prioritising key sets of workers and would you start with public sector workers and nurses of whatever, how feasible is that? Are we looking to try to simplify what I agree is a horrendously byzantine structure? In effect you are looking at very



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roughly three groups of people. Those who have been here for quite a while, have jobs that clearly are jobs that we need them to continue in, registered with all the tax authorities and completely legitimate, for which we need to design an internet-able application that is very simple and does not require loads of people working in Croydon to process.

Secondly, you have a group of people who are not quite as straightforward as that and may have travelled in and out of the country over a number of years, maybe double nationalities and so on, that will require some more intensive work. Then you have the really problematic ones like your seaman and whoever else, who we will have to almost adapt the rules for on a case-by-case basis. Am I horrendously simplifying the situation or could something like that be applied as a model to try to get some sort of order and discipline into this?

Ian Robinson: The problem that you have there is you immediately get on to what the person in an old folks' home with Alzheimer's who is incapable of applying. You immediately go on to what about the criminals who may have been paying tax but who would not be welcome after Brexit, and then god knows how many other small categories. Ultimately we need to go back to first principles. What I think the Government ought to want to achieve is to ensure that people who are over here should be able to stay so long as their presence remains conducive to the public good, ie they are not criminals in which case I assume we would want them to leave.

Essentially it can be a very simple process, complex for some but very simple, and it can be as simple as, "Demonstrate that you are European, demonstrate that you have been here for a qualifying period of time". At the moment that qualifying period of time would be five years for settled status, but does it need to be that long? Can it be one year? Because people are either going to stay beyond the one year or go home one way or another anyway. If they stay for five years, they will get permanent residence. Once you know that they are here and that they are European and they have been here for a while, check that they have not been convicted of criminal offences and, if not, grant it. If they have, there will be a different track for them.

More complex will come to what do you do about the belligerent people, the French grandmother who has been here for 50 years and refuses to apply? What do you do about the person who is incapable of applying? What do you do about the seaman who is not here to make the application?

Q57 **Tim Loughton:** Those go in the third case to an extent. For a belligerent French grandmother, tough. This is now the new system, everybody has to comply with the new system.

Danielle Cohen: We could make an application for her under the immigration rules and succeed, if she wished to apply. But we are not going to get her out of the system. We are not going to resolve her case,



we are just going to shift it to another category, which will not be called Brexit, which will be called 27ADE private life on the basis that she has lived here for 20 years. These people are not going to leave because they are not going to be granted permission to remain here, we are just going to put them in another category and create a new backlog with new complexities.

- Q58 **Tim Loughton:** Let us not get hung up on a belligerent French grandmother; it could be any nationality within the 27 other nations of the EU, I am sure. But if you are saying that she just will not apply, it is her duty to apply and if she does not apply she does not get the benefit that goes with it, ie her entitlement to stay, which would not be disputed. She just has to go through the process.

What I am desperately trying to do is to simplify this system, which I thought you would agree with, but you have given me too many complications back. I think you are now trying to overcomplicate my simplistic system.

Ian Robinson: I felt that you were oversimplifying, and I may be as well. It is as simple as, are they European, are they here and have they been for a period of time? If yes to both of those questions, so long as they do not have criminal convictions, give them settled status. It should be as simple as that.

You can prove that you have been here for a period of time in a variety of ways. Do not be too prescriptive. You can prove that you are European with a copy of the passport. You can then link the passport number to the settled status and then you run it through PNC to check that a person does not have a criminal record. It can be that straightforward. It just becomes more complicated for people who struggle to apply for practical reasons.

- Q59 **Tim Loughton:** How many of those sorts of people do you think there are, ballpark? Because we seem to be designing the system to deal with the most complicated ones, whereas we should be designing the system to fast track those straightforward ones who you have described. Those who are criminals, there are already rules to remove criminals anyway. Need we change that?

Those people who do not have capacity, we have to treat them on a case-by-case basis. But the vast majority of these, surely—and what do you think that vast majority is—should be quite straightforward. If you just get the computers linking up so you have that input of passport, residency and paying their tax if they are workers, and so on, and you want to prioritise and fast-track those workers because they are absolutely the ones who we need to stay here to carry on their jobs, then how many are we left with of that 3.5 million existing, let alone ones still coming after that, who are going to be more complicated, very roughly, do you think?

Ian Robinson: Sorry, I am not sure that can be answered, frankly.



Colin Yeo: Another way of looking at this is when the day comes when you are required to have leave to enter or remain and if you do not have it then you are unlawful, how many tens or hundreds of thousands of people are going to be caught by that and is there a way to reduce that number or to prevent that from happening.

The problem is that you need to set a deadline at some point, if you really are going to transition to a new system, but whenever that deadline happens it seems to me almost inevitable that a very large number of people will become unlawful on that day and because of the “hostile environment” laws and policies their lives are going to be made extremely difficult and that is going to have a very negative effect on a very large number of people.

Q60 **Stephen Doughty:** I want to back a little bit to the decision-making process, and I was struck by what you said, Ms Cohen, about the only time a case received proper consideration is often when it ends up in court. Certainly from my experience often it is also when MPs get involved that gets proper consideration. I have dealt with hundreds of cases since I first got elected, mistake after mistake after mistake and extremely complicated and torturous circumstances for the individuals involved.

You have all touched on different issues driving this: the training of assessors and whether they are properly applying rules; the resourcing issue; the complexity of the rules leading to that application being made in the first place; deliberate policy perhaps driving some of the approach. Are there other issues driving it or would you say those were the four things? Have you seen any sense in which the Home Office is trying to reduce the number of cases that end up in court and that level of expense and time?

Danielle Cohen: We do have a good success rate and I do see very good results from the Home Office. The problem is that it is random. It is possible but it is not consistent. I will give you an example, if I may, to illustrate quite a funny point. A Syrian refugee granted refugee status in the UK made an application through my firm to bring his wife, who he married by proxy marriage, which is lawful, to the United Kingdom. The entry clearance officer refused the application on the basis the parties have not met. We have provided ample evidence to show that they were sweethearts and that he left her when he ran away.

The interpretation of the entry clearance officer—despite the directions to him was the opposite—said that they have to have met immediately before the ceremony. Now, if your applicant is a refugee from Syria and the British Government granted him refugee status, how could he have met her? The witness statements and the evidence of them being in a relationship for a long time before was discarded as self-serving. Every witness statement is self-serving. Of course photographs together when you are teenagers is self-serving. So we appealed, we will go to court and I have no doubt that there is a body of work to show that they have met.



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It does not have to be immediately before the ceremony, because proxy marriages are recognised.

We are applying for the entry clearance to review it. I do not know if it will. This man has spent a fortune. The woman went from Syria to Lebanon to Jordan to be able to join her husband. It looks to me such a waste of resources and goodwill when people are already recognised as refugees. Could we not have made it less bureaucratic? Or perhaps get in touch with me and say, "Ms Cohen, we have issues with this application. Would you mind shedding some light?"

But there was a blank refusal and now we are going to wait a full year before the appeal will come to court. This case is privately funded because there is no legal aid for his case to be heard, so now we have a separation of a refugee from his wife for many years. That does not encourage people to feel loyalty to the place or to trust the system, and that is a great wasted opportunity of somebody we wish to accept into our culture and to influence the way that they are thinking by setting an example.

Colin Yeo: There is a good way to stop cases from coming to court and there is a bad way to stop cases from coming to court. The good way is to have a good feedback loop and to make sure that you are learning from mistakes and that you are stopping those mistakes from happening in the future. We see appeal success rates that varies between different immigration categories of around 40% or 50%. It does vary depending on what type of case it is.

Q61 **Stephen Doughty:** Which is the worst and what is the best?

Colin Yeo: I cannot think. I would be in danger of getting it wrong if I were to try to say now. But that would be very positive. We have seen inspector report after inspector report saying the Home Office needs to start learning from possible feedback loops but is just failing to do so. That would be a good way of stopping cases from coming to court. The bad way of stopping cases from coming to court is by charging sky-high fees for tribunals, by introducing the deport first, appeal later, where virtually nobody bothers to appeal any more and it is almost impossible to appeal if they do even manage to lodge an appeal, and basically acting unlawfully in a large number of cases, as we have seen. That is what we see from the Home Office. It is trying to restrict access to justice rather than trying to learn from mistakes that are made and feed that back into the decision-making process.

Q62 **Stephen Doughty:** On the other side of the spectrum, would you agree with the observations by Mr Justice McCloskey who said that the Home Office is slavishly appealing decisions themselves, effectively automatically sending everything back and further clogging up the system?



Colin Yeo: We see that in some categories. Where the Home Office is concerned that there would be media interest or public interest, particularly in criminal deportation cases, what we see, I am sorry to say, is that civil servants will routinely lodge appeals, even when there are not really any grounds for doing so, where it is clear that the result was the correct one. The Home Office might not like that it is the correct one, but these are the laws that they have designed and set themselves in the immigration laws. You see court resources and also Home Office resources being wasted in trying to appeal those kinds of cases sometimes.

Q63 **Stephen Doughty:** Is that a common factor that you see as well?

Danielle Cohen: Yes, it is. I deal a lot with asylum seekers and recently I have dealt with a lot of homosexuals from Pakistan. The only reason why applications are being refused is that the Home Office official through inappropriate questioning at interviews doubts that my client, in this case a Moslem male in a relationship with another man, is genuinely homosexual. There was one extreme case when the Home Office granted a permission to get married and nevertheless doubted the homosexuality. So, we go to court and the only question for the immigration judge is, "Are you a homosexual?"

It is offensive to speak openly about your sexual habits, especially if you are coming from a country or from a culture that does not allow it and it breaches the UNHCR guidelines on how to take statements from individuals. This kind of attitude by officials saddens me greatly because that is not what the asylum process is about. Of course, once you say, "I recognise that you are homosexual" all your friends in the background are cheering. Next. So, there is no engagement with the country information, which we know homosexuality is illegal. To me it is a waste of resources, time and again, very bad faith.

Ian Robinson: It also goes once again to the difference in our jobs. I am the business side dealing with Sheffield Home Office. We do not have any of this. It is an entirely objective system, which means it provides certainty. When I stand on a stage with our American colleagues at best they can offer predictability through their subjective system. I can say, "Pay them properly, make sure no Brits can do the job, sponsoring, you have the visa". It is an entirely different legal framework and accompanying culture and that customer-friendly culture needs to be carried across after Brexit.

Q64 **Esther McVey:** Listening to the complexity of the customer-friendly environment and on the casework I have I would say it was not just complex, I would say it was convoluted. Danielle, going back to what you said a little bit earlier, if a picture is in wrong or if you not ticked the right box it is taken out and you have to start the process all over again. I guess I am thinking time is finite. Resources might be flexible but anyway it is how to make the best use of all of them within a time, so we are looking at March 2019. That 85 page document you have to fill in, how



much of that then is relevant and how much do you think you could streamline it and where would you begin?

Danielle Cohen: First of all not all the sections in the form are relevant but you have to go through the form and decide which one is and which is not. If you want to a dual application you cannot include dependents in it. So if you are an Italian national married to an American you cannot do the same application at the same time. But I would have to rely on his evidence to show that she is self-sufficient or the other way round; she is working and he is self-sufficient. So, there is duplication in the process.

Q65 **Esther McVey:** Do you think that duplication could be thorough, ie necessary, or is that a waste of time? Could we get this down because that is what we are looking at in this.

Danielle Cohen: Allow both parties to apply at the same time online. One nightmare of every practitioner is to try to calculate the dates of absence that an individual has been away from the UK. First, you have to do it for five years so can you imagine an Italian national has no stamp in the passport trying to come back in and out of holidays and business trips? They now have to make a declaration and sign that this is the best knowledge and belief every day that you have been absent for five years. I would not be able to tell you how many days I have been absent in the last five years. Then you make an application for naturalisation and it is 10 years.

We have heard today that there are records for this so I have to ask my clients to send a disclaimer, "I have provided this information to the best of my knowledge and belief. However I may have—". But this is time consuming and to be honest unnecessary because from a legal point of view if you have not been absent continuously for two years you have not lost your status and if you have not been absent for six months you have not broken the period of continuity. So, why do we need to know every single trip to see grandma in Italy? How does it add to the administration of justice? It becomes oppressive.

Esther McVey: So, these are the things on a less staff—

Danielle Cohen: How is the Home Office going to check if they are going to go page by page through the passport where there are no stamps? Do they have another source of information, in which case why do they not use it and save us the need to do so?

Esther McVey: As we have a countdown these are the things that—

Danielle Cohen: Shift the burden to the State where they have the resources to deal with it and get the people to provide the evidence they can so it will be an atmosphere of co-operation as opposed to the burden being on the applicant to prove, because it is in the best interests of the nation that we will resolve it, so we can do it together.

Q66 **Esther McVey:** Would that be your number one priority?



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Danielle Cohen: Communication and working together to have these people settled, happy and move on to the big challenges.

Q67 **Esther McVey:** Just going to Colin, at the beginning you said we are not addressing the people so I guess in that regard is this the same as Danielle said? How do we do that? I am looking at how we streamline the process to fit the timeline we have ahead of us.

Colin Yeo: The processes are often designed from a Home Office perspective to meet what the Home Office considers to be its needs. I am not sure the Home Office necessarily very accurately reviews its own needs and it sometimes invents needs that it does not necessarily have if it was really to think about it. But certainly it ends up in a process that is very convoluted from the end-user's perspective, from the applicant's point of view. That is all very well where you are not trying to help people and you are trying to discourage people, but in a situation where we are trying to stop people from becoming unlawful when Brexit happens, a very different approach is needed, I think.

Q68 **Esther McVey:** Finally, with the various groups of people again is there simplification in creating those groups? Have you thought about them, what the Home Office could be using to go forward?

Ian Robinson: Essentially they need to work with civic society groups who are already thinking about, and frankly panicking about, these groups and the support they will need. Having identified those groups I know from my own experience the moment you find two or three you have 10 on the doorstep and another 10. They need to work with civic society groups, understand the people who are affected and then essentially there will be one rule and one process for the common man and then they just need a series of exception processes for the uncommon person. It is really not that difficult to create those processes.

Q69 **Sarah Jones:** It is interesting you talk about being out of the country for too long. I wrote to the Minister just today with one of my cases where somebody had been out of the country for nine days too long over a 10 year period. She is working in the local hospital and she had gone abroad to study as part of her job doing something really important for us in Croydon Hospital. She has now been refused indefinitely to remain because of that nine day discrepancy. Anyway, I will ask you the same question that I asked the previous people. The number of applications has gone up overall over the last year significantly. How do you think the service is coping with culling it?

Danielle Cohen: Sometimes it works well. Sometimes my clients stay illegal for a very long time, lawfully here in limbo, so I kept getting calls from employers saying, "Are we allowed to employ them? Can you explain section 3(c) again, please? What does it mean that his passport has been with the Home Office for six months? Surely he is hiding something". The burden has shifted to the employers now, they are checking whether the employees are legal.



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It used to be the duty of the State to monitor the comings and goings. Now everybody is almost a big brother. The employer needs to check. The bank needs to check. The landlord needs to check. Everybody is doing the other people's work and the atmosphere became very tense. I say, "No, there is the helpline at the Home Office. You as an employer can phone and check". Human Resources gets very upset and nobody knows if they are allowed to employ these people or not and people are about to lose their jobs. So, yes, the delay causes limbo and the Home Office are not always helping the employers to sort it out.

Colin Yeo: My impression is the Home Office is just about coping at the moment and that there has been a period of a certain amount of stability where we have not had a whole load of new immigration legislation year after year over the last five or six years. We have had bits of legislation in 2014 and 2016 but that is relatively infrequent compared to previous years. Also there have not been any major overhauls of the immigration rules. There are all sorts of problems with the immigration rules but Home Office systems have not had to change. The Home Office is not very good at change management. I think we have seen that over and over again.

We are not aware of any new backlogs that are building up at the moment. The waiting times are creeping up for the different categories but not in a disastrous way and as far as we know there are not any boxes of files being shuffled off somewhere to disappear. But in a just about coping organisation where we have a white paper coming up apparently that is going to redesign the immigration system, we have some sort of EU immigration legislation, the contents of which is utterly unknown, we have Brexit and we have registering all of the 3 million, or however many there are citizens, plus coping with the influx of new European citizens who will need leave to enter or remain in future where they did not previously. That is a lot to be dealing with in a very short space of time and history is just the Home Office is not brilliant at dealing with those kinds of situations.

Q70 **Sarah Jones:** Knowing that is coming, what are the steps the Home Office needs to take in terms of preparing for that and scaling up in terms of resources?

Colin Yeo: There is a certain amount of mitigation that can be done so as I was suggesting earlier, if, instead of forcing people to apply and bring people within the leave to enter and leave to remain system you passport them effectively and you confirm by law leave to remain if that is necessary on people who have permanent residence so they do not need to apply, they do not need a piece of paper necessarily to prove their residence and they are not here unlawfully. That would be a big step in the right direction but we are not seeing that suggested by the Home Office at all at the moment, as well as then trying to get to grips with simplifying processes and probably large-scale recruitment of civil servants as well.



Sarah Jones: We see it in things like Universal Credit. When you try to simplify a system you have huge complexities that are unintentional—

Colin Yeo: You can be overambitious in the way that you simplify things or you can adapt and simplify existing systems more incrementally and that might be a better way of doing things.

Ian Robinson: I think there have been some welcome efforts such as the online form for EU nationals. It is really good when you can use it. The work they are doing with local authorities is good too and that makes the European process much simpler. Colin is spot on when he says the Home Office is just about coping with the increase in EU applications, but again there are things they can do to help themselves such as, for instance, allow a person to apply for citizenship where they qualify without first needing permanent residence. That would just make everything an awful lot easier for people who want to become British. I worked at the Home Office and still have friends there so I have an idea of what is going on but it is still a black hole even for me, let alone people who do not have those friendships.

Everything needs to be transparent. I have so many companies who are just panicking because how would they operate after free movement if they cannot get lower skilled workers, if they cannot get skilled workers, if things become more expensive? If we were to bring in a worker today with four dependents for five years it would cost £16,000 in Government fees. Under the Conservative manifesto plans it would have gone up to around £31,000, almost doubling. They are worried about the cost and the time it will come in and they just need transparency. They need a very clear statement to say yes, workers will be able to come in but more than that, we will continue to allow people to take lower skilled jobs. They need some idea of how long those people will be able to stay and some idea of how long it will take and what it will cost because they cannot plan their business.

I have not heard of many businesses offshoring or moving work overseas because of access to labour and Brexit. But in some areas that is a real consideration and what they are already doing is moving their work into different countries where they know they will be able to get workers in future, and away from the UK. We are not seeing them upping sticks and moving completely but this death by a thousand cuts seems to be happening and bits and pieces keep getting chopped off and sent overseas, so it is just the uncertainty.

Q71 **Mr Christopher Chope:** Do you have any insights into the approach the EU is going to take in respect of UK citizens resident in the rest of Europe in the event of there being no deal? In other words, having a crunch point at the end of March 2019. What do you think the EU is going to do?

Ian Robinson: We know the EU's preference is to allow anybody resident at the point of cut-off, wherever that cut-off date is, to be awarded settled status or something akin to settled status. We also know



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that they want to be rather less hostile than the UK in terms of people who do not register so whereas the UK would consider them to be illegal immigrants the EU would find nudges to push them into registering their status.

In terms of the operations of it, it will differ from country to country but if you look at the Dutch, whereas we are a six month postal process the Dutch is an hour at your local authority. The Germans are pretty good. France is a horribly bureaucratic country but it would seem to be quicker than us as well. I have not brought it but I can if you like send the Committee a table we put together a little while ago in terms of processes around Europe. Broadly speaking we are not the worst, but we are not the best either.

Q72 Mr Christopher Chope: Would a UK citizen in those circumstances, resident in the European Union, have to present their passports and have them stamped in some way or would it all be an administrative process?

Ian Robinson: This comes with the caveat that anything is possible until the negotiations are completed but country by country I imagine there will be different processes and probably akin to those that exist already. The UK would like, I understand, for the provision of biometrics to be added but beyond that I do not see that the system will change greatly. I am sorry. I will forward you a table over.

Q73 Mr Christopher Chope: Thank you. Have you any insight into how it operates where the 12 EU countries currently under EU law require people to register with the authorities in those countries after they have been there for more than three months, which is what we could do here if we wanted to? How does that work in practice and do you think that would be maybe a measure that we could introduce administratively quite quickly in the UK before we get to Brexit?

Ian Robinson: All I could really say on that is we have offices in Frankfurt, Brussels and a few other European locations; I tend to hear when there are problems with how the system works because I tend to advise on how they might approach those problems. We never have problems with the post-entry registration systems. They are always a pain, frankly. Nobody particularly enjoys them but they tend to go quite well.

In terms of could it work for the UK, that is pretty much what is planned for the phase 2 transitional period after March 2019. The intention is if a person wants to come in from Europe they can do so without a visa. If they want to stay for a short period of time, fine. An extended period of time they would need to register their status after arriving. So, pretty much what is planned but what will be needed is once again a front-end digital process that is pretty document-light to allow those people to register. What will also be needed is a decent lead-in period so that people and businesses can plan how they go about that. It cannot be that on 29 March the policy is published and on 30 March it takes effect.



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Q74 Mr Christopher Chope: Surely we could say we are going to introduce such a system now and that if you have been here for more than three months you must register but you have until 29 March 2019 to do that registration. There is nothing to stop us doing it, is there? That would give us a heck of a lot more flexibility, would it not?

Ian Robinson: That is what is being proposed.

Q75 Mr Christopher Chope: But did I hear you say you could apply before, now, in anticipation of leaving? I thought you were saying you had to get—

Ian Robinson: The timeline would be from the cut-off date. Brexit would be the end of March 2019 but from September 2018 you will be able to register your status, whether that is settled status because you have accrued five years or a period of temporary status because you are not quite at five years yet. Then we get to March 2019. It will become mandatory over the course of the next two years to make one of those two applications.

During that period you will have a bunch of European people come and go. Some will stay for a few weeks, some for a few years. Those who stay for an extended period will have to pretty much do what you have described and register their status after arriving. What we do not know is what constitutes temporary and what constitutes an extended period. Nor do we know the process but the process ultimately, it would be impossible to deliver that unless it is online and unless it's document-light.

Colin Yeo: Can I just come back on the issue about the visas of UK citizens in the EU? This is something that we have not really seen a lot of material on. There has been a bit of a deafening silence from the UK Government on what the UK proposes will happen to UK citizens in the EU. We have seen a lot of material on what will happen to EU citizens who are in the UK but there are a lot of UK citizens who are in the EU, hundreds of thousands of them. If we do to EU citizens what the Government is currently proposing then that will also be done to UK citizens who are in the EU and essentially they will be treated as what we call third country nationals. It would be like being an American in France.

It is not about the EU doing something to those citizens or giving them a status because they will not get an EU status. They will get a French status or a German status or an Italian status or whatever it is, and then they will not be able to move between countries. They will be stuck with residency in whatever country they happen to be in, assuming that they qualify. Also the UK will have no power to ensure they are properly treated because they will be strictly subject to French, German or Italian law or wherever it is.

There will be no backstop court that is overseeing them. There will be no way of enforcing any agreements and if, for example, the Spanish



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Government went back on its agreement to give residency to UK citizens who were there, the UK Government could complain about it but there would be no way those citizens could enforce their rights because that is what the UK has been proposing will happen to EU citizens in this country. It would be good to see a bit more detail to the UK proposals on what would happen to its own citizens.

Mr Christopher Chope: Surely it is not just for the UK to make proposals. It is also for the EU to say what their proposals are.

Colin Yeo: It is the UK that is doing Brexit.

Mr Christopher Chope: The EU is saying that it is going to provide guarantees for UK citizens currently resident in the EU but it has not shown its cards on that at all.

Colin Yeo: The EU proposed that UK citizens in the EU would retain all their existing rights but the UK said we do not want that to happen because we are not going to let that happen to EU citizens in the UK. What we have not heard from the UK is some sort of counter offer. So the EU has come forward with an offer saying preserve existing rights for existing people and the UK has said, "No, we do not want that" but has not said what it wants to happen for UK citizens in the EU or what the system would be for ensuring their rights are properly protected and that is very disappointing.

Q76 **Stuart C. McDonald:** Before I begin, I should put on record that many years ago I sat as a solicitor with an organisation called Immigration Advisory Services with a very intelligent chap called Colin Yeo, not only providing expert legal advice but training and training materials at that time as well. But any confusion with immigration rules I subsequently display is entirely my fault and nothing to do with Colin

Can I just start, Mr Yeo? You referred to the fact that under the UK's current proposals EU citizens here would lose some rights and I think most of us here would think of some of the rights to bring members of the family here. Can you say a little bit about what change they would witness and what other rights might be affected by the UK proposals prevailing?

Colin Yeo: The biggest change is a really fundamental one. It is quite hard to understand if you are not a migrant yourself, I think. They will suddenly require permission to be there and that will have to be in the form of a piece of paper in a passport and they will have to show that to employers, landlords and so on in order to just live in this country where they do not at the moment. Because they will have to have permission that can be taken away from them in a way that it cannot very easily at the moment. That is a sense of insecurity and impermanence that does not seem to matter to a lot of people but it matters to people who experience it.



In terms of rights it is a bit easier for us to understand who are not subject to that. Family members is one of the big ones so at the moment, for example, if you are settled in the UK or even if you become a British citizen and your parents are not British citizens it is virtually impossible to bring them in under the current rules that were introduced in 2012. There are tests in EU law to bring in a dependent relative, as they are known, but they are really quite easy to meet, frankly. You have to show they are dependent or if they are an EU national themselves they can just come here and it's fine. But that will not be able to happen in future so the UK is cutting off the EU citizens who are in the UK from their families in the EU and they are stopping them from coming to the UK in future.

Q77 Stuart C. McDonald: Mr Robinson, can I just take you back a little bit? Earlier on you were talking about—and I totally get the point—sometimes in terms of the sphere of business immigration and so on things seem to be a wee bit more straightforward, objective. You can see the criteria and so on.

But that rosy picture is not always what I get when I go out and speak particularly to small and medium sized enterprises who try and engage with the non-EU immigration system because they say it is very complicated and very expensive, time-consuming, the whole thing grows arms and legs. So you find that SMEs in particular are much more reliant on recruitment from the EU instead of trying to engage in that sort of system you are talking about. Is that fair?

Ian Robinson: Yes, I think it is. When we talk about quality of decisions, whether quality means speed or success, the UK has a really good story to tell, better than most countries. But when you delve into the policy first, again, it is very expensive. I use the family of five for five years, £16,000, a heck of a lot of money. When you look at smaller businesses it also becomes very slow. So if I were a large multinational sponsoring for a period of time, I decided I need Danielle in three weeks, that is perfectly achievable. You are looking at a couple of days to compose the application, in five days it is considered and she can come over.

If I am a small business who has never sponsored anyone before it is probably going to take me a month or two to realise I need sponsorship. It is going to take me about a month to get the documents together and quite often incorrectly because the policy is quite complex. You are looking at four to 11 weeks for the application to be considered, then another four to six weeks to receive your certificate of sponsorship, whether restricted or unrestricted, and then five to 15 days for the visa. So, sponsoring for the first time it is a six month delay and that is when you lose the person. That is when you lose the business opportunity.

Q78 Stuart C. McDonald: Thank you. The final thing I just wanted to explore, anyone who wants to proffer a view on this, we have talked a lot about the complexity of any system that might be mooted for European citizens and obviously you could advocate something like free movement continuing or free movement with a couple of adjustments. What are



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your thoughts on that? Is that not the elephant in the room here?

That is the simplest way to go about trying to fix this and, if politically that is impossible, what would be the case if one part of the United Kingdom took a view that we want to see free movement of people carry on here because it is in our interests for that to happen? Given that EU nationals will not require a visa to turn up in the United Kingdom what would be the logistical challenges about making that happen if say Wales or Scotland or Northern Ireland wanted to take a different approach?

Ian Robinson: My final job in the Home Office was in charge of economic policy, so the area of law that I deal with now, and we often spoke to the Scottish Government about the prospect of more liberal immigration in Scotland. The challenges we always saw for any regional immigration system was how do you ensure the applicants stay in the country or the place they said they were going to? Frankly, you would need some sort of regime that would link their employment to living and working in Scotland. That would need to be enforced by employers because I am pretty sure the Home Office would not have enough people in Scotland to enforce it for them.

You would also need sanctions against those employers where they move away from it and sanctions against the individuals. It would be extremely complex because what happens when I send a worker from Edinburgh down to Reading to work for three weeks? How does that work? Do they need a visa almost to go and work on secondment in Reading? There would be all sorts of complications. Ultimately, frankly, it could happen and it could work. It is just about the political will being there to deal with and tolerate the problems that could occur. Honestly, an American worker or an Italian worker moving from Aberdeen down to Reading, it does not seem like it is the worst thing in the world that could happen as long as politically you are happy to accept that and have systems in place to police it as far as it is possible.

Q79 **Stuart C. McDonald:** Ms Cohen, Colin, do you have any thoughts?

Colin Yeo: We have those sanctions in place already with the hostile environment and it does potentially open up the possibility of regional immigration policies because already employment is linked to a particular employer and realistically you are not going to be able to move around the UK other than on your weekends or on holiday if your employment is tied to a specific job in a specific building, which employment visas often are at the moment.

Yes, some people might leave their work and enter the black market or something like that but we have enforcement policies that deal with that and the hostile environment policies potentially deal with that. I have all sorts of problems with the way the hostile environment works but if it is here to stay then it would potentially be a way of implementing regional immigration.

Q80 **Stuart C. McDonald:** The point I am getting at is if somebody wanted to



work illegally or go into the black market in, say, England, for example, they just fly into Gatwick, say, "I am here to visit the auntie" and head off. It's not as if they have to use Scotland or Northern Ireland or wherever else's back door. The front door is already open.

Ian Robinson: I think it would take a lot of people to be so desperate as to travel and work illegally in England when they could live legally and work in Scotland or wherever, particularly if they are Europeans and have the entire European continent where they could live legally.

Q81 **Chair:** Thank you. We are very grateful for your time, for your long evidence session today. The focus of this evidence session and consideration at the moment is very much what needs to be done in the short term around implementation.

We would be very grateful, however, if you had any further thoughts that you were able to give us, first, around what the longer-term rules might need to be and what the consequences would be in terms of practicalities for the long-term proposals once the transitional period is through and what the replacement—Mr Robinson, as you referred to at the beginning—might be put forward around free movement, what adjustments, as Mr McDonald was raising.

Secondly, also we are interested as well in the wider issues around some of the backlog of asylum cases and what the reasons might be for the increase in asylum cases, given part of our concern would be any change to the rules, whether it then has a knock-on impact on other parts of the system in terms of resources.

Can I ask you just one brief final question? If there is no deal in terms of what contingency planning might need to be in place, what would you say the Home Office would need to be thinking about to have in place for March 2019 if there was no deal?

Colin Yeo: Two things: first, a law would be necessary to be passed that says that people who would otherwise be illegal are not. So there would have to be something that converted by operation of law automatically, without a piece of paper in each passport, all EU citizens who are in the UK or according some criteria anyway to leave to enter or remain status.

Secondly, you would have to very quickly increase your capacity to deal with conventional immigration from future travelling EU citizens who no doubt would be somewhat put off from coming to the UK anyway in the event of no deal so we might well anticipate lower immigration from the EU than is currently the case. But nevertheless the needs of business are not going to disappear. There would be some need for entry of EU citizens. We would probably have to quite quickly implement things like sector-based schemes for agriculture, food processing and those difficult manual labour jobs.

Danielle Cohen: The most radical approach is claiming amnesty, as the Home Office usually has when there is a big backlog. So, in a crazy world you can say anybody who has been here before the date of the



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referendum can stay and we will review the ones that come after on a case by case basis according to the rules. The Home Office is very good in dealing with backlogs by giving a blanket permission for people to stay and that can be one of the solutions.

Ian Robinson: You need a basis on which people can come and a basis on which people can stay. If you were to apply everything that exists already in the immigration rules, if you were to then apply permanent residence rules that would be a car crash. It is far too complicated so just assume that everyone is allowed to stay.

If you were to apply a points-based system to people who want to enter then that is all well and good. I doubt many people would want to enter under those terms but for a start you would need to give effect to Tier 3, have low-skilled workers remembering, of course, that Tier 3 is two words and there is no more to it. You would need policy behind it.

We founded and chair the Strategic Migration Forum, which is 45 of the biggest business groups in the country coming together to work out what their combined message is on immigration and business. If it is helpful for a few Committee members to talk to them about no deal but also a deal and what happens I would be happy to set up a session. It is a useful group.

Colin Yeo: Just one final thing; I mentioned sector-based systems and it makes me feel uncomfortable sounding like I am proposing them because there are real problems with sector-based systems. That would be the obvious short-term solution. The problem with sector-based systems is where your employment is specifically tied to a particular job then that very much gives the upper hand to the employer and at the moment farmers complain under free movement rules if you do not like it on one farm you can just move on to the next one. That is very empowering for the individuals concerned and if that right of free movement is taken away and instead you are tied to a specific job for which you entered the UK then it is a recipe for exploitation.

Ian Robinson: The easiest way to deal with low skilled work—and they do it in Australia, Canada and most countries—is youth mobility. Allow people to come in for a period of time, do what they want but if they happen to work on farms or in care homes or wherever you have shortages they can extend and stay for longer. Just nudge people in that direction.

Chair: Thanks very much. Any further thoughts that you have on what the longer-term proposals should be will be very gratefully received in written evidence. Can I thank you very much for your evidence? This has been a helpful session.



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