

Select Committee on the European Union

Corrected oral evidence Brexit: Deal or No Deal

Tuesday 7 November 2017

4.05 pm

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Members present: Lord Jay of Ewelme (The Chairman); Baroness Armstrong of Hill Top; Baroness Brown of Cambridge; Lord Crisp; Lord Cromwell; Earl of Kinnoull; Lord Liddle; Lord Teverson; Lord Whitty; Baroness Wilcox.

Evidence Session No. 5

Heard in Public

Questions 41 - 50

Witnesses

[I](#): Mr John Foster, Director of Campaigns, CBI; Mr Owen Tudor, Head of European Union and International Relations, TUC.



Examination of witnesses

Mr John Foster and Mr Owen Tudor.

Q41 **The Chairman:** Welcome to you both. We are very glad to have you here. The session will be recorded and we will send you a transcript afterwards. We also have a photographer here, who is taking photographs to show a Committee hard at work, so perhaps you could look earnest and committed when the camera is pointed at you.

Owen Tudor: Do you want us to sweat?

The Chairman: You have got the message.

We are grateful to you for coming to give evidence to us as we come to the end of gathering evidence on our report on no deal and on transitional arrangements, which is the alternative to no deal. We had evidence last week from David Davis, which you may have seen. He talked about both sides of that deal. Perhaps I can start by asking whether you think that the Prime Minister's Florence speech and announcements that have been made since then have provided any clarity on the Government's approach to the Brexit negotiations. If so, what sort of clarity do you think you now have about them.

John Foster: Thank you for inviting us to give evidence today. From a business perspective, we saw three things from the Florence speech that have helped to break some of the logjam in the negotiations. First, there was the tone. A message that we received from our European sister federations, and indeed the negotiators, was the need to make sure that the tone was focused on shared practice, shared vision and a conciliatory, emollient partnership of values. We certainly saw that in the Florence speech, which was a welcome breakthrough.

Secondly, there is a clear message from Europe that we cannot move negotiations on to discuss transition, which is what is critical to business, until we have made sufficient progress on the financial settlement. The Prime Minister's acceptance that the UK will honour its obligations during the current EU budget period represented a good step forward on that.

Finally, and most importantly, there was a need for the Government to acknowledge that hard choices and compromises will have to be made in order to ensure that the economics is put at the forefront of the negotiations. We saw that principally through the Government's commitment to a status quo transition, acknowledging that there can be no cherry-picking, that the freedoms, rules and jurisdiction of the ECJ must apply and that the UK will not be able to strike trade deals during that interim period. I think we saw good progress on those three things.

However, there has been some confusion, particularly on the issue of transition and some of the Prime Minister's comments about the need to have agreed a trade deal in advance and a transition by the end of 2018. That has certainly caused business concern. The Prime Minister took a



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welcome step forward yesterday at the CBI conference, at which Owen and Frances were also present, when she reiterated the Government's position for a status quo transition and the need for it to be secured as quickly as possible. So we have seen progress even in the last day.

Owen Tudor: I echo almost exactly what John has said about the positives that came out of the speech. As he ran through them, I thought that I would have to put a "but" at the end, but he gave the "but" as well. My mood of euphoria evaporated 24 hours after the speech was given, as the uncertainties began to add up and as people apparently started to detach themselves from the positions that the Prime Minister had set out, in particular about being bound by the status quo nature of the transitional period and about negotiations on trade deals and so on. I am still slightly confused as to exactly what is on the table. I absolutely agree about the tone, which can only be done by a speech. One of the reasons why the European Union's negotiators said that they wanted to see stuff on paper was to ensure that exactly what is being committed to is written down. Without that, the clarity that appeared to come out of the speech, which I think was genuinely helpful in moving the discussion on, is slightly undermined; there is a lack of rigour in the commitments that are being made.

John Foster: I wholeheartedly agree. One of the messages that we are taking to the Government is the need to put down on paper what they want to pursue in transition. We saw the benefits of that over the summer with the future relationship papers on things such as Northern Ireland, customs and data in particular, where there is a clear negotiating position. By putting something down on paper, you remove the ambiguity from the European side about whether the UK Government are prepared to accept those hard choices that I mentioned.

The Chairman: If you look ahead over the next 18 months to two years, can you map out to yourselves the sequence of events?

Owen Tudor: I can map out a sequence of events for myself, but I have no certainty that it will be followed. I suspect that everyone has their own map of events running forward. In some ways, I am not entirely certain that that is surprising. It is a negotiation. Trade unions and employers have lots of experience of negotiations. We would love them to go to plan, but they never do. Without wishing to repeat some of the more unfortunate language that has been used in recent months, nobody's plan survives first contact with the enemy—not that there is an enemy, obviously, in this area. It is difficult to map that out and sometimes it is unhelpful to set timetables in that way, as that means that the clock is ticking, which almost certainly advantages one party rather than another.

John Foster: It is certainly difficult to predict, but I can tell you what would be helpful for business. Owen mentioned the ticking clock. There is unquestionably a ticking clock to the Article 50 deadline. There is also a ticking clock for every individual business about when they need to take decisions to implement their contingency plans. Our members are



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increasing the amount of scenario planning that they do. We recently conducted a survey with our members—it was released on Monday—relating to contingency planning: 10% of those members surveyed have already started to implement their contingency plans.

The Chairman: Not just make them, but implement them.

John Foster: Implement them, yes.

The Chairman: They are doing things now that they would not have done had we not been where we were after the referendum.

John Foster: Absolutely, yes. Before I give a bit more detail, I should add that one of the messages that we heard back in Q3 was that businesses were looking to put off those plans as far as possible. It has been a consistent message since the referendum: businesses are desperately trying to push back to that point when they finally need to make those decisions. That is increasingly coming upon them, so 10% have already implemented their plans, 25% will do so by January if they do not get clarity on transition and a further 25% will do so by March if they do not get clarity on transition.

The Chairman: So that is 10 plus 25 plus 25.

John Foster: So 60% in total, if my maths is correct, by March 2018, without clarity about the transition.

Lord Cromwell: In the plans that they have, are they exclusively withholding investment or are they actually making alternative investments for a new world?

John Foster: That is a really good question. Since the referendum, we have seen businesses' investment decisions being negatively impacted. We conducted a survey in the summer which found that 40% of business investment decisions have been negatively impacted. When we ran the survey fairly recently, we found the figure to be 36%. We have seen investment decisions being put off for larger businesses—that is, investment in capital; investment in training and innovation has tended to continue. For smaller businesses, it is more about the uncertainty and pressure of currency fluctuations, which have had a bigger impact on things like recruitment and retention.

There are what I would describe as a sliding scale of contingency plans that are made up of a mixture of commitment, investment and momentum. We put six different types of contingency planning among the scenarios to our members. They range from things like supply-chain adjustments. I do not want to use the phrase "most popular", but that is the most popular element of that contingency planning. Then there is hedging currency, moving jobs, price increases, relocating production centres and moving HQs. That is the sliding scale, if you will. Moving HQs is the last resort.



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Lord Cromwell: What percentage of people are physically moving their HQ already?

John Foster: I do not have a percentage figure of those who have already done it. Some 10% of our members who have started to do their contingency planning have factored in a movement of their HQ unless, of course, we get the transition in time to stop them doing so.

Owen Tudor: It really is not just about investment decisions. As John says, there are all sorts of decisions here. To be honest, when we survey our members we have a rather more broad-brush way with the sums. We ask people: what is happening in your workplace? However, we would not say that it was necessarily as scientifically rigorous. They are not reporting that often about investment decisions, partly because, although John's members are obviously lovely people, they quite often do not discuss their investment plans with our representatives. However, what our representatives are seeing is all sorts of changes being made now as well as planning for the future, in particular on things such as wages, where people are recruiting from and how they are recruiting, as well as on what terms and whether it is temporary or permanent recruitment. We have seen a shoot-up in the number of people taking on staff temporarily because they are not entirely certain how long they are going to want them for. One of the key things coming across to us from our representatives is uncertainty. It would be nice in some cases for the business they work in to have a plan. What their business's plan is at the moment is this: "Don't do anything because we are uncertain about what is going to happen next".

The Chairman: Is the making of contingency plans sector-specific in any way? Do you have a sense of which sectors think that it is more important than others, or is everyone doing it?

John Foster: There is an element of it being sector-specific. Obviously financial services are much further down the track than many others. It tends to be those sectors which would need to make significant changes either to infrastructure or systems. It is also for those sectors that are involved in the just-in-time supply chain. They include pharmaceuticals, automotive, aerospace and retail. Those are the sectors where these plans are most advanced. Small businesses, naturally, are finding it incredibly difficult to plan. There is a huge amount of confusion, and it is certainly an area where the CBI is going to be providing a lot more support going forward. We are asking how we can support our small and medium-size members with any scenario planning that they are going to be doing.

Owen Tudor: From our point of view, it really is about what sort of business you are in. In the auto industry, we have already seen a massive reduction in the amount of investment in capital, as you would expect. That is one of the reasons why there are fewer people working in the auto industry than there were 20 years ago, even though more cars are being produced. It is precisely because the money has been put into



capital rather than into labour. Those parts of the economy that rely more on labour are taking decisions about their labour costs rather than their capital costs.

Q42 Lord Whitty: You are telling us that quite a lot of clocks are ticking quite loudly. What is your judgment, and that of your members, about the likelihood of reaching a substantive agreement within the timetable? What are the obvious or less obvious stumbling blocks to reaching an agreement both on the withdrawal issues and on a longer-term agreement?

Owen Tudor: There are lots of little stumbling blocks, but the two major ones are, first, in grand terms, the number of red lines that have been put down about what is not allowed to happen and what will not be done. I accept that if you go into negotiations you probably have red lines in the back of your mind and you have objectives which you are willing to set out, but drawing a number of red lines before you go into negotiations is unhelpful and has not been a good move. I am particularly thinking about insisting on not being members of the single market or the customs union, and coming out of the jurisdiction of the European Court of Justice as two of the main ones.

A second stumbling block is Ireland and Northern Ireland. That is an enormous stumbling block at the moment. We have certainly not yet had explained to us a solution that works. It is not that we do not think that agreement has been reached on how to deal with the issue, but we have not seen any proposals that actually work. Probably it is the case—we made this submission to a Select Committee in another place—that the solution which really works for the border between Ireland and Northern Ireland is staying in the customs union and the single market, but if that has been ruled out, we do not see what the alternative is. We think that there are enormous problems with the common travel area. What are the implications around what would be necessary to meet the Government's proposals on that?

There is an even broader concern about stumbling blocks which from the TUC's point of view affect both the UK Government and the remaining 27 EU member states. I do not think that much of the discussion about the future relationship or the withdrawal arrangements actually focuses on the problems that led to the referendum result being what it was. There are obviously lots of theories about why the referendum turned out as it did. We would emphasise the problems that people were experiencing in terms of lack of wage growth and lack of public services. There have been all sorts of problems in those areas, but obviously they account for only some of the people who voted to leave. I do not think that anybody on the UK side is addressing those problems, and I do not think that the European Union is addressing the similar sorts of problems that are present to varying extents across Europe. Until Governments on both sides of the Channel start addressing them, we will not get a resolution to the problems of Brexit.



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John Foster: In the first phase of the withdrawal negotiations, we obviously know that there are three issues that we need to achieve sufficient progress on: the financial settlement, citizens and Northern Ireland. On citizens, to give the Government credit, they have made good progress. After the fourth round of negotiations, the CBI and the TUC issued a joint statement calling on the Government to bring an end to what we called the human poker game and to issue a unilateral offer that provides a backstop that gives a guarantee that, in the event of no deal, that uncertainty is removed. For the financial sector, this feels like it remains potentially the biggest stumbling block from the first phase of the negotiations.

Looking at the transition and the shape of the future economic relationship, Owen is right to refer to lots of stumbling blocks. If I were to try to summarise them in two words, they would be form and timing.

I mentioned earlier the transition and the Government accepting the need for hard choices. If the form of the transition deviates in any way from the status quo, if there are any exceptions that they try to pick apart, that could be when it all falls down, both from the European side and for business, if it creates additional barriers to trade.

Secondly, in terms of timing, there is clearly a difference of interpretation about what the final trade deal might look like before the Article 50 period finishes. Obviously, the Prime Minister has indicated that the UK Government are seeking full agreement for a trade deal before the 29 March deadline, whereas when you look at some of the comments that Michael Barnier has made, he sees the future economic relationship as being based on a negotiation that takes a number of years, going past that Article 50 deadline. So the form and timing feel to me like the two biggest stumbling blocks going forward.

Lord Teverson: One of the things that is often described as a stumbling block is that the British Government do not know what they want and the EU does not know what the British Government want. Is there any truth in that?

John Foster: One of the messages that we certainly receive consistently, both from the CBI's sister federations and from our interaction with EU officials, is that the Government need to be absolutely clear about what they are seeking. It does not help if you have different voices giving conflicting messages. That is why it was incredibly important that the Prime Minister was able to stand up at the CBI conference yesterday and say, "This is what we are seeking". I think Owen and I both agree that the next step would be to put it down on paper—that is how the Europeans can then see that we are serious about some of the hard choices that I talked about earlier.

Owen Tudor: On the other hand, we are back to the idea that they have put down too many red lines. Yes, say what you want, but recognise that you may need to be flexible about some of those issues. I agree with



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John that one of the important things is that we need to be clear with people about what the compromises and trade-offs might have to be in these situations. It would help enormously if the Government were clearer about what they wanted. There is a sense in which, for the rest of Europe, it would also be better if the whole British people were clearer about what they wanted. I have some small bit of sympathy for the Government in terms of not being certain about what they want, because in part they are reflecting a population that does not know exactly what it wants. That is part of the problem that we had before the referendum about having a proper discussion on what it was that people wanted.

Lord Whitty: Like Owen, I have been somewhat critical of the negative negotiating techniques of the British side, in terms of discarding options and declaring red lines far too early. But is there not something quite seriously wrong with the EU's negotiating structure, in that the elements of the withdrawal package are not actually objectively soluble until you know where you are going? You mentioned Northern Ireland, and it is true that you will not have the final figure on the budget until you know where you are going. To some extent, even on citizens' rights, where the differences are much clearer and more progress has been made, the issue of the ECJ has to be resolved before you can get a final agreement on that. Is the very nature of the two-stage structure a big stumbling block and, if so, how do you overcome it?

John Foster: Briefly, you have touched on a really interesting point around this definition of sufficient progress, which is clearly subjective. But you have seen that the European side and the UK Government have had some success, particularly around Northern Ireland, in terms of being able to convince the European side that you do not need to try to solve the entire Northern Ireland issue in phase 1. You cannot solve that very difficult and crucial question until you know more about what the future trading relationship will look like—for example, with customs, to which Owen alluded earlier. In terms of how the Europeans approach it, they see it in very legalistic terms. In the discussions that we have had with the Europeans, they believe that you can only move on to discuss transition and the future economic relationship, which they see as the real prize, when you have principally sorted out citizens and the financial settlement. They believe, on their negotiating side, that if they were to slacken off, that would effectively weaken their negotiating hand. You are right that it is potentially a significant stumbling block, but it is how the European side have been able to approach the negotiations.

Owen Tudor: It should be remembered that this is a two-stage process which the UK Government agreed to—in my view, and I suspect most other people's, rather surprisingly quickly. I thought it would hold up the opening negotiations for longer than a day, although there is a certain sense in folding quickly if you think you are not going to get anywhere. A lot of it comes down to the 'sufficient progress' issue. It would indeed have been an enormous stumbling block if the European Union had decided that it wanted to resolve these problems before moving on to the



next stage. So there is that subjective issue of 'sufficient progress', and in some ways it is good to have the possibility of making a judgment call rather than having to pin yourself to a firm timetable. We think it was wrong of the European Union as well not to make a unilateral offer on the right to remain; the European Trade Union Confederation has said the same thing to the European Union as we have said to the British Government, as have the European Trade Union Confederation's national members in each individual country to their Governments. Obviously there is a slight uncertainty about how you can exactly make the offer on the other side in terms of the right to remain, whereas it is clearer on our side, but that certainly ought to have been done.

I hold absolutely no brief for the legal profession until the Law Society affiliates, but it is important to note by the way that it is not necessarily right to say the European Union is legalistic. The point has been made that it is a union of law as opposed to a union of economy or union of politics and so on, and there are some difficulties in how far you can get round that by some clever wording and fancy footwork, which I think is going to be problematic at some stage as well. All sides may be able to agree on what the best option is but may then spend a large amount of time and probably money trying to work out how that can be squared with the treaty and legal requirements.

The Chairman: We are going to try to finish the session by about 5.10 pm. Baroness Armstrong.

Q43 **Baroness Armstrong of Hill Top:** I want to come back to the issue of no deal and what you think the implications would be, positively or negatively of that.

John Foster: I am happy to begin. Positives are very difficult to come by, and I do not say that flippantly. I should begin by saying that no deal is not an option that the CBI or our membership advocates in any way, but the one positive would be that it is decisive and quick. You are talking about a very complex relationship over 40 years, so no deal would provide a very definitive stop-off point. However, there would be serious economic consequences across all sectors, based on five points. The first is, as I mentioned, the uncertainty for those 4 million UK citizens in the EU.

Secondly, it would lead to an increase in costs for businesses and consumers alike—the UK would face tariffs on 90% of our EU goods exports by value. The CBI has done some analysis based on WTO most-favoured nation terms saying that it equates to an average tariff of 4%, which is about £4.5 billion to £6 billion-worth of increased costs per year on our exports. So there is a significant impact on competitiveness. Thirdly, we would see disruption at our ports and airports as a result of the reams of paperwork that we would acquire from non-tariff barriers. Around 130,000 traders would have to fill out customs declarations for the first time. Our ports process 55 million customs declarations a year—that would increase to 255 million. The Port of Dover is a member of the



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CBI, and says that every two-minute delay to process a lorry would result in 17 miles of tailbacks. So the consequences are significant.

The fourth is confusion over everything from contracts to chemicals regulation. The EU withdrawal Bill seeks to enshrine EU regulations into UK law, but what it does not do is provide for reciprocal recognition. Just to give a practical example, the Vehicle Certification Agency allows automotive companies to sell their vehicles across the European Union. In the event of no deal, that simultaneous licensing will disappear. Finally, we would see some significant chaos around cross-border services. The UK economy is comprised of 80% services and there is no WTO fallback. Some of our most successful exporting industries and services—financial services, aviation, broadcasting, professional and legal services—would find that there are serious legal implications in terms of their ability to conduct their business after 29 March.

Owen Tudor: I agree with all those points and would add to that the need to think about the human cost of what John has outlined: what it is going to mean for EU citizens in the UK and UK citizens living abroad; what it will mean for people's jobs, livelihoods and so on. The main problem is that I cannot entirely envisage what no deal means. There is a bigger argument to be had about whether it is, as it has been described, a chaotic no deal where everything stops or whether it means at some point you decide that you will negotiate a series of mini-agreements to deal with particular things, which for most people would constitute a deal. It is difficult to work out what no deal actually means, except that we have been here before. I am not being apocalyptic, but if the continent was cut off because of a world war, that provides a sort of no deal option, but obviously is not the sort of thing that we would be terribly keen on.

Baroness Armstrong of Hill Top: David Davis has talked about a bare-bones deal, which I think is also more what you are talking about. You come to a very low-level agreement within the timescale and then have the transition to negotiate the detail—whether we can fly, we can travel and so on—and the negotiations around how goods can travel. Has any real thought been given to that in business?

John Foster: Owen is absolutely right: that is a deal, it is just a very bad deal. It is also difficult to identify a set of political circumstances where decisions are taken that allow the UK to remain in the single aviation market and the single electricity market so that the lights stay on in Northern Ireland, but then no transition is agreed. I struggle to see how the jigsaw puzzle comes together where you have a set of four or five bare-bones deals but not a transition.

Owen Tudor: That is one reason why no one has done much on what it would entail, because it is extremely difficult to work out. Also, if you were going to go for some sort of bare-bones deal, that itself would take some time to negotiate, so at what point do you make the decision to go for such a deal given that the clock will still be ticking? I am uncertain that even a bare-bones deal could be negotiated by March 2019. As we



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move into the process, it will become less and less possible to do so by March 2019, and thus it becomes less and less possible to do anything without a transition arrangement.

John Foster: It also has to go to the European Parliament for approval by October. A scenario where a bare-bones deal is agreed in October without a transition does not feel like a likely option.

Baroness Armstrong of Hill Top: Do you get a feeling about how the 27 are thinking about the timetable and what can be achieved before March 2019?

John Foster: There is a good amount of agreement about what can be agreed regarding the transition, particularly by March 2018. As I mentioned, there is a clear difference of interpretation about what can be achieved in a future economic relationship. The point we would make is that if both sides can come together with a shared vision of what the future economic relationship might look like, that certainly would expedite the process and make it much easier. So even if by the end of March 2019 there is a heads of terms agreement for what the future economic relationship would look like, that in itself would be helpful for business alongside a schedule of how the talks might progress going forward. That would be the most likely way to get an alignment at the moment.

Owen Tudor: We get the distinct impression that the rest of Europe wants a deal. They are very clear. I think that Monsieur Barnier has occasionally said something about it, but there is not much talk about no deal being an option from the European side. The problem that I would raise, however, is that the heads of agreement argument works only if you are going to get a bespoke agreement. Because the EU is a union of laws, it will resist that quite strongly, not only because of the union of laws but because of the agreement with Switzerland. The Europeans have experience of what a bespoke deal looks like and they are really uncomfortable about it.

Lord Liddle: Presumably the most likely scenario for no deal is if the British Government and the European Union cannot agree on the money by Christmas. If there is no settlement on the money, the political pressure here might be to say, "Well, we have no legal obligation to pay, so we might as well walk away from this". The question is: what would happen then? You may dismiss that as completely stupid, but it must be regarded as a possibility—much as I do not want it.

Owen Tudor: Obviously, some progress has been made on the issue of money, so it is difficult to discount that entirely. I do not think that the European Union is likely to say in December that so little progress has been made from its side that it does not want to continue just because of the money. There is a question about the UK Government, but I am not sure what would be in it for them if they removed themselves from the table at that point when at the moment they have a fairly strong



negotiating line. The amounts of money being talked about compared with the effect on the economy of something on that scale would be a strange trade-off. You might save £40 billion or something, but potentially you would impose far more than that on the British economy. It is difficult to see how a Government would make that assessment.

John Foster: We discussed earlier how the subjective nature of sufficient progress can be seen in effect to move the goalposts. It also allows for flexibility. I think that there is now little expectation that in December we will get a set figure for what the bill would look like. It will be more of a mutual agreement. I agree with Owen's sensible assessment.

Owen Tudor: But we may be being markedly optimistic, and you are right to say that things could go wrong. My ability to predict the future has taken a knock over the past couple of years. I do not know about other people.

Q44 **The Earl of Kinnoull:** I want to come back briefly to jobs activity relocating away from the UK. I have two brief questions. First, where is this activity going to? Do we have any details on that? Secondly, you have helpfully described the relocation process as having three phases. The first is the raw planning phase involving bits of paper. There was an enabling works phase where you open a subsidiary and relocate some staff who do not actually do anything. Then there is the phase of actually moving the activity. It would be helpful to be clear about what the windows are for each of those phases. I suspect that we are through the planning phase already, so can we have some idea of the timing hurdles involved?

John Foster: Yes, of course. It may help to describe it almost as a contingency curve. We know that 57% of our members have done some kind of scenario planning for what their contingency plans might look like. I mentioned earlier that 10% of those have already put those plans into place. They are predominantly financial services firms, but they are also some of the other sectors that I mentioned earlier.

On the question of where jobs are going, we have one FS member that is already, for example, supporting its employees to find school places in Frankfurt. In that list of six different contingency measures that I outlined earlier, with supply-chain adjustments being the number one action that businesses are taking, 27% are moving jobs or are considering moving jobs. There is a variation across sectors. In manufacturing, for example, we have seen members deciding to relocate production units to Poland because of its access to the European market.

The Earl of Kinnoull: That is very helpful, thank you, but I am trying to get at this: if we have not produced a vision by next summer, say, will people move to the third of the phases that I have described? What is the date by which we need to have done a few things, otherwise the real damage is going to start happening?



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John Foster: As I outlined at the beginning, for 25% of firms that date is December. For another 25% of firms it is March 2018. If I had to put a single date on it, that would be the critical moment when, if businesses do not have certainty, particularly on the transition, you will start to see plans being put into practice—going from investment to momentum on those three points that I mentioned earlier. I hope that answers your question.

Owen Tudor: It is not just about investment decisions or the relocation of jobs. There is no fixed number of jobs or a fixed level of economic activity. Some of this stuff might just stop.

Another of our concerns is that it is not just about the number of jobs involved but about the quality of jobs and the remuneration for them. We are picking up from our representatives—convenors in large companies, mostly—that those terms and conditions are already being affected by this uncertainty, so people are already seeing their jobs degraded in that sense. Another concern about timing is that hopefully the European Union (Withdrawal) Bill will do something to ensure that rights across workplaces as a whole will be preserved, but if we get into a no deal discussion I am not certain that that will hold, so we might see job quality dropping across the economy as a whole in response to that.

John Foster: Cost pressures are a particularly big issue for small and medium-sized businesses. A textile firm told us that it had intended to provide pay increases for its staff, but because of currency fluctuations it was going to find it very difficult to do so. It wants to, but the uncertainty is having a significant impact on its business.

Baroness Brown of Cambridge: You are stressing the problems caused by the uncertainty. I am feeling a bit confused. If there is, say, a two-year transition period and at the beginning of that transition period you do not know what the deal will look like at the end of it, is that not just prolonging the uncertainty by another two years? Actually, that is no help to companies that are trying to make investment decisions and so on, is it?

John Foster: The purpose of a transition is twofold. First, it is to avoid the cliff edge that we have been speaking about, particularly for larger businesses. But it also has a second purpose, which is an implementation period, an adaptation period, which is particularly critical for smaller businesses. You are absolutely right that a transition is at its most valuable as a bridge when you know where you want to get to. Nonetheless, it relieves the uncertainty about having a quite severe cliff edge, as in some of the examples we gave, such as services.

Owen Tudor: There is a certain amount of road on which Road Runner can carry on running over the edge of the cliff before that sudden drop. In some cases, business planning is not necessarily over a timeframe that is quite as long as until March 2019 plus a transitional period, so there are things that can carry on in that timeframe. The other thing is that



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because it would lock off that cliff edge in March 2019 in people's planning, they would know that they had at least that long to deal with a set of rules that they clearly understand at the moment, and that would give them short-term certainty, even if long-term certainty is still an issue.

John Foster: A status quo transition would require businesses to make only one set of adjustments. They cannot afford to transition to a transition, if that makes sense. That is why the status quo is so critical.

Q45 **Lord Crisp:** I will start with a point of information. Mr Foster, I found your percentages of firms doing this, that and the other very interesting. How much of the economy do your members represent?

John Foster: The membership survey is of 306 members. It is the regular survey panel that we use for things like our industrial trends, distributional trends and growth indicators. Obviously, it is weighted according to the CBI membership.

Lord Crisp: What I am getting at is this: how big is the CBI membership compared to the whole economy? If 25% of your people are doing this, what do we know about the economy as a whole?

John Foster: The survey figure is 306 members. There is an element of imbalance between some of the sectors, but our surveys are normally taken as a fairly good indication of what is going on in the economy. I am happy to write to the Committee with a breakdown.

Lord Crisp: How much of the economy does your membership represent?

John Foster: In total, we have 190,000 members with about 7 million employees, which is between a quarter and a third of private sector employment.

Lord Crisp: Thank you. That is what I wanted. We have talked about businesses doing contingency planning. What about Governments? What is your assessment of whether the UK Government are doing enough contingency planning? Also, do you think the Europeans are doing enough contingency planning?

John Foster: From the government perspective, we recognise that it is a sensitive issue, in the same way that only 87% of our members have had a conversation about Brexit at board level. We would say that that means that 13% need to pull their socks up and get a move on. The Government have taken steps, but we think there are some more practical steps that they can take. In the Budget submission that we sent off to the Treasury recently, we outlined four key practical steps that we think the Government could take. The first is simply to publish a review of current government capabilities. The second is to identify which departments and bodies require further investment. The third is to begin to work with those departments and arm's-length bodies to invest in the



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communication that is going to be needed to work with business. Finally, the fourth is that they should set up a one-stop-shop—a hotline, or whatever it might be—so that businesses have a single point of contact for taking questions to government.

On the European side, it is a mixed picture across the 27 as to how far they are with their contingency planning. We know that the Benelux countries, for example, are particularly well advanced. The Belgians and the Dutch, working with their Governments, have set up cross-sector analyses. We know, for example, that Rotterdam might need to hire 600 extra staff to deal with the customs burdens that I mentioned. It is a bit of a mixed bag, but the Benelux countries are probably slightly further on than some of the other member states are.

Owen Tudor: First, on the question of contingency planning, the main effort the Government ought to be putting their mind to is not planning for no deal but trying to plan for a deal and to secure the agreement with the European Union on the deal that is needed.

Secondly, like the CBI, we have used the opportunity of our submission to the Chancellor to argue that the other area of contingency planning that the Government really need to give attention to is making the economy Brexit-ready. In some ways, even for a good deal there are still a number of things to be done to make sure that the economy functions well. Many of the problems of the economy predate the referendum, and need to be addressed. If we do not address them, we will be in an even worse position. So there are things about infrastructure, spending money on hospitals and doing something about wage levels, especially in the public sector.

On your question about what other European countries are doing, we do not have an enormous amount of information on that. However, one thing that has struck us recently is that at least two trade unions have informed us of the establishment of tripartite working groups to look at the effect of Brexit on their economies and what should be done. It is slightly embarrassing that the Czech and Norwegian Governments—Norway is not even in the EU—have set up tripartite arrangements to look at the problems that will need to be addressed and our own Government have not.

Lord Crisp: I meant to ask about contingencies specifically in the case of no deal. Are there specific things that you think the Government should be doing that they are not doing at the moment?

Owen Tudor: That is my concern: they ought to be making sure that they do not get into a no-deal situation.

Lord Crisp: Not car parking over Kent.

Owen Tudor: I am not sure that would send the right signals to anyone.

John Foster: I am not going to affirm that one here.



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The Chairman: We now come on to questions about the transition arrangements. We have morphed from no deal to the transition arrangements—inevitably, I think, because that is the way the conversation goes.

Q46 Baroness Wilcox: Is a transition arrangement a necessary component of any lasting agreement, and, if so, why?

John Foster: Yes. I mentioned earlier that the value of the transition is twofold: to avoid the cliff edge and to have a trading arrangement as an implementation period. Free trade agreements have implementation periods. That is a fundamental, consistent part. Take the GDPR, which was agreed in April 2016 and came into force in May 2016. We are currently half way through a two-year implementation period. It is normal practice with free trade or trading agreements and regulatory agreements for there to be a period of implementation.

Owen Tudor: We have also said that we simply do not see a way of reaching the sorts of decisions that need to be reached with our European partners by March 2019, so we need some form of transitional arrangement as a way to provide extra time to reach that deal.

The Chairman: How much certainty do you need about what a transition would involve, say by March next year?

John Foster: A lot depends on what the future economic relationship will look like and how much detail we have on that. If we have very little detail, the value of the transition is in avoiding that cliff edge. If we have a heads of terms agreement, which would obviously have a schedule of talks, businesses can start to plan. If we have a detailed assessment of what the future economic relationship will look like, businesses can start practically to implement some of the plans for that relationship. It is dependent on what post 2019 looks like.

Owen Tudor: Our view is slightly different in that we think it is pretty important, pretty quickly. One reading is that it was already set out in the Florence speech that the transition period will operate the existing rules of membership of the European Union and that that is the critical issue that needs to be settled. In our view, with all fingers crossed, it has already been settled. That is what the Prime Minister has set out, and it is the critical thing that needs to be delivered in a transitional arrangement.

The problem is the uncertainty about whether that is exactly what has been promised. That needs to be sorted out quickly and, I suspect, before the December Council meeting. If I was Michel Barnier, I would suggest that putting that on paper is the most important thing the British Government could do to make sure that the December Council decides to move on to the next stage of negotiations.

John Foster: I absolutely agree with Owen that the priority has to be securing a transition on the existing basis as quickly as possible.



Q47 Lord Teverson: When is a transition deal a transition deal, and when is it just putting things off for two years, especially if the *acquis* just carries on—although when he came before the Select Committee that Lady Wilcox and I sit on, Secretary of State Gove made it quite clear that agriculture and fisheries should not be in it, so we already have that difference? If it is not just to be a delaying period, what are its necessary components? Presumably if it is a bridge—to go on with all these different similes—we have to have a landing point, do we not?

John Foster: Yes. Perhaps I will say a little about what a transition period could include. First, Owen is absolutely right: it needs to be the status quo and there can be no exceptions. When you start to cherry-pick, that is when you bring in extra barriers to trade. Take agriculture or fisheries as an example. That is where you have customs and regulatory checks on lorries.

The second aspect is that it needs to be automatic and dynamic. The UK needs to have the same process of adopting EU legislation and directives as it does now, otherwise we will face consecutive cliff edges. Owen talked about the Norwegians. We have had quite a lot of interaction with our Norwegian sister federations. They had a delay in implementing a salmon directive, which meant that the trucks that crossed the Norwegian and Swedish border needed to be stopped. It needs to be automatic and dynamic.

The third point is the importance of the third-country trade agreements that the UK currently has access to as part of the European Union. There are something like 57 trade agreements, and it is really important that those are replicated in their entirety, otherwise there will be further barriers to trade.

Lord Teverson: Is that not up to the third countries? No one can tell them what to do.

John Foster: Yes, but the point I am trying to make is that these are the necessary sorts of steps of what a genuinely effective transition looks like.

The fourth area is the continuity of cross-border contracts. That includes making sure that things like life insurance, pension contracts, derivatives and service contracts for machinery are valid. Quite often, those contracts go past the Article 50 date and may well go past the proposed transition period. There are lots of elements to it that need to be agreed for it to be effective.

Owen Tudor: I agree, in particular about the need to continue to implement EU decisions.

On the question of trade with third parties, it depends to a certain extent on exactly what form the transitional arrangement takes. It may not be up to those other countries, because in those circumstances their existing



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deals with the European Union might automatically roll over into covering the UK. It depends on exactly how that is framed.

There is an issue with making it clear that it is a transition and not just a delay. We should be clear that we are talking about no undue delay in the timing of moving to the next stage. We absolutely should not be sending out signals that this is just kicking the can down the road for two years. Things actually have to happen within a certain timeframe.

I said two years, because I think there is an issue about exactly what we say about the timing. That also goes towards not saying that you can stop bothering for a couple of years and then start bothering again at that point.

Q48 Lord Whitty: Some of our witnesses have put to us that it has to be in effect a two or three-stage transition. One is a standstill, during which you could fill in the heads of agreement, and then an implementation period. That probably takes us beyond two years. Nevertheless, there is a certain logic to that. Do you have any views on that?

John Foster: It depends on how much progress we get on the future economic relationship by the end of the two-year period. If by the end of that period we know in detail what the relationship looks like, the transition period that is currently proposed may be sufficient. If we have less clarity on what the future economic relationship looks like, we will need a further implementation period to support businesses to adapt.

Owen Tudor: Also, some elements of whatever the final deal is will obviously take longer to implement than others, such as the length of contracts, the length of agreements and things like that, as John said. It is entirely possible to conceive of a transitional period that gets you to the stage where you know the timing on each element. In some cases, the transitional period may well be enough. What people are talking about is a transitional period that means everything that currently applies and then an implementation period that deals with any bits that stick out after you have done that.

Baroness Brown of Cambridge: I am interested in this. There is clearly a tension in that you want this period to be pretty much as short as possible, because we will have a long period of uncertainty where lots of industry will not invest because, until they know what the deal at the end of the tunnel looks like, they will not know whether they will continue to be based in the UK or how they will remain profitable. If we make this awful period longer and longer, the UK will not have the investment to increase productivity. Yet we are now talking about needing a transition period, and once we get the new arrangements we will need an implementation period. How long do you think this can and should go on for?

Owen Tudor: I did a lot of work with the London 2012 Olympics people, who would regularly say, whenever I threw something else into the mix



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we wanted, that by September 2012 they would be on a beach somewhere. Everything had to be done by the time the date came round, because we could not make it any later. That just will not be the case for leaving the European Union. The TUC believes that there should be no undue delay through the transitional period to reaching a final deal. On the other hand, a lot of stuff has to be done, and it is absolutely vital that it gets done before a new arrangement kicks in.

As I say, I really do not want to talk about a transition period that is as long as a piece of string. As you said, because of the uncertainty and so on it is really valuable to have all the haste you can manage, but at the same time it is also really valuable to get the arrangements made that need to be made.

John Foster: We talked about it being as short as practically possible. Based on conversations with our members, we believe that to be between two and three years. As I mentioned earlier, it depends—

Baroness Brown of Cambridge: How does that divide between the transition period to when we understand what the endpoint looks like and the implementation period beyond that?

John Foster: It is impossible to tell without knowing what the future economic relationship will look like.

Q49 **The Chairman:** What will your members want written down about the transition period? We talked about it needing to be this, that and the other, but will you need to have a formal agreement written down?

John Foster: It would depend on the sector. For the majority of sectors, an in-principle agreement would be sufficient to remove some of that uncertainty. Financial services, insurance and contract-based industries will need an agreement because of the nature of their business.

Owen Tudor: For the purposes of negotiation it is important to put this down in legally clear terms. Our members' main concerns would be to make sure John's members keep employing them on decent terms and conditions, possibly even better terms and conditions than they are on now. We might talk about that later.

The Chairman: It is good to have a bit of a disagreement.

Owen Tudor: In particular, we want to make sure that during the transitional period the rights workers have are protected and that the new rights acquired under the European Union during that time are also implemented in the UK. That also requires European Court of Justice judgments to be accepted by the UK system and the possibility of taking cases to the European Court of Justice during that period.

Lord Cromwell: You are very emphatic that there needs to be written down exactly what the Government want, where we want to get to and so forth, which I am sure we would all understand. I will press you a bit



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more: if you were in charge, how long would you ask for as your transition period?

Owen Tudor: I really do not want to put a number on it. It has to be as quickly as possible, subject to making sure that everything that needs to be done is done. It makes it sound a little like job and finish, which I am sure Lord Whitty will remember if no one else does. What is critical for us is to make sure that we have it right. To guess how long that will take, the two to three years that John referred to is probably about right. As I said, I am uncertain whether the endpoint of that is a heads of agreement deal or an agreement that we are, at the very least, on the route to one of the existing models. This is only a prediction, not what ought to happen, but I predict that at that stage we would need it to be clear which model we were likely to adopt. It is unlikely that we will end up adopting a bespoke model, because I do not think that is what the European Union is likely to agree, but I might be wrong and I can see the arguments for prodding a bit to see whether it is possible to get something other than what is on the table.

The Chairman: The last question is from Lord Whitty.

Q50 **Lord Whitty:** Given the complexity and the time constraints, do either of you have any views on the capacity of Her Majesty's Government, or even the EU, to deliver this in the kind of timescale that we are looking at?

John Foster: What a question to finish on. Yes, but it depends on the economics prevailing over the politics. One of things we have seen since the October Council round is both sides being quite pragmatic about the consequences of not making progress. The European side and the UK Government have both shown a real desire not to have no deal as the outcome. Provided that that sort of direction and sense prevails, we believe we will get a deal.

Owen Tudor: I am not sure that this is a declaration of interest, but obviously the civil servants in Britain negotiating this arrangement are all good trade union members of the First Division Association, as far as I know. Therefore, they are the cream of people, so if anyone can do it, they can. I am sure the same applies on the European side.

Seriously, my concern is that it is dependent on the ability of the Governments involved to do the things they need to do to make this happen. Implementing the bones of it is possible, but for that to happen the Governments have to take the necessary decisions.

The Chairman: As a former member of the First Division Association, I thank you for your last answer. Thank you very much indeed to both of you for answering our questions. It has been extremely helpful to our deliberations and our inquiry.