

Public Administration and Constitutional Affairs Committee

Oral evidence: Devolution and Exiting the EU, HC 484

Tuesday 22 May 2018

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Members present: Mr Bernard Jenkin (Chair); Ronnie Cowan; Mr Marcus Fysh; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones.

Questions 607 - 690

Witnesses

I: Andy Street, Mayor of the West Midlands Combined Authority.

II: Dr Katy Hayward, Queens University Belfast, Professor Cathy Gormley-Heenan, Ulster University, and Professor Jonathan Tonge, University of Liverpool.

Examination of witness

Witness: Andy Street.

Q607 **Chair:** I welcome our witness to this further session on devolution and exiting the EU. Today we are focusing on the effect of devolution on England as we leave the European Union. Could you identify yourself for the record, please?

Andy Street: Yes. I am Andy Street, Mayor of the West Midlands.

Q608 **Chair:** Welcome, thank you for joining us. The legislative and Executive devolution has incrementally increased to Scotland and Wales over the past 20 years. While the UK Government have talked of devolution to England, to what extent has legislative Executive power actually been devolved to the West Midlands Combined Authority and other areas of England?

Andy Street: First, thank you very much for giving me the opportunity to meet you this morning. Given the issues at stake, and the time you



HOUSE OF COMMONS

have spent discussing them for Scotland, Wales and Northern Ireland, I do appreciate your examining the issues for England as well.

In a sense, that is the backdrop to the very first question you ask. The answer is that there is not a single answer for England at all. I will describe how it is in the West Midlands, and I think you will probably draw out in the next hour that there are very different arrangements in different parts of England.

It is fair to say there has been no legislative devolution to the West Midlands, so the combined authority does not have legislative responsibility in the way in which the Scottish Parliament and the Welsh Assembly have. What we have had is—as I would describe it—a respectable start in Executive devolution. There are some powers that we now have over some of the supply sides of the economy, over transport, housing and skills, and indeed, critically, the responsibility for the regional economic strategy. It is best described as a start along the road of devolution rather than, in any sense, a conclusion.

Q609 Chair: Would this be better described as decentralisation rather than devolution?

Andy Street: I do not want to be evasive in answering that, but I would be very interested in how you distinguish between devolution and decentralisation.

Q610 Chair: I am not used to my witnesses asking questions. Decentralisation is where the fundamental competence and powers are retained by the centre and merely lent, as opposed to there being a formal transfer of power.

Andy Street: A great description. The answer is some and some. What do I mean by that? If you look at the principle that was talked about by the architects of English devolution—notably, Michael Heseltine, George Osborne, David Cameron—that there would be a single pot when we come to financial devolution, and that then it would be the responsibility of each of the English regions to do what they will with that, we have made little progress towards that that would be described as true devolution.

The answer to your question, in a sense, is yes, in that what we have is responsibility for implementing sums of cash that have still to be agreed with central Government. In your definition of decentralisation against devolution, I would agree with the distinction that you are drawing. Having said that, there are a limited number of areas where, in your description, we do have genuine devolution. A good example of that would be complete responsibility for the transport authority across the West Midlands.

Chair: Ronnie Cowan, you want to chip in.

Ronnie Cowan: Just on your definition of devolved and decentralised, as



HOUSE OF COMMONS

we know a power devolved is a power retained. It is not given away to any other Parliament, it still here in Westminster if push comes to shove. Shall I press on with my question?

Q611 **Chair:** I will just carry on. Generally, what would you make of the landscape of how England is governed compared with the other entities?

Andy Street: It is obviously still much more centralised, so if you look at some of the key areas where Scotland and Wales have taken their own responsibilities, such as health, apart from the Manchester experiment, they have not yet been devolved in England. Compared with the other nations, more of the English responsibility is retained by the Westminster Parliament.

Q612 **Chair:** What effect do you think this has had on the actual governance of England?

Andy Street: Let us look at the outcomes that have been achieved as well as the pure governance. What has definitely happened in the regions that have started on this devolution journey is that more responsibility for economic planning and, indeed, the social outcomes of those plans is now held in the regions. Through the devolution deal, we can invest capital behind our ambitions and that is definitely a responsibility now held in the regions.

Please, I don't want anyone to think the process hasn't started; it is how far along the journey we have come. If you look at the West Midlands outcomes, there is also no question but that, for a region that underperformed the average for the UK in the period up to 2011, we have reached the position where we consistently outperform on almost any measure, and that has coincided with the beginning of the devolution journey.

Q613 **Ronnie Cowan:** At the meeting of the seven mayors last November you said, "I believe now is the time for the Government to go a step further and provide us with tools to tackle the challenges and seize the opportunities that we each face". Do you believe that Brexit would deliver further devolution for the West Midlands Combined Authority?

Andy Street: I should probably explain what that quote was referring to first and then we will come directly your question. The actual subject matter that was under discussion that day was devolution of responsibility for skills, training and some elements of education. I still believe that that is the twin of our responsibility for the local industrial strategy.

As you probably know, two areas of the country have been asked to produce the local industrial strategy in response to the national industrial strategy—Greater Manchester and the West Midlands—and the reference was that the human capital side of that, the skills side of it, is an absolutely critical ingredient. I still believe what I was referring to then.



HOUSE OF COMMONS

In terms of your question, the issue at stake is whether the responsibilities that are currently held in Brussels will simply be devolved back to London or whether there is an opportunity for some of those things to be passed straight on to the regions of England. Obviously, the critical issue in the economic area is the whole question of the authority around the EU structural funds.

Q614 **Ronnie Cowan:** Do you believe that Brexit will deliver further devolution to the West Midlands?

Andy Street: I do believe that those EU structural funds should come under the control of the West Midlands Combined Authority, so yes.

Q615 **Ronnie Cowan:** Do you agree that the Withdrawal Bill should not proceed without receiving a legislative consent motion from the Scottish Parliament?

Andy Street: That is not a question that I am expert on at all. I have talked about the devolution of funds to the English regions.

Q616 **Ronnie Cowan:** We are talking about powers coming back from Brussels and not being held here and moving on to devolved areas.

Andy Street: Yes. To answer your question straightforwardly, I believe it is a national negotiation conducted by the UK Government and they are sovereign over this issue.

Q617 **Ronnie Cowan:** Have you seen any Government analysis on the impact of Brexit on the West Midlands?

Andy Street: Of course we have all seen the Government analysis that either is or is not an impact assessment, depending on who you listen to. We have all seen the impact of that upon the West Midlands, yes.

Q618 **Ronnie Cowan:** Has the West Midlands Authority itself carried out an impact assessment?

Andy Street: It has not carried out an impact assessment but there are assessments being done in the region, for example by Birmingham University. What we are absolutely clear on is that what we have to do is strengthen our economy to deal with any impact. Let's be clear, there are positive and negative opportunities here. The very issues that we are carrying out around our industrial strategy, indeed our investment in different sectors of the economy are all designed to ensure that we are the most robust and ready to take advantage of the opportunities that there are.

Q619 **Ronnie Cowan:** Have you made any representations to the UK Government that the West Midlands should have some sort of special arrangement on the Customs Union?

Andy Street: I would not call it a special arrangement. Absolutely categorically, yes, we have had discussions with Government Ministers



HOUSE OF COMMONS

about the import of the Customs Union arrangements for our manufacturing sector.

Just a bit of background: manufacturing accounts for a greater proportion of GDP in the Midlands than any other area of the country, so it is particularly important in sectors like the automotive sector, the aerospace sector, where their complex supply chains are very dependent on frictionless trade. Yes, we have discussed that directly with Cabinet Ministers and, indeed, the Secretary of State responsible, and I am satisfied that they all understand the import of that to the West Midlands economy.

Q620 Dr Rupa Huq: You talk about the West Midlands. I am a London MP, and it does feel that London has a less clearly defined settlement on devolution than Scotland, Wales and the other constituent parts of the British Isles that we have been looking at in our Committee. Do you think now is not a good time to clarify or have greater powers for London? It does generate the lion's share of this nation's wealth, not through manufacturing—I will grant you that—but through the financial services sector.

Andy Street: Let's be really clear, nothing in terms of the journey towards devolution for the English regions is designed to be in any way hostile to London. The truth, though, is that it would be a greater strength for London if the other English city regions were much stronger. You know that, in a sense, national policy has had to be mindful of the relative underperformance of some of the regions and it would be much better if there was greater equality between those regions.

What I see is a steady journey towards more powers for London, its authority and its mayor. I would continue to encourage that and I believe the case has been made very well. A recent example: the agreement over the retention of the sale proceeds for health, land and institutions in London. That is a new-found right in London. It is very lucrative. It is going to be invested in the health economy in London. It is a very good practical example of a new deal that has been struck with London and, frankly, the rest of country looks slightly enviously at what you have been able to negotiate there.

Q621 Dr Rupa Huq: I know you said it is a UK negotiation, but your counterpart in London thinks that he should have a seat at the table because of London's disproportionate contributions.

Andy Street: The two things are not mutually exclusive, are they? There has to be one ultimate UK negotiation. That does not mean there should not an enormous amount of input from different places to help the Government reach the right conclusion. That is what your colleague's question has just drawn out as well about our representations.

This whole phrase "seat at the table" is fascinating because it is a sort of visual image. I would not describe it in quite those ways. I would say it is



HOUSE OF COMMONS

absolutely essential that the Government understand the different needs of the different areas of the country.

I will give you one statistic that demonstrates the huge difference between our two regions. Of your London GDP, only 8% comes from the export of goods. Yes, you have other huge strengths. In the West Midlands it is 24%. Just that one stat reveals the difference. I do believe it is utterly critical that the negotiations are able to reflect the different needs of different areas. Sadiq Khan is right; he has to have a strong voice in influencing the outcome, given the strength of the financial services sector in London.

Q622 **Dr Rupa Huq:** We know EU agencies are moving out of London, are you seeing that in your region?

Andy Street: No, is the categoric answer. The recent job numbers, which I think were released on 15 May, show that for the first quarter of this year the West Midlands had the best improvement in employment rate and, over the last year, the West Midlands wider region had the highest number of new jobs created. We are definitely not seeing that yet.

Q623 **Ronnie Cowan:** In the article you wrote for the *Financial Times*, you said if we get the customs deal wrong it will destroy thousands of jobs in car manufacturing. Do you think we are getting the customs deal right with 311 days left to Brexit?

Andy Street: The reason for writing that was to say just how important this is with that clock ticking away. I cannot know if it is right yet because we don't know the final proposal. What I was putting on the table was what really matters to the West Midlands, as your previous question drew out. Again, that is exactly what we should do to contribute to the debate.

Q624 **Dr Rupa Huq:** The principle of subsidiarity, making decisions at the lowest possible level, should that be made a clearer feature of the UK's post-EU constitutional settlement?

Andy Street: A one word answer, yes. The reason I stepped forward for this role—and you will know that my previous role was in business, so I changed what I was doing to do this, moved away from John Lewis and into this—was that I genuinely believe that the outcomes for the people of the West Midlands would be better with stronger local leadership making the new model work that we were able to negotiate in the first devolution deal. That is an example of responsibility being taken back locally. The same principle should apply to the outcomes here as well.

Q625 **Dr Rupa Huq:** In my first year in Parliament I think all Conservatives were duty bound to say "Andy Street" in any question, so it is good to meet the man behind the name.

The next one I want to ask you is about the dual role that the UK Government have been described as having in relation to the whole of



HOUSE OF COMMONS

the UK and the Government of England. How effectively do you think that represents and advocates for different interests within England, compared with the devolved Governments in Scotland, Wales and Northern Ireland?

Andy Street: I think there is a tension, is the honest answer to that. It is behind my very first observation that—and again I don't take anything away from what has been achieved, I am full of admiration for what the Scottish Government and the Welsh Government have done in being able to represent their cases extremely well—there is definitely a risk in that duality that the English regions' voice has not been heard as loudly. There is a structural issue there, so there is not an institution of Scottish Parliament status, or indeed the Welsh Assembly, or indeed a leader in the form of Carwyn Jones, for example, to represent the English regions, even though—as you will know—the economies of a number of the English regions are bigger than the economies of the devolved nations.

There is an inconsistency and what I hope will be drawn out of this is that through these less formal structures that they have, such as the mayoralities emerging, at least there is a voice, a way of putting that representation into the national Government.

Q626 Dr Rupa Huq: Population-wise, the West Midlands Combined Authority is similar to that of Wales and bigger than Northern Ireland. Are you able to represent the distinctive interests of the West Midlands as effectively? You pointed out that the devolved Administrations have figureheads at the top and in the Parliaments, is that—

Andy Street: When one thinks back to the creation of the mayoralities, and this is the interesting thing—because the Chair's first question was very much about formal powers and structures—there is very much a soft power as well that comes with being the representative for the region. If you asked any of the six mayors elected last May for their reflections on a year in post, that ability to champion their region, to be that spokesman, to be the representative, as your question draws out, is where a lot of the authority comes from. Yes, I do believe that we are now a voice to be able to do that and I think there was a deficiency in the national governance arrangements before those roles came about.

Q627 Dr Rupa Huq: Some of us would like to see more women mayors, because they all seem to be chaps at the moment, but change is very slow in these matters.

Concern has been raised that the UK Government's dual role preferences England over all others, the interests of England, to what extent would you agree with that?

Andy Street: I don't think that is right. See the answer to the previous question. Both the Scottish Government and the Welsh Assembly have been extremely effective. The noise from English regions to say—to use the phrase you used earlier—"We don't have a seat at the table. The



HOUSE OF COMMONS

devolved nations do”, is clear evidence that your view is perhaps not the majority view.

Chair: Yes, I rather like the idea of a woman mayor for London.

Q628 **Kelvin Hopkins:** We have heard there is a tendency in Whitehall, especially in big Departments, to hold on to power and be cautious of decentralising power. You have touched on that already, but would you like to expand on your experience?

Andy Street: Yes. The first thing to say is there isn’t one standard experience. That would obviously not be correct. We have had some incredibly positive experiences, to be clear. I presume you want me to talk about different Departments and their attitudes?

Kelvin Hopkins: That would be helpful.

Andy Street: We have had a lot of very positive experiences. Obviously you would expect this, but DCLG, in its old guise and its new guise, has been a constant advocate of devolution under the leadership of different Secretaries of State, and their officers have carried that through. We have had incredibly good support from DCMS in a number of victories for the West Midlands in terms of bringing investment in for major events there. We have had very strong support from the Department for Transport and, if you look at, for example, the new rail franchise—to choose a very topical issue—there is more local control over our West Midlands rail franchise than I think anywhere else in the country; very practical examples there.

Of course the other superb advocate has been BEIS under Greg’s leadership. BEIS has been willing to follow through on the theory of local industrial strategy by putting cash on the table to enable us to develop our sectors. I am sure that has underpinned our economic outperformance, so some really strong examples.

The area—and it drew on the question that your colleague asked earlier—that we found the most difficult, but I genuinely think that change is in the air, has been the Department for Education. I understand their reluctance because, frankly, we did not have a good track record in some areas of education and, in our second devolution deal, we did not manage to achieve the new powers and spending authorities I would have hoped for, but we are now in active discussion with them. I believe that we will get to a much more successful situation.

Q629 **Kelvin Hopkins:** Very helpful. Which powers and functions that will return to the UK from the EU, post-Brexit, could be more effectively administered at local level?

Andy Street: We have already touched on this. There is one overwhelming answer for us, which is this question of the EU structural funds in their different guises. Just to give you the numbers around that. It is worth about £550 million to the urban West Midlands over the



HOUSE OF COMMONS

current period, 2014 to 2020. The total national sum is about £17 billion, so we get a relatively small share of it for an area with some significant social challenges. Nevertheless, it is still a very substantial sum and it has funded a number of our youth employment schemes, for example.

If I am honest, I think there is a lot of scope under the UK Shared Prosperity Fund to improve the effectiveness of that spending. It tends to have been used in the same way as in previous years. I don't think there has been much private sector leverage from it and there is a real opportunity to connect it to our local industrial strategy. We are ready, wanting to contribute to the thinking about how that is done. I am very, very keen that that should be an example of the single pot in action, so that we can get the multiplier effect in terms of our work rather than its being controlled from London.

Q630 Kelvin Hopkins: A supplementary question to that is: given that the Government will have greater freedom to decide on regional support, regional aid, is it possible that this could be beneficial to the West Midlands?

Andy Street: It definitely should be. We are currently very much governed by—I will get the exact description of it wrong but I will call it the tiering status for different regions. Only three regions of the UK have tier 1 status. We don't have any of that, despite some of our authorities in the Black Country having very challenging situations. Of course, it is not related to what you might describe as opportunity. The current rules—and where we have been very successful with the Government since 2015 is in understanding that investment, to fulfil our opportunities as well as just the deficit side, can really be fruitful. Again, that is what has helped our current performance. The redefinition of the rules definitely gives us an opportunity.

Q631 Kelvin Hopkins: A separate question now. How much communication has there been between central Government and local government to enable local government to prepare for the UK's departure from the EU?

Andy Street: There can probably never be enough but I would say there have been substantial sums. You will know that with the core cities—of course Birmingham City Council is the biggest authority within the combined authority—there has definitely been communication there directly with DCLG officials. There has been similar debate between West Midlands Combined Authority officials and DCLG at officer level and then, of course, in previous questions I have described the political dialogue there has been. I would say there has been a good groundwork but obviously, until we know the settlement and how there is going to be implementation, it is difficult to prepare for that.

Q632 Kelvin Hopkins: What capacity exists at local level to take on responsibilities for powers and functions that are currently held at an EU level?



Andy Street: I would say good capacity but, let's be honest about this, the combined authority is—it is a jargon phrase—on a journey. When it was set up it had very limited capacity but we are developing that all the time.

You might be interested in how we are funding a lot of the development because this goes right to the principle of devolution, which the Chair drew out at the beginning. We are funding our growth largely through the retention of business rates. The second devolution deal gave the West Midlands the right to retain 100% of the business rate uplift so, as our economy grows, we have greater spending power and that is absolutely the principle that I believe in. In this year we have been able to build out our teams for housing, for skills and, on the back of that, for example, we are bringing about really good collaborative working between all of the local authorities, which led to a housing deal. We can develop our capability with that model, going forward.

The other resource that we should mention is we have three very strong local enterprise partnerships. They have retained their independence, and for some of the funds that are currently administered via London from Brussels, we do believe that we have good governance arrangements in there, such as work for the local growth fund.

Q633 **Kelvin Hopkins:** One supplementary in my little group of questions. I am a passionate believer in the importance of manufacturing to our national economy—obviously the West Midlands' role is a major part of that. We have an enormous trade deficit in manufactures with the EU, which I like to think has been helped a bit by the depreciation of sterling since the referendum. Do you see Government control of macroeconomic policy benefiting the West Midlands as an important factor going forward to make sure manufacturing plays its part?

Andy Street: Let's be clear, the depreciation of sterling has helped our manufacturers. Again, it is one of the undoubted facts behind the relatively good performance of the West Midlands economy recently. Equally, let's be clear, the lesson of the last 50 years is this: the Germans had the best manufacturing economy with an appreciating exchange rate for a long time and it demonstrates that the underlying factors around productivity in the sector, level of investment, level of innovation, are the things that will win out long term. That is why we are making sure that, whether it be around battery technology for the electric vehicle, testing for autonomous vehicles, the level of innovation in our supply chain, the links between our universities and our manufacturing sector, it is those long-term determinants that will determine our success.

Critically in that, if you lined up West Midlands' manufacturers at the moment and said, "What is the biggest threat?" they don't talk about the exchange rate. They don't actually talk about competition. They talk about skills, so the single biggest factor is whether we have the appropriately qualified people for those high tech jobs.



HOUSE OF COMMONS

Q634 Mr Marcus Fysh: Mr Mayor, you mentioned earlier that your impression of what devolution was like in England was that it was about implementing the sums of cash that still had to be agreed with Government rather than divvying up grants, and that you are looking for EU structural funds to be devolved properly to places like the West Midlands. I understand the Government have caveated their promise to honour existing funding through that method by saying it will be honoured if they are, "good value for money and in line with domestic strategic priorities". Could you give a bit more on how appropriate you think it is for the Government to be involved in that way?

Andy Street: My answer would be that it is absolutely appropriate to set the big picture context. That is what the industrial strategy is trying to do, but what is not appropriate for the Government and Whitehall to do is sign off individual projects. Let's take transport where we do genuinely have devolution, where a capital sum has been agreed. We decide which of the transport projects that we are investing in. That model of parameters being set: let's agree the performance and hold us accountable for the performance, but then we take the decisions on individual investments.

Q635 Mr Marcus Fysh: Obviously, with the devolved nations there are block grants according to a formula. When you look at your funding and the funding available for the local initiatives that you have described, how does that compare with the scale of the block funding that ends up in other cities that you are competing with, for example, other industrial agglomerations?

Andy Street: You are talking about the devolved nations. If what you are getting at is the Barnett formula, the straight answer is a region like the West Midlands does very poorly against the devolved nations for the application of the Barnett formula. That is a long established fact and, thus far, there has been no change to that. But the facts are very clear. We do relatively poorly, is the answer to your question.

Q636 Mr Marcus Fysh: You mentioned the desire to look at opportunities as well as deficits. Obviously, the Barnett formula is essentially done on the basis of population adjustment. Even if it is an out-of-date one, what do you think we can learn from the processes that you are going through in the West Midlands for how we should maybe think about block funding other areas of the UK?

Andy Street: The first thing you can learn—and I have tried to be modest and realistic about this—is that something has happened in the West Midlands, which perhaps other areas can learn from. If you look at our relative performance up to 2010, it was poor. Let's just be really clear about that. In the 1960s, pay rates in the West Midlands were the highest in the UK.

You could argue that Birmingham was, on many measures, the wealthiest city in the Union. We got ourselves to 2010 where we had the



HOUSE OF COMMONS

parliamentary constituency with the highest unemployment in Britain, so there was a long-term decline. No one is going to say that that is solved. We still have some acute social issues that are the consequences of that decline, but what is absolutely clear is that, on any measures at the moment, there is a revival of our economy and that is beginning to address some of those acute issues.

The question to learn from is: how has that come about? I would draw out two real lessons. The first is that there has been incredible teamwork in the West Midlands. People have buried their political differences and universities have come on board, businesses have come on board and there is an alliance that has promoted investment in the West Midlands. The second thing that has happened is we have followed a clear economic plan. I often joke that we had what I call a mini industrial strategy before the Government brought it back in. We have been utterly consistent in that: the sectors that we are after, the interventions designed for those sectors, and it is working. I do think there are things that can be learnt and obviously—as was drawn out by some of the other questions—the sort of governance models that we have now put in place have not been adopted by some other areas of England.

In terms of the financial lessons to be drawn out—and it is the summary of the whole morning—I do believe that there is an opportunity for the Government to release more control so that we move to more examples of genuine devolution—transport, the business rates would be examples of where it has already happened—so that we have the financial lever to fulfil that strategy that we are creating and implementing.

Q637 Chair: Turning to intergovernmental relations within the UK, we have heard a great deal about the need for increased co-ordination, particularly of the common frameworks that are going to be developed on things like fisheries, agriculture and the environment in the UK post-Brexit. In fact, setting up what one might regard as shared competencies between the UK Government and the devolved Administrations. What role should mayors play in this process? There is an even more glaring inequality of esteem once these partly devolved areas of competence are brought back to the United Kingdom.

Andy Street: Clearly, fisheries and agriculture are not the relevant things for the West Midlands, but there are other critical areas that we have not talked about yet.

Q638 Chair: Such as?

Andy Street: A really important issue is the universities' access to research funding and the whole Horizon 2020 piece. I talked earlier about how the universities played a critical role within our economic success. For every one of our sectors' success you can trace it back to a university and the research they are doing: Warwick in manufacturing, Birmingham in the life sciences, so critical. I think a role of the mayor in answering this question is the link between the regional economic strategy, which



HOUSE OF COMMONS

the combined authority has to pull together, and the universities' contribution to that, and ensuring that there is sustained research funding for whatever is the son of Horizon 2020. It has been critical to our success.

Q639 Chair: I congratulate you for raising an issue that will require a joint framework of a kind, which nobody from Cardiff or Edinburgh has yet raised with us. This is a first. I would suggest that that does underline how much elected mayors in England have to contribute to the UK conversation about shared frameworks. Given that, as a European region, you are represented on the Committee of the Regions—

Andy Street: Yes, we are.

Chair: —and, therefore, to some extent engaged in the EU frameworks, how should we replicate this in the UK context when there is no regional representation for England? Nobody has started to talk about it.

Andy Street: Let's take the example I chose of this research funding, given the whole previous 40 minutes' debate about our economy and everything I said about what really matters when you asked me the question about devolution—which is those long-term investment innovation pieces. So many of them are tracked back to universities working with industry. Let's be clear, it is not just about manufacturing. It is the whole life sciences revolution: how we are going to be the centre of medical research; that explosion that is happening in Birmingham. That is part of that as well. The answer must go to the whole question of: what is the UK structure for allocating of research funding post leaving the EU?

The Government have made a number of changes to that recently with UKRI and the whole role of Innovate UK. What we have to do is be absolutely clear that the unique advantage of the West Midlands' economy as an agglomeration is understood by Innovate UK and UKRI, and we are getting—as I would describe it—a disproportionate share of the investment because of the potential contribution we can make. We are making, let's call it, the beginnings of those steps but there is definitely a piece of work to be done to understand what the framework is post Brexit as well.

Q640 Chair: I am extremely interested in this because I personally have been working with some universities about this whole question of post-Brexit engagement in global science and research. There is a structural difficulty, isn't there, in that the UK Government are currently envisaging that these joint frameworks will be developed by the Joint Ministerial Council and its subsidiaries? Mayors and regions are not represented on the Joint Ministerial Council, which is confined to the devolved Administrations and the UK Government.

Andy Street: That is back to one of the other underlying points about the imbalance of governance structures, and the question about seats at



HOUSE OF COMMONS

the table drew it out. Being very straightforward with you, I did not say we needed a negotiating seat at the table. I think that denies the sovereign role of the UK Government, but I do believe that where there is then a structure to be worked through going forward it is critical that the English regions, particularly given their economic force, are represented around that table.

Q641 **Chair:** Which table are we talking about, the Joint Ministerial Council?

Andy Street: I am not dodging the question. I genuinely don't know, Mr Chair, but, whatever structure there is in place for thinking about the allocation of research funding across the UK, there is absolutely no question but that a region as powerful as the West Midlands with eight universities must be a full member of that discussion.

Q642 **Chair:** That prompts the question that here we have been sitting for nearly 50 minutes discussing the shape of English—what we traditionally call—local government post-Brexit in the context of devolution to Scotland, Wales and Northern Ireland. What is your vision for what the structures should look like in order to accommodate something like your anxieties about science and innovation in universities?

Andy Street: Let's just name another critical problem here as well—and I tried to hint at it earlier—there is not a standard model for all of England yet. For example, you cannot say, "Let us take a mayor for each of the English regions" and then be confident that you have a council of mayors that covers everywhere. Six were elected last year, two more regions have agreed, so there are only eight. There are vast parts of England without that structure. One of the challenges facing those people thinking about the constitutional solutions is the inconsistency of the model. I would like to get to a point where the model that we are testing in the West Midlands is deemed to be a success and other regions adopt it as well. Therefore, you would have a position where you could bring all English economic regions together, through those combined authorities, and then you have a way of incorporating that in whatever constitutional arrangement you have and, critically, whatever governance structures there are for some of those economic decisions, such as research.

Q643 **Chair:** That would suggest you would prefer to avoid trying to plan for a blueprint, which everyone agrees about but which would probably take a long time to agree in terms of institutional structures. You would perhaps prefer to operate through a kind of Joint Ministerial Committee plus representatives of English interests, in order to ensure that the English local or regional dimension is represented in the decisions about the formulation of joint frameworks.

Andy Street: Correct. That is right, because that is the practical way forward around the fact that we have inconsistency of structures across England at the moment.

Q644 **Chair:** What discussions have you had with the Holyrood or Cardiff Administrations about this subject?



HOUSE OF COMMONS

Andy Street: Personally, none.

Q645 **Chair:** What discussions do you think there have been at all between English local government or English mayoralities and the Scottish and Welsh Governments?

Andy Street: There have been conversations through the Core Cities Group, of course, where Scottish and Welsh cities are represented in that but, to my knowledge, there have not been conversations between English combined authorities and both the Scottish and Welsh Governments. Not formally. I am sure there have been informal contacts but there have not been formal discussions.

Q646 **Chair:** How would you react if we recommended this in our report? That in fact you ought to use your autonomy to generate this kind of discussion and present something of a plan to Government?

Andy Street: I would welcome it hugely. Again, back to one of my earlier themes, I am full of respect for how the Scottish and Welsh Governments have taken this and, for an economic region as large as we are, we are less far down that journey so I would welcome that.

Q647 **Kelvin Hopkins:** If I could follow on from what you have been saying, Chair, which is very significant. In the past we have had regional economic planning councils, regional agencies and so on, and for areas that are not the big conurbations some kind of regional structure like that might be a way forward. Is it possible that you might be advocating that rather than a mayor for, say, the eastern region that is not an elected authority?

Andy Street: It is a really important point of principle that your question draws out. The areas that have come together were based on natural economic geography, not on political lines. I honestly think that has been one of the things that have brought us success. In our situation, that is the core metropolitan authorities and, as we call them—sorry for the jargon—the non-constituent areas around, and I think the principle of natural economic areas should be the one that is adopted. One of the issues with the previous model was that it was much more of a political map than an economic map.

Q648 **Chair:** This has been a very fruitful and interesting session and we are very grateful for your coming to see us. Is there anything you want to add as a postscript?

Andy Street: Can I add one thing? It is an obvious point responding to what you said. I was very interested that my observations about research in universities had not been covered by the Committee before, because I was not expecting that reaction. If you look at funding, those research funds are hugely significant. I do not profess to be an expert on it but, of course, the people who I know would be enthusiastic about following that up are the vice-chancellors of our universities. We have six research universities in the West Midlands, eight in total. They work incredibly well



together as a team and they have their organisational structures. If I could encourage you to invite one of those vice-chancellors, on behalf of the team, to talk to you about the import and, critically, the link to regional economic performance, I think it would be really illuminating.

Q649 **Ronnie Cowan:** Presumably, you are also going to lose students that are working in those research establishments as well. As soon as we stop the immigration we are going to lose students and we are also going to lose access to the Erasmus+ scheme, which allows UK students to travel across Europe.

Andy Street: I think there has been a commitment that Erasmus+ will continue, but you are right to draw that out. That is something that has been very valuable and we would wish to see that continue.

Ronnie Cowan: For the transition period.

Q650 **Dr Rupa Huq:** For Horizon 2020, the research funding is also going.

Andy Street: That is what I drew out, but you made an observation and it is correct, yes.

Q651 **Chair:** It has been very helpful. I am very glad we invited you.

Andy Street: Thank you. It has been interesting for me as well, so thank you for the opportunity.

Chair: Thank you very much for coming.

Examination of witnesses

Witnesses: Dr Katy Hayward, Professor Cathy Gormley-Heenan, and Professor Jonathan Tonge.

Q652 **Chair:** I welcome this panel on Devolution and Brexit? I hope you do not mind my commenting that this is a substitute for the dialogue that we would have preferred with an elected Assembly in Northern Ireland and a devolved Administration, but I would never suggest that it was a poor substitute. Could you each identify yourselves for the record, please?

Professor Gormley-Heenan: I am Professor Cathy Gormley-Heenan, Pro-Vice-Chancellor for Research and Impact at Ulster University.

Professor Tonge: Professor John Tonge from the University of Liverpool.

Dr Hayward: I am Dr Katy Hayward. I am a Reader in Sociology in Queen's University Belfast and a Fellow of the Senator George J Mitchell Institute for Global Peace, Security and Justice.

Q653 **Chair:** The purpose of this session is to take into consideration the effect of Brexit on the devolved settlement in Northern Ireland. We are less



concerned with the immediate Brexit issues, although obviously we are going to touch on that, but how the devolved settlement in Northern Ireland is going to be affected by Brexit and by the issues, some of which are very contentious and, indeed, we can hardly avoid the question of how the land border is to be settled.

Could I start by asking each of you to outline your understanding of the main proposals for the UK-EU border in Northern Ireland?

Dr Hayward: It is worth bearing in mind the commitments that have been made, specifically about the border and which both the EU and the UK are trying to adhere to, so the commitments to avoid a hard border on the island of Ireland and the commitment to having no physical infrastructure and no related checks or controls. That is framing the approach from both the EU and the UK towards this.

The joint report in December outlined three possible scenarios. I think what we are going towards is a mixture of specific solutions for Northern Ireland and full alignment. If we consider what we already have on the table from the European Union—which is the protocol and the Draft Withdrawal Agreement—that is the so-called backstop option. This frames it such that you would have no internal borders between Northern Ireland and Ireland, on the island of Ireland, specifically for the free movement of goods and specifically to maintain North-South co-operation. This essentially means that you will have a partial application of a single market for Northern Ireland. This has huge implications for regulation, for alignment, which I am sure we will get on to. It also has implications for governance.

Another core part of that common regulatory area that is proposed is Northern Ireland being part of the Customs territory of the EU. In addition to that protocol, which is very important, there is the possibility of continuity of bilateral arrangements, specifically for the Common Travel Area but they may be further extended between Britain and Ireland to avoid having a hard border, for example in relation to movement of people.

Let us consider what is on the table from the UK Government so far. These are really not in the form of very detailed or concrete proposals but we are expecting more on that soon. The first is “max fac”, maximum facilitation, using technology. This does not avoid a hard border. I think that is very clear. It just makes the presence of a hard border less visible, a Customs partnership that entails a lot of complexity. It has already been rejected by the EU but there is a possibility that it may come back forward in some shape or form. Then, last but not least, we have the suggestion of an alternative backstop, which has come more recently into the public arena, and that is essentially extended transition as far as I can understand it. In some ways, it is half full alignment. It will be alignment in relation to the Customs Union, but not so much on the single market.



HOUSE OF COMMONS

As I say, at the moment the concentration is very much on Customs and the single market to a lesser degree. The wider questions about North-South co-operation have not yet been addressed in much detail.

Q654 **Chair:** I will look at this question of the proposed backstop, this alternative backstop. Do you understand this to be merely a temporary arrangement to allow technical matters to be resolved, or could it turn into an arrangement to effectively prolong the negotiations while fundamental political differences are resolved?

Dr Hayward: We do not yet have the detail to know what it would be. It would be hard to see it as much other than an extension to the transition period.

Q655 **Chair:** An extension to the fundamental negotiation, rather than—

Dr Hayward: Let us bear in mind, the UK will have already withdrawn, so that will have happened.

Q656 **Chair:** But it is effectively the withdrawal agreement including a deferral of an unresolvable issue.

Dr Hayward: It would probably be fair to put it that way. Most certainly it would continue the sense of uncertainty that exists around the border, so it does not address that issue for businesses in the border regions and so on.

Q657 **Chair:** How much do you envisage it ending at the behest of one party, rather than by agreement?

Dr Hayward: This alternative backstop?

Chair: Yes.

Dr Hayward: The EU would not sign off on it unless it has a specific end point, so the purpose of putting something into a withdrawal agreement—and indeed a future trade relationship—would be that it would have legal definition, so it could not be a rolling situation.

Q658 **Chair:** Could it be ended unilaterally by one party?

Dr Hayward: I don't think so. I do not think that would be possible.

Chair: Professor Gormley-Heenan?

Professor Gormley-Heenan: In addition to what Katy has said, it is important to reflect on what the implications of the three proposals might be for devolution. It is fair to say that there will definitely be much more complexity for us to manage than in relation to any of the other devolved arrangements. The Northern Ireland distinct arrangements—which we will have in some way, shape or form—will mean that we are managing alignment with the EU in some areas and I am sure we will come on to that later when we talk about how North-South co-operation will work in practice.



HOUSE OF COMMONS

For me, most fundamentally—and you mentioned it at the outset when you said you would have preferred Ministers to be here—the protocols that are being developed assume a fully functioning devolved suite of institutions and we are not there, so it is quite difficult to talk about the implications of the proposals for devolution in the absence of devolution.

Professor Tonge: The only thing I would add to what we have heard from Katy and Cathy is to go back to what was agreed in December when it says, “In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South co-operation, the all-island economy, and the protection of the 1998 Agreement”. Implicit in that is that if North-South co-operation is not involved then we are potentially looking at a more variable geometry of trade. I do think that is a possibility, so clearly the EU would have the whip hand in terms of UK-Ireland trade.

I would not want to overdo the parallel but you have a Common Travel Area in terms of people, almost a common trade area between the UK as a whole and Ireland, but with some scope for the UK to try to pursue a more independent policy elsewhere. I agree with the premise about this deferring an unresolvable problem. You would potentially have tariff alignment for a number of years yet to try to resolve the border question and look at improvements in technology to deal with some of the issues, which Katy outlined in particular, but we have to be careful. Even the Karlsson report, which was probably the high water mark in terms of advocacy of purely technical solutions, does not completely argue that technical solutions to this are ultimately possible. It suggests that technology has the potential to crack this in terms of regulatory alignment and checking of rules of origin, but it does not go any further than that.

Q659 **Chair:** Looking at Northern Ireland, the trade across the border in Northern Ireland, first, is relatively minute compared to the trade that the Republic of Ireland has with the rest of the EU and with the UK in particular. Secondly, it is largely confined to either large operators, who would be authorised economic operators under a borderless scheme, or it is construction traffic and construction materials, or it is farm traffic. Livestock is already checked at one or other side of the border and the island of Ireland is regarded as a single phytosanitary area, but there are checks on livestock movements across the border already. There are checks on either side of the border to stop fuel smuggling and VAT fraud and other things like that. What slips through the net?

Professor Tonge: It is entirely correct that any transaction over £250,000, in terms of livestock, has to be recorded via Intrastat anyway, so there is quite a lot of cross-border checking of transactions and as you know cross-border trade only amounts to about 5% of the UK’s total trade anyway.



Where there are differences in excise duty it does create problems. If you talk to anyone from An Garda Síochána or the PSNI, they would highlight the element of cross-border smuggling in terms of diesel and cigarette duty when you have different excise regimes. If you multiply that many times over if there was a differential tariff regime, we are looking at potentially a serious policing problem, if you want to call it that.

Q660 **Chair:** That assumes so long as we do not have a zero tariff regime between the UK and the EU anyway, which is what the EU and the UK both want. How much of this problem is a prism through which the EU and the UK are seeing their much broader differences rather than intrinsically a problem in itself?

Dr Hayward: I am happy to answer that. It is helpful to understand the Irish border is encapsulating a lot of the difficulties about the withdrawal of the UK from the EU. It is at this point we see the levels of integration that there have been between the UK and the EU almost in a material and economic form too. In addition to that, we have the absolutely vital context of the peace process and what integration across the border has meant.

In very simple terms, if the UK leaves the Customs Union and is outside a Customs Union with the European Union, setting everything else aside, the border between Northern Ireland and Ireland becomes a Customs border. Therefore, you have to have checks and controls and all that that would entail, which means a huge amount of friction on that cross-border trade, as well as a need for inspections to happen.

It is worth remembering how the conflict escalated in Northern Ireland around the border during the Troubles, if we think back to the early 1970s. It was not a case that all of a sudden these watchtowers appeared or that the armed checkpoints appeared. There was steady, incremental change. Customs officers—as they were in the 1920s—became targets for violence. If it was the case that inspections would have to take place, if Customs officers would have to be performing duties on many more goods and many more vehicles than they are at the moment, there is the risk in terms of security that they would have to be supported by police, maybe they would have to be supported by the Army, who knows. It is worth remembering the history of the Irish border and how it became what it did become, in terms of a securitised frontier, and the effects that that has had economically and socially.

Q661 **Chair:** How much of that applies if the checks are not conducted at the border; if they are conducted in the warehouse at arrival or by electronic means, given that a great many goods entering the European Union through UK ports, for example, are not subject to any checks because the checks have been done elsewhere?

Dr Hayward: You would always have to have humans involved in checks and inspections. You can have machines that scan vehicles. They can tell you that maybe there is more in that container than has been declared



HOUSE OF COMMONS

but you still have to inspect it. You are right; you would need warehouses and dedicated places to do that. They may well become targets. More to the point, the further away these things are from the border, maybe they would be in a hidden place somewhere, it would be hard to hide, but, anyway, maybe they were hidden and people would not necessarily see them at the border. That creates a space through which you have the possibility of things being changed over on the truck or of a vehicle disappearing somehow. Electronic means can certainly aid efficiency, but they cannot reduce or avoid the implications of having a Customs border and what that means.

Q662 **Chair:** Professor Gormley-Heenan, can we avoid stimulating the idea of the border in the mind, which you refer to in your evidence?

Professor Gormley-Heenan: No, I don't think we can. At the moment, the difficulty we find ourselves in is that there is an inordinate amount of focus on trade and Customs and the where and what of the border. In other words, where should it be? Should it be on the island of Ireland or in the Irish Sea? The what of the border, should it be hard or soft? The border of the mind is the part of all of this that has been discussed least, and that is that borders exist more in the minds of men than they do on maps.

Katy is right when she talks about the historical context of the border in Northern Ireland being really critical to everything that we discuss here. What the EU and EU membership did was effectively take the Irish border question out of Irish politics. The referendum result has effectively put it right back at the heart of Irish politics in a way that had been diluted for about 20 years, where people were much more willing to talk about whether they were British or Irish in the context of also being an EU citizen. I think what we will see post-Brexit will be a re-ignition of the identity question in a much more profound way than we have had for more than a generation.

While I understand much of the conversation around the technical issues that have to be addressed, I would urge a note of caution that, in doing so, you forget the bigger border question, which is the border of the mind.

Q663 **Chair:** Queen's University, Belfast, has just produced some research suggesting that, even if these issues become current in Northern Ireland politics, Northern Ireland looks like a more pro-UK country than even Scotland. This may well be something that we need to address, hear and understand, but are the political implications as profound as some people are suggesting?

Professor Tonge: I have read the Queen's survey. It basically confirmed the study that we did at the University of Liverpool last year. We did the 2017 Northern Ireland General Election study. That found that, in terms of constitutional attitudes, there was still strong support for Northern Ireland remaining part of the UK: 50% wanted Northern Ireland to



HOUSE OF COMMONS

remain in the UK, 27% wanting a united Ireland. That still left 23% undecided, not that far from what the study at Queen's was saying.

Also what we found last year, which was significant, is that only a relatively small percentage of the population thought that Brexit made a united Ireland more likely. That said, we should not underestimate the polarising effect of the Brexit referendum. When you have nearly 90% of nationalists voting to remain and only 35% of unionists voting to remain, clearly that has fed into the political polarity that we have seen. It is not the reason that devolution has collapsed. There are plenty of other reasons why that has been the case, but we should not underestimate it.

It is not a case of an imminent threat of a return to violence. Former Taoiseach Bertie Ahern said, no, that is simply not the case. The dissidents do not have much traction. Sinn Féin have been adamant that they do not want any return to violence at all, but we should not underestimate the impact upon what you might term "soft nationalism", those who would accept the border as a political fact in the short and medium term, notwithstanding longer-term constitutional aspirations—they certainly do not want that border to be anything other than silent. They do not want it reinvigorated in any way, shape or form.

Chair: Do either of our other two witnesses want to react to that?

Dr Hayward: Other elements of that report were quite interesting. Most particularly the question about: if there was a hard Brexit, if Northern Ireland was taken out of the single market and Customs Union, if there was a harder border, how would you vote? Notably, Catholic respondents are much more likely to then want a united Ireland. What happens in relation to Brexit is critical for the political stability of Northern Ireland.

Q664 **Chair:** The question of a possible border poll has been put into the public domain. How possible is it that there would be a border poll in the near future arising from all this?

Professor Tonge: It is in the gift of the Secretary of State to call one if she thinks that attitudes to the constitutional question have substantially changed. There could not be another one for seven years after that, under the terms of the Good Friday Agreement. It is most unlikely that one would be called. I think people would regard it as destabilising and I clearly think there would be a vote for Northern Ireland to remain in the United Kingdom, notwithstanding that a significant percentage of people now declare as being undecided.

Professor Gormley-Heenan: That aside, I think that what has happened now has been that the constitutional question is back on the agenda in a way that it has not been for 20 years. As academics, 20 years ago we were asking in a Northern Ireland exam, "What are the constitutional options for Northern Ireland?" and about six or seven regular answers were trotted out: An independent Northern Ireland; a



federal Northern Ireland; joint authority, and so on, and they were the standard answers.

When devolution effectively became the only show in town those things were no longer discussed, not in the press and very rarely even among political parties. If you did an analysis now of newspaper coverage and tested for those sorts of words, "federalism", "independent Northern Ireland", "united Ireland", "joint authority" you will see that all of those old constitutional questions are now coming back centre stage again.

Q665 Kelvin Hopkins: This is a question to Professor Gormley-Heenan. You have likened the political arrangements in Northern Ireland to a dry stone wall that does not follow grand architectural designs but is carefully and intelligently constructed using local rough and ready building materials. Could you explain this very interesting metaphor?

Professor Gormley-Heenan: It came originally from a political philosopher, Michael Oakeshott, who wrote about it in a book back in the early 1980s, "On History and Other Essays". What he was trying to do was suggest that there are no moments in history that utterly change everything. That, regardless of what happens, you find yourself in a set of circumstances where things have to change to take account of something that has happened, in the way that we now have to take account of Brexit as we discuss the post-Brexit landscape for devolution. He uses this idea of a dry stone wall to say that you lift what is available to you—in our case, the Good Friday Agreement—and all the protections that are in that to try to craft something else that fits together quite well, albeit a little bit irregular or a little bit dysfunctional looking.

In the absence of having cement—and the cement in Northern Ireland would be a common national identity, which we do not have—you take the things that you have close to hand, the previous agreements that have been made, and you use those as the building blocks to shape whatever might need to come afterwards. In the context of Brexit, this would mean the reference to not undermining the Good Friday Agreement, using the Good Friday Agreement as a way to craft some of the other things that might need to be put in place in the post-Brexit environment.

From my perspective, I would argue that all of the eccentricities that you see in the Good Friday Agreement, all of the irregularities that you see in relation to our position and place relative to the rest of the UK—and even some of the seemingly dysfunctional characteristics of our various agreements—are necessary in order to be able to find enough building blocks to create something that is stable, that holds together for a long time, and that will not fall apart.

The reason that I used the dry stone wall metaphor in my work was to remind us that we should expect that there will be eccentricities, irregularities, and a very distinct characteristic in the approach to



devolution in Northern Ireland, post-Brexit. We cannot expect anything other than that.

Q666 **Kelvin Hopkins:** I must say it is very British and very unlike the written constitutions in other countries. Has knowledge been handed down, from the generation that established the Good Friday Agreement to the current generation, to adapt the carefully constructed political arrangements in order to accommodate the UK's departure from the EU?

Professor Gormley-Heenan: I would argue no. I don't think that it has been effectively handed down. We saw evidence of that in the run-up to the referendum itself, when the uniqueness of Northern Ireland was barely discussed at all. The fact that there was a land border was barely mentioned in the pre-referendum period. That is most demonstrated by the lack of understanding that we saw in the early days, perhaps around the fact that the UK could not have the clean break agreement that it wanted, because of its obligations under the Good Friday Agreement, and Northern Ireland could not have a clean break with the EU because of the land border.

It is really interesting that what we see now is a lot of the language that was used during the Good Friday Agreement being played out in the negotiations between the UK and the EU. Things like, "Nothing is agreed until everything is agreed", was something that we heard daily 25 years ago, so we smile to ourselves that this is very common territory for us in terms of negotiations. Remember, Northern Ireland has a very long history and expertise in how to conduct negotiations, given that we have been in a permanent state of negotiation, effectively, for the last 30-odd years. I don't think that has necessarily worked its way down through Whitehall or Westminster.

The constitutional foundations of our agreement include the principle of consent. That was something that was sold to people in Northern Ireland, so the difficulty of what the principle of consent might mean in a post-Brexit landscape, where Northern Ireland effectively did not consent to leave the EU, are the sorts of nuances that have not been passed down in the 20 years since the agreement was signed.

Kelvin Hopkins: I have many more questions, but I will defer to my colleagues.

Q667 **Chair:** Just a brief follow-up. How should this be handed down now, this method of approaching this problem? Whose responsibility is it? Who is accountable for making sure that we apply this kind of philosophy, building philosophy, to the present situation?

Professor Gormley-Heenan: It is a collective responsibility in the sense that, even at the level of civil servants, there should be much more exchange arrangements and so on put in place, so that everyone within the Civil Service understands the nuances of the Northern Ireland agreement and the implications of doing something that you might think will cause no harm but does.



There was a very recent example of that in the press where there was an advertisement for jobs from the UK Border Force agency—20 of which were to be deployed in Northern Ireland—and the advertisement said, “British passport holders only need apply”. The Good Friday Agreement gives people in Northern Ireland the right to declare themselves as British, Irish or both. The UK Border Force agency did not pick up that nuance, which is in the Good Friday Agreement, and thought it perfectly acceptable to advertise jobs in Northern Ireland that only a particular section of the community would have been eligible to apply for. There are lots of anecdotal examples of that, of missing the point of the Good Friday Agreement at the Whitehall level, which could cause real problems in the longer term.

Q668 Chair: This is very important. Can any of you furnish us with other examples of this that we could put in our report? We would like to give this some prominence. What about the way the political discourse is conducted? We have had some experience of that. What do you think of the way the political discourse around this ignores this philosophy of building an understanding?

Dr Hayward: It has been unfortunate that the British and Irish Governments’ relationship seems to have come under strain as a result of Brexit. Obviously it puts the UK and Ireland on different sides of the negotiating table, and that has been maintained, possibly having an effect on communication between the two Governments. This is very worrying for Northern Ireland. A fundamental principle—not just of the Good Friday/ Belfast Agreement but also of the Anglo-Irish Agreement—is that Northern Ireland is not purely a domestic concern of the United Kingdom. It cannot be addressed in that way for the reasons that Cathy has explained.

Any approach to the future of Northern Ireland, most particularly how we manage these very complicated and difficult situations and challenges, must be dealt with between the British and the Irish. There must be that close co-operation. I am not just thinking about withdrawal. I am thinking about what Northern Ireland is going to look like in two years’ time after transition, in five years’ time, in 10 years’ time, looking ahead in terms of institutions and the capacity for institutions at multiple levels to be able to address this.

Professor Tonge: Initially, there was a promising response. The last gasp of coherent devolved Government in Northern Ireland was the joint letter from First Minister Foster and Deputy First Minister McGuinness to the UK Prime Minister of 10 August 2016, which emphasised the unique vulnerability of Northern Ireland’s agriculture and food sector and it appeared that, notwithstanding the political differences, there would be a coherent response from the devolved Executive. That all turned to dust by the start of 2017 and therein lies part of the problem. There has been no coherent response, no response whatsoever, from the devolved Government in Northern Ireland.



HOUSE OF COMMONS

Whatever one thinks of the responses from Scotland and Wales, at least they have offered something to the debate, whereas we have had nothing from Northern Ireland, given the zero-sum game politics that have taken place there since 2017. We can look almost wistfully back at the golden age of devolved Government from around 2007 to 2016 in Northern Ireland.

Q669 **Chair:** That is how bad it is. What should be the Government's response? What should we be recommending?

Professor Tonge: First, we need a restoration of the devolved Executive, given the scale of the problems that are confronting Northern Ireland.

Chair: That is not in our gift.

Professor Tonge: That is a question of political will. Clearly, there are institutional amendments that can be made—and I have appeared before the Northern Ireland Affairs Committee discussing them—but ultimately, as their report says today, this is a case of political will rather than institutional tinkering, otherwise there is no voice for Northern Ireland.

It is interesting that the Northern Ireland Affairs Committee says in its report today that there ought to be a dedicated Northern Ireland Brexit Minister, in the absence of a devolved Executive, because nobody is speaking for Northern Ireland at the moment. With all due respect to the Secretary of State, we need more in terms of representation for Northern Ireland.

Dr Hayward: I will just make a small point following up Jon's point about the OFMDFM letter, which was really vital and it set out a lot of common ground, a lot of that thinking was in the political parties' positions well into 2017, including in the manifestos. Even the DUP was saying it would want specific solutions for Northern Ireland, recognising the particular circumstances arising from the border. Similarly, all of them are saying they want to avoid a hard border on the island of Ireland, the unionist parties wanting to avoid internal borders within the UK.

There is a lot of common ground between the parties, specifically on agriculture, on the single electricity market on the island of Ireland, in relation to EU funding, in relation to citizens' rights. We must bear in mind the commonality there, especially with this process of negotiation within Northern Ireland as well as between the UK and the EU.

Chair: That is absolutely fascinating. I must stop talking because it is going far too slowly.

Q670 **Mr Marcus Fysh:** What you have all said is extremely important and I agree, as a starter, that ensuring that in people's minds whatever arrangements are there are seen to be smooth and secure is the key thing that we should all aim at. I absolutely agree with Dr Hayward that there is a lot of common ground there and we should try to build on that.



HOUSE OF COMMONS

You mentioned the uniqueness of the agri-food sector in Northern Ireland within this process. You mentioned also the fact of the land border. What other issues do you think arise as a result of leaving the European Union, which are unique to Northern Ireland and so would not necessarily be addressed by the overall arrangement agreed between the UK and the EU?

Professor Tonge: What is unique is that this is a dog that has not fully barked. The text of Strand 2 of the Good Friday Agreement does not make any sense in the context of Brexit. It will need amending and obviously we are talking about amending a treaty that is registered as an international treaty at the United Nations, or part of it. It talks about the North-South Ministerial Council in Strand 2 and it talks about implementation of EU policies, programmes and proposals, and that arrangements will be made for the North-South Ministerial Council's views to be represented at European Union meetings. How is that going to take place with the UK outside the European Union, or are you simply asking the Irish Government to act as some sort of proxy for the UK Government, which would not really be a credible position? There has to be an agreed textual rewriting of Strand 2 and I have not seen any substitute text yet appear on the table. That is unique, has to be considered and, given that the agreement was of course backed by a referendum in the North and South, I would be interested to see the revised legitimacy.

Of course treaties can be amended. The St Andrews Agreement was in one sense a successive treaty to the Good Friday Agreement. There is nothing to say the Good Friday Agreement cannot ever be amended, but there needs to be a discussion and an agreement about how Strand 2, the North-South dimension, will formally be reworded in the context of Brexit.

Professor Gormley-Heenan: For me, one of the other unique elements that might not be immediately resolved is the citizenship question, the issue of Irish citizens who are EU citizens living in Northern Ireland and how they exercise those rights. Robin Walker, the Parliamentary Under-Secretary at DExEU, has argued that that is a question for the EU because they will have to make the appropriate arrangements for Irish citizens born and living in Northern Ireland who are also EU citizens, but it is a point that is particular to Northern Ireland and is very distinct from the rights of EU citizens living elsewhere in the UK, because of the protections that have been afforded.

In terms of those rights, it raises questions about a bill of rights for Northern Ireland again—which had been off the table and then came back on to the table—which might look at the rights of the Irish in the EU and might also need to look at the rights of Northern Irish-born British people in the EU. How do you distinguish between someone who is Irish from Northern Ireland or British from Northern Ireland without asking to see evidence of that citizenship and identity? Not everyone might carry a



HOUSE OF COMMONS

passport, or a passport might have expired. Maybe you use residency, or whatever, but it is something that is unique, and very little focus in the joint agreement at Christmas, the joint position at Christmas and the negotiations to date has taken that into account.

It is easier to see how the rights of Northern Irish-born Irish citizens might be protected if they were to go to Europe and use the European medical card, for example, but it raises questions about how the rights of EU citizens from Northern Ireland might be protected if there was some sort of divergence, for example paternity rights. If the EU were much more generous in their paternity or maternity provision could you, as an Irish citizen living in Northern Ireland with EU rights, ask for the EU version of maternity or paternity rights or would you be obliged to adhere to the UK version? Those are very thorny, pernicky questions that are unique to Northern Ireland and have not really been tackled yet.

Dr Hayward: Following on from that, there is an interesting corollary, which is that British citizens in Northern Ireland will not then have equal rights with Irish citizens, which really undermines a fundamental principle of the Good Friday Agreement about the equality of Irish and British citizens. It turns it on its head from the way it used to be, of course.

The question of North-South co-operation is really vital here. This is what puts Northern Ireland in this unique position and I want to follow up on what Jon was saying in that regard. We know there was a mapping exercise and 142 areas of North-South co-operation were identified. We do not have to look very far; we just look at the remit of the North-South Ministerial Council to see the kind of areas that North-South co-operation covers. It is not just in the formal implementation bodies, such as waterways and trade and the EU programmes; it is also in such things as energy, agriculture, environment, tourism, transport and so on.

If we have continuity in North-South co-operation in these vital areas, for example, it makes more sense for transport regulations to be matched for cross-border rail services between Northern Ireland and Ireland than it does between Northern Ireland and Scotland, England or Wales. Therefore, the question is: how does Northern Ireland manage that process of aligning to Ireland and indeed under EU regulations and not fall foul of UK legislation that may be counter to this? How does it manage that position of being in between the UK and the EU?

The EU has put forward notions of this in the draft protocol and it is worth looking at what it suggests in that regard, vis-à-vis the specialised committee and a Joint Committee. For people living in Northern Ireland, it is not sufficient for the representation of Northern Ireland's voice and the governance of Northern Ireland in a proper way. It could be much more ambitious, thinking about the likelihood, almost inevitability, of Northern Ireland having to remain aligned to EU regulations in certain areas.

Q671 **Mr Marcus Fysh:** Can I ask a specific question? I am interested in your



HOUSE OF COMMONS

perspective on something that has been exercising me in this area, because it seems that one thing that is quite unique that we need to make sure of is a technical thing that gets covered in the agreement, and I am not sure how close they are to agreement on it yet. There are two aspects to it. One is the access to the sharing of information system and the other one is to the passenger name records information. Those seem to me quite critical data requirements for the operation of a Common Travel Area. Without the knowledge of what is crossing the wider border area it is impossible then to think about how you administer the system within it in Ireland.

Professor Gormley-Heenan: That is an important point, because there is some degree of confusion in what the Common Travel Area arrangement means. That is the protection of rights for British and Irish citizens to move freely across Britain and Ireland, but how do you know who is British and who is Irish effectively without some measure of checking, testing or passenger list? You are absolutely right on that, but it is because there is confusion about what the Common Travel Area arrangement means and who it applies to. It applies exclusively to British and Irish citizens.

Dr Hayward: The UK is being quite ambitious in what it wants to remain opted into in the EU system, such as the sharing of information system and the like. That is still to be negotiated, of course, but noting that justice and security is a core area of co-operation in North-South those kinds of issues you are raising are very important, such as data protection and sharing of information between police forces. That has to be addressed most specifically in the case of the island of Ireland, but also more broadly in terms of the UK and EU relationship and we do not know yet where that is.

Q672 **Chair:** A great deal of that kind of co-operation happens bilaterally and informally anyway.

Mr Marcus Fysh: If the framework of the law is different, you have a problem.

Chair: Acknowledged.

Professor Tonge: As you said, Chair, the CTA is an informal arrangement. It has been constructed through a series of Acts or opt-outs of Acts, whether it is the 1971 Immigration Act or whatever. The Common Travel Areas is much more of an informal arrangement than a legal framework.

Dr Hayward: Sorry to interrupt, but it is worth noting the difference the European Arrest Warrant made. Putting it in the European context was absolutely vital because, before then, extradition between Ireland and Britain was a highly politically contested point. The European Arrest Warrant made a huge difference to British-Irish co-operation, so it has been more than bilateral in some ways.



HOUSE OF COMMONS

Q673 **Dr Rupa Huq:** A core part of the Belfast Agreement is the three strands. How might these be affected by the UK leaving the EU?

Professor Gormley-Heenan: I will take Strand 3, which is the East-West relationship between the UK and Ireland. I suppose one of the things that we might see is a reconceptualisation of that East-West relationship and the architecture that could potentially exist around that to support it. I start from the premise that the current East-West relations in Strand 3 of the Good Friday Agreement, that is the British-Irish Council, the British-Irish Intergovernmental Conference, the British-Irish parliamentary body and so on, all those things that make up the East-West axis have been highly criticised over the last 20 years for failing to deliver, and that there was a lack of resources invested in them. We had constant suspension of the institutions in the North, and a bit of a reliance on things going to JMC rather than BIC.

One of the outcomes or effects of the UK leaving the EU might be that the Irish and UK Governments reconceptualise that East-West relationship, do what Professor Tonge has said and look at Strands 2 and 3 of the agreement again in the context of Brexit to see if it still makes sense. If it does not, are we now in the headspace of a renewal review that the agreement is renewed to take account of the new circumstances in which we find ourselves? This takes me back to the dry stone wall: you do not utterly change it, but you rewrite aspects of it to take account of the change in circumstance.

Q674 **Dr Rupa Huq:** Anyone else on one and two? I think she has covered it all.

Professor Tonge: In terms of Strand 1, everything is conditional upon whether we get a restored devolved Executive; there is no immediate prospect of that. That is not to say that the devolved Assembly will be disappearing anytime soon, it will not, and it can play a useful role in terms of scrutinising the repatriation of powers that come as a consequence of Brexit. There will be a role for the Assembly but that is a poor substitute for the restoration of a devolved Executive, and the lack of voice for Northern Ireland—which I touched on earlier—remains perhaps the biggest single problem in this process. The Secretary of State has not given up on the idea of restoring the devolved Executive, and there may be talks about talks again soon, but at the moment all bets are off.

Dr Hayward: Specifically on Strand 2, very quickly, the North-South Ministerial Council to function needs a functioning Executive and Assembly. In relation to the implementation bodies, a lot of their work relates to EU directives, for example, a huge portion of what Waterways Ireland does is based on EU legislation, such as the Water Framework Directive, and then, more broadly, that question of North-South co-operation; there are 142 areas. They are small things, such as mobile phone roaming, but they make an enormous difference for the functioning of everyday life, let alone the all-Ireland economy.



Professor Tonge: To add two quick points: the intersection of EU competencies and Northern Irish competencies is greater than for Scotland and Wales, which, we stress, is the urgency. The second point to make is that the British-Irish Intergovernmental Conference is supposed to be picking up the ball of North-South co-operation in the absence of a devolved Executive, but simply is not functioning. That needs addressing as a matter of urgency.

Q675 **Dr Rupa Huq:** In evidence to the Committee, Professor Michael Keating highlighted the development and importance of all-Ireland institutions in areas like electricity and agriculture. What other all-Ireland institutions exist and how might they be affected by leaving?

Professor Tonge: You have the six implementation bodies that were set up under the Good Friday Agreement, of which I would argue by far the most important is the Special European Union Programmes body, and one wonders what will happen to that post-2020. As Katy outlined earlier, the North-South Ministerial Council presided over quite a wide range of bodies, not necessarily based on all-Ireland implementation, but upon implementation separately in the two jurisdictions. The problem is that the North-South Ministerial Council is in abeyance as a consequence of the collapse of devolution. There is this unfortunate domino effect that has come as a consequence of the collapse of devolution.

The first point is to get the Executive back and then all the other institutions will rise to their feet again, and North-South co-operation can manage.

In terms of the all-Ireland energy market, yes, there are interesting consequences of that. I do not think we should run with the idea that it was a seamless thing. You had different regulatory authorities in the North and in the Republic, and I would imagine that the all-Ireland energy programme and market could continue via co-operative bilateralism between North and South, perhaps subject to EU approval. There are different issues there: the supply of electricity, the interconnectivity and the security. The latter point might be the greatest, because the EU is increasingly strong on that. Without being overly sanguine, I do not think there is any reason why that could not continue. Katy may disagree.

Dr Hayward: No, but there is an interesting point on the all-Ireland institutions where, specifically for the North-South Ministerial Council, it was mentioned in the protocol and the draft withdrawal agreement—and this is an area highlighted in green, so it has already been agreed in text and principle—that this would be able to feed into whatever might happen for North Ireland vis-à-vis the EU and alignment. What about the space there for some British-Irish institutions and representation feeding into the situation for Northern Ireland vis-à-vis alignment in the future? It is something that would be worth exploring.



HOUSE OF COMMONS

Professor Tonge: One last point about that on all-Ireland energy markets. There is a single Nordic energy market as well, although it is worth remembering that Norway, while outside the EU, is part of the European single market.

Professor Gormley-Heenan: Katy is absolutely right in terms of the new arrangements that might have to be put in place North-South. At the heart of that will be an opportunity for them to manage the regulatory changes that may well come to pass between the EU and the UK, so new life may be breathed into some of the North-South institutions and the operation of that as well.

Q676 **Chair:** Moving on to the question of legal arrangements for devolved powers arising from Brexit and the infamous clause 11 of the EU (Withdrawal) Bill—which I understand is now clause 15; their Lordships have added so much to our Bill—what are we going to find that we have missed because the Northern Ireland Executive and the Northern Ireland Assembly have not been shouting their corner during the debate about clause 11?

Professor Gormley-Heenan: One of the first things that I noticed was in terms of the development of the UK-wide frameworks, where the devolved institutions in the UK Government were going to agree to prevent any policy divergence from taking place. One of the things that was not picked up on in the local press at home, nor by the politicians, was that the framework set out to create a common UK, or GB, approach. The fact that there is reference to a, “GB framework” suggests that there may be an acceptance of a fairly different set of policy arrangements in Northern Ireland.

At a minimum, one of the things that we would have to suggest—in the absence of Northern Ireland being part of the discussions around clause 11—is that the UK Government need to conduct some sort of impact assessment each time there is any regulatory divergence from EU policy to take account of the border question. That is not in clause 11 because no one is thinking of that: the impact assessment that might need to take place as policies move from Westminster back to the devolved institutions.

Professor Tonge: I do not see clause 11—now 15—as a Westminster power grab; I would dissent from the Welsh and Scottish perspective here, particularly the Scottish one. Only 16% of policy areas are where the UK Government are proposing a legislative common framework, the other 84% will be non-binding and voluntary. Of course, there is the problem, yes, who speaks for Northern Ireland in this in setting these new frameworks for UK Common Agricultural Policy? Clearly, given Northern Ireland’s agrarian economy—and you do need someone speaking for Northern Ireland—one can only assume the Secretary of State will be the advocate for Northern Ireland, perhaps with specialist input from the Northern Ireland Affairs Committee, or from former Ministers within the Northern Ireland Executive acting in an unofficial



HOUSE OF COMMONS

capacity to argue Northern Ireland's case in terms of what powers should be re-devolved to Northern Ireland. Ultimately, Northern Ireland will acquire greater powers. You do need UK-wide frameworks.

Q677 **Chair:** We do not need to rerun the whole debate; what is specific to Northern Ireland? What views do the political parties take that might have been more forcefully expressed had the Assembly been in place?

Professor Tonge: All the political parties will protest—including the DUP and Sinn Féin—that they want a restoration of devolved Government. The problem is that they cannot agree over issues such as an Irish language Act that would restore that devolved Government. Therefore, the baton is passed on to other representatives whereas the FM and DFM really ought to be at the table representing Northern Ireland.

Q678 **Chair:** We have perhaps touched upon it, the GB approach being distinct from the UK approach, leaving a silence where there might be an all-Ireland approach, though we have been talking about electricity markets and other parts of policy that might be regarded in that vein. How does that affect the power of the Secretary of State to submit a Bill for Royal Assent, or revoke secondary legislation which she considers incompatible with the international obligations, or has an adverse effect on the operation of the single market in goods and services within the United Kingdom? Why is the UK single market in goods and services included in the Northern Ireland Act and not in other devolution Acts?

Professor Gormley-Heenan: This was something that was not really a bone of contention, or discussed very much at the time when the Good Friday Agreement was being negotiated. The piece about the incompatibility with international obligations was about legislating for a bill of rights, which was not devolved down to Northern Ireland at that time. That is where that came from. The piece about the legislation not having an adverse effect on the operation of a single market of goods and services, which was unique to Northern Ireland, was because we had consumer law devolved, so anything that is not listed as reserved or excepted is automatically devolved, and consumer law was an example of that. That right of the Secretary of State was to deal with some of the things that had been automatically devolved.

I am conscious that in 20 years the issue itself has only ever come up once, and that was in relation to a case on the appointment of a Children's Commissioner and the rights of a Children's Commissioner in Northern Ireland relative to the rights of the Children's Commissioner in England, with access to certain data. We will probably come to that later, but there are grey areas between the devolved and reserved and excepted matters. There are many instances of overlapping or shared responsibilities that the Secretary of State would probably have to take into account in terms of her role.

The key issue for me here is that, while the Secretary of State has the right not to pass secondary legislation that contravenes any international



HOUSE OF COMMONS

obligations, she has accepted responsibilities as the Secretary of State to represent the interests of Northern Ireland within the British Government. There is something of a contradiction in terms of the responsibilities and the legislative competency that she has, not least because the core remit of the Northern Ireland Office and the Secretary of State at the moment is to support and implement the political agreements that have been agreed there to increase the stability of the institutions, in other words, to make devolution work. No Secretary of State—which is why this has only ever happened on one occasion—wants to refer to that piece of legislation that says, “We have the right to not put forward Bills if they contravene this or this”.

Q679 **Chair:** That was a long answer, and I hope it will do for the other two witnesses but, in a word, these arrangements are appropriate and should remain appropriate, as set out in the Northern Ireland Act 1988?

Professor Tonge: Yes.

Q680 **Chair:** We will move straight on then to the question about a binary model of devolution between excepted and reserved matters and transferred matters. Does that continue happily after we leave the EU?

Professor Gormley-Heenan: Shall I go?

Professor Tonge: Yes. I don’t think it is a binary model, so you had better go.

Professor Gormley-Heenan: That is about what I was going to say—I am not sure—

Q681 **Chair:** The question is: how do we fit shared powers into this?

Professor Gormley-Heenan: In some instances we do already. It is absolutely not a wholly binary model at the moment; there are overlapping, shared and interdependent powers. If you look at something like equality legislation and the operation of it in Northern Ireland, it is a devolved matter but the appointment of equality commissioners is a reserved matter. There is an example of a shared power. If you look at fuel poverty as a policy area, there is a shared function there where the UK Government are responsible for energy market prices, for tariffs and for all aspects of energy efficiency, but the devolved Government are responsible for insulation, heating assistance, cold weather payments; all of those sorts of things. There are multiple examples of shared and overlapping functions between both.

Q682 **Kelvin Hopkins:** The Committee has heard a lot of evidence in favour of placing intergovernmental relations on a statutory footing. What principles should underpin these relationships?

Chair: They are making you do all the work.

Professor Gormley-Heenan: I know that, a couple of years ago, the House of Lords Select Committee found in its report that JMC did not



work very well, and had suggested that intergovernmental relations were placed on a more statutory footing, which the Government rejected at the time. There are still arguments that could be made for making it statutory, and it prompts the question, "What constitutes a statutory footing?" There are different degrees of this and you can have the overall principles without going down into the detail.

One of the things that it could have, for example, is an independent secretariat. Meetings could be called by any of the four devolved Administrations rather than the UK Administration by itself. There could be better scheduling and a better lead-in time to the meetings that take place. Certainly, the Government's response to the Lords Select Committee report indicated that there would be much more regular JMC meetings, which has not really come to pass.

A key thing, in terms of the optics, as much as anything else, would be the rotation of the intergovernmental relationship meetings, like JMC, around the different parts of the UK. Everyone has to come to London for those meetings, and it would send a very strong and powerful message that the intergovernmental relations are stepping forward in a different way, if both the chair and location of it were on a rotation, and that it had an independent secretariat drawn from the four devolved areas as well.

Most importantly, the thing that it could have, if it were on a statutory footing, is a policy and audit function. In other words, we have an audit function at the EU at the moment to make sure that we adhere to the policy rules and regulations. There is certainly something to be said about JMC taking on that audit review role as well within the UK to make sure that the different parts of the UK are adhering to the regulatory frameworks and common agreed frameworks that might be put in place.

Q683 Kelvin Hopkins: You touched on my second question, which is: what might formal mechanisms look like? Is there anything you would like to add to put a bit more meat on the bones?

Professor Gormley-Heenan: I know that in previous evidence, Richard Rawlings mentioned a JMC domestic single market and JMC international trade as subcommittees. At the moment, we have JMC Plenary, JMC Europe and then Exiting the EU. For me, there are things like the environment—whether it is air quality, energy or fuel—that will take on a very different dynamic in the post-Brexit landscape. JMC on specific policy areas would be critical beyond trade and the single market. That is what has been suggested so far. Also, that adherence and enforcement function is something that should be seriously considered.

Q684 Kelvin Hopkins: What considerations need to be made of the potential for different positions in a power-sharing Executive in these mechanisms?

Professor Gormley-Heenan: The question is: what do we do when the Northern Ireland First Minister and Deputy First Minister arrive at these Joint Ministerial Committees and have a different view on what the



circumstances or policy should be? There are a lot of lessons to be learned from Strand 1 of the Good Friday Agreement, and we should not lose sight of what that was about: it was about building relationships between people and putting in place structures to ensure that the rights of the minority in any arrangement were protected and listened to. In the JMC at the moment, it does not always feel that the devolved Administrations that are there feel they are necessarily being listened to.

One of the considerations that could be taken into account is that things could be carried on the basis of England plus one, for example; that you would need to have the support of at least one other devolved Administration or institution in order to be able to really push forward a particular agenda. As it stands now, Scotland, Wales and Northern Ireland may raise concerns and the Government will indicate that they have listened to those concerns and take it away, but it does not necessarily come back to JMC again. Whether there is a joint or two different positions from Northern Ireland, I do not think it affects—at least in numeric terms—the outcomes of how decisions are taken at JMC and arrangements are made.

Q685 Kelvin Hopkins: That was about the possibility of the Executive and the Assembly working again, but if there is no Northern Ireland Executive or Assembly—as is currently the case—or if direct rule is imposed, how could Northern Ireland be distinctively and effectively represented?

Professor Tonge: You could have representation from the Assembly because it would remain, I am fairly sure, at least as a scrutiny body. That is the way forward.

Going back to what Cathy was saying, the Welsh Government's idea of a UK Council of Ministers is a good one, but with Irish representation as well. The British-Irish Council has not really worked, other than in a sectoral format. Going back to your question then, in the absence of a First Minister and Deputy First Minister, the way forward is to have representation via the Secretary of State via the Northern Ireland Affairs Committee and elected members of the devolved Assembly. That way you could ensure at least semi-adequate representation for Northern Ireland.

Q686 Kelvin Hopkins: My next question is: how might more formal intergovernmental relations mechanisms interact with the North-South Ministerial Council and the British-Irish Council? You have touched on these already, but do you want to elaborate a bit more, Professor?

Professor Gormley-Heenan: One of the things that we would have to pay particular attention to is that any intergovernmental institutions and mechanisms that are put in place do not tie Northern Ireland anymore tightly to the UK than needed, and that is because we also need to take account of the North-South, East-West dynamic as well. How the intergovernmental mechanisms interact with North-South Ministerial Council and BIC is as important as how JMC itself operates internally.



HOUSE OF COMMONS

I know from negotiations in the run-up to the Good Friday Agreement that the SDLP, for example, had undertaken a lot of work on what the BIC could look like. If you look back at the agreement, the British-Irish Council has no implementation bodies; it has nothing associated with it in comparison with the North-South institutions that were put in place.

One of the more formal intergovernmental mechanisms that could be put in place, to interact with the North-South and BIC, might be around those implementation bodies and really putting meat on the bones of the aspiration of the East-West axis that was developed in much more detail in Strand 2, but was left very loose in Strand 3.

Q687 **Kelvin Hopkins:** My next question—and, again, you have touched on it a bit—if common UK frameworks were agreed through this mechanism, what consideration would need to be taken of the all-Ireland institutions and economy?

Professor Gormley-Heenan: The answer, very briefly, on that: it has been taken into account with that, “comma and GB” frameworks, that is definitely in the common framework agreement that has been agreed, it just has not been emphasised very much, for a variety of reasons, perhaps.

Chair: Attention span.

Q688 **Kelvin Hopkins:** My last question is: what kind of dispute resolution mechanism could be put in place that would respect the current constitutional balance?

Professor Gormley-Heenan: Does anybody else want to take that?

Professor Tonge: That is definitely one for you, Cathy.

Professor Gormley-Heenan: That is a difficult one. The dispute resolution mechanisms are not well regarded by the devolved institutions; we saw evidence of that with the Olympics debacle and the Barnett consequential that had to come out after the funding for the Olympics. The devolved Administrations got about £30 billion more on the back of that, but the ride continued for a really long time, and the Treasury did not accept the arguments that were being put forward.

Respecting the constitutional balance is very difficult when England makes up more than 80% of the total landscape. It goes back to the point that you made before when you asked: how do you account for differences of opinions in the JMC? It is this issue of maybe England plus one that it cannot just be carried by itself, and did it adhere to the spirit and the ethos of the joint nature of the Joint Ministerial Council? It has to be more than just one devolved part wanting something to happen.

Q689 **Kelvin Hopkins:** Do any of the other witnesses wish to add anything?

Professor Tonge: The UK Council of Ministers—if one could set up a dispute resolution mechanism of three independent figures who would



HOUSE OF COMMONS

resolve disputes—other than that there is the England plus one mechanism that Cathy has talked about. Those are the two ways forward as I would see it.

Q690 **Chair:** I have a last question about inter-parliamentary relations. We have been talking a lot about how the UK ought to have some kind of permanent inter-parliamentary council to scrutinise the work of the JMC. What lessons should be learned from the British-Irish Parliamentary Council?

Professor Tonge: I would regard the British-Irish Parliamentary Assembly as a pretty effective functioning body, a model of its type: 25 members from each have helped foster cordial relations between Westminster and the Oireachtas. That is the area where I am most sanguine about current structures. You have the North-South Inter-parliamentary Association as well; we are still awaiting take-off for the North-South Consultative Forum, so that is something that we need to look at, but in terms of British-Irish parliamentary relationships, as distinct from intergovernmental relationships, that is probably a success story.

Dr Hayward: There is a little bit of concern about the effectiveness of what happens to recommendations from the British-Irish Inter-parliamentary Assembly. For example, the EU Affairs Committee made a recommendation in relation to the HGV levy, which was particularly arising from vehicles from the South crossing the border and then coming into Northern Ireland. That is an interesting case, because it relates a lot to the kind of challenges that we will have post-Brexit—some of those battles and those differences—and it is not clear that the recommendations were terribly effective in that regard. Looking ahead, we are going to need to think about much more substantive roles, as my colleagues have been saying, for these institutions.

I want to make the point that Northern Ireland will be in a very unique position. If we are to have a situation in which it has distinct arrangements, specifically it may not be as extensive as single-market membership for the production and marketing of goods, it may be less than that, but, nonetheless, there will be a need. If it was a different situation it would have observer status, as EEA members get. It would have that kind of role in terms of being consulted and legislation coming forward on the EU, and being able to lobby, et cetera. We are looking to a situation where there is a risk that it might not have anything near that, so you would have very much Northern Ireland being affected by EU legislation with having very little say.

What do we do in that regard? I suggest we go forward and want something in the protocol that might be able to boost up those mechanisms that may be there. Article 12.4 and the protocol have the possibility of a decision-shaping role for experts or representatives nominated by the UK on behalf of Northern Ireland. What would that look like? Who would those experts be? Who would those representatives be?



HOUSE OF COMMONS

There is a lot in there that we could begin to work upon to avoid Northern Ireland being negatively affected by decisions from the UK neglecting Northern Ireland, and, indeed, decisions by the EU neglecting the implications for Northern Ireland. We need to think ahead to avoid that situation at this stage before the withdrawal will be able to be signed off.

Chair: Thank you very much. We have had a very interesting session and I am so glad we did it. It would have been a real gap in our understanding if we had not done this session and invited your evidence. Thank you very much indeed. If you have anything to add in writing, please do so. Thank you very much.