



Select Committee on the European Union

Justice Sub-Committee

Corrected oral evidence: Civil justice co-operation post Brexit— follow-up inquiry

Tuesday 17 July 2018

10.45 am

[Watch the meeting](#)

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

Evidence Session No. 3

Heard in Public

Questions 20 - 27

Witness

[L](#): Lucy Frazer MP, Parliamentary Under-Secretary of State, Ministry of Justice.

USE OF THE TRANSCRIPT

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

Examination of Witness

Lucy Frazer MP.

Q20 The Chairman: Good morning and thank you for coming along: I am sure you are extremely busy. A little bit of housekeeping first. This is a public evidence session and it is being broadcast. A verbatim transcript will be taken and a copy will be sent to you shortly. We should be grateful if you would advise us of any incorrect parts. If you want to amplify or correct anything you say, or to give us additional evidence, please feel free to do so. We would much appreciate it.

For those watching, I should say that this is a follow-up series of evidence sessions to a report that we wrote in March last year called *Brexit: Justice for Families, Individuals and Businesses?* The report was aimed exactly at its title. This is the third session. We heard in the first session from the Law Society and the Bar Council. Last time we heard from three family law experts.

Before we begin our questions, do you want to say anything in particular as an introduction, or do you want to go straight in to the questions?

Lucy Frazer MP: I am happy to go straight into the questions, but thank you for having me back. It is a pleasure to be back and thank you for your continuing work in what is a very important area.

The Chairman: Thank you very much. The first area of inquiry relates to the transitional arrangements foreseen in the withdrawal agreement. There has been a bit of activity on that. First, Article 63 has now been agreed and changed and, secondly, there has been the White Paper. Could you give us a bit of colour and background on where we have got to with the withdrawal agreement? Is anything still being debated that is regarded as technical, because words coloured green are “technical: institutions only”? Could you give us a survey of what the world will be like in the transition period?

Lucy Frazer MP: You are right that to say that we have made some progress. The remaining section, Article 63, was published in June so, as far as we are concerned, the text of the agreement on the transition period is now complete. This is now confirmed and there are no outstanding matters in our area for transitional provisions.

The Chairman: Are you and your department involved in those technical discussions, and is there still an amount of play within the eventual agreement?

Lucy Frazer MP: For the future deal? We have agreed the separation, we have agreed the implementation period and now our focus is on the future arrangement.

The Chairman: My question is about the transition period—sorry for not being clear enough. When things are coloured green in the negotiating document, there are still what are called technical discussions going on. Is your department involved in any technical discussions, or is the text agreed in Article 63 and the surrounding articles?

Lucy Frazer MP: As far as I understand it, it is now agreed, but I am sure that my officials sitting behind me can correct me. My officials confirm that it has been agreed.

The Chairman: Very good. One other thing came up in our second evidence session, which was concern that Article 11 of a Brussels IIa regulation to do with child abduction was not being brought through into the transition period and that there would therefore be a lacuna in the arrangements. We have tried to analyse where Article 63 has got to, but I should be interested in your view on whether that lacuna had been cured.

Lucy Frazer MP: I read that evidence and discussed it with my officials, who assure me that it is covered by Article 63.1(c).

The Chairman: That is very clear. Thank you very much.

Q21 Lord Judd: When we heard evidence, we heard particularly from the Bar Council that there were already indications that in Belgium, Germany and France, preparations were already being made to use the English language to take over a bit from London. We were concerned about this, and warned in our report that the uncertainty caused by Brexit in this area was having an impact on the UK's market for legal services. Sixteen months later, how do you see the situation? If there is a challenge, what specific steps are the Government taking to avoid work drifting from London to mainland Europe?

Lucy Frazer MP: You are right that there are other jurisdictions which hope to capture the outstanding legal services that we have in this country and are taking steps to do that. You are right to point out that we are in a period of uncertainty, which is not good for business broadly. We are very alive to the fact that we need as much certainty as quickly as possible.

In the Ministry of Justice, we have tried to ensure as much certainty as possible within the framework of an ongoing negotiation and steps within it. We were one of the first departments to put forward, in our August paper, what we wanted to see. We said very clearly from the outset that Rome I and II, in terms of applicable law, would continue to be respected.

We have agreed the withdrawal agreement and the transition period. We published our slides for Task Force 50 on the next stage, and we continue at all times to engage with the professions. So much of the position that we have already adopted has been put together as a result of discussions with the professions, and we continue to engage with them on the future. I have met with the Brexit Law Committee and have had two separate sessions with experts on specific areas: one on family and one on commercial law. My officials have regularly met with a large group of people across the industry.

We must also not forget other areas of legal services—my department is very keen on this—so we are also ensuring that we remain at the forefront of legal services by

encouraging and supporting LawTech, which hopefully will put us in a good place post Brexit.

Lord Judd: Thank you for that very clear response. May I press you on a couple of points? You have talked about what I might call the atmospheric work that you are doing to endeavour to keep the atmosphere as positive and full of potential as you can. You have talked about discussions, thoughts, ideas. What is the detail of the negotiation that is going on and that will be of help in this area?

Lucy Frazer MP: We have a lot of details on our relationship at the moment up to the end of the implementation period, so we are very clear on the position until then. But you are right to point out that the future deal is still a matter of negotiation. We have only just published the White Paper, and we need to negotiate and liaise with the EU on the aspects that are set out there.

Lord Anderson of Swansea: Minister, can you give us some idea of the scale of the exodus, actual and potential, and where they are going? We know, for example, that President Macron has made a great attempt to attract law firms to Paris. Are other major centres, equally, seeking to attract them? How worrying is it, and are the Government succeeding in their damage limitation?

Lucy Frazer MP: You are right. You have heard evidence of a number of centres across Europe that are building up their expertise and building up courts with English law in them. We need to ensure that we get certainty and the right arrangements, but at the end of the day that will ensure that we continue to have cases argued here.

However, while this is all extremely important, and we must press on to get the best possible deal, we must continue to remember that a lot of our international work done here is not European; it is truly international.

Lord Anderson of Swansea: Of course.

Lucy Frazer MP: We must remember that a number of jurisdictions use our common law—Kazakhstan, and others—and we have a very strong presence in them. Britain remains a centre of commercial excellence, and we are doing a lot through the Legal Services are GREAT campaign to continue to explore our legal services abroad outside the EU. We recently went to Kazakhstan, we are planning a trip to Nigeria, we have been to China. There is a lot of work on a number of levels.

Lord Anderson of Swansea: But are the Government worried about those who have already moved and those who have expressed an intention to move?

Lucy Frazer MP: As I think I said, we are alive to the fact that there is an impact to uncertainty. We are aware of what is happening in other jurisdictions and we continue to do our best to ensure that we can give that certainty as soon as possible.

Lord Anderson of Swansea: That is an aspiration. Are the Government worried?

Lucy Frazer MP: People come here not just because we are part of the EU and we have the benefit of Brussels but because, as I think someone on your Committee mentioned in one of the evidence sessions, we have first-class judiciary, who are respected—

Lord Anderson of Swansea: Yes, of course.

Lucy Frazer MP: —and an outstanding legal services industry. Those things will all remain after Brexit. Of course, we acknowledge that there is an impact from uncertainty, but we are working towards getting that resolved as possible.

Lord Anderson of Swansea: And the impact will be wholly negative.

Lord Judd: Could I just come back to what you have just said? Of course it is reassuring to hear that you are very active in trying to build up business more widely in the world, but would you not agree that the weight and the credibility of London as a centre rests very much on the strength of its work with Europe, and that the other countries that might become competitors in this sphere also have global aspirations and global outreach? Therefore, it will be disabling to some extent if our businesses seem to be reducing in Europe and others' are building? People like to go to where success appears to be.

Lucy Frazer MP: We obviously need to ensure that we get the best deal that we can, and not for one moment would I suggest anything other than that. This is an incredibly important relationship. Of course, reciprocity of judgments and certainty about jurisdiction as well as the protection of families and consumers is very important, but we must remember that we are an international centre, not a European centre, that attracts people for a variety of reasons.

We are also a very successful leader in the arbitration field, and that latter part of our legal services will certainly continue to thrive post Brexit.

The Chairman: We need to make a bit of progress. First, Lord Cromwell has a brief question.

Lord Cromwell: There is no doubt that everyone is doing their best to get the best possible deal, and there is no doubt about the excellence of our legal and other services here in the City. We can take both those points as a given, I hope.

My question, without wanting to extend the discussion on this subject for too long, is whether the Government accept that there is likely to be a net loss of business to London as a result of the Brexit process, no matter how hard you try to involve Kazakhstan or other places? Is there, or is there not, likely to be a net reduction in business for the City of London in your model?

Lucy Frazer MP: I think I have said on a number of occasions that we are not blind to the fact that uncertainty is not helpful.

Lord Cromwell: I agree about the uncertainty, but what are you planning for? Are

you planning for a reduction, or do you think that it will be more or less as it is now?

Lucy Frazer MP: At the moment our focus is on ensuring that we get the best possible deal.

Baroness Shackleton of Belgravia: My question, Minister, is slightly different. One of our witnesses, a retired Lord Chief Justice, pointed us to the problem of developing law. The public believe that we are the supplicants of Europe, not the vast contributors to it. The area he was pointing our attention to was digital law, and his evidence was along the lines of our being simply too small on our own, without either Europe or the States, to develop in this area of law, which is the fastest-growing area of law.

What efforts are the Government making, if we leave Europe, either to carry on contributing to that area of law or to make other arrangements to hook up to another jurisdiction—to put it bluntly—so that we are pivotal and not left out on our own?

Lucy Frazer MP: One thing we are very keen on doing is ensuring that we are at the forefront of technical innovation in our legal services market. We are doing a lot with law firms to try to ensure that our law firms develop technical innovations in smart contracts, blockchain and all the things that will be the future for some aspects of law. Only last week we established a tech panel, which is chaired by the president of the Law Society, through which government is supporting firms to develop in this space.

Baroness Shackleton of Belgravia: Where is this going to be adjudicated, because we will have no judge in Europe? Where is the final stop?

Lucy Frazer MP: On matters of the role of the ECJ where there are issues of EU law, it depends what area we are looking at. We have said in relation to goods, where we have a common rulebook, that we will look to the EU but made very clear that the ECJ will not have direct jurisdiction over our laws.

The Chairman: It is a very interesting area. One thing I would say, however, is that if we invest in what Baroness Shackleton suggested, as a nation, we will reap good benefits, but we have to have the courage to invest in time and pay for expensive judges and lawyers to be able to interact and have that influence.

We will leave that area now and move to the future relationships with the EU 27 after the transition period.

Q22 Lord Cromwell: In August last year, the Government produced two Brexit papers on cross-border judicial co-operation. We took evidence on them. Without wanting to be too hostile, the Bar Council described one of them as fine words but not specific and another of our witnesses described them as extremely superficial and deeply disappointing.

We have had the Prime Minister's Mansion House speech, assuring us that civil

judicial co-operation will be covered by the agreement. Looking at last Thursday's White Paper, how confident are you that the UK will secure a comprehensive, new bilateral agreement on civil judicial co-operation before the end of the transition period, which is a few months away? You could answer that by saying, "Very confident", but if you do, can you explain how this deep and special relationship is to be achieved and what role the CJEU will or will not have in it?

Lucy Frazer MP: I understand everyone's frustration and that everyone wants answers, but we are in negotiation. We have put forward our position and are now negotiating it with the EU. I do not think that I can answer your question to give you the answer that you and the rest of the country want on particular areas.

We have been very clear about our desire for a framework that is as close as possible to the one we have at the moment. I think we can take some comfort from the fact that we have reached agreement on the withdrawal agreement and the transition period. We can take some comfort from the fact that in the guidelines set out by the EU, it was interested in the area of the family, so it has not ruled out mutual co-operation and reciprocity. We should take some comfort from the fact that we already have the Lugano convention, which is a different model and does not have the direct jurisdiction of the ECJ but is a mechanism for co-operation between countries.

All those point to the possibility and the fact that it is in everyone's interests—for the protection of families, businesses and consumers—to have mutual arrangements.

Lord Cromwell: Forgive me, those are very fine words, but I am conscious that there are very few months left to arrive at replacements for things which took years to establish. We will come on to the Lugano convention in a few minutes. I guess it comes back to my original question: I am sure that there is mutual good will, but how confident are you that we will have the mechanisms to deliver this in the next few months? I am not asking what the mechanisms are, but how confident are you that they will exist?

Lucy Frazer MP: I hope we can achieve that.

Lord Cromwell: So do I.

Lucy Frazer MP: I think it is in everyone's interests that we do—ours as well as theirs—in the interests of the many EU citizens in our country, the many UK citizens who are abroad and the many businesses that operate there. My officials have written me a note saying that we have until the end of the implementation period in December 2020.

Lord Cromwell: Which is a fair challenge, but it will still come up more quickly than we think when we think how many years it has taken to establish what we have today

Lucy Frazer MP: Yes. That is what we are working towards.

The Chairman: It is worth pointing out that Article 63 of the withdrawal agreement has quite a long tail, because if you begin a process during the period, it is all covered in the withdrawal agreement, so it is not quite the cliff on 31 December 2020. It is a well-drafted article, I suggest, so the hurry is possibly not quite there.

Lord Anderson of Swansea: One of our witnesses said something like, “Hope butters no parsnips”. Is it your view that there is sufficient appetite on the part of our negotiating partners to finish the relevant negotiations before the end of the transition period—the end of 2020?

Lucy Frazer MP: I am sure that is the case. I hope I have highlighted some facts as to why we should get some comfort from the positivity of where we are going. We have certainty that they are interested in a particular area that crosses borders—family law. We have certainty that they have already agreed our withdrawal agreement, which we recognised ensures certainty for those who have cases already pending before the ECJ and how they will be dealt with, and those people who have opened insolvency proceedings during the implementation period.

We have examples of circumstances where the EU has co-operated and ensured that we have practical arrangements. That is not hope. That is facts.

Lord Anderson of Swansea: But when it comes to the timing, as Lord Cromwell said, it takes a long time. For example, there is a ratification process, which has proved difficult in the past. What calculation have you made that all will be completed before the transition period?

Lucy Frazer MP: We have completed the withdrawal agreement within the time. We have agreed the implementation period within good time. We are continually putting our points to member states. We presented a slide pack, which is public, to Task Force 50 recently, explaining the benefits of continued co-operation. The Justice Secretary was at the Justice and Home Affairs informal Council last Thursday and Friday, continuing to make our case. We will continue to do that.

The Chairman: That is probably a very good time to come to Lord Cashman’s question.

Q23 **Lord Cashman:** Minister, it is good to see you, and thank you for your responses so far. You will know of our debate on 20 December last year on our report, and it is worth reminding all of us that the report’s subtitle is *Justice for Families, Individuals and Businesses*?

Out of that debate came real concern from most contributors about the lack of legal certainty about what will happen to judicial co-operation and dispute resolution, the fear being that the rights and remedies that we have and that currently work with 27 other member states may disappear post Brexit. That deep concern is shared by all members. Indeed, that concern was expressed when we saw the Law Society in April this year, again about legal uncertainty.

It expressed concern and the Bar Council expressed concern. In particular—I will

quote this, especially in the light of the Government's published White Paper last week—the Bar Council told us that “it is a matter of real concern” that the Council's negotiating guidelines of March 2018 referred to judicial co-operation only in “matrimonial, parental responsibility and other related matters”. Therefore, my question is: have the Government persuaded the EU 27 to widen discussion to include all current civil judicial co-operation?

Lucy Frazer MP: I understand that it is frustrating, but if we had a deal, we would be telling you that we have a deal. We are in a negotiation.

Lord Cashman: But the difference is that we now have a White Paper, which is a proposal on the table which will be negotiated between the parties. I am asking you whether it is part of the negotiating mandate to include civil judicial co-operation.

Lucy Frazer MP: It is absolutely part of our negotiating mandate to include all those areas. As I said, we presented a slide pack to Task Force 50 which sets out the mutual benefit of co-operation in all areas—civil, commercial and family—and the White Paper is very clear at paragraph 128 and at paragraphs 145 to 148 that we want a deal that spans civil and commercial law, including family and insolvency. We feel that we start from a basis of significant co-operation, and that is the arrangement that we should like to continue.

Lord Cashman: I asked whether the Government had persuaded the EU 27. You are saying that it is an aspiration that you will be able to persuade them.

Lucy Frazer MP: I am saying that only a week-and-a-half ago—time is always very unclear in the past; not long ago—did we present our White Paper, which sets out what we are seeking from the European Commission. I do not think you would expect us to have a completed deal on those matters just yet, but that is what we put forward. As I mentioned, the Justice Secretary went to the informal Council on Justice and Home Affairs last Thursday and Friday, continuing to make that case.

The Chairman: You used the word “Commission” there. We have various players in the negotiation. A particular concern of the committee is that the European Council produces negotiating guidelines now and then. Its most recent iteration of those guidelines—the Council's view of life—includes matrimonial, parental responsibility and related matters; it does not include the broad band. Okay, we are talking with the Commission about broad-band stuff contained in the White Paper—everything—but the Council appears to be interested in only a little piece of this. Can you give us comfort that the Council, despite its negotiating guidelines focusing on the narrow aspect of civil judicial co-operation, now has a wider view?

Lucy Frazer MP: Well the Council knows it is our view, so we are talking to it about that. We have set out our negotiating position and it has set out its negotiating position. I should make clear that we are also talking to member states to ensure that they understand what we want and what relationship we would like to have. Officials are also talking to their counterparts at official level and between member states.

Baroness Ludford: Just to follow up: we will come to the Lugano convention in a moment, but you are hoping for Lugano plus some of the co-operation that has been developed within the EU. You talk about reflecting that co-operation is still based on mutual trust in each other's legal system. I put it to you that that has long been a failure of understanding of successive British Governments going back to Jack Straw—that you can just have mutual trust without common instruments and a common legal structure of supervision and enforcement. That cannot work. Someone came up with a clever quote a few weeks ago—that it is mutual trust based on the fact that everybody is obeying the same laws and court judgments. How will you have mutual trust without being part of the legal framework?

Lucy Frazer MP: We want to be part of a legal framework

Baroness Ludford: Of a legal framework.

Lucy Frazer MP: Of a legal framework.

Baroness Ludford: Like “a” customs union?

Lucy Frazer MP: I am not coining any phrases here. We cannot expect to join the Brussels regulations as a non-member state. We hope to be able to enter a new framework which is as close as possible to it, or achieves reciprocity in a similar fashion to that which exists at the moment. I do not think for one moment that people expect that we would just rely on trust. We would very much like a framework that is similar to what we have at the moment and goes well beyond what Lugano does at the moment.

Baroness Ludford: And what would be the legal jurisdiction and enforcement?

Lucy Frazer MP: That has not yet been determined, but we know that Lugano operates without binding decisions from the ECJ. We also know that when we operate outside of the EU regime—for example, when we operate under the Hague regime—we rely on the courts of other member states to enforce our judgments and respect our laws. So there are two existing mechanisms: one that is member state court to member state court and one that relies on looking at the ECJ but not being bound by it. I am not suggesting that those are definitely the mechanisms that will be determined, but I am saying that there are already frameworks which operate without direct ECJ jurisdiction.

Baroness Shackleton of Belgravia: But in Lugano there are holes which deal with neither of those, such as divorce. Divorce is not dealt with by Lugano; it is dealt with by Brussels II. So we will be in a mighty mess if there is not something to scoop it up and, as Baroness Ludford says, some reciprocity. It is no good us collecting our rules if they will not be enforced abroad, and vice versa. We need mutual recognition of divorce.

Lucy Frazer MP: You are right: Lugano does certain things, the Hague convention does certain things and the Brussels common regulations do more extensive things, and there is a gap between the Hague and Lugano.

Baroness Shackleton of Belgravia: Nothing in Lugano deals with recognition of marriages, so if you get divorced in this country, it will not be recognised in France.

Lucy Frazer MP: Which is why we would like to have a wider framework to deal with those things.

The Chairman: I will come in a second to Lord Judd and then we will formally move into Lugano territory, but on this question, we are still asking about the future relationship.

Lord Judd: I have been very impressed by the evidence we have heard from significant practising lawyers about how the situation in this sphere of law has been steadily improving within the European Union and how arrangements for the protection of children in particular have been improving. We are deeply committed, with our pioneer work on the UN Convention on the Rights of the Child—prominently committed—to the well-being of children. In the middle of all this, we are talking about the certainty of the well-being of children. Things have been improving. What you have been candidly saying to the Committee gives me no sense of reassurance that anything being thought about will be nearly as strong as what was in fact emerging. Am I being unfair?

Lucy Frazer MP: I think you are being unambitious. I understand very clearly the issues that the people who have come to you have identified. As I mentioned, I have met with the Brexit law committee and experts from that and other committees. One of those experts was on your first panel. Another of those experts was invited to your second panel but did not attend, although colleagues of his did attend and made points about the extent of the existing conventions and regimes that we have.

We are very alive to what issues we need to resolve. We understand, and my officials very clearly understand, the regimes that we have in place at the moment and the regimes that we would have if we did not have Brussels, both in the family sphere and in other spheres, and we are working very hard to ensure that we have as comprehensive an arrangement as possible.

The Chairman: We now dive more deeply into those other arrangements. Baroness Ludford will start us off on the Lugano convention.

Q24 Baroness Ludford: As I understand it, we would have to go through all these consent procedures to become a member of the Lugano convention and notify the EU itself, Denmark, Iceland, Norway, Switzerland, and there is a certain time limit—I think it is a year—within which to express consent. While we understand that there is no legal barrier to the UK becoming a party to the Lugano convention, could you explain to us the steps which the Government have taken to secure the UK's participation after December 2020, which is not that far away? Are active steps being taken and, if so, what are they?

Lucy Frazer MP: Yes, they are. You are right: there is no intrinsic reason as a matter of law why we could not join Lugano. We need the unanimous consent of all those who are party to it, which includes the EU. We as a department are engaged with

the EU, Switzerland, Iceland and Norway. We have had separate meetings with all of them on Lugano and we have made it very clear in our White Paper that we want to rejoin Lugano. It is no secret, and we are taking steps to ensure that that happens.

The Chairman: Which ministry is in charge of that?

Lucy Frazer MP: We are.

The Chairman: The Ministry of Justice.

Lucy Frazer MP: Yes.

The Chairman: Another thing that has been concerning me is whether there will be an absolutely clean moment when we cease to be Lugano members because we are EU members and we begin being Lugano members because we are outside the EU, and that there will be no horrible period when there is a great big trench into which people can fall.

Lucy Frazer MP: With both Lugano and Hague, we would like to ensure a seamless transition between us being members of those as members of the EU and us being members in our own right. That is one of the discussions that we are having.

The Chairman: Good.

Lucy Frazer MP: I would just like to clarify with my officials that we are in charge of Lugano, because I have assumed that we have responsibility. Yes, we are.

Lord Cromwell: So there will be a seamless transition to those two treaties, let us hope. But with Brussels I and II falling away, will we also at the same time have seamless transitions to what I think in a previous meeting we called London I and London II to plug those gaps? We are back to mechanisms again and 29 months, which I accept from your officials is a more accurate representation. That is still not very long. Will London I and London II, if you forgive those terms, be in place in that time?

Lucy Frazer MP: Yes. That is what we are trying to achieve. There is a particular issue with a seamless transition particularly with commercial contracts, so of course we want to ensure that people are protected as much as possible, which would ensure that a continuation is secured.

The Chairman: Lord Anderson, you were going to develop the Lugano discussion.

Q25 Lord Anderson of Swansea: Everyone appears to accept that the Lugano convention needs a degree of modernisation. Do you find in your talks with our EU partners and the EFTA groups that they too are prepared?

Lucy Frazer MP: At the moment we are not a contracting party to Lugano in our own right, so the modernisation of Lugano is a matter for Lugano. We are focusing on a framework that would be separate from and more extensive than Lugano. If it became appropriate to discuss something broader in relation to Lugano, of course

we would have those discussions, but at the moment we are working towards a new agreement that is more comprehensive than Lugano in the Brussels sphere.

Lord Anderson of Swansea: And what would you hope to include in this extended agreement?

Lucy Frazer MP: The White Paper sets out that we want to have mutual recognition and enforcement of judgments across the sphere: civil, family, commercial, insolvency. That is what we are working towards.

Lord Anderson of Swansea: And you believe, then, that the red line in relation to the Court of Justice will not be breached?

Lucy Frazer MP: We are working towards a mechanism that does not have the ECJ giving direct jurisdiction, and we are very pleased that, knowing that red line, the EU has put family forward in its guidelines as an area in which it is very interested in mutual co-operation.

Lord Anderson of Swansea: Although in fact there are very rare precedents for the CJEU judgments not being followed in Lugano.

Lucy Frazer MP: Yes, but there is the conceptual distinction between following things because the ECJ has set them out and they appear to be right and us being bound by what the ECJ says we need to do, which some people feel is an affront to our parliamentary sovereignty.

The Chairman: That is a good moment to come off the subject of Lugano. As Baroness Shackleton pointed out, Lugano is not helpful in family matters, so we move to considering various Hague conventions.

Baroness Shackleton of Belgravia: It is helpful in some family matters, but not in all of them.

The Chairman: Lord Judd will kick off with the first question in this regard.

Q26 Lord Judd: During the debate on the withdrawal Bill, it was argued with regard to family law that the “Hague alternatives would be perfectly adequate and satisfactory on our leaving the EU”. Do you personally agree with that statement? If so, why? If not, what are your principal areas of remaining concern? The Committee is particularly interested in the issues of abduction and maintenance.

Lucy Frazer MP: You have had extensive evidence from practitioners in the field who have identified that there is co-operation to varying degrees in different areas of family law. Alexander Layton made very clear that Hague was a good substitute in relation to the protection of children. In relation to maintenance, we have Lugano and the 2007 maintenance convention. There are no jurisdictional rules. In relation to divorce, as Baroness Shackleton identified, we are back to our old rules. So there are different degrees of protection according to the area of family law.

So there is some protection and some mechanisms for mutual co-operation in the

existing rules that would remain under Hague, were Brussels to fall away with no alternative. However, as I keep reiterating, we are trying to ensure that we have a much more extensive and similar arrangement. The EU has identified that it is interested in this area of mutual co-operation, which is very important. One reason why it is important is that, as a result of free movement of people, we have a lot of EU citizens living in this country who this affects, and we have a lot of UK nationals living abroad, so this is a very real area where mutual co-operation is important.

Lord Judd: Your reply is interesting, because, to put it frankly, as in other spheres you are replacing certainty—increasing certainty, in the successful way in which present arrangements are working—with aspirations and possibilities. I repeat what I said a moment ago: we are dealing with children and vulnerable women. We need some certainty in this area. Why on earth do we get rid of something that is working well unless we are absolutely convinced that we have something that will work at least as well and convincingly in future?

Lucy Frazer MP: The answer is that it is not our choice. We have had a vote to leave the EU and the consequences of that are that we can no longer be a member of many of the arrangements which we were previously. Therefore, we need to renegotiate our position. We are aware that this sphere is an important area that protects children, families, businesses and individuals. That is why we are trying to ensure that we have an appropriate arrangement.

Lord Cashman: But I am afraid that one stymies oneself when one puts down a red line that completely cuts out the European Court of Justice. That is the major problem. Where we can maintain co-operation and the joint regulations that we have, what brings us up against the barrier all the time is the red line against the Court of Justice of the European Union. For people seeking redress, people seeking certainty and people practising in those areas, it makes no sense whatsoever, Minister.

Lucy Frazer MP: I understand what you say. There is a section of the country that agrees with you, but there is also a section of the country that feels that the ECJ takes away our parliamentary sovereignty and does not want to be controlled by those who are not part of our parliamentary and democratic system.

Lord Cashman: I just say for the record: countries cede power to the European Union. Sovereignty is not taken away. Each parliament cedes power.

Lord Judd: I just say on that that it seems to me that there are two important principles at stake. We can certainly argue about parliamentary sovereignty, although I rather endorse what Lord Cashman just said, but we are signatories to the Convention on the Rights of the Child. Indeed, we were pioneers of it. We have an absolute obligation to the well-being of and what is in the best interests of the child.

Come on: these are the two principles you are arguing for—parliamentary sovereignty and the rights of the child. I put it to you that the Government should

not proceed unless they have something at least as good if not better for the rights of the child. We do not talk about the rights of the child nearly enough in our consideration of this matter.

Lucy Frazer MP: The rights of the child are very important, I know, which is why it is good that, as Alexander Layton said in your first session, there is a good substitute for the protection of children in the Hague convention. That is important.

Lord Cromwell: Do you accept, however, that Brussels I and II were created because of the gaps and inadequacies in Lugano and Hague? That is why they were created. We would not need them otherwise. Therefore, ipso facto, by withdrawing from them, we are leaving those gaps. The assurance you gave me earlier is, I think, that the new arrangement we will come to will plug those gaps in a new way, albeit in a short timeframe in my book.

Lucy Frazer MP: Yes, Brussels goes further than the conventions in some areas.

The Chairman: That is quite a good place to end this particular area of debate. I just note for the record that the number of marriages between EU and UK citizens is in the hundreds of thousands, so the number of times that one will need this type of arrangement makes it a very big issue. It is equally big both sides of the divide—for the EU as well. Therefore, it is an important point to be sorted out.

We need to make progress, and we now move to the Government's preparations for winding down—an unfortunate phrase.

Q27 Baroness Shackleton of Belgravia: I understand that we are where we are, but there must be a plan B. The Government's formal response to our report was that, should we fail to reach an arrangement with the EU 27 on future civil justice co-operation, they are considering how ongoing co-operation in this area could be wound down.

As someone who practises in this area of law, that is deeply scary. I do not see how things can be wound down. It is like being half pregnant: either they work or they do not; either the rule is applicable or it is not. To suggest winding down on first past the post on divorce is completely extraordinary. We have to apply that to an individual seeking advice on a system which is, through no fault of this Government or anyone else, heaving with applicants who are not legally represented in front of a judiciary which is not trained at all. We have a whole generation of judges and practitioners—I am so long in the tooth that I was there before—who have operated only under the Brussels II regime.

The whole system will creak to a halt. As our chairman said, hundreds of thousands of people will be affected by this, because intermarriage between Europeans is very common. There are cases of child abduction. For the record, Jacqueline Renton, when giving evidence, said that a piece had been left out of Article 11 which makes it inferior to what we have already agreed to. I am drawing on Lord Judd's point. She could not understand why that had been left out of the negotiations. She said, "it is obviously ideal if you continue with the regulation in the meantime on

the understanding that you would have the CJEU and full reciprocity. It is what happens afterwards that is the difficulty". She also said: "They seem to have put in place the Brussels II revised jurisdictional rules—the rules on recognition enforcement and the good practice in co-operating with central authorities—and left out Article 11 on all the rules on child abduction. I cannot quite understand why there is that lacuna".

So it is not identical or ideal. That is just correcting something you said earlier. What is happening? It is eight months since that statement was made and all the practitioners who have given evidence to this inquiry say that, despite being listened to, they are still none the wiser.

Lucy Frazer MP: Thank you. The references to winding down are in Articles 62 to 65. What arrangement will we have if we do not get a deal? How will we ensure that we put our house in order, even if there is no deal? Article 62 to 65 now do that comprehensively in all areas. If you have a case ongoing at the moment, you will still be able to finalise it and your judgment will be recognised if you have it in the appropriate timeframe.

To clarify the reference to winding down, it was ensuring that we have a system in place.

Baroness Shackleton of Belgravia: For existing cases?

Lucy Frazer MP: For existing cases and the overall governing law of contract.

The Chairman: There seem to be a lot of different buckets of cases. There are existing cases where proceedings are starting; there are cases incurred but not started yet. There are a lot of buckets of cases. The comfort we are looking for is that, eight months on from when we first heard the phrase "preparing for winding down", lots of thinking is going on in case we never get to a withdrawal agreement.

Lucy Frazer MP: We have done that, because that is what Articles 62 to 65 do: they set out the circumstances.

The Chairman: Yes, but all those articles are predicated on the fact that we actually sign a withdrawal agreement. If we do not sign a withdrawal agreement, the question is whether we are prepared for a chaotic situation.

Baroness Shackleton of Belgravia: Are the judges trained, for example? Are there enough courts? The simple, practical consequences—

Lucy Frazer MP: We got £17.3 million from the Treasury this year for Brexit preparations, and of course as a department we look at the downstream impacts. We look at what happens not just in our sphere but in Defra. If it has uncertain regulations or a change of rules, there will be an impact on our courts too, so of course as a department we are looking at any impacts for HMCTS. We are looking at the downstream impacts of any changes across all departments. Usually our department is the end of the road, but we are looking at the impacts for other

people in other departments. So, yes, we are looking at all those things in the family law sphere. That aside, we recently brought on another 8,000 sitting days, as we did the previous year. So, yes, we are looking at the impacts of Brexit.

I just want to make clear in relation to Jacqueline Renton's point that Article 11 is covered by Article 63(1)(c).

The Chairman: The papers for us were prepared before we had seen the revised article, so we accept that, and thank you for pointing that out.

Lucy Frazer MP: Yes, it is very fast-moving. It has been a busy week.

The Chairman: You have started very well.

I want to be super clear about this. Winding down was originally a concept, I believe, to do with a chaotic Brexit, but you are saying that you have plenty of activity going on to prepare us nationally if it becomes clear that no withdrawal agreement will be signed, and that we will not move into Article 63 territory, essentially, where life would be pretty similar to how it is today, for a period.

Lucy Frazer MP: Yes.

Baroness Shackleton of Belgravia: Would it not strengthen our negotiating position for them to know that we are armed up? Nobody who practises feels that we are armed up at all. We are all at a loss as to what is going to happen at the end of the day if there is no deal. If we have to walk away, nobody has shared plan B with any of the practitioners who operate in the field that I operate in.

Lucy Frazer MP: We are preparing plan B. We as a department are looking at what statutory instruments we need to put forward to ensure that we have the appropriate arrangements in the event of no deal.

Baroness Shackleton of Belgravia: I have been addressed outside on this. They are frustrated by the silence. All their views have been taken off them, but there has been no feedback at all on how it will work. They, of course, need to be trained. People need to be trained. It is not very far away. It might all be happening, but it has not been communicated.

Lucy Frazer MP: We are preparing as a department for no deal. We are preparing our statutory instruments from a legal perspective, and of course we will look to the future in relation to what we will need should that eventuality happen.

Lord Cromwell: Sorry to keep obsessing about timing, but whether we get a deal or not, as one of the QCs who appeared before us pointed out—and this touches on Baroness Shackleton's point about a whole generation having grown up with one system—whichever one we end up with, the legal profession will have to re-gear itself, possibly on a sixpence, to whichever one we finally sign up to or do not sign up to. You may have a seamless transition legally, but are you factoring into your approach that a huge re-education and retraining process will be needed for the

legal profession going into this new world?

Lucy Frazer MP: We will have to put in appropriate measures.

The Chairman: One thing that I would say is coming out is that there is obviously a mild communication problem, because you are furiously working away at a plan but no one here knows anything about it. It would be of great help to the profession generally, even if one does not know what it is, to know that a plan is on the way.

Lucy Frazer MP: Yes.

The Chairman: That is just a thought for you to take away and consider with your colleagues. It has been worrying us as a Committee quite a lot, because we do not know, and Fiona and her colleagues practising at the Bar do not know, and anything that you can say about the amount of resource that is going into planning for a plan B would be of great comfort.

Lucy Frazer MP: There are two points to make on that. The Prime Minister, and I think the previous Brexit Secretary, made clear that the Government were ensuring that we were prepared for a no deal and that departments across government are preparing for a no-deal scenario. That has been quite a public statement.

I have met individual practitioners to ask for their input, as they have experience and expertise, and their various thoughts on matters in relation to no deal. It is impossible to communicate with and ask everyone's advice. I saw that some on your panel felt that they were well engaged with the ministry and thought that we were really listening, and that others have not been part of that process. But we are very much engaged with—

Baroness Shackleton of Belgravia: Minister, I do not think anyone is complaining that you have not asked enough people. In fact, everybody believes that you have been fantastically impressive in asking all the people who matter. They are frustrated that they have no feedback and are not doing their homework in order to be prepared to hit the ground running if there is no deal. Everyone, I think, appreciates that you are doing super due diligence, but there is no communication back the other way. That is a problem.

The Chairman: I am very grateful. May I say how very frank you have been? It has been refreshing and hugely helpful to us as a Committee, and we wish you lots of luck in what will be a very hard few months of preparation, whatever way it goes. Thank you very much for coming along.