

Scottish Affairs Committee

Oral evidence: [Scotland and Brexit: Trade and Foreign Investment](#), HC 903

Monday 15 October 2018, Edinburgh

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Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Hugh Gaffney; Ged Killen; John Lamont; Danielle Rowley; Tommy Sheppard; Ross Thomson.

Questions 269 - 374

Witnesses

[I:](#) Wendy Alexander, Vice Principal of the University of Dundee, Universities Scotland, and Professor Richard Williams, Principal of Heriot-Watt University, Universities Scotland.

[II:](#) Alastair Ross, Head of Public Policy Scotland, Association of British Insurers, Conor Lawlor, Principal for International & Brexit Policy, UK Finance, and Richard Normington, Senior International Policy Adviser, Investment Association.

[III:](#) Polly Purvis, Chief Executive, ScotlandIS, and Svea Miesch, Research & Policy Manager, ScotlandIS.

[IV:](#) Michael Clancy, Law Society of Scotland, and Carolyn Thurston Smith, Law Society of Scotland.

Written evidence from witnesses:

- [Association of British Insurers](#)
- [Law Society Scotland](#)
- [Universities Scotland](#)

Examination of witnesses

Wendy Alexander and Professor Richard Williams.

Q269 **Chair:** Welcome to the Royal Society of Edinburgh—fantastic surroundings for this session of the Scottish Affairs Committee’s Scotland and Brexit trade inquiry. We are very grateful to our guests this morning for coming along to help us out with our proceedings. Just for the record: who you are, who you represent and anything by way of a short introductory statement. We will start with you, Ms Alexander.

Wendy Alexander: I am Wendy Alexander. I am the Vice Principal (International) at the University of Dundee. I am also a member of the Scottish Government’s Enterprise and Skills Strategic Board. I am a trade envoy for the Scottish Government with particular focus on higher education. I had a prior life, but I will not dwell on that beyond perhaps saying I was at one stage Higher Education and Enterprise Minister. I had a role in the foundation of SDI and also in the Scottish Funding Council.

Professor Williams: I am Richard Williams. I am Principal and Vice-Chancellor of Heriot-Watt University. I am here today particularly representing our 19 HE institutes as the international convenor on behalf of Universities Scotland. My other role is sitting on the UK Westminster Brexit higher education group.

Q270 **Chair:** Thank you. To get things started, perhaps you can explain and describe to us how trade and higher education services operate and if there is anything that you would like to tell us that may be different in Scotland from the rest of the United Kingdom. We will kick off with you, Mr Williams.

Professor Williams: Yes, certainly. First, it is helpful to regard universities as long-term tenants, because of course each of our 19 HEIs is embedded in their own communities and they provide vision. Of course they do problem solving with others as well as providing education and training, and they bring a window to their communities and take Scotland out to the world. It is in that broad context that you can regard universities as having exports in education services.

At the moment in Scotland, higher education is about the fifth largest exporter for Scotland. It is about £1.6 billion in terms of GVA. Breaking that down, what does that mean in terms of business? Around £488 million comes from student fee income; £515 million comes from the spend that our students make in Scotland; another £25 million comes from their families and tourism; around £400 million from research that is resourced from outside the UK; and around £16 million from overseas campuses. That is the breakdown of that £1.6 billion, so it is a very significant sector. Also of course Scottish HEIs work with around 20,000 businesses around the world. In terms of scale, just by way of completing the picture, we have around 235,000 students in Scotland at the



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moment. Of those, 63,000 are international, and of those around 29,000 are from the EU, so that broadly paints the picture.

- Q271 **Chair:** We will get into some of your student numbers and then the populations in the course of our questions. In your written evidence you refer to the rise of overseas programmes currently being provided by Scottish higher education institutions. Could you talk us through the process by which a higher education provider can establish a presence in another country and how this may be different from an EU country and from countries beyond the EU?

Professor Williams: It is quite difficult to answer that because it takes the form of many different forms of partnership. Usually it is based on existing relationships and there is not necessarily a different mechanism that one would use in establishing a partnership in an EU country and in a non-EU country, so it is quite difficult to generalise about any differences between the two. As I say, it is usually based on longstanding expertise and relationship, mutuality and where a market lies. In the area of the income stream I referred to for course student fee income, it is usually looking at where a significant market may lie.

- Q272 **Chair:** Could you talk us through how that is done? What we are interested in is how this is secured and achieved. You describe something as “mutual recognition” in your response. Is that something that is required in order for this to take place?

Professor Williams: Wendy may wish to comment a little bit further, but critical to all this is the educational reputation that Scotland has. I often describe Scotland as being not world class, but beyond world class in its capabilities and its diversity, and then there is the sheer quality of what it does. It is that quality that gives us the ability to form partnerships. That is why it is so critical that we retain that quality and that reputation because that opens doorways to us in many countries in the world. That is the critical factor that enables us to have access and, beyond that, the explicit skills that we have in our sector.

- Q273 **Chair:** I am looking at your written evidence here. You say that there are 310 Scottish higher education programmes being run in Asia and North America. Is that an accurate figure? Ms Alexander is shaking her head.

Wendy Alexander: No, I am nodding my head. I think the evidence makes reference to 1,200 relationships in Europe and 400 in the rest of the world. Roundly speaking, it is fair to say that the volume of relationships is not a proxy for their significance in export terms. Many of those 1,200 would, for example, be Erasmus programmes. It reflects the proximity of Europe. Maybe what the Committee is looking for is a sense of what the products in trade terms and export terms of higher education are. Essentially there are three.

First there are students who come to study in Scotland from overseas, and the order of that is they spend about £0.5 billion on fees and another £0.5 billion in export earnings when they are here—accommodation and



so on. That is one product of international students studying here and of course there the immigration regime is completely fundamental to our ability to grow that.

Secondly, there is learning and teaching that we offer overseas in third countries. Some of the evidence we have provided suggests that that involves an estimate of de minimis 36,000 people we educate overseas. In a UK context, I would say we are already in a position where UK institutions are educating more people offshore than they are educating onshore.

The third product that results in export earnings would be research development and knowledge exchange. Take, for example, my own institution in Dundee. We would have contracts not simply with Horizon 2020, which would be well known, accessing European moneys, but a consortia of global pharma companies, which would contribute to life sciences research that would represent money that was channelled via the international research side of things.

Therefore it may be helpful for the Committee to think in terms of those three products: £1 billion earned from onshore; £400 million-plus earned from international research contracts; and a growing presence of also educating students and learning and teaching offshore.

Q274 Chair: How would Brexit impact on those very impressive figures that we currently have? We will maybe leave the onshore just now, but we are particularly interested in some of the offshore ventures you describe there. What should concern this Committee in the almost certain event of Brexit?

Professor Williams: Clearly we have across our educational streams here in Scotland a significant proportion of students from the EU at undergraduate level—something like 10% of our students across the Scottish universities. It varies widely. At postgraduate research level, it is around 30% and at postgraduate taught level it is also around 20% to 25%. It is a very significant component of our activity. Significantly, at the undergraduate level, they of course come because of the fact that their fees are paid by the Government, and we welcome that. The question is what will happen if in the long term that is waived? Our own view and the view across the UK is that many of them will continue to come, but how many and at what price point? That is the issue that we face going forward in the long term.

In the short term, the guarantees that have been given to students hopefully will be extended early so that there is clear messaging on that. The big question going forward for us, particularly at the undergraduate level, is what fees may we be charging and what would that attract?

At the PG research and PG taught level they are already in a competitive marketplace, so I would not necessarily envisage that change. However, much would be due, of course, to the mood and the messaging. Critical



for us in Scotland is to retain the clear high ground that we have in our very warm welcome to international students and to be messaging that very strongly.

Wendy Alexander: If I refer back to the three categories I mentioned and talk about the impact of Brexit on each of them. If you take students coming to study in the UK, leaving aside the European students, for the international students there is clear survey evidence at this stage that Brexit is impacting on the attractiveness of the UK as a study destination. I have to say that works in both directions. There are some countries where we are less attractive as a result of Brexit. North America would fall into that category. Because of the devaluation of the pound, which is obviously happening simultaneously, there are other countries to which we are more attractive, so there clearly is an effect on the desirability of studying in the UK.

Secondly, on setting up offshore locations for British higher education, one of the obvious examples is that Universities Scotland went last year to India with the DFM. We are going back at the end of November. If you look at Prime Minister Modi, he put on the record when Theresa May visited in 2016 and again when he visited the UK in May this year that in the context of thinking about a bilateral trade deal between the UK and India, one of the things that India wanted to put on the agenda was mobility and access for students. As you will be aware, a country like India substantially funds through the Government students to come and study here, and India is obviously interested in ensuring that, in any bilateral trade deal, there is an opportunity for those students to stay on and work here. There is no point in having international students come to study if you do not manage to realise the dividends of that trade relationship subsequently by them being able to stay and build relationships here, perhaps in the context of post-study work or indeed mobility of researchers.

The third area that I mentioned was research and knowledge exchange links. Again, that is an area where the character of any bilateral trade deals that we were developing would be important to the higher education sector.

Q275 **Danielle Rowley:** You discussed some of the opportunities. Are there any other opportunities for the sector that Brexit could bring and are there any existing barriers to dealing with non-EU countries that may be removed through Brexit?

Professor Williams: Yes. In terms of the opportunity, it is just thinking of where as a nation we can raise our game and our collaborations in the whole international sphere. There are some significant opportunities to do even more of that. The question is how can that be pulled together more coherently? There are several examples of how we can do that more coherently in the way that we work together with the UK Government and the Scottish Government in identifying key strengths of the Scottish sector that also align to the Industrial Strategy.



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There are some very clear messages that we can develop by way of partnerships. What does that mean? There are opportunities for universities to work with the bodies I have just mentioned, to be looking at new types of deals between Scotland and particular regions in the world. I would say between regions and cities within North America, for example, there are some new things that we could be doing there together in a very passionate and joined-up way, utilising some of Scotland's key strengths: in digital; in the blue economy; in healthcare and biosciences, just to name three critical and obvious key strengths of Scotland in developing those links with a city or region.

That region-to-region relationship is one that we should do more of, but it does require a focus and a decision as to which region, because in many regions you mention there would be good connections, but I think it is moving to actually doing something, rather than just talking about it. There are some opportunities in the environment we find ourselves in at the moment.

Q276 Deidre Brock: Can I ask Mr Williams, are those not opportunities we could explore or take advantage of anyway without Brexit?

Professor Williams: Yes. I was just giving the example of things that we could be even more passionate and focused in doing. They are not explicitly consequences of Brexit, but as our mind is thinking about how to do new things with new energy, we do not need to wait for Brexit for that to happen, but we do need to do some aligning of intent, set a target vision and have a look at how well-equipped we are then to address that in a joined-up way because these are quite complex things. From the universities side, on behalf of the 19 HEIs, we are absolutely up for a laser focus on ways in which we can work collectively to address international opportunities in a new way.

Wendy Alexander: The main opportunity from Brexit is a rethink of immigration policy, something that works for staff and works for students in terms of recruitment of talent and mobility. I know it is a subject that the Committee has looked at in depth. It has looked at the proposals of Eve Hepburn and others.

I would simply say, in the context of this inquiry, that it is the single greatest opportunity. Since you carried out that work, new work by Universities UK has demonstrated that eight out of our 10 competitors have a preferential post-study work regime to that which is available in the UK, so I would just urge the Committee to recover some of the intelligence that you have explored before as that is the key opportunity of Brexit.

There is of course a forthcoming White Paper on immigration covering both the EU and non-European Union and it is fundamental to the prosperity of the sector. As people will know, since you published your evidence, Britain has now fallen behind Australia as the second recipient



of international students. We are now in third place, so I would commend that earlier work and the continuing significance of that agenda.

Chair: I am grateful for that. You will know this Committee's long-term interest in post-study work schemes and it will be an issue that I am almost certain we will return to. Thank you for that.

Q277 **John Lamont:** Good morning. You have both spoken already about the significant number of EU and non-EU nationals that make up the number of students we have in Scotland. Can you give us a sense of the importance of these international students in terms of the financial sustainability of your members?

Professor Williams: It is absolutely of critical importance to us, because from the Audit Scotland report we realised that the fee levels that we get, for example, for Scottish students are around £2,000 less than in other parts of the UK. We are running at about 94% of the actual cost of education. To attract new sources of income is really important so that we can continue to develop the quality of what we have here. The ability to continue and grow income from alternative sources so that we can fulfil our mission as charitable bodies—because that is what we are, we exist to have an impact on society—is vital. We want to carry on doing that and be able to do that in a way whereby we can continue to grow our quality and our diversity, so it is critical to us that we do that.

Q278 **John Lamont:** There is currently a cap on the number of Scottish and EU students who can attend university here in Scotland. This has obviously attracted some criticism recently, particularly when you look at the clearing system. There are lots of spaces available—or more spaces available—for those students paying fees compared with those from Scotland who do not currently have to pay fees. What do you think about the suggestion that EU students could now be charged for courses at Scottish universities?

Professor Williams: What do I think about the suggestion? I think this is a political decision to be made. I would just offer a general observation that of the up to £90 million or so that is currently spent in supporting EU students at universities, of course if we are in a new environment, there are at least five areas that we would be looking for. One is the point you just mentioned as to whether we should be raising the cap, because there is a cap of course on Scottish students coming into university. We do have areas where we have more students of high quality apply than we have spaces, so there is a point about raising the cap.

Secondly, there is the point I mentioned earlier about raising the unit cost, the contribution that goes with each student, so that we can be more competitive and cover our costs: that is the second candidate.

The third candidate of course is to drive widening access further, which the universities in Scotland are also passionate about and committed to.



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The fourth area is looking at how we can develop a stronger graduate apprentice scheme, which of course incidentally has a strong widening access component to it potentially, but that is not clocked at the moment.

The fifth area—and Wendy might want to talk about this more—is that Scotland has a big opportunity to look at resourcing some international scholarships that may go beyond the EU. The messaging that would give if we were to establish a national/international scholarship scheme to attract the very best talent would have an enormous signature about it and would really position Scotland strongly.

I have not answered your question directly, but I have indicated that in my mind there are five areas that might need to be looked at for funding.

Q279 John Lamont: I am just trying to cut through here, so would charging for EU students allow your universities and other members to offer more free places for Scottish students?

Professor Williams: It depends on the formula of the current funding arrangements, which is not for me to decide, but if your proposal came through, the answer is that it would give that possibility, yes. Of course we already have European students who are paying to do post-graduate programmes with us.

Chair: Ms Alexander, do you want to come in there?

Wendy Alexander: Yes. Let me deal with the two issues that John has raised. Forgive me, let me try to do this really succinctly. The first issue he raised is the sustainability of Scottish higher education and the second is the optimal use of the £90 million that has now been spent on EU students studying in Scotland. Let me deal with the first part of the question. It is the case that Scottish higher education is more fragile because of the financial system that we have to support students in Scotland. If you think of Scottish higher education—the economy of Scottish higher education—as £1 billion that comes from the Funding Council to support Scottish students, roughly £1 billion that is won competitively in research and a further £1 billion that is earned in export earnings. That is the essential economy of Scottish higher education, three one-thirds.

Of the one-third that comes from the Scottish Funding Council, as Richard has made clear, Audit Scotland estimate that only 94% of those costs are actually covered. Similarly, its estimate for the research side of things is that the sum is—just to make sure I have it—85% of the full economic costs of research are funded, so what you have is two-thirds of the pie funding Scottish students and research that is cross-subsidised by the money we make from international students. That economy in Scotland is slightly more fragile than that in England because obviously it does not have a cap system for the funding of domestic students, so in that context international students are fundamental.



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Let me come to the second issue, and that is why Scottish universities work so hard in the international arena and why this Committee recognising the place of higher education in trade is more fundamental to preserving the financial sustainability of Scottish institutions than it is for comparator institutions south of the border. When you come to the use of the £90 million it is the case—look, this was an unintended consequence: to my recollection—although I may be wrong—no Scottish political party advocated that European students should come free.

Ironically, the unintended consequence is that we have an extraordinary diversity of extraordinary bright financially-challenged students, whether that be from the accession countries or the Baltics, who have brought huge diversity to our campuses. But we now have a challenge because we have a population of students from Europe who are unlikely to be able to meet either the £9,000 fees in England or full international fees, which approach £20,000, so it has to be anticipated that there will be a significant drop in European students, whatever fee regime the Scottish Government decide upon.

The one thing I would add into the mix is there is obviously a desire for that £90 million to be spent in a variety of areas. Richard has touched on some of them: widening access at home and lifting the cap. I would simply say that in the context of trade and growth—and I would say this as a trade envoy—if you look at the recommendations of the Growth Commission, if you look at the recommendations from many small countries around the world, the whole notion of Scotland the brand and how we move to supporting Scotland as a location for higher education, not just to live, but to live, work, study and invest, a small proportion of that money should be used to try to preserve that extraordinary diversity of European and global students coming into Scotland.

Q280 John Lamont: Moving on then, should the UK Government use the end of free movement as an opportunity to liberalise student mobility in future trade agreements, particularly with non-EU countries?

Professor Williams: Yes.

Wendy Alexander: Yes.

Q281 Chair: You mentioned the example of India, and obviously this is a feature that has appeared in quite a number of the submissions that we have received on this from the service sector. I think we are all aware of Modi's remarks, in terms of free trade agreements work both ways and India will obviously be looking for bigger opportunities for Indian students coming here. Is that something that you welcome or do you see concerns with that?

Professor Williams: Personally, I would welcome it, because what we are talking about here a weaving together of research capability, educational training capability and our innovation capability. In future with these trade agreements, it is the weaving together of those three



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strands that will differentiate us, rather than saying, "Oh, here is education and here is research, here is training", so weaving together of those aspects is where we are going to get traction. Every country wants to look across those boundaries, so our ability to put together these carefully woven proposals will get us traction.

Let me take an example, if I might, in my own institute of Heriot-Watt. We are a rather unusual university in that we operate from five locations in three countries and two-thirds of our students are outside the UK. When I have looked at the list of companies that we work with in Scotland, UAE and Malaysia, companies who have operations in those three countries, it is not a short list. It is a list of over 50 companies we are working with, so there are real opportunities. They are interested not just in training their own staff, but in research methods and innovation, so this will characterise trade deals to see the critical catalytic role of universities in not just an educational transaction, but much broader.

Q282 David Duguid: Good morning. In your written evidence submission you say that removing students from the UK's net migration statistics would help attract more international students to the UK. Why do you think this would be the case?

Wendy Alexander: There is pretty overwhelming evidence, which I alluded to. Since you published on this subject in the summer, Universities UK has produced evidence showing that eight out of our 10 competitors had preferential post-study work regimes. They are differentially important to countries. Most Chinese want to return to China. That is why China has become so dominant in the mix of international students in the UK. There are other countries, such as India, where the way in which families finance higher education often involves them taking out loans and often means they wish for the opportunity for someone to remain in the UK, not forever, but for an apprenticeship in the trade that they have learned while they are here.

I would just add one final comment on this. In much of the commentary around Brexit, the evidence is that countries tend to overestimate the importance of hard power in the short term, but underestimate the importance of soft power in the longer term. When it comes to soft power, the HEPI research, which was published by comrades in 2015, demonstrated that 55 of the then serving global world leaders had been educated at British universities. If you look at the statistics we have before you today, there are currently 32,000 international students studying at Scottish universities onshore, 36,000 studying offshore. They will all be friends of Scotland in the future.

I look back to 20 years ago. We established GlobalScot essentially as an expatriate organisation. What we have here are country nationals from 180 nations around the world who will be friends of Scotland in the future. They will be stronger friends of Scotland if we give them the opportunity to spend two years here after they graduate, enjoying Scotland and understanding Scotland in an employment context, not



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simply in a study context, and then allowing them to return to their countries and be friends of Scotland on an ongoing basis. That is the opportunity to leverage our soft power, which would be tragic to miss in the context of a post-Brexit environment.

Professor Williams: I would echo that. It is a measure and a sign of trust in an educational relationship, an inter-country relationship, and also of course it is an opportunity for those students to add value to our own economy, some of whom we may indeed want to retain in our economy. There are two primary reasons for wishing to have a post-study visa and for those students to have a status whereby they are recognised as being outside an immigration target.

In the poll that Wendy referred to, some 83% of Scots were keen that students should have an opportunity to contribute and stay on, so the messaging about them being included in immigration is not positive messaging.

Q283 David Duguid: The recent Migration Advisory Committee report has said that removing international students from the statistics would make almost no difference to the number of students entering the UK. How do you respond to this?

Professor Williams: The number of international students is quite significant, so I do not fully understand whether that is left as a datum level and therefore any future pluses or minuses are against the datum; including them in at the moment at a datum level from a political measure of change, perhaps that is what it meant. However, as I mentioned, from a messaging point of view and a positioning point of view, there are negativities in including them on that basis, but much will depend on what defines the datum level in that argument.

Wendy Alexander: The MAC report was a mixed bag, but the key upside was that it recognised that international students offer benefits. Therefore we need to focus on the actions behind that rhetoric of us wanting to have an outward-looking nation that is building stronger trade links. The truth is that we are losing market share at the moment in the area of international students on a UK-wide basis, so we need a policy framework that supports the goal of exports. That does mean having an appropriate post-study work regime that puts us on a level playing field with all our other international competitors, who are increasingly offering English language provision, which has been absolutely fundamental to us being a leader in that space for so long.

The accountancy treatment of international students is a secondary issue to the substantive issue of whether we have a level playing field for those who are graduating here to have the opportunity to make use of their skills and deepen their links with this country before they return to their own country.

Q284 Tommy Sheppard: Good morning. Just a supplementary on that. I



wonder if you agree with the argument that Brexit makes reconsideration of the post-study work visa all the more important. If that goes ahead and we arrive in a situation where freedom of movement ends and ostensibly EU students are treated no differently from students elsewhere in the world in terms of their migration status in the country, a very large number of EU students who can currently study a course here and then stay on in employment because they are an EU citizen and benefit from freedom of movement anyway, if that is withdrawn it seems to me that that will take away a large number of potential skills, people coming into industry and employment in this country. I wonder if you agree with that and if there are any figures that relate to the number of European national students in Scottish universities who stay on anyway, not with a post-study work visa, but who stay on to do an apprenticeship or to work in a local area.

Professor Williams: We can try to see if we can find some figures to report back to you in writing following the Committee here. Of course it is possible for people with high-level skills to gain entry and visas to work here in the UK and a number do so. We will see if we can find some statistics for you.

I agree with your opening comments that it becomes even more important that we offer that capability of post-graduation employment in the case of a Brexit.

Q285 **Tommy Sheppard:** It immediately puts us at a disadvantage compared with the EU27, doesn't it, because they will maintain the opportunity for people to go and study and continue to work in all 27 countries?

Professor Williams: I believe that is correct, yes.

Q286 **Hugh Gaffney:** We have covered a good deal of what I was going to ask already in the previous two questions, but I want to ask you specifically about the tier 1 post-study work visa that we previously had, where obviously international students were allowed to remain in work for up to two years after their studies. How successful was that scheme and is that the kind of thing that we should have post-Brexit?

Wendy Alexander: There are various views on those schemes, but past schemes have been successful and we should be looking to have a generic scheme that is suitable in the future that can draw on some of those strong points.

What has been very interesting in the analysis that has been done is how it has been possible to demonstrate that students have been fully compliant to very high percentages with the procedures that were adopted in those entry processes.

Q287 **Chair:** Ms Alexander, you will be familiar with the Fresh Talent initiative that was initiated by the Labour Executive, as it was then. Do you have any comments to make about the success or otherwise of that scheme?



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Wendy Alexander: Yes, two very brief comments. Mr Sheppard is right, that while there has been a lot of focus on the settlement scheme for EU nationals, the uncertainty for any young person growing up in Europe who might wish to study in Scotland is about what the regime will look like long term. What will be the opportunities for them to continue to live and work in Scotland after they graduate and will that be contingent on a particular salary level, as is the case for non-EU citizens? It is an incredibly live issue.

While there is some data—and the Scottish Government are looking at this for students who are currently staying on in Scotland—what it is not possible to do at the moment is establish how many of them may or may not meet a future salary threshold, were that to be introduced in the future. Obviously the number coming will be hugely hit by the fact that we are going to charge them for the first time, so it will be a very different segment who are likely to come, all of which is likely to reduce the diversity of Scottish campuses, which is one of the fundamental aspects of our global competitiveness at the moment.

With respect to what we should do in the future, as the Committee is well aware, timing is everything in politics. You have done a lot of good work with Dr Eve Hepburn looking at the administrative possibilities. It is important—and the Chair has outlined this—to be non-doctrinaire in the way we approach a differentiated migration regime.

I was privileged enough to be here in the Royal Society at a meeting that had officials both of the Scotland Office and from the Scottish Government discussing what was possible. One of the things that I learned about Fresh Talent was that it was administered by the Home Office officials, not by the Scottish Government. One would have to be empathetic to the pressure that the Home Office will find itself under in the decade ahead in managing the variety of migration regimes that are out there, so it may be timely once the Immigration Bill is published to think about what might be possible from an administrative point of view.

I would just say in that respect Universities UK brought forward a scheme for a graduate talent visa, where it invited the universities to police where students were for the two years after they graduated. It will not surprise the Committee to know that did not find huge favour with universities in terms of the risks of having to do the policing ourselves, but I think that does allude to the opportunities that will be out there once we have the bare bones of a new immigration scheme.

Chair: Thank you. We have two more questions left and we do not have very much time, so we will try to rattle through them.

Q288 **Deidre Brock:** I was wondering about the impact of, in my view, the nightmarish scenario of a no-deal relationship with the EU, a Brexit no deal. I wondered if you could talk a little bit about your main concerns in that situation, the impact on universities here in Scotland.



Professor Williams: There are five things that are on my list to attend to in a no deal: first, looking for the UK Government to commit unilaterally to guaranteeing the rights of EU nationals working, studying and residing in the UK as of 31 December 2020, in line with the Settlement Scheme Statement of Intent. I think that is critical.

The second area is to ensure, if there are to be any substantive changes governing EU migration, that they are preceded by a period of two years to allow universities and prospective staff and students to prepare for any new system, so we would not want to be bounced into any catastrophic regime.

The third area is to have clarity on how the underwriting of EU grants will work in practice, including who will administer the funds and make decisions and what is going to be required of universities who are in receipt of those funds, because this is a major hiccup in our transactions.

Even more explicitly, setting out contingency plans for replacing access to the single beneficiary Horizon 2020 funds, and significantly the European Research Council funds and the Marie Skłodowska-Curie Actions.

Finally, as you are all aware, we very much want to encourage and maintain Erasmus+ schemes and clearly we would be looking to some underwriting of the student mobility for 2020-21.

There are some specific actions that concern us as a group of universities that are articulated there. If I might just add one more that is not necessarily no-deal dependent, but is important for the Committee to know. I think the Scottish universities were perturbed to see that the Office for Students had ended the UK-wide approach for quality assurance for what we call transnational education, where we had a single qualifications agency—the QAA—that was active across the world in verifying the quality of UK education. That is an important thing and as a sector we are a little distraught that that has been disbanded and that could be damaging also. Thank you.

Wendy Alexander: I have nothing to add.

Chair: We will leave it there because we are almost out of time, but we do have time for Mr Ross Thomson.

Q289 **Ross Thomson:** Universities Scotland is currently involved in the Scotland is Now campaign. Can you tell us a little bit more about the aims of the campaign and how it is going to promote Scottish exports?

Professor Williams: The higher education sector has come on board strongly in Scotland is Now. We are trying to identify where our priorities would be in utilising that collateral, which is very impressive. As we are putting in more specific stories of success and ambition of the sector, we anticipate using that collateral particularly looking at some major markets in North America and also in Asia. As to the detail of how we will do that, we are currently working out what that should be. I would certainly like



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to point to my earlier remark about the possibility for us to look at region-to-region collaboration, and there it would be extremely useful collateral for us to do that.

Wendy Alexander: Let me say something that may find favour with the questioner. There is a risk in parliamentary Committees that you think, "Let's streamline this. Overlap is a bad thing". I would say that the fact that Scottish higher education is nested within the quality framework of UK education is extremely helpful to us globally. It is the case that there are occasions where you will use a global brand; there are occasions where you will use the Scottish brand; there are occasions when you will use the city brand; and there are occasions when you will use your institutional reputation, such is just the complexity of operating on a global stage.

I would, however, add one thing that just touches on the comments that I made earlier. Dating back 25 years, there are examples of how you try to sell Scotland successfully abroad. It was historically too much focused on visiting Scotland. The Scottish Government are to be commended for trying to move us towards "study, live, work, invest". If we are honest, we have to put some money behind it and top-slicing universities to fund the study element does not make sense. It might be helpful for the Committee to point to some of the data in the evidence, which is that over the last nine years we have seen a 154% rise in international fee income exports. Therefore a little bit of financial support to pump prime that success story of tremendous growth would be helpful, and Scotland the brand and Scotland is Now provide that opportunity.

Ross Thomson: That is very helpful. On the point that you have made there, my understanding is that for those international students who are looking to study, the first thing they will decide to do is choose a subject that they want to study, then they look at where, so which country do they want to go study in, and then third is the institution itself. Therefore looking at that second category of where you want to study, there is a real opportunity for the UK and for Scotland to show there is a great quality of life when you come here to study and a broader experience rather than just studying at the institutions. With that in mind, do you think there is more that the Department for International Trade with the GREAT campaign or the Scottish Government can do to work together? I felt that maybe sometimes these things are done in competition rather than together to promote Scotland and the UK as a place to study.

Just as a plug, I know that the new principal of the University of Aberdeen, Professor George Boyne, who we were speaking to recently, would be really keen to get involved because there is so much that Scottish universities can do to sell themselves and the more DIT and the Scottish Government work together, the more he thinks we can do.

Professor Williams: I am sure there is scope to work together. As George has come on board, I spent some time talking to him. I have not noticed the working in competition. I utilise the GREAT campaign very



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strongly in different territories where it has a very strong resonance. There is an ability of the customer—if I can use that word—to look through multiple windows, but for sure, there are ways we can line up more strongly. Do not forget of course that the biggest advocates of Scottish education are our army of unpaid sales agents who are alumni.

Wendy Alexander: Yes. Very briefly, there is no doubt that the UK network of the FCO, SIN and the British Council are invaluable in promoting Scottish higher education interests overseas. A week today I will be in Beijing at this time with the British Council. It is invaluable. One of the interesting developments is that the UK Government have committed, in a joint initiative between DfE and DIT, to produce a strategy on international higher education in January. That may fall within the timescale of the Committee reporting. That is a hugely positive development.

In the Scottish context, the Scottish Government are to be commended for appointing a Trade Minister. Ivan is less than six months in post. Seeing that on the trade envoy side of things we want higher education there, the fact that Ministers when they travel overseas now always have a Scotland is Now element built into their programme is encouraging developments north of the border.

One of the issues that will emerge from the strategic board that I sit on, which needs to be reflected upon, is where the international dimension of Scottish higher education is owned going forward. Is the sponsor Department the Education Department of the Scottish Government or the Trade Department? The future configuration in that space needs a little bit of further thought, but some very positive developments.

Chair: Thank you for that. We will leave that hanging in the air as an intriguing end to the session, but thank you both very much. It was very helpful. There was something you said you would give us further information on. I know the Clerks have a note of that, so we would be grateful. Anything else that you recognise as we continue this inquiry that would be useful to the Committee, please feel free to submit it to us, but thank you.

Examination of witnesses

Alastair Ross, Conor Lawlor and Richard Normington.

Q290 **Chair:** Good morning. Welcome to the Scottish Affairs Committee's inquiry into Brexit and trade and foreign investment. We are very grateful for your coming along this morning to help us out with our inquiry. Just for the record: who you are, who you represent and anything by way of a short introductory statement. We will go, as is traditional, from the left to right.

Richard Normington: Hello, my name is Richard Normington. I am a senior policy adviser at the Investment Association. The Investment



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Association represents the UK's asset management industry. Our members manage some £7.7 trillion worth of assets. We have approximately 250 members overall and a large and important section of them can be found here in Scotland.

Conor Lawlor: Good morning. Thank you to the Committee for having us here this morning. My name is Conor Lawlor. I work for UK Finance. I am a principal on Brexit and international policy responsibilities of day-to-day management for our Brexit work programmes. UK Finance is a banking and finance trade association with 300-plus members with customers, consumers, clients and businesses all over the world.

Alastair Ross: Good morning. My name is Alastair Ross. I am Head of Public Policy for Scotland, Wales and Northern Ireland at the Association of British Insurers, which—as the name suggests—is the representative body for the insurance long-term savings industry in the UK. We are an extensive industry right across the country. In Scotland what that looks like is around 22,000 jobs supported; a contribution to the Scottish economy of about £3 billion per annum in terms of GVA and major centres in Glasgow, Edinburgh and Stirling.

Q291 **Chair:** Thank you. Just to get things started, perhaps you could tell us a little bit about what the financial sector typically trades internationally and where your main export destinations are. We will start with you, Mr Lawlor.

Conor Lawlor: Yes, very happy to. A lot of main inter-broker wholesale businesses are fundamentally based out of the United Kingdom and obviously on the basis of passporting. Much of the business between the EU and the UK is for £25.9 billion in terms of cross-border trade between entities based in the UK to their customers in the EU27. To give you a comparison to see the quantum and what the next biggest customer base is, you would look to the US, which is about 14.4 billion. Then coming to Japan, which I think is circa 2 billion, and then Switzerland, so the EU27 market is definitely the biggest market in terms of banking and financial services, with the US coming in close second.

Alastair Ross: Quite similar to Mr Lawlor there, the Bank of England estimates that around 10 million UK policyholders, representing about £27 billion of insurance liabilities and 38 million customers in the EEA, representing about £55 billion worth of insurance liabilities, would be affected by the UK's departure from the EU. The UK makes up about 20% of the European insurance long-term savings market, so a substantial player there, and then when you go beyond that it is a similar footprint to UK Finance.

Richard Normington: We manage £3.1 trillion worth of assets for overseas clients. Of those, £1.7 trillion is for the European Union and £1.4 trillion for the rest of the world. Our largest single market outside the European Union is North America, where we manage approximately £510 billion.



Q292 Chair: It is fair to say these are very significant and substantial figures. It gives a sense of the value of the financial services in Scotland. Can I ask about the type of regimes you currently operate in? Of course with the European Union as it currently stands, passporting is the main feature of allowing you to do trade across the EU28, and when it comes to other nations internationally, it is the WTO GATS arrangements that are in place. Could you help us to understand the difference in how both these regimes operate and how they work in practice? I think we understand passporting. Maybe briefly touch on that, but tell us a little bit more about what we would expect if we resorted to WTO rules when it comes to trade and services. I can see Mr Lawlor shaking his head most enthusiastically, so we will start with you with that one.

Conor Lawlor: Absolutely. I think this will be a team effort, but I can start. Essentially services are traded in two different ways. One of those ways is cross-border, so you have a business or a financial service entity based out of anywhere in the UK with a big customer base across the EU. You generally do not have to have a presence or additional authorisation in any other EU member state to provide that service and that is the uniqueness of the single market and passporting.

The other mechanism for trade and services is establishment: having a presence in a particular jurisdiction. That is more common when you come out of the European Union and look more globally, but the big difference is the volume of trade is minimalistic compared to that between the UK and the EU. There is much more restriction when you are trading outside the European Union under, let's say, WTO GATS standards. You have restriction on full subsidiarisation, ownership rights. The EU has restrictions on your ability to build a branch network. You may have discretionary or different treatment from local branches in an area you are trying to grow, so it is a completely different business and banking environment more globally than you would have in the single market in the EU.

Richard Normington: We are affected partly by the passport, but also for our industry delegation is the key issue. Delegation is the ability to delegate the management of your funds to where you wish. It is something that predates the European Union and it is an internationally recognised standard. It is achieved through things like regulatory co-operation agreements between international regulators, and we think that the maintenance of delegation between the United Kingdom and the European Union is obviously essential. Because delegation takes place between, for example, EU entities and other states like Saudi Arabia or Nicaragua, we would expect the delegation would certainly be allowed to take place for the United Kingdom and we have welcomed the recent statements from France and the regulators that this is likely to take place.

Q293 Chair: Could you describe to us what sort of barrier there is to trade for UK financial services with non-EU countries? How would they typically



present themselves?

Richard Normington: In our case, you will find that you will have to have obviously local entities that are authorised. You can find that barriers could be in place by having forced localisation, so that you have to employ extra staff. You can find that barriers are sometimes put in place, for example, overseas pension funds will be told that you could not invest a certain amount overseas, so there could be caps. There are other non-tariff barriers that affect the industry.

Alastair Ross: In addition to that, you also have in terms of insurance you can have scenarios where under GATS the WTO member company that you are looking to trade into can put additional provisions in place, such as a first refusal, so that in the first instance the domestic or indigenous insurer would have first refusal on any lines of business in particular areas before you as the incoming business could pick that line up.

Also, particularly in Far Eastern countries like China and India, you have restrictions so that you can only enter that market as part of a joint venture, and within that joint venture you are probably going to have a limitation put on the amount of shareholding you can have in that. It is likely to be 49% or lower, so there are a number of different ways in which, in addition to GATS, there can be further restrictions.

Q294 **Chair:** I am sensing from these responses that it is significantly easier for you to ply your trade where there is a passporting regime, which is the current regime with the EU, than it is with some of the WTO regulations in the regime that is in place.

Alastair Ross: Passporting within the EU is barrier free, so you do not encounter these problems. As Conor touched on a moment ago, from an insurance company point of view, you can service customers right across the EU27 out of the UK or out of Scotland. It is very easy to do. You do not have to go to the expense of setting up a subsidiary office in that location and staffing that with the requisite number of people who sit down with the regulator and capitalise on that separately in committing capital to make sure that the office runs. None of that applies if you have passporting. It is much easier. From our point of view, anything below the current access that we have to the European market is suboptimal.

Q295 **Ross Thomson:** On this point of barriers, at the moment 83% of Scotland's financial and insurance exports go to the rest of the UK. That compares with around 4% that go to the EU. Would you agree that it is really important that we do not set up any new barriers within the UK market and that the financial services sector is protected internally?

Alastair Ross: Yes, we would want to enjoy the benefits that we currently have in terms of being able to trade. Obviously there is a significant change coming in our relationship with the European Union. I am not aware of any proposals to anticipate changes in the relationship with the rest of the UK.



Conor Lawlor: I agree. I do not think there should be anything that prohibits the financial services sector working the way it currently is now by creating a new regime globally or with the European Union.

Q296 **David Duguid:** I am just taking some notes on that previous answer. Do any of you think that Brexit might provide an opportunity to increase financial service exports to new markets outside the EU? If so, what needs to be done to maximise that opportunity?

Conor Lawlor: There is opportunity outside the European Union for financial services. How we get there is a different question. Fundamentally, you can build new relationships by increasing our regulatory diplomacy between different jurisdictions. There is thinking that we build new free trade agreements with different countries and that will enable trade in services, which is true. It generally locks in a sense of openness, but what really gets you there is regulatory and supervisory co-operation.

Touching on what Alastair was saying a couple of moments ago, if you look at what the Chinese did last year, they changed foreign ownership rights from 49% to 51%. That was not achieved through a free trade agreement. That was achieved through regulatory and supervisory diplomacy and a policy decision that this was a particular market that it wants to open up to liquidity and foreign capital for economic development. If other jurisdictions think like that, and if we can conduct regulatory and supervisory diplomacy to achieve it alongside free trade agreements, yes, I would agree, I think there is global opportunity.

Q297 **David Duguid:** You mentioned China there. Are there any other potential markets that we could maybe focus on?

Richard Normington: Perhaps I could come in on that. We have identified a number of opportunity markets. China is one. In fact, we will be doing a delegation to China next week to talk with our counterparts in the asset management industry about the opening up of the Chinese markets. We have also looked at Japan. Japan is looking to refresh its asset management industry and it is looking to UK expertise to do it. Japan and Brazil have both been markets where the traditional way of funding yourself is to buy local bonds, but they are looking for expertise overseas now. With Brazil, we had the economic and financial dialogue, which has meant that they have changed their rules. Again, it was a regulatory discussion supported by the UK Government and industry to make it easier for Brazilian pension funds to invest overseas.

We have had similar delegations from Colombia. We have had a group from Mexico. There are other jurisdictions like Canada and Australia where we have traditionally strong relationships and where their pensions industries have a particular need to find investments and where we can work in partnership with them.



There are many opportunities out there and it is a case of working with the individual state in identifying what the regulatory needs are and the ambitions for either the local pension funds or sovereign wealth funds and to work with the development of those countries.

David Duguid: Mr Ross, do you have anything to add there?

Alastair Ross: Yes. From the ABI's point of view, we have a strong set of relationships with our sister trade organisations around the world in the various different countries and jurisdictions. We have worked very closely with them in the past, but more so from the second half of 2016 onwards. We have identified eight priority markets. I do not think you will be too surprised to hear where they are. You are talking about China, India, Japan, Singapore, Indonesia, South Korea, Malaysia; broadly speaking the Far East part of the globe.

To pick up on what Conor mentioned, we are very supportive of the existing relationships that the UK Government have achieved, usually on a bilateral level in terms of what is known as the economic and financial dialogues that operate between countries like the UK and China and India. We find those very useful and absolutely, as Conor said, the key to this is regulatory dialogue and supervisory co-operation. Those are the two fundamentals for building relationships going forward.

On the other hand, I would make the point that the UK as a major insurance hub and as the largest insurance hub in Europe exports in excess of £10 billion a year of insurance and long-term savings products into the EU, whether that is pensions, commercial wholesale insurance governing property or liabilities, cyber insurance, directors and officers liability insurance and so on. We export in excess of £10 billion in a year and we import in the tens of millions, so that is the kind of change that we are looking at. I think that it is fair to say it would be quite challenging to replace some of that with the new expanded opportunities that will present themselves after the UK leaves the European Union. That is quite a challenging prospect.

Richard Normington: There are also products that will be in greater demand looking ahead where the UK has a particular role. Environmental, social and government issues are key to a lot of the funds that we have and how they are invested. The expertise that the UK has in doing that and the corporate governance that is associated with it is a strength for our industry here in the UK. We also are seeing around the world changes to global pension systems as the defined benefit schemes give way to defined contribution. For example, I think the figure I have for Korea is that there are going to be an extra \$200 billion worth of pension funds looking to be invested, and the value that we can add to those pension holders is something that should not be underestimated, partly because we have gone through a lot of this ourselves and we have the expertise, but we are also seen to be a global hub.

Q298 **Chair:** In your view, do you think this is a potential new benefit of



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opening up new markets, where these arrangements will make up for the loss that will be incurred by passporting going with the European Union?

Conor Lawlor: I think that it is difficult to say. What would be at risk is the ease of use for cross-border, what the WTO call mode 1 trading, not having to resubsidarise and move your business from the UK to a new jurisdiction to trade. Given the rest of the world generally conducts banking and financial services and the importing of services in a very different way, it is a very difficult question to answer. There is a big gulf in terms of our customer base value in the EU and the rest of the world.

Q299 **Chair:** I would like to hear Mr Normington on that question too. I would also throw this in. Why could we not just do these agreements anyway? What is stopping us making new trade arrangements with non-EU countries?

Richard Normington: I think that you make a very good point. We do not want to see the loss of the European customer base that we have now and the ability for European investors to use our services to invest worldwide.

Alastair Ross: I would concur with what Conor and Richard have said there.

Chair: Don't feel the need to respond to questions.

Alastair Ross: No, but in this case I do.

Q300 **Ged Killen:** Moving on to the future relationship with the EU, now that the UK Government have confirmed that the UK will lose its financial passporting rights post-Brexit, what do you suspect will be the impact on Scottish firms and their ability to trade with the EU?

Alastair Ross: I am happy to kick off on that. Just to help put that in perspective, I was talking to one of my member companies last week that is based in Scotland and has in excess of 500,000 customers in mainland Europe. What they are having to do is in order to keep on servicing those customers and those existing contracts—so if you set aside new business opportunities for a moment. Honouring their existing commitments to these customers requires them to set up a subsidiary, in their case, in Dublin, and to invest in staff there, working with the regulator to agree the approach there that they will have to take, going through what is known as a part 7 transfer, which is a process of transferring all those contracts into this new subsidiary, which is a legal process that needs to go through the court.

It also needs to have regulatory approval. You also have significant IT costs that are associated with that transfer. I mentioned staff costs. All that combined is costing them, they estimate, probably around about £40 million. That is a significant sum of money that in other circumstances could have been diverted into other areas of their business, to invest, to develop new products, to enhance the business and ultimately serve their



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customers better. That is one example of the kind of impact that you are starting to see.

They will then have to maintain those customers going forward. It is also difficult to see what scale of opportunity there would be to build new business. It is quite difficult to talk about that because there are sensitivities on the EU side. That the position of what is called contract continuity, as I say, in servicing those existing customers, may be a way for the UK to lead into establishing a bridgehead so you could then service new customers, is simply not the case. It is about honouring the commitments we have to the customers we already have. In some cases, if you look at the regulatory regime that insurance operates under, that is all about treating customers fairly. That is what the FCA demands that we do, so we need to make sure that we treat our existing customers fairly before we start thinking about the expanded opportunities.

Conor Lawlor: I concur with that. If you look at what Scotland is very good at, it has a strong asset management sector, an internationally traded insurance sector, more of a domestic banking sector, and if the UK is, let's say, tomorrow treated as a pure third country, ie a country outside the European Union, what those industries will be worried about is, "Can I access my customer tomorrow morning?" If you look at what products and services are traded internationally, that is what is at risk if we do not have an agreement with the EU or if we do not synthesise the types of market access that we have now with the European Union. Can these companies access their customers purely dependent on the agreement and the mechanisms by which we allow trade in services to happen?

On the banking front, it is much more of a domestic sector here so there may be indirect impacts. If the UK is a third country, let's say, tomorrow morning, are those banking customers able to export their services and goods to their customers globally in the EU? If not, that may have a knock-on impact on the banks. The asset managers here in Scotland are serviced by custody banks headquartered in the UK or in London with ancillary services here in Scotland. If those asset managers cannot access their customers, there may be an impact directly on the asset manager, but also indirectly on the banks servicing those asset managers. There is a wide variety of impacts that may occur in a range of subsectors within the financial services sector here in Scotland.

Richard Normington: I think that is a very good point. We do live in an ecosystem as far as financial services are concerned. From Scotland about £615 billion is managed, which is a considerable amount. Our members have taken steps in case of what is called a hard Brexit. That includes setting up management companies within the EU27. It involves having regulated entities set up within the EU27 and in some cases transferring or setting up offices with new staff.

Q301 **Chair:** Is there much evidence that that is happening? Obviously, it is



something that is available to you as an option, to set up a subsidiary in the EU27, but is there any evidence that firms are leaving the UK, and Scotland particularly, and setting up in the EU27?

Richard Normington: Our asset management survey said that there is a movement. It is in the tens, not the hundreds, confirming what members have said to us.

Q302 **Chair:** The insurance sector, given my interest obviously with Perth being a major hub, you are not going to be moving out of there and setting up somewhere in the EU?

Alastair Ross: I will maybe let Aviva speak for themselves in terms of intentions about Perth. In terms of the industry's response, since the second half of 2016 we have obviously been working very closely with our member companies. From then on, our advice, broadly speaking, is to hope for the best in terms of the UK's negotiations and an eventual withdrawal agreement and a future trade relationship, but very much to plan for the worst.

I mentioned a moment ago when I was answering Mr Killen this part 7 transfer process. That is a legal process to move your existing contracts into a separate legal entity, in this case a subsidiary. That takes about 18 to 24 months. That is an extensive process, so our member companies in the second half of 2016 started looking at their plans and evaluating them. They have started working through those. They have committed in some cases tens of millions of pounds to set up new offices and operations and to staff them and to meet the regulatory requirements. All that is ongoing.

The initial working assumption was that you would be trying to complete that in order to meet a deadline of December 2020 and the end of the implementation period, but in the scenario of a no-deal Brexit and leaving the European Union on 29 March next year, it is far from guaranteed that all of those processes could have been concluded by then. That is a really stark prospect for our sector.

Conor Lawlor: Absolutely, yes, I concur with that. Speaking on behalf of the UK finance membership, it depends on your exact operational and business model, but generally firms—to quote Alastair—are hoping for the best, but planning for the worst. In some cases that does mean setting up operations to serve some of your customers in the EU27. That is absolutely happening. In some cases, that means getting regulatory approval from domestic EU regulators, at least getting yourself in the queue to trigger that authorisation. That is almost certainly happening.

There are two things missing here that give firms the ability to stop or take their foot off the gas in terms of going forward with these contingency plans, and that is certainty. There is not a transition agreement set in stone just yet by virtue of the fact that the withdrawal agreement is not agreed yet. Therefore, transition is not definite. Firms



have to plan on the basis that there is going to be no agreement at the end of March/beginning of April, and there is not yet an agreement on a future framework for how firms based in the UK will trade globally and with the EU27. Without those two key components, it is difficult for firms not to go ahead with full contingency plans.

Q303 John Lamont: My question is about the EU existing equivalence regime. My understanding is that the regime only covers certain areas of financial services currently. I just wondered how firms from third countries currently operating in areas not covered by those equivalence rules operate within the EU.

Conor Lawlor: Equivalence is effectively the regime that the European Union, in particular the Commission, uses to assess whether another jurisdiction is equivalent in the same rules and laws as the European Union. I believe—but I am happy to check the figures—there are about 283 equivalence agreements between the European Union and other jurisdictions. Not all of those, in fact, I think only three of those, actually equate to market access, ie the ability for a firm outside the European Union to provide a service into the European Union. The majority are recognition agreements. If you are a firm in the UK and you hold capital of an Australian bank, you get preferential capital treatment because there is an equivalent regime between the European Union and Australia, but what it does not allow is market access.

Firms generally coming as a third country into the European Union in most, but not all, cases is probably branch establishment to provide a small selection of services. You have a wide variety of foreign banks based out of the UK who may not have full subsidiaries here, but are just providing a small sector or customer base. Whether that can be expanded upon using equivalence regimes going forward is a question for policymakers in terms of widening and expanding it to synthesise what we get from passporting now or at least get you halfway there. It is a regime that definitely needs to be adjusted and calibrated.

Alastair Ross: To add to that, my understanding is that there are about 40 or so different equivalence requirements covering the financial services sector and it can mean different things to different parts of the financial services industry. In terms of insurance and long-term saving in my subset, there are three different aspects of equivalence that would cover capital requirements, group supervision and reinsurance. That would be different for banking and different again for asset management. As Conor said, it does not come with market access. That is the fundamental difference that really causes a problem.

Richard Normington: Yes, the regime is currently patchy. It is also seen to be highly political. What business wants is something that can be fixed for the long term. We want to make sure that it involves consumer protection and we also want to make sure that it is transparent and accountable. The system for achieving equivalence should be that, which we do not have at the moment and we hope to work on that.



Q304 Tommy Sheppard: Following on from that, the problem is, isn't it, that there are a large number of areas that are covered by passporting that are not covered by equivalence, which is why the Government's White Paper suggests this enhanced equivalence arrangement? Notwithstanding the fact that the EU does not seem to be interested in such an arrangement, from your point of view, how does that work for your members? Would that be something that is workable and would square the circle?

Richard Normington: From our point of view, we always wanted to see mutual recognition. We felt that mutual recognition was our first choice. Enhanced equivalence is the second choice. We want to make enhanced equivalence work. We have seen examples elsewhere around the world for the asset management industry where you have had mutual recognition of funds, and that is the area that we would like to see explored further.

Conor Lawlor: On equivalence, if we were to play out an example—and again assuming the UK becomes a third country at the end of March—and you simply switch on the equivalence regimes that are currently built in by the European Commission to cover financial services, it would be incredibly minimalistic and get you absolutely nowhere near the level of cross-border trade or trade in general of services that is granted under the current single market and passporting system. This is where we get the suggested term “enhanced equivalence” from.

We would look to adjust basically two things. One is the scope. For example, current equivalence regimes do not cover any of your classic banking services, debt issuance, deposit taking, syndicated lending—not covered by equivalence at all. The first thing that we would do is ask the UK policymakers, regulators and the European Commission to discuss widening the scope to cover some of those services. It is not about getting you 100% of what you get in passporting because the UK will not be in the European Union and therefore will not have the same rights and obligations, but certainly could we get some of the key services that businesses and consumers use across the European Union in the scope of equivalence?

The second element we would look to adjust and address is the process. Right now, equivalence is not definite. It can be taken away with 30 days' notice. If you are providing a five, 10, 15-year plan to a customer base fundamentally based on equivalence, it is going to be difficult for you to invest and sign up to something when you know the mechanism by which it is allowing you to trade those services can be taken away with 30 days' notice. Having something a little bit more robust definitely should be on the agenda for both sets of policymakers.

Then enhanced equivalence should be flanked by two key pillars. One of those is a new regulatory and supervisory forum for European and UK regulators to discuss and agree current rules and potentially new rules on how services are traded. Then if we do reach an outcome where one of



those jurisdictions wants to diverge, rather than simply pulling out the plug of equivalence, let's have an effective divergence and dispute resolution mechanism where those two parties can discuss, come to an agreed outcome or a safe off-ramp that does not put the end user business, customer or client at risk.

Alastair Ross: To add to that, I would echo the criteria that Conor set out there in terms of what we look for from enhanced equivalence. It is just a bit difficult to express a definitive opinion on it at the moment when we have so little detail about what that looks like.

Q305 **Chair:** Is enhanced equivalence still on the table, given Barnier's remarks just a week or so ago where he seemed to almost definitively rule it out, saying it would offer all sorts of competitive advantages to the UK in terms of trade in services? What is your understanding about where we are with that?

Conor Lawlor: It is a question for the policymakers and negotiators. I do not think it has formally been ruled out. It should form part of the discussions of the future agreement negotiations and we are just not there yet, given the topic of conversation at the moment is the current withdrawal agreement. Our objective and ask to negotiators and policymakers would be to consider and discuss the best ways in which services can be traded between jurisdictions in a safe way that does not lead to disruption for customers or businesses across the EU, including the UK and the rest of the world.

Q306 **Chair:** I will just read you the quote from Michel Barnier. He says, "We have a coherent market for goods, services, capital and people—our own ecosystem that has grown over decades. You cannot play with it by picking pieces". Is he right in that? Mr Normington, maybe you could help us with this one.

Richard Normington: Michel Barnier made some very good points when he was the lead negotiator on the Transatlantic Trade and Investment Partnership. One of the issues there that affects us now is the question of regulatory co-operation, the inclusion of financial services, and the relationship that can be built between two large economic powers. This is, as was said, very much an issue for the policymakers themselves, but what industry would like to see is a forum for regulatory dialogue to avoid regulatory clashes, whether intentional or unintentional.

Q307 **David Duguid:** Something that comes to my mind when we are talking about the future trading relationship with the EU is whether the possibility of an EU financial transactions tax concerns you. Would you wish the UK to secure a deal that ensures that the UK financial sector would not have to be subject to such a tax if it were to be implemented in the EU post-Brexit?

Richard Normington: I think that there is a very important point here about being a rule-maker and a rule-taker. Questions like that sound like ones that would have to be addressed later. Certainly extraterritorial



taxation and the question of extraterritorial reach is something that global policymakers are dealing with right now. Chairman Giancarlo of the CFTC was in London recently, and he issued words that you do not often hear from a US regulator, “Mea culpa”, about the extraterritoriality and their response to the financial crisis. What they are looking for is a system of regulatory deference and co-operation so that you do not see the clashes that we have had. I would say that that is an area that the European Union, the United Kingdom, the United States and the global entities would want to consider further.

Alastair Ross: It would be comparatively less of an issue for the insurance and long-term savings industry, but I would not disagree with what Richard has said. The point he made about being subject to rules that you have absolutely no say in the formulation of is quite a stark prospect.

Q308 **Danielle Rowley:** The White Paper has different proposals for goods and services in terms of regulatory arrangements. What do you think the benefits of that are, having a looser arrangement for services? Do you see financial services having greater flexibility as an issue? What would it mean in terms of market access for your sectors?

Alastair Ross: I will start off on that one because I am conscious that the perspectives might be slightly different as you work your way along the table. As I said earlier, obviously the EU is a major customer area for the insurance and long-term savings industry. Ultimately positions around how flexible or how closely we align ourselves with the European Union are more political and policymaking decisions rather than ones for industry to take a particular position on.

For insurance and long-term savings, you have an additionally challenging factor in that if we are talking about equivalence, in the case of our industry the main regulatory vehicle is the Solvency II Directive. That is a European Directive, so in contrast to other international agreements like the Basel agreement that covers banking, that agreement comes out of Europe. Essentially, it is a proprietary arrangement as Europe’s agreement. Any divergence from that would be difficult for the UK in terms of servicing the markets that we have in Europe at the moment, back to the issues I mentioned earlier around contract continuity and serving existing customers. It would be quite challenging, but as I say, that is more a question for politicians and policymakers than for trade bodies to answer.

Conor Lawlor: I agree with Alastair’s comments. Goods and services are treated very differently and that is illustrated in the White Paper. In terms of services, if you read the text in the White Paper, it is open for general interpretation, at least in terms of flexibility for services. What we could look at is which of those services are key services and traded internationally and therefore open to slightly more alignment in order to open up market access to those jurisdictions. I would then look from a UK perspective at the domestic services industry, where it is not necessary



to sign up to as much alignment as you would to internationally traded services.

Going back to my comment earlier on the domestic banking services, if the majority of your customers are here in the UK, the majority of regulation and supervision should probably take place in the UK.

Richard Normington: I think that it also comes back to the whole question of having a major financial services industry and the ability to regulate itself here from the United Kingdom.

Q309 **Deidre Brock:** I wanted to ask about the mutual recognition of professional qualifications. As I understand it, since 1997 the UK has recognised over 142,000 EU qualifications, and that covers lawyers, engineers and financial services advisers, and there are over 27,000 decisions to recognise UK qualifications. Could you tell us a little about how important that mutual recognition is to your area?

Alastair Ross: I am happy to lead off on that again. Broadly speaking, I would probably defer to the next panel, Michael Clancy and the Law Society of Scotland, because it is a much bigger issue for them. From an insurance point of view, the Chartered Insurance Institute is the professional body for the insurance industry and it is an important issue for their members.

What you have here is a situation where each jurisdiction can set their own educational requirements. If you take Belgium as an example, the regulator there, the FSMA, has decided to set the bar for qualifications at quite a high level. What they are looking for is that any senior member or member of staff responsible for distribution needs to be qualified to an MA or a BA level in insurance in Belgian terms. That then means that they do not recognise the qualifications that have been set out and agreed by the CII that apply in the UK. If you play that through, what that means is if you are going to be setting up in Belgium, to use that as the example, you are going to be much more limited in terms of the senior management that you can appoint because they are required to have qualifications that are recognised in that particular jurisdiction.

That is certainly a concern and a challenge. It is not our No. 1 priority, I will be honest with you. That is around achieving a withdrawal agreement so that we do not go into a no-deal scenario, and also the contract continuity I mentioned earlier, but it is certainly something that needs to be addressed and we would hope that it would be.

Conor Lawlor: I would add to that that I think banking is less dependent on professional services qualification recognition, but banking and financial services works with accountants and lawyers, where the recognition of those qualifications is incredibly important. To quote Alastair, I think your next panel will be able to dive into a much deeper level of detail.



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Richard Normington: Out of the 100,000 people that we employ, one in five are international workers, and one in 10 of the total are from the European Union, so a fair division between the two. Because the industry covers so many areas—it includes audit, legal, compliance, and 16% IT—a wide range of professionals are required to be employed here in the United Kingdom. Certainly measures that can make it easier to employ them after Brexit will be welcomed.

Q310 **Deidre Brock:** Did the proposals in the White Paper meet your expectations around this?

Richard Normington: We are still consulting on that. I think there will be something later with another organisation. The approach of having an open system that welcomes talent from around the world is the one that we want to see. As a global entity, we have an interest with the European Union, but we also have an interest with the emerging markets, the Chinas and Indias of this world, and the race for talent is one of the things that will determine our future success. That also means raising home-grown talent and having efforts within the financial services industry and the asset management industry to encourage more people and more diverse people into it.

Q311 **Chair:** I am just looking at something here from TheCityUK, where they say that intra-corporate transfers are an issue of prime importance for the financial industry, which has a critical interest in being able to continue moving people across the UK and the EU27. Freedom of movement is ending, so an arrangement or an agreement has to be made so that there are reciprocal mobility arrangements in place with the EU. There is all sorts of talk again in Chequers about an appropriate framework to deliver this. What would be your ideal solution given that freedom of movement is going to end? How do we secure and achieve this for the benefit of the industries that you serve?

Conor Lawlor: It is a tricky one to answer. Services is incredibly dependent on high-skilled labour and talent, and if we were to ask the membership of UK Finance what is important, it is high-skilled talent. The ease with which you can get high-skilled talent and labour in your industry, whatever framework policymakers agree on, it needs to be cheap, effective and easy to be able to hire the right staff to do the right job. Without a framework that enables that, leading to something that is quite cumbersome and difficult and takes time, that would be detrimental to all services industries here in the UK.

Q312 **Chair:** Mr Normington, do you have a view on this? I see a couple of solutions have been suggested: allow temporary entry to a defined and limited category of professional financial services workers or allow the temporary transfer of financial services staff. This is getting into quite complicated and technical and cumbersome types of arrangement. Is this, as TheCityUK says, going to have a devastating impact on financial services?



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Richard Normington: I do not recall reading that in the report. The outcome that we want is one that enables people to come to the United Kingdom through as streamlined a process as possible. The steps to achieve that I believe we will see, in consultation with TheCityUK and others, in another set of proposals coming through, and we also need to look at what some of the barriers are for attracting talented staff to the United Kingdom. Sometimes it is not the things that we think. You will find, for example, in some countries there is an exit tax for expatriates and that is what puts people off from wanting to be posted there. It is looking at some of those other things that will make the difference as to whether the UK is an attractive place. This is part of it.

In some of the free trade agreements, there are references to the ability to fly in and fly out and have people on a temporary basis doing professional business work. I think there is in the CPTPP. Those are areas again that we will be able to explore after we have finished our negotiations with the European Union and we know what the bottom line is going to be.

Alastair Ross: I would not necessarily add anything to what my colleagues have said, but I would make the point that financial services jobs tend to be very productive jobs within the position of the UK economy. The ABI has carried out research that shows that the productivity of your average insurance worker is almost twice the UK average. I think there is inherent value in financial services jobs, and if we can make the process of coming to the UK to work in financial services as streamlined as possible, as my colleagues have set out, it is going to be of benefit to the entire economy.

Q313 **Chair:** If there is no agreement reached with the EU, what would be the impact on UK firms with offices in the EU?

Conor Lawlor: It is hard to say. It depends on your staffing and operational needs and where you need to put key people. If there are immigration barriers in the way, I think companies and firms, particularly with global businesses, will need to think about how they address that lack of talent if those barriers are in the way.

To make a more macro point, the UK economy is inherently based on services. I think 79.8% of GDP is derived from services, and those businesses depend on the staff and people within them. Putting up any form of barrier to an ability to hire the right staff on an appropriate basis will be incredibly detrimental.

Q314 **Ross Thomson:** What preparations has the industry been making for a no-deal outcome in the Brexit negotiations?

Conor Lawlor: Going back to my earlier comments, all firms are assuming no deal because they have to plan on that basis. Of course they would like to see an agreement made in the withdrawal deal leading to transition and giving us a little bit more time to prepare for whatever



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landing zone we find ourselves in for the future agreement in 2020 and beyond.

On the exact operational changes that firms are making, it depends on where their customer base is. If you look at some of the international broker dealers based out of London who have a huge customer base in the EU, yes, they will need to think about staffing requirements and new operations in order to serve those customers. Other institutions may be looking elsewhere, to Asia, the US and other markets. It is not a case of simply lifting business from the UK and replacing it in the EU. In some cases, that may be marginal, and marginal to the extent where it is not worth doing anymore and Europe as a whole loses out if there is no agreement.

Alastair Ross: As I discussed earlier, our member companies are quite advanced in terms of their preparations, partly because they have to be because of the length of time it takes to transfer business from an insurance point of view. They are in the advanced stages of that. They have identified locations. In insurance, you tend to see companies setting up subsidiaries in locations like Dublin, Luxembourg and Belgium because they are existing insurance centres within the European Union. That takes the money that I spoke about earlier in terms of recruitment and staffing up these operations, because they are certainly not brass nameplate offices where there is a very small footprint. Regulators are setting the requirements for the number of people to be based there, the types of people to be based there, the kinds of qualifications that they need. They can be quite prescriptive in that. You then have the IT costs of the transfer and all that.

We are all incredibly far down the road for this, but it is a long, long process when you talk about insurance and long-term savings. Having started, as I said, in the second half of 2016 to plan for this, arrangements are advanced, but not all arrangements are likely to be in place by 29 March. A no-deal scenario would mean, to put it in very fundamental terms, that it could become illegal for insurers to honour the contracts that they have entered into with people. People who took out contracts with insurance companies before either 29 March next year or even 23 June 2016 will find that it either may be illegal for them to pay into a policy, into a premium or to contribute to a pension they have signed up to or that it is illegal for the insurer to pay out on those policies.

That is certainly not in the best interests of the customer, but that is the situation that we could find ourselves in, that regulators in EU27 states could say, "The payment of that money is a regulated activity and therefore you are breaking the law".

Q315 **Chair:** That sounds pretty horrific. In that scenario, surely customers have every right to be quite concerned and anxious if that was to happen.



Alastair Ross: I do not disagree with you at all, Chair. This is a situation that is not beyond fixing. This is an accommodation that can be reached in terms of a solution. We might go along in a moment to talk about the temporary permissions regime, so apologies if I am pre-empting anything there. You have a situation where the UK has given assurances to what we call inbound insurers, so EU-based companies writing business into the UK, that they will be able to continue to do that after 29 March until the end of the implementation period, provided they have taken steps to be authorised by either the FCA or the PRA at the end of that period. The UK Government and their regulators and the Bank of England have done the right thing.

Q316 **Chair:** What do you make of the temporary permissions regime, Mr Normington? Is that something that will get us around some of these issues?

Richard Normington: We certainly welcomed it in principle and it shows the right approach by the UK authorities. We are looking forward to reciprocity on the European Union side. We are looking at the details of the temporary permissions regime right now to see how it is going to work in practice and where there might be changes at a technical level that may be needed to make it more effective, but we certainly welcome the attitude.

Q317 **Chair:** Could you explain how it would work? Maybe Mr Lawlor could help us with this. This was part of one of the technical notices, wasn't it?

Conor Lawlor: Yes, and it is something that the Financial Conduct Authority is consulting on as we speak, so more detail to come on how the temporary permissions regime would work. In essence, it is for firms passporting from the EU into the UK providing regulated services. What the UK regulators have effectively said to those businesses is, "If in late March/ early April we do not have an agreement, your ability to provide services in the UK to our customers based in the UK will not stop". There is an effective safety net there by the regulators in case the worst happens, and I think that is incredibly prudent and incredibly important.

What we would look to now is for European regulators to replicate a similar safety net to what the UK regulators have done and for EU policymakers to give regulators the guidance and political oversight to do that. I think that is one key component that is missing.

Q318 **Chair:** It is unfortunate that there has been no indication from the EU27 that they are prepared to reciprocate when it comes to the temporary permissions regime. If we do not get any indication that they are prepared to reciprocate, should that offer from the UK be withdrawn?

Alastair Ross: No. As I said earlier, the UK has done the right thing in opening up this reciprocal agreement. It is the right thing to do to treat customers fairly. What I would point to is that while there is scope for a regulatory solution here, it does require an element of political consent or



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support or cover, whatever term you want to use, from the European Union and the European Commission.

What we have is a situation where the UK has opened this permissions arrangement. It has yet to be reciprocated. We are, however, picking up encouraging signs from the European regulators; not the politicians so far, but the regulators. Felix Hufeld, who is president of BaFin, which is the German financial services regulator, said back in August that it is almost impossible for just one side of the stakeholders involved, whether that is industry itself or individual supervisors, to fix this problem exclusively and he certainly would like there to be a regulatory or legislative solution to fix the problem. The problem can be fixed. What it requires is regulators to co-operate, but to do that with the political consent of their respective Governments. We have that in the UK; we do not yet have sight of that on the EU side.

Q319 Chair: Are you hearing encouraging noises, Mr Normington, that the EU is prepared to reciprocate?

Richard Normington: As we watch the negotiations unravel or roll on forwards in whatever form they are going to take, the whole question of whether you deal with the basics that make international financial markets work and whether you are ready to put global financial stability at stake for whatever your political agenda is, that is a key question. Our industry would like to see financial stability. We want to see the markets continue to work. We want savers and investors to continue to have savings and investments.

Q320 Chair: Lastly—and we are grateful for your evidence and contributions today—in the event of no deal, what would happen to the continuity of cross-border financial contracts between the UK and EU? What would this mean for firms and consumers? We have heard a little bit from Mr Ross about this, so I will pass this one on to both of you gentlemen. Could you explain to us a little bit about the implications of this and what it will mean for cross-border?

Conor Lawlor: Absolutely. I am happy to start and I will base my comments on what Alastair has said. There is about 27 trillion to 29 trillion—I think valued in dollars—of contracts agreed between the UK and the rest of the European Union. The majority of these are in insurance and derivatives risk management tools that are incredibly important to supply chains and businesses across Europe. If the UK is unplugged from the European Union overnight and is to be a third country and not part of the European Union, a lot of those contracts do not fall away. They are still fundamentally based on commercial or corporate law.

What is difficult to do is intervene in those contracts because it would be deemed a regulated activity. For a contract where we are providing a currency management tool from London to, let's say, a car manufacturer in Germany, the contract would be permissible, but the counterparty's ability to get in there and service it because there has been a global



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upset in currency markets would not be allowed. Therefore you would have a contract that is not suitable for the cause of what the business wants to do. At best-case scenario, it means increased costs. At worst-case scenario, the business cannot function because a counterparty cannot intervene and make the contract work in the way that it should. These interventions are effectively called lifecycle events, which are very common through contracts that in some cases span five to 10 years, and in the insurance sector, 15, 20 and beyond years.

Richard Normington: Obviously we would like to see a transitional regime and, where it can happen, the grandfathering of existing provisions. That way things can be given a degree of certainty.

Q321 **Chair:** I think that you are all counting on a transitional regime being put in place, given some of the real difficulties that will be encountered with a no deal. Is that roughly right, Mr Ross? Are we facing some serious and significant difficulties if we do not get a transitional arrangement in place and if we do leave without a deal in a few short months' time?

Alastair Ross: Potentially, yes. As I mentioned earlier, particularly in terms of pensions contracts, you might be in this position where it could be deemed illegal to pay somebody the pension that they have paid into.

Q322 **Chair:** Seriously, deemed illegal?

Alastair Ross: This is the advice that we are getting. Dependent on the attitude of the regulator in the country into which you are paying that payment, as Conor said a moment ago, if it is considered a regulated activity, then it could be deemed illegal if you do not have the consent under a no-deal scenario. That would be a very stark position, but that is the kind of situation that we are looking at.

I am conscious that we have spent quite a long time talking about companies today and perhaps not as much as we could have done on consumers and other businesses. Two points on that to give you a couple of practical examples: one is the European health insurance card system. At the moment we benefit from that and if we are in Europe and any one of us falls ill we can access treatment there at the same rate as a resident of that country, whether that is at much reduced cost or it is on a free basis. If we come out of that system, then there is nothing to replace that. What you would expect to happen is that you will be charged the full amount for your treatment and you will probably have to claim that back on your travel insurance. It is likely then there would be significant pressure on travel insurance premiums to go up. That is on the basis that you would be covered by that. You would need to check your travel policy to make sure that it did provide that level of cover. These are things that are all starting to come into play now.

Another example both in terms of the domestic and also the commercial use is the green card scheme. At the moment you can travel without any other requirement for motor insurance within the whole of the EU—what



is called the motor insurance free circulation zone. Again, if we come out of that, what that means in practical terms is that you would have to issue every domestic driver and also every vehicle in a commercial fleet with a green card, literally some kind of piece of paper.

I say that not because I am denying the existence of a 21st-century digital world, but because that system previously operated in the 1970s. You would be going right back to that and coming up with a system whereby if you or I were to take our cars to the continent we would have to get that. If you are operating a haulage fleet, it is a much more extensive exercise. You would have to match each of these cards up with the relevant vehicle registration. That is the kind of stuff that we are talking about in terms of disruption and consequences if we come out without any kind of withdrawal agreement on 29 March.

John Lamont: Just to be clear, the same point would apply to EU drivers and EU nationals coming to the United Kingdom. If the UK withdraws from that scheme, it works both ways. It really is in both sides' interests to ensure that that situation, that scenario that you have described, does not happen because it works on both sides.

Alastair Ross: Absolutely. We would hope that it is in both sides' interests to reach a resolution before 29 March.

Chair: I think we all saw that as a feature of the technical notices that were released last week, where there was a big emphasis on some of the insurance regimes in the event of no deal.

We will just leave that there. We are very grateful for your attendance and contribution today. If there is anything further that you feel you could usefully contribute to this Committee, please give us any submissions. Thank you. We will have a five-minute break before the next panel.

Examination of witnesses

Polly Purvis and Svea Miesch.

Q323 **Chair:** Thank you both very much for attending the session today and patiently awaiting the arrival of the Committee. For the record, could you say who you are, who you represent and anything by way of a short introductory statement? We will start with you, Ms Purvis.

Polly Purvis: I am Polly Purvis, CEO of ScotlandIS, and this is my colleague, Svea Miesch, who is our Research and Policy Manager. We are the trade body for the digital technologies industry in Scotland, funded by our members, so quite independent. We have over 300 member companies mainly engaged in software development, IT services, telecommunications and digital agencies. We also represent the computer science and software engineering expertise within academia, and I know they were giving evidence earlier on today. Our members include technology businesses from multinationals such as Microsoft, CGI, BT and



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Oracle, unicorns such as Skyscanner and FanDuel, but the majority of our members are small to medium-sized enterprises and start-ups.

Optimal for our members would be continued frictionless trade with the EU and the free movement of labour. The tech industry is a highly skilled, high-value sector with a cosmopolitan workforce trading in competitive global markets. Here in Scotland the industry has been experiencing year on year growth in the region of 10% per annum, and Edinburgh is now one of the fastest growing tech centres in the UK. Scotland plc is investing heavily in emerging areas of technology where we can compete internationally in, for example, data science, artificial intelligence, mobility as a service and cyber-security. Our industry benefits from the world-class research in our universities in computer science, which attracts people from around the world.

Q324 Chair: I am grateful. To kick things off, obviously we did an inquiry into the creative industries in Scotland a few years ago. We found it a very helpful inquiry and we recognise and acknowledge the growth of the sector in Scotland. Perhaps you could talk a little bit about what you export internationally and how successful Scotland plc has been when it comes to digital in the course of the past few years.

Svea Miesch: Yes. Over the last few years, exports have been more and more important for our sector. Given that Scotland has a relatively small population, the real growth potential for companies in our sector is to export around the world. In 2016 that has been £2.3 billion, which is equivalent to about 8% of Scotland's total exports. The main markets in that are the EU, North America and Asia. Some of the industry are also exporting increasingly to the Middle East, Australia and New Zealand. In terms of proportions in markets, 39% of those exports are going to the EU and 61% to the rest of the world. Unfortunately that is not broken down further in the statistics, but we know from surveys of our members that the US, North America in general, is the biggest market outside the EU.

In terms of what export and trade looks like for our members, that is trade mainly in services rather than goods. With business clients, B2B is the main way of trading for our members rather than B2C. It is predominantly Scottish SMEs selling to enterprise-level clients, corporate clients, around the world. In terms of service delivery, it is mainly digitally or online, so providing software or apps to download, and that is either on a one-off basis or on a subscription basis. Software as a service is a big delivery model. Some parts of the industry also deliver physical products that need to be shipped around the world, but that often comes with associated services, so it is installation or maintenance afterwards. Those services often require staff to visit those clients or even work from their premises for a certain time.

Q325 Chair: I am just looking at the evidence that you supplied to us and we have here that 43% of digital services is exported to the EU and is worth in the region of £1.6 billion.



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Svea Miesch: That has been updated since.

Chair: It is even better than that?

Svea Miesch: Yes, it is even better now.

Chair: Go on, tell us what it is now then.

Svea Miesch: Those were the figures that we had after the referendum and since then we have more up-to-date ones.

Q326 **Chair:** I am thinking that it is actually better than the numbers that I have just quoted to you and it has improved.

Polly Purvis: I think you said £1.6 billion?

Chair: Yes, I did.

Polly Purvis: It is now up to £2.3 billion.

Q327 **Chair:** Okay. My question therefore is what are the priorities of the digital technology sector for the UK's future trading relationship with the EU, given that we are seeing these types of figures?

Polly Purvis: I guess the priority for us is access to talent. It is the major issue for the whole of the industry and it is a grave concern to everybody in the sector. We currently need more than 12,800 new people to come into our industry every year. That is equivalent to more than 10% of the tech workforce. Already we have some 12% of the technology workforce within our industry—that is the serious, deep-tech skills—performed by non-UK EU citizens. There are also many non-UK EU citizens in the wider commercial workforce within our industry. The loss of movement of people is the single biggest concern.

We will also need visa-free access to Europe for UK citizens working on behalf of Scottish-based businesses to deliver services in EU countries. We have a real concern about downturn in entrepreneurship in our sector, particularly in the start-up community. A lot of the new businesses that are being set up have non-UK EU citizens in their founding teams. Those people have brought great talent to the Scottish marketplace.

Other issues would be market access. The single market offers the best trading conditions for our sector. Whatever we end up with needs to be as close as possible to single market conditions. We are concerned also that the sector will lose out on the future benefits of the digital single market, which could be worth as much as €2.9 billion to the Scottish economy. The digital economy as regards data will face increasing trade costs if UK and EU legislation diverges. EU legislation regulating the free movement of personal data and data localisation facilitates cross-border data flows within the EU. Outside the single market, UK businesses and particularly data-intensive service industries such as accounting, banking and telecommunications will lose competitiveness.



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Q328 **Chair:** One of the recent innovations of course in the EU is the digital single market, which you have mentioned. I can remember some of the discussions and debate concerning some of the protracted arrangements and agreements that were made around this. How big a deal would this be for your sector if we did come out of the digital single market, which according to everything I have seen is the intention of this Government?

Polly Purvis: It is difficult for us to give you a straight answer to that. It is going to be a big issue. We do risk losing out on the opportunities in the digital single market. I do not think those are yet sufficiently well realised for us to be able to say what that is going to look like, but certainly these estimates suggest it is quite a major loss to the Scottish economy.

Svea Miesch: Yes, and with the digital single market developing further and further, it is at the moment mainly around ecommerce and telecommunications where there are opportunities. With the digital single market deepening, those are opportunities we do not have at the moment, but we would have if we were to stay in the EU single market, but we do not have figures around that at the moment.

Q329 **Chair:** I think that it is the Government's intention to be as closely aligned as possible with the digital single market as we do go forward. Is that something that might give you some reassurance about how the UK is going to approach these issues?

Polly Purvis: I think that it is absolutely essential that we have that position, yes.

Svea Miesch: We know that the UK Government have been a big driver of the EU digital single market, so keeping that in mind, hopefully there will be a continued push to be closely aligned to that. With the UK not being part of the single market anymore, there is a question as to how that is going to be possible.

Q330 **Chair:** I think that it is more than that. The UK was perhaps the prime designer of the digital single market and I listened, obviously depressedly, to the Prime Minister saying one of the advantages of leaving the EU was coming out of the digital single market. Is there anything that you would suggest or say about what we would need to do beyond being in the digital single market?

Polly Purvis: It is what we have already suggested: very close alignment, making sure that the regulations stay close. I know that the UK Government were very keen to make sure that the GDPR went through fairly unopposed.

There is a further point, which is around what we do as regards data. As I understand it, as we come out of the EU there will be no issue with personal data being transferred from the UK to the EU, but there will be a problem about personal data being transferred back into the UK. Getting that sorted out before we go through the next couple of years is essential



to make sure that we have no hiatus in that arrangement, otherwise we will be in serious trouble.

Q331 Deidre Brock: Welcome to my constituency, first, Edinburgh North and Leith, which you will know is a thriving hub for the digitech sector. Indeed, many of my constituents work in digitech. I have a particular interest in what evidence you might have seen of your members potentially relocating to Europe as a result of Brexit or considering that, particularly in terms of no deal.

Svea Miesch: We had a survey just after the referendum and about 10% of those who responded said that they were considering it. We still have members telling us that they are thinking about it, but there is little evidence at the moment that they are taking practical steps. We only know of a few that have made inquiries and taken practical steps either to set up an office in an EU country or relocate the whole business. I think that is also due to the fact that there is not a lot of certainty about what is going to happen, so is it really worth investing time and resource in setting up a new office when it might not be necessary in the end?

Q332 Deidre Brock: Your view is they are still waiting to see?

Svea Miesch: Yes, the majority will be still waiting to see if it is an issue for them at all. It depends on what the skills and market requirements are.

Polly Purvis: A number of our large member companies already have bases in other parts of Europe. For some, they already have that capability.

Q333 John Lamont: I want to go back to your survey, which I think you carried out in July 2016 to assess the views of your membership in respect of Brexit. Following up on your previous answer, have you considered going back to your members to do a further survey? It is certainly the case in many sectors that the initial fears around Brexit have not transpired. I just wondered if you had considered doing a further survey to assess the current mood.

Polly Purvis: We have been in regular contact with our members throughout the last two years around the whole Brexit issue and we have been making sure we keep them abreast of what is happening. We survey them on a fairly regular basis. We do an annual survey and we have brought up questions regarding the Brexit situation in each of these surveys. Before we came to see you, we also went back out to our membership. We are fairly close to our members on this topic and we understand what their challenges and concerns are.

Q334 John Lamont: The figures that were in your July 2016 survey—for example, 49% of your members expected your business environment to get worse—how do those figures compare with today?



Svea Miesch: We did not go back with the exact same questions. We did more qualitative surveys of the members in preparation for this and throughout the last two years. We do not have up-to-date figures on exactly the same questions, but that is also due to the fact that the situation keeps changing. We felt that we would have to survey too often to keep up-to-date on that.

Q335 **Tommy Sheppard:** What do you think of the proposals in the Chequers agreement for, as I understand it, the provisions for separating digital and data services? Do they provide clarity on what the future relationship with the EU might look like?

Svea Miesch: In terms of the proposals in the Chequers agreement on keeping the common rulebook and keeping close to the regulations with the EU, we hope that this is going to be the case, but we are concerned that this might not be taken up on the EU side, that the agreement will not offer the same data transfer regulation that we have at the moment.

Q336 **Tommy Sheppard:** Sure. I understand the EU may not want to agree them, but from your perspective they work?

Polly Purvis: It is very difficult to tell. We clearly want to make sure that as far as data and digital services are concerned, these stay as aligned to the current arrangements under the single market as possible. What is concerning from an industry point of view is that what we thought had some certainty in it several weeks ago around Chequers now again seems to be under serious discussion. The sands are constantly shifting and it is very difficult to know what is going to transpire at the end.

Svea Miesch: In terms of Chequers, what we are mainly concerned about is that it does not cover services to the extent that would be necessary for our industry given that we mainly trade in services.

Q337 **John Lamont:** Can you see any benefits of having a more flexible regulatory regime compared with the current system we have on an EU-wide basis? For example, would greater divergence from EU standards allow for more opportunities for digital service providers to expand into new markets?

Polly Purvis: If we could separate out the two elements here, one is divergence from the current EU regulations as far as trading back into the EU is concerned. We would be very concerned about a race to the bottom. Scotland has a strong reputation for quality in software and therefore it is very important to keep that going. There are clearly opportunities for new markets, but some of them are quite a long way away.

The vast majority of our members who are already exporting are exporting into sophisticated economies who are big buyers of technology. The US is the single biggest market for software in the world. Our members are already selling into the EU. They are already selling into the US. They are selling into Australasia and into the Middle East. Some of



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the trade deals that are considered hugely attractive, such as India and China, are not necessarily so attractive for our sector. In China there is a real challenge around IP. Very many people already have working relationships with India, but there are concerns about security of data in India.

These trade deals are likely to take eight to 10 years, on the Government's own advice, so it is a long time before we see real benefits out of that. You are asking the industry to accept the loss of a significant market now for the opportunity for jam tomorrow, and I think that is a real issue.

Svea Miesch: When we ask our members what opportunities they in particular see, there were hopes that new free trade agreements with non-EU countries would include services and regulatory alignment to allow more access to the telecoms market, for example, and also to facilitate ecommerce around the world. That is not only an important subsector of our industry, but ecommerce is quite important for many businesses and SMEs in Scotland and across the UK. This all depends on the nature of the free trade agreement that can be negotiated and how well services trade is being facilitated in those.

Q338 **Chair:** The former Secretary of State for Culture, Media and Sport, Matt Hancock, made a big feature that intellectual property-rich businesses would be a significant central part of any free trade agreement struck with a third party country. Creative industries would also be part of any arrangement that was going to be put in place as new agreements were struck. Do you have any confidence that this will be pursued? Were you reassured by the comments from the Secretary of State?

Polly Purvis: I have no doubt that they will attempt to pursue those issues. I think there is a real challenge in some geographies as to whether you can make that work.

Q339 **Chair:** I think this was in recognition that, in terms of content being produced, the UK is probably in the top three of practically every creative discipline. It is something that we excel in and it significantly assists our exports. Surely there must be opportunities if we are striking up these types of arrangements for that to be central and for a bigger expansion of the UK's creative sector.

Polly Purvis: I do not think we can talk for the whole of the creative sector. We very much represent the digital technologies end of the industry. While we do not specifically include the games sector among our membership, we do very often look at their skills requirements as part of what we are looking at on skills and we have quite a lot of knowledge around the games sector. The games sector is already a global market. I do not think that there is a real challenge for them. They will continue to trade very much on similar terms to the ones they trade on now. There are certainly things that could make their business easier, but I think that would be on a trade deal by trade deal basis.



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The issue around IP tends to be around the more general software sector, where legislation controlling IP in some markets is nothing like as strong as it is in the UK and the EU.

Q340 Chair: You did mention freedom of movement and I would like to ask you a couple of questions about that. We regularly hear from the creative sector that freedom of movement is central to successful, thriving businesses. Could you talk a little bit more about and expand on your fears if freedom of movement disappears? You will also have access for mode 4 services; would that be right? Have you seen any reassurance that this will be respected and honoured as we go forward on leaving the EU?

Polly Purvis: Do you want to address the mode 4 question?

Svea Miesch: Yes.

Polly Purvis: I will talk about some of the other issues. As an industry in Scotland in particular, we have benefited from the free transfer of talent across the EU and the success of the Scottish technology sector is partly because we have been able to bring in people with different cosmopolitan backgrounds, different cultures and different languages. Companies like Skyscanner have been successful because they have been able to get that blend of people.

We have also been very successful across our universities in bringing in young people from the rest of the EU to study computer science, software development and games development. Those young people tend to come and do placements and internships in Scotland. Clearly, the lack of a post-study work visa scheme makes it very difficult to then keep them here. Whatever we do in Scotland, however, closing the gap in skills is not going to happen overnight, with the best will in the world and everybody's attempts to try to make that happen. We currently produce around 5,000 people per annum from our universities and colleges who could come into our industry now. First, they are attracted into a number of other industries as well. The financial services sector in London is great at taking those skills. Secondly, other industries are also looking for those skillsets.

We need about 1,200 people a year. Whatever way you do the maths, we are short of people. Having that continued free movement of people across the EU and the wider world is hugely important to us. One of the things we would absolutely ask that the Committee feeds back is that whatever is done around visas, can they be as light touch as possible and can we make sure that visa regulations take into account the difference in salary levels between here and London? Scotland is the second-most expensive place in the UK for technology skills, but there is a significant step between London salary rates and ours. Cognisance needs to be taken of those differences in salary levels for the whole of the UK economy.



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Q341 **David Duguid:** A quick supplementary on the subject of mode 4 personnel coming from EU countries. Do you see an opportunity to attract mode 4 personnel from outside the EU? I am thinking in particular of places like India, which has a huge IT and digital skill base.

Polly Purvis: I think you will find the industry already attracts quite a lot of people from outside the EU. The subcontinent has been a significant supplier of skills to the IT industry across the whole of the UK and people from there are already within the workforces in Scotland. Clearly there is an opportunity to increase the number of people coming from those backgrounds. We would like to see people who meet the skills needs of the industry coming from any background to work in the Scottish marketplace. We are just desperate for people.

Q342 **David Duguid:** You already have people coming from outside the EU, not as frictionlessly as currently experienced with freedom of movement from the EU, but we are still able to get them in?

Polly Purvis: Yes.

Q343 **David Duguid:** Do you see any reason to expect people from within the EU to have any additional difficulties coming in post-Brexit?

Polly Purvis: One of the challenges around non-EU citizens coming into the UK and working in the IT marketplace has been that the regulations around those visas are tighter than they are around the EU transfers of people. It tends to be that you can attract the more senior people under those visa regulations and the salary levels tend to be that much higher than those of junior developers, for example. The challenge is to make sure, if we are going to have a continuation of that form of visa, that it covers all elements of the marketplace and not just the more senior skills.

Svea Miesch: Bringing people in through a tier 2 visa, for example, which is the main route in our industry, requires significant upfront investment and effort by companies to understand the rules, to become a sponsored employer and so on. Bigger employers use tier 2 quite regularly. They have the capacity to make these investments, but for SMEs and smaller companies it often is not feasible. They might want to bring in just one or two people, but it is quite a high cost so they decide not to make that investment at that time.

Q344 **Danielle Rowley:** We have seen that many industries are preparing for a no-deal Brexit scenario. Has your industry been preparing for that?

Svea Miesch: Yes. We asked our members if they had prepared or if they felt able to do so and many of them indicated that they feel that there is still insufficient information and uncertainty about the outcome. Members feel that investment in preparation for one kind of scenario is too big a risk if another scenario could also be quite likely. Larger companies have more resources than smaller ones and they have been able to do more analysis and planning for the different scenarios. To give



some examples, of those who are taking preparatory steps, we have heard from members that they are reviewing contracts to make sure that they are still up-to-date and applicable to EU-based clients after Brexit. Some companies are building cash reserves to prepare. Some are looking at EU offices—relocating—but as I mentioned earlier, that is more a consideration than a practical step for the majority.

Q345 Danielle Rowley: Do you feel that the Government have been helpful to the sector? Do you think there is anything more they could do?

Svea Miesch: No-deal notices that have been put out—there is a feeling that there is still limited information. For many companies, it is not something they can directly act on. The biggest concern around this is also about understanding the new trade landscape. Especially in terms of no deal, members who have not exported outwith the EU so far have no experience of paying tariffs or of other non-tariff trade barriers. They have no expertise in-house and again it is quite a big investment to get up to speed on that. It is a topic that is quite complex. There is definitely an opportunity for Government to do more around that and offer practical support to companies.

Polly Purvis: There are a couple of other points on that front. The Scottish Government have already invested in a number of European hubs and that is really welcome.

The feedback from our members suggests that they will need more support on exporting, as Svea as said. There is a need to make sure, for those people who are exporting a combination of product and software, that their disruption at the borders in terms of product flows is minimised.

A couple of members have suggested that the corporation tax system could be used to help incentivise exports to new markets. There is a need to see the UK Government playing a more positive role in pushing for a stronger, more inclusive, rules-based trading system so we minimise tariffs on technology products, and minimising barriers to data flows around the world through trade agreements.

There is also a need for more practical help for small and medium-sized companies, not just access to information, but also practical help on how they move into these new export markets and how they deal with the new trade arrangements. For many small companies, it is seriously worrying as to how they are going to make that transition.

Q346 Chair: Thank you both very much. I know it has been a very short session, but it has been very helpful for us to get an understanding of some of the challenges that will be coming to your sector with Brexit and the possibility of no deal.

I did notice some of the technical notices that went out last week and there was one specific to your sector. It seemed to dwell almost exclusively on portability—that you will not get your Netflix when you go



to a European nation. Was there anything further in these notices that gave you any comfort or that you recognise as a possible difficulty?

Polly Purvis: We have been through the notices. They are still fairly high level, so it is quite difficult to see at the micro-economic level what the impact is going to be for smaller companies. Everybody is looking for as much guidance as possible. We are trying to keep on top of those notices and make sure that we transfer that information to members, but as yet there is a lack of specific detail.

Svea Miesch: Also a lack of specific detail across the piece. There are some smaller areas where there is some more detailed information—for example, on VAT for digital services; there is some clarification around that which is quite helpful—but there is not the same level of detail in other areas that our members are concerned about.

Q347 **Chair:** That was my view when I had a look at it.

We are very grateful to you for coming along today. If there is anything further you could usefully contribute to this Committee, please give us any further information. Thank you.

Examination of witnesses

Michael Clancy and Carolyn Thurston Smith.

Q348 **Chair:** Welcome to our two guests. It is good to have you back, Mr Clancy, and welcome to your colleague. For the record, please say who you are, who you represent and anything by way of a short introductory statement.

Michael Clancy: Good afternoon and thank you very much indeed. I am Michael Clancy. I am Director of Law Reform at the Law Society of Scotland.

Carolyn Thurston Smith: I am Carolyn Thurston Smith. I lead on commercial law and trade policy issues for the Law Society of Scotland.

Q349 **Chair:** That was very short and succinct. We are very grateful to you for that. We have been here for quite a number of hours this morning, but we are very keen to explore some of these issues with you. Mr Clancy, perhaps you could start by telling us about the international trade conducted in legal services and where are the main export markets for Scotland.

Michael Clancy: It is important for the Committee to ask questions rather than hear from me droning on, but we submitted a response to the Committee and that sets out some of the issues in connection with trade. In Scotland, we are looking at a trade of about £1.5 billion in value from the legal sector. It is a vibrant legal sector. We do not have perhaps the same kind of global reach as our neighbours in the Law Society of England and Wales, but about 1,200 Scottish solicitors practise outside the Scottish jurisdiction and a significant number of them in Europe will



be affected by this. That probably sets the scene for you. If you wanted anything more—

Q350 **Chair:** Maybe you could describe to us the types of services that are exported internationally, to the EU and beyond. What types of services in particular do you offer? Does Scotland have a niche place within the type of international offer that we have?

Carolyn Thurston Smith: If you are looking at trade in legal services, you are to some extent just looking at what anybody is going to be giving legal advice on generally. You can look at family law and consumer law, where there will be EU dimensions, right up to high-volume, high-value commercial transactions, competition law, merger filings, where often you will be looking at the UK, and that of course includes Scottish firms—as the nexus for that analysis—bringing in firms from other parts of the world.

The other thing that is always important to remember in terms of services is that they are not quite as easy to track as perhaps goods are. There is no physical thing that goes. You might have a phone call on a Friday afternoon that will not be captured in a trade statistic, but is still very much part of the picture in terms of the provision of legal services.

In addition to looking at trade in services in terms of clients coming from abroad or going abroad to serve clients, there is also a major role for legal services in facilitating foreign direct investment into Scotland. The role that solicitors have in terms of professional advice, along with other professional advisers who have a strong reputation in the Scottish context, is something that it is important to remember here.

Q351 **Chair:** Maybe you could help us with this. Under current arrangements within the EU, legal services are traded within the confines of the single market, but outwith the EU, they are traded under the WTO GATS agreement internationally. What are the key differences between how these regimes operate? Are there any particular challenges or issues that you have with either or both regimes?

Carolyn Thurston Smith: It is fair to say that under WTO rules there may be situations where there is an FTA that goes slightly beyond the WTO rules per se, but what we have managed to achieve in the EU context is a very integrated internal market for legal services. It took 20-odd years to get to the point we are at and part of that was a recognition of the fact that legal services are jurisdiction-specific, so there was going to need to be a separate conversation that allowed that. Through the 1997 Lawyers' Services Directive, the Establishment Directive, which is facilitated through the 1998 Directive, then also provisions in the context of mutual recognition of professional qualifications and services more generally, there is a bespoke framework and the level of access is very good in the EU context.



However, it can be a very different picture if you are looking at WTO arrangements. They rely solely on GATS commitments under the relevant schedules. For example, in an EU context, what the EU member states have signed up to is that people can provide law advice in terms of the jurisdiction where they are qualified and they can provide international legal advice, but there is no obligation to go beyond that, so any level of market access you have is on a jurisdiction-by-jurisdiction basis and the only difference is just looking at the EU context from a third-party perspective in terms of what you can do from country to country.

Q352 **Chair:** Would there be massive difficulty or issue if we swapped the current EU single market arrangement for an arrangement that was more like the WTO arrangement in doing business with the rest of Europe?

Carolyn Thurston Smith: Some of the things that you can do in terms of the EU framework include advising clients in other member states on the temporary basis—fly-in/fly-out—that some others were talking about earlier, representing clients in domestic courts and tribunals of other member states, representing clients in European Commission investigations, for example, in competition cases before the European Intellectual Property Office. All those things fall away if you are not part of the EU regime. Then you are looking at what you can do in a specific country and in terms of requalification, what is the process for that. For example, in Austria there is a citizenship requirement. You essentially have to be Austrian or you have to come from one of the EEA countries. It is just not possible to requalify if you are from outwith that framework. It depends on the jurisdiction, but it can be difficult, if not impossible.

Q353 **John Lamont:** Before I ask my question, I should declare an interest as a solicitor, although I have not practised for many years.

What are the priorities of the legal profession in terms of outcomes from the Brexit process? What does the legal profession want to see on the other side of Brexit?

Michael Clancy: We set out our priorities for negotiations for the withdrawal agreement some time ago and those included things like making sure that civil justice arrangements were properly dealt with, that criminal justice arrangements were properly dealt with, that citizens in the UK and the EU could get proper advice from their lawyers and that their immigration status would be properly catered for. We also looked for proper co-operation between the United Kingdom Government and the devolved Administrations and legislatures so that this could not just be the project of one of the Governments, but something that involved the whole of governance. That, from our perspective, included not only the elected, but also civil society, academia, professional organisations and so on.

Q354 **Deidre Brock:** Returning to mode 4 services, how dependent are Scottish firms on the free movement of lawyers to the EU to provide those services? If no agreement were to be reached on the free



movement of lawyers, what would be the impact on the sector?

Carolyn Thurston Smith: We do not have statistics and obviously there are some commercial sensitivities, but we do know that free movement is a right that lawyers make use of. Beyond that, there are people who are out there on a permanent basis now who would also be affected.

Michael Clancy: It is difficult to answer the question about dependency, but certainly I have a right to establish as a lawyer in an EU country at the moment, if I get my skates on. That kind of right will be taken away from me at the point where the Treaty no longer applies and we leave the European Union. We know that there are Scottish solicitors in the European Union who are making arrangements to ensure that they can continue to practise in those jurisdictions. Some have taken nationality; some have been able to switch to become members of the national bar in the relevant country and things like that. We are actively giving information to lawyers across the profession so that they know the sorts of things they have to do if they want to protect their rights as much as they can. However, time is limited and for some people it has already run out.

Q355 **Deidre Brock:** Gosh. What were your thoughts on the language used by the UK Government in the Chequers agreement on the future framework for mobility?

Michael Clancy: Can you be a little bit more specific, please?

Q356 **Deidre Brock:** I am looking at the Chequers agreement. What were your thoughts on the language used regarding—

Michael Clancy: We responded to the White Paper on the future relationship. In our response we made 27 recommendations about clarity and an expansion of some of the propositions. From that, you can deduce that we found that the White Paper, which is of course the only proposition on the table at the moment, was not as clear as we thought it might be, that it could be more expansive, and that it could give greater guidance to those who want to read it, either because they have to or because they are interested.

Q357 **Chair:** You do not need to give us all 27 of your proposals and suggestions in response to the White Paper, but you argue that any future UK-EU deal should seek to retain the advantages of the current EU framework and you say that it has been highly successful in creating the market for legal services. Are you comforted by what you have seen in the White Paper that you are going to get close to securing that?

Michael Clancy: Of course the White Paper, as you well know, Chair, is dedicated essentially to achieving a common rulebook on goods; services do not feature as high up the pecking order. It is fair to say that there was concern that there had not been a more expansive discussion about services. Some aspects—for example, the reference to there being agreements between UK lawyers and EU lawyers in future—are difficult



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propositions at the best of times and may not prove to be achievable in the end.

Q358 **Danielle Rowley:** Focusing just on professional qualifications, how important is mutual recognition of qualifications within your sector? Do you think that the Chequers agreement was adequate in that area?

Michael Clancy: It is fair to say that mutual recognition is viewed by the EU as something that is contained to a range of professions and a range of qualifications and that those areas that Carolyn spoke of earlier in terms of the Establishment Directive—fly-in/fly-out—create a discrete area for mutual recognition in connection with lawyers, although there are crossovers between the Establishment Directive and the Mutual Recognition Directive.

Carolyn Thurston Smith: One of the most important things to note is that at the moment, under the Lawyers' Establishment Directive and the other Directives we were talking about, I have the ability to go tomorrow and get a job in, say, Frankfurt and while there, I could give advice on Scots law, international law and EU law. As part of that, there is also the ability to start working with lawyers in the relevant domestic jurisdiction to build a greater understanding of German law, which it would be in that context, and to begin advising on German law as I became familiar with it and therefore had the competence to do so.

In terms of the way the mutual recognition system functions for lawyers, there are a few options for requalification. The first of those is to sit an aptitude test, so essentially an exam, at the end of which you are qualified, subject to passing it. Another option is three years of experience working alongside colleagues in the relevant jurisdiction. You can qualify that way, without sitting an exam, because you have the practical experience. You have to demonstrate that practical experience. If you are working as a third-country lawyer, however, you will not necessarily have rights to advise on anything other than the law of your home jurisdiction, so that—moving into EU law, moving into domestic law—is taken away.

In a way, mutual recognition could almost be regarded as—or in certain situations may become—more important at the point that you do not have that automatic ability to advise on EU law or to start learning the new system so that you can advise alongside colleagues.

Q359 **John Lamont:** Just to be clear, under the current system it is only mutual recognition to a certain extent, in that you still have to sit an aptitude test or have a certain number of years of experience. It is not as of day one when you arrive that you are qualified to practise in that jurisdiction. Similarly, those moving from Scotland, as a Scottish-qualified lawyer, to London or vice versa, while you can work in those jurisdictions, you are not qualified in that jurisdiction.



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Carolyn Thurston Smith: If we separate it out, there is a different system for how you would go about qualifying if you were to go to London and that does not break through the EU Directives. Similarly, at the moment, you have the Intra-UK Transfer Test for lawyers from London coming up here. That means that English solicitors have to sit three exams. I think the EU lawyers' test is four exams. At the moment the Law Society is looking at introducing in the next set of regulations a new system in the admissions regulations where there will be nine exams with an exemption system. You would be automatically exempt from certain of those exams as an EU lawyer. The rest would be things you would have to sit as a replacement aptitude test.

The UK is separate. The difference is that you can advise on Scots law and international law from day one. That would not change. However, you can advise on EU law and you have to be a member of one of the EEA countries to be able to advise on EEA or EU law, so without mutual recognition that is taken away, but you can do that from day one.

In terms of German law, if I were to go to Frankfurt, I could not advise tomorrow because I do not know what the rules are, but if I were familiar with them, if I had studied and therefore did know some German law, that would be a slightly different question because it comes down to my competence and knowledge of the rules, not within a barrier that says, "You are qualified in jurisdiction X, so you cannot".

Q360 **John Lamont:** The point I am trying to make is that the current system is not seamless and that solicitors moving between jurisdictions already have to comply with lots of hurdles and administrative processes. I am thinking about some of the most truly global law firms. They have offices outwith the European Union and they are complying on a day-to-day basis with dozens of different rules and procedures without any difficulty. Yes, there is a partial relaxation in respect of those operating within the EU, but lawyers are very used to dealing with a global international legal market.

Carolyn Thurston Smith: I do not think there are hurdles beyond the fact that you would have to register as a registered European lawyer in the relevant jurisdiction. Obviously there are some safeguards built into the EU, but there is no limitation on what you can advise about because you can advise on EU law, home and international law, whereas if you go overseas, in some jurisdictions it will be very easy; in others, you cannot advise on domestic law or you get into an area where you have to determine whether your specialism falls under the category of reserved areas and therefore you have to be qualified there. It is a case-by-case basis and I think international law, home state law, those are usually more open. However, taking away the ability to advise on EU law is one of the really serious things from our perspective, looking at the EU context.

Michael Clancy: Also the removal of confidentiality or legal professional privilege, which do not apply to communications with your client when



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you are a third-country lawyer. Clients do not have the benefit of legal professional privilege or confidentiality. That is a significant drawback for the client.

Q361 **John Lamont:** How does that work for lawyers from Scotland working in the United States or Hong Kong now?

Michael Clancy: It depends on what they are doing in the United States or Hong Kong. I do not know what the legal system of Hong Kong or the United States is.

Q362 **John Lamont:** It is possible to build a relationship with those jurisdictions to allow them to carry out work. They are clearly doing so just now because neither of those jurisdictions is in the EU.

Michael Clancy: I am sure that there are requalifying rules in New York State and in California. I am not sure that there is one in Texas, where it might be a criminal offence to give legal advice.

Q363 **John Lamont:** The fact that Scottish and UK lawyers are able to do that as of today, they are obviously not stupid people, but it is something that is easily surmountable.

Michael Clancy: I cannot say that it is easily surmountable; it is surmountable.

Carolyn Thurston Smith: It also depends on the area of law. We touched earlier on the rights of representation. For IP lawyers who want to appear before the European Intellectual Property Office, for competition lawyers, who must—to be able to serve their clients properly—be able to appear in European Commission investigations, those things are essential. They come down to the EU rules and the permissions you have within that and there will be no workarounds for those.

Q364 **Chair:** I am a little bit confused about what you are saying about what would happen if there is no agreement. I am looking at what the EU says, which is that if no agreement is reached during the negotiations and we fail to recognise each other's qualifications, it might be necessary for a Scottish solicitor or advocate to start from scratch in order to try to secure a qualification to practice within the EU if no agreement is reached.

Carolyn Thurston Smith: As I said, it is jurisdiction by jurisdiction. For example, if an illustration is helpful, the process to qualify in Germany means that you do four and a half to five years—sometimes a little longer— of a university degree and then you sit the state exam, the *erstes Staatsexamen*, the first state exam, and it is a pretty tough exam. There are statistics on the failure rates, which I do not have here, but it is not an easy exam necessarily.

This is followed by a two-year training period. You are moved around on a rotation basis, which means you spend some time with a civil law



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judge, a prosecutor or a criminal law judge, then in an administration office, then nine months of training with a law firm before sitting another, zweites Staatsexamen, the second state exam. Currently there is no transfer procedure for lawyers who are qualified outside the EU to requalify as a lawyer in Germany. You would have to go through that whole process, as a Scottish-qualified solicitor, regardless of your qualifications.

Q365 Chair: It is going to be very difficult and tricky, that is what you are effectively saying to us, if no agreement is reached. What about if there is no deal and we crash out of the EU without any agreement or arrangement in March next year? Have you done any preparations as a sector or industry to try to ensure your position is protected?

Michael Clancy: We have made representations to the UK Government.

Q366 Chair: Yes, we know you have done that, but what are you doing to prepare for no deal?

Michael Clancy: Preparing for it, we have given information to those Scottish lawyers who are working in the EU. As I said in answer to Ms Brock, many of them have taken steps to secure their own positions within the jurisdictions in which they work because once we become a third country, it is back to square one for people who want to work in the EU and that would mean complying with work permit requirements and immigration requirements as well as professional requirements. As Carolyn has said, in some jurisdictions that just would not be possible.

Q367 Chair: Is there any evidence that some of your firms may be considering locating to countries such as the Republic of Ireland in order to be able to access the single market?

Michael Clancy: I have not heard that any Scottish firms are doing that, but many global firms that may have a presence in Scotland have solicitors who undoubtedly have qualified in the Republic of Ireland.

Q368 Chair: Lastly on this issue, the Bar Council's Brexit working group has urged the EU to preserve the rights of EU lawyers working in the EU if there is no deal. What would have to be achieved and secured in order for that to happen in the event of no deal?

Michael Clancy: The Bar Council is a very eminent group of people and has great ideas some of the time, so it is not for me to comment on its specific proposal, but I do think that that would require some form of individualistic treaty, which would make some kind of arrangements solely for lawyers. I would have to say that is a remote proposition.

Our focus has not necessarily been in terms of the rights of lawyers. Why do lawyers have rights? It is so that they can serve their clients and so that their clients can get information about their rights and obligations, but this is also something that goes to the heart of the rule of law. In all the arrangements about providing citizens with rights under the



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withdrawal agreement as it is currently drafted, it is important that, if you give people rights under any form of treaty, they have the capability of getting advice about those rights. That has been a feature of our representations from the very beginning of this process.

Q369 David Duguid: Staying on the subject of a no-deal scenario, have you done an assessment of the impact of non-tariff barriers on the legal services sector? If so, are there any particular non-tariff barriers that you are especially concerned about?

Carolyn Thurston Smith: The primary non-tariff barriers probably consist in some of the issues we have been talking about in relation to regulation, market access and what you can do as a lawyer.

One of the other issues, which is tied to the representation issue and comes down to jurisdiction—and also ties in with what Michael has just been saying in terms of rights enforcement—is that at the moment we participate in EU recognition structures. The Brussels I regulation is often mentioned in this context, Brussels IIA as well, and these deal with recognition and enforcement of judgments in civil matters. There is an element of if you are looking for someone to enforce a case, they need to have standing. If you are looking at rights of enforcement, you need to have a case you can bring. In terms of the legal structure as a whole, there are a number of issues that might not be non-tariff barriers per se, but link in with those things that we have been discussing earlier, which are the more traditional non-tariff barriers for lawyers.

Michael Clancy: I was just reflecting that the issue that Carolyn raised about civil judicial co-operation is key in any future relationship we are going to have with the EU, because we have a suite of laws at the moment that allow people to raise actions and have enforcement in EU countries from here to other countries in the EU and back. It is very important that the message is sent out clearly that people will be prejudiced significantly if we do not achieve an adequate civil judicial co-operation regime.

Q370 Ged Killen: What are the current barriers and opportunities facing the legal services sector in Scotland expanding into new markets outside the EU post-Brexit?

Carolyn Thurston Smith: I think the barriers come from what we have been talking about in terms of some of the access rights. Looking at opportunities, one of the things that we spoke about in our submission was the importance of having a transition period. Part of that transition period, from both the EU's and UK's perspective, is an expectation that would allow us to go to current trading partners and say, "We currently have an agreement through the EU. Can we continue that for the transition period?" to give a little bit of a window to negotiate rollover of those existing agreements. Beyond that, in terms of legal services themselves, it is very much a question of legal services being given sufficient priority within the whole negotiating priority framework.



However, in terms of the view that we have been taking of trade as a whole and the submission that we made to you, one of the things that we think is really important from a legal services perspective is that you are looking at how trade agreements can work in a wider perspective, so looking at industries that we work closely with—financial services, for example—making sure that our interests are not just defensive interests for what we are good at right now, but as colleagues were talking about earlier in relation to digital services, making sure that you have a forward-looking trade agreement that will allow growth where Scotland has potential for that growth.

On the digital element, we recently launched a project ourselves, LawscotTech, which looks at technology and Scotland as a space for legal technology. Then looking to wider rights enforcement, the mechanisms that underlie a trading deal, which allow consumers to access justice, which allow businesses to bring claims against each other in a dispute situation.

Ross Thomson: In your written evidence you refer to launching Scottish Legal International. Could you tell us a little bit more about this initiative and how it is trying to promote Scottish legal services outside the EU?

Michael Clancy: It is an initiative that is firm-led, not Law Society-led, as such. We are supportive of Scottish Legal International. We were concomitant with Scottish Development International last week in arranging a meeting alongside the International Bar Association in Rome, where members of SLI were able to attend and have a meeting with Lord Keen, Lords Minister in the Ministry of Justice, and also meet local lawyers and others who were participants in the conference in Rome. That is an example of what we are trying to do. It was only founded earlier this year. It is early days. We know it has a platform for the future and we sincerely hope that we will be able to assist it for many years to come.

Q371 **Chair:** We are grateful. Thank you once again. Just before you go, now we have you here, Mr Clancy, I know that you submitted written evidence to the general inquiry, but briefly—we are going to be catching a plane down to London—just a few words just about what you see to be the future role of the devolved Administrations in some of the bigger discussions about trade as we go forward with Brexit.

Michael Clancy: Thank you very much indeed for the opportunity. Starting off, our comments about participation of the devolved Administrations and legislatures in trade is of course that under the Scotland Act 1998, schedule 5, paragraph 7, there is no formal role for the Scottish Parliament in the creation of trade agreements or any other form of international agreement, including EU agreements. Therefore when one looks at what has happened up until now, if you consider the memorandum of co-operation between the Concordat, as it is called, on international relations between the UK Government and the Scottish Government, it sets out a framework. Clearly we want to see that



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framework work properly. One can take the model that already exists for the construction of EU law, where Scottish Ministers can attend meetings of the relevant councils of EU, such as the Justice and Home Affairs Council or things like that, and advance a line that has been preagreed with the United Kingdom Government. That is exactly the sort of thing that one would want to see in the international trade arena.

We would encourage the UK Government to think carefully about that. As we get to the review of intergovernmental co-operation, which has been going on for some time now, we are looking forward to hearing what the Cabinet Office Secretary, David Lidington, has to say about its progress. It is quite important that we make sure that there is a voice for the devolved Administrations and legislatures in these arrangements. We set out a range of options on a scale in the paper that we submitted to you. One of those options may fit, but five of them may not.

The important thing, however, is that we are on a journey here. These are different times, and it is the whole arrangement for agreeing trade agreements in our law, which are prerogative agreements, which then have to be translated, because we have a dualist system, into international law, which then have to be translated by ratification under the Constitutional Reform and Governance Act. It is fair to say—and people have said—that that is not an adequate system for scrutiny by Parliament or by the devolved legislatures. That is where we need to be looking at better intergovernmental relations and better law to back that up.

Q372 Chair: We may have some good news for you on that front, because this Committee will be conducting an inquiry into intergovernmental relations and I am pretty certain that one of the first people who will be invited to attend will be your good self, Mr Clancy. Anything that you could do to help us in that inquiry would be very helpful.

Michael Clancy: I have received the notification of that inquiry, Chair, and I have already started to think about something to say.

Chair: As we knew you would. Can we thank both of you for attending? It has been very helpful. Again, if there is any other particular issue or something that we may have missed out that you could helpfully point to, please get in touch with the Committee at any time. Thank you.