



Select Committee on the European Union

Energy and Environment Sub-Committee

Corrected oral evidence: Post-Brexit enforcement of environmental law

Wednesday 6 February 2019

10.35 am

Watch the meeting

Members present: Lord Teverson (Chairman); Lord Cameron of Dillington; Viscount Hanworth; Lord Krebs; Duke of Montrose; Lord Rooker; Lord Selkirk of Douglas; Baroness Sheehan; Earl of Stair; Viscount Ullswater; Baroness Wilcox; Lord Young of Norwood Green.

Evidence Session No. 1

Heard in Public

Questions 1 - 15

Witnesses

[I](#): Professor Richard Macrory, Emeritus Professor of Environmental Law, University College London; Ruth Chambers, Senior Parliamentary Affairs Associate, Green Alliance; Professor Charlotte Burns, Researcher, Brexit and Environment Network; Debbie Tripley, Director of Environmental Advocacy and Policy, WWF-UK; Tom West, UK Environment Lead, ClientEarth; Begonia Filgueira, Brexit Task Force Co-Chair, UK Environmental Law Association; Martin Baxter, Project Board Member, Broadway Initiative.

Examination of Witnesses

Professor Richard Macrory, Ruth Chambers, Professor Charlotte Burns, Debbie Tripley, Tom West, Begonia Filgueira and Martin Baxter.

Q1 The Chairman: Colleagues and witnesses, can I thank you very much indeed for coming along this morning? One of the areas that came out of our original report on Brexit and the environment was the problem there would be, post-Brexit, of the Commission or the European Court of Justice not being there and so being unable to enforce environmental legislation in particular. This is taking that forward now, particularly since the Draft Environment Bill has been published and is being looked at, at the other end of this building.

I will go through some parish notices quickly. Can I ask Members to declare interests, if they have any, when they first speak? I would remind everybody that this is a public session. It is being broadcast on the web, so is obviously live and public. We will be doing a transcript, which we will be circulating so, if you see anything incorrect in the transcription, please let us know. I would ask Members and our guests to try to keep comments and questions relatively short, so we can be really comprehensive and go through all the issues.

We are looking specifically at the Office for Environmental Protection; we are not looking at environmental principles and that side, which is another big conversation, but not what we are doing today. It is around enforcement and how that should work. Very briefly, without long CVs, for those members of the public who are watching or are here, could everybody including Members say who they are? I am Robin Teverson; I chair this Committee. That really sums me up.

The Earl of Stair: I am Jamie Stair, a Member of the Committee.

Professor Richard Macrory: I am Richard Macrory, Professor of Environmental Law at University College. Some years ago I worked in the Commission on environmental enforcement, so I have some insight and feel for that.

The Duke of Montrose: I am the Duke of Montrose. My family owns land in Scotland with a nature reserve and a handful of SSSIs.

Lord Selkirk of Douglas: I am James Selkirk. I was an MP for 22 years and a Minister for the Environment for five.

Lord Rooker: I am Jeff Rooker, Member of the Committee and an ex-Minister at Defra.

Debbie Tripley: I am Debbie Tripley, Director of Policy and Advocacy at WWF, with a legal background in environmental law.

Lord Young of Norwood Green: I am Tony Young, a Committee Member and Labour backbench Peer.

Tom West: I am Tom West, law and policy adviser at ClientEarth, where I lead on our work relating to Brexit.

Baroness Sheehan: I am Shas Sheehan, a Member of the Committee, and I declare a small interest in the family smallholding as of April this year.

Begonia Filgueira: I am Begonia Filgueira, co-chair of UKELA's Brexit Task Force and head of environment at a law firm called Foot Anstey.

Viscount Hanworth: I am Stephen Pollock, a Member of the Committee and a professor of mathematical statistics.

Ruth Chambers: I am Ruth Chambers, here representing Greener UK, a coalition of 14 environmental NGOs.

Lord Krebs: I am John Krebs, a Crossbench Peer, Member of the Committee and academic by background.

Professor Charlotte Burns: I am Charlotte Burns, Professor of politics at the University of Sheffield, and co-chair of the Brexit and Environment network.

Lord Cameron of Dillington: I am Ewen Cameron, a Crossbench Peer and farmer by background.

Martin Baxter: I am Martin Baxter, Chief Policy Adviser at IEMA, a professional body for people in environment and sustainability. I am also part of the project board for the Broadway Initiative, which has developed a blueprint for the new Act.

Viscount Ullswater: I am Nick Ullswater, a Member of the Committee and, at one time, was Minister of State at the Department of the Environment.

Baroness Wilcox: I am Judith Wilcox and was once a Minister for Business and Intellectual Property, but worry about fish more than anything else now.

Q2 **The Chairman:** I will ask everybody to direct their questions, or indicate, to me or Alex if you want to raise a question or speak. Let us get started then. The fundamental question is this: would the Office for Environmental Protection as envisaged in the Draft Environment Bill provide an effective and independent domestic enforcement mechanism to fill that vacuum when the European Commission disappears? I would like to go round and ask our witnesses to give us a short summary of that; then we will get into the detail afterwards. It just gives us a base for where we are at the moment. Richard, would you like to start us off with that, with a minute and a half maximum to get going?

Professor Richard Macrory: Generally, yes, although there are footprints of other Departments on some of the detail, and we will come to that concern. As my Lord Chairman knows, when the Committee first raised the subject, the previous Secretary of State was not very

interested and thought judicial review was sufficient. I take my hat off to the present Secretary of State, who immediately saw the logic of the argument.

There are two general things I would say. First, the idea for this came out of the Brexit gap and the Brexit story is not over. I would argue that, even if we ended up remaining in the EU or perhaps a member of EFTA, which has a supervisory authority, this would still be a useful body to have in this country as a contribution to our environmental law more generally.

The second thing to say as a qualification is that there is not much point in creating this body if our existing regulators and local authorities either do not have the resources or are not enforcing environmental law enough. I worry about some of the recent figures from the Environment Agency, for instance. The formal cautions issued by the Agency have dropped four-fifths in the last three years and the prosecutions have dropped from 515 in 2011 to 113 in 2017. That is a dramatic drop. Now, I do not know all the reasons for that. They have not all been replaced by civil sanctions. It may be there is much better compliance. I do not know, but I am concerned that we have that backdrop. If we all get excited and concerned about this point, we must not forget that that is the background picture. You have had evidence that Natural England also has concerns.

The Chairman: That is a very useful start.

Debbie Tripley: I want to put this in the context that we think the Bill is a good thing overall, but I have to say we do not think it is fit for purpose at the moment. We are worried about its lack of independence and think that is seriously going to affect its effectiveness and bite. In particular, the constitutional framework will allow possible political interference by successive Secretaries of State, and we are concerned about that. We feel it should be at arm's length from Defra in its set-up.

We are also concerned that it does not have an overall environmental objective, and would like to see an overall environmental objective, such as 'restoring nature in line with promises for a better environment than inherited'. We say that because, for us, the ambition of this Bill is to address nature and the terrible depleted state that it is in. To remind the Committee, the *Living Planet Report* that came out in 2018 had statistics that show a 60% fall in wildlife population since the 1970s and other terrible statistics like that. We want to see it trying to address those issues. At the moment, without an overarching objective, it is somewhat rudderless. The actual enforcement powers lack a strong and coherent framework, which can be amended. We have some suggestions of what we would like to see in it, but it is somewhat toothless at the moment.

The Chairman: Tom, ClientEarth has some form in this area.

Tom West: Following from Debbie, I would say generally no. The Bill provides a good skeleton, but this work needs to be built on. I appreciate

we are focused on the OEP today, but I want to make a quick comment on the overall nature of the Bill. It is constitutional in nature; it is looking at creating a new framework for environmental law as a whole, so getting it right is critical. That constitutional nature creates a need for constitutional innovation. That is true of its overarching objectives and principles, including non-regression, but that is felt most strongly with the OEP, where we need an innovative approach.

We are faced with the challenge of replacing the supervisory role of supranational entities, the European Commission and Court of Justice, which is very challenging. To attempt to mirror it directly is perhaps impossible. Having said that, there is a possibility to rectify some of the shortcomings of the EU system but, unfortunately, the Bill as it stands does not quite do that. It is lacking in independence, and we have seen the problems of lack of independence in particular when it comes to funding. Some of the issues that Richard raised can be traced back to those issues with environmental bodies, so improving the independence is crucial.

A bespoke enforcement procedure is also needed, to hold the powerful to account and ensure the law is being properly complied with, which is generally accepted as the intent of this body, including from the Government. What we need there are stronger ties with Parliament, in terms of funding, accountability, appointments and a bespoke process centred on the ability of the OEP to issue binding notices.

As I say, the Bill as drafted gives us a skeleton and something on which to work, but it needs significant improvement in places to provide an effective enforcement mechanism.

Begonia Filgueira: On the whole, UKELA welcomes the Environment Bill and the Office for Environmental Protection. Your questions were specifically about efficiency and independence. To be efficient, it will need the right budget and, we believe, a wider scope. On its independence, we are concerned about how members will be nominated and the ability of the Secretary of State to remove non-executive members. I will address our specific issues on the lack of independence later. On its effectiveness, its monitoring function could be strengthened and we have some specific comments to make about enforcement, as to whether judicial review is the right procedure for the equivalent of infraction.

The Chairman: I will just make the point that, if there is additional evidence that people want to bring forward, you can do it very quickly to Alex after the meeting, if there are things that we did not cover.

Ruth Chambers: In answer to your question, I would say "not yet", because the issues I am about to identify at a high level are all fixable with the right drafting and political will.

The first flaw we would highlight and that everyone else has mentioned is the lack of sufficient independence for the OEP. I would like to say more about that later if the opportunity arises. Secondly, we do not believe it

has the full range of necessary powers, and the powers it has will lack bite. Thirdly, the proposed definition of environmental law raises as many questions as it provides answers, and it leads to grey areas and a lack of clarity about what is in and out of scope for the OEP. A particular exclusion that worries us is the omission of climate change, and I would welcome the chance to come back to that later.

At the moment, it is designed as, and on a fast track to becoming, an England-only body. The Bill is entirely England-only and reserved matters are in its scope. There are consultations promised in Wales and Scotland on these issues, but they are yet to materialise, so there is no clear path to address these issues across the UK.

Finally, the Secretary of State has said that the Government want to set up a "pioneering new system of green governance", which we wholeheartedly welcome. We worry that, by bringing forward the draft clauses in the way that the Government have and not seeing that wider system, there is a risk that the OEP may be developed in a bit of a vacuum, whereas, in reality, it needs to be the beating heart of that system if that system is to be truly pioneering.

The Chairman: That is a good summary.

Professor Charlotte Burns: Like others, I welcome it but it is not quite there yet. There is more that can be done. A particular issue of concern we have noticed is that the appointments, budget and oversight all lie in the hands of the Secretary of State, and we would like to see some of that pass over to Parliament. The enforcement regime that is being suggested is much weaker than that which we have at EU level at the moment. You mentioned the Commission in your question, but not the Court of Justice of the European Union, which has the ability to levy fines against States that are not implementing or enforcing environmental law. That is not being replicated in any way, shape or form here. We can expand on that as the debate continues.

Martin Baxter: It is tempting not to leave Richard on his own in saying yes but, from our perspective, there are still some gaps and concerns. One is that we only have the first part of this Bill for pre-legislative scrutiny and it is difficult to comment on whether the OEP, in the functions and activities it needs to perform in the round, is complete, because we have not seen all that it could do. That is something that we are focused on, in terms of the second part.

As Ruth alluded to, there are still some gaps. First, the Commission's enforcement is on the UK as a whole and on all parts of the UK, and this Bill is very much for England and matters that are reserved at UK level. We have a gap for other parts of the UK that have to implement environmental law, but we do not have details about what they would be as yet. There is an opportunity either to develop one single body or to have parallel bodies that operate in similar ways, which is something to consider.

The Commission performs its duties in relation to the overarching treaties. While we have the principles that have been stripped out of the treaties and put into this Bill, the overarching objectives in the treaties, as they relate to environmental protection, have not been brought forward. There is an absence of an overarching objective in the Bill against which the OEP, anything relating to environmental improvement plans and the principles as a whole can bind together in a common framework and purpose. That is sorely lacking in this Bill. We believe that that is crucial to be a guiding hand for the work that the OEP is going to do.

We have concerns about independence. It is difficult to see how a body that is appointed and resourced by a Minister is then going to hold that department to account for some aspects of environmental law. That seems to be quite a challenge. In order to perform its role, the Commission takes information from Member States. Greener UK has done some work looking at the statutory instruments that are going through under the Withdrawal Act, where reports that would have been sent to the Commission are now just being published almost without purpose and without being directed to a body that can hold them to account. We see that as another gap opening up in the transposition of EU law through the Withdrawal Act.

As many colleagues have said, these are all fixable in the time that we have. One of the beauties of having two goes at a Bill, with the next part coming through, is that there are real opportunities to set this environmental constitution for our future. That is something we are keen to work towards.

Q3 Lord Krebs: Thank you very much to the witnesses for very clear introductory statements. I would like to start the conversation about independence, since everybody brought that up. I can see the problem: if the Secretary of State for the Environment has the purse strings and appoints the board, what is actually independent about it? I would like to ask the witnesses what alternative model they would favour. To float two, Jeff and I, at different times, have both been chair of the Food Standards Agency, which is a non-ministerial department. In principle, it gets its budget directly from the Treasury, although the Department of Health has a role in that. It is accountable to Parliament through Health Ministers. Do you favour that model?

The other body I have been on is the Committee on Climate Change, which is an independent body, an NDPB, but its budget nevertheless comes from BEIS and Defra, and the board is appointed by Ministers. On the other hand, the Committee on Climate Change is a creature of Parliament so, if it is not satisfied with the budget it is given, it can make representations to Parliament. I am not quite sure how, but there must be a mechanism there. I wonder if either of those models works for you or whether there is something else you favour.

The Chairman: Debbie Tripley, do you want to start us off on that, and then I will bring in Richard, because you talked particularly about

independence when you opened up?

Debbie Tripley: I actually think Ruth is better at answering this question.

Ruth Chambers: For me, the independence or lack of it for the OEP is almost the most troubling aspect of the Bill. Regardless of where the OEP's functions and powers end up, if it is not able to operate and exercise them independently of Government, it will not be able to do its job. In the way it is constituted, the draft Bill sees Ministers having very tight controls indeed on funding and appointments, in a way that will make the OEP's job difficult in the long term.

At the moment, what is on offer is a pretty bog standard non-departmental public body, along the lines of many other NDPBs in Defra's family. That is not necessarily to criticise those bodies, but we all know from our own experience of bodies, both within and without the Defra family, that it is all too easy for Ministers to reclaim functions, reduce funding and control what those bodies can do, either directly or by a process of stealth that takes place over many years. That is what we do not like.

What do we like? I would start by saying that we are keen for this body to be much closer to Parliament than to Government. There are a number of practical principles that, if they were enshrined in the Bill, could help to make it much more independent of Government than it is currently. To start with funding, we see no reason that the body could not prepare and be subject to its own estimate. That would then be part of the annual approval by Parliament of all public expenditure. We see that becoming part of the normal conventions of funding as not wholly outwith the bounds of possibility. To set a political context for that, the Government should introduce a commitment to multiannual funding of the OEP. Again, that is not without precedent; it exists, for example, for the Office for Budget Responsibility. The Chancellor does it, not as a legal requirement, but he does it in public and, therefore, it is a political commitment for which Ministers can be held to account.

There should be a greater role for Parliament in making and changing appointments than currently devised. At the moment, the Secretary of State is able to decide who the Chair and all the non-executive members are. We think that that should be done much more closely aligned to Parliament. Again, there are lots of examples here: the Chair of the Office for Budget Responsibility is appointed by the Chancellor, but only with the consent of the Treasury Select Committee. There are lots of examples of where precedent says that we can do this, but Government seem to want to hide behind a constitutional smokescreen at the moment. In reality, they do not want this body to be as independent as many of us do.

There are plenty of models around that we could base the OEP on. The National Audit Office is a good example of a body that is much more closely aligned to Parliament. We think the underlying principles of that

model would lend themselves well here. The Press Recognition Panel is set up by Royal Charter, but again has a much more independent appointments process. Those are some thoughts on how, practically, the body could be made more independent than it is at the moment.

The Chairman: Thank you, Ruth. From my past experience, Defra is quite strong at keeping its NDPBs close to itself, probably more than other Departments.

Professor Richard Macrory: On that point, it has done so even more in the last two or three years, because that is the trend that has been going on. I agree that this model is not good enough. We need some way to spread out the funding, such as the Committee on Climate Change. The National Audit Office is one model where moneys are paid directly by Parliament.

One concern I have heard about that is that it is unconstitutional to have an enforcement body that takes a lot of enforcement action, maybe against Government, funded by Parliament. I never quite know what that means in those terms. This is what I am told some of the advice is. It is a bit like when you are trying to do something new at university, and you are told, "No, no, health and safety" or "data protection". I know that argument is always raised to stop you doing something innovative. I am not sure where that is coming from. There are other funding models that would secure it. At the beginning, everything will be fine and it will be funded properly, and then, in five years' time, particularly if it is making life a bit difficult for Government, which it is there to do, or there are other funding squeezes, there could be real problems.

Tom West: I support everything that has been said so far about the need for innovation, the need to move closer to Parliament and multiannual budgets. I want to suggest another example of potential good practice. The German equivalent of the NAO is able to prepare and propose its own budget and submit that to a parliamentary committee, alongside the Government's proposed budget. That allows a viewing of what the difference is. It allows that to be done transparently and a decision to be made with all that information available. In the spirit of building on what is already in the Bill—as I said, it is a skeleton on which to build—in the Schedule the OEP is required to provide a statement on whether it thinks its funding is sufficient, but that is at the back end currently. That needs to come towards the front end, so it is able to influence what happens in a more effective manner.

Begonia Filgueira: I agree with those statements. UKELA believes in the model of funding from various departments, such as the Committee on Climate Change, and the idea of being closer to Parliament. Ruth mentioned the Press Recognition Panel as a model when it comes to appointments. The members are appointed every five years and can only be removed, in that time, by the unanimous agreement of board members. The board is appointed by Royal Charter, and the Charter itself can only be amended by a two-thirds majority of the House of Commons, the Lords, the Scottish Parliament and the unanimous agreement of the

board. Really, there are lots of different models from which we can choose.

To follow on from what Tom has said, it is true that the OEP can report, in its annual financial report to Parliament, on whether the budget has been sufficient. Parliament can comment, but I do not see how it can then ask the Minister to increase the budget. There seems to be no backwards mechanism to correct that.

Professor Charlotte Burns: This mirrors Begonia's point about the Committee on Climate Change. One of the advantages of that model is that the Committee on Climate Change also reports to the Assemblies in the devolved nations, so there is a shared model. One Government would find it quite difficult to undermine what the Committee on Climate Change is doing without getting the other Governments on board, so that is another potential advantage of the Committee on Climate Change as a model.

Professor Richard Macrory: The appointment of the Chair and the chief executive should be subject to Select Committee pre-appointment hearings. Those appointments are always difficult. The Committee on Climate Change has had two very good, strong Chairmen, who have shown themselves to be independent. It will be incredibly important when it starts to have, as the Chair and chief executive, people who are of strong characters, who can develop a vision. This could be a really important body, for not just enforcement, but generally how we develop and think about environmental law.

Q4 **Lord Rooker:** The NAO might be good. I once served on the Public Accounts Committee, so I am a big fan of the system, but the appointment of the C&AG is almost unique in these bodies, as the chief exec of the NAO. There are letters patent or something like that, which give someone rock solid tenure, in a way, so they are difficult to remove. I do not know if we would be able to replicate that for an English system.

Nobody has mentioned the analogy with the Civil Service Commission, so I just want to give you an example. I heard yesterday from two independent and separate sources about the present situation, in which all appointments to such bodies, not just Chairs, are done by No. 10. The Secretaries of State are not doing them. No. 10 is approving the shortlists for any appointment to any body. They are adding people to the shortlists and the recruitment panels are not allowed to make an appointment. All they can do is list the candidates they have seen as appointable or not appointable. That list goes back to No. 10, which is making the decision. Therefore, the involvement of the Select Committees in the other place is almost irrelevant when it comes to that. I am a bit worried about what I have heard and I was given quite detailed examples.

That is not the way it worked in my time; that is for sure. When I was Chair of the Food Standards Agency, I was once subject to an appointment of the chief exec, when the Civil Service Commission

oversaw what we did. That was a remarkably different system, which had a constraint built in, and I was more than happy to work with it, because it was open, transparent and fair, and there was no jiggery-pokery. They are not involved, because we are not talking about appointments of civil servants; however, we used the model that the Civil Service Commission operates. In the present situation, it refers to the Secretary of State and everybody else, but I can tell you now that it is not the Secretary of State doing it. It is No. 10. How do you change that?

Ruth Chambers: Very briefly in response to what Lord Rooker has said, that is a deeply troubling pattern of behaviour, which is happening across the board on appointments. Professor Macrory talked about pre-appointment hearings. They are an important part of the system, but not a panacea to guarantee independence. We want to see a more active role played by the relevant parliamentary Select Committee or some new infrastructure created, if needed, for the new body, along the lines of the Public Accounts Committee, which supports, guides and scrutinises the National Audit Office. We would support that as well.

Q5 **Viscount Hanworth:** I would like to derive a clearer idea of what we will be forgoing by leaving the European Union in terms of the resources to support environmental protection, such as laboratory facilities and expert personnel. How do the European Union facilities measure up against those of the US EPA? Also, what does a properly functioning OEP require in terms of this sort of support?

Debbie Tripley: I will have a little go. This body is clearly going to have monitoring and reporting functions, and one would hope it would have scrutiny functions. One of the things it has to do is to monitor and report on the environmental improvement plans, which are quite significant and wide in themselves. To do that successfully, one would expect it to have a lot of resources, in order to obtain the scientific evidence it needs to do so. The intention of Government is that it will rely on Government's scientific evidence, which it will collect through its reporting on metrics, and then just carry out an assessment, but I query whether that is sufficient and effective if it is to have this independent monitoring function. It will need a lot of resources for that.

On top of that, it has an enforcement function, which includes an aspect of access to justice in taking complaints from citizens. It will need sufficient resources to look at and consider those complaints, so it needs quite a considerable legal resource. Then it will probably need resources to take cases to court, which I do not see covered in the funding provisions at the moment. Coming back to independence, funding will be determined by the Secretary of State. How will he determine how much budget the OEP needs both to enforce complaints and to take judicial review cases? It is conceived as a body that is quite slimmed down but, to carry out the functions it has, advisory, monitoring, scrutiny and enforcement functions, it may need considerable resources.

Viscount Hanworth: May I offer a quick observation? The Environmental Protection Agency of the US has 27 laboratories and

14,000 personnel. Presumably the European Union measures up to that and we have to depend upon these things if we cannot depend upon our own resources.

Debbie Tripley: We have the Environment Agency and Natural England. We know from your own Select Committee reports that Natural England's budget has been depleted over time but, if it was restored, it would do a considerable amount of that. We should not forget that we have that resource.

The Chairman: That partly comes back to Richard's earlier point that we must not forget the regulators we already have. I will ask people to make quick comments.

Martin Baxter: Building on your comments, a lot of environmental standards have been set at EU level, so there has been a capability at that level to set standards, which have gone into, for example, the Water Framework Directives and water quality standards. So there is the potential that we have a gap. On the other hand, quite a lot of environmental expertise is derived from the UK. We have pretty strong research capabilities. We have NERC and the Research Councils, which could provide an important evidence base on which we can start to build a more coherent UK-wide framework for setting long-term objectives, targets, milestones, metrics for how well we are doing, measurements, data and all the rest of it. Until we have this full framework in the Bill, it comes down to understanding which parts of the EU need to fit where. Some need to land within the OEP, some more broadly with Government, and some as part of the processes that we have to create from scratch. That is critical to me.

Ruth Chambers: That is a very important question. To add a timing conundrum, we have the draft Bill before us and it is on a reasonably fast track. If everything stays equal, the full Bill will be introduced in June and get Royal Assent sometime in spring 2020. However, we cannot wait until spring 2020 for the OEP to be set up. That process will inevitably have to be commenced by Government before then. Many of these underpinning issues, such as the design principles that will help ensure that the OEP is set up in the right way, what its baseline budget will be, what the staffing complement will be and how that resource will be spread between the different disciplines, are questions that Government should probably be thinking about sooner rather than later. There are other places where views should be concentrated, not just on what is actually going to be in the final Bill.

Professor Richard Macrory: There has been little public indication yet of the resources that are meant to be going to this body. It is clear from looking at the general scope that it will have its work cut out and will have to prioritise things carefully, particularly on enforcement. To give some scale, looking at that, the Committee on Climate Change—and Lord Krebs will tell me if I am wrong—has a staff of about 30, or that sort of number.

Lord Krebs: It is between 30 and 40.

Professor Richard Macrory: The Equality and Human Rights Commission is one model, which is enforcing a narrower area of law, but against both the public and private sector. It has a staff of about 200. I suspect we are going to end up somewhere between them, and one has to work to that model.

It also leads to the point that Viscount Hanworth raised. If I look at implementation in the way the European Commission goes about enforcement action, it has a small number of lawyers doing that but, when things get complicated, as they often do on air or water quality, they can draw on the other Commission policy and scientific services to help them understand the enforcement action. I suspect that this body will have to draw on the expertise within the Committee on Climate Change, and we can come to that issue later, or other bodies, rather than duplicating all the scientific services that exist. That will be an important function, but we have to be realistic about what is going to be created by the body and the number of staff who will be available to it.

Professor Charlotte Burns: To go back to this question of pooling data and expertise, one of the great advantages of the European Union is that we can do that. Universities can work with each other to gather data. We have the European Environment Agency and there are consistent data protocols. Key concerns are both resources and what kinds of data the OEP will have available to it. Will they be the same kinds of data being used by equivalent bodies in Scotland, Wales and England? Will it have access to the European Environment Agency? There are good reasons for us to carry on being a member of the European Environment Agency, so as to have access to those data, but also for cost reasons.

Begonia Filgueira: We think that, in the way the Bill and the OEP framework are structured, it would have to co-operate with a number of existing bodies. There is a duty on public authorities to co-operate with the OEP when it comes to enforcement, but there is no duty when it comes to monitoring. We would like to see public authorities under a duty to collaborate, provide information and data, et cetera, to the OEP when it comes to monitoring.

Tom West: On leaving the EU, we are losing a wider system of governance. Greener UK put together a briefing on the governance gap a while back, and enforcement was one part of that. There are others, so what is in the rest of the Environment Bill is crucial. As you have already heard, what we see in the SIs under the Withdrawal Act shows that some of those other key governance functions are going in a concerning direction. Having said that, the key role of the OEP is enforcement. That is the key issue it has picked up, so ensuring it is focused on delivering that enforcement function is crucial. Placing the purpose of the OEP in the Bill alongside an overarching objective for environmental law would help direct the OEP's attention to that enforcement role.

Q6 **Lord Cameron of Dillington:** I should have declared an interest at the

beginning. I am chairman of the Centre for Ecology and Hydrology, CEH. I want to get the opinion of our visitors on where the OEP might stand in the overall structure. Martin mentioned it: who is going to be the overall leader? I do not know whether any of you attended the launch of the environmental capital strategy yesterday, when Dieter Helm mentioned that he thought the OEP was going to be the overall leader in running things. At the moment, you have Natural England, which has been completely gralloched of its power and is definitely being weakened. Whether that is on purpose, I do not know. As Richard was saying, the Environment Agency does not seem to be exercising its full powers. When Michael Gove came before a Committee I chaired last year looking at Natural England and the NERC Act, he hinted that, once the Brexit flurry is all over, he will be looking at the way that the Environment Agency and Natural England work together and whether they should be assimilated. With that in mind, do you feel that the OEP could become a leader in the global environmental picture?

Martin Baxter: It is a crucial point. First, the OEP has to act strategically. It cannot get down into such detail that it ends up fulfilling roles that are already supposed to be done by Natural England and the Environment Agency, so it has to have a strategic role. Therefore, that strategic role has to be one of direction. What we expect to see in the Bill, and this comes back to the overarching architecture, is a defined process for setting long-term targets and milestones. We have it with the Climate Change Act; we have a long-term direction, which is avoiding dangerous climate change and an 80% reduction in emissions by 2050, and a process by which there is advice on milestones to be achieved. It is then Government's role to achieve those milestone moments in the budgets.

A similar type of model, not replicated perfectly, offers you an opportunity for the OEP to advise on whether that target process is in line with the overall objectives, and it can then hold Government to account by reporting to Parliament on whether that direction is being achieved. That is the strategic model. Then it would have an elevated role, but would not get down into too much detail.

Ruth Chambers: I have a couple of brief points. Again, this is an important question. The body will be coming into what is already a complicated and complex delivery and policy landscape, so it is important that it is clear about its purpose and where it fits into that, and that Government and all the other bodies are clear as well. Professor Maria Lee from UCL has called it the 'watcher of the watchers', which is a useful analogy to think about where it would fit in. It should not, in any way, try to replicate what is already going on, on the ground, and all the excellent work that those existing bodies are already doing. If there are issues of compliance with environmental law, it needs to take a role and step in.

Going back to the comments that other people have made about the need to see this in its proper strategic framework and system, the rest of the Bill becomes really important here. We see this new body, yes, as a

leader, but it is not the only leader. It needs to be at the heart of the new green governance system for it to work.

Professor Richard Macrory: I slightly disagree with Tom's statement that enforcement is going to be its key function, because one of the clauses here is potentially even more important, which is Clause 15 on monitoring and reporting on environmental law and its implementation. Nearly every EU directive has a systematic provision to make reports on what is being implemented by Member States, which gives a useful picture. We have never done that in our environmental law. I have found one example of emissions trading, where there is a requirement to have a report every five years, but we have never done it generally. If there is some scandal or a Select Committee picks up the issue, that is fine.

If the body goes about systematically looking at how we are implementing and enforcing environmental law in different areas, and picks up questions about Natural England, the Environment Agency and what is happening on the ground, and if those reports, as in Clause 15, have to be made to Parliament as well as the Secretary of State, this body could provide useful objective information about what is happening and keep up the pressure. Although it is not a leader in the sense that it directs these other bodies, it will be able to stand back and say, "This is the picture of what is going on; Government will have to do more", or whatever. Although that is a rather small provision, it is a very important one.

Q7 **The Earl of Stair:** You went a little too fast at the beginning, I am afraid, and I failed to declare my interests, which are agricultural and farming, as shown in the Register of interests. This is a general question to the whole panel. This is a United Kingdom Bill. Much of the environmental work has been devolved to the regions. On the presumption that this arrangement will continue post-Brexit, do you see a gap forming and how should we resolve it? Should this Bill and Act become UK-wide? We have SEPA, the Environment Agency, the Northern Irish and the Welsh agencies. Is there going to be a conflict between this new body and those that exist?

Professor Charlotte Burns: This is just to note that, under the Withdrawal Agreement and backstop, we are required to have UK-wide provision of a body or bodies that will be responsible for enforcement. Whether this body becomes UK-wide or puts in place co-operation mechanisms, that will have to happen as part of those provisions (if the Withdrawal Agreement is adopted, but we will not discuss that here).

It would be politically problematic to say that this body will be UK-wide. There will need to be a conversation with the devolved nations about their preferences, and I can see that some of them might prefer to opt into this body rather than to create their own, but others might prefer to have their own body that then co-ordinates closely with the OEP. From an environmental perspective, as with the data, it is important that we have ongoing conversations and that a coherent and co-ordinated framework is put in place to ensure that things do not slip through the cracks.

Ruth Chambers: At present, the Bill is drafted on an England-only track, as we have mentioned. That is a potential issue, because it means that the concomitant processes, such as the drafting of the policy statement on environmental principles and the set-up of the OEP, are forging ahead on an England-only track. That is inevitable with the Bill as it is drafted. While we understand that there are consultations on the way, potentially imminently from both the Welsh and Scottish Governments, they are yet to materialise, so there are no firm plans yet from either of those countries for how the governance gap, which will exist across the UK after exit, will be closed.

I would draw attention to the situation in Northern Ireland, which is of particular concern because there has been no commitment to consult there. There is obviously no Executive in place at the moment to take plans forward, and this has historically been a rather weak environmental governance system. The environment is already losing out in Northern Ireland.

What needs to happen? Most collaboration at an intergovernmental level in recent times has focused, inevitably and understandably, on no-deal preparation and the statutory instruments. We believe that the time has now come to shift the greater focus of that intergovernmental collaboration on to talking about how governance arrangements could be made to work across the UK. From a personal perspective, there is definite scope to include powers in the full Environment Bill for the Northern Ireland Executive, as and when one is constituted in the future, to take forward environmental governance proposals.

Tom West: I was going to make the point about the Withdrawal Agreement, but will quickly add this. As well as there being this legal requirement for a UK-wide solution, there is an environmental and ecological requirement for it and a need to co-operate. The devolution agreements are asymmetrical; they are not the same, so there will need to be careful consideration and negotiation as to how this will work across the four different regions.

Debbie Tripley: With reserved powers, it is quite difficult for some devolveds to see themselves fitting into this Bill. To take Wales, for instance, it has its own Environment (Wales) Act and its Well-being of Future Generations (Wales) Act, all of which have their own principles embedded already and particular systems for achieving environmental progression and nature restoration. They are grappling with how they could fit within this Bill. The alternative is for them to have their own enforcement body, but how will those bodies talk to one another? What is the body of the bodies to bring the devolveds together? That gap is not being discussed at the moment. That is one issue. If there was progression to an overarching objective along the lines of what Martin was talking about, it might be one way for all the bodies to come together behind a particular principle or objective to which the OEP spoke. That is a thought.

Q8 **The Chairman:** Is there any scope here for environmental enforcement

arbitrage, if people go to the nations that have the least rigorous regime, or is that fantasy?

Debbie Tripley: You would only be enforcing what was happening within your own domestic backyard, you would only be able to go to your own enforcer, but there is a worry about a race to the bottom. Without an overarching objective and a set of strong environmental principles—obviously the EU has high-level environmental protection as its overarching objective—what is the purpose of this body for the overall environment? What is it aiming to do?

Martin Baxter: Debbie mentioned overarching objectives and they could provide an element of a common framework. We could look at a duty to collaborate and co-operate, because we have shared environmental resources. Catchments are not observers of national boundaries in our home nations, so catchments in England, Scotland and Wales often overlap. We need approaches to managing those natural resources that are similar, because otherwise it will be difficult.

It is interesting to read the Explanatory Memorandum to the Bill, because the OEP does not have a role in international environmental law but, as a UK nation, we have to ensure that any of our international obligations are implemented in full across the whole of the UK. There could potentially be a role for the OEP to do that, but it would be interesting to see how that works with devolution and devolved settlements. I leave that open, as I am not brave enough to offer a solution, but I have not seen many people articulate that problem. It is important because, whether it is the Paris Agreement, the Montreal Protocol or a whole set of international obligations that the UK takes seriously, and we are global leaders in many of them, it is critical that we have mechanisms to ensure implementation across the piece. That is crucial when moving into a new governance framework.

Q9 **The Chairman:** As I understand it at the moment, this is only supposed to have powers over what is being brought into UK domestic legislation. Anything that is an international treaty is outside its remit. Is that right?

Martin Baxter: It is also about UK retained law rather than things that are devolved. Obviously, some aspects of devolved environmental law could be part of a delivery mechanism for the UK's overarching obligations under an international treaty.

Professor Richard Macrory: What you are implying would be challenging to our constitutional arrangements, if it is enforcing international law obligations. I come back again to monitoring and reporting on environmental law. Providing we get the definitions right, there is a case for saying that it should have the power to monitor and report on how we are implementing our international obligations. When it comes to enforcement against bodies, you cannot do that unless we are going to change our dualist system.

The Chairman: John, could you bring in the climate change issue and deal with it quickly, because of your background there? The situation at

the moment is that we have the Committee on Climate Change. It does all the advisory stuff, but cannot do the enforcement.

- Q10 **Lord Krebs:** I would be interested to know what the panel thinks about that. I have seen some of the position that has been written in the briefing documents. As you say, Robin, and as Martin has said, the role of the CCC is partly advisory: what is the most cost-effective path to achieve the trajectory to 2050? It makes recommendations on carbon budgets, which are then approved and passed by Parliament into law. One question is whether Martin's model of having a long-term objective and a roadmap implies something analogous to carbon budgets that will be approved by Parliament and then become law, with which the Government have to comply. The other role of the Committee on Climate Change is to report to Parliament against the Government's progress so, although it has no statutory enforcement power, it has a statutory power to hold the Government to account. The question is how that role relates to the conceived role from the panel of the OEP. At the moment, climate change is not in the OEP's remit, but some people in the green movement think it should be. If so, what is the relationship?

Ruth Chambers: In short, we think climate change mitigation in particular should be part of the OEP's remit. It is excluded at the moment. But the body will need to work very closely with the Committee on Climate Change, to ensure it does this in a complementary manner and that there is no duplication. The main reason we think climate enforcement should be in is that, otherwise, there will be a climate governance gap after exit. The Government have committed to closing all governance gaps, not just on environmental law. Climate change is very much part of environmental law, and it would be confusing for stakeholders and the public were it to remain omitted.

- Q11 **The Chairman:** In practical terms, if it came to enforcement of something, what does it enforce? Does it say, "Oh, you didn't do the Fourth Budget. You have not done enough preparation for it. We are going to take you to court and fine you"? What do you do in that area?

Ruth Chambers: That is a very good question. You could look at whether the body is enforcing against the building blocks that go into the carbon budget. As it will be increasingly difficult for the Government to meet the Fourth and Fifth budgets, without that last-gasp reserved power of enforcement, we worry that there will be a gap. Future Governments, which may not be as committed as the current administration or politicians, could then all too easily ignore those budgets or let them slip by the wayside.

Begonia Filgueira: We think that climate change should be part of the remit and scope of the OEP. There is a governance gap. The Commission also reported, monitored and would infract, if necessary, governments on climate change, so there is that governance gap. The Committee on Climate Change monitors and reports, but there is no enforcement function, so there is a clear gap there. In terms of what would happen, the Committee on Climate Change has told the Government that they are

not going to meet their next carbon budgets. What would happen? There will be monitoring and reporting on that, and co-operation between the Committee on Climate Change and the OEP?

Ultimately, the remedy is judicial review. We can talk about remedies later, when a question goes more to that point, but the court would give a declaration to the Government to change their policy or do something to meet those carbon budgets. As to why the Government excluded the issue of climate change litigation, it may be a very live issue in the future, which may be one of the reasons why it has been excluded, but we think it should be included.

The Chairman: Are there any other areas that have been excluded that you think should be included?

Begonia Filgueira: Yes, forestry seems to have been excluded, for example. Planning is excluded but environmental impact is included, and it is one of the most litigious areas of environmental law. Flooding seems to be excluded, but that is governed by the environmental permitting regime, so you would have thought it was part of environmental law. On international law, we query whether there should be an ability to monitor and report on implementation. There is the issue of budget, as any budgetary matter is also excluded. We are concerned that, when the Environment Agency says, "We have not done this because we do not have the budget", the court cannot make an announcement on it.

Martin Baxter: Building on the question of where enforcement would arise, one example is the question about whether the existing clean growth plan gets us to the Fifth Carbon Budget.

The Chairman: I could take a vote on that actually.

Martin Baxter: You could take a vote. From the analysis I have seen, the budget says 57% and the plan gets us, with a fair wind, to 53%, so there is currently a gap and Government have not come forward with a plan to achieve the Fifth Carbon Budget. There is a duty on the Government to come forward with a plan in reasonable time and we could argue that they did not, so that would be another particular gap.

Then, if we look at some of the requirements that we have from EU law, we have the 2020 renewables target for UK energy of 15%. The UK will not hit that. The question is this: if we have a process of non-regression, who will hold the UK Government to account for not coming up with a plan to ensure that we hit a legally binding target? Those are three practical examples in the area of climate change that would warrant enforcement mechanisms from the OEP.

The Chairman: Thanks, Martin. That is very useful. Can I ask Members, in the time we have left, which is just under half an hour, to go through some of the items we have not quite covered yet?

Q12 **Baroness Sheehan:** Debbie, you mentioned that you are a little concerned about the OEP being "toothless". I think that was the word you

used. When this Committee carried out its report on *Brexit: Environment and Climate Change*, more than one witness said that the avoidance of infraction drives government compliance. I want to address the role of the Court of Justice of the European Union.

The Chairman: Perhaps we can broaden that out to the whole question, if you do not mind. Should we be able to fine the Treasury? Where does the money go? Will there be an equivalent to infraction?

Baroness Sheehan: Particularly we should address whether JR is an effective replacement.

Debbie Tripley: There are two parts and I will start with the first. It is whether the enforcement mechanisms in the Bill are effective. It relies on judicial review as the backstop. Then your question goes to remedies. It is often said that the remedy of financial penalties drives Member States to take action and implement EU law. On the first, the framework for enforcement is somewhat incoherent at the moment. We have investigations on complaints, then a set of information notices, followed by decision notices, followed by a type of bespoke judicial review. To put it simply, because this is quite a complex area, we feel that the OEP should have power to do more mediation around the use of decision notices, but we would like the decision notices to have some bite at the end of that; otherwise, we cannot see why Governments and public authorities would enter into any type of mediated response.

It is a bit like the EHRC, which can issue undertakings with other public authorities. If those undertakings are breached, it can go to court to enforce them. We recognise that going to court for the breach of an undertaking may be a step too far for this OEP, but we would like something that provides some sort of bite to that decision notice, which is not there at the moment.

We feel that judicial review is a narrow and constrained enforcement approach. We know that the Government feel it is equivalent to the way that the CJEU approaches this task, but we feel it is not, because the CJEU has a wider ability to scrutinise both facts and law. The ability to look at the substance as well as the procedural illegality of a decision is important in achieving that type of equivalence and effective judicial scrutiny. At the moment, in the way that judicial reviews are generally approached, the substantive elements are often not looked at. By the substantive elements, I mean some of the facts. One could give examples of why that is important, but I will not for these purposes.

The Chairman: Tom, I guess from ClientEarth's point of view even the present system does not work very well; otherwise you would have been out of business on clean air ages ago. Maybe we should not overlord even the present process.

Tom West: The clean air case gives an example of what you can and cannot do with JR. It demonstrates a way in which, through our challenges, air quality policy has improved, but has it improved quickly

enough and to a big enough degree? No, because we are still in breach of air quality limits. There is this question of how we replicate or improve on what the Commission gives us. A bespoke enforcement process is what we need, which requires improvements to what we have at the moment. There are lots of parts to that. Richard was talking about Clause 15 and what that offers, and there is something interesting in there, but at the heart of what we need here is decision notices and increasing how binding they are, so the steps they set out to achieve compliance have that bite that Debbie is talking about.

The steps that these notices could set out will not just arrive out of nowhere. The process through which you will get there will involve dialogue with the public authority in question to look at non-compliance, and what the issues and barriers are, as well as conversations with complainants and other stakeholders involved to look at what the best approach is to achieve compliance with the law. This approach is needed because of the vague nature of many environmental law duties, coupled with JR's limitations in providing a forum to review and assess the quality of decisions made. We need a forum where those decisions can be looked at and assessed, and we can see if we are applying, interpreting and implementing the law in the most effective way possible. The OEP can give us a forum to do that.

These binding notices are almost the centrepiece of this enforcement process, but what goes around them is also crucial. On the ability to be pre-emptive, Clause 15 with some changes could allow the OEP to look into the best ways, in advance, to make sure you do not have non-compliance in the first place. As you say, we do not want to breach the law in the first place. There is a range of functions needed, but the binding notices are key.

Professor Richard Macrory: Can I take this in two stages? The first is the process of its enforcement and then the question that you were alluding to about fines and whether, at some point, there should be a fining mechanism. The process that has been outlined in the Bill, of an information notice, decision notice and then some action before the Court, is intentionally meant to replicate or reflect the current Commission process, which is a formal letter of notice, then a reasoned opinion and referral to the Court. The great advantage of the Commission process at the moment is that something like 90% of cases are resolved by discussion, before having to go to court. Each of those stages before it goes to court is not a binding notice or a binding letter; it is an indication: we think there is a breach, so tell us why there is not. Once it gets to the reasoned opinion stage, it is pretty serious. If the Government agree and concede, they will back off.

I am keen not to make these stages legally binding in some way, because that will immediately start to get a litigious and defensive response. I want them to be seen as a one-way ratchet, which eventually, if things are not properly resolved, will get to the Court.

We then go on to the Court. At the moment, and again there are hands of other departments on this, the Bill has gone down the conventional route of JR. There is a feeling, as has been mentioned, in some Government legal circles that, in principle, JR is equivalent to the way the European Court of Justice approaches infringement cases. I do not think that is the case. As Debbie indicated, when you look at some of the conclusions, the approach of the European Court of Justice is less deferential to decisions by government and public bodies. It will look closer than is the tradition still in JR. If it is a question of pure law that may be similar, but most of these infringement cases, in practice, are a complicated mixture of fact, law and decision-making. As a matter of principle, I do not think it is equivalent.

I would avoid all the baggage of JR. We are trying to create something new, a new way of thinking about how we enforce and supervise environmental law. My preference and the model I would have is that, if we cannot get agreement with Government at the decision notice stage, rather than going to JR¹, it would go to the Environment Tribunal to have that decision notice confirmed. The Tribunal is an independent body that has been in existence for nearly 10 years. It handles appeals in about 44 areas of environmental law. The advantage of the Tribunal is that it combines legal members with expert members, who have expertise in environmental science and so on. It has a much more informal procedure and can resolve things very quickly, if need be. I propose we have a new model for the actual court that deals with this.

When it comes to fines, the European Commission does not have a direct power to fine for infringement proceedings, it has to go to the European Court, but nor does the European Court. It is only fining for failure to comply with its judgments, which is like contempt of court. Even in JR, if you do not comply with a court order, you can get contempt of court and they could theoretically—I do not think it has even been done, but nearly threatened—imprison a Secretary of State. They can sequester and fine. They have all the powers there behind them.

In giving the OEP a direct power of fining, we will then be fining for breaches of public law. Actually, in most cases of JR, there is not a real intention or recklessness of trying to breach law. There is often a disagreement about the law. Even in the ClientEarth case, as you will know, the third time round the judge said, "I still think the Government were trying to act in good faith and the civil servants were doing the best they could". Are you going to fine them for that? It is quite difficult. Once we get to a court order stage, there are sufficient powers in the courts to enforce their orders. Whether it is a clear order of the court is the question. In this country, most Government departments and public bodies will comply with an order of the court, and it is rare for that not to happen.

Q13 Viscount Ullswater: You have clearly explained the hierarchy of what

¹ The witness subsequently clarified that he meant to say "...if the OEP cannot get agreement with Government at the decision notice stage..."

happens in the European Union. That is an outside court taking a nation state's Government to court, and you have explained what happens. When you import it into this country, who would it be taking to court? Would it be the Environment Agency or the Government department?

Professor Richard Macrory: I have a radical view on this. At the moment, under the Bill, it would be any public body—it could be the Environment Agency, a local authority or central Government—that is breaching its environmental law duties. It would not be taking action against private sector companies, because that is for the regulators. Maybe we can get on to this. I would propose a model that is radical in public law terms, which is that the Government should be taking on responsibility where there have been major failures by public authorities. Whichever part of Government it is, it is the Government that should be taking on this. This is a new model of public responsibility, but akin to what happens with the Commission.

Q14 **Lord Rooker:** A long time ago now I had two years in MAFF and, a less long time ago, two years in Defra. I can assure you, on the threat of infraction, we were being fined all the while. There was loads of money. There was a pressure to do the job right or to say to the Treasury, "You have cut the budgets too much".

I am sitting in Brussels watching the UK not doing what all the 27 do on the environment. The effect of it is industry gains, shortcuts and corner-cutting. This is the first thing I would say to my people on trade negotiations: "We are not going to trade if they do not have exactly the same pressures on business for the environment". Why are they not going to do that? As I read it, it is referred to in the Withdrawal Agreement. For trade agreements they do not want to see us cutting, because business gains from a dirty environment effectively, and they will say, "You have an economic advantage because of this. You are not doing what you should be doing when you left". What is the answer to that?

The Chairman: Begonia, please come on specifically on non-regression from the Withdrawal Agreement.

Begonia Filgueira: Could I just add one point on the JR? I agree that pressure from a notice or letter from the Commission is huge on the Member States, and 90% comply, as Richard says. That is a powerful thing for the OEP to bear in mind when it comes to enforcement, which will be selective. I agree there are many other models we can adapt but, with JR, there are no emergency powers or powers to act quickly. You will have to go through all the internal procedures of complaints and appeals through the Environment Agency; then you have to go through the monitoring, information notices and decision notices of the OEP; and then eventually you have a JR and we know how long that takes. If JR is the chosen method, we ask that there be some power to serve a stop notice or an emergency injunction.

The non-regression principle was in the withdrawal deal that was proposed. It is not in the Act, and it could be one of the principles

incorporated in the Environment Bill to ensure that standards, particularly standards for industry, are kept the same as the day we leave the EU.

The Chairman: I am running out of time, so can we have some quick comments on Lord Rooker's question on non-regression, just a couple of sentences, if possible? Then I am going to conclude the session by asking our witnesses, not our Members—they have that opportunity later—what one thing really needs changing or doing. I am giving notice of that.

Ruth Chambers: In a couple of sentences, this is one issue that the Government recognise, tucked away in paragraph 12 of the Explanatory Notes to the Bill, they have not addressed; that is, how their commitment in principle to non-regression will either be delivered in legislation or enforced in practice. They say they will be coming back to this matter ahead of publishing the final Bill, so let us put that back to the Government and ask, "How and when will you be doing that and what is the intention to enshrine that commitment in law?" If it is not in law, it just remains a political commitment, which can change as Secretaries of State come and go.

Tom West: As much as I support the comments earlier about international law and how the OEP could have a role there, the easiest way is to get non-regression into domestic law in the Environment Bill. The broader issue here is that the OEP's powers are only as good as the law it is enforcing, so let us have things like non-regression and binding overarching environmental objectives, which the OEP can get its teeth into.

Martin Baxter: We should not confuse having the whole framework of EU law with delivering the outcomes we want for the environment. That is where this Bill needs to set out its stall. This is absolutely about enhancing the environment over a generation and ensuring the environmental standards that we set are not regressed, not necessarily that the whole panoply of mechanisms by which that is done is replicated in full. Having been part of some EU legal development mechanisms and laws, everything gets thrown in and they lose focus, so there is an efficiency and effectiveness that could come through by meeting the same environmental outcomes.

Professor Charlotte Burns: I would like to see a much clearer definition and understanding of what non-regression means. If I were the EU, I would want us to commit to dynamic regulatory alignment. It is not just staying where we are now, but tracking as we go. That needs to be part of the conversation as well.

Lord Cameron of Dillington: I am not totally convinced about enforcement yet. The €40 million fine to the Italian Ministry for Environment for transgressing a waste directive, followed by another €40 million six months later, I do not see being replicated by the current system.

Q15 **The Chairman:** It is probably unlikely. Let us conclude by focusing on

the one thing that our guests here think is the most important for this Committee to take forward.

Professor Richard Macrory: Generally, it is a bold and imaginative initiative but, when it comes to enforcement and the role of the courts, it has gone back to conventional solutions. I would argue for abandoning JR in the Administrative Court. That will still be there, but this new body could use the Environment Tribunal and a dedicated procedure.

The Chairman: To reduce the tension, this does mean everybody has to say a different thing, so Martin at the end has to think, "Oh, my goodness, what is left?"

Debbie Tripley: There needs to be a more coherent and dynamic enforcement mechanism that speaks to an overarching objective, in the way that Martin has been talking about it.

Tom West: We have talked a bit about both independence and enforcement, and I would make the point that we need both of those. Increasing one does not allow you to slack off on the other. They are both incredibly important for the OEP to do an effective job.

The Chairman: There are no trade-offs.

Begonia Filgueira: We would like to see a strengthening of the body by securing its independence, with different funding, appointments and membership. We would also like to see it bolstered by extending its scope and monitoring provisions.

Ruth Chambers: Many others have mentioned it, but I cannot fail to emphasise again the importance of the body being more independent than it is currently. As others have said that, perhaps I get a second go, which is to insist that, if there could be greater urgency in finding solutions for environmental governance that work across the UK, it would be extremely welcome.

Professor Charlotte Burns: As Ruth has mentioned that one, I would again emphasise independence, but also having that overall strategic objective that commits the body to a high level of environmental protection, which is currently missing and is needed.

Martin Baxter: For me, it is the overall objectives of the Bill and that process for setting out targets for the future, then cementing the advisory role of the OEP in giving trust to broader stakeholders and the public, which will deliver the investment we need in our natural environment.

The Chairman: Colleagues, thank you very much indeed. It has been a useful session and I have certainly learned a lot. We have some real priorities there, so can I thank you all for attending and for giving us your time? We will take this forward, not least with the Secretary of State. I agree probably his biggest contest will not be with Parliament, but with his fellow Cabinet Ministers and the Treasury on some of these things.

Thank you very much indeed.