



Select Committee on the European Union Justice Sub-Committee

Corrected oral evidence: Rights after Brexit

Tuesday 7 May 2019

10.45 am

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

Evidence Session No. 3

Heard in Public

Questions 24 - 40

Witnesses

I. Marie Demetriou QC, Brick Court Chambers; Aidan O'Neill QC, Matrix Chambers; Angela Patrick, Doughty Street Chambers.

USE OF THE TRANSCRIPT

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

Examination of witnesses

Marie Demetriou QC, Aidan O'Neill QC and Angela Patrick.

Q24 The Chairman: Welcome. We are delighted that you have joined us. Thank you very much for coming. We as a Committee have two completely separate views on what we would like from you, so the answer is probably both. We would like you to answer the questions that you have seen, but we will also pose some questions about what you think we should be doing to press the Government and move things forward.

As you know, the session is open to the public. A webcast of it will go out live and be available via the parliamentary website. A verbatim transcript of the evidence is being taken and will also be put on to the parliamentary website. If you want to add to or amplify anything in the transcript, which will be sent to you in a few days for you to check for accuracy, you are very welcome to do so. We would like you to advise us of any corrections as quickly as possible.

We would like each of you to introduce yourselves and then maybe make a short opening statement, because that would be hugely helpful to us.

Marie Demetriou: I am a QC practising in European law at Brick Court Chambers. I had not prepared an opening statement, but the key point I would make is that, although in a sense this is trite, we are still in a position of marked and intense uncertainty. One of the questions that you have asked relates to the Withdrawal Agreement and legislation to implement it. We still do not know what that is, which is extraordinary. That legislation really will be of great constitutional significance, and it is critical that there is proper time for it to be scrutinised in both Houses of Parliament.

That is the point that I would emphasise in terms of what you should be doing. The legislation really needs to be published and brought forward so that it can be scrutinised and debated. The European Union (Withdrawal) Act, which we do have, is not designed to work in circumstances where the Withdrawal Agreement is approved, so that Act would need to be amended quite substantially, which is the job of this new piece of legislation. Critical points remain up in the air regarding how that would be affected.

The Chairman: That is helpful. You would like us to push quite hard on that.

Aidan O'Neill: I am a QC in Scotland, and in England and Wales. I practise at Matrix Chambers, primarily in EU law, human rights and constitutional law.

I had not prepared any particular opening statement either, but in my evidence I would like to emphasise a broader cultural issue. We are asked to talk about human rights after Brexit, and one of the first questions is about the fact that human rights are not dependent on the Human Rights Act or EU membership but in fact long predate all that. That is absolutely true, but it seems to me that to have a human rights culture it has to be inculturated—it has to be brought into one's own history

and constitutional traditions. That exercise has not been properly carried out. Human rights have been seen as something external, foreign and European.

My reading of the Brexit vote was that at some levels it was an expression of English nationalism. There has been no space for Englishness to coalesce around. At one point there was a proposal for a British Bill of Rights. It always seemed to me that it would have been so much better if it had been an English Bill of Rights, because then one could focus on the specific traditions of England, the English constitution and Magna Carta and all that — indeed “1066 and all that”, in a sense.

The anger and passion which the Brexit referendum aroused and has continued to arouse has to do with fundamental questions of identity. It is very easy being Scottish, as Angela and I will make plain, because you can make your identity known by wearing tartan, drinking whisky and singing sentimental songs. Englishness needs some kind of place, and it seems to me that a good place to start would be in an English Bill of Rights.

Angela Patrick: I am also a barrister. I practise from Doughty Street Chambers, and I think I have been invited along because I have been advising a number of NGOs and other organisations that focus on public law and human rights in the United Kingdom on the implications of Brexit for the protection of individual rights after exit day, including preparing a paper with two colleagues of mine, Caoilfhionn Gallagher QC, and Katie O'Byrne for one of the political groups of the European Parliament. Beyond that, everyone should be aware that I also used to be a legal adviser to the Joint Committee on Human Rights.

Q25 The Chairman: Thank you. That is very helpful. I will start by giving you a rather long quote from Edward Argar, because I think it needs to be on the record as well as for the benefit of people who may be watching. It is rather long and you probably know it anyway. He said, “This country has a long tradition, which long predates the ECHR or the EU, of championing and setting the highest standards on human rights. The Human Rights Act 1998 reflects that and gives further effect to the ECHR in our domestic law, and we are not considering amending or repealing it ... Both the political declaration and the White Paper make it clear that our future relationship with the EU should be underpinned by our shared values of respect for human rights and fundamental freedoms, and this includes our ongoing commitment to the ECHR”.

Before that, this Committee has been hearing noises off that say that we may not be so keen on the European Convention, so this might be seen as reassuring. We would like to hear from all of you whether you find it reassuring.

Marie Demetriou: Not really, because it simply reflects a statement of current intention. As you just mentioned, we keep hearing noises to the contrary. In any event, even if it were the settled intention of the Government today not to repeal the European Convention, that of course cannot bind future Parliaments. There is always the possibility that there will be support for repeal of the Human Rights Act

post Brexit. That would have a very significant effect on protection of human rights in this country. I do not find it very reassuring.

Aidan O'Neill: I agree with Marie. I am similarly not reassured. Again, it comes down to the structural, constitutional point, as Marie said, that we have a very thin notion of a constitution in this country. It was not helped by the Supreme Court's *Miller* decision, which seemed to say that we do not have a constitution in a *prescriptive* sense—that which ought to be done—but simply in a *descriptive* sense: that is what we do now.

If your only principle is that there is parliamentary sovereignty, limited only by the idea that Parliament cannot bind its successors, you have no structural protections whatever. The point about EU membership was that it had a different notion of constitutionality. It required fundamental values and fundamental laws that have to be respected. In that sense, because of this thin notion of sovereignty, constitutionality in the UK it is seen as a foreign imposition, but it is the way constitutions work in every other country: there are fundamental values and laws that have to be respected by all organs of government—the judiciary, the Government and parliaments.

It seems that we are losing all that. These immediate political statements say, “We are not thinking about repealing the Human Rights Act today”, but who can say what another Parliament might do. I see no reassurance in that at all.

Angela Patrick: I agree with Marie and with Aidan. It is also not an unsurprising statement. None of the EU's international agreements with its European neighbours has been concluded without some underlying commitment to the European Convention on Human Rights. So it is perhaps unsurprising that a Minister who is part of a Government whose manifesto commitment committed this Government to the European Convention on Human Rights only during the life of this Parliament, thus perhaps temporarily limiting their political commitment to that separate international and incredibly significant regime for the protection of human rights in Europe, is perhaps trying to send political assurance not only to this Parliament but to the parliaments in the other 27 member states.

The Chairman: Absolutely.

- Q26 **Lord Anderson of Swansea:** Your statement that the UK could withdraw from the European Convention and hence, presumably, from the Council of Europe is true, but that has always been true. Perhaps the only new features are that there was a debate at the time of the *Hirst* judgment and the *Abu Qatada* judgment in the popular right-wing press on whether one might withdraw. The Government seem to have wobbled, and this seems to be a fairly clear statement of adhering to the Convention, but any Government at any time, if they so choose, could withdraw.

Marie Demetriou: I agree. It is now an obligation for new members of the European Union to be signatories to the European Convention.

In terms of existing members, I agree with you that, as a matter of principle, the Government could at any time have withdrawn from the ECHR. The key thing for me is that, had the Government withdrawn from the ECHR while we were members of the EU, that would have been unfortunate, but the European Charter of Fundamental Rights would have continued to bind them. So there might not have been much substantive difference in protection of rights. There would have been a difference in the sense that the Charter applies only within the scope of EU law, but it none the less would have provided a substantial protection. Of course, once the Charter no longer applies there will be a void until Parliament decides to enact something else to protect us.

Lord Anderson of Swansea: It is part of that cultural view of opposition to being subject to by foreign courts. Alas, the ECHR, even though it was drafted in large part by British lawyers, is deemed to be a foreign court. The tide has now probably moved against that in the current spirit of regarding the European Union.

Aidan O'Neill: Tides ebb and flow, as we know. That is the problem. The whole point of having these constitutional structures is to stand against the varying tides of whatever happens to be the political mood of the moment.

Picking up on what Marie said, under Article 2 of the Treaty on European Union one was also committed to a whole series of values on human rights, equality and the like, and under Article 6(3) there was a reference to general principles of EU law, not just the Charter, which were inspired by the constitutional traditions common to the member states. They expressed fundamental values, as seen particularly in the ECHR.

Although you absolutely right that, when a member of the EU, the UK could theoretically have withdrawn from the ECHR, the political cost would have been quite large. The fact is that there is another thing lost by not being a member of the EU: that that hurdle no longer has to be overcome.

Q27 Lord Wasserman: We have just touched on the Charter of Fundamental Rights, which will not be part of retained EU law. Could we, on the record, hear a little more about whether you think that rights protection will be weakened once we no longer have the Charter? Do you think this is important?

Marie Demetriou: Undoubtedly it will, in two main ways. Others may have points to add, but the first key issue is that, substantively of course, the Charter covers a wider range of human rights than the European Convention. It reflects the European Convention on Human Rights in so far as the rights overlap, although even the European court in Luxembourg has interpreted some of those rights in a stricter way than the Strasbourg court has. There are examples of that. But it covers a wider scope of rights; there is a whole range of social and economic rights, such as worker protection, environmental protection and so on, which are not in the Charter.

The second point is about applications of the Charter regarding the remedies which EU law gives right to; if there is a conflict between domestic primary legislation and

the Charter, the courts must disapply the primary legislation. The remedies are not as powerful under the Human Rights Act, so if there is a piece of primary legislation that contradicts the Convention, the courts will of course endeavour to interpret it consistently, but if they cannot they are restricted to a declaration of incompatibility. Then it is back to Parliament to remedy it if it so chooses.

There is a disparity in the force of the remedy. Those are the two key points. There will be a significant deterioration in human rights protection once we lose the Charter.

Lord Wasserman: That is pretty clear.

Aidan O'Neill: I agree with Marie. I would just pick up the point that the other issue of the Charter is that it has the same legal status as the treaties under Article 6, subsection 1 of the Treaty on European Union. The case law of the Court of Justice – notably Case C-684/16 *Max-Planck-Gesellschaft* - has said that clear and unequivocal provisions of the Charter will have direct effect against private individuals just as much as against public authorities. That will be lost, because at the moment the Human Rights Act applies only in relation to public authorities or private individuals carrying out a public function, whereas elements of the Charter were universally applicable, whether against a private body or not.

Again, picking up on what Marie has said, on some levels you think of having two European human rights courts as a potential for chaos, and that it would be much easier just to have the European Court of Justice under the auspices of the European Court of Human Rights. In fact, what has happened as a result of the Court of Justice saying in its Opinion 2/13 *On the proposed accession of the EU to the European Convention on Human Rights* that that was not compatible with EU law is a competition, in a sense, between Strasbourg and Luxembourg, racing to the top in increasing human rights protection: if one court is not so good on a particular area, the other court might take up the baton. There is a dynamic going on in that way. Again, that will be lost if we are no longer under their jurisdiction.

Angela Patrick: Again, I agree with Aidan and Marie. In cases where EU law would apply, there will simply be fewer tools in the toolbox open to people seeking to enforce their individual rights the day after we leave. The tools left in the box, as much as the HRA is significant and important, may be less effective.

In cases where EU law applies, individuals will not be able to rely on the provisions of the Charter that are not duplicated in the European Convention on Human Rights. Where the rights are protected by both the Convention and the Charter, they are better protected by the Charter. Individuals will not have the benefits of that additional protection. They will not have the benefit of the better remedies afforded when you can bring a Charter claim: that is, challenging incompatible provisions of primary legislation and asking for them to be disapplied.

Finally, they will not have the recourse of going to the Court of Justice of the European Union, after asking the domestic courts to make a reference in order to

seek a final say on what the Charter really means for the protection of human rights across Europe.

We have learned in a number of cases that that fall back of asking for the opinion of the Court of Justice of the European Union can make a real difference. You only need ask Mr Watson about how his claim in respect of the regulation of the Investigatory Powers Act went domestically, and how it went when he managed to get his claim before the Court of Justice of the European Union. Yes, it will make a significant difference.

Lord Wasserman: That is very interesting.

Q28 Baroness Shackleton of Belgravia: That is very illuminating. As we all know, courts are really good deterrents to people breaching or behaving in a certain way, basically because they know they will get caught, which stops them behaving in that way.

Do all of you see this having terrible repercussions on the ground on how people actually conduct their affairs and behave? Do you see it as very worrying that the sanctions are so diluted by this that people will take advantage of it?

Aidan O'Neill: I suppose our understanding of human rights today is classically not so much about individuals being limited in their behaviour as about public authorities—as in government and, to an extent, Parliament—in terms of EU law. I find it worrying, because there will not be the limitations upon government action that there currently are, so ill thought out ideas might be carried out, such as further restricting access to the courts by removing legal aid even further.

At the moment, legal aid has been drastically taken away under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), but there is an exception in Section 10 of that Act: if you have an EU-law-based claim, you potentially have an entitlement to legal aid, because Article 47(3) of the Charter says that EU law rights have to allow for legal aid to allow for access to the courts. It is all very well having rights, but you have to be able to have them vindicated. So I would be concerned, not so much about the removal affecting how individuals conducted their own affairs but about how the Government will conduct their affairs.

Baroness Shackleton of Belgravia: Which is even more serious.

Aidan O'Neill: It is, yes.

Q29 Lord Anderson of Swansea: Part of this question has been covered, but a related practical matter is that one problem relating to the Strasbourg court is delay—the vast backlog, partially dealt with by subsidiarity—whereas I believe that the Luxembourg Court is speedier in its judgments, so potential litigants may have longer delays as a result of leaving the Luxembourg court. Is that correct?

Marie Demetriou: That is correct. There is an additional point that reinforces the point you have just made. The way the Charter applies is different from the way the

Convention applies through the Human Rights Act. The Charter is directly effective, and the courts have to apply it and comply with the judgments of the European Court of Justice.

As far as the Strasbourg judgments are concerned, there is a duty to have regard to them, but the courts can depart from them. If you are a claimant who has a claim based on—

Lord Anderson of Swansea: A cast-iron one?

Marie Demetriou: Exactly. You would need to exhaust your remedies in the domestic courts first, and if the courts did not agree or chose to depart from the Strasbourg standard, you would need to go to Strasbourg, which is of course a very lengthy process. Your rights are much more immediate in the English courts and the EU law, as things stand.

Lord Anderson of Swansea: Relating to the supremacy of European law, I think you have covered this in part already, but am I correct that the Convention law is traditional civil rights, stemming from the UN Convention Rights and so on, whereas the Charter rights tend to be more what I call 20th-century rights relating to employment, such as data protection and so on, so that area, if not included in separate legislation, would be lost?

Marie Demetriou: Precisely, as indeed is logical if you look at when each instrument was adopted. A considerable period of time elapsed between the adoption of the European Convention in the 1950s and the Charter of fundamental rights much later. The Charter reflects a more—

Lord Anderson of Swansea: Modern.

Marie Demetriou: Yes. It includes the rights in the Convention but also a much more updated list of socioeconomic rights that are not in the Charter, so we would also lose a substantive scope.

Lord Anderson of Swansea: Should I ask about Northern Ireland?

The Chairman: Yes. The Northern Ireland question is really important.

Q30 **Lord Anderson of Swansea:** The Equality Act 2010 does not apply to Northern Ireland. The removal of the Charter and the supremacy of European law could therefore in principle have a greater adverse effect in Northern Ireland. Do you accept that?

Marie Demetriou: I am not sure that is right, in my understanding. The Equality Act is essentially based on European legislation. That Act implements our obligations in a raft of different European directives. Northern Ireland, as part of the UK, has to comply with that European legislation, not through the Equality Act but by and large through statutory instruments. As far as I understand it, those statutory instruments implement the relevant EU obligations.

Lord Anderson of Swansea: Including in Northern Ireland?

Marie Demetriou: Including in Northern Ireland.

Aidan O'Neill: There is the example of the *Ashers Bakery* case—“Cakegate”. There are provisions in Northern Ireland, as Marie says—not the Equality Act, which is a GB measure, but statutory instruments. On some levels, that means that there is a greater possibility for the courts to say, “Well, if this statutory instrument is contrary to fundamental rights, it’s invalid”, which they could not say about the Equality Act.

So the paradox might be that there is greater protection for human rights, because as equality rights in Northern Ireland are primarily statutory instruments—at least, some might be. But if and in so far as they fall within devolved competence they are matters for the Northern Ireland Assembly, whose acts again are valid only in so far as compatible with fundamental rights and EU law.

Angela Patrick: I agree. I would turn the question slightly on its head by saying that there already has been some concern over the divergence between the protection offered by the Equality Act 2010 and the specific provisions applicable in Northern Ireland. However, - the structural questions which Aidan has addressed aside - as it stands today, both systems have the same EU underpinning. If there is a problem in Northern Ireland or in London, you as an individual litigant can rely on the underlying EU instruments that would have direct effect.

If that goes away post exit day, the differentiation between the two jurisdictions might seemingly be more stark. The EU instruments might have become part of retained EU law for the purposes of the European Union (Withdrawal) Act or any future provision, and then they would be interpreted when necessary in accordance with that Act. However, specific provision is also made in the protocol regarding the backstop for Northern Ireland to deal with the requirements of the Good Friday agreement. A specific part of the current draft would require the UK to take steps to implement specific provisions of EU law, including specified anti-discrimination measures in annexe 1 to the protocol.

The question then is how that mechanism in the protocol works in Northern Ireland. Does it in effect reinstate the protection offered by the underlying EU law for the citizens of Northern Ireland, although that protection will not be available to litigants in London? That in turn raises the question of how long the protocol will remain in place.

The Chairman: Precisely.

Angela Patrick: It might almost be the reverse. If, during the period of the protocol, the question is asked: “What is the position for Northern Ireland on equality measures?”, you might actually have a better chance in making your case in Belfast than if you were making it in London.

Lord Anderson of Swansea: In the interim period?

Angela Patrick: In the interim period while the protocol applies, or if some future arrangement adopts similar mechanisms for the protection at least of the core equality framework of the EU, as is reflected in the protocol to Northern Ireland.

Aidan O'Neill: Of course, the British-Irish agreement that resulted in the Good Friday settlement commits Britain separately as a specific international obligation, guaranteed and underpinned by the EU, to ensuring that the fundamental rights of all individuals in Northern Ireland, from whichever community or background, will be fully protected, and to maintaining that level of protection. So Northern Ireland potentially has belt and braces in the maintenance of fundamental rights protection.

The Chairman: That assumes, of course, that there is a backstop that can last for a considerable period of time, does it not?

Aidan O'Neill: It assumes that the British-Irish agreement that was concluded in 1998 will continue to be honoured, in whichever way that might be. I presume, given the good faith of Her Majesty's Government, that that will be the case.

The Chairman: Essentially you could say that the Good Friday agreement was predicated on the Charter of Fundamental Rights.

Aidan O'Neill: It worked because there was free movement of everything - so one did not have to have a border - and common fundamental values. It worked because it was between member states of the European Union.

The Chairman: Absolutely.

Q31 **The Earl of Kinnoull:** We come to Schedule 1 to the EU Withdrawal Act. Paragraph 3(1) says: "There is no right of action in domestic law on or after exit day based on a failure to comply with any of the general principles of EU law". What do you feel the impact of that paragraph will be?

Marie Demetriou: There will be a substantial impact, because as things stand, while the United Kingdom is a member of the European Union, whenever the Government or the Administration adopt an Act or pass legislation that falls within the scope of EU law—that is construed quite broadly; it is not only things such as implementing a directive but acting within a derogation conferred by EU law, so it covers a whole swathe of government activity—if you want to challenge such an Act as unlawful, for example by bringing a claim for judicial review in the Administrative Court, the general principles of EU law are available to you as grounds for judicial review. For example, you can challenge the Act on the basis that it is disproportionate.

Conversely, if you are in scope of purely domestic law, proportionality for example is not available to you as a grounds for judicial review. You would have to argue that the Act was irrational, in the sense that no rational public body could have adopted it. There is a big difference between those two grounds, so the courts will look much

more rigorously at a governmental Act under the principle of proportionality. That would no longer be available to a litigant as a ground for judicial review.

Proportionality is just one general principle of EU law. Equal treatment is another that does not apply in the same way domestically. Essentially, judicial scrutiny of measures adopted by public bodies, including Parliament, will be conducted in a less rigorous or less intrusive way, because the general principles would not be available as grounds for judicial review.

The Earl of Kinnoull: I want to put one additional point to you. Last week, a couple of us were at a conference at which a senior academic had put the point that they thought common law might evolve to try to fill that gap. They felt they had a certain amount of evidence for seeing some very recent judgments of the Supreme Court trying to do that. Do you feel there is anything in that at all?

Marie Demetriou: I would not say that there is nothing in that, but I do not feel very confident that it will happen, or happen sufficiently quickly. The reason for that in a sense is that it has been an ongoing debate for many, many years. Lawyers have tried very hard to persuade the courts to adopt similar grounds for review relating to conduct that falls outside the scope of EU law. The argument has very often been put that this is all a bit arbitrary, because if a claimant can pitch up to the Administrative Court and invoke proportionality as a ground for a review in circumstances where EU law bites but is restricted to a lesser ground of review outside the scope of EU law, that results in arbitrariness and the courts should fix it so that they can converge the standards of review.

The courts have not really done that over a significant period of time. In a sense, the pressure will be off once we leave the EU because there will no longer be this disparity in domestic public law. That pressure to fill the gap will be less than it was before. I am not saying that there are not circumstances in which the courts will act to fill the gap, but I do not feel confident that that will happen in a sufficiently quick or comprehensive way.

Aidan O'Neill: It also depends on the personnel who make up the Supreme Court and its small “p” political approach to legal matters. The Supreme Court is not necessarily the cavalry coming over the hill to save us and reintroduce all those principles. We know that the principle of proportionality, which Marie mentioned, was completely rejected as a common law principle in a 1991 challenge called *Brind* to the legislation that prevented the voices of Gerry Adams and other members of Sinn Féin supposedly associated with the IRA from being broadcast. If you remember, the interviews were shown, but their voices were dubbed. That was said to be disproportionate and contrary to freedom of speech.

The Appellate Committee of the House of Lords said that proportionality was not a principle of common law. There have certainly been lots of attempts before the Supreme Court—we have all tried it—for it to come over and see that things have moved on and to accept proportionality, but it has always been this teasing, “Not

yet. Maybe one day". Yes, things might change, but on the other hand it might do the opposite, as Marie said, because there is no pressure from an EU perspective.

On the equal treatment matter, the 2018 decision of the Supreme Court in *Gallagher Group Ltd.*, if that is a straw in the wind, says that the equal treatment is *not* a separate principle of English administrative law. It is desirable that things be consistent, but it is not a basis of a challenge that things are inconsistent. It has to be shown to be irrational, unreasonable, that you have lost your senses; whereas under EU law it is a hard principle that, if there is a difference in treatment between otherwise like situations, it has to be shown to be justified. Cogent evidence has to be given and proper justification shown forth, and then the courts will say, "In these circumstances, the lack of equal treatment will be allowed". That will all apparently be lost, even on the basis of the most recent Supreme Court decisions.

Angela Patrick: Again, I agree with almost everything Marie and Aidan said. I will add a few things. The first question you have to ask yourself if you are looking at the implications of the Schedule 1 limitations is that the Act still provides for general principles still to be used as an interpretive tool. If you have another cause of action, how far can you rely on the general principles in litigation to inform how the court reaches its conclusions? That will be an interesting argument for lawyers to have for some time to come.

The other outstanding issue is how, looking at the not uncomplex case law of the Court of Justice of the European Union, we will identify a general principle as distinct from case law founded on the Charter. The Charter was designed to embody all the general principles at that point. Unfortunately, the case law subsequent to the implementation of the Charter is not careful in its distinctions between which of its decisions is based on the arguments put by the parties based on the Charter and the arguments based on the general principles.

Again, there is some scope for argument there. If you can get the general principles into your litigation as some means of interpretive tool for retained EU law, which of the case law, which may be founded on Charter decisions, is effectively a decision relevant to the interpretation of the general principles? That will be an interesting legal question for our courts to grapple with.

Wholesale, Schedule 1 highlights the limitation of the model adopted in the EU Withdrawal Act. In effect, we have tried to grandfather decades of legacy EU legislation into domestic law, but we have forgotten that that EU legislation was constrained by EU public law. Anything that was previously EU law was only EU law in so far as it was compatible with both the Charter and the general principles.

We as EU citizens now have the capacity to challenge the Government's interpretation and application of that legislation, relying expressly on both the Charter and the general principles. By removing our capacity to do that, we will create a body of legacy law unconstrained except by domestic public and administrative law. If, for example, a piece of EU legislation that qualifies as retained EU law is struck down by the CJEU three weeks after exit day and a

challenge is brought domestically, our domestic courts will have a great time determining whether that challenge can be brought on Human Rights Act grounds or whether another cause of action can somehow be interpreted compatibly with general principles. It will be interesting and challenging for domestic lawyers and judges alike.

Will the common law come to the rescue? In most places, as the others have said, so far it has not. Academics have shown that there is plenty of material within the innovative judgments of our domestic judges to say that there is scope for judges to try to fill the gap. They are trying to fill that gap in very contentious political circumstances where we have seen our judges exposed to incredible pressure in the press and in political debate.

The question mark has to be over the kind of pressure that Parliament wants to leave the judiciary exposed to, simply because there is a gap that has not been addressed in our constitutional protections by the other institutions of Government.

Q32 The Earl of Kinnoull: That is a very intriguing question. I will finish off on Schedule 1, if I may. A bit later on, in Clause 4, the rule in *Francovich* is dispensed with. Perhaps I could ask you, Marie, to start by briefly explaining the rule in *Francovich* to those watching, and then say whether you feel that matters a lot.

Marie Demetriou: The rule in *Francovich* was developed by the European court. In order to provide effective protection to individuals for breaches of EU law rights, it provides that if the breach is sufficiently serious, and if it has caused loss, the state is liable in damages to compensate the individual for that loss. I think it will make a difference, again because English law does not recognise the right of damages for breach of public law except in very narrow, specific circumstances where one can show a breach of a private right. The tort of malfeasance in public office is the key example, but that is very hard to prove.

So there will be a difference in protection if the *Francovich* damages right is removed. It is true that there have not been very many successful *Francovich* damages claims in the English courts, but I do not think that that in itself is indicative; it should not lead one to the conclusion that it will not make a difference.

This comes back to a point made by Baroness Shackleton in her question earlier: the fact that a right exists and the courts are there to vindicate it provides a constraint on government and public authorities when they act. So I think it will make a difference.

Aidan O'Neill: I agree. *Francovich* damages are very much a last-resort remedy developed by the Court of Justice. The court started off with direct effect—the idea that individuals could rely on EU law directly even if it was not properly implemented in national law. It then developed indirect effect, which is the idea that national law should be interpreted whenever possible in a manner that vindicates the EU law rights.

It is only if those two techniques fail that the ultimate backstop, to coin a phrase, is the possibility of getting damages because your EU law rights have been breached in a sufficiently serious manner such as actually to cause you loss. As Marie said, not many cases have been reported in the English courts. I have raised a number of *Francovich* actions, and my suspicion is that they are settled out of court often because the UK Government does not want to set a precedent and build up a body of case law that sets up the expectation that one should be entitled to damages when government action has resulted in loss to you.

So yes, the *Francovich* rule is incredibly important. It is not reflected in English administrative law. There is some argument as to whether or not it could be developed in Scots law, because that would follow French models, but that is another matter altogether. Yes, its loss would again take away a constraint on government action and thereby remove protection from the individual.

The Earl of Kinnoull: Thank you. Do you have anything to add on *Francovich*, Angela?

Angela Patrick: I have nothing to add

Q33 The Earl of Kinnoull: I would like to turn to the package that is currently on the table, consisting of the Withdrawal Agreement and the political declaration. Assuming that that package were to be agreed, how far and in what areas do you think they might mitigate any weakening of human rights standards in the domestic law regime?

Marie Demetriou: The political declaration does not have much of a bearing because it is not legally binding, so the extent to which a future agreement protects human rights will be a matter for those negotiating at that time. The political declaration is no more than a statement of political intent at this moment. As for the long-term future relationship, we do not have anything that is a predictor of what will happen.

The transition agreement under the Withdrawal Agreement provides for the application of human rights standards within the scope of the Withdrawal Agreement. The general provision under the Withdrawal Agreement is that, unless otherwise provided for under the Withdrawal Agreement, EU law will continue to apply for the transition period. During the transition period we will then have more or less effective human rights protection. That is broadly my answer to the question.

The Earl of Kinnoull: That is very helpful.

Aidan O'Neill: As you know, the Withdrawal Agreement is simply the first step—the divorce bill rather than how we will live together afterwards. The political declaration is incredibly thin. In fact, it barely 20 pages, while the government explainer on it is 34 pages long. So there is an awful lot of aspiration regarding what might happen.

Clearly any trade agreement between the EU and a third country, such as the UK will become after Brexit, would be expected to contain the effective protection of human rights standards within the four corners of the matters covered by that agreement. Given that there is an intent to move away from lots of elements of EU law, human rights protection would be lost from anything outside the four corners of the future relationship agreement.

Angela Patrick: I agree with Marie and Aidan. I have already addressed the language in the political declaration, the more recent statements of the Ministers and the change in our language on our commitment to the ECHR, and I will not revisit that except to say that it is somewhat significant that the language changed, particularly in the context of a Government who have historically been hostile to the ECHR protections offered in the Human Rights Act 1998 and have left on the table the exploration of the further diminution of commitments to the ECHR. The position of Northern Ireland is slightly more complex, and I think we are going to come onto that shortly.

Q34 The Earl of Kinnoull: You have answered some of this before, or at least ventured into this area, so I am, as it were, going to kick off the football here.

In March last year, the Northern Ireland Human Rights Commission published a joint statement with its Republic of Ireland counterpart in which they argued that there should be an enforceable commitment to what they called the aim of no diminution in rights in the final Withdrawal Agreement. We have at least an interim Withdrawal Agreement now, and I wondered how true to what those two organisations were looking for the current package of documents is.

The Chairman: That is a wonderful series of expressions among the three of you.

Aidan O'Neill: It is “complicated”—is what one would say. One of the reasons why the Equality Act applies only within Great Britain is that it was intended that there be an Irish Bill of Rights, as it were, uniting the communities and the like. The Northern Ireland Human Rights Commission was tasked with that. That task has not got incredibly far, as part of the lack of continuing dialogue across and within the communities.

Clearly, as I said, the 1998 British-Irish agreement accords and recognises, on the part of the United Kingdom and Ireland, the unique status of Northern Ireland, which is like a Venn diagram where the two countries intersect. Individuals born in Northern Ireland are able, claiming their birthright, to be Irish, British or both—the “or both” is incredibly important. They can choose.

There is something different about Northern Ireland. It will have to be different, because Ireland and those of its citizens who wish to claim their birthright of being Irish or Irish *and* British will have to have those rights maintained.

The Withdrawal Agreement does not yet deal with that fully. It seems to me that the backstop is an attempt to try to maintain what we have. Ultimately, any final

relationship agreement will have to be compatible with the British-Irish agreement and the Good Friday settlement.

Marie Demetriou: Another key point is one that Angela made earlier. It relates to Article 4 of the Northern Ireland protocol, which states that there should be no diminution in the protection of rights in relation to Northern Ireland. Annexe 1 to the protocol lists various pieces of EU rights protection legislation that will continue to apply in Northern Ireland.

One key issue there is that the same enforcement mechanisms will not be in play, so the Commission will not be able to bring infraction proceedings, for example. The enforcement of those rights will be less effective. None the less, Northern Ireland is treated better, if I can put it that way, in terms of the continued application of those pieces of EU legislation than the rest of the United Kingdom—a point that Angela made earlier.

Angela Patrick: I agree with Aidan and Marie. The simple fact is that the Good Friday agreement in terms requires an at least equivalent level of protection for human rights to pertain on both sides of the border. While international obligations in respect of the Good Friday agreement require that citizens enjoy exactly the same human rights protection north and south of the border, that was not a particularly complex agreement to reach, given that we had, as part of the agreement, agreed in both Ireland and the UK to incorporate the European Convention on Human Rights and that both were member states of the European Union. Of course, that is why the Northern Ireland problem has played such a high-profile role in negotiation conversation.

The question is how the protocol, the backstop, deals with the temporary arrangements for that equivalence. Does it meet the requirements of equivalent rights north and south? How will any new arrangements designed to replace the protocol ensure that that requirement for equivalence is met? There is a lot of commentary from specialists more focused on Northern Ireland and the legal arrangements there who I commend to you, not least Professor Christopher McCrudden. The arrangements include a general obligation in Article 4 of the protocol, which Marie has already referred to, to avoid any diminution of rights. It expressly refers to the rights, safeguards and equality of opportunity chapter of the Good Friday agreement, but also provides for a specific provision for no diminution of rights in respect of specific articles of EU law listed in Article 1—mostly importantly the EU non-discrimination framework.

The question then becomes how individuals will be able to rely on that commitment. That is where I agree with Marie—it is completely uncertain at present. The protocol provides for mechanisms to be put in place. The explainer explains how that will incorporate the existing Good Friday arrangements. It will involve the Northern Ireland Human Rights Commission and its equivalent south of the border, but makes no explanation of the Article 4 provisions—not in the protocol but in the Withdrawal Agreement—which require that, where any part of

the agreement, seemingly including the protocol, will give an individual a right to rely on union law, that domestic primary legislation will have to make provision for those rights to be interpreted and applied by domestic courts.

That brings us back to the very first question: how? Parliament does not yet know, because it has not yet been shown a draft of the European Union (Withdrawal Agreement) Act. Until we know how that will work and how the specific arrangements for the implementation of Article 4 of the protocol will work together with that Act, we simply do not know how that Good Friday commitment to equivalence will continue to be respected if at all.

The Chairman: I think you are saying that one of the jobs of this Committee is to press on that.

Angela Patrick: That is entirely right.

- Q35 **Baroness Shackleton of Belgravia:** Article 4 of the Withdrawal Agreement envisages that our courts—the UK courts—will be given the power to disapply inconsistent or incompatible domestic provisions. How contentious do you believe this will be in the future? What effect do you think this will have on the courts? In my experience, uncertainty encourages litigation. If people do not know what the result will be—putting it bluntly, thinking that it is worth a shot—they are more likely to take the chance. That is what happens if the results are ambiguous or could be ambiguous to both sides. If you think it will have an effect on us, do you think our courts are equipped to deal with what might be a minor tsunami of litigation?

Marie Demetriou: The first point to note is that it is not just a power; it is a duty under Article 4 of the Withdrawal Agreement. If there is an inconsistency, the courts, for the transition period, subject to this being implemented in the Act we have not yet seen, will have a duty to disapply inconsistent provisions of domestic law. The courts are equipped to deal with that, because that was essentially their role while we have been a member of the European Union. Article 4 in effect provides for a continuation of the status quo—courts recognising the supremacy of EU law as far as the wide range of matters covered by the Withdrawal Agreement are concerned.

The courts are equipped to deal with that role because it is no different from what they have been doing thus far. Whether it will be controversial is mostly a political question. I suspect it will be controversial, because one of the main features of the pro-Brexit narrative has been the role of the European court. We will be in a position during the transition period where our courts will essentially be applying EU law and disapplying domestic law that does not comply with EU law, but not participating in the making of the relevant European rules. We will be a rule taker, not a rule maker.

Politically, I suspect it will be controversial, but it is there in Article 4 of the Withdrawal Agreement. Under the agreement, the Government have an

international law obligation, if the agreement is approved, to introduce domestic legislation to make sure that that happens.

Baroness Shackleton of Belgravia: So it is business as usual.

Marie Demetriou: It is business as usual. It substantially applies for the continuation in force of the European Communities Act 1972. That might not be the way it is dealt with in the legislation. We just do not know at the moment.

Baroness Shackleton of Belgravia: So it is business as usual without teeth.

Marie Demetriou: Yes, business as usual in terms of our obligations to comply with EU law, but no participation in making the rules.

The Chairman: We are running quite slowly, but this is absolutely fascinating and very helpful. Unless the other two of you have anything specific to say, I want to move to Lord Cromwell.

Q36 **Lord Cromwell:** Thank you, Chair. I endorse your comments about how fascinating it is.

Certainty, or the lack of it, is the theme to have come out of much of our discussion today. I want to look at the Withdrawal Agreement in a different area of possible uncertainty. By its cross-referencing, it is based essentially on the citizens' rights directive, but the Government have gone further than that by saying that you do not have to prove that you have exercised your citizens' rights; you just have to have been here for five years and that is enough. If you are an intermittent taxpayer, an intermittent worker, a carer or a homeless person sleeping rough, it is very hard to prove those five years of being here.

My first of two questions is what certainty for EU nationals about the protection they will enjoy that leads us to?

Angela Patrick: I will have to defer to the others on the panel on this question, but I am glad that the Committee is conscious of the practical implications of enjoying the rights that are to be guaranteed under the agreement. I do a lot of work with individuals who rely on their EU rights now. It is exceptionally difficult particularly for the groups you have identified to establish their EU status. Even those of us who do not have close contact with the Home Office and simply read the newspapers know that even those who are not in those categories are subject to close scrutiny under the settled status scheme. So I am glad that the Committee has it on its horizon, but others may be better placed to comment than me.

Aidan O'Neill: I am not sure that I am. Quite frankly, I find it profoundly shocking that those who have full citizenship rights as citizens of other member states and have lived, worked, married and brought up families in this country should now have to go through any kind of process whereby they get to maintain living here, going to a doctor and not paying for accident and emergency because their status is changing from citizen to non-citizen. It is quite remarkable that there has not been more objection to that.

As for, “Well, you just have to show you’ve been here for five years”, as I understand it you have to account for every time you have left the country. Even I cannot remember the times; one does not remember them and say how long one has been away, why one has been away and what you have been back for. A whole group of our fellow EU citizens in the UK—some 3.5 million; we do not even know how many—are being subjected to administrative and bureaucratic scrutiny in a manner that ultimately restricts their current rights. Currently, they have a right to vote in European parliamentary elections and municipal elections. That right will be taken away from them. As I say, they have become strangers in a strange land. This Committee should highlight that.

The Chairman: We are working on it.

Aidan O'Neill: Absolutely. That goes too for the position of UK national free movers who have moved to the rest of the EU.

Marie Demetriou: Although part 2 of Withdrawal Agreement, which deals with citizens’ rights, broadly reflects most of the citizens’ rights directive and other secondary legislation, you have pointed to a key difference: that is, as matters stand under EU law and as a succession of cases have shown, you do not have to provide evidence to have the right, whereas now evidence will be constitutive of the right, so you do not have the right to start with. You will need to supply the evidence to have the right in the first place. That will be difficult for many categories of people and be a significant practical difference between the two regimes.

We know that over the years the European court has been expansive in construing what is meant by European citizenship. The British Government have tended to be quite restrictive about what is meant. It has needed the courts to ventilate some of these disputes to give teeth to the rights under EU law. Even though these are rights which, once you have demonstrated you have them, are meant to last for the lifetime of the Union citizen, there will be less scope for enforcing them after the transition period than now.

Q37 Lord Cromwell: Thank you. Perhaps I may come on quickly to my second question, which I hope is equally practical. The Committee has been concerned about the possible use of the data that one submits when one applies for this process. For example, if one has had a criminal conviction or is homeless, that data could be shared by the Home Office. Without being a conspiracy theorist about the whole thing, I suggest that could lead to people considered bad’uns being deported or detained. What are your thoughts on that?

Marie Demetriou: There is currently data sharing between government departments because of a link to the Immigration Rules. I worked on a case a while ago relating to NHS debts. There is an immigration provision that states that if you incur a certain level of NHS debt, it has negative repercussions. The law in the area is complex, because there are confidentiality protections. Essentially, data sharing within bounds is permitted. Broadly speaking and without my delving into the some of the complexity of the law, that is a risk for individuals.

Aidan O'Neill: The other issue is the devolution to the private sector of the enforcement of immigration controls that will apply to EEA and EU citizens—people who rent out houses or employers, for example. We are talking about a criminal offence where your wages can be taken from you or you can be fined if you are working without the necessary permits. All those “hostile environment” rules, which have been created to be used against non-EU nationals, will be applied to not properly-documented and vouched-for EEA nationals in the UK. That is shocking.

Q38 **Lord Dholakia:** It has been suggested that if the protocol on Ireland/Northern Ireland ever became operative, it could lead to a democratic deficit in Northern Ireland, which might be contrary to Article 3 to the First Protocol to the European Convention on Human Rights, which is about the right to free elections. What is your assessment of this argument?

Aidan O'Neill: There is already a parallel, which happened in a 2002 case involving Gibraltar—*Matthews v UK*—where Gibraltar was subject to EU-derived legislation but Gibraltarians had no right to vote in European parliamentary elections. The Article 3, Protocol 1 ECHR case was taken to the Strasbourg court, which said that the European Parliament is for those purposes a legislature and that there was a right to vote which the UK had to make provision for.

It then did so by extending to all residents of Gibraltar who had UK, Irish or Commonwealth citizenship—so some of those individuals had no EU citizenship—the right to vote with regard to the European Parliament. That was then challenged in 2006 by Spain in Case C-154/04 *Spain v. UK* before the Court of Justice, which said that it is up to the member state how it defines who will be part of its electorate, even for the European parliamentary elections, so you do not have to be an EU citizen.

I agree that there is a potential deficit for individuals in Northern Ireland who are still subject to, as it were, regulatory alignment with European legislation. It could be solved by the Irish Government making provision for individuals in the six counties to have a right to vote in European parliamentary elections, much as was done in *Matthews*. That might be thought to be controversial, but it seems to be a way around the specific legal point. Whether there is the political will for that is another issue.

Angela Patrick: I agree with Aidan in the sense that it is arguable, but I would not go any further. The point is that, as I understand it, this problem was raised in the context of negotiations on when and how the protocol should apply, and how it should attempt to give effect to the requirement for equivalence in the Good Friday agreement. In my view, it is not a problem that creates a reason to depart from our international obligations in the Good Friday agreement. If it is a problem, it needs to be addressed, and as Aidan has suggested, a number of solutions have been explored. None of them is particularly easy, but they are out there.

This is not an easy situation, but if we are to abide by our Good Friday agreement obligations in international law to ensure that the protection of human rights in

Northern Ireland and in the south is equivalent, a solution should be found. There is not necessarily one in the protocol as it stands, and it is possibly an outstanding issue to be resolved between the UK Government and the Irish Government as to how arrangements might be made both for voting and for individuals to participate as an MEP or otherwise in the EU institutions of government. I have seen it used as a reason not necessarily to make such extensive provision for different arrangements in Northern Ireland, but it is not justifiably a reason not to explore better how to meet the obligations of the Good Friday agreement; it is simply that it is an area yet to be addressed.

The Chairman: We are going to move on, because we are running out of time.

Q39 Baroness Shackleton of Belgravia: Prior to the publication of the draft Withdrawal Agreement, this Committee considered the reinforcement and dispute resolution of Brexit, because without that being effective the law is not much use anyway. In our report we expressed worries and concerns that if disputes relating to the Withdrawal Agreement and future relationship were governed by arbitration, that would put businesses and individuals in a poorer state—their rights, such as they are, would be less effective.

Having seen the processes proposed in the Withdrawal Agreement and the political declaration, do you have any additional thoughts on this issue?

Marie Demetriou: Very briefly, by way of introduction to the issue, there is a distinction between the transition period in the Withdrawal Agreement, because law will continue to be directly effective there—

Baroness Shackleton of Belgravia: Business as usual.

Marie Demetriou: Yes, it is more or less business as usual.

Baroness Shackleton of Belgravia: Negotiations without teeth.

Marie Demetriou: Exactly. There is a distinction between that transition period and the position afterwards. Obviously some of the matters in the Withdrawal Agreement will be subject to arbitration even within the transition period. Ultimately the arbitration panel must make a reference to the European court if there is a question of interpretation of EU law, but in terms of looking forward to the future relationship—and we do not yet know at all what that is going to be—if that provides for some type of arbitration dispute resolution mechanism, we can expect that it will give less direct enforceability of rights to individuals than the system that we have at the moment.

In a sense, that is inevitable; once we have left, one would expect a dispute resolution mechanism that worked on the plane of an international law agreement between the EU and the UK, which would be a non-member state at that stage, to have less effective dispute resolution mechanisms than the ones that we currently have. That is an inevitability.

Baroness Shackleton of Belgravia: Would legal aid be available to people bringing

actions under arbitration, or would they have to mention the fact that they were going to go up to Europe in order to get it? Will you find that people big up their connection to Europe—to put it colloquially—to entitle them to get legal aid?

Aidan O'Neill: Oddly enough, that very question was looked at by the European Court of Justice last week in the decision of the full court in the CETA opinion—Opinion 1/17, I think—which is to do with the comprehensive economic and trade agreement with Canada. As you will recall, there was a problem with the ratification of that agreement when Wallonia decided that it was not too happy about precisely the provisions that have been highlighted regarding dispute resolution.

As part of the compromise of allowing the agreement to come into effect provisionally, as it were, application was made to the European Court of Justice by Belgium as to whether the arbitration provisions were compatible with the fundamental requirements of EU law. In a very long opinion, the court ultimately said, “Yes they are, so long as you put in specific provisions allowing for accessibility to these tribunals by small and medium-sized enterprises and individuals who could require legal aid, because Article 47 of the Charter will apply to those tribunals because they have been entered into by the EU even if they are not binding on Canada”.

So there is strong awareness of the problem of taking matters away from the court to a tribunal. As you know from your own professional experience, arbitration tribunals are traditionally secret and confidential places, not with judges but with professionals who do not have security of tenure, and they do not publish their decisions because confidentiality is everything.

Baroness Shackleton of Belgravia: And then you do not get precedent.

Aidan O'Neill: Exactly. That is a big worry, but it is something that the Commission is very alive to. There is a strong attempt to create a new international court of arbitration that will have all the trappings of a court, including, it would appear, according to this decision by the Court of Justice, the right to legal aid, the deferment of fees and the like. Lots of rules will have to be worked out, and the CETA provisions might help as a useful precedent.

Q40 The Chairman: As you know, the First Minister’s Advisory Group on Human Rights Leadership in Scotland has proposed an Act of the Scottish Parliament to provide human rights leadership. To what extent do you think that could ensure non-regression from the rights currently guaranteed by membership of the EU, and how would it relate to the wider UK human rights framework? I would guess, Mr O’Neill, that this question is really for you. Everyone else is welcome to comment, but we are running out of time.

Aidan O'Neill: The suggested Act is certainly an ambitious and forward-looking one. It would apply only within devolved areas. The working group was concerned that it might not be within the devolved competence of the Scottish Parliament, but the most recent decision from the Supreme Court *Re the UK Withdrawal from the EU*

(Legal Continuity)(Scotland) Bill says that the Scottish Parliament is not trespassing on UK competence even if it puts forward a policy in devolved areas that is wholly at variance from that put forward by the UK Government. Certainly the protection of rights and the promotion of equal opportunities is within the devolved competence. So it could be a leader within the UK as to how human rights might be developed.

However, the reality is that from the perspective of London, Scotland is a faraway country of which we know very little—it has its own legal system and has managed for 300 years to go its own peculiar way—so I am not sure that it would set a fantastic precedent for how things might happen in the UK generally.

I come back to my opening remarks: we need to talk about England. We need to have an English Bill of Rights and to have a conversation about where it can be safe, proper and forward-looking to be a proud progressive English nationalist.

The Chairman: You are asking quite a lot there. We are going to Scotland in two weeks to talk about that. Do either of the other two want to add anything?

Angela Patrick: I agree with Aidan that in principle there is no constitutional difficulty with the kind of Act being proposed. In the scope of areas within competence, much could be done in Scotland to be progressive on rights protection. However, it starkly illustrates what we all know is a real discord in the political discourse north and south of the border and in Northern Ireland and Wales: in each of the parts of the UK that are not England, there is a much more progressive discussion about how rights are protected and how valuable the legal protection of human rights is for the purposes of our constitution.

The Good Friday agreement aside, this is another indication that a commitment to fundamental human rights and the protection of human rights is really important for our constitutional guarantees, and that conversation has to be central to the post-Brexit settlement.

That said, it must be remembered that the UK is responsible on an international plane for the implementation of all our international human rights obligations, whether they derive from the ECHR, from the UN or from EU instruments. That would include the UK taking responsibility for strides ahead in Scotland, steps back in England and real difficulty, if that emerges, in Northern Ireland.

The Chairman: Thank you. We really are running out of time, but we will ask each of you what you think we as a Committee should be pressing on.

Marie Demetriou: I already made the point in opening that you should be pressing to see and scrutinise the legislation.

The Chairman: Absolutely. That point is well taken.

Aidan O'Neill: I will bang the drum for allowing diversity in unity and not seeing the possibility of different modes of fundamental rights protection *across* the Union necessarily being a threat *to* the Union.

Angela Patrick: Again, I agree with Marie and with Aidan: we need to see the legislation. What has gone before, Parliament must take responsibility for. We have already had the EU Withdrawal Act. In future, it needs to be Parliament's responsibility to understand what it is agreeing to. Beyond that, I would encourage Parliament to entirely scrutinise the position on Northern Ireland to make sure that it complies with the requirements of the Good Friday agreement and international obligations.

The Chairman: That is hugely helpful. May I just say how enormously helpful this has been? You have given us a lot of material that we did not have before and that has not wholly agreed with some of the evidence that we have already taken. It has been wonderful and we are really grateful.

Baroness Shackleton of Belgravia: Thank you for making it so clear.

The Chairman: To the non-lawyers, particularly.