

Committee on Exiting the European Union

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 372

Wednesday 10 July 2019

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sir Christopher Chope; Stephen Crabb; Richard Graham; Peter Grant; Andrea Jenkyns; Stephen Kinnock; Jeremy Lefroy; Seema Malhotra; Mr Pat McFadden; Craig Mackinlay; Stephen Timms.

Questions 4571-4702

Witnesses

[I](#): David Lidington MP, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster.

[II](#): Sir Keir Starmer MP, Shadow Secretary of State for Exiting the European Union.

Examination of witness

Witness: David Lidington MP.

Q4571 **Chair:** David, welcome. David Lidington, Chancellor of the Duchy of Lancaster, we are very grateful to you for agreeing to come and give evidence to the Select Committee. As ever, we have a lot of ground to cover, so answers that are as succinct as possible while covering the ground would be much appreciated. Looking back at the cross-party talks, where would you say the Government moved on their red lines, compared with where they were at the start of the talks, as opposed to the end?

Mr Lidington: The issues that very quickly became apparent—the key elements—were, I think, threefold. First, there was an issue over customs that from the start was controversial. The Government and the Opposition began with very different positions on the preferred outcome. Secondly, there were issues with workers' rights. Thirdly, there were issues to do with a second referendum or a confirmatory vote—however one labels it. Other issues came up—environmental rights, and UK participation in or relationships with EU agencies after exit, for example—but those were less central to the debate. They came up, they were discussed and the potential wording of agreements was talked about, but those three were the key issues.

One thing I should stress from the start is that, for both sides of the talks, there was an understanding that they were conducted on a without-prejudice basis. From the Government's side, those of us who were in the room made it clear from the start that, if we got to the point where we could agree, we would then need to go back to Cabinet and see if what was acceptable to the Opposition would find collective agreement. You can ask Keir Starmer later on, but I think the same was true for the Opposition—their position was always without prejudice to a final shadow Cabinet discussion taking place.

On workers' rights and on customs, I felt that we did offer language that was a possible bridge. In the end, particularly on customs, it was a bridge too far—or perhaps not far enough, to be more accurate. We could not get agreement on that. On workers' rights, we came very close to an agreement. On the second referendum, we were not able to get to an agreement.

My sense of the Labour party's position was that, during the talks, there was a shift towards greater insistence on the opportunity for a second referendum, and not just a vote in Parliament on that, as something that ought to be offered. We felt that it was bound to be debated in Parliament when the implementation Bill came through, and therefore there ought not to be a problem—it would be voted on and Parliament would take its decision accordingly. You can ask Labour colleagues about their position



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on this, but we certainly felt that we could not be in a position where we were actually advocating a second referendum.

Q4572 Chair: From the Government's point of view, what was and is the problem with a permanent customs union, given the position that the Government have adopted throughout the process—it was friction-free trade and then it became as-frictionless-as-possible trade—and given the Northern Ireland issue?

Mr Lidington: The Northern Ireland issue was part of the negotiation on the withdrawal agreement, whereas the longer-term relationship over customs was going to be, and will still need to be, part of the negotiation on the longer-term future partnership with the European Union. The position that the Government have consistently taken on this has been that the drawback of a full customs union with the EU is that: first, it would stop us having an independent trade policy apropos of third countries; secondly, it would, at least if it followed the precedent that has been set with the EU-Turkey customs union, oblige us on an unreciprocated basis to give preferential trade access to our markets to goods from countries with which the EU had negotiated a separate FTA excluding the United Kingdom; and thirdly, there was an assumption—I'm trying to be fair to the Opposition's position; this was the Labour party's position—that we would also be bound by the common commercial policy of the EU and that the EU would conduct negotiations with third countries on our behalf. In fairness, an accurate description of the Opposition's position is that they said, "We should be able to do that while crafting some mechanism for having a say in how the EU negotiates with those third countries."

Q4573 Chair: You told the House of Lords EU Select Committee on 19 June that, "The reason the political declaration was worded that way was that that was as far as the Commission was willing to go"—on some issues, to give the context. Can you give us an example of an issue on which the Commission had said, in the discussions on the political declaration, "We're sorry, but that is as far as we can go"?

Mr Lidington: Yes, on justice and police co-operation. The Commission throughout the negotiations were very clear that, in their view, full membership of and participation in such agencies as Europol is available, on their reading of the treaties, only to member states of the European Union. We could therefore not expect the same access to those databases and legal instruments, even as a close partner but a third country, as we could as a full member.

Q4574 Chair: Did they say that in respect of, I think, paragraph 23 of the political declaration, which relates to trade and customs arrangements?

Mr Lidington: What they said in terms of trade and customs was that they dislike the phrase "frictionless" because their definition of "frictionless" is membership, which brings full participation in both the single market and the customs union. That is why you have the formulation—I think it is a good formulation—about there being a spectrum when it comes to future trade relationships, depending on



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whether you elect to have greater national autonomy over trade policy or whether you give priority to preferential access to the EU market.

Q4575 **Chair:** Turning to the risk of a no-deal Brexit, could you briefly tell the Committee what the Government's current assessment of the economic impact is of that for the United Kingdom?

Mr Lidington: The overall impact—the macroeconomic impact—is as published by the Treasury earlier this year. We stand by those figures in terms of predicting, in so far as one can, that in the event of no deal there would be an immediate shock to the economy, as the Chancellor has set out. A lot then depends both on what mitigating measures are put in place here and on the direction of future policy—not just in the United Kingdom but in the European Union 27.

Q4576 **Chair:** That economic assessment shows that a no-deal Brexit would be the worst outcome for the economy.

Mr Lidington: Yes, it does. You then also need to look at the microeconomic impact. To give one example, I was in County Fermanagh last Friday, and the businesses I met there used the word “catastrophic” to describe no deal. The sort of examples that they were giving concerned how, in a no-deal scenario, their trade would be at risk simply because the EU, from day one, would require businesses with customers and suppliers located in the Irish Republic to apply the obligations of the EU acquis. For example, a milk producer in Northern Ireland that sold milk regularly to a processing plant in the south would suddenly find that it would be unlawful for its buyer in the south to continue receiving Northern Ireland milk because it could not be certificated as complying with the relevant EU law.

I talked to a company on Friday that said that they send 60 or 70 trucks over the Irish border every day of the week. It is not just about cameras and checks on the border; it is about the fact that you would have to comply with the various rules that the EU applies to any third country with which it does not have a negotiated trade agreement of some kind.

Q4577 **Chair:** That is a really important point. If nothing changed at the border, there would be an economic impact.

Mr Lidington: There would be consequences that would be particularly felt in Northern Ireland because it is the land border and because trade has developed in a way that you have cross-border supply chains, including for very small businesses, selling directly to a counterpart across the border. The same problems would arise—it is known from many public statements and publications—at other ports. A lot would depend on how long it then took to get to a new equilibrium and a different sort of trading relationship with the EU27.

Q4578 **Chair:** Thank you. A yes/no answer would help with this one. Do you think it would be acceptable to prorogue Parliament in order to prevent the House of Commons from taking a view on a no-deal Brexit on 31 October?



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Mr Lidington: No. All Members in this place have the right to express their own opinions. I think it would be a constitutional outrage.

Q4579 **Chair:** Thank you; that is very clear. Do you think that if the House of Commons were to vote again—as it has done previously—to reject a no-deal Brexit, any Prime Minister should respect that decision?

Mr Lidington: It is hard for me to put myself in the shoes of a potential future Prime Minister. To some extent, things depend on the precise nature of the debate, the resolution passed and the circumstances, but I would have thought that any Prime Minister would be unwise lightly to disregard the expressed view of the House of Commons, simply because the reality is that every Government exists by virtue of the fact that it can command a majority in the House of Commons.

Q4580 **Chair:** I accept that this is a hypothetical question, or a hypothetical circumstance, but there is a question about the Cabinet manual within it. If there were a vote of no confidence in the Government over a no-deal Brexit and we were heading towards an election, is it your reading of the Cabinet manual that the Prime Minister would be obliged to ask the EU for an extension, in effect to keep the options open for whichever Government was elected in that election—assuming that it was after 31 October—to come back to?

Mr Lidington: Again, as you say, Chair, it is a hypothetical question. Normally what would happen if a general election were to take place, for whatever reason, is that from the moment of its announcement the Government would be in caretaker mode and would not take decisions, other than those—this is where there is a grey area—for which it was absolutely essential that they be taken at that time, lest taking those decisions prejudice the future Government of whatever political complexion. But of course there are exceptions that we have experienced quite recently. In 2010, Gordon Brown's Government had to take decisions about the financial crisis right up to the Sunday after the general election, when the Government was in office but the Conservative-Liberal Democrat talks about forming a coalition were nearing a conclusion.

Q4581 **Chair:** Just to remind you, the Cabinet manual says quite specifically that during the period we are talking about, "Ministers continue in office and it is customary for them to observe discretion in initiating any action of a continuing or long-term character. This means the deferral of activity such as: taking or announcing major policy decisions." Is not writing a letter to ask for an extension to preserve the status quo for the incoming Government a major policy decision? Would not a Prime Minister—a caretaker Prime Minister, in effect, in those circumstances—therefore be obliged to keep the status quo by applying for an extension?

Mr Lidington: It is self-evidently a major policy decision. I probably have my private views on this as a Member of Parliament. Speaking on behalf of the Government, I think we would say that this is a hypothetical question.

Mr Bone: The problem is that the situation is that you have to keep the status quo. Parliament has already decided that we leave on 31 October.

What you are suggesting would be a new policy decision—the complete opposite of the logic that you are suggesting, Sir.

Chair: I was merely asking the Chancellor of the Duchy of Lancaster what his view was, and I quoted the Cabinet manual accurately.

Mr Bone: But your interpretation was wrong, Sir.

Chair: I was asking what the witness's view was.

Mr Bone: And the witness said that it was a hypothetical question.

Chair: Well, he could have said that in answer to the question the first time round. We are very grateful that he didn't and that he got into the highways and byways of the point that I was trying to make, because it could arise—maybe—and what the decision would be would have huge import for the country.

On that cheerful note, I will now hand over to Andrea Jenkyns.

Q4582 **Andrea Jenkyns:** You did pinch a few of my questions, Chair—which you are probably glad about, David.

Why do you think there was a lack of flexibility by the PM about changing her deal, right up to the point that she sat at the table with Labour? Why did it have to wait until she sat at the table with Labour for anything to be up for grabs?

Mr Lidington: I don't think that she has displayed a lack of flexibility. What the Prime Minister and the Government collectively had to face was the fact that we had negotiated an agreement with the EU27; it was very difficult to agree, it took a lot of time and required compromises on both sides. The Prime Minister believed, and continues to believe, that that agreement successfully safeguards the key interests of the United Kingdom. We put it to Parliament on a number of occasions and there was a majority against accepting that.

What was not open to us was simply to go back to the EU and say, "We want to rip this up." It had been made very clear in both private comments from the Commission and the 27 Governments and in their public statements—particularly that from President Juncker after the additional protocols to the withdrawal agreement had been concluded in the late-night meeting the PM had with him in Strasbourg—that they were not going to shift further. As they saw it, they had made a lot of compromises. It is ironic that Monsieur Barnier was severely criticised in Paris and other capitals for having, as those capitals believed, sold the EU short over the backstop. So that was not available.

Q4583 **Andrea Jenkyns:** Can I come in on that point? Regarding the backstop, when the Committee was in Brussels, we interviewed Verhofstadt and Martin Selmayr. I asked if the PM or anybody in the team had ever asked for the backstop to be removed. Their answer was no. What is your understanding of that?

Mr Lidington: I can only speak for the period when I have had my current office. You would need to ask Secretaries of State or officials who were in office between 2016 and the beginning of 2018 to get a view on what happened at those stages of the negotiation.

Q4584 **Andrea Jenkyns:** Was it ever discussed at Cabinet, for example?

Mr Lidington: No, the PM made it very clear to the Commission and to Heads of Government that if the backstop were dropped, there would probably be a majority, but it had been clear from a very early stage—certainly, this crystallised in December 2017—that this was in their eyes something that, while they didn't want it, was an essential insurance policy for them.

It was not just about the Irish border, important though that was, and particularly for the Government of Ireland. It was also about trying to reconcile the requirement for an open border on the island of Ireland with protecting the integrity of the European single market. On a number of occasions in the negotiations, the focus from Sabine Weyand and others was very much on how to protect the integrity of the single market. It wasn't about Ulster; it was, "How do we make sure that stuff from elsewhere isn't coming in?"

Q4585 **Andrea Jenkyns:** Back to my question, David. Were you aware of the Prime Minister ever asking for the backstop to be removed?

Mr Lidington: I know that she has raised that in conversations with other leaders. They were in no doubt that without the backstop, there would have been a majority, but it was very clear, certainly from December 2017 onwards, that that was not something they were prepared to contemplate.

Q4586 **Andrea Jenkyns:** Okay, thank you. Do you agree that the Government could have listened more to Conservative MPs when the withdrawal agreement was first rejected?

Mr Lidington: I think we were listening very much to the views of Conservative MPs and being frank with MPs across the House, because we were in a House of Commons with no overall majority for any one party and debating difficult choices on an issue that throughout my time in Parliament and before has divided both the Conservative party and the Labour party. So, knowing the reports that we were getting back, in particular from the Chief Whip but also from others, I think we were very alive to where the different currents of opinion were.

Q4587 **Andrea Jenkyns:** What offers were made to Labour during the cross-party talks?

Mr Lidington: Again, I must preface this by saying the discussions with Labour were on a without prejudice basis. They were on the lines of, "If we put these words forward, would that be sufficient for you to not just vote in favour of the implementation Bill on Second Reading, but to ensure a safe majority to see it carried through all its stages?" That was the nature of the conversation. We tested various formulations on the difficult issues: on customs, on workers' rights and on a second referendum. On



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the second referendum we were prepared to commit ourselves to protecting time for a debate because we thought it was inevitable, anyway, that there would be a debate and a vote on the second referendum. I think it is fair to say that the Labour party wanted us to go further than that, but we could not move on that, and we were not able to get to an agreement on customs, either.

Q4588 **Andrea Jenkyns:** Did you ever offer support for the withdrawal agreement in exchange for a general election at a certain date?

Mr Lidington: No.

Andrea Jenkyns: Thank you.

Chair: We will now hear from Joanna Cherry.

Q4589 **Joanna Cherry:** I want to ask questions, Minister, about the intergovernmental structures with the devolved Administrations. The Joint Ministerial Committee (EU Negotiations) that was set up in October 2016, which, for me and I am sure for you, seems 100 years ago now, had a specific remit: "Through the JMC(EN) the governments"—the British Government and the devolved Governments—"will work collaboratively to...seek to agree a UK approach to, and objectives for, Article 50 negotiations" and "provide oversight of negotiations with the EU, to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations". It is fair to say that those objectives were not fulfilled, isn't it?

Mr Lidington: When I took stock of this after taking on this role at the beginning of 2018, it was clear to me that there were some lessons to be learned. It is a matter of regret, I think, that JMC(EN) did not meet as frequently during the previous period as it probably ought to have done. I would ask you, Ms Cherry, to accept that there were some pretty basic differences of view between the UK Government and the devolved Governments in Scotland and Wales respectively, and we were also hampered by the fact that we did not, except for a very short time after the referendum, have Northern Ireland Ministers present after the collapse of devolution. There has not been a common position on article 50. I think the views of both the Scottish and the Welsh Governments had been that their preference would be—the Scottish Government more than the Welsh Government—to stay within the EU. Initially, the views of both devolved Governments were to want to see something that continued UK membership of both the customs union and the single market, but that position has hardened over the last year towards support for a confirmatory vote or a second referendum.

Q4590 **Joanna Cherry:** It is fair to say that the Governments did not agree a UK approach. You did not take the Welsh and the Scottish Governments with you in your approach, did you? There was no common agreement.

Mr Lidington: I think that we have made a lot more progress than is sometimes realised on the nitty gritty of what arrangements should be put in place after exit. Where Ms Cherry is completely right is to say that there



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has not been agreement over the objective of the negotiations with Taskforce 50. I have never pretended that either the First Minister or Mike Russell or Jeremy Miles—or Mark Drakeford before him—are signed up to the objective. But if you look at, for example, the work on frameworks, there has been a lot of very fruitful work where we have been able to say, “Notwithstanding our differences on the political objectives, we need to make sure that in practical terms businesses can continue to buy and sell throughout the United Kingdom as powers are transferred back from Brussels.”

Q4591 **Joanna Cherry:** The red lines that the Prime Minister set out were never agreed with the Scottish Government or the Welsh Government, were they?

Mr Lidington: No, and I have never pretended that they were.

Q4592 **Joanna Cherry:** On the second objective—to ensure that, as far as possible, outcomes were agreed by all four Governments—I think it is fair to say that the withdrawal agreement was not viewed as satisfactory, or agreed as a satisfactory outcome, by either the Government in Edinburgh or the Government in Cardiff. That is right, isn’t it?

Mr Lidington: That is right, but, as I say, it is also the case that there are some fundamental differences of objective between the different Governments.

Q4593 **Joanna Cherry:** You very fairly said that the process has not been ideal. Last year, the Public Administration and Constitutional Affairs Committee of the Commons concluded that, “It is clear from the evidence to this inquiry that Whitehall still operates extensively on the basis of a structure and culture which take little account of the realities of devolution in the UK. This is inimical to the principles of devolution and good governance in UK.” That was the conclusion of a cross-party Committee chaired by Sir Bernard Jenkin—hardly a bastion of the movement of which I am part. That was their conclusion, wasn’t it?

Mr Lidington: I thought that that conclusion exaggerated things. There are certainly flaws in the current process and the history of what has happened in the last three years, and it is important that whenever the next Government get on to phase 2, in whatever circumstances, and try to negotiate a long-term agreement with the EU27, we learn from that and have a more productive approach.

I would disagree with the excerpt from the Committee’s report that Ms Cherry read out in that, first of all, we have established not just within JMC(EN) but between Departments in Whitehall and Departments in Scotland, Wales and Northern Ireland good working relationships. For example, when it came to DEFRA preparing the Agriculture Bill, the DEFRA officials and Ministers took great pains to talk to their counterparts in Scotland, Wales and Northern Ireland to try to make sure that we were taking account of the views, interests and specifics of agriculture in those parts of the United Kingdom.



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The work on frameworks has been successful. We are bringing back to UK jurisdiction somewhere between 150 and 160 different areas of EU competence which also intersect with devolved competence once repatriated to the UK. We managed to narrow that down to only about two dozen where legislative frameworks would be needed, and we have now narrowed that down to just four where there are still some serious differences between the UK Government and the devolved Governments over the right approach to be taken. Even of those four, I think two are on fairly technical issues.

We have set up a ministerial forum on EU negotiations co-chaired by junior Ministers in the Cabinet Office and DExEU, so that gives devolved Administrations the opportunity to contribute in greater breadth and depth in priority areas to the UK negotiating position. We have now also, as a matter of policy, invited the First Ministers or their representatives in their Administrations to attend meetings of the relevant Cabinet Committee that is looking at exit preparations. Both First Ministers have attended meetings of that committee, and when they have been unable to be there and devolved matters have been on the agenda, Ministers from their Administrations have attended in their stead.

Q4594 Joanna Cherry: Is the review that was announced by the Prime Minister when she was in Scotland recently—the Dunlop review of the interrelationship between Whitehall and the devolved Administrations—purely a review of administrative procedures, or is there any intention for that review to make recommendations regarding policy change?

Mr Lidington: It is not intended to provide a peg on which to revisit the devolution settlement, and the terms of reference given to Lord Dunlop expressly say that one of the purposes of this review is to establish ways in which we can strengthen the devolved settlements. We want the review to look in particular at how we organise Whitehall, both in administrative terms and how well adapted the culture of work in Whitehall is to dealing with the realities of devolution. I would have hoped it is something that even parties committed to a different constitutional outcome might welcome, and might want to contribute to.

Q4595 Joanna Cherry: That is very helpful. Are there any plans for any legislation to come out of that review, either primary or secondary?

Mr Lidington: There is nothing planned, but we will have to see what Lord Dunlop recommends.

Q4596 Joanna Cherry: Just one more question. It is reported in *The Scotsman* today that the First Minister has said that Scottish Government civil servants have been deprived of key information relating to a no-deal Brexit by the UK Government. She was very clear that she was not criticising the British civil service; she was criticising the UK Government as being at the root of the withholding of information in relation to no-deal preparations.

You will be aware that fairly extensive no-deal preparations are being made in Scotland by the Scottish Government's Resilience Committee in



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relation to various areas. However, you will also be aware that the Scottish Government feel that their hands are tied, for example in relation to transport, because there has been no ability for the Scottish Government to plan for any key logistical areas such as how much ferry capacity will be available after exiting the EU, due to a lack of co-operation from the UK Government.

Are you aware that the Scottish Government are facing this problem that, although they are advanced in their no-deal preparations, there is only so far they can go because they only have certain competences, and they are experiencing the withholding and deprivation of key information that would enable them to go further? It is a very important point.

Mr Lidington: I am happy to give an undertaking that if the First Minister wants to supply details, I will be happy to investigate that and come back to her.

As I said earlier, at ministerial level, the Scottish and Welsh Governments now come to almost every meeting of the EUXT preparations committee, EUXT(P). While it would be wrong of me to divulge what happens there, I can say that those Ministers play a very active role, and one of the benefits of them being there is that when something comes up where there is perhaps a particularly Scottish angle—transport policy, let us say—they have the Secretary of State for Transport sitting there, and they can either raise the issue directly or flag it as something they need to take offline and sort out bilaterally outside of that meeting.

In addition, Scottish and Welsh Government officials sit at every meeting of the official level equivalent committee on EU exit preparations, so there are, I would argue, ample opportunities for the Scottish Government to take up things that concern them. However, I cannot recollect any recent occasion when Scottish Ministers have said to me that they are seeking information and it is being withheld from them.

Joanna Cherry: According to the information I have, Scottish Ministers are concerned about a lack of information in relation to ferry capacity, not knowing what goods will be classed as priority and what arrangements will be made for Scottish needs, including the particular challenges of rural areas. However, I am happy to take on board your undertaking, which I will pass on to the First Minister, that if she has concerns about any of these matters, she should give you the details and you will get back to her.

Q4597 **Mr McFadden:** Thank you, David, for coming this afternoon. I want to ask you a few broader questions about Brexit and the Union. You have been quoted as telling the BBC a few weeks ago that you thought the Union was under “greater strain” than you had seen in the past. This morning in the *FT* there is a report about a Cabinet paper which has you saying there is a real risk of the UK breaking up in the event of a no-deal Brexit. You may not want to comment on a Cabinet paper—I accept that—but, leaving that aside, can you just spell out for us why you are so concerned about the risk to the Union from a no-deal Brexit?



Mr Lidington: As Mr McFadden expected, I will not comment on reports of what allegedly was discussed at a Cabinet meeting, but I have said things on the record about this subject. My view is that the Union is under some strain in any case. I think that that derives in part from the fact that in Scotland, to be fair to SNP members of this Committee, there is a devolved Government that has quite open policies, for which it seeks electoral endorsement, of Scottish independence. That, as the First Minister has made clear, is the overarching strategic objective of the Scottish National party and of the Scottish Government that the SNP leads. That of itself, and the campaign under way now to try to press for a mandate for a second referendum on Scottish independence, is a potential threat to the Union.

In Northern Ireland we have a situation where demographics are shifting. In Northern Ireland you are looking at roughly equivalent proportions of the population who now identify as British and as Irish with, perhaps, 12% or so in the middle—non-aligned, or however one wants to describe their position. We see those changing demographics reflected in electoral results. We saw in the most recent Stormont elections, two and a half years ago, for the very first time since 1921, no Unionist overall majority among elected Members of Stormont. At the European elections earlier this year the highest number of first-preference votes went to Sinn Féin. Historically, since direct elections to the European Parliament were introduced in this country, Northern Ireland has been represented under an STV system by two Unionists and one nationalist or republican. This time round the second Unionist seat was lost to the leader of the Alliance party, so there are changes.

In addition, in England, the polling evidence suggests that too many people for my liking are at best indifferent to the value of the Union. I think those of us who are Unionists have not made a strong enough positive case in any part of the UK, and we need to. If I look at how Brexit has an impact on that, the fact that two of the four nations voted to leave, and two to remain, sets up an inevitable tension in how we manage things. That, allied to the changes in the politics of the different home nations, has produced strains for Northern Ireland in particular. The border, of course, has an important economic significance, is critical to conceptions of identity and has a history, of recent years, that arouses all sorts of fears very quickly, including of civil disorder. That is at the back of people's minds. Even now, you go to any border area, you find that. I think the strain is there.

Even in Wales, which I haven't mentioned, Plaid Cymru got one of its best ever votes at the European elections recently, and the First Minister of Wales has said this week that, in the event of Scotland voting for independence, Wales would have to consider its position. We will have views around this table about the desirability and practicality of that, but I thought the fact that a Welsh First Minister who is himself a Unionist said that was pretty significant.

Q4598 **Mr McFadden:** You have said, and Mark Sedwill has said, that a no-deal



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Brexit would necessitate the reintroduction of direct rule in Northern Ireland. Why is that the case?

Mr Lidington: In the event of a no-deal exit, decisions would need to be taken very rapidly and for a period of some months at least on an effective legal basis. The absence of Stormont means that there is no effective legal basis for those decisions. The position of the Northern Ireland civil service, first of all, is that it has far fewer autonomous powers than officials normally do in the various nations in Great Britain. For example, even planning decisions in Northern Ireland are taken by Ministers in the Executive, not by local authorities in Northern Ireland, because of the history of Northern Ireland local authorities being sectarian in one direction or another.

In the absence of the Executive—now for two and a half years—the Northern Ireland civil service says that it can only take decisions within a mandate set by the last lot of Northern Ireland Ministers, and without new primary legislation no Secretary of State, including the Northern Ireland Secretary, can direct the Northern Ireland civil service to act in particular ways, beyond that mandate set, in so far as one was set, by the last set of Stormont Ministers.

That hands-off position was reinforced by a court judgment in Northern Ireland about a year ago—the Buick judgment—that ruled that the Northern Ireland civil service could only act in the most restricted way possible. The particular case was about the location of an incinerator and planning permissions for it. The court interpreted the law in a very restrictive fashion and that is why the Government then introduced, and Parliament took through, the Act to give the Secretary of State for Northern Ireland some limited powers to issue guidance to the Northern Ireland civil service, and we voted in the Commons yesterday to extend those powers for a few more months.

However, in the event of a no-deal exit the decisions that might have to be taken would be of a much higher order and they would require much more explicit powers of direction. There would need to be either some new statute to give powers to the Secretary of State, or I think our feeling is that there would need to be something that involved Westminster, or we might need to have emergency legislation for Northern Ireland on more than one subject, depending upon the actual out-working of a no-deal exit.

Q4599 **Mr McFadden:** In reflecting on this debate as a whole, and without pinning blame on anyone, do you think the debate has concentrated too much on issues of trade, tariffs and economics in general, if you like, and maybe not enough on what you are really describing as an existential threat to the future unity of the UK itself?

Mr Lidington: I think that the trade, tariffs and prosperity issues are very important—they matter a great deal to individuals and businesses in all our constituencies—but, no, the potential impact of that scenario on the

United Kingdom has not been given sufficient focus in the public debates about this.

Q4600 Mr McFadden: Wouldn't it be the ultimate tragedy if, in the pursuit of an objective of taking back control to the United Kingdom, we found that we didn't have a United Kingdom in which to take back control?

Mr Lidington: Yes, I agree completely with that, and I think that view very much lies behind the stance the Prime Minister has taken, particularly in recent months.

Now, I believe that the United Kingdom, and membership of the United Kingdom, continues to have value, whatever the circumstances of our exit from the European Union, and I will continue, whatever else happens, to make that argument, but I think the unity of the United Kingdom will be under greater challenge in the event of a no-deal exit than if there is an orderly exit with a transitional period.

Q4601 Stephen Crabb: Minister, can I start by asking you, as somebody who I know cares deeply about morale in the civil service, to give us a sense of the current mood within the ranks of Whitehall in the context of Brexit? How bruising a period has it been over the last two to three years as we have tried to wrestle with Brexit?

Mr Lidington: I think it has been very difficult because the civil service has been running pretty much with the machine on red for at least the last two years. This work has come on top of everything else that we ask our officials to do. In some cases, it has required the transfer of people temporarily into different roles. The reality of the need to prepare negotiating positions, sometimes at short notice, for a live negotiation has made civil servants work very hard indeed. I would say that it has meant the civil service has been under huge pressure. Of course, it has happened at a time when, for reasons which I and I suspect Mr Crabb would defend, the size of the civil service has been reduced quite significantly. Yes, there has been a lot of pressure. What that makes even more important is that elected politicians of whatever political colour avoid making personal attacks on named civil servants who are unable to answer back. I think politicians should have the guts to criticise Ministers or shadow Ministers to their face, and not take it out on officials.

Q4602 Stephen Crabb: Have you personally in your work in the time that you have been in this post encountered any cultural bias within the civil service that has sought to, if not block, then frustrate or be an impediment to the smooth running of the Brexit process?

Mr Lidington: No, not at all. What I have had, and what I would expect to have, is officials who come to me and point out practical challenges and difficulties that would have to be surmounted to obtain a particular objective. I have found civil servants saying that they might have a plan worked out and then the Ministers might say, "Sorry, but we think for these reasons that it is not actually going to get through the House of Commons, so you need to take that away and try again." Whatever the personal feelings of any civil servant might be, I have not at any time



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since the referendum come across cases where civil servants have tried to frustrate the policy of the Government in delivering that referendum result.

Q4603 Stephen Crabb: Given what you said in answer to my first question about the bruising experience that it has been for Whitehall in some respects, do you think that the civil service, particularly at a very senior level and the way it works—its processes, its norms and conventions—can survive Brexit?

Mr Lidington: I think it would be wrong to say that the way in which the civil service is organised and the way in which its culture is framed is perfect. Every human institution has its flaws. The late Lord Heywood in particular was always insistent that the civil service had to be constantly looking for opportunities to renew itself and to adapt to the changing nature of British society and of political developments and he sought to improve professionalism across the civil service—an agenda that his successor is seeking to carry through. But what I hope we do not lose is the basic principle that it is the duty of the civil service—the professional duty, in which they take pride—to do their very best to implement the policy of the elected Government of the day and then of the particular Ministers whom the PM of the day gives to them, in one Department or another.

Q4604 Stephen Crabb: And you don't feel that that important ethos is creaking today in the wake of the resignation of Sir Kim Darroch?

Mr Lidington: I think that morale in the senior ranks of the civil service, and certainly today in the Foreign and Commonwealth Office in particular, will have taken a very heavy blow. I have no idea who leaked those communications from Sir Kim Darroch or what particular malice motivated that individual or organisation. I am frankly enraged by what happened. I hope that the culprit or culprits are found out and subjected to appropriate disciplinary and legal sanction.

I hope we can make every effort to restore civil service morale, because I think the quality of government suffers if officials feel that they should be inhibited from giving frank advice to Ministers. Sometimes that means a frank assessment of the approach of a foreign Government or international organisation. At other times, it means coming to a Minister and saying to that Minister something that the official knows the Minister will find very unwelcome.

I have always tried to take the view, when I have had the privilege of holding ministerial office, that ultimately it is my decision whether I drive the car off the cliff, but if my civil servants see me heading towards Beachy Head, I do actually want them to come and tell me that, not just leave it to me. It is up to me whether I accept or reject their advice and then to be accountable to Parliament for those decisions. Their job is to give me the frankest and most honest advice possible, whether it is something I would welcome hearing or not.

Q4605 Stephen Kinnock: I want to go back to the cross-party talks. You set



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out the way that the Government interpreted Labour's priorities and objectives going into those talks. Do you feel that the Labour side entered those talks in good faith?

Mr Lidington: Yes, I do, and not only because that is what they said to us directly. There were eight plenary meetings of the two negotiating teams, in addition to separate meetings between the Prime Minister and the Leader of the Opposition and what we termed working groups where particular Ministers and shadow Ministers went off to try to resolve one or two dossiers outside the plenaries. Those meetings usually took a couple of hours apiece, so there was a lot of senior-level time and energy, not to mention the preparation by our officials and advisers, which I think means that people were taking it seriously. Particularly at the start, in the first meeting, there was quite a lot of feeling our way from both sides, because this was not the sort of scenario that any of us was used to—certainly not between the two big parties at Westminster—but I think the intentions were serious on both sides.

Q4606 **Stephen Kinnock:** When you look at the product of the talks, which was the withdrawal agreement Bill—the talks had collapsed, but a couple of days later, the Government published that Bill and a list of 10 points summarising what had shifted and changed—do you think the Government had moved to a place where it would have been reasonable to expect the Labour side to accept what was in the end the content of the withdrawal agreement Bill as proposed by the Prime Minister? Obviously, it is important to focus on the words “good faith” and “reasonable”, which are subjective terms, but in terms of, as you say, the distance between the two sides, the negotiations and the product that was put on the table, are you disappointed by Labour's decision not to accept the terms of the withdrawal agreement Bill and to reject it? Do you feel that that was a reasonable decision for Labour to make?

Mr Lidington: The last question is one to put to my Labour counterparts. To answer Mr Kinnock's question, I thought we made a good offer. I think it would not have been reasonable to expect the Government to go further on a confirmatory vote other than to guarantee parliamentary time.

Q4607 **Stephen Kinnock:** At Committee stage?

Mr Lidington: It could be Committee of the whole House or both in Committee and on Report. I think our private view was that it seemed unlikely at the time we were having those talks that there would be a majority for a second referendum. I might be right or wrong about that assumption, but we thought the right way forward was for the House to come to a decision, not for the Government to change their position.

On customs, we felt that both sides wanted what we sometimes termed the “benefits” of a customs union—trade between the UK and the EU without tariffs, quotas, rules of origin declarations and bureaucracy. Where we differed was that the Government believe we can do that and still have the freedom to pursue an independent trade policy. Whether future FTAs were compatible with that obviously would be affected by whatever we had agreed in practice in phase 2 with the EU, but we felt we could have



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that additional freedom, whereas the Labour party view was that the better way forward in their judgment for the country was to be part of EU negotiations and to try to construct some kind of say for the United Kingdom in those. We had our views on how practical that objective was, and each side probably said that the other was asking for something that was not practical and could not be achieved. In summary, that is where the key differences were.

Q4608 Stephen Kinnock: Thank you. Did you provide the Labour side with written proposals and written material to support the negotiations?

Mr Lidington: Yes.

Q4609 Stephen Kinnock: What was the content of those documents?

Mr Lidington: At different stages, we proposed different formulations. We also tried to craft position papers that we thought might represent where there was a landing ground between the two sides. The Labour party could then come back and critique some of this and say, "We might be happy with this line, but we do not think this bit fairly represents where we are coming from." There were documents.

I say again that these things did not have Cabinet or shadow Cabinet approval. They were working negotiating papers, because we were into a discussion that involved legislation and possible changes to the political declaration that we might seek jointly from the European Union, and therefore there was no avoiding the need to set words down on paper so that everyone was clear about what is or is not proposed.

Q4610 Stephen Kinnock: Would you be prepared to share those papers with the Committee?

Mr Lidington: What I would say is that, after this meeting, were the Chair to write to me formally, I would consider that. The qualification is that these were treated by both sides as confidential talks. I don't think either of us set out to leak what was in those papers. I think I would want to talk both to Labour representatives and to those other Ministers who were on the negotiating team to see what we could provide. I would seek to be as helpful to the Committee as I could be.

Q4611 Stephen Kinnock: Subject to the Chair's confirmation, I think it would be useful and interesting to see those papers. I have one final question on the issue of the customs union. What was finally proposed in the withdrawal agreement Bill in essence is a customs union in all but name until the general election. The deal was that you go into the next general election and each party would be welcome to take a position on the customs union and put that into its manifesto. Labour may well campaign for a more permanent off-the-shelf version of the customs union and the Conservative party might do something else. That is a reasonable position, isn't it, to say in essence, "This is a compromise, whereby we make this arrangement to enable us to leave the European Union with a deal, but there is a general election coming at some point and the two parties can campaign on a different policy, should they wish to do so"?



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That is your understanding of what it being proposed?

Mr Lidington: That's right. In effect, that said to the Opposition that we cannot completely bridge the differences between us, so part of the solution is to leave with a deal. As Mr Kinnock says, the formulation that we agree is framed in such a way to give each party the opportunity to seek a mandate for the particular model of a future customs relationship with the European Union that the party prefers.

Q4612 **Chair:** On that point, if the transition period went to December 2022, which is probably likely—we can debate that—because we would have been staying in the customs union anyway until December 2022, how exactly was that an offer of something different from what was already in the withdrawal agreement?

Mr Lidington: Because it is not guaranteed that the transitional period would be extended to December 2022. It is not a unilateral United Kingdom decision—it requires EU agreement if we were to extend rather than go into the backstop. Under the withdrawal agreement, the transitional period could be extended for either 12 or 24 months.

Q4613 **Seema Malhotra:** Thank you for coming to give evidence to us. I have a slightly different area of questioning for you, around constitutional matters. The Conservative party is conducting its leadership contest at the moment, and there is expected to be a new Prime Minister on the 24 July. Very recently, a Constitution Unit article written by Meg Russell and Robert Hazell suggested that it is not necessarily the case that whoever wins the contest would automatically be the Prime Minister; the Cabinet manual states: "If the Prime Minister resigns on behalf of the Government, the Sovereign will invite the person who appears most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government."

Do you think it is possible that, with the uncertainty surrounding our politics at the moment, there may be an alternative outcome to the linear process that is expected? Do you think the Queen could make a provisional Prime Ministerial appointment conditional on a new Prime Minister demonstrating that they have the confidence of the House?

Mr Lidington: A number of intriguing questions are wrapped in that. First, taking Ms Malhotra's last point, I think it is a really important principle that senior elected politicians of all parties do their utmost to keep the sovereign out of politics. In theory, it would be the Queen who would, to use Ms Malhotra's words, ask someone to take office "conditionally". I think it would be very wrong to expect a constitutional sovereign to take that decision personally, rather than there being a political consensus that a particular course of action was the right one to follow.

To go to the main thrust of the question, the key phrase is that quoted from the Cabinet manual—the outgoing Prime Minister has a duty to advise Her Majesty on the person who is most likely to be able to command a majority in the House of Commons. I do not want to speculate too much, but to me it seems that that decision must weigh up whether



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one individual rather than another has the best chance of forming a majority. For anyone other than the new leader of the biggest party to do that, they would have to provide some pretty compelling evidence that there was a majority—not just a narrow majority—behind them in this House of Commons. There is no guaranteed overall majority for any Prime Minister of any political party without some kind of agreement from other parties in the House.

Q4614 Seema Malhotra: There has been some concern, hasn't there, that assuming there is a new Prime Minister on 24 July who seeks to take the country towards no deal and colleagues may choose to resign their positions and potentially their Whip to take a stand against that, in the period between July and September there may not be a majority in place? What constitutionally do you see happening then? Would there need to be a vote of no confidence to seek to confirm that the Prime Minister has the confidence of the House?

Mr Lidington: The Queen's Government has to be carried on. If the Prime Minister goes to resign on 24 July, the Prime Minister has the obligation to advise Her Majesty about the person most likely to be able to form a majority in the House of Commons. A newly appointed Prime Minister can voluntarily seek parliamentary endorsement. That is a matter for the new appointee. It is, of course, open to the House to invoke the provisions of the Fixed-term Parliaments Act 2011 at any stage that the House, and in particular the Leader of the Opposition, chooses to do that.

Q4615 Seema Malhotra: Could it be conceivable that, if there is a vote of confidence, you could see the Sovereign suggesting to the Leader of the Opposition whether they, for example, may have a coalition that could be built across Parliament?

Mr Lidington: This is taking us into different territory from that we will be in with the change of leadership of the Conservative party coming in the next couple of weeks. If we are looking at a scenario where a no-confidence motion as laid down in the Fixed-term Parliaments Act—that point is important—has been carried, the 14 days provided for in the Act start to run down. If after 14 days the House has not passed a motion in terms specified in the Act to express confidence in Her Majesty's Government, a general election follows.

Of course, what happens in that 14 days is untested—it is like article 50, really. It is a bit of constitutional law that no one has yet tested in practice. But of course you would have an incumbent Prime Minister, who would have the duties under the Cabinet manual as regards advice to the Sovereign. Now, anything I say about this is speculative, but obviously it might be that the Prime Minister at the time would seek to find a way to assemble a majority to be able to present a motion of confidence. It is possible that an incumbent Prime Minister could go to the Palace and say, "I now have to resign, but there is this man or woman whom I now believe is the most likely to be able to command a majority, and I advise you to send for him or her." That I think is about as far as one can go in terms of

speculation, because so much depends on the precise political circumstances.

Q4616 Seema Malhotra: What is your role, as Minister for that Cabinet Office, in that scenario? Also, just to slip in a final question, obviously the timing is interesting. If there was a vote of no confidence, the 14 days ran down, and then there was a general election in those five weeks, we could be in a general election period through 31 October, when we would leave the EU. What do you think would need to happen in that scenario? Would we seek an extension, and would that be done by the Prime Minister?

Mr Lidington: If I may say so, I think Ms Malhotra is vaulting over several fences to talk about my role in such circumstances, but the Cabinet Secretary clearly has an important role in advising the Prime Minister about duties under the Cabinet manual, just as Her Majesty's private secretary has an important role in constitutional affairs. It takes us back to the Chair's question at the start of our session on what is required of an incumbent Prime Minister in the event of a general election being triggered.

Certainly, the convention that has been established hitherto and is reflected in the Cabinet manual is that if a general election is called, whether triggered by the Fixed-term Parliaments Act or because Parliament gets to the end of its term, the Government from that moment goes on to a caretaker basis and does not take any significant decisions that would prejudice the freedom of decision taking by whichever Government the people elect.

Chair: I think Peter Bone had a very quick question in relation to this point.

Q4617 Mr Bone: It is hypothetical, Chairman, but say Boris Johnson was elected by the Conservative party to be its new leader and the Prime Minister was heading to the Palace on that Wednesday, but she was advised that 30 Conservatives are about to resign the whip. Is it possible that on her way to the Palace she will think, "My goodness, he won't control a majority, and there is only one person left who might do that: Mr David Lidington."? Is there any possibility of us having a Prime Minister Lidington?

Mr Lidington: I don't know what bets Mr Bone has placed that he is trying to bring to a happy conclusion for him.

Chair: I think it is a hypothetical question.

Mr Lidington: It is an extraordinarily hypothetical question. I think the best assurance I can give to Mr Bone is that I am not finding my sleep interrupted by those speculations.

Chair: We are all reassured to hear that.

Q4618 Stephen Timms: I also want to ask a question about what might happen



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between now and 31 October. In your judgment, how much scope is there for renegotiating elements of the deal that is on the table at the moment, which the current Prime Minister has negotiated, between now and 31 October?

Mr Lidington: Of course, the European Council decision to grant the extension to 31 October includes a sentence to the effect that both the EU and the United Kingdom agree that the withdrawal agreement cannot be reopened. I have heard nothing since that European Council meeting in any conversation that I have had, either with somebody from another European Government or institution or with those who talk to people around European capitals, to suggest that that position has changed. What I think is the case is that the EU remains open to discussing potential changes to the political declaration. It is conceivable—I do not know whether it will happen in practice—that the EU would be prepared to discuss some kind of further protocol to the agreement, but I cannot guarantee that.

The other thing is that European interlocutors have said to me on many different occasions that, when the new Prime Minister comes, they will give him a hearing. They are very clear about that. They will also want to know not only, "What it is that you, Prime Minister want from us, and is it something we can accept?", but, "Were we to make that step, will that definitely provide an assured majority in the House of Commons?" I don't think the EU27 are going to be prepared to, as they would see it, make further concessions, unless they could be very confident that that would produce a parliamentary majority.

Q4619 **Stephen Timms:** It is my impression that both the contenders for the leadership of the Conservative party are saying that they will change the withdrawal agreement before 31 October. I think you are saying it is clear to you that that cannot happen.

Mr Lidington: There is a legal decision in the form of the European Council decision that does have the legal effect that the withdrawal agreement cannot be reopened. There are protocols, if the political will is there, to go further than that, but there is an impatience, frankly, in the other 27 capitals, about how long this is all taking. We saw that with President Macron's approach to the last European Council. We have seen it in the Taoiseach's public comments in the past few weeks. My view is that, as best I can read it, the other 27 Governments still regret the 2016 referendum outcome, but they know they have decisions to take as a community of 27 member states that they need to get on and take.

I do not think it is guaranteed, whatever stance a new British Prime Minister takes, that the other 27 would unanimously agree to a further extension beyond October this year. They might or they might not, but it only takes one Government, perhaps for domestic political reasons of its own, to say no, and that brings the whole process to a crashing halt. That is why, despite what I have said earlier in this Committee session about what I judge to be the very severe costs of a no-deal exit, I have always been in favour of preparing for no deal as a contingency option, because

this is not a decision that is entirely in the gift of the Government of the United Kingdom.

Q4620 Stephen Timms: You have suggested to us that there might be some renegotiation of the political declaration or perhaps some additional protocol might be negotiated. Do you think one or both of those might be possible before 31 October?

Mr Lidington: You can always negotiate something to take effect after a particular deadline. If there were the political will and political agreement that a further set of changes was satisfactory to both the EU and the UK and would provide a parliamentary majority at Westminster, I could see—it might need a technical extension to take legislation through—how any such changes could be done, with new documents deposited on 1 November, let us say. It is a very short timescale that the new Government will have.

Q4621 Stephen Timms: We have a summer break between now and then. Is that a significant impediment to negotiating anything?

Mr Lidington: It is a problem, because both in member state Governments and in institutions, an awful lot of people will have booked their family holidays for the July-to-August period but, to be honest, if there is a sense that this is serious, I think people will make sacrifices to try to get a deal done.

Q4622 Stephen Timms: How much of a difficulty is it that the new Commissioners will not take up their roles until the day after 31 October? It seems difficult for the outgoing Commission to negotiate a change to the political declaration or a new protocol just a few days before the new Commission takes over.

Mr Lidington: I do not think the Commission is a major obstacle here. The Commission is never dissolved. Of course, the Juncker Commission continues, if necessary in a caretaker capacity until a new President and College have been confirmed by the European Parliament. So even if there were a logjam in Strasbourg and the new Commission were not in place in this calendar year, there would still be people—the Juncker Commission would be in office—able to take decisions. Actually, a new Commission might well welcome inheriting a situation in which the UK problem had been sorted out by their predecessors. They could get on with other things.

The key issue is the European Parliament—that is, the new European Parliament—because its assent, with an overall majority of its entire membership, is necessary under article 50 for any withdrawal agreement to take effect. I would expect that if any talks take place under President Juncker's stewardship of the Commission, he will probably have lines open to Ursula von der Leyen, and he will also be wanting to keep in very close contact with the main group leaders and committee chairs in the European Parliament, because making sure that they are on board will be essential.

Q4623 Stephen Timms: All that considered, how likely is it that there will be a



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proposition for a deal on the table by 31 October that is any different from what is there at the moment?

Mr Lidington: My own view is that if a deal is to be done, a lot of it will resemble the deal that is on the table. The key question is whether changes can be negotiated in a way that both sides are willing to accept, that the European Parliament is prepared to endorse and that will command a safe majority at Westminster. That will be the test for the new PM.

Q4624 **Richard Graham:** Minister, welcome. On that point, it is a good moment to pick up on what happened before the third time that the withdrawal agreement Bill was presented to Parliament, because there were of course changes made to the withdrawal agreement in the shape of the additional protocol, which dealt with the backstop issue. At that time, many of us here voted for it, on the basis that the additional reassurances given on the method of arbitration to leave the customs union if we wished to were adequate. Was your sense, after the vote, that the arrangements were not adequate, that they were inadequately sold, particularly to the DUP, or that Europe could have done more to give us reassurance that we could unilaterally get out of it if possible?

Mr Lidington: My sense was slightly different. My sense was that those Members of Parliament who voted against the deal the third time around were making a mistake of judgment about national interest, because it seemed to me, first of all, that much of the argument was not about the terms of the withdrawal agreement but about the terms of the future relationship, which was something still to be settled in negotiation and parliamentary debates in the years to come. Secondly many of the issues—for example, confirmatory vote, which motivated some people to vote down the withdrawal agreement the third time around—would have come up in any case during the passage of legislation on a withdrawal implementation Bill. I felt that the opponents of the deal—of the resolution that the Government put down—had made the wrong judgment. Historians will look back and judge who made the right call or the wrong call in the negotiations at some stage in the past three years. I think that—

Q4625 **Richard Graham:** May I interrupt, Minister? Specifically, some people were strongly put off by the last line of the Attorney General's letter, which in effect said that nothing had changed legally. That was surely a consideration, particularly for the DUP Members.

Mr Lidington: I think that was. Of course, earlier in the attorney's letter, he had said that the balance of legal risk was—I think this was the phrase—"significantly altered" for the better. It was partly a matter of what people wanted to read into the attorney's letter. I go back to what I said earlier about the backstop. If you go around talking to Ministers in France, Germany or the Netherlands, they will say, "This is mad. You are getting, O United Kingdom, tariff-free, quota-free, rules-of-origin-free access to our single market. You're not accepting freedom of movement, and you're not paying into the budget. You are not accepting all the level playing field obligations that member states have to accept. Barnier has



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sold us short. If you think that we actually want this backstop, or if it comes into last for any length of time, you must be mad." One of the remarkable features of the outcome of the negotiation is that the views of the backstop in the United Kingdom and the European Union are completely different.

Q4626 Richard Graham: But none the less, that is the area—in terms of the additional protocol—where there could be wiggle room for a future leader to exploit.

Mr Lidington: It could be, but I do not want to rouse false hopes in the Committee. I would hope that something could be looked at again, because no deal would be bad for everybody, particularly for the UK and Ireland. But you come back to the point that Taskforce 50 returned to again and again in the negotiations: it is not just about north/south on the island of Ireland, but about an external border of the single market of the European Union. TF50 were asking questions: "How can you ensure that there won't be American, Turkish or Indian manufactures or foodstuffs imported into Northern Ireland? It then comes anywhere in our single market." It is suddenly a highway for large-scale smuggling.

Q4627 Richard Graham: Of course, there has been talk from one of the candidates for the Conservative leadership that after a no-deal exit from the European Union, GATT 24 could be agreed between the UK and the EU. How realistic is that?

Mr Lidington: I think it is a complete misreading of article 24. Mr Azevêdo, the secretary general of the WTO, said as much earlier this week. Article 24 is not about interim arrangements; it is about all customs union or free trade agreements between a WTO member and another country or group of countries.

Q4628 Richard Graham: How realistic might it be in a no-deal exit for the citizens' rights elements of the withdrawal agreement Bill to be separated out from the financial obligations in Northern Ireland, in order to ensure that the lives of the 3 million here and the 1.2 million there will not be too disrupted?

Mr Lidington: Legally, you could do it, as long as you did it while the United Kingdom was still a member state of the European Union. You cannot so readily do it after exit, because if we exit without the transitional arrangements, the legal position is that it becomes a member state, rather than an EU, competence to negotiate citizens' rights agreements with third countries. It becomes much more difficult if we leave without a deal and then try to sort out citizens' rights. Politically, I don't see that it really gains anything to try to separate these things, because the EU will not agree to even start free trade agreement negotiations for the longer term unless all three of those critical issues—citizens' rights, financial settlement and the Irish border—have been satisfactorily resolved.

Q4629 Richard Graham: You said earlier that, from an EU perspective, it would be incredibly important for them to know that, if they were to make any



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additional concessions, a new leader could take the legislation successfully through Parliament. How important in that process will be the views of the 26 Labour MPs who wrote to their leader expressing concern about the Labour party's change of policy on leaving the European Union?

Mr Lidington: It would be important but, as far as I can tell, I think EU Governments will be looking for more than letters. They will be looking for evidence that people will vote in a way that commands a majority in the House.

Q4630 **Richard Graham:** In the event of no deal, was what you were saying earlier effectively indicating that there would have to be home rule on day one in Northern Ireland?

Mr Lidington: Direct rule? Yes. If you talk to the chief constable of the PSNI about the potential risks to public order, and you are looking at a situation in which there would be no devolved Justice Minister to take decisions—even if you are looking at possible problems over transport across the border, but there is no devolved Transport Minister in place—you have to have somebody, and in my view somebody who is democratically accountable, who has the authority to take those decisions from day one.

Q4631 **Richard Graham:** In the event of direct rule, how serious would be the likelihood of violence of some sort and possibly physical harm?

Mr Lidington: I think the recently retired chief constable of the PSNI, Sir George Hamilton, has said publicly that he is very concerned about the risks of public disorder. There is no doubt in my mind that both dissident Republican terrorists and organised crime would look for ways to exploit the situation to their own advantage. I don't want to exaggerate the threats, because organisations such as the dissident Republicans will look for ways to cause havoc in whatever circumstances, but they would latch on to this as one way of doing that. I certainly think the risk of public disorder would be greater and that was certainly the view of the PSNI when I talked to them about this.

Richard Graham: Lastly, Chair, if I may very briefly—

Chair: Very briefly.

Q4632 **Richard Graham:** In terms of what might happen on 31 October, one leadership candidate has said, "We will leave on 31 October at the latest," and the other has allowed for some wiggle room if there was the possibility of a deal on the table and time needed for the legislation and so on. Is your understanding clear that the EU would extend the current expiry date if there were clear reasons to extend it in order to allow for legislation to be passed?

Mr Lidington: That is my reading of the public statements that have been made so far. As I said earlier, I think there is greater reluctance now than a year or six months ago to go for an extension, particularly if it is just to give more thinking or debating time, but if it was for a particular purpose



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then I think the case is one that they would accept. Certainly, from the EU point of view, they have said publicly that they would be prepared to consider a further extension, either if there were an agreement in sight and you needed some extra weeks technically to get relevant agreements and legislation through, or if there were a democratic event of some kind in the UK. This is not a secret; they have said it publicly.

Chair: Unfortunately, we have run out of time, but on behalf of the Committee, can I thank you very much indeed for coming today and for giving evidence? It has been extremely informative and interesting and may well figure in some of our subsequent reports.

Examination of witness

Witness: Sir Keir Starmer MP.

Q4633 **Chair:** Sir Keir, you are of course the shadow Secretary of State for Exiting the European Union. Can I thank you too for agreeing to come and appear before the Committee this afternoon? We really do appreciate it.

Keir Starmer: Not at all.

Chair: As you can guess from the previous session, we have a lot of questions to ask and a lot of ground to cover. I will begin with the first question I put to David Lidington. During the course of the cross-party talks, did you feel that the Government had moved on any of its red lines?

Keir Starmer: I think both we and the Government were exploring our positions and seeing whether we could bridge gaps between us. Actually, what we didn't do, on both sides, was set out our red lines at the beginning of the process, because we didn't think that it was particularly helpful for each side to say, "These are our red lines, these are your red lines", because we didn't think we'd get anywhere, so we explored the issues to see whether we could bridge in any of the areas.

The areas, broadly speaking, were, "Was there anything on the substance we could agree?". That was things like the single market, customs union, workplace rights, etc. Then, there was the lock. That probably took more time than everything else, which was the fact that, by the time the talks started, the Prime Minister had indicated she was stepping down. Therefore, a central concern of ours was whether, even if we were somehow to reach an agreement with David Lidington and his team, it would be able to survive more than a few weeks.

We were particularly concerned about that because, during the talks and while we were in the room talking, members of the Cabinet and/or those who were later to throw the hat in the ring to be leader were generally making statements about how they wouldn't respect the outcome of the process, so it became a real issue.



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The other issue that I was very focused on from the start was deliverability, which was, "Would there be the numbers to actually carry this through?" That was because I took the view that, unless we could build a sustainable majority that would stick with an agreement and be in place, not only to vote a deal through, subject to a lock and subject to issues such as a second referendum, but for the legislation that had to follow from that.

Because we were invited into talks so late, which was a big mistake in my view, there were difficult issues. For example, it was assumed that the withdrawal agreement could not be reopened, and there were issues in the withdrawal agreement that we therefore had to find workarounds for.

Also, there was a big discussion about changing the political declaration. At one point, we were discussing with the Government changes to the political declaration, the terms of the implementing legislation, the terms of the Agriculture Bill, the terms of the Environment Bill and the terms of a Workers' Rights Bill, because all the issues between us came up in all of those Bills.

The question of a sustainable majority was not, "Can you get something over a line on one evening in the House of Commons?" It was essentially, "Could you get a working and sustainable majority that would carry through a whole series of pieces of legislation if this is to work?" That was the basis on which we were exploring how far we could go.

Q4634 Chair: On the question of the customs union—you will have heard what David Lidington said in answer to my question—did you feel that the offer of some kind of arrangement up to the next general election really constituted something, given that, if the transition were to run its full term, we would be in one anyway for another eight months?

Keir Starmer: No, I didn't think that was a substantive offer and I thought it was problematic. It wasn't a substantive offer because I think that, if there is a transition period, we will be in transition until the next election in any event. Therefore, simply saying that there will be a customs arrangement until the next general election was really to say, "Well, the transition can extend to the next general election".

However, there were two other problems, which we explored and which were real, because what the Government wanted was to say that during the period up to the general election they would negotiate their preferred position, so that the temporary arrangement would be a holding position, but they would use the months or years to the general election to negotiate with the EU their preferred position, which was outside a customs union with an independent trade policy.

That was fine and understandable from their point of view, but from the Labour party point of view to win an election and go to the EU and say, "Can you forget the three years of negotiation you have just done, and the agreement you have just almost reached, and start again?", seemed to us problematic.



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The other problem was that, assuming for a moment that there wasn't a transition period and that this was going to be part of an agreement, it introduced the suggestion, which we discussed, that you would have a transition; you would then go to an agreement that had an unresolved element, namely the customs union; and the idea then of a further agreement, some way further down the line. You sort of had transition and then an interim agreement of some sort where most things were agreed with the EU, but not the customs arrangement. I couldn't really see how that would work, where you said "We're still parking the customs arrangement and will come back to that in a few years for a further agreement down the line." I didn't think that would work in practice. One of the main issues between us was that I was very clear that we needed to see changes to the political declaration before we could sign anything off. In other words, we couldn't agree simply that Government would use its best endeavours to seek changes. We need to know. I wanted to know the answer to the question whether the EU would actually agree to this sort of interim agreement that wasn't really the final agreement that would come some time after the general election. That became a central issue. In the end, that is why it wasn't really, either, a substantive offer—it was no different to transition. It wasn't really practical or workable, and had never been explored with the EU in any event. Therefore it didn't really survive much scrutiny.

Q4635 Chair: Clearly, the people with whom you were negotiating, given what you have said a moment ago, could not have offered you any guarantee or assurance that whatever you did negotiate and maybe reach agreement on would be proof against being changed by an incoming Prime Minister.

Keir Starmer: No, they couldn't. At the minimum, we needed changes to the political declaration—real changes. We were not saying that we would try and get changes, but that we needed real changes. In the early weeks one of the sticking points in the talks was whether the Government were actually prepared to even seek changes to the political declaration. There was an exchange between myself and David, and David said "We are prepared to seek changes to the political declaration," but it was only in weeks three or four that the Government actually instructed Olly Robbins to contact the EU to see whether it would be open to changes and ask the question how long would that take. So we were well into the six weeks before the Government actually reached out to Brussels to say "Is there a possibility of changes?"

When they did so they were given an answer that reasonably simple changes would take four to six weeks, and more complicated changes would take longer than that. That presented the Government with a central problem, which was it became obvious that they couldn't get any changes to the political declaration in time to start the implementing legislation. Hence we went to this odd situation of moving to the implementing legislation for a Bill which hadn't been agreed—so this idea of implementing a deal notwithstanding we didn't know what the deal

actually had in it. I thought that was putting the cart before the horse and a fundamental problem.

Q4636 **Chair:** Did you get an impression during the negotiations that the Government appreciated the economic impact on the UK of no deal, which we have been taking further evidence on in the last four weeks?

Keir Starmer: Yes. We had different Ministers around the table, so they took different takes on this. I was dealing mainly with David Lidington and I think he had a very good understanding of what the impact of no deal was, and was doing everything in the talks to try to avoid that outcome; but we did get to the stage, as I say, where in the end the suggestion was to start the implementing legislation without the deal. Among the problems with that is that you can bet your bottom dollar that any amendments to the Bill, absent knowledge of what the deal is, are not going to work, because the deal comes along at the end of the exercise, you realise you have pressed the wrong amendments and you would have put a different series of amendments had you known what the deal was. More substantially—I said this to David—I didn't want to start a Bill that would take weeks of the extension without knowing that the deal at the end was going to be acceptable, because if the deal wasn't acceptable it would crash the whole process and we would have wasted months and used up all the available time.

Q4637 **Chair:** Again, a one-word answer: do you think it would be acceptable to prorogue Parliament to stop Parliament expressing its view about a possible no-deal Brexit in October?

Keir Starmer: Completely unacceptable and I hope it would be challenged if it was done.

Q4638 **Chair:** Okay, and is it your view that if the House of Commons were to vote once again to say "We don't accept a no-deal Brexit" that any Prime Minister should respect that?

Keir Starmer: I think the Prime Minister should respect that, yes.

Q4639 **Chair:** If no deal were to happen and we entered this period of shock and uncertainty, as we heard from David Lidington a moment ago, unless that were to continue indefinitely, at some point it is reasonable to assume that one side would pick up the phone to the other and say "How are we going to sort out the difficulties that we are in?" Where do you think the UK might end up, in the form of some temporary holding pattern, while some kind of future relationship was negotiated to sort out the difficulty that had been created?

Keir Starmer: I have always had a difficulty with the argument that you could leave without a deal and, once outside, negotiate a deal that is better than the deal you could have negotiated while you were on the inside. Unless we are contemplating leaving without a deal and never having an arrangement with the EU ever again, I am assuming that there are therefore talks at some stage, after we have left without a deal, and the EU's position, I am pretty sure, would be "Well, you had better settle your debts, you had better sort out the position for EU citizens, and we will



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need assurances about the Irish border, and then we can talk to you about a deal”, so you are in precisely the same position but have left the EU and are in a weaker bargaining position. I have never understood the logic of saying you leave without a deal in order to get a better deal. It seems to me you leave without a deal, get complete chaos, and end up with an inferior deal if you get anything at all.

Q4640 Chair: Specifically on the point of where we might sit temporarily, assuming there was a will to sort it out, can you see what kind of arrangement that would be given that, in the absence of that, we are third country with all of the consequences that flow from a no-deal Brexit?

Keir Starmer: I don’t know, but I can’t at the moment see how the EU would insist on less in relation to a third party than they are insisting on for a departing friendly member, but I would also just add this. The Government, as you know, last summer published technical notices on what would be needed for no deal. There is obviously work going on in the Cabinet about how prepared they are for no deal. The technical notices indicate that there are various bits of legislation that need to be passed if no deal is to be done without complete chaos, and that a number of international agreements need to be changed if we are not to leave without total chaos. The last report, as I understand it, to the Cabinet said we are behind schedule. Even when we get to no deal, there are two types of no deal. One is a no deal after you have completed all the necessary steps in so far as the Government has set them out, which is not going to happen by 31 October, or you leave with no deal knowing you haven’t even completed the bare minimum that the Government itself says is necessary for a no deal—there is chaotic and there is very chaotic.

Q4641 Chair: Do I take it, finally, from what you have just said, that in order to try and bring to an end the uncertainty and the shock that we heard about earlier, your judgment is that the UK would have to accept the obligations of the withdrawal agreement even though it had left without a deal on 31 October for the purpose of avoiding having to accept them?

Keir Starmer: Yes. I can’t see why the EU would say, “Well, now you have left without a deal, you don’t have to pay what we think are your financial dues. Now you have left without a deal you don’t have to make arrangements for EU citizens. Now you have left, we don’t have to make an arrangement for Northern Ireland.” I can’t see the circumstances in which they would say that, or why they would do it.

Q4642 Stephen Kinnock: You have said many times, and I think many of us around this table share the view, that crashing out of the European Union on 31—

Mr Bone: Not everyone.

Stephen Kinnock: No, I said many. Sorry, I have lost my train now.

Mr Bone: You were talking about “crashing out”, which isn’t going to happen.



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Stephen Kinnock: You keep interrupting. It is quite hard to keep a train of thought when you keep heckling from the sideline.

Chair: We don't engage in heckling of questioners.

Mr Bone: When you say things that are—

Chair: Peter.

Mr Bone: It is outrageous. That is not a term you should use in a Select Committee. You shouldn't say "crashing out" in a Select Committee. You know that, Chairman.

Stephen Kinnock: I would argue that it is a very well established term to describe leaving without a deal.

Chair: Just to draw this little exchange to a close—apologies to the witness—Members are entitled to put the questions they want in the terms in which they want. If we were all to interject because we object to the terms in which the question is put, our sessions would be even longer than they are already. I suggest we allow each Member to ask their question and respect their ability to do so. The floor is with Stephen Kinnock now.

Stephen Kinnock: Thank you, Chair. The implications for our economy and national security and the Good Friday agreement would be very concerning. Do you agree that we are now much closer to that scenario than we have ever been?

Keir Starmer: No. For some time there has been a majority in Parliament against no deal. Parliament has spoken on a number of occasions, and it drove the initiative in March and April not only to seize the Order Paper but to pass primary legislation requiring the Prime Minister to extend article 50, which was a very effective way of preventing no deal. In the end, by the time the legislation was passed, the Prime Minister had already decided to extend article 50, so it did not have the effect that it might otherwise have had. Otherwise, it would have been an effective instrument to stop the Prime Minister from doing so.

My sense is that that majority is still there, and I hope that some of those currently in the Cabinet who may not be in the Cabinet in two weeks will join those who want to take action to prevent no deal. I think the numbers may change in the next couple of weeks.

Q4643 **Stephen Kinnock:** But, on the other hand, the future of the Government is now in the hands of 160,000 Conservative party members, the majority of whom appear to embrace the idea of leaving without a deal. The candidate who looks highly likely to win has said that we will leave on 31 October come hell or high water. The legal default position under the terms of article 50 is that if there is no alternative on the table, we leave without a deal. Do you not feel that is stacking up towards massively increasing the likelihood of leaving without a deal on 31 October?



Keir Starmer: It certainly increases the risk. The legal default has been the same since article 50 was triggered—that has not changed. It was the legal default on 29 March and it will be on 31 October. That is neutral to who the Prime Minister is. The current Prime Minister for many months said, “It’s my deal or no deal; if you don’t vote through my deal, we will crash out without a deal.” That was the way she put it. I accept that an incoming Prime Minister might ramp that up. That is where the political fight is with Parliament, where the numbers are on preventing no deal. The risk has gone up.

Q4644 **Stephen Kinnock:** Yes, the risk has gone up. Looking at the sequencing of events between the collapse of the cross-party talks and the publication of the withdrawal agreement Bill, was there anything in that Bill that had not been discussed in the cross-party talks?

Keir Starmer: I don’t think the Bill was ever published. I think what the Prime Minister did was to indicate some of the features that might be in the Bill.

Stephen Kinnock: Yes, there was a list of 10 points.

Keir Starmer: There was. I think I am right in saying it was never published. One of the issues that we had to grapple with in the talks was that we sometimes tried to explore a position—let’s say on customs—in ordinary language, and would ask the Government to look at what that would look like in a Bill. Suddenly, what you thought you had been exploring did not quite match up with what is in the Bill. I am not being critical of anyone—there is just often a gap between what people say they were trying to achieve and what is written in a Bill.

I do not think the Bill was there. Some of the things that were discussed were identified by the Prime Minister when she unveiled what she said was going to be in the Bill. What happened next vindicated one of my central concerns. On 14 March, a couple of weeks before we started the cross-party talks, the Prime Minister had a vote on the extension of article 50.

On her own side, only 112 MPs had followed her whip, and 188 had broken it. Throughout the talks, one of my central concerns on which I kept challenging the other side—a friendly challenge not an aggressive one—was whether they had the numbers on their side to carry this off. I was really worried that they never really had the numbers. The Prime Minister announced some of the features of the implementing legislation at the beginning of the week. By the Friday she had been forced to say she was leaving as Prime Minister. If ever there was evidence that our judgment call that she couldn’t in fact deliver was right, that was it.

That is not critical of her—they are just the numbers. That was that, because she showcased some of what we had been discussing and not all of it, and her own party decided that that was enough for them to require her to leave as Prime Minister. I have no doubt that the same would have happened if we had been standing alongside her. That deliverability was a massive problem. I always had in my mind the fact that 188 of her own



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side defied a three-line Whip on a simple extension, which was not particularly controversial and a lot less controversial than some of the positions in the implementing legislation, and I couldn't see how the numbers were ever going to stack up.

Q4645 **Stephen Kinnock:** This is a hypothetical question. If, for example, the second referendum option and the revoke option were not on the table and you had to choose between what was announced—you are right that it was not published—and what was presented by the Government as the key features of a withdrawal agreement Bill and crashing out without a deal, presumably you would choose the WAB over leaving the EU without a deal.

Keir Starmer: Well, obviously that is not the circumstance. There are other options and therefore that has never been a choice we have been presented with. Yes, of course leaving with a deal is better than leaving without a deal, but one has to be careful how far you take that, because the current Prime Minister's approach was obviously not to bring Parliament into the process during any point of the negotiations. Even the call to us to have cross-party talks was after 29 March. It wasn't eleventh hour; it was after midnight. Therefore, there was no consensus about what a deal might look like and no attempt to build that majority. If the simple proposition is that leaving with any deal is better than leaving with no deal, that would require all of us to sign up to any deal even if it is a Canada-minus-minus-minus, because it had the word deal written at the top of it. In other words, it takes the whole critical role of MPs out of it altogether, because you are simply saying, "As long as you have got something that has deal written at the top and it is signed by the 27 and us, we will have to vote for it in the end." It seems to me that that removed any effective scrutiny or challenge in Parliament.

Q4646 **Stephen Kinnock:** Some have characterised the decision not to back the withdrawal agreement Bill as allowing the perfect to be the enemy of the good. Would you agree with that characterisation?

Keir Starmer: The political reality is that the implementing Bill fell because, within days of announcing it, the Prime Minister was taken out.

Q4647 **Stephen Kinnock:** Do you think the timing was problematic, because of course it was done just a few days before the European Parliament elections? Perhaps all parties were at their most partisan at that time.

Keir Starmer: Possibly, but the idea that the Prime Minister would bring just a few votes to the table and the Labour party would provide the bulk of the votes, and that that would be a happy arrangement that would leave in her post, is not realistic. In other words, the first test of the implementation legislation was, "Have you got your own side on board? If so, what then can the Labour party add?" And the Prime Minister did not have her own side on board, because she announced some of what we had been discussing and the reaction of her own party was to say, "We no longer want you as our Prime Minister." Therefore, she hadn't got over the first hurdle of ensuring that she had enough of her own banks to begin a meaningful discussion with us about the passage of the Bill. We said we



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wouldn't support it but, frankly, whatever we said, her own side had already formed a judgment on that pretty swiftly, and within a week she had resigned as Prime Minister.

Q4648 **Stephen Kinnock:** I have one final question. I asked Mr Lidington earlier if he would be comfortable sharing the documents with the Committee that were provided by the Government to the Labour side and I just wondered if we could ask the same question in relation to documents provided to the Government in response to their proposals by our side.

Keir Starmer: I heard what David said and I think the sensible thing is for David and I to talk about it. I would obviously need to check on my side as to what our approach would be, he obviously wants to check with the other Ministers, and we need to refresh and remind ourselves what the documents are. That seems a sensible course of action.

Stephen Kinnock: Many thanks.

Q4649 **Sir Christopher Chope:** Did you vote to trigger article 50?

Keir Starmer: Yes.

Q4650 **Sir Christopher Chope:** And did you vote to extend article 50 to 31 October?

Keir Starmer: Yes.

Q4651 **Sir Christopher Chope:** And do you recognise that, under article 50, there are two ways of leaving the European Union: either with a deal or without a deal? There is no third way of leaving the European Union.

Keir Starmer: Yes.

Q4652 **Sir Christopher Chope:** As a lawyer yourself, you must have been involved in negotiations in and outside court in which you and your clients must have made the threat that, if a deal is not done, you will walk away. Do you recall that from your practice as a member of the Bar?

Keir Starmer: Well, walk away or not walk away. Normally it would be go into court and fight. But yes, I get the point.

Q4653 **Sir Christopher Chope:** You seem to be suggesting now that the United Kingdom should concede to the European Union that in no circumstances would they walk away from a deal. Therefore, the United Kingdom must accept a deal. In so doing, you are effectively giving the European Union a veto over the contents of that deal by refusing to contemplate walking away.

Keir Starmer: No, I think that no-deal would be an act of economic and national self-harm that far outweighs the tactics in the negotiating exercise. If you are going to make a threat in negotiations, it has got to be credible. In my negotiations in and around court proceedings, if you made a threat which both sides knew you would never carry out, it didn't really have much force.

Q4654 **Sir Christopher Chope:** That is the point, isn't it? Because Her Majesty's



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official Opposition is trying to undermine the credibility of walking away without a deal, that is giving credence to the European Union, so they think they can impose terms on us as though we are the vanquished following a conflict rather than wanting to be able to exercise our freedom. This is not imposing terms like the treaty of Versailles on the vanquished. This is a free country wanting to exercise its right to change its arrangements with the European Union.

Keir Starmer: The way I saw it was this: under article 50, if you have not reached an agreement by the deadline, you are pushed over a cliff. To threaten to jump early did not seem to me to be a particularly credible threat.

Q4655 **Sir Christopher Chope:** So when you voted to trigger article 50, you recognised that, to put it in your terms, if you didn't get a deal before 29 March, you would be pushed over a cliff. You recognised that as a clear possibility? That was the implication of supporting article 50, wasn't it?

Keir Starmer: What the Labour party said very clearly at the time, and in our manifesto in 2017, was that under no circumstances would we accept no deal. We have always maintained the position that leaving without a deal is not a viable option as far as the Labour party is concerned.

Q4656 **Sir Christopher Chope:** But as far as the British people are concerned, leaving without a deal is far more popular than leaving with the Prime Minister's deal. You accept that?

Keir Starmer: No. But let us just explore what we mean by no deal, because I think we talk about slightly different things. If we are literally leaving without any agreement at all between ourselves and the European Union, we are rupturing our trading arrangements overnight: both the customs union and the single market. I have talked to businesses across the United Kingdom and all of them have said to me that that would be extremely damaging for them.

We would also not have any arrangements on anything else. I was the UK representative in Eurojust when I was Director of Public Prosecutions. That is a European agency that we could crash out of with no deal. It is an agency where we share high-grade intelligence on very serious criminality—normally terrorism and human trafficking. That is going on 24/7. We trap the criminal activity and agree jointly when we will intervene and arrest, and then how we will prosecute those cases. That is a small example, but if we were to leave without a deal we would come out of those arrangements. *[Interruption.]* Just bear me out.

There are some areas where you could say we could probably live without a deal for a short period of time but, in my experience, dealing with very serious terrorism cases, any gap in the coverage is a huge risk, and I would never take that risk with our country.

Q4657 **Sir Christopher Chope:** I think you are right to refuse to equate leaving without a deal with leaving without a withdrawal agreement. When I talk about leaving without a deal, I am talking about leaving without a



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withdrawal agreement. We can leave without a withdrawal agreement but with other deals to cover the sorts of situations that you have described. That is well documented and seems to be part of the agenda that the prospective Prime Ministers are thinking about.

Keir Starmer: The problem is that that is not well documented and is not possible. If you leave without a withdrawal agreement, you have got no agreement. If we want side agreements, we had better get on with negotiating, because we have not got any at the moment and 31 October is not very far away. There are no side agreements. If we go without a withdrawal agreement, we have no agreement with the EU on anything covering trade, aviation, climate change or security and counter-terrorism. As I spent five years working on security and counter-terrorism and I know the intelligence and prosecutions that are being worked on, I think that leaving without any deal would be extremely bad for our country and make our citizens very unsafe. The idea of leaving without a deal but with deals on the side—

Q4658 **Sir Christopher Chope:** So you are pleading with the Government to start working on some side deals, which I agree with. I agree with you—that is a very sensible way forward.

Keir Starmer: I am trying to explore what you mean. When I say, “No deal would be very dangerous for the following reasons,” you say to me, “Well, no deal is not really no deal, because there will be deals on the side.” My point is that there aren’t any; there are no negotiated deals on the side. There is not a security and counter-terrorism deal on the side. If you pull out of the arrangements, you have pulled out of the arrangements and there is nothing in place. That is a very dangerous place to be.

If any Prime Minister or Home Secretary allows that to happen and then there is a terrorist incident that could have been prevented, the public will never forgive them. The idea that the public would applaud this—I am sure that you have been to Eurojust, but if you have not, go and have a look at the types of cases that it is working on. I have seen them at first hand and been involved in them, and there are very serious terrorist gangs, operating usually in three, four or five countries, and they are sometimes advanced in their planning. If there were an attack during the period in which we were out without a deal, no Prime Minister would survive that—nor should they.

Q4659 **Sir Christopher Chope:** Leaving aside your hysterical fearmongering, if the Government accept that the current withdrawal agreement is not a goer—it is never going to get through a Parliament—then your advice to the Government is to start working on these side deals to cover the sort of scenario that you have been talking about. Is that a way of summarising what you are saying?

Keir Starmer: No. Your response to my saying that leaving without a deal would leave huge gaps is that the proposal is that there are all sorts of side deals. In response to that, I am saying that those side deals have not been negotiated, the discussions have not been had, and neither the

UK nor the EU have even explored them. In the time available between now and 31 October, I think that it is extremely unlikely that they are going to be place, ratified and up and running.

Q4660 **Sir Christopher Chope:** But you would like work to start so that during the next three months work can be done on that?

Keir Starmer: No, I would like us to take no deal off the table so that we do not have to waste our time on something that will be very damaging for our country.

Q4661 **Sir Christopher Chope:** So you would like to take no deal off the table and basically give a veto to the European Union on the terms of the withdrawal agreement. I can understand your point of view, but I disagree with it. Let me ask you this: what do you think the implications will be for the British constitution if Parliament refuses to deliver the referendum result for which the people voted, to leave the European Union? They did not vote to leave the European Union with a deal; they voted to leave the European Union. We have already delayed that. If we go beyond 31 October, will that not be a constitutional crisis of immense proportions?

Keir Starmer: Unfortunately, during the referendum campaign, lots of things were said that should not have been said. The proposal that a vote to leave was a vote to leave with no deal was not one that was put on the table. Lots of things were said, such as you can leave and get £350 million for the NHS, which I do not believe to be true; you can leave, and the EU are so dependent on us for trade that they will give us any terms we ask for; we can leave, and we will get better trade agreements around the world with many countries that will treat us as a preferred customer. In my view, none of that will come to fruition, but I do not think you can say that people voted leave in order to get no deal.

Q4662 **Sir Christopher Chope:** They were hoping for a deal, but they recognised that if the only deal on offer from the EU was a “bad deal”—to use the Prime Minister’s words from Lancaster House—leaving without a deal under the terms of article 50 would be far preferable and the only way of meeting the commitment of the referendum.

Keir Starmer: One of things I have tried to do since I have been in this role is get around the United Kingdom and go particularly to areas that voted to leave, to have discussions with communities, groups, businesses and so forth to ensure that I am as informed as I can be. My strong impression from those discussions, which have involved many thousands of people, is that the idea that all remain voters voted as a sort of groupthink for something, and that all leave voters voted as a sort of groupthink for something else, is completely wrong. People who have spoken to me and voted leave say they voted for all sorts of different reasons, with different strengths of feeling. I respect the fact that they did that, but the idea that we can badge millions of voters and say they all voted for X is not borne out by any of my experiences going around the United Kingdom, which I do every week. As I say, I go particularly to leave



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areas, because I think it is very important that I do so. I simply have not come up against this groupthink block vote.

Q4663 Sir Christopher Chope: Can I just ask you this? You have described the traditional parties. What about the Brexit party? It has got immense support across the country, which is coming from people who are in the category that I have been describing. They voted to leave the European Union and want us to leave no later than 31 October—preferably with an agreement, but if we cannot get a decent agreement, we must leave in any event. Do you respect that enormous group of people in this country? Would you accept that if you do not respect them, you will be betraying their interests and creating a constitutional crisis?

Keir Starmer: Of course I respect them. Throughout my period in my post, I have tried to respect all sides of the argument—people who voted both ways, and very many MPs who have strong and different views on Brexit. Of course I tried to respect that, but at the end of the day we have a duty to act in the national interest and take a judgment call as a Parliament on what is in the national interest. In my view, it would be contrary to the national interest to leave without a deal, for the reasons I have set out. I think that is the view shared by the majority in Parliament.

Q4664 Peter Grant: Can I follow up on that point? First of all, Sir Keir, thank you for coming in to speak to us today. The only time the Brexit party stood in elections, it got 6 million votes; 17 million people voted to leave the European Union. Do you have any idea where the other 11 million leave voters have gone and why they did not vote for the only party that was promoting a no-deal Brexit?

Keir Starmer: No, but the turnout was obviously low in the EU elections.

Q4665 Peter Grant: But it is the case, isn't it, that people were not given the chance in the referendum to vote for a no-deal Brexit? They were given a chance to vote for a Brexit. In the European elections, they were given a chance to vote for a party that campaigned unequivocally for a no-deal Brexit. Well over half—in fact, almost two thirds—of leave voters did not take the chance to vote for a no-deal Brexit when it was put in front of them.

Keir Starmer: I agree with that. What was on offer to leave voters varied according to who was speaking. What was proposed was not no deal; what was proposed was a deal. Claims were made that we could have the single market, the customs union and the rest, to boot.

Q4666 Peter Grant: In answer to Stephen's question earlier, you confirmed that once the legislation triggering article 50 was passed, no deal effectively became the default unless something else happened. Given that you voted for the Second Reading and then voted for the Third Reading—by which point we knew there would be no strings, conditions or anything else attached to it—what did you think would happen between your vote helping to trigger article 50 unconditionally and the date of leaving the European Union? What did you think would happen to prevent a no-deal Brexit from taking place?



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Keir Starmer: That Parliament would do what it could to seize control of the agenda. That is why I worked up the idea of a meaningful vote. The phrase “meaningful vote” started with me. I talked to other people about it and I worked with colleagues across the Chamber on it, including agreeing how amendments would be put, in order to secure a meaningful vote and therefore a real foothold for Parliament to be able to evaluate what came back and say no if the deal was not good enough. What I wanted to put in place was a check or safety valve, and we did that. Dominic Grieve obviously pushed the amendment back in December 2017, and we got the meaningful vote enshrined in legislation.

Q4667 **Peter Grant:** But at the time that you voted unconditionally to trigger article 50, the Prime Minister had an overall majority of MPs. Was it not at best a bit optimistic—possibly even almost reckless—to trust either to a majority Conservative Government or to parliamentary procedures that had seldom, and in some cases never, been put to the test before, to protect us from what you are now saying—I agree with you—would be the worst possible kind of Brexit? Did you at any time wonder whether you made a huge mistake by voting for article 50 when you did?

Keir Starmer: I do not see it that way. The fact of the matter is that we did win the right to a meaningful vote; we got that enshrined in legislation and it gives us not only the meaningful vote but the ability to take further measures, as you saw in March and April, consequent on the vote going down. I think that collectively—the Labour party played its part, but so did other parties and MPs—we put a very effective lock into the system. But for that, the Prime Minister was proposing simply to come and announce the deal that she had made. Because of that initiative, we have the ability to stop that. That is where we are, and I think that is a good place to be.

Q4668 **Peter Grant:** Is it the case that, as of today, we have about 20 to 25 parliamentary sitting days left and, if the new Prime Minister decides to go for no deal, constitutionally there is nothing we can do without the support of members of the Conservative party? That is the case, isn't it? We have to rely on support across the House, including those who were elected on a manifesto of supporting Brexit, to prevent a no-deal Brexit.

Keir Starmer: Yes. That is how we won the meaningful vote; that is how we have won any of the votes we have won in the past three years.

Q4669 **Peter Grant:** How meaningful was the meaningful vote, if we won the meaningful vote and are still heading for a no-deal Brexit at the end of October?

Keir Starmer: It is pretty meaningful, because but for that, we would have left. Three times the deal was voted down, so if the test of effectiveness is whether it stopped a deal that should not have gone through, then it scores pretty highly.

Q4670 **Peter Grant:** Is it the intention of the official Opposition—I am not asking you to give away secrets about how you might achieve it—that there will be a Labour Government in the United Kingdom before 31 October?

Keir Starmer: We want a Labour Government as soon as possible.

Q4671 **Peter Grant:** Do you have your own version of the withdrawal agreement and political declaration ready to take to Europe in the event that you become the Government?

Keir Starmer: Our own version of the withdrawal agreement and political declaration? No, of course we don't. What we have been doing—it is not a secret—is having discussions with Michel Barnier and his article 50 team for the best part of a couple of years now, to discuss and explore what the possibilities would be for any negotiations that we might have, and the state of negotiations as they are. That has been going on for some time. When I started that, I spoke to David Davis, who was then the Brexit Secretary, about it to ensure that, in having those discussions with Michel Barnier and his team, I would not be impeding the Government's negotiations. David Davis and I agreed how that would operate, and he actually facilitated the start of those discussions.

We have been having those discussions for two years, but we have not negotiated anything, because both we and Michel Barnier recognised that we were not negotiating with him; we were simply exploring with him what options the EU might or might not be open to. Not only did we not want to craft a document but I am as sure as I can be that Michel Barnier would not have countenanced agreeing a document with us, because he would—and frequently did—say, "I am not negotiating with you; I am negotiating with the UK Government."

Q4672 **Peter Grant:** Thank you. You expressed disappointment earlier that you had been invited too late to talks with the Government, which you described as a big mistake. At what point should you have been invited to talks with the Government about the negotiating strategy?

Keir Starmer: I think the Prime Minister should have brought Parliament in at the very start. The referendum result answered one question: whether more people wanted to leave the EU than stay in the EU. It did not answer the very next question, which was, if we are to leave, what should the future relationship be. That question permits many different answers.

One answer might be that we should be economically close to the EU, operating very similar provisions to those in place at the moment. Another might be that we should be very distant from the EU and look elsewhere for our trade, therefore re-orientating our whole approach to global trade. Those are obviously two very different approaches. I thought, and think, that the whole of Parliament should have been involved in answering that question, not just the Prime Minister. When the Prime Minister drew up her red lines in the autumn of 2016, as I understand it, she did so without consulting the Cabinet and certainly without consulting Parliament, and I think that was an error.

I know it is easy to say this in retrospect, but had the Prime Minister brought Parliament into this and got a consensus on the way forward, she would have had a lot more authority in the negotiations, because as we



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have already heard, one question the EU constantly asked the Prime Minister was: "Have you got a majority to get this through?" Had that consensus been built, she might have had that majority. By the time we got to the talks, it was far too late, because the withdrawal agreement was already signed, sealed and locked, and therefore it was virtually impossible to have a meaningful discussion about how any of that might be changed.

Q4673 Peter Grant: What discussion have you had with the devolved Administrations in preparing your thinking about what a Labour-led withdrawal agreement might look like?

Keir Starmer: It varies. We have obviously had extensive discussions with Wales, because we are in Government in Wales, and therefore those discussions go on all the time. As you know, I go to Scotland from time to time and discuss this with our Scottish colleagues. When I do, I try to have discussions with the Scottish Government. Northern Ireland is a different kettle of fish, obviously.

Q4674 Peter Grant: You seem to be saying that you have discussions within the Labour family, and occasionally you step outside that. Are you not making the same mistake as the Prime Minister of talking to your own party and not having discussions with, for example, a Government from whom you will need a legislative consent motion before your plans can be implemented?

Keir Starmer: I do not think so. I am happy to have discussions with anybody about how we advance and make progress. If there are meetings that you think I ought to be going to or should be invited to, I am very happy to take those invitations up.

Q4675 Peter Grant: Thank you. I will certainly pass on that message to my colleagues in the Scottish Government. It struck me when both you and David were talking about the sticking points between the agreement that the Government reached and what Labour might have wanted that ending the free movement of people was not a sticking point; it was not one of the three problem areas. In your 2017 election manifesto, you supported ending the free movement of people. Would you expect that to be in your manifesto if there is an election this year?

Keir Starmer: Obviously we will have to see what is in the manifesto if there is an election later this year. Yesterday we announced that whatever outcome is arrived at by the incoming Prime Minister should be subject to a referendum in which remain should be an option, and the Labour party will campaign for remain.

Q4676 Peter Grant: Are you satisfied that you understand how fundamentally important the free movement of people is to Scotland? Do you understand that no Brexit that ends the free movement of people will ever be acceptable to the overwhelming majority of Scotland, and probably to the overwhelming majority of the Scottish Parliament? Are you sure you actually understand how deep that feeling goes in Scotland?



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Keir Starmer: I have done my best. I have been to Scotland a number of times to discuss it with various communities and businesses up there. I have had meetings with Scottish businesses down here, and they have impressed that on me very strongly. Colleagues have discussed it with their own colleagues in Scotland. I have had discussions with SNP colleagues about what the position is, and I am happy to have further discussions.

Chair: We need to move on. Seema wants to ask a question.

Joanna Cherry: One more question?

Chair: If it's very quick, because you have had a goodly time.

Q4677 **Peter Grant:** Jeremy Corbyn has repeatedly said that there has to be a Brexit for jobs. Could you describe a Brexit that would be good for the Scottish economy, or that is better than being in the EU?

Keir Starmer: The question Jeremy Corbyn addressed was: if we are to leave with a deal, what are the central components of that deal? We argued for a deal that had a customs union with the EU and single market alignment. Those are the two necessary characteristics of any deal that would be as protective as possible of the economy and therefore of jobs.

Q4678 **Peter Grant:** But it is still not as good as the deal that we have just now.

Keir Starmer: I voted and I campaigned for remain, but I do not think that allows me to dodge the question: if we are to leave, what are the features of a deal that would be acceptable to the Labour party?

Chair: Thank you. Seema.

Q4679 **Seema Malhotra:** Thank you very much for coming to give evidence to us today, Sir Keir. Could you share some perspectives from the discussions that you have had around the country? They might have changed in terms of what has been said to you as you consult. What is your assessment of the drivers of Brexit and the expectations of citizens now about what would be different or better after we leave the European Union?

Keir Starmer: There are a number of drivers. I am conscious of the fact that I voted to remain and therefore describing the drivers for other people is fraught with difficulties. I think that the phrase "Take back control" was very powerful. It spoke to people in a way that made them ask real questions about whether they had enough control over their lives on a number of different levels, and for many people the answer was no, because, in my view, they think that the political and economic system—the status quo, if you like—is not working for them, and I think they have a point. I question whether leaving the EU will answer those concerns. One of the tragedies of the last three years is that we have not spent any time in Parliament addressing the core issues—regional investment, infrastructure, public services, you name it—because all of our energy and time has been sucked up talking about Brexit.



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Q4680 **Seema Malhotra:** Is it a concern, then, that we might end up leaving the EU, but it would not solve the issues that people had voted for Brexit to help deliver?

Keir Starmer: I am worried about that. What I found interesting at the end of the article 50 exercise running up to 29 March was that by that stage not even the Prime Minister was really arguing that she had got a very good deal that would be great for the future of the country. She was simply saying, "This is the best I can put before Parliament". It seems to me that the argument that this will be a great benefit has receded over the three years.

Q4681 **Seema Malhotra:** I have one final question. I am conscious of time as well. Were there to be a further attempt at cross-party talks before 31 October, what would the Labour party's position be and what about any preconditions to taking part?

Keir Starmer: My approach to cross-party talks is as follows. If there is a serious invitation from the Government to have cross-party talks, we should engage in them and see what the Government seek to achieve from them. As I said in the talks in April and May, my own assessment is that for many colleagues in the PLP any deal is unlikely to be acceptable unless it comes with the lock of a confirmatory vote. If the purpose of any talks is to build a sustained majority, it has to be taken into account that many Labour MPs would attach that condition to any deal. It actually helps to unlock it, in a curious way, because you don't have to agree every detail of a deal if it is then going to be subject to the lock of a confirmatory vote, and that is one way to break the impasse.

Chair: Thank you very much. Jeremy Lefroy.

Q4682 **Jeremy Lefroy:** As I think Peter Grant has already said, the Labour manifesto in 2017 made it clear that the Labour party supported the end of free movement. Is that not the case?

Keir Starmer: What we actually said was that freedom of movement would end when we left the EU, which is perfectly true. We then said that we would seek fair and managed migration. So, we were not advocating the end of freedom of movement; we were simply stating the fact, which was true, that if you leave the EU free movement ends.

Q4683 **Jeremy Lefroy:** But that is not quite the case, is it, because you could leave the EU and remain in the EEA, and free movement would continue.

Keir Starmer: That is perfectly true; I accept that.

Q4684 **Jeremy Lefroy:** But, in effect, by accepting that free movement would end, the Labour party was saying that we would leave the single market, because that is one of the four freedoms of the single market, and therefore if you are not having free movement, you have left the single market.

Keir Starmer: This goes over what now seems like old ground.

Q4685 **Jeremy Lefroy:** No, it is quite important in the chain—

Keir Starmer: It is. The only members of the single market are members of the EU. If you want to—

Q4686 **Jeremy Lefroy:** That is not actually the case.

Keir Starmer: Yes, it is. If you leave the EU, you are not a member of the single market. You can be very close to it, as Norway is, through the EEA, but not a member in the sense of being voting members of the single market. EEA countries are outside the single market, and they are buffering up and aligning very closely, but they are not members, if membership connotes voting rights.

Q4687 **Jeremy Lefroy:** Right. Okay. I accept that there are slight differences, but Norway would consider themselves members of the single market, as would Iceland and Liechtenstein. Switzerland would not, clearly, because that is a slightly different arrangement. Anyway, leaving that one aside, it is clear that in the Labour party manifesto that was what was said—that we would not have freedom of movement.

It was also said, very clearly, that you would be looking for a customs union arrangement, and I fully accept that. So, what I have wanted to try and understand, and I think this is what Mr Kinnock was trying to drive at, is where were the really substantive differences between where the Government ended up and where the Labour party ended up. Also, given that there were negotiations about workers' rights, environmental protections and things like that, which I fully accept were also in the Labour party manifesto, quite clearly and in my view quite rightly, would there not have been a position to compromise on, which would have enabled the majority of the Labour party to support the position as it was at the end of March?

Keir Starmer: The fundamental difference, just to take the customs union as an example, was that we had argued for a comprehensive customs union, and therefore a customs union with the EU27, and I had discussed this with Michel Barnier and his team, saying that that would involve our having a say or some influence over trade policy, but we would be negotiating trade agreements alongside the EU.

We went for that model for three reasons. One, we are convinced that that is the only effective way to protect manufacturing, and pretty much every manufacturing business that I have talked to in the last three years has impressed on me just how important it is for them to stay in the customs union.

We adopted that arrangement because we took the view that there was no way of keeping the arrangements in Northern Ireland as they were unless a customs union with the EU was part of the arrangement. I worked in Northern Ireland for five years and I went there frequently to discuss this. I have never heard a credible argument that it is possible to keep the border as it is without our being in a customs union.

We also did it because we felt, and do feel, that we are likely to strike better deals if we do it alongside the EU than we are on our own, and the



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evidence of the last two years does not suggest that countries are coming to us first to get better trade deals than they are to the EU; it seems to be the other way round. So, that was our position.

The Government's position, by contrast, was obviously that if they could get the benefits of the customs union, they wanted them, but they also wanted an independent trade policy. They realised that that was a difficult ask of the EU, which had not been agreed. That is why it is not in the political declaration, but that is what they wanted to achieve. They are fundamentally different positions.

We were exploring whether there was common ground between those two positions, but in the end the Government said, "The independent trade policy is worth more to us than agreeing a customs union." One of the discussions we had was about what the Government's default position would be, if they tried to get the benefits of a customs union independently of trade policy but could not reach agreement with the EU. Do you default to an independent trade policy or do you default to a customs union?

If the answer had been, "We would default to a customs union," the discussions would have gone to a different place. I am not criticising the Government, but their argument was to go the other way. We were trying to see where there was common ground, but in the end as we worked through what would happen in various circumstances, it was clear that there would have been a divergence of views on that.

Q4688 Jeremy Lefroy: I understand that. However, the withdrawal agreement meant that the United Kingdom would have remained within the customs union and the single market until December 2020, with a possible extension up to December 2022, and a general election must be held by June 2022. Therefore, there was an opportunity, even within the withdrawal agreement, for the Labour party to make clear its own policy at a general election and to be voted in on its own policy, which would have been remaining in a customs union. The only caveat would have been that that extension to 2022 would have to be effectively guaranteed rather than remaining a possibility. Am I not right in saying that that would have given people the chance to say, "Yes, we agree with your policy of a permanent customs union"?

Keir Starmer: The Government's position in the talks, which they presented to the public, is that they want the final agreement agreed before 2022. That was their position in the talks. The Prime Minister always held that she wanted the deal to be done before the next general election. Therefore, the talks were premised on the Government saying, "We want to have concluded the negotiation and to have signed a deal before the general election." I understand that, from their point of view, but that was the premise on which they were advancing the talks.

Q4689 Jeremy Lefroy: I see. I have one final question. Given the huge importance of what is happening at the moment and the potential consequences, if the Government were to indicate flexibility in their



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position—whether the current Government or a new Government in a few weeks' time—do you see there being more flexibility on the Labour side, so that an agreement could be reached, which would command a majority in the House of Commons; or is it all dependent on whatever happens being subject to a further public vote, i.e. a second referendum?

Keir Starmer: As David Lidington said, both sides went into this in good faith and maintained that good faith throughout. I have a lot of personal respect for David Lidington, particularly as the leader of that team. We were both conscious of the desire of many people across the country to break the impasse. Therefore, if there was an offer of further talks, we would look at that and explore what was possible. We would have to see how flexible the Government are prepared to be, which is what we did last time.

I don't know whether that will come about. It depends who wins the race to become the Conservative Prime Minister, but I cannot envisage circumstances under which we would say that we would not have further talks, if the Government proposed such talks. We would enter them in the same spirit, to see whether it was possible to find a way through.

Q4690 **Mr McFadden:** I have one question, which I also asked David Lidington, about the unity of the UK. You spoke extensively in an earlier exchange about the security implications of leaving without a deal. We have debated the economic implications of leaving without a deal. I want to give you the opportunity to put on record your view on this question of the implications for the Union. Do you think they have been underplayed, and how big a risk do you think leaving without a deal poses to the unity of the UK?

Keir Starmer: I think the risks are real, and I agree with a lot of what David said—that there are underlying tensions and reasons why that risk is there. Brexit simply adds to those risks. He answered pretty fully on Scotland and Wales, and I would agree with his analysis.

In Northern Ireland, what I have observed is that the Brexit debate has morphed into a debate about the island of Ireland, and it has introduced the idea of accelerating some of the mechanisms under the Good Friday agreement for the unification of Ireland. That has been extremely unsettling because, under the Good Friday agreement, there are provisions in place for the island of Ireland, with carefully calibrated steps if Ireland decides to go down that road. What Brexit has done is to introduce an acceleration of that, therefore driving a debate that was not there before in Ireland. In addition to what David said on Scotland and Wales, I would add that as an additional risk, and that is very Brexit-related—it is Brexit that has caused it.

Chair: Lastly—

Mr Bone: Don't I get a turn?

Chair: Well, you hadn't indicated, but Richard had—

Mr Bone: But—

Chair: Usually you catch the Chair's eye—of course I will bring you in, but Richard Graham was next.

Q4691 **Richard Graham:** Sir Keir, it seems to me that you have had an incredibly difficult task in trying to formulate a policy that can hold two very separate wings of the Labour party together—those who strongly voted to remain in the metropolitan cities, and those who in the north and the midlands especially voted to leave. Clearly, the best way to do that has been to fudge your position, so that it doesn't entirely satisfy everyone and isn't particularly clear. What surprised me, I think, is that the difference between your stated position for a comprehensive customs union and what was effectively in the third attempt at the withdrawal agreement Bill does not seem so far apart as to warrant risking the possibility of no deal.

Keir Starmer: First, let me take on the challenge of "fudge". The position we took was that, as a party, we would campaign to remain and reform the EU, but when the result went the other way, we accepted it and took the view that that required us to trigger article 50 to allow the Prime Minister to start the negotiations—

Q4692 **Richard Graham:** But it did more than that, didn't it, because your manifesto did commit you to respecting the result of the referendum—

Keir Starmer: Just hear me out, so I can put this in its proper perspective. What we did was to indicate, when we triggered article 50, what we would expect of any deal when it came back. During the two years, we spelt that out in more detail, about a comprehensive customs union and single market alignment, and we worked on putting in the safety valve of a meaningful vote. When the deal came back, it didn't come anywhere near that, not just on the customs union, but on the single market and the agencies, and when I read the political declaration, I was quite shocked at just how thin it was—it was a menu of options, rather than anything that indicated where we would end up.

The deal having gone down and the cross-party talks having failed, the position we announced yesterday in relation to a second referendum recognises where we are in the process and that there is not a deal that can go through that will be acceptable to the Labour party. Put in that context, you can at least understand—whether you agree or disagree with the steps along the way—how the position has evolved.

I do not hide from the fact that there are differences of opinion in my party about that, or that I have not been trying to hold those views together in so far as I am able to do so. It is important to respect both sides in this, and to try to hold the Labour party together in it, but I do not want you to be left with the idea that in the end the only thing between us and the Government was the customs union, because we are also part of the single market, of the agencies and of workplace rights, which were a real problem.



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The withdrawal Bill treated workplace rights wholly differently from other aspects. On consumer rights and on procurement, you have in the withdrawal agreement dynamic alignment during the course of the withdrawal arrangements; for workplace rights, they are frozen and without the enforcement mechanisms. There were many things that we disagreed with the Government on, and that in particular was a problem, because the Government had baked a provision on workplace rights into the withdrawal agreement. That was a political choice they made—that they would not seek dynamic alignment on workplace rights. They could have got it if they had asked for it. We were trying to explore with them how we got around the fact that they had baked in what we thought was the wrong approach in the withdrawal agreement. The idea that it was just the customs arrangement is wrong; there was much more to it than that.

Q4693 Richard Graham: Can I bring you back to the central point? Some people listening to this might conclude that that was a very elegant, lawyerly way of not really answering the question. In your manifesto for the 2017 election, the Labour party said, “We will respect the referendum result.” Those members of the Labour party and Labour supporters in my constituency who voted to leave would, I think, have huge difficulty reconciling respect for the result of the referendum—to leave the European Union—with your current position, which is to have a second referendum. On the ballot paper they received and on the advice they had from the Government, it was very clear: “What you decide, we will implement. No second referendum.” How do you explain that to them?

Keir Starmer: It is very important to read the whole of the manifesto. We said, “We respect the outcome of the referendum but we will not countenance no deal.”

Q4694 Richard Graham: This isn’t countenancing no deal. We are talking about a deal that has three times been on the table, and many of us are hoping that there will be another deal on the table. The Labour party’s current position is that, regardless of deal or no deal—

Keir Starmer: If you had let me finish the answer, I would have dealt with that.

Q4695 Richard Graham: You want a second referendum.

Keir Starmer: I was about to finish the answer, and then your further question would not have been necessary.

Richard Graham: It was quite a long answer.

Keir Starmer: What we said was, “We do not accept no deal and we do not accept the Government’s red lines”—we made that very clear—“and we would negotiate a different kind of deal.” We spelled out that we did not agree with the Government’s red lines in our manifesto. Nobody voting Labour in 2017 could possibly have thought that the Labour party was going to vote through a deal with the Prime Minister’s current red lines, because we made absolutely clear we were not going to do that.

Q4696 Richard Graham: Somebody who voted for the Labour party in 2017—



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there were quite a lot in my constituency—would have assumed that you were going to respect the result of the referendum and leave the European Union. You are now telling them there is going to have to be a second referendum, whatever the deal put in front of them is.

Keir Starmer: That is largely because the Government have made a pig's ear of the negotiations.

Q4697 **Richard Graham:** Would you have achieved something different?

Keir Starmer: We have got to a position where there is not a deal that can go through, and we have to deal with the circumstances as we find them. I cannot remember whether you voted for the deal or not—I really don't know—but very many Conservatives did not. Therefore, there isn't a deal that is going through. That is a failure of the negotiations, and when the negotiations fail at the end of the exercise, parties have to react to that. *[Interruption.]* The Labour party said in its manifesto it was not going to vote for a deal with those red lines.

Chair: Okay. Finally—

Mr Bone: You are very kind, Chair.

Chair: I am. Peter Bone.

Q4698 **Mr Bone:** You haven't done that normally; that is very kind. We have until 6 o'clock, I am sure.

There are one or two things you said, Sir Keir, on which I did not quite follow the logic through. You made very clear your dislike of no deal, you talked about crashing out or driving over the cliff and you gave examples of why no deal would be disastrous for the country. I understand your view on that, but we were in the same Lobby on three occasions voting against the Government's withdrawal agreement. I have no fear of no deal, and the logic was if there could not be an agreement, we would finish up with no deal. That, in fact, may be where we are heading now. So why, on three occasions, did you vote against what we both absolutely agree was not a good deal but would have removed the uncertainty of no deal if you had supported it? There were not many Conservatives who voted against. I think there were 28 Eurosceptics, so it was not many Conservatives.

Keir Starmer: On the third vote.

Mr Bone: Yes. It was entirely possible to carry that withdrawal agreement, and then no deal would have been removed from the equation.

Keir Starmer: On that logic, the Labour party should have voted for any deal that was put before it. The Prime Minister said, just to follow her mantra, "It's my deal or no deal. It's my deal or no deal. It's my deal or no deal." Her deal then went down. She then said, "I'll have cross-party talks to see if I can arrive at a different deal." So the proposition that this was the only deal that could ever be negotiated or agreed was blown as



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soon as she said, "Do you want cross-party talks?", because she then said, "Well, what about changing this deal, then?"

The idea that this is a fixed deal and nothing can be changed, with "It's this deal or no deal" as the mantra, which was wrong in principle, was blown out the water the moment the Prime Minister, having lost the first vote, didn't say, "I'm now preparing for no deal," but said, "I'm going to talk to people about a different kind of deal." She did it, as I understand it, with her own side, and she did it with all other parties. Then we went into the cross-party talks. The idea that this was the only deal that could ever be negotiated or agreed was wrong.

Q4699 **Mr Bone:** But I guess the implication is that you would agree that some deals—i.e. the Prime Minister's one—were worse than risking the possibility of no deal.

Keir Starmer: No. First, I didn't think this Prime Minister would take us out without a deal. I thought that because when I was Director of Public Prosecutions this Prime Minister was Home Secretary and I had worked with her on serious terrorist and security cases. I knew that she knew the implications. Although she said, "My deal or no deal," from my knowledge of her I thought that her deep sense of duty would not allow her to do that, because she would know the risks she was exposing the nation to. I didn't think she would do it. I was right about that, because on the day she lost the first vote, as you will remember, she got up to the Dispatch Box after the vote and didn't say, "I'm now preparing for no deal." She did say, "I am now prepared to have discussions across the House." My judgment that she was not actually going to take us out without a deal was right.

It was further borne out by the fact that although we seized the Order Paper and passed a law with Oliver Letwin and Yvette Cooper to force an application for an extension, the Prime Minister had already decided to do so by the time we got there. That doubly reinforced my view that this Prime Minister was not going to take us out without a deal, whatever she said about that. She actually changed her language as well, going into the March vote, and it became obvious to me that she wasn't going to do that—and quite right, too.

Q4700 **Mr Bone:** But you would agree that the European Union has made it very clear that it will not change the withdrawal agreement.

Keir Starmer: That is what it has said consistently since November of last year.

Q4701 **Mr Bone:** I don't think this is a wrong position for you to take, but it would seem to me that all along you were driving at trying to keep us in the European Union, and now it is the official policy, as I understand it, that you are going to campaign for remain. We have now got to a situation—you have got to this situation cleverly—where the Labour party is, I guess, the official remain party, and the Conservatives will be a leave party. Was it always your intention to drive it in this way, to try to keep us in the European Union?



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Keir Starmer: No. Anybody who has observed what has gone on in the Labour party and the position we have adopted will know very well that we have had very intense discussions about what a deal should look like, including voting on things like the customs union and the single market.

What has happened is that as the negotiations have failed and failed and failed again, the prospect now of a deal going through that could possibly be satisfactory has gone down, and in the Labour party that has meant that more and more colleagues here and members across the country think that the right thing to do now is for any deal that is arrived at, or no deal, to be put to a referendum where remain is an option, and we will campaign for remain. But that was not the position a year ago.

The position a year ago was an intense discussion in the Labour party about the customs union and the single market. It was only when the talks really began to fail that more colleagues were driven to the conclusion that the only way to break the impasse is a second referendum.

Q4702 **Mr Bone:** This is my final question. David Lidington said he is not losing any sleep about the possibility of him becoming Prime Minister. Are you losing any sleep about the possibility of you becoming Prime Minister?

Keir Starmer: No.

Chair: That is a very clear answer. Keir, on behalf of the Committee, I thank you very much indeed for your evidence today. For the record, from the Chair, I noticed no hysteria in any of the evidence given to the Committee this afternoon.

Keir Starmer: Thank you.