

EU Exit Working Group – Wednesday, 28 November 2018

Transcript of Item 5 - The Future Status of EU Nationals; Deal or No-Deal

Len Duvall AM (Chair): Can I move to item 5 on the future status of European Union (EU) nationals, deal or no deal? I would like to welcome to this session our guests, who are going to be making some statements as well as answering some of our questions. Welcome to Professor Charlotte O'Brien from York Law School; Christopher Desira, Director of Seraphus; and Sunder Katwala, whom we have met before, Director of British Future. Welcome back before us if you have given evidence as well.

If I can begin, this is an extremely complex issue and we will never be able to give it the real time and justice it requires. It is an incredibly sensitive issue. We have had information. In fact, some of you have participated in previous meetings when we have thought immediately after that, actually, we could see light at the end of the tunnel. Then I should not be amazed in terms of how this country goes about its business. Things move. The goalposts get moved. Other issues are introduced and it becomes a little bit more vague and a little bit unclear.

I am remembering against the background we are talking about people, people's lives and people's families. We are very conscious as [London Assembly] Members of what we are talking about, and sometimes we can be bogged down in procedures and not think about the human side of this conversation that we are about to begin.

Do you wish to make an opening statement or should we go straight into questions? What would you prefer?

Christopher Desira (Director, Seraphus): Questions.

Professor Charlotte O'Brien (York Law School): Questions is fine.

Sunder Katwala (Director, British Future): Yes, I am happy with that.

Len Duvall AM (Chair): OK. If we can then begin in terms of the first set of questions, which are going to come from me, it concerns issues around some things we are assuming that may happen in terms of withdrawal agreements, etc. Charlotte, to you first: can you set out for us what the Withdrawal Agreement says about the future status of EU nationals in the United Kingdom (UK), just to set the scene for us?

Professor Charlotte O'Brien (York Law School): Yes. It is important to bear in mind first of all that there are two different sets of proposals that are in play here. There is the EU-UK Withdrawal Agreement and then there is the UK's own proposals set out in its statement of intent to do with settled status.

Just focusing on the Withdrawal Agreement for the moment, the bit that would have some degree of international enforceability, it does not contain very many surprises from a citizens' rights perspective because it mostly reproduces those provided for in the March [2018] draft. What it provides for is the continued rights of EU citizens in the UK or UK citizens in the EU who have taken up residence or taken up work before the end of the transition period. It is about pre-existing rights continuing rather than future rights, as such.

One of the big concerns that I have expressed in the past, which is reintroduced in this iteration, is that those rights are still attached to, and very dependent on, showing that you are exercising a right to reside under [Citizens' Rights] Directive 2004/38. That typically means that you are working or that you have been working, showing that you have been economically active or connected to someone who has been economically active. That is just in order to stay or to claim permanent residence, which is akin to the UK's settled status suggestion, to have been exercising that right for five continuous years.

Now, what is unsurprising is that it reproduces the conditions for a right to reside that exist currently, but the difference is in the consequences. Currently, what it means to show that you are exercising a right to reside under EU law is to have entitlement to equal treatment and access to benefits, and those conditions exist to stop benefit tourism, essentially. Now, what we are looking at is a situation where that mechanism, which is problematic enough for allocating a right to reside for access to benefits, is being used and transplanted to decide a person's entitlement to stay in the place that they have made their home. That means there are more dramatic consequences as a result of failing to exercise the right to reside.

If you are in and out of work, you suddenly lose that protection. Where are you in the Withdrawal Agreement if you cease to be exercising your right to reside with one reason or another? There are some very good reasons. Benefit tourists are the tiny minority of the people who are outwith the scope of right to reside at any one point. There are people who are in and out of work, are on short-term contracts or may have hours that go up and down. There are people who take time out of work for care reasons and that is the big group, women in particular, who are disproportionately represented amongst that group caring for children or caring for older relatives. Some of them are very long-term residents as well.

In the work that I have been doing with EU nationals in the context of claiming welfare benefits, this right-to-reside construct has excluded some very long-term residents, often disproportionately women who may have been in the UK for decades but, if they have married a UK national rather than an EU national worker, then they are not exercising the right to reside and have not clocked at permanent residence. If they have been a homemaker or if they have been supporting their UK national spouse with self-employment, then they are not clocking up the five years necessary for a right to reside. If several decades down the line their spouse gets ill or dies and they need some welfare support, they are not entitled to it. As I say, the consequences will be more dramatic. It is not about not having welfare support; it is suddenly not having an entitlement to stay in the UK, where they have been for many years.

It affects children very disproportionately because children have no means to independently, in their own right, exercise a right to reside under [Directive] 2004/38. They only exist in that Directive only as migrant parasites. They only exist insofar as they are related to a parent who is exercising the right to reside. If they cannot show evidence of that for one reason or another or if their parent has employment misfortunes or whatever, the child has no means to exercise that right to reside in their own right. If they are a child in care, how are they going to show that connection? If they are a child who has been removed from a parent because of a domestic abuse situation, how are they going to show what their parent is or was doing?

There was a case a couple of years ago now on the right to reside, again in a welfare benefit context, dealing with a 17-year-old child who was a Portuguese national born in the UK. She had lived in the UK all of her life and was abandoned by her mother at the age of 16. Her mother went to a third country and so there was no EU country for this child to go 'home' to, in inverted commas. At the age of 17, she claimed income support and was found not to have a right to reside. Under the Withdrawal Agreement, what that would mean is she would be expected to leave the country that she had grown up in and had never been anywhere else.

The right-to-reside construct is totally impervious to questions of social integration, language, family, friends and so on and so forth. It is all about showing that you are exercising the rights under [Directive] 2004/38. Of course, under international human rights law, we do not expect children to have been working for five years and we should not. Yet somehow, because they have not done that, they have no means of having the right to reside.

The Withdrawal Agreement is potentially very exclusionary and myopic in a way in terms of the swathes of people who will fall through the gaps because there are massive gaps: care gaps, domestic abuse gaps. Women who have had to be relocated and as a consequence they have suffered a punctuated employment history and do not have a permanent right to reside of five years. There are long-term residents I have worked with, women who have been in the UK for decades. There was a case in the UK, a tribunal of a woman who had been in the UK for more than 33 years but, because she had married a UK national, she had not accrued a right to reside in her own right. She had no right to reside. People with disabilities are more likely to be disproportionately affected. There is a whole raft of gaps in there.

There is another potentially significant gap in the Withdrawal Agreement but it is difficult to know how to interpret this. A group of carers who do have a right to reside under EU law are known as 'Teixeira carers'. There was a case in the Court of Justice of the European Union (CJEU) that found that the child of an EU national worker or a former EU national worker has a continued right to reside in the host state to continue their education and, for that to be a meaningful right, their primary carer has to have a right to reside. They are Teixeira carers. They appear to be included up to a point in the Withdrawal Agreement under article 24. They will continue to have the right to reside in the event that that the EU migrant worker parent has left the UK. That is one scenario in which Teixeira rights kick in. The other scenario is where the EU migrant worker parent ceases work and that is not explicitly covered in article 24(2). I am not sure why 24(2) exists if other than to create that exclusion. In theory because the case law of the CJEU is meant to continue to apply and in theory because the relevant regulation is meant to continue to apply, all Teixeira carers should be covered, but this particular provision seems to suggest that it is only some who will be favoured and some who will not. The ones where the EU migrant worker parent has ceased work are not explicitly covered in this provision, which could be problematic.

Len Duvall AM (Chair): Do you think that if there is a deal done, there is either going to be supplementary advice covering these areas or we are back in the courts? We would be straightforwardly not back in the courts because it seems it is deliberately not mentioned because there is no right. Is that what you think will happen if there was a deal done? In those areas that you have outlined and some of these gaps, these areas where there is no explicit provision, it is either a free-for-all or open to interpretation.

Professor Charlotte O'Brien (York Law School): It seems to be then just down to domestic preference, really. We have the UK proposals, which would appear on the face of it to cover a lot of these people because they just asked for residence; they do not ask for evidence that someone has been exercising a right to reside.

There are a number of problems with this. First of all, if you are relying just on domestic preference, then that is subject to the whim of the executive or whoever is in charge of writing the regulations at the time. It is amendable. It is also not enforceable at an EU level. The EU has cut these people loose, effectively, according to this Withdrawal Agreement. It means that there will be a patchwork of rights across different member states according to what other member states choose to do about the UK nationals in these situations there.

Another problem with the UK proposals is, first of all, the hard deadline [of the settled and pre-settled status for EU citizens and their families] that appears to be suggested, which would mean that while a lot of these

people would have an underlying right to settled status, they may not in effect realise that right because they miss the deadline or because they are in a vulnerable situation and do not know that the scheme exists, do not know how to apply or do not have the support to apply for it. Who is going to take responsibility for making sure children in care get registered?

Len Duvall AM (Chair): Christopher and Sunder, do you want to add to that or do you want to highlight something a bit further? I want to thank you, Christopher, for the additional information and the flowcharts of the complexities of the issues. We will record that formally into our evidence.

Sunder Katwala (Director, British Future): Just to build on what Professor O'Brien has been saying, there are 3.5 million to 4 million people, maybe a third of them in London, in the UK and then there are the British nationals out there in the EU. The Withdrawal Agreement, if we get the deal, will be the Withdrawal Agreement. There will then be some oversight rights of the CJEU for eight years beyond that and so on.

Then you have national policy and, in this respect, national policy based on what the UK Government is saying is offering reassuring language and, therefore, we have to look at the delivery. There might be other challenges for people in other countries as to whether all the gaps are filled. Therefore, on the question in terms of the UK policy, the biggest thing that the UK policy does on a voluntary basis, not in the Withdrawal Agreement, is that it does not now look for the comprehensive sickness insurance (CSI).

We have been seeing - and we are still getting refusals - a quarter of [CSI] cases refused. There is a very good case to say that we should have a moratorium on refusals now in this period because it must be quite worrying to be getting refusals. We are looking for a 99% or 100% acceptance rate very soon. Should we still have a 25% refusal rate? There is very low trust. There is a Government saying very reassuring things, "We want to cover everybody", and very low trust in the client group because of the politics of this, and so there are those refusals.

What is a reasonable ground to refuse? The Government has a couple that would be broadly accepted. One is serious criminality above the criminal threshold that already applies to EU citizens. That seems fair. There may be people with some criminal history that is not at that level at all and who do not know that it is not at that level, do not apply and so on, but serious criminality, identity fraud, not being who you say and not being resident here at all are the reasonable grounds of refusal.

The UK Government is saying, "Residence is what we are looking for and, therefore, that higher threshold is not what we are looking for". What we now need to look at is: if that is what gets applied; if that is what people know will be applied; and if the people who could apply under that basis then apply; or if something else happens. Do you get exploited by somebody else? Do you pay many thousands of pounds to somebody else for advice if you have been working cash-in-hand because you assume you will be refused? What are our communications and advice like?

Thinking about this big group of 3.5 million to 4 million people, it is quite probable that the Government, employers, other people, the computer systems that have been set up, assuming they work well -- it is quite probable that there are going to be multiple routes to about 2 million of these people and that we will keep finding the same 2 million people. If you have been in work, if you have good tax records, if you have been employed in the public sector and so on, we will keep finding two thirds of the group very easily, and they may or may not often be the people whom it is easiest to communicate with about, "This is about you". The groups to worry about are the people who will just have less footprint on the systems and might not have met the old

tests of the Directive but would if they knew it meet the test of you are resident and you are really who you say you are to get into the system.

The bar, in theory, is set very low for presettled status. I might have been here 20 years and have very little evidence of it, but you know I am here. Then I will get presettled status. I will get the right to build up five years. If we have a lot of people in that box who have been here a long time, then we will have a very big problem in five years' time and will have to keep our eye on that. There will be other people who have been here more than 20 years. There might be 300,000 like that. You might think this is for the people who arrived in the last ten years. You might not know that if you are a child and so on.

There might be 1 million people who, unless we get good advice to them, will not know this is for them and there might be other people, for example, who think, "I have a very patchy employment record. My employer has not been paying tax. I had better not apply". There is a very big group that we need to worry about whether they will get through the system.

There is another issue, which is whether the refusal rate will be below 1% and also what pace of applications we are expecting. We have never seen 4 million people apply for something in a two-and-a-half-year period and so we do not know whether we are ahead or behind. If we got 95% of this right by the middle of 2021, we would all be reasonably relieved to find that we have done that. That will take a lot of investment and a lot of resource.

That would mean that 200,000 people did not have the status that they would have been entitled to and, therefore, from the start we need a sense that we are going to think about if you are eligible. At the moment the thing says, "Did you have a good reason not to apply?" I am not sure you need a particularly good reason not to apply; you need an eligibility for the scheme. There is bound to be a problem at the end with 100,000, 150,000 or 200,000 people if 95% of this went well and we ought to have a sensible policy at that stage. If that problem is 400,000, 500,000 or 600,000, then we have a much bigger problem.

Christopher Desira (Director, Seraphus): Yes, the Home Office's message and communication is that this is quite simple and residence and identity and undergoing criminality checks are the steps you need to do to achieve your residence.

However, there is some devil in the detail. They published the suitability requirements just over a week ago and that allows the Home Office, if it so chooses to do so, to assess under current EU law and the European Economic Area (EEA) regulations whether someone is working or exercising treaty rights or not. Therefore, it is not purely residence. What the suitability guidance tells us is that if someone applies and is not in work or has never worked at all and they provide the evidence of residence for five years and that application goes into the settled status team, the settled status team will then review the application and see that that person has not exercised any treaty rights or has not worked at all for five years. They can then pause the settled status application and then, in consultation with a senior caseworker or the European migration policy team, they can decide whether enforcement is required under current EEA regulations on the non-exercise of treaty rights.

What will happen is someone applies because they are not working and the general caseworker level sees that they are not working and asks a senior caseworker, "What do we do in this scenario?" They, in consultation with the other team, decide, "They have never worked. Maybe then we need to consider whether removal should be instigated under the current EEA regulations". The settled status will pause, the EEA regulations will kick in and they may consider issuing a removal decision because of the non-exercise of treaty rights. Then the settled status application will restart and will be refused because a removal decision is now valid and active

before the decision on settled status is made. The applicant will then receive a refusal of a settled status application and also a removal decision and will have to then challenge the removal decision before they can challenge the settled status application.

Therefore, residence is the main requirement, but the Home Office has the power to choose whether to instigate removal on non-exercise of treaty rights or misuse of rights still.

What we do not know is who they are going to exercise that power against. Is it going to be a 25-year-old Eastern European man who has never worked or is it going to be a single mother who has had to stop working to look after her two children? If it is applied to everyone equally, then fair enough. EU law still exists until the end of the transition period and the Home Office has the right to exercise that power. If it is applied indiscriminately or targets individual groups, which it has done in the past, then we have a major problem on our hands.

Sunder Katwala (Director, British Future): What we would like, then, is some clear language and some policy to go with it about why and when that will be applied exceptionally, as opposed to in a broader sense, because there is a clash between doing that and saying, "The test is identity, residence and not having serious criminality". If you are applying that, then you should not be doing this and there are exceptional public danger criminality reasons to do it.

Christopher Desira (Director, Seraphus): The Home Office published a caseworker guidance for the caseworkers but we have never seen the senior caseworker guidance. We never see that technical decision-making on those detailed cases. Maybe, if that is published, we can have a clear and transparent idea of what they intend to do with those complex cases. Through the European Commission (EC) we have asked for that guidance. It has never been supplied, only the caseworker-level guidance, which only covers straightforward cases, which would be the majority of those who are in work and can work.

We also do not have answers about whether the Home Office will disclose information to other Government departments or third parties. They say they can when the settled status email is issued to people during the testing phase. They receive an email saying, "You have settled status. These are your rights. This is how it will work. Also, we may share data with other third parties".

My worry as well in another group is, if someone who has made a settled status application on the basis that they are employed and they provide their payslips and P60s and everything in the application and indicate that they are in employment and then the application checks with Her Majesty's Revenue and Customs (HMRC) and HMRC comes back and says, "We have no records of this guy being in existence", because maybe the employer it is not paying taxes and taking advantage of the employee, will the Home Office, when the inconsistent data from HMRC is discovered, then disclose that information to HMRC that this is a person who may not be working or their employer has not paid any taxes on their behalf? We do not know how data is going to be shared with other Government departments or even third parties.

Len Duvall AM (Chair): Thank you for that in terms of setting the scene and the complexity of the issues that need to be dealt with or thought about. Are there any questions before we move on to the next section on this part of the questioning?

Caroline Russell AM: I just wanted to pick up on the children again, just to clarify. If you are saying that they have to be working for five years and if you assume people are at school until they are 18, then no one will have worked for five years until they are about 23 or 24 maybe, and so we are talking about a big chunk of

young people who could have grown up in this country and suddenly find that they do not have settled status here.

Does that mean that they would potentially just have to leave, in which case, do we have a sense of how many of those young people there are?

Professor Charlotte O'Brien (York Law School): According to the Withdrawal Agreement, yes, there would be a large number of children who would not have an entitlement to stay in the UK either because they themselves have not been exercising a right to reside under [Directive] 2004/38, like working, or because their parents have not been. They may have had a Teixeira carer parent but Teixeira rights do not accrue or clock up the five years for permanent residence. When they would be assessed as to whether or not they fall within the scope of the Withdrawal Agreement, they will be found not to be exercising their rights in accordance with the Directive and therefore would not have an entitlement to stay.

Under the UK proposals it would be different because of the concern of residence rather than exercising the right to reside. If the UK proposals survive intact and all that is asked is whether you have been resident for five years, then a lot of children would be, in theory, in the clear. Of course they could also potentially fall foul of the rule because they have not been exercising the right to reside. Therefore, there is this inherent contradiction in the UK proposals saying, "We are not looking for you to have exercised a right to reside but, if you are not exercising your right to reside, we might remove you".

Sunder Katwala (Director, British Future): I am not sure whether that is a contradiction. Under UK policy, the answer is that they are all supposed to be covered. Either you are eligible if you are attached to a person who is eligible for settled status or, if you are not attached to a person who is eligible for settled status but you are resident in this country, you are eligible and so on. There is a range of risks if you are attached to a person who might be removed for some other reason. I would say it is a different level of risk once we are in the UK policy. What it is meant to do is cover them all.

Whom might it not cover? Three hundred thousand of these children were born in Britain and there might be a belief that they are already covered because they were born in Britain, but it depends what year they were born, whether they were registered, whether they are in the system. There might be parents with British-born children and the rules have changed at different times and they might not register their own children. What would we do? However, there is no doubt under the UK policy that it is supposed to cover all the groups and then it is making specific -- children in care are the responsibility of councils and so on.

Whether or not people know what they are meant to do is probably a bigger thing than whether they are eligible at all.

Caroline Russell AM: It is not so much deliberate. It is a gap that exists and that is a risk but it is not deliberately trying to get --

Sunder Katwala (Director, British Future): The UK policy fills a gap that the Withdrawal Agreement would not, but this then is for the UK Government and the UK courts under the domestic law when it is passed, not the EU treaty, because it is up to the nation state to augment EU law and directives, that is what Britain --

Caroline Russell AM: OK. I am finding all of this really confusing and complicated. I have a lot of friends in this country who are EU citizens and who have children born and brought up in this country. I am hearing from constituents and friends of their concerns and people are worried about falling between these gaps.

I am just wondering what information is out there to help people navigate their way through all of this. Is there information out there? If there is not, who do you think should be producing it?

Christopher Desira (Director, Seraphus): The Greater London Authority (GLA) has its portal on citizens' rights and we have a guide, some questions and scenarios on there and referrals to any organisations that can give advice. That is fairly new.

Then the European Commission Representation Office in London has published a question-and-answer (Q&A) document on the process and settled status and scenario questions on a range of topics like, "I am European but my Brazilian wife is here. Can she stay with me?" There is that information there.

They are also providing information services in partnership with a range of lawyers. They provide public seminar sessions, which we have participated in, and open Q&A sessions for citizens as well. Some of those have been livestreamed. What they intend to do beyond January [2019] on this is to try to get a more centralised information portal, similar to the GLA one but on a national scale, which will have the same information available and recommendations on whom to seek advice from, not-for-profit organisations, and also to try to centralise those information sessions because a whole range of organisations are providing them. We can have some central database that people can log into, put the postcode in and find out where the next information session is that they can attend for free. They are working on trying to build that up a bit more.

Caroline Russell AM: Who is "they"?

Christopher Desira (Director, Seraphus): The European Commission Representation Office. Our firm has contracted with them at least up until March next year [2019] to provide that. The Law Centres Network is providing similar things in partnership with the EC. They focus on charities and voluntary groups who want to set up these information sessions. We work in partnership with the Commission and with embassies that want to set up these sessions. The embassies have set up over 70 of these sessions and we have participated in them all across the UK including Northern Ireland.

Len Duvall AM (Chair): One of the gaps that may appear in terms of that provision of information, if things ever do become clearer, may be for employers. We need to get to employers to carry out some responsibilities for their employees and not only brief themselves up on good advice but also the individuals. That could be one of the things that we suggest that the Mayor ought to concentrate on in London so that we get this out to employers as far and wide as possible.

Christopher Desira (Director, Seraphus): I was going to say that there have been employers who attend these sessions and they have also then been encouraged to hold their own sessions and so have done similar sessions for their employees. That is a good way of doing that. It is also good public relations for the employers. They can tell their staff, "We want to look after you. We want you to stay". Frankly, it is quite cost-effective for them, rather than losing staff and having to hire and retrain staff again.

Caroline Russell AM: Again, that is talking about bigger employers rather than the smaller.

Christopher Desira (Director, Seraphus): Even for smaller employers the cost of maybe having a lawyer present if they do not want to do it themselves is going to be smaller compared to having to recruit and retrain people.

The Home Office is also preparing lots of communication materials as well. There is an employer's toolkit, which is available publicly and which is being reformatted for charities and not-for-profits so that they can have something to distribute as well.

Caroline Russell AM: Do you know when that is available?

Christopher Desira (Director, Seraphus): The employer's toolkit is available. I am not sure of the availability date for the repackaged one for charities and advisers.

The Home Office has worked up a communication model and is providing all these pamphlets, but the next stage of that is to then communicate this to everyone who gives advice to EU citizens, to make themselves known to the Home Office so that the Home Office can have a map of who gives advice and the extent of the advice and allow those organisations then to order all of these pamphlets and leaflets and information so they can then be distributed on to the advice sector.

It still falls short of what I think that the Home Office should do and because the campaign model was not really going to reach all of the vulnerable groups, those with dependency needs, those who are in close-knit communities. They really need to start thinking about more traditional advertising models like television, radio and so on to really access people where they engage with communications. At the moment the communication is mainly online, like putting adverts in Spotify. Frankly, that might capture a few people but it is not going to capture all the people who are going to be vulnerable in this process.

Sunder Katwala (Director, British Future): There is going to be a significant amount of communication. There is a plan for a significant amount of communication and there is a significant number of stakeholders that want to be involved in that. Employers have been very keen to be seen to be involved. They are being ethical. They have an interest in doing it. The Government itself will do it.

There are a couple of complications about getting this right. Firstly, however much you do, it needs to be systemic and it needs to be sustained, and maybe it will never be enough but actually a lot of people are going to step up and in a way reach the two thirds of people that we will find relatively easy to reach. That is the first challenge: that a lot of the energy might be attached at the relatively above-the-line groups and therefore just make sure there is energy going to the harder groups. Embassies will be doing things; employers will be doing things and so on. It might be at the higher end of the labour market and the firms that feel they have a reputational advantage. We might particularly want the low end of the labour market to be as engaged. There will also be things in different languages through embassies and so on.

There is some money being spent but, if you looked at it, you would say that it does not sound very much. There is £9 million pounds going to non-governmental organisations and civic groups to reach harder-to-reach audiences. If you have a list of 50 different harder-to-reach audiences, then that is the challenge. While there will be a lot of communication in general, it will need to be worked out how it gets to the more vulnerable groups.

The other thing is that the message really needs to be very simple and we need to have a strategy here of vigilance without alarmism. The simple message is: here is the information; everybody should be eligible; you are eligible; here is what you do. You all need to apply. If you have permanent status already, you need to swap it over; it does not cost you anything. There is a level of detail but it is like engaging with the system. When people do engage with it, if it goes well, they might find it surprisingly less complicated than they were expecting a Home Office system to be, because it is.

Then there is this other set of issues when we are all keeping an eye on the policy gaps, etc. We need to keep that away. We cannot have a complacent message, “You will all be fine”. We do not know that, but we cannot have, “There are lots of ways you might worry about it”, because there is very low trust and there is very high concern. If they roll out the system and it does not fall over, then most people should find that they are able to engage with the system, say who they are and get a decision. We should worry a lot about the reach out there, but we should separate our policy worries, about whether we are going to reach the last 500,000 or 1 million people, and how we are all very worried about trust in the Home Office. That is already there. The GLA needs to think as well about communicating very simply, “Here is the information. Here is what you do. Here is how long you have”.

Len Duvall AM (Chair): We will move on from that. Has there been any conversation - it is not perfect - the electoral registration system will record some EU nationals for the purpose of voting so that they can vote in regional and local government elections. Has anyone talked about using that list to contact people, with the right message of course? Has no one raised that?

Sunder Katwala (Director, British Future): No, not that I am aware of.

Len Duvall AM (Chair): OK. We might try to look at that. It is not perfect. It will not reach everybody. It is particularly imperfect in transient areas. Where it is more settled, people will be on there.

Caroline Russell AM: Just going back to this information, is the GLA portal easy to use? Does that fit the bill? I am sorry. I have not looked at it.

Christopher Desira (Director, Seraphus): It is still not as simple as we would want it to be. The Home Office publications, from a lawyer’s perspective, are a bit too simple but I am a lawyer and I know the detail and all of this. They are probably simple enough for those people we are worried about to understand. For example, I attend these information sessions and give these seminars out and I am still surprised, even as near as last week, that some people still have that disconnect between Brexit and actually having to secure their residence in the future to continue residing here. There is even that level of basic understanding that we need to reach.

Home Office materials might be useful. Maybe it is an idea that maybe we can have them available to social services, to hospitals and emergency wards, to anyone who may come into contact with those who are maybe not employed, so that anyone who finds an EU citizen can say, “You are an EU citizen. Here is a leaflet. It has nothing to do with what you came to see us about but read this. It may be relevant to you”. Getting that material out to people in all of those places might be just an idea.

Caroline Russell AM: That is certainly something we can talk to the Mayor about. Moving on, looking at the future systems, the Government has been very clear that after the transition period has ended, there will be a new immigration system and that the freedom of movement between the UK and the EU will come to an end. First of all, to Charlotte and Christopher, after leaving the EU, what would the UK’s new immigration system look like and what would it mean for EU nationals wanting to come to the UK to work?

Professor Charlotte O’Brien (York Law School): In a word, there is a risk that it will look messy. Bearing in mind that we will still have EU nationals in the UK subject to a new-old regime and then new arrivals subject to a new-new regime, we will have multiple parallel immigration regimes with different entitlements, running

simultaneously, with different evidential requirements, with different procedures, all being processed by the same overstretched department in fairly short turnaround times, with different enforcement procedures.

Caroline Russell AM: You say “overstretched department”. Just thinking back a step to the people we were talking about before, the current people here, there was a sense that it was going to be quite straightforward to deal with the majority and there was just going to be the 200,000 or so people whom it would be hard to find. Do we think there is capacity to process the people who are here before we even think about the new system or do we think those workers are going to be very stretched in order to deal with that?

Christopher Desira (Director, Seraphus): The Home Office intends to make the application online and fairly automated with residence checks with HMRC and the Department for Work and Pensions (DWP) and having identity checks with mobile apps. It really intends the system to be as automated as possible without any human interaction for those straightforward cases that tick all the boxes and have all the evidence. Hopefully, the system will then process those without much hassle and will then start achieving high workflows.

However, then the problem is going to arise when people need to scan and upload additional residence evidence or do not have a national ID document to confirm they are a European citizen or have criminal offences. When there needs to be then human interaction and caseworker involvement in the cases, things slow down substantially at the Home Office, as they do now.

Sunder Katwala (Director, British Future): We would estimate that group might be 10% or it might be 30%. The biggest thing that will make a difference to it going right or going wrong is the recruitment and training of the staff who will be doing the human bit. It will be brilliant if the computers do 2 million of them without needing a lot of things, but the human bit is very important. They say they are aware of that, but this is exactly the National Audit Office and immigration inspector and parliamentary scrutiny and GLA scrutiny kind of question: do we have the right people?

When they give a cert, they should be very transparent about the data, how many people applied, what the acceptance rate was, what the timescales were. I do not think they have said yet, but if they are clear, “We are expecting a 10-day turnaround”, or whatever it is and they are delivering it or are not delivering it. We should know a lot two quarters in because there should be quite a rush about whether the system appears to be adequate to the first few hundred thousand it received or the system is already looking not really up to the job.

Caroline Russell AM: Thank you.

Professor Charlotte O’Brien (York Law School): It is worth noting that according to the technical note issued about this time last year, the Home Office was promising a greater degree of human interaction on those cases that required it than currently happens at the moment. There would be more exercising discretion and giving claimants the benefit of the doubt and involving an extra layer of dialogue by getting back in touch with claimants if there is a problem with some of the evidence and advising them what to do instead. This is stuff that does not happen now. When you are dealing with potentially a bigger flow or a bigger caseload in a short period of time, there is a risk that those promises are not terribly plausible, especially bearing in mind the evidence that was given by the former head of immigration enforcement to the Home Affairs Select Committee last year [2017] that the Department was like an ineffective sausage factory with low-grade staff. Unless there is a very significant planned improvement in how cases are processed when that human interaction is involved, then there is a very significant risk that things are going to go wrong and not get the attention they require.

Sunder Katwala (Director, British Future): The part where the language is reassuring is that the plan is to have specific capacity to do that and there is a lot of warm words. It is called a 'customer resolution centre'. There is a lot of language that says, "This is here to get you through". In some ways, if you want to be cynical about it, you would say that it is almost like you are creating teams to say, "Do not act in the ways we always act. Do the opposite. That is the policy. You are the team. You are the team to approve people. You are the team to not refuse them. You are the team to get back to people and say that".

There ought to be an opportunity then to say, "If that worked, is there a culture change opportunity for the future system?" However, the first point is whether there is specific dedicated capacity and whether it is doing what we were told, which is that it is there to say yes to people and to check what else they need to say yes.

Caroline Russell AM: Did you say that two quarters into this we would start to get a sense of it?

Sunder Katwala (Director, British Future): We will get data straight away, but have indicators so we know what we expect. Someone said, "It is a unique situation. Who knows how big the rush should be? Maybe we are behind for good reasons". Let us set some indicators, especially when we get to the end of the two-year or two-and-a-half-year period. If we are not at 75% of cases through and processed with six months to go, we should already have said, "It needs to be kicked on a year", at that point. We do not want to say that at the start. We want to have a deadline when people would apply so that they apply, but we should already know. We should not be saying, "There is a rush at the start. We are hoping for an even bigger rush at the end. You are right. There are 1.5 million cases missing". It does not sound very good. We should have a reasonable sense of what on course would look like and whether there is already a sense that the remedies for not being on course are extending the timeline, spending more money and investing in the system.

Professor Charlotte O'Brien (York Law School): There are two separate variables here. There is the processing time, which, as you say, we can get from the data, but then there is the question of application flow, which is very difficult to predict. To what degree are people going to think, "I have two years. I do not need to apply straight away".

Christopher Desira (Director, Seraphus): The Home Office is going to publish application processing times online and so we will have that data, but what we should encourage the Home Office to do is to publish engagement with that and how many people have applied so that it is quite transparent to everyone and where we are at that stage. With six months to go, if only 75% of people have applied, there needs to be a considerable amount of planning to stop 25% or 30% going unlawfully resident at the end of the deadline. That will need to be continuously assessed. I am sure the Home Office will assess it, but it is wise for that data to be publicly available.

Caroline Russell AM: Do the two years start on 29 March [2019] or have they started?

Christopher Desira (Director, Seraphus): The transition period ends on 31 December 2020 and then we have that six-month grace period for people to apply. The transition period ends on 31 December 2020 and then --

Professor Charlotte O'Brien (York Law School): If there is a transition period.

Christopher Desira (Director, Seraphus): Assuming there is a transition period and then --

Caroline Russell AM: In the event of no deal --

Professor Charlotte O'Brien (York Law School): In the event of no deal, there is not a transition period. What period of time are they aiming for?

Sunder Katwala (Director, British Future): 1 July 2021 is the date.

Christopher Desira (Director, Seraphus): Yes.

Sunder Katwala (Director, British Future): It is not widely understood that the transition period and the settled status registration period are not the same thing. They happen to be running over the same two years. They are completely different. In a no-deal scenario - and the Government does not want to admit this even in a deal scenario - the Government will not be able to have immigration controls until 1 July 2021. If it tries to have them or it does not admit this, it will create an enormous catastrophe with lawyers, landlords, discrimination and so on. At some point in a no-deal scenario, they have to show how they are doing it and what they are doing and they will have to say, "People can continue to come in on this basis", because people who are here now have until 1 July 2021 to apply for this scheme and they do not need to have done anything. Therefore, I cannot tell the difference between somebody who has been here from Italy or Poland for five years and somebody who arrives tomorrow because the person who has been here five years does not need to show me anything. That is true, deal or no deal.

It is also the case, if you then have a transition period, you have another reason why everything is carrying on the same until December 2020. It covers up that you have to do that. The Immigration Minister fell over at the Home Affairs Select Committee because she did not really want to admit that in the deal or the no-deal scenario. She wanted to say that free movement will have ended on Brexit day, of course, and then what else will you have done until 1 July 2021? You really cannot do anything else and so the grown-up thing is just to say, "It will take us time to design our system well. We have this amount of time. We will not be telling you until this White Paper what it is but let us not create an expectation of changes on Brexit day when you are getting changes in July 2021". That would calm down the mood for EU nationals themselves and for employers asking if there is a cliff edge. In all of these scenarios, you are not able to have new immigration policies until July 2021.

Professor Charlotte O'Brien (York Law School): Thinking about the issue about giving information to employers to give to their employees, one of the problems we have, particularly if there is a no-deal scenario, is that it is not at all clear what the advice to employers is meant to be. If we look at the exchange between [The Rt Hon] Caroline Nokes [MP, Minister of State for Immigration] and [The Rt Hon] Yvette Cooper [MP, Chair of the Home Affairs Select Committee], there were a number of contradictions about what employers are supposed to be doing in terms of checking whether someone has an entitlement to be in the country based on settled status or if they have been resident in the country for five years or if they have only just arrived. The people who are entitled to equal treatment should not be subjected to significant extra checks, but how do you know if someone is entitled to equal treatment unless you do those significant extra checks? One of the things that [The Rt Hon] Caroline Nokes [MP] suggested was that they would not be expecting the system to be overly rigorously enforced. You think, "What does that mean?"

Caroline Russell AM: These people in -- not knowing where they are?

Professor Charlotte O'Brien (York Law School): Yes, but at the same time saying, "But we expect employers to do adequate checks". The message would be incredibly mixed and employers would not really know what they were supposed to be doing in terms of checking whether or not people had settled status, or

they might not have the settled status certificate or may have applied for it but not yet received it and they have no evidence of that. They would not be able to produce the single document that should settle the question.

Caroline Russell AM: Just to be absolutely clear, post 29 March [2019], deal or no-deal, people will still be able to come here and they will have until - it looks like - 1 July 2021 in a no-deal situation to sort out their --

Sunder Katwala (Director, British Future): The Government then has to pass a law to make that the case. The only sensible policy that fits with the Government's settled status scheme is to say that what we are asking employers to do is to look at a European passport or an identity card as they do now. That is what we can do and that is whether they have been here 20 years or whether they are coming in. The Government would have to make provision for that. If it passes the Withdrawal Agreement Bill, the Withdrawal Agreement Bill will make provision for that and the rules will still be the same. If it has not done that, it will have to make the new rules for the first two-and-a-half years so that their scheme works. Otherwise, the scheme will fall over.

Caroline Russell AM: OK. Finally, will EU nationals with settled status be affected in any way by the new immigration system? If someone is an EU national with settled status now, is there anything that they need to be worried about in relation to the new regime?

Professor Charlotte O'Brien (York Law School): According to the current proposals, once they have settled status, that is it, unless they are out of the country for a sufficient period of time to lose that settled status. Of course, subject to the degree to which it is mirrored in the Withdrawal Agreement, there would not be supranational enforcement. There would not be a legal guarantee that the law would not change at some point, but that is not the intention at the moment.

Sunder Katwala (Director, British Future): It is more generous than current forms of indefinite leave to remain and permanent residence because you can go for a complete period of up to five years without it affecting your status. If you go for a complete period that is over five years, you would then become a new person, but for everybody else now it would have been two years. That is how you then end up back asking what you need to apply for.

Christopher Desira (Director, Seraphus): Yes. I would say that the Withdrawal Agreement provides that protection and the settled status cannot be taken away unless it is for a very specific reason. There is that absence and also criminal offences. If there is a serious criminal offence, they could lose settled status at that point.

Professor Charlotte O'Brien (York Law School): The Withdrawal Agreement protects permanent residents, which could be a different thing. You would not necessarily be entitled, according to EU law, to permanent residence even if you have settled status.

Christopher Desira (Director, Seraphus): The way I see it, if settled status is granted under the draft Withdrawal Agreement and if someone then commits an offence post 31 December 2020, after the end of the transition period, that offence can be assessed under UK immigration law. That means that if someone commits an offence that then attracts imprisonment of 12 months or more, they move into the automatic removal process and so their settled status is at risk then.

Sunder Katwala (Director, British Future): Yes, unless you became a citizen. If you became a citizen, you would then be in the --

Caroline Russell AM: OK. Thank you.

Caroline Pidgeon MBE AM: You have already started to touch on some of my areas of questions. This is so complicated. You are all really deeply involved and have a huge understanding of all of this. My questions are around no-deal and you have already started to touch on them. Simply, maybe Charlotte, in the event of no-deal, how will the status of EU nationals living in the UK be affected, just in simple terms?

Professor Charlotte O'Brien (York Law School): If there is no deal, there would not be EU-level or supranational protection of the status of those EU nationals in the UK or UK nationals in the EU. There would be, potentially, depending on what domestic law is, domestic provision for them. It is not totally clear. The UK proposals, we are told, are not dependent on there being a deal and yet a lot of the detail in the statement of intent appears to presume there is going to be a deal. There is a risk that those UK proposals will change, will shift or will be used as leverage to try to get some sort of reciprocal guarantee, even if it is bilateral guarantees from other member states.

There is the possibility of attempting to ringfence the citizens' rights provisions in the deal if it looks like the overall deal is a non-starter. It might be possible to harvest out the citizens' rights provisions because they are the provisions that receive amongst the quickest degree of agreement. It is accepted that not having any kind of provision and just having a status cliff edge would be a human catastrophe for a lot of people.

There are some legal questions over the possibility of doing that, but it seems entirely plausible that that would be advisable rather than having no deal entirely.

Christopher Desira (Director, Seraphus): When we have talked to the Home Office about a no-deal scenario, they have never really answered the question directly but have always said that the intention is for the settled status process to be available whatever the outcome of the negotiations. They have invested a lot of time and money building this toy and they are going to want to use it, essentially.

In a no-deal scenario, if I can guess how it might work, they will still have to implement the European Union Withdrawal Act, which brings the current European regulations into domestic law. The European regulations are the things that brought the Citizens' Rights Directive into UK law. Once that is there, it gives them the legal coverage to say, "Look, this is now the transition period for people to apply for settled status. In a no-deal scenario, you still have to apply for settled status. This is the deadline to apply for settled status", and so you would still have time to do it and you would have the legal coverage to do it.

My worry in that scenario is that although they will be able to protect some residents' rights, all the associated rights that come with residence might be affected.

Caroline Pidgeon MBE AM: Can you give me some examples of what you mean by that?

Christopher Desira (Director, Seraphus): Family reunification for family members who are not yet here and who cannot enter the UK --

Caroline Pidgeon MBE AM: We would lose that, yes.

Christopher Desira (Director, Seraphus): Yes. There are social security rights and pension rights as well and whether you retain your pension when you go back to Portugal and that pension continues to be

operated. That will not be available in a no-deal scenario. The biggest one is family unification rights. That will be the biggest obstacle. That is where the Home Office might look at the process in a no-deal scenario and say, "We were forced to protect these issues under the negotiations but now we have the unilateral power to decide what we really want to do". There could be other scenarios as well, like the Surinder Singh scenario. British nationals who have lived abroad and come back to the UK are able to bring their family over under European law.

Sunder Katwala (Director, British Future): In a no-deal scenario, it is really important to ringfence the citizens' deal as a ringfenced deal. It is difficult to see why there would be an objection on any side to doing that. The UK Government sounds quite open to it but the Mayor, the Assembly and Londoners should be looking for both sides to say that.

The reason it works is very important for the Britons in Europe because of 28 sets of bilateral arrangements. So much will get lost. In a way, if the UK Government then did what it should say, there would be some risks and losses especially of the appeal rights, but if they implemented the same scheme there would not be. The message would be, "Look, people can argue about the market access and the £39 billion, but that is enough to argue about and no one is in a particularly worse position in the poker game other than that they are holding 4.5 million people to ransom to put that through". There is no legal barrier to doing that and that is especially important.

However, if you do not do that, the political risks of starting to unpick the deal as opposed to saying, "We should do what we said", are quite high and there should be pressure to, say, introduce it as it was. You lose the legal oversight from the EU-end. For example, the European Commission is in charge of overseeing it and we are creating a new domestic independent monitoring authority that comes into place only in 2024. We need that quicker and so on.

The only, I suppose, politically tempting thing for the UK Government is to do the same thing but with a tweak. They might decide to have a tougher criminal threshold from the start because the criminal thresholds for other forms of non-EU migration are tougher than the EU ones. At some point, they will make that transition in the change. They might change that.

There should be political pressure to say, "If you are sticking to what you said, stick to what you said", but it is so much better to do it on an EU-wide basis than to do it as a domestic law.

Caroline Pidgeon MBE AM: If there is no deal, will it also affect EU nationals' ability to access things like public services, rights to work, rights to remain in the UK? Would it effectively create a different class of citizen?

Sunder Katwala (Director, British Future): Christopher Desira (Director, Seraphus): Where it will do that is because of confusion and miscommunication and people accidentally breaking the law or deliberately breaking the law because people have heard about a no-deal Brexit and they are a landlord and therefore do not know if they should rent this house to somebody who is Italian and so on. There are significant risks with people not understanding.

The Government also has to pass a law so that what it wants to be the law is the law and there will be a lot of laws to pass in a no-deal scenario, but the big risk is around the communication that nothing has changed. You have some hate crime risks there. You also have just some confusion risks for employers and landlords that they are not supposed to be doing that now. That should not be if the Government is doing what it is

meant to do. There are no risks to your status if they pass this deal or get it through, but people might not understand that.

Caroline Pidgeon MBE AM: Do you think that those EU citizens will almost be seen as a different class, effectively, because they are just in a different space at that time?

Professor Charlotte O'Brien (York Law School): It is worth bearing in mind that already we have a system where EU nationals do have to go through different checks to UK nationals for various kinds of services and to show their entitlement to equal treatment and to show they are exercising a treaty right. Those kinds of hurdles do create different administrative experiences and different risks of administrative injustice. My concern is that that will be on a different order of magnitude, particularly if we are in a no-deal scenario and the Government is maintaining that employers should be differentiating between new arrivals and people subject to the 'old regime', in inverted commas, and those entitled to settled status with the bureaucratic hurdles that people will have to go through and the checks that they will have to go through. It is difficult to know what they are going to look like, especially if employers are being told on the one hand, "You should not be discriminating. You should not be treating this group of people differently", but then, "You should be treating this group of people differently". How do you find out which group they fall into?

Caroline Pidgeon MBE AM: The additional checks and pressures on employers, as you say, and others.

Professor Charlotte O'Brien (York Law School): A deal will depend upon what status people are deemed to have: (a) if they are new arrivals; and (b) if they are people who are already here but do not have settled status for one reason or another, or if they are on the pathway to settled status and what it is they are supposed to do to maintain entitlement to reside in order to get settled status. If someone has not registered in time, we were just discussing before whether that will mean that they are effectively treated as undocumented immigrants subject to the legislation that applies to illegal immigrants? Will they be subject to the hostile environment? Will they suddenly find that every time they bump into other bits of law they are committing criminal offences just because they have not registered?

There is a number of risks of administrative injustice and a number of risks of administrative discrimination, some of it inadvertent, some of it out of confusion, some of it potentially because the system almost requires it.

Caroline Pidgeon MBE AM: Are you concerned at all? We have seen in recent times the Windrush scandal and hostile environment checks destroying lives of people in this country legally. Are you worried that the Government is in such chaos on this that the whole approach risks that there could be a repeat for EU citizens being treated in the same way?

Professor Charlotte O'Brien (York Law School): I am concerned, yes, especially on the point of people who do not register in time or cannot produce the evidence of their residence for one reason or another or they do not have the footprint. An awful lot seems to be in the pilot scheme based on having what a lot of people do not have, a National Insurance number, for one reason or another. There are people who have been trafficked, who have been doing unpaid care work, who have relocated due to domestic abuse, who have children and so on. There is a significant risk of people not meeting that deadline or not having the evidence or not having the document that shows their entitlement when push comes to shove, when we reach the Brexit point and the end of the transition point.

Caroline Pidgeon MBE AM: These are very vulnerable people.

Professor Charlotte O'Brien (York Law School): Yes, including old-age people as well. I know that Age Concern is very concerned about the effect on older vulnerable people, particularly isolated people, non-internet-using people. It is worth noting of course that that has a disproportionate effect on women due to our habit of living longer. Something like 75% of EU nationals over the age of 75 are women in the UK.

Sunder Katwala (Director, British Future): The risk is that there will be a lot of vigilance in the media, in politics and so on, and the Government is aware of that and actually under some pressure therefore to not fall over. That is a good thing.

Whether that vigilance is sustained as long as it needs to be -- because this will not be as much of a problem next Easter after Brexit when everyone is watching for it. It will then be a problem in the summer and autumn of 2021. If it becomes a very big problem, it might happen in the summer and autumn of 2026 - because people may be on presettled status when they should be on settled status and did not have it - and whether or not we have the mechanisms to do that. It might be that if you have said, "We have a policy of saying, if you are eligible, we are quite keen to grant it to you", and in the end that will be fine, but these are different. It is the sustainedness of it.

The positive side to that is that inventing this scheme is exactly what did not happen in 1971 and 1973. You created a big change in the law and changed people's status and found out when they retired 40 years later and they ended up in another system. That is why this spring, all of the messages should be about the advice, the communication, the support you need to apply and then some real vigilance so that people do not get mistreated in it. We are deciding the scale of the problem two years later, three years later and six years later in how much we invest in the reach of the system now.

There is a very big chance that a lot of people will be on presettled status who are not meant to be and that nobody will be looking out for them five years down the road.

Christopher Desira (Director, Seraphus): I have a concern that there will still be problems years down the line. There are parents who did not register their children under the scheme because they wrongly thought their children were British. Some elderly EU citizens even now are saying, "Why should I get engaged with any of this? I have a passport. I am allowed to be here. I have been here for 45 years. I am not going to do this". Then, when they come to the point in their life when there needs to be a check because they are accessing education or healthcare or a reassessment of social services, at that point it is going to be like, "Where is your settled status?" It will be, "I did not need one. I thought I never needed one", or, "I did not apply for it because I did not really need it". That is the problem. Later on down the line, there are going to be obstacles for people if they have not engaged with us.

Caroline Russell AM: Yes. I am looking at the impact of all these changes on community cohesion. Last year, Sunder, you came to our open-mic session and raised a lot of concerns about EU exit and about the heightened feeling of them-and-us in UK society. I am just wondering if you think that that has happened and if you think that is getting worse or more evident and, if so, what it is you are looking at to provide evidence of that.

Sunder Katwala (Director, British Future): It is hard to gauge and give a definitive answer of it. I would say that the politics of issues like Brexit are now perhaps more polarised at the end of 2018 than they were at, say, the end of 2016 and at both ends of the debate, and that has some dangers. In either, I would say, a no-deal scenario or possibly a scenario where there was a referendum and some people did not think it should be

happening at all, you might see a more heightened polarisation in the new year, next spring and in the summer during these political events. Just that heightened atmosphere and how that feels on social media might affect people in their lives and how they feel.

While those are all legitimate political debates, we should be looking for ways for people of different political views and different views of Brexit to try to get some foundations in place about behaviour and hate crime types of issues. We have lost that to a surprising extent. We have lost the consensus of, whether you are left-wing or right-wing, remainer or Brexiteer, hate crime and xenophobia are bad. We had something, which was that all the political advocates on all sides thought all the EU nationals should be allowed to stay, but we did not make a quick decision and so people felt very worried about that and felt very bad about that.

In principle, whatever side you are of Brexit or politics, racism and hatred is bad, but we now have a political polarisation, for example, about whether that is happening or not or whether liberal people have made up that that is happening because they did not like the referendum. Therefore, other people would say, "I would be against if it was happening. I think you have made it up and you are just trying to put all of that in the *Guardian*". We have a job. Hate crime cannot be a 48% versus 52% issue. It should be a 90% issue. We have some work to do to separate out, "I did not like your campaign. You lied on a bus. Why do you not accept the result just because you lost?" Separate out that stuff from, "Do we have shared norms and agreed norms if people get shouted at in the street?" If it gets that heightened, it is not that most leave voters think it or anything, but the 5% of people who do think it start saying, "Why are you still here? Why are you still in my country? I want a no-deal". It will be quite confused in the sense of having a no-deal Brexit and everybody has two-and-a-half years to stay and that you have free movement. That is a surprising thing whichever side you are on. We have lost something really important, which is just the foundational norms against prejudice and hate crime to the polarised politics. We have to keep that out of communities and try to get that back. Remain and leave voices deliberately being seen to do that together while having quite big arguments about everything would be quite important.

Christopher Desira (Director, Seraphus): That requires leadership to do that. Theresa May's [Prime Minister] comments on queue jumpers did not go down well at all because no one is abusing the system and no one is queue jumping and no one is taking advantage. They are EU citizens who have a right and exercise that right to come and choose to live in the UK. Then to paint EU citizens with that brush, when they are neighbours, teachers, nurses, hairdressers, friends, family, and lovers is completely wrong. That is where the rhetoric is coming from. The leadership tells the general public, "This is how it should be". That is the message we send.

Len Duvall AM (Chair): Is there a sense not just about the messaging because I could even go back further thinking that actually this was a settled issue until the words were said at Chequers in shorthand, which took us back a step, even though I thought there are lots of grey areas, as you outlined earlier on in your presentations. In the message at this particular time, even with the polarisation where we are, politicians, just watch your language because you can either create more anxiety within EU nationals or create more problems with those in building up whatever sense of resentment they feel that there is or why they voted or feel cheated around that.

Is there a case then of - it is probably the wrong word - honesty with politicians of where we are? It is quite interesting. There will be a number of people who will feel that this does not represent what they thought was going to happen to EU nationals, which has been very clear in the media. Being a politician and the messaging that goes out, you think it is very clear, but when you talk to people on the doorstep it is not very clear about what they think your position is or what the reality is and why it is beneficial to this country. Even though this

does open up a number of issues, with the case that those EU citizens have made a contribution – let us be honest here – there is a moral issue why they should stay but there is also a very good UK business case and why we are talking about settled status for those here and a different sort of status for people coming in. That is where the honesty is not coming across with politicians. We do not hear enough in this debate about those issues and why they have come to these conclusions. It will become dressed up as the EU holding something over us, when actually the reality is that the negotiators on the UK's part have realised that actually this is where we should be. We have all seen the dressing up and the spin that goes on about political stances and about controlling borders. Do I have that right? Am I missing something? I am a practising politician.

Professor Charlotte O'Brien (York Law School): Part of what of the problem is goes to the fact that there is a policy cognitive dissonance here in terms of how we are dressing up future free movement. We are saying we are ending it and therefore justifying it by describing free movement as a problem or a blight, which reflects upon the people who have already exercised free movement. There needs to be greater transparency over that dissonance and saying, "Look, this is what we are doing over future free movement because that is what is being translated and what is being interpreted as the impetus behind the referendum, but we are embracing those people who had, prior to the referendum, prior to Brexit, prior to the end of the transition period, exercised those free movement rights and celebrating what they have contributed and will continue to contribute", and justifying it on that basis.

You are quite right that the problem of rhetoric goes back quite some way in that prior to the referendum there was a very strong anti-free movement discourse charging the leave campaign and there was not a counter narrative from the remain campaign, which focused very much on the overall macroeconomic benefits. If you looked at the *Stronger In* website, there was a whole list of benefits of being in the EU and free movement of people was not on that top 10 list. There was no attempt to engage with that or address it head on.

That was problematic because there was an opportunity, regardless of the outcome of the referendum, to try to command that narrative a bit more and make it more positive and make it warmer and more welcoming, recognising very much the human dimension and tapping into the fact that an awful lot of people, however they voted, do like and get on with their neighbours and their colleagues and do not want them to be booted out.

Sunder Katwala (Director, British Future): That is why that distinction between the past and the future does need to be reciprocated on both sides of politics. Both sides of the referendum debate have to agree to do that and that has been difficult.

I commissioned a poll on the weekend after the referendum and published it a week later. It was 84% for EU nationals staying. That was 90% of remain voters and 75% of leave voters. A lot of people were very surprised by that. To some extent, it was the remain liberal newspapers that were as surprised by it as well. That was because there was a principle there, which is that you can have your view about opposition of the EU because we had a referendum and you can have a view about policies we might introduce, but you do not change people's lives now. That is why the 'queue jumpers' language is wrong and it is important to apologise, but it is also important then for the liberal side to say, "We like free movement and we think it is a mistake to end it". They need to take the deal --

Caroline Pidgeon MBE AM: Yes, explain the benefits.

Sunder Katwala (Director, British Future): -- but they also need to take the deal on separating the past. It is a legitimate political position to say, "I want to leave the EU and change the free movement rules and I can treat people well". You cannot then say, "You are an absolute hypocrite because you cannot do both of those things", because of course you can. There is a principle of human justice saying that we do not change things retrospectively and that future changes are for future people. You have to take that deal if you want to say, "Look, we want to have a fight about the future immigration policy because we would still like it for business reasons and so on, but we accept it". That is where we need the foundations.

There is a positive thing here. There are worries about hate crime and there is evidence about hate crime and I am sure hate crime is still underreported and there is polarisation around Brexit and politics generally. There has been a big reduction in the heat and temperature of the immigration debate. The salience has fallen a lot and attitudes have warmed up a fair bit. It is counterintuitive, but it has happened.

Ask the people who have changed their minds why they have changed their minds and there are two different reasons of relatively equal weight. If you are a person who ended up voting remain in the end but you did not like free movement that much, you are now warmer to it. You have seen stories of the 3 million. You are more empathetic. You actually regret it. Windrush has happened. The newspaper stories have been positive. If you are a leaver who did want to end free movement and still wants to, you feel a bit more powerful. You feel a bit of control and you are expecting some changes. Therefore, for two different reasons, there has been a reduction in the temperature. We have more temperature about Brexit and Europe but we have less temperature about immigration. Bar being very vigilant about hate crime, we should welcome that.

The public, when they get, "OK, a new system, what do you think should be in it", has actually a moderating discussion because they say, "Skills are good and care-workers are important". People at all different levels of the debate end up thinking, "If I want control of this stuff, I have to think quite hard about it". In a way, having an open immigration debate about the choices we want - should we keep free movement, should we control it differently, should we change it - is actually quite moderating because it is not just all good or bad. That has happened and we should lean into it and therefore have more confidence to have the kind of leadership you were discussing.

Christopher Desira (Director, Seraphus): The positives of immigration have never been talked about in politics, never.

Caroline Pidgeon MBE AM: No. Nobody dares.

Christopher Desira (Director, Seraphus): This goes back generations, a long way, and this is why we are where we are with hostile environments and some of these attitudes. I am not a politician and have never worked in politics, but I have worked in immigration law my whole career and so I have understood and seen examples of the hostility that is around non-EU citizens. When the referendum debate started hitting immigration and I started listening to the debate on immigration and there was no positive message on immigration at that point, that was when my fears started really hitting home that there was a massive risk that the vote could be leave at that point. From my own personal interaction with this, I understood that there is a real undercurrent of hostility towards migrants, not at a massive scale, but it is out there. I understood that if we tapped that enough, then the risk of leaving was then increased at that point.

I can only talk from my interactions with EU citizens now. There is that hostility. I have listened to examples of some EU citizens talking in their own language, say in German on the bus, and then someone walks up to them and says, "Why are you speaking that language? We have voted out. Why are you still here?" I spoke to

a woman who set up her own branding business. She has been here for 15 years and then her friends and colleagues started talking about migration and how glad they were we voted out and how we can kick all these people out. She will turn around to them and say, "You are talking about me as well". They did not realise that she is Belgian and has been here all these years. She has no accent and you cannot tell, but she will turn around and say, "I am one of the people you are talking about. Do you want to get rid of me?" They say, "No, we do not want to get rid of you. We are not talking about you at all".

There are hate crimes and there have been instances of violence. We do not know how widespread because they are really substantially under-reported, but the embassies do receive examples of where people have been threatened with violence or with verbal abuse because of the hostilities now that they are facing that non-EU citizens have faced for a long time. There is no political strength there to say, "We are an open country. We welcome migration. These have been net gains for migration. This is why we want people here. This is why we want people to stay", to counteract all of the hostile messages.

Sunder Katwala (Director, British Future): It is incredibly important to counteract prejudice and hate crime, but I want to challenge or disagree a bit on just one point.

It is often said now by the more liberal and the more remain end, "The other side made the negative case. We did not make a positive case". It is absolutely not the general public's perception of most Londoners and most people that the positive case was not made. Some people feel the positive case was not made.

A lot of other people feel that some people - and they mean big businesses but they also mean [former Prime Ministers] Tony Blair and David Cameron and [former Deputy Prime Minister] Nick Clegg and [former Chancellor of the Exchequer] George Osborne - have been making the positive case on the gross domestic product gains and blanketing us out and therefore not listening about the local pressures. That is all they were doing and they were not listening. There were two very polarised perceptions that we were not allowed to say we have some problems with it even though we have some problems with it but we are not nasty to our neighbours and so on. There are some people who feel that the positive case was blasted at them and they were not allowed to say anything else about it and other people who feel, "You think you were not allowed to talk about immigration but you have been talking about it for 40 years and so you obviously were allowed to". There is a real polarisation and people actually feel relieved after Brexit that the debate has opened up and we should have done it much earlier and should have been dealing with it and it is good now. Other people are saying, "We have talked about it and we need to close it down".

It is worth recognising that polarisation and getting into the discomfort a bit of saying, "Let us have a discussion where all of those views are legitimate". There is then quite a lot of common ground about immigration and especially integration between the people who felt they were not allowed to talk about it for 15 years and the people who feel, "Can we not talk about something else now?" In a way, the liberal group has to not say, "I just want to give you the facts about how good it is", or, "Can we not talk about something else?" They need to say, "Let us talk about your pressures, let us talk about my gains and let us put together a policy".

The 'London is Open' message, for example, is very important and it should work very well. It needs to work for the 40% of Londoners who voted leave. They need to say, "Yes, London is Open. I voted leave but London is Open", rather than also being very valuable to the 60% who voted remain, "I am really pleased London is staying open because everywhere else is not now". It has to bridge that divide.

Caroline Russell AM: ‘London is Open’ is exactly what I was about to ask about. Do you think that the Mayor is doing enough about the need for London to remain an open and tolerant place to live and work? Sunder, you were just saying about the fact that it has to work for people who voted leave as well as for people who voted remain. Do you think that that is coming across enough from the messaging that is coming out from City Hall?

Sunder Katwala (Director, British Future): I do not know if it is or it is not, but it would be worth finding out about that because, if it is really working, people ought to feel very open. Broadly, open versus closed is not a good way to make the case for open. You are actually saying something quite pejorative about the other group. Some people are, “Open versus closed”. Some people are, “Shut the borders”. That is quite rare. Most people are, “London is open but how do we manage it fairly for everybody?” A certain type of, “Open versus closed”, is very important to say to the EU nationals themselves. It is very important for London to say it to the other cities, etc.

However, what it cannot be saying is, “London does not really agree with the rest of the country”, even though it is partly true, “and that therefore the people who voted leave in London are not as ‘London’ as the rest of us”. It should be saying, “Whatever these big national debates happening about Brexit, London is still going to be London. We all agree with that and the openness and getting this right”. Testing that in the boroughs that voted leave but with the leave voters who are in all the remain boroughs as well and not to concede too much so that the remain voters do not feel they are part of it. That is quite an important part of the ‘London is open’ story.

Caroline Russell AM: Thank you.

Len Duvall AM (Chair): Are there any more questions? We have exhausted our core questions. Is there anything you think we have not asked you that you think we should be aware of? Is there something, “Shock, horror, they have not said anything about this”, that you want to tell us? We are going to reflect on what you have said to us and we will come back to you with any follow-up questions.

Sunder Katwala (Director, British Future): The bit we did not really do, but there is so much to do, is that there will be a White Paper next week if they can decide on it. It is important for people to realise that these are the 2021 changes, not the next March [2019] changes, and there is going to be a debate about that and it will be about the low- and medium-skill matters debate. Instead of saying, “Why have the debate about skills at all”, it is a good chance to take the consensus on high skills, student and skilled migration across the political consensus and across the referendum. There is a consensus on that. Managing low- and semi-skilled well in work so that it works for London, it works for everybody is harder work and let us talk about that as well, but there is a good thing even if you want migration all the way up and down the skills level. There is a good thing in realising that there is a consensus on student migration and skilled migration. Therefore, saying, “Let us not talk about skills at all because it is good or bad migrants”, is slightly missing part of the point that actually, if you take the skilled migration, you cannot have the net migration target we have.

Then we do need mid-skilled migration and lower-skilled migration. Care homes are important, but not just going straight to ‘take everybody’ versus ‘all closed’. It is quite a subtle thing to get right in this next debate, which will be in this White Paper this week and the Brexit crisis, but then there will be an Immigration Bill next year [2019], which will be the most important piece of immigration legislation since the 1971 [Immigration] Act. If that is a controlled system, how can a controlled system let London be open? That is really hard work for the next period.

Professor Charlotte O'Brien (York Law School): We touched on social security coordination before and I have some concerns about how the future system is going to work. Particularly if there is no deal and there is no ringfencing of citizens' rights that includes social security coordination, then we could see a significant problem, as Chris was saying before, in terms of the aggregation of pension contributions working smoothly if people make pension contributions in different member states and then have the ability to export their pensions and have that operated, etc.

Even in the event of a deal that includes provisions on social security coordination, my concern is mainly from an administrative point of view. My experience of working in the system now is that it is uncoordinated coordination. It is really quite hard to get things to work appropriately the way they are in theory meant to, even with specialist support, even as a member of the EU.

An example case that I had involved what should have been a fairly straightforward very temporary exportation of a benefit claim. I went on to the relevant benefit office's website and was directed to contact the exportability team. We did and the exportability team did not exist. Then I phoned the number that I was told to phone and someone answered the phone and said, "Sorry, I do not think this team exists. Have you tried ringing this number?" It was the number I had just phoned. It was like being lost down some sort of strange administrative rabbit hole.

That, as I say, is from the position of being a member of the EU where we are supposed to be co-ordinating social security smoothly and it is anything but smooth. My concern is that when we are not a member of the EU, it is not going to get any easier. For a number of people, particularly on aggregation of contributions or for small periods of exportation for all sorts of, sometimes quite dramatic, life reasons - like if someone has settled status but they need to go temporarily to another member state to look after an elderly relative who is dying and during that period needs to export a benefit - it is going to get harder and I am worried about that.

Christopher Desira (Director, Seraphus): Yes, accessing social assistance for those on presettled status is going to be a problem as well because presettled status will not gain you social assistance. The DWP is still going to ask you whether you are working, whether you are self-employed and so on. Settled status will be the gateway to social assistance but presettled status should be as well. If the test is residence and identity and so on, then, once you get presettled status, it should be the gateway to social assistance as well. That is going to be an issue.

I would also say - and this is going to be more relevant as we get closer to March [2019] - that if we have a deal and the political messenger is that we are ending free movement, maybe the message needs to be much more clearer than that. A message saying that we are ending free movement says to some of the public who do not understand this that free movement ends in March [2019] for EU citizens. It does not; it continues. That message needs to change as well.

Sunder Katwala (Director, British Future): There is one final point I would make about integration and citizenship. You mentioned the voting rights for a lot of people. We do not know where we are going to be on the voting rights.

Also, if we have however million people in London, 3.5 million to 4 million people [in the UK], who are here, who are told they are a permanent part of our community and who are not citizens, we should be thinking about - which just has not come up in the public debate because there are so many complicated things - an easy route to citizenship for these people and the Government ought to be encouraging it. It would be good if people do get the right to vote in local elections and London elections, but if they are permanently here, that

is what settled status is. There should still be an opportunity to ask if there should be a route. If 4 million people are going to go through a system, why have we not asked people if they have thought about being a citizen and cut out the barriers and loopholes and costs for this group?

Professor Charlotte O'Brien (York Law School): Especially for children.

Sunder Katwala (Director, British Future): That will make the biggest difference to integration because it is the largest ever population of people without citizens' rights who are here permanently.

Len Duvall AM (Chair): Thank you for the way that you have answered our questions and raised some very important points for us to consider and also for the Mayor to consider both on his own actions but also on actions we are going to ask of others. Thank you for that.