

EU Exit Working Group – Thursday, 28 March 2019

Transcript of Item 5 – Panel 1 – Brexit: The Next Steps

Len Duvall AM (Chair): Let us move on to Brexit: the next steps. Can I welcome our guest for the first part of this session, Joe Owen, Associate Director from the Institute for Government?

You are one of the leading experts on some of the work that we have been following. Do you want to make a statement on where you think things are as an opening statement to us and then we will take questions from the panel to you directly?

Joe Owen (Associate Director, Institute for Government): The first thing to say is that there are three simultaneous pathways that are happening at the moment. Pathway one is the Prime Minister's [The Rt Hon Theresa May MP] deal and whether that will come back. There will be a further vote on that in the House of Commons and then a move on to further ratification. Pathway two is the process that has been taking place in the House of Commons this week, trying to see if there is a majority for something else through the indicative votes process. That, if successful, could lead to possible amendments to the political declaration and the future relationship element of the Withdrawal Agreement. Then the final pathway is no-deal, which remains on the table. The current "drop-dead" date on that in international, United Kingdom (UK) and European Union (EU) law is 12 April [2019]. At the moment, all these three tracks are happening.

There are a number of challenges with each of them that we can probably get into. I am very happy to talk about what I see them as now before questions or we can dive into them in the questions.

Len Duvall AM (Chair): Go for it.

Joe Owen (Associate Director, Institute for Government): With track one, the Prime Minister's deal, there are three big challenges. One is getting the support and whether you have the political backing for it. I am no expert on the politics and anyone's guess is as good as mine and so I am not going to dwell too much on that.

The second is the procedural steps in getting it back into Parliament for a third vote. The Speaker [of the House of Commons], John Bercow, yesterday made his intervention, suggesting that even if the House of Commons were to express a majority to say, "We want this deal to come back", he still would not see that as sufficient in terms of the procedure around not asking the House [of Commons] the same question twice. That is quite a big challenge for the Government. That was one of the options that most people felt was a way through when he made his original ruling last week, but there are other options. One that has been spoken about probably the most is whether or not the Withdrawal Agreement Bill, which is the piece of legislation that is required in order to ratify the Withdrawal Agreement under UK law, could be used as a route to overrule the EU Withdrawal Act, which is the piece of legislation that determines you need a meaningful vote or provide amendments, and basically use that as a way to bypass the meaningful vote process and move through to ratification.

The third challenge on the Prime Minister's deal I wanted to bring up was the Withdrawal Agreement Bill itself. It is often considered that piecing together a majority to push through the meaningful vote is done and dusted and there is a majority for the deal, but the legislation that will need to follow is certainly unlikely to be

contentious. If you look back at the implementation of previous bits of EU treaty, the legislation has proved to be a pretty tricky process. If you throw yourself all the way back to the UK joining, in the version of the meaningful vote there, the approval for joining the EU, there was a pretty big majority. I cannot remember the exact number but it was close to 100 in favour of joining the European Economic Community, as it was at that point. When you got through to the implementing legislation, that majority was down to single figures because of some of the challenges that, as they are written in UK law, may put off Members of Parliament (MPs) who have possibly agreed with it in principle.

The other point is that there will be lots and lots more votes that the Prime Minister and the Government will need a stable majority for. For Maastricht, there were over 100 divisions or maybe 120 divisions on the piece of legislation, all of that from second reading and approval of the Bill in principle to some quite tricky amendments that could have consequences for our ability to abide by the agreement as signed up to with the EU and therefore potential consequences for the EU's willingness to ratify. The broad point I wanted to make there is that the meaningful vote is not the last hurdle. There are plenty of big parliamentary votes that are potentially just as important still to come in order to get through to ratification.

The second track I talked about was the indicative votes process. What we saw last night, as you will know, is that there is not a majority for any of those options. What we saw was that there was maybe potential Labour and opposition party support for some softer types of Brexit, but the Conservative Party voted against all of those. Where you saw a big yes vote from the Conservatives was either around no-deal or around the standstill transition but leaving still without a deal that was put forward. How you reconcile those over the next week to come up with this stable majority still looks really difficult and it is not as if there is an obvious answer that will come out of this process.

The final track I talked about was no-deal. Despite big votes from the House of Commons, if you speak to officials working in Government departments, they have not taken their foot off the gas in terms of the preparations that need to be in place for potentially leaving without a deal now on 12 April [2019]. That is a real challenge for how you give advice and communicate with businesses and citizens who will, rightly, be wondering what will change, when and by how much. Taking account of this huge effort that is still going on to try to prepare for no-deal despite timelines being quite uncertain is a really important point.

Len Duvall AM (Chair): Of course, behind the various paths, there is legislation going. Your organisation back in January [2019] published *Brexit: Two Months to Go*, and then started to put red, green and amber - not much amber - on the different Parliamentary Acts that are required for various issues.

Joe Owen (Associate Director, Institute for Government): Yes.

Len Duvall AM (Chair): That has not really changed, has it? If we get past this week and early next week and there is something - because even if Monday happens, there are further steps that those who want to take the indicative process and turn it into legislation would have to take - time is running out to pass the rest of any accompanying legislation that you need to do. It almost begs the question: why were we not in this position sometime last year, then giving us some breathing space to pick up those issues?

In your view, is that still substantial? Let us play 'what if'. If the Prime Minister's deal gets a majority on Friday, with the timetabling to pass the rest of the legislation, can that still be done in the timescales that both the EU and the Government have arrived at?

Joe Owen (Associate Director, Institute for Government): The legislation necessary for leaving depends on how we leave. If we leave with a deal in the scenario that you say - the Prime Minister's deal goes through

and we are aiming for this 22 May [2019] date - the only critical piece of legislation is this Withdrawal Agreement Bill. That is what is necessary in order to ratify the Withdrawal Agreement and enter the transition. Then the other bills that are making their way through Parliament can come in during the transition.

If we are to leave without a deal, there is a raft of more legislation, both primary and secondary, that would be required. The Government has been bit inconsistent and it is still not entirely clear which of those bits of legislation are absolutely critical for no-deal and which ones we could live with putting in place in the weeks and months after, but one of the really problematic areas for them is the Trade Bill. The purpose of the Trade Bill is to give the Government powers to roll over the agreements that we are part of through our EU membership, the stuff that the Department for International Trade (DIT) has been trying to agree, and there has been a steadier stream in the past few weeks and months of agreements that we have reached in principle or somewhere in slightly more detail.

The House of Lords has passed an amendment to that saying that this cannot come into force unless MPs vote for no-deal, and so the default legal leaving does not mean that that would then come into place. That is quite a problem for the Government in getting its legislation through if Parliament is saying, "We are not playing ball unless you give overwhelming support for no-deal".

Back to your question on timelines, if you are looking at the 22 May [2019] scenario of leaving with a deal, that is still very tight for getting just the Withdrawal Agreement Bill through. There were something like 40 parliamentary sitting days used for passing the Maastricht legislation and it was down to about 25 for the Lisbon Treaty. It is still going to be relatively tight to try to get that legislation through.

If the scenario on the timelines is leaving without a deal on 12 April [2019], if you look at where those bills are - and I do not know off the top of my head but I do not think they are that much further on from when we published that - we are still a very long way from having the necessary legislation or at least all of those bills that the Government once indicated were necessary for no-deal. We are still a long way from having those in place. What the Government has done for the last few months really is to hold them all back to try to avoid uncomfortable votes in the House of Commons. There is nothing to suggest that MPs or Lords would not start to lay similar types of amendments that they have done on the Trade Bill to those other bits of legislation. Under no-deal it is much more problematic than it is in the deal scenario, but the deal scenario is not without big risks.

Len Duvall AM (Chair): You have published a paper about - just taking one aspect of preparation by the Government - the Home Office and whether it is fit for purpose around migration issues. Your position is that the Government needs to change how it does its work. Do you want to just take us through that? We might follow up on that.

The whole issue is just that it opens up all sorts of issues. Even if you set aside Brexit, the role of the executive and the role of Parliament - both Houses, because we have not heard from the House of Lords except for that one vote and we know what the House of Lords is capable of doing - and the timetable of relationships, are Government departments able to move as quickly into that? We know that when rushed legislation goes through mistakes are made. Let us hone in on some of that work you did on the Home Office and the preparations around that. What were your conclusions and what did you draw from that?

Joe Owen (Associate Director, Institute for Government): In some respects, the Home Office piece was looking much further ahead because the Home Office is one of those areas, at least in migration, we looked at where the Government could - I am not saying it would be easy politically but practically it could - remove any, for want of a better phrase, cliff-edge where all of a sudden certain arrangements end and new ones need to

begin. We could unilaterally say we want free movement to carry on for another year if we wanted to. If we did not think we had the necessary processes in place, we could make that unilateral decision.

Where it is much more acute and where there will be a legal and practical step change overnight in certain areas is around the border. I have also done a bit of work there and so perhaps I will use that to illustrate some of the challenges around Government departments working together on timelines.

The border is one of those areas where things will change on day one legally. We will become a third country as far as the EU is concerned and the EU has a long list of rules that we have been applying for a long time about how to treat third countries with whom you have no trade agreements at the border. In terms of the UK side, we can make some unilateral decisions to say that for trade coming from Europe to us, we are happy to wave stuff through and will take a pragmatic approach and we do not want to insert too much friction in the border, which is a possible temporary fix but longer term is not sustainable given where we will be negotiating with other countries around the world and possible challenges at the World Trade Organisation for our approach at the border. One of the biggest practical tasks for the Government is preparing the border.

If you look at the number of departments and agencies, just under 30 different Government departments or agencies have a role at the border, everything from the Department for Environment, Food and Rural Affairs (Defra) doing checks on animal health to Her Majesty's Revenue and Customs doing stuff around customs, but then we have these other public bodies. I remember when we looked into it I was very surprised that we have the Forestry Commission, which are responsible for issuing phytosanitary certificates that are necessary for entering the EU and trade with other countries. We have the Government Diamond Office, which potentially needs to play a role for specific goods. The Arts Council has a role for certain things. They are bigger or smaller depending on what they are, but the cross-Government task is huge because of the way our key trading routes with the EU are constructed.

When we went around and spoke to people when we did a paper in 2017, they said it is constructed to be a continuous motorway. Although you change mode of transport, we want it to be as free-flowing as possible all the way and they have optimised space for that. If you need to insert checks somewhere there, the knock-on effect could be quite substantial. If you have to conduct checks but one of the Government departments is not ready and does not have the necessary people or processes in place, all of a sudden that can have quite a big knock-on effect to how the others operate.

The Government has taken some pretty positive steps in trying to join this up. It established the Border Planning Group, which was the senior officials from all of the relevant departments and agencies, and then the Border Delivery Group, which had a specific role at trying to deliver this. However, when we spoke to people across the Government about this issue again at this time last year [2018], they said that there was this real issue of how you got things to line up. In one respect, there are also different Ministers involved in these different areas and some of the different Ministers, as you will have seen no doubt from various briefings in newspapers about the Cabinet, have different views of where things should go and where priorities should be. Some of that does make it difficult to come up with a single coherent plan, particularly when there is no single Minister sitting in Cabinet who is responsible for the border and who can be the person to say, "No, I am making an executive decision. This is how it will run". That was one of the challenges that came out: just the political tension.

The other is, clearly, the timeframes. In 2012 we adjusted one of our systems, in line with EU law, at the border to introduce a new piece of paperwork called an Entry Summary Declaration. From the point at which that piece of system was ready - and it took possibly a couple of years to get it all up and running - we gave businesses 18 months before they had to comply and before they would then be turned away at the border if

they did not have the right paperwork. We have had three years from the referendum until now. If you look at one of the big systems that they are implementing at the moment, the Customs Declaration Service, a big information technology (IT) system involved in the border, that will have been running for seven years. These changes take time, not just from the Government to work out what it wants and what the right systems are to facilitate it, but to get traders and businesses up and running.

We know from loads of Government projects that that is often the most difficult bit, whether it is making tax digital - which is running at the moment and which has had to be kicked back a few times because of difficulties engaging with small businesses - or automatic pension enrolment, for which some businesses were given six years to prepare with constant communication about what is needed. Where we are now, it is not really fair to say that communication began - it is not really fair to say it began in earnest in terms of broader communication - in August last year [2018] with a bunch of technical notices that were plonked on the Government website. Most people who have done big change in Government say that that is not the way to get everyone ready. While there has been some much more focused and detailed engagement - and I am not saying that the Government has not been doing this - they have really struggled.

There was a really telling piece of evidence that the lead officials who were in charge of the border gave to the Public Accounts Committee in Westminster a few weeks ago. They were saying, "We just have not been able to engage, particularly with businesses, say, in Northern Ireland. We have just been told by Ministers that we cannot talk to them about it because it is too sensitive". The politics and the practicalities and the tension between them have been real difficulties in getting some of the necessary communication out.

Len Duvall AM (Chair): Much of our legislation process has been exposed by this challenge, the capacity to respond, whether it is at policy level or implementation level, will need to be, whatever happens post Brexit, probably redesigned. It will be a different civil service and a different Government approach is required if it is going to meet the challenges that we face post Brexit. Is that a summary of your conclusion of where it ought to be?

Joe Owen (Associate Director, Institute for Government): That is certainly true in some areas. There is a serious question about whether having responsibility for the border so fragmented through the Government is the way that we will continue to work or whether the Border Delivery Group and the Border Planning Group become much more of a set part of Government infrastructure, if you like.

One other area that we talked about was immigration and we did say that, longer term, there is a real argument for a big rethink. The way the immigration system works now, there is a big change by introducing the end of free movement. There is a big change from a policy perspective because previously we have been able to rely on free movement, whether you are for it or against it, as a policy lever. It has basically been a safety valve. If the Government restricted immigration in certain areas and for certain professions too much for non-EU migration, they always knew that EU migration would be able to pick up some of that slack. Therefore, there is a different policy question that will require different Government departments to come together in a different way to answer the big trade-offs in a way that free movement has allowed them not to do.

There is also a big delivery question. Again, take immigration. We are simply introducing many more people who will have to come into contact with the immigration system. People who have come here under free movement will have to go through the Home Office processes. Just capacity wise, that is a big burst.

Then the other argument that we made on immigration was just public confidence. When you look back at some of the challenges the Home Office has faced, whether it is Windrush or DNA testing in the past, there is

an argument about whether it is the right construct to inspire public confidence both domestically and for people who will be looking to come here and whether that is an argument for rethinking.

Len Duvall AM (Chair): Tomorrow your organisation is publishing a piece of work around what has changed in the Government since the EU referendum. Are you in a position - and I know it is a bit cheeky to ask - to give us some headlines that you think might well be coming up tomorrow in terms of the publication of your document?

Joe Owen (Associate Director, Institute for Government): What we have done is drawing on some of our past work but basically asking what has changed in the past two-and-a-bit years. Has Brexit changed the Government? There are probably three interesting bits: the Civil Service, Ministers, and then Parliament.

In terms of the Civil Service's pure size and scale, there are 14,500 officials working on Brexit as we stand now. All of the indications are that that will continue to increase in certain areas. Defra is a really good example. After 2010, it lost about one-in-three staff through the spending reductions that were delivered under the Coalition Government. Within about 18 months to two years after the referendum, that has just been totally reversed. If you look at the chart, it goes straight up after the referendum. That is a big change for that Department and the role of that Department. Likewise, in the Home Office those cuts have been reversed. Size-wise, there is a big question for the civil service.

Quickly on Ministers, what we pulled out is that there has been increasing strain in the ministerial-civil service relationship in some areas. We have seen Ministers being quite critical of the Civil Service. We can take Olly Robbins [Prime Minister's Europe Adviser and Chief Negotiator for Exiting the EU] as the chief negotiator and as a bit of a lightning rod, but there were things said about the Treasury and its role in the economic analysis. That relationship is coming under strain in a way that perhaps it has not in more recent history.

The other point is about resignations. We have seen party discipline from a ministerial perspective, particularly in recent weeks, change in a way that again is unprecedented in recent memory. I cannot remember how many now. I think there are five ministerial posts that are still empty because people have resigned. If you look at the people who have already resigned or have voted against the deal and showed opposition to the deal, the pool of people who are potentially eligible to be a Minister is quite small. That tension is there.

Then on Parliament, we have seen tons of things that are unprecedented around the use of the humble address originally to force information out of the Government and then more recently these indicative votes. You could argue that it is not uncommon for Parliament to decide what it wants to talk about and what it wants to debate, but those are usually on carefully allotted days, not by taking control from the executive for a certain day and certainly not to carry out a series of votes that are different to the Government's single biggest policy, which it has been working on for the last couple of years. That tension is partly a reflection of life in a minority Government, but there is a real question about the extent to which that continues.

One other point I would make is around devolution, particularly with the nations. That relationship has come under a lot of strain, particularly with Scotland, because of the way devolution was done. Devolution settlements were made when there was a Labour Government in each of the countries and there was the EU framework to say, "We will give you control over environment, agriculture and fisheries, but we can do that knowing that the EU sets the outer bounds". When you remove those outer bounds from leaving the EU framework, how do the four nations work together to ensure that they do not diverge without it being seen as Westminster then saying, "We are going to curtail your ability to make decisions for yourself in these areas"? That is a real problem. We have seen a lot of friction, particularly with the Scottish and the Welsh. Then there

is the question of Northern Ireland, where there has not been an executive. Those are some of the big challenges that we touch on.

Caroline Russell AM: I want to go back to the beginning when you set out that we had three simultaneous pathways. You talked quite a lot about pathway one, which is the Prime Minister's deal. You have talked about no-deal and preparations both for the Prime Minister's deal and for no-deal.

What we have not heard much about is this process of the indicative votes. I am interested to understand where you think that could end up, whether you think there is any opportunity that we might get a vote put back to the people, and whether pathway two could be a way through the impasse that you have been describing to us.

Joe Owen (Associate Director, Institute for Government): The first thing to say about pathway two is that we do not know what happens next. We do not know what will happen on Monday. We know that there will be an attempt to try to whittle down these options, but the exact process and procedure - unless something has changed and I have missed it - is still unclear. However, the three options that received the most votes last night were for a confirmatory referendum, a customs union - which was the closest in terms of majority division - and then Labour's alternative plan.

The first question is, if any of those were to be successful, what does that mean? First of all, there is a question of whether the Government will accept it and whether it will use that to go back to Brussels or to change the process. The second question is whether they are negotiable, what they mean and whether we could come up with an agreement. This is not just about Westminster deciding what it wants, but it is also coming up with something that is negotiable with Brussels.

Only two of those three options would require negotiation. The confirmatory referendum would require negotiation I guess only inasmuch as we would need a much longer extension to be able to --

Caroline Russell AM: Could you see a scenario where we ended up holding the EU elections?

Joe Owen (Associate Director, Institute for Government): I do not want to nail my colours too highly to the mast, but it is almost impossible to see how we would have another referendum without holding EU Parliament elections. In fact, it would be impossible if you look at the timelines in current legislation. This could change, but there is the time required to pass the legislation for another referendum, and the Electoral Commission has suggested it would want at least 14 weeks to test the question. Then there is the regulated campaign period as set out in UK law that we would need to take account of.

We did a piece of work that said, if you took the Electoral Commission's assessment and the campaigning period as in legislation with a little bit of time, if you assumed there was a whopping majority for this and it could just breeze through Parliament, which is a big assumption, you could possibly get it done in 21 or 22 weeks, which is very similar to the Constitution Unit, which did a piece of work on this.

Yes, it is very difficult to see how you would escape the European Parliament elections. Also, if 'remain' was on the ballot paper, not taking part in the European Parliament elections would make it very difficult to then choose to remain.

Caroline Russell AM: If this is still something that is in play, holding the EU Parliament elections, am I right that 11 or 12 April [2019], which is our current cliff-edge no-deal point, is the deadline for holding those

elections? How prepared do you think that this country is for holding those elections? Is that part of the Government's Brexit preparedness?

Joe Owen (Associate Director, Institute for Government): I have to admit that I have not asked or spoken to officials directly about whether or not this is being worked on. There were points made after Theresa May's [Prime Minister] second attempt when her meaningful vote a few weeks ago was unsuccessful. She told the Conservative Party that they would need to be ready for these elections. Whether that is just briefing I do not know.

The short answer is that it is very difficult to tell, but the purpose of 12 April [2019] is that we have sufficient time afterwards to do some of that organisation and then have the five-week campaign period. I am not in a position to be able to say definitively either way, but you would assume it features in planning, given that it is now a relatively realistic prospect.

Tony Devenish AM: Joe, do you have somewhere in all your research a very simple flow diagram of who is supposed to be doing what and by when? I know you probably do not have it all, but are you publishing one in your paper tomorrow?

Joe Owen (Associate Director, Institute for Government): When you say who needs to do what, who being the different bits of --

Tony Devenish AM: Which Department? Which bit of local government? What the Mayor is meant to do? I am a great believer in a nice flow diagram. If you do not have one, would you draw one up for us subsequently, please?

Joe Owen (Associate Director, Institute for Government): I have no idea how you would go about doing that. It is extremely complicated and the interdependencies between the different departments and the different layers of Government are pretty dizzying. The closest you could get to that flow diagram probably exists in one of the darkened rooms in Whitehall in the Department for Exiting the EU (DExEU) on one of their huge mega Gantt charts trying to articulate it.

This is one of the problems of planning this change given the interdependencies and where the different responsibilities lie. It is a really big challenge. At last count, although it may have been updated, there were 313 Brexit workstreams across the Government that DExEU was monitoring. Some of those within departments will splinter out again into a number of workstreams, which would then be required to engage with local or devolved government. Also, you have businesses and citizens on the other side of that. This, as a planning task, is pretty unprecedented for the Government.

Yes, I am sure there are lots of people who would love to get their hands on a simple flow diagram, but I certainly would never want to suggest that I could come anywhere near drawing up one that was accurate and complete.

Tony Devenish AM: Maybe I will ask the Deputy Mayor [for Fire and Resilience] later if she wants to draw one up. Do you have a list of the 313 workstreams?

Joe Owen (Associate Director, Institute for Government): This is a really interesting question because the Government has not released them. One of the interesting things about this planning project and this big preparation project is that, if you were to compare it to another major project in Government, with other major projects in Government you have the Infrastructure Projects Authority to do regular reviews and you have

transparency about exactly where the money is going, what is red, amber or green, and how ready we are ahead of each workstream. We do not have that information, particularly around no-deal.

That is one of the striking things about the votes on no-deal that took place. Wherever you stand on no-deal, whether, "It is going to be better for us long-term than a deal", or, "It would be a disaster for the economy", if you take that to one side, one thing that was really missing in that conversation was, "Are we ready?" Of the £2 billion that has been allocated for Government departments to have spent by the day after tomorrow, I guess, since Brexit, where has that money gone? Of those projects that we thought needed to be ready by the end of March [2019], how many of them are ready or not? We do not have that information. Even the basic information about what the workstreams are we do not have. It is quite remarkable that there is such little information about readiness in the way that you would expect for the Olympics or High Speed 2 or the Thames Tideway Tunnel, these things where they would publish red-amber-green ratings. We just do not have that information.

Tony Devenish AM: Thank you. Finally, when I ran large infrastructure projects, when I used to have a proper job before I became a politician, we would do what is called a 'red team review'. We would get experts from a wide range of backgrounds, often retired chief executives or senior technical engineers, and would try to do some analysis of what in the plan had been missed out and how the plan would work. Is that being done at all?

Joe Owen (Associate Director, Institute for Government): There are reviews similar to that happening within the Government as Government officials, not externally. The Cabinet Office has set up a thing - the name of it may have changed but it was called the Functional Support Team - that said, "We know that we have experts in project management from the Infrastructure Projects Authority. We have human resources specialists. We have tech specialists. Let us bring them in. If we think there is a project that is struggling, we will bring some of these top resources from across the Government in to have a look at it and see what it needs to try to fix it and get it through".

Those projects that have been part of that process, at least when I spoke to them quite a number of months ago, admittedly, were quite positive about it, but bringing external people in has not happened as far as I am aware, not in a red team review. There have been areas where engagement on policy has been better or worse. Immigration is one of the areas where it has been better. However, for stuff particularly around the border, if you speak to businesses that have been relatively closely contacted, there are non-disclosure agreements (NDAs) and they are not allowed to say what is happening. They feel quite constrained in what they can and cannot say on engagement with Government and have relatively little sight on exactly where the Government is.

Tony Devenish AM: Thank you very much.

Len Duvall AM (Chair): Confidentiality - and you touched on it slightly - is important for the Government to go about its business, but equally the transparency issue is. Has anything come across these NDAs with the private sector and probably in terms of the public sector? This lack of consistency in confidentiality is the key here in terms of what is going on. Do you have a view on that? We are going to be asking our colleagues in the resilience bit what their take on it is and whether they have come into contact on it. Just give us a view around the issues of governance. Confidentiality is important, but I am not sure in these circumstances why. What is the thinking that you can cast a light on?

Joe Owen (Associate Director, Institute for Government): The question is: what is it for? As you say, there is perfect logic in having confidentiality agreements if you are in early stages of policy and you want to

test it out with the experts that it will affect without it becoming seen as the defined Government policy and you want to use it in that early process.

However, there is a different point. If it is when you are four months away from having to implement something and the people you are speaking to about what might change you are speaking to only under confidentiality and loads of other people have no idea what is going to happen and when, that is a very different issue.

The problem of transparency has been a real issue around Brexit. Again, I agree that confidentiality will be important for testing out ideas in the early stage but having so few people aware of what may or may not change so close to the point at which it might change because of excessive secrecy is a real problem. It has also had problems inside the Government with Departments not being able to share information with one another and the 313 workstreams and the big Gantt chart that exists somewhere. Brexit is a massive co-ordination task. If you are telling people that only a small number of very senior people can read important planning documents by turning up to specific darkened rooms in Whitehall, between specific times and they cannot take the information away with them, that is a real problem for how you co-ordinate, particularly when you are involving the devolved assemblies or public bodies who are not anywhere near Whitehall and cannot have access to the reading rooms.

These are problems that the Government has grappled with. If you speak to people, they say it has got better recently, but there was a point when planning guidance was issued for the 313 workstreams to say, "These are the three scenarios you need to work for. These are the basic assumptions behind each scenario. This is what you need to work to". That planning guidance was available essentially in a small number of reading rooms or permanent secretaries' offices and you could not take it away. If you are one of the thousands of people working on this in Whitehall, 80% of what Defra does is framed by EU law and so a huge amount is changing, but if for the planning parameters you have to go and wait outside your permanent secretary's office to have a read through and you cannot take them away, that is a real problem. As I said, it has got better, but that is one of the things that you hope will be fixed around the next phase if we were to leave with a deal and we start negotiations again that communication between departments gets off on a better foot.

Len Duvall AM (Chair): Clearly, it has implications for the future. An NDA is a modern version of the Official Secrets Act that used to be signed for all sorts of bizarre issues and for the right issues as well, and so I accept that.

When we have the Home Office come back and say it refuses to answer how many NDAs it has because it is too burdensome to answer, when in reality out in the ether it is about 100 but it cannot bring that figure in itself, it just seems absurd. We have the Department of Transport doing 79.

It is interesting. Like I say, there is a need for confidentiality to a certain level, but there is this inconsistent nature of it. Do you think this is one of the issues that can be picked up as the odd and bizarre governance issues in the country that we have encountered that do work against good planning and good implementation? That is what it is a barrier to. Do you think that is going to be picked up?

Joe Owen (Associate Director, Institute for Government): Yes. It is hard to say without going through on a case-by-case basis almost. Trade is an interesting area when it comes to engagement and NDA and how you use businesses in trade negotiations, whether that is with the EU in the next phase or with countries around the world. It is quite important to have businesses able to see what you are trying to negotiate and be able to comment on what you are trying to achieve for two important reasons.

One is that, as bright and as great as officials are across the Government, having someone sitting in DIT making a decision, for example, on different bits of farm regulation that we will or will not sign up to, when you do not speak to the individuals for whom different bits of those regulations may be a huge part of their business model or not and changing them can have a big effect, you need to be able to have that conversation and bring that expertise in.

The second important point with businesses is that they are an important reason we are doing trade agreements in the first place because we want to open up routes for trade and we think it will have preferential access for our businesses. One of the big problems if you look at trade agreements internationally is that governments go away, have their big negotiations and their nice signing ceremonies and it is all great, but people do not know what is in the trade agreement and so loads of businesses trade without ever taking advantage of the preferential terms that have been agreed because they have no idea that they have been agreed. They do not know what is in them. How you bring businesses in to ensure that they can make the most of agreements is a really important question.

We will need to fix that because the closed, secret nature of the way the negotiations have been constructed in phase one could have big complications when we start to discuss the trade elements in more detail in phase two or with other countries around the world.

Caroline Russell AM: I am just listening to this. We know that the British Social Attitudes surveys are now showing a majority of people in the UK would vote to remain now. There is this hiding of information about the impacts and details of all the negotiations and the things that might change.

Do you think if that was more public, you would be seeing very different responses to that polling that is going on?

Joe Owen (Associate Director, Institute for Government): It is very hard to tell. I do not pretend that I can read public opinion or predict where it will go. Arguably, people have probably had quite enough of Brexit headlines. Whether information about planning progress, etc, would make a big difference to the general public is a question, but there are probably lots of businesses that are trying to engage with the Government and would benefit from understanding where the Government is.

Whether that may change their mind or not will probably depend on where the Government is. The Government could say, "Here is all of the stuff that we have done for no-deal and we are quite prepared for no-deal", and it would make people feel more assured by that. That is one possible outcome. It could go completely the other way. It will depend on what the Government says. I would not like to guess which way it will go.

Caroline Russell AM: Of course, yes.

Len Duvall AM (Chair): Look, Joe, thank you very much for that contribution. We might like to have you back.

Joe Owen (Associate Director, Institute for Government): Brilliant. Thank you very much. I would be very happy to come back.

Caroline Pidgeon MBE AM: Thank you very much. Really good. Really informative.