OFFICIAL REPORT
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Constitution, Europe, External Affairs and Culture Committee

Thursday 31 October 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE
24th Meeting 2024, Session 6

CONVENER

*Clare Adamson (Motherwell and Wishaw) (SNP)

DEPUTY CONVENER

*Alexander Stewart (Mid Scotland and Fife) (Con)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Neil Bibby (West Scotland) (Lab)
*Keith Brown (Clackmannanshire and Dunblane) (SNP)
*Patrick Harvie (Glasgow) (Green)
*Stephen Kerr (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Ross Anderson (Faculty of Advocates)
Professor David Collins (City St George's, University of London)
Dr Adam Marks (Law Society of Scotland)

CLERK TO THE COMMITTEE

James Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Constitution, Europe, External Affairs and Culture Committee

Thursday 31 October 2024

[The Convener opened the meeting at 09:30]

Interests

The Convener (Clare Adamson): Good morning, and a warm welcome to the 24th meeting in 2024 of the Constitution, Europe, External Affairs and Culture Committee.

I put on record our thanks to Meghan Gallacher for her work on the committee and wish her well in her new role on the Local Government, Housing and Planning Committee.

The first agenda item is a declaration of interests. I extend a warm welcome to Stephen Kerr, who joins the committee today and invite him to declare any relevant interests.

Stephen Kerr (Central Scotland) (Con): It is a pleasure to join you and other colleagues and to serve under your convenership. I have no relevant interests to declare.

The Convener: Thank you very much, Mr Kerr.

Review of the EU-UK Trade and Co-operation Agreement

09:30

The Convener: Our second agenda item is to begin to take evidence on the second phase of our inquiry in relation to the review of the European Union-United Kingdom trade and co-operation agreement. The committee published its report on the first phase of the inquiry, focused on trades and goods, in September. The second part of the inquiry will focus on trade and services and mobility.

We are joined by Dr Adam Marks, international policy executive at the Law Society of Scotland, and Dr Ross Anderson, advocate, Faculty of Advocates. We are also joined online by Professor David Collins, professor of international economic law, City St George's, University of London.

I will begin with a couple of questions. I will then invite members to indicate if they want to come in. I hope that we will be able to accommodate supplementaries from the committee.

What are the biggest concerns arising from the TCA in relation to legal services provision? Are you able to offer any solutions? Thinking more positively, are there any upsides to the TCA at the moment?

Professor David Collins (City St George's, University of London): In essence, you ask us to describe the negatives of the TCA, and then the positives. The negative aspect of the TCA with respect to legal services is that there are many reservations at the member state level. That is why it can be a bit misleading to look at the legal services provisions of the TCA and think that they have been liberalised, when, in fact, they have not really been liberalised much beyond what we already had at the World Trade Organization level with the general agreement on trade in services—GATS.

People sometimes say—and I have said—that the TCA was a weak agreement because it focused only on goods and did not focus on services. Of course, it does concern services—legal services are included—but there are many reservations at the member state level. You have to look at the non-conforming measures in the annexes to see what the reservations from each of the member states are, and they are substantial, which means that the agreement does not really go that much deeper than what we already had under the WTO, and does not go beyond what the EU has typically granted in other free trade agreements.

The positive aspect—which I have already mentioned, but which I should underline—is the fact that legal services were mentioned at all, which is a really good thing. It is a good sign that the EU and the UK are mindful of the importance of legal services to our economies. That is reflected in some of the other free trade agreements out there, such as the comprehensive and progressive agreement for trans-Pacific partnership—CPTPP.

We have this basic provision that allows legal services providers from the EU and the UK to provide designated legal services concerning home state law, public international law and arbitration. We also see reference to new categories that are not mentioned in GATS, such as intracorporate transferees and one or two others.

There is an awareness there, and a framework in place that could, in theory, be used to more fully liberalise legal services in the future.

Dr Adam Marks (Law Society of Scotland): Building on what Professor Collins said, I would say that the TCA provides a basis to start from. Whatever has happened in the past, we can now see a good way forward, building from that basis.

When thinking about members of the Law Society of Scotland—who I am here to represent—it is worth noting that we are talking about two sets of people in the context of this discussion. There are individual members and solicitors who are currently based in the EU across the member states, some of whom have gone there for economic and business reasons, and some for family reasons; and there are, predominantly, the larger firms, which are interested in doing legal services and advice abroad. That business mainly concerns what we call "fly in, fly out" work—that is, the ability to get on a plane, advise a client, fly back and get paid for that, which is the slight kicker at the moment in the issue. The home title practice is very useful for that. Although they cannot advise on EU law, they can advise on international law and arbitration and can do a lot of the work that they would be doing anyway.

It is important to consider what we can challenge and change. There are definitely routes within the TCA's article 126—which I am happy to talk about later—through which we can explore changing that.

The next few years potentially present that opportunity through the review process, which has been referred to by many people. I will read out what the TCA says about the review process, to remind everyone quite how vague it is:

"The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter."

That is it. It is fair to say that lots of people have projected lots of ideas onto that.

My advice would be that we should approach this in a way that is constructive and that leads to things that we can, in fact, deliver. That is, we should consider the TCA and work there, rather than going beyond that.

From our side, we want to look at areas around transparency—which we can definitely do through article 145—and mobility. In broader terms, there are also opportunities to look at youth mobility.

In that context, the reset of relations that we have seen recently between the new UK Government and the new Commission is useful. As that comes into play, it could at least set some good mood music. I do not know whether we have seen anything concrete so far, but it is all very early days, so let us see what we can build from that.

Specifically, it is interesting that, in the new portfolios of the Commission, the UK's trade with the EU is now being handled by DG—director general—trade rather being than its own separate part. That will be worth watching. The EU is pressing that as the normalisation of relations. On the positive side, anything that takes out the high drama of the past few years is probably a good thing. It also places us very much as one among many. We are on the same footing as everyone else in terms of our trading relationship with the EU, and we need to be mindful of that as we approach it.

Finally, I would like to thank the committee for the work that has previously been done. We—ourselves and the Faculty of Advocates—finally got admittance to the domestic advisory group of the TCA. I know that many members and former members of this committee raised that issue on our behalf. We are very grateful for the support that the committee has given us in the past—thank you for that.

Dr Ross Anderson (Faculty of Advocates): I am also grateful, and I reiterate what Dr Marks said about the support that we received in relation to the matter that he mentioned—thank you for that.

To answer the questions, I will start with observations comparing where we were before the TCA with where we are now, because that provides the practical context for us as lawyers and—in the case of the faculty—advocates.

In the EU, there were three key aspects to the provision of legal services. The first was that we, as Scottish lawyers, could provide advice across the EU to EU-based clients on, among other

things, EU law. The second was that we had a right of audience; that is to say, we could appear in EU courts and tribunals. I had a right of audience before the General Court or the Court of Justice of the European Union, as well as various other European tribunals, in the same way as I could appear in Glasgow Sheriff Court or the Court of Session. The third aspect was an additional one, in that, under the directives, there were mechanisms whereby one could register in another EU country under home title and provide advice on the national law of that country, and then, after a particular period, become qualified.

Of those three aspects, the first two—being able to give advice on EU law and having the right of audience—were of the most importance. Those rights have been lost post-Brexit, and that loss is embedded in the definition of "designated legal services", because it excludes EU law and, more generally, means that we do not have the right of audience. The third aspect, which is tied to mutual recognition of professional qualifications under the TCA, was a central aspect of the scheme but, in a practical sense, was less important. That is where we were and, obviously, under the TCA, we no longer have those rights.

I mention the definition of "designated legal services" from the perspective of my professional body because, as advocates, we appear daily before courts and tribunals. That major aspect of our practice—appearing before EU courts and tribunals—is eliminated by the effect of Brexit, and nothing in the TCA makes that look as if it will ever change. However, on the advisory side, the limitation in relation to EU law is also crucial and has significant practical implications.

For that reason, one upside is that at least legal services are mentioned in the TCA. However, from the perspective of advocates, the content of that is much more limited when it comes to what we are able to undertake. Therefore, in terms of the review process—to which Dr Marks referred to some extent—and of looking at the art of the practical, the revision exercise probably relates to basic aspects of freedom of movement and the ability to travel to provide such advisory designated legal services as we are allowed to provide.

The Convener: Thank you for those opening remarks. Transparency was mentioned. One theme in our trade inquiry was an ask for more Government advice and support to the profession. Would you welcome that? Is it needed, or do you think that it will grow naturally within the profession as you negotiate in the TCA?

Dr Marks: Support is always welcome. Part of the issue that we face in terms of clarity and transparency of understanding is that, ultimately, we now face 27 jurisdictions at least—in some member states, there will be different rules at regional and state levels on mobility and what you can and cannot do. There is a need to be have understanding in that regard and, to an extent—given that the agreement is still relatively young, particularly when you take into account the Covid travel freeze—it is inevitable that, over time, that understanding will come. However, certainly in the immediate future, there is far more room for clarity in the sharing of information from member states about what it is possible to do. Article 145, which commits both sides to that, should be developed and pushed forward. That does not have to be just a part of the review process; it can be done in wider relations. An awful lot of areas around the TCA do not need that formal review process. There is no need to wait. We can start now on that work. I think that the previous Government did some work, which I assume will continue under the new Government, to understand what is possible in each area.

Briefly, I have some optimism that that is possible because there have been specific issues on the compatibility with the TCA of certain member states' legal frameworks, and good work has already been done, even among the seas of high politics, to change that. For instance, in relation to Greece, lawyers in maritime shipping were primarily affected, but that has been largely resolved—I confess that more English lawyers than Scottish solicitors were affected by that. Scottish solicitors were definitely affected in relation to Luxembourg straight after the signing of the TCA, out of no particular design or fault of Luxembourg—the issue was that the way that its law was written immediately made it illegal for UK lawyers to practise home title or international law in Luxembourg. Last year, the Luxembourg Parliament passed a bill to change that and, as far as we can tell, that has gone through in a positive way and seems to have resolved the issue.

09:45

The good news in the agreement is that there is a way of building on all of that. Increasing that understanding will throw up similar issues, and we will continue to work our way through them as they come up, case by case—I say that because I am sure there will be more. There is a double side to the transparency, which can help.

The Convener: Okay. Dr Anderson, you mentioned transparency, I think. Do you want to comment on that a bit further?

Dr Anderson: I do not remember mentioning it. To be frank, I do not really have anything to add on transparency. The fundamental issue is that there are now 27 different legal regimes, so greater clarity as to what is required in each state

is welcome. I do not have anything else useful to add to what Dr Marks has said.

The Convener: Professor Collins, do you want to comment?

Professor Collins: Yes. I will pick up on what both Dr Marks and Dr Anderson said, which I agree with entirely. It is not really about transparency but about clarity.

You need to be careful with the concept of transparency, especially when you are dealing with the EU, because the EU likes to bombard its trade partners with an abundance of information—perhaps excessively so—which becomes hard to manage. Some of the appendices of the TCA are absolutely overwhelming in their meticulousness and their level of detail.

We cannot fault the EU or the TCA for a lack of transparency. For the most part, the material is there. The question is about its clarity, such that it becomes usable for practitioners—in particular, those who are not part of big firms and do not have the resources to parse through that information. Clarity is what we need, rather than ever more such documents coming out, which, often, do not provide a path forward—we have all these frameworks but we do not get any progress in the expansion of market access.

The Convener: I move to questions from the committee.

Alexander Stewart (Mid Scotland and Fife) (Con): Does our legal profession find that it can work with some of the 27 member states? Are certain countries more amenable? If that is the case, which are they and why are they more amenable or why does the legal profession find working with them easier? Are some just not used at all, because of the complexities? You talked about a situation with Luxembourg that has now been resolved. Do the majority of the member states have such capacity, or do you find it easier to negotiate with some of them because they are some more favourable to working with you?

Dr Marks: It is not necessarily that some states are more amenable, but that, inevitably, the economic interests of Scotland mean that lawyers end up in some countries more than others. You would be unsurprised to find a cluster of our members around Brussels, because Brussels is a bubble. We have a cluster in Luxembourg, because of the Court of Justice of the EU. Then again, you will also find our members in Paris and Berlin, and in Scandinavia—where, in particular, there are in-house lawyers for energy projects. The business is there.

When the TCA started, the two specific problems that reared their heads were Luxembourg and Greece, which is a problem to a lesser extent for us, but important to the Law Society of England and Wales. Again, I do not think that Luxembourg and Greece were unamenable; it was just that, unfortunately, the way in which their law was written did not anticipate the TCA, and it has taken some time for that to get sorted out.

As I said, it is still relatively early days in the process. The fly-in/fly-out type stuff, as a starting point, is the building of relationships, which then develops into something more. That, rather than particular barriers in a particular state, is the starting key.

Lawyers are inevitably—as you will, I suspect, be unsurprised to hear—cautious. As a result, when there is a lack of clarity over whether you can or cannot do something, you are not going to get gung-ho lawyers—which is, I would hope, a good thing. Clarity matters, as Professor Collins has said.

Alexander Stewart: Dr Anderson, did you want to answer?

Dr Anderson: Actually, it is difficult, I think, to answer this question and to generalise, for the practical reason that, given the relative size of our profession, such issues generally arise for an individual lawyer going to a particular country. Therefore, the professional bodies as such will not necessarily know about the difficulties faced by a particular individual in Berlin, Paris or Marseille or wherever. If we do not know about it, we do not know about it. Moreover, I would not have thought that the Law Society or the faculty would have enough of an impression or any sort of meaningful feedback to allow us to generalise in that way beyond the two examples that Dr Marks has given.

Alexander Stewart: In that case, what suggestions would your organisations make for what should happen next? Yes, timescales have been short, but we have to make progress for the future. Some of the barriers are being managed better, and the relationship has improved in some locations. What are your wants and needs for the future to ensure that what the legal profession has—and continues to have—is relatively seamless in terms of what you want to achieve?

Dr Anderson: I have previously mentioned the art of the possible. From our perspective, the fundamental difficulty is that what we have lost—that is, the opportunity to appear in European courts and tribunals—is not something that looks as if it is on the table. Members of the faculty who want to do that—the same is true, I think, of the Law Society—have gone to professional bodies in other countries, whether it be in Ireland or in Belgium, and have sought admission to the bars of those countries. To be honest, I would say that, at a practical level, getting what we actually want is

something different from what is likely to be achievable under the revision regime.

That said, it would be fair to say that the relationship between the professional bodies in the United Kingdom and their counterparts throughout the EU is generally good. Beyond that, as far as the art of the practical and the things that can be done are concerned, Dr Marks has already referred to travel, for example, and what can happen under article 126. However, I should probably allow him to talk about that.

Dr Marks: I am happy to.

The short-term business visitor mobility section of the TCA as it stands is, I think, particularly interesting. It is outlined in the treaty under articles 142 to 145, if you want to go digging, but the crucial point is that short-term business visitors are allowed to visit for 90 days in a six-month period, with certain reservations. At the moment, the problem is that one of the key reservations is that you cannot make any money in that time. It is almost easier to explain this in terms of goods; you are allowed to visit a trade show, but you are not allowed to sell anything without having the appropriate visa from the member state that the show is in.

What I think is important are certain broader exemptions, particularly one on commercial transactions that allows management and supervisory personnel and financial services personnel, including insurers, bankers, and investment brokers, to engage in commercial transactions. I think that it would be useful to add legal services to that list, because such an inclusion would bring back the ability for them to provide that sort of short-term fly-in, fly-out advice under their home title practice. That is definitely doable.

It is said that article 126 will be reviewed and looked at as part of the review process, and this issue falls firmly within that remit, even within the limited grey areas of what has been defined. I therefore think that we should be looking at the addition of legal services if we are thinking about asks to move forward in a constructive way.

Frankly, the issue of legal services is what I am interested in; some other sectors might well be interested in the same approach. Perhaps we will see what can be done over the next few years as we move through the process.

Alexander Stewart: Professor Collins, is there anything that you would like to add?

Professor Collins: I would like to make a few comments. First, on the previous question, I was a member of the international committee of the Law Society of England and Wales for a number of years and had some experience with the association's endeavours to make agreements with the various bars around Europe.

From my recollection, Cyprus was probably the most forthcoming, because it is a common-law jurisdiction—it may be the only one in the EU, aside from England and Wales. Various arrangements were created; I am sure that the other witnesses will be more knowledgeable about that than I am. For example, an agreement was reached with France on some kind of recognition provision.

With respect to improvements to the text of the TCA, I alluded to one of the concerns in a blog post that I wrote many years ago. I went back to it, but I struggled with the article numbers—I was not quite sure to what I was referring.

Anyway, if you look at annex 22 to the TCA, you will see that it refers only to

"contractual service suppliers or independent professionals".

There is no reference to inter-corporate transferees or BVEP—business visitors for establishment purposes, or however that acronym works. I was very concerned about the omission of those two categories, as it suggested to me that they were not really part of the mindset with regard to what the TCA was looking at in terms of liberalisation.

I would like to see those categories specifically addressed, and in the reference to "Legal ... services" in the provision relating to contractual service suppliers and independent professionals, I would like to see broader language used. You will see that legal services is the first sector that is listed under the "Contractual Service Suppliers" heading. The text refers to

"Legal advisory services in respect of public international law and home jurisdiction law".

I would like to see more detail on that—for example, with regard to meeting with, and charging, clients. To me, the current provision seems very thin. That is where I would like to see progress on the TCA.

I would also like to see more commitment at the member state level, especially in relation to recognition of foreign qualifications.

Patrick Harvie (Glasgow) (Green): For obvious reasons, there has been a lot of discussion about EU member states. One comment was made about non-EU member states, and the idea that we are now in the position that they are in with regard to trying to work with the EU.

I wonder if that could be drawn out a little bit more. Are we now in exactly the same position as other non-EU member states that want to work with EU jurisdictions? Do those non-EU member

states that have a high level of economic relationship with Europe have in place similar arrangements to what is in the TCA? Have those arrangements developed over time? If we are looking for the TCA, or whatever develops out of it, to be deepened and enriched over time, can any lessons be drawn from other countries that are outside the EU and that have some of the same issues around the lack of freedom of movement and the impact that that has on services? Have those countries found solutions?

Dr Anderson: I hope that you will forgive me if I characterise that as a really difficult question, although I appreciate that it is, no doubt, the committee's job to ask difficult questions.

The reason that I say that is because, as I indicated, we are now in a situation in which we have 27 different regimes that apply within the EU, against the background of the United Kingdom previously having been an EU member state, so that is at least a known quantity.

In so far as your question is directed at a comparative analysis of the relative position of non-EU member states, that is much more difficult for us to know. We have not conducted research on that, so we are not really in a position to answer that question.

I would say, however, that the TCA is a significant international agreement. This is subject to the caveat that I have just mentioned of not having conducted the research, but the provisions in the agreement, which seem to extend to legal services on first principles, must surely put us in a better or at least more desirable position than would be the case if we did not have the TCA and we were just standing outside of it on ordinary WTO grounds. I acknowledge the difficulty of not being able to comment on the comparative analysis, but it seems to me that the TCA provisions, such as they are, are something to build on.

10:00

Patrick Harvie: Are there any other views?

Dr Marks: We probably have broadly similar caveats, but it is worth considering that we need to see what the new structure in the Commission looks like when it all comes out in the wash, and what the actual reality is. The point that I am making is that we are going to have to work to engage with the EU in a way that we did not have to when we were a member of the EU, but we all kind of know that anyway.

There is an interesting question about how close we are and the legacies of our membership. For instance, the Faculty and the Law Society sit as two members of the UK delegation to the Council of Bars and Law Societies of Europe—the CCBE—which is a Europe-wide council. Since Brexit, we have not been full members any more because we no longer have voting rights on the various subject committees that have exclusive competence for the Commission and EU matters. We have voting rights on a lot of the other committees, and we still attend those committees where we do not have voting rights—we have a sort of associate status. That shows how we can build and develop relations.

Our experts are still in the room and they are still being asked their opinions on things. Scottish and English solicitors are quite often experts in their fields, and there is still a lot of room for collaboration. We need to build on that going forward. As Dr Anderson said, it is about looking towards the future and at what is possible from where we are now, and there are some possibilities within the agreement.

Patrick Harvie: The situation is comparable to whether one is in the room as a politician or a civil servant. Very often we are in the room, but we have a lesser status or less opportunity to influence discussion.

At the same time, in the EU, there is a kind of move away from the idea that accession is just a binary, in or out process, and the idea is that there is more of a graduated change for countries that seek EU membership to gradually integrate. Even though I might wish that we—Scotland or the UK—become a re-accession country one day, whether or not that happens, I presume that there is space for a level of integration that will address some of the issues that we are discussing today that is comparable to that which the EU now explores with countries that are seeking membership. Am I going too far there?

Dr Marks: That might well be right. Whatever has happened politically does not change our shared history as a result of our having been a member state of the EU, or the vast body of EU law that continues to exist here under whatever name, whether it is assimilated law or retained EU law under UK legislation. In an informal sense, the various bodies, such as the CCBE or the European Law Institute and so on, in which UK lawyers continue to play an active role, continue to operate at a pan-EU level. Where matters go next is a political question, to which we take an entirely neutral approach, but although there has been a political break, given our shared background, it does not mean that there has necessarily been a practical break for the professionals.

Patrick Harvie: Does Professor Collins want to add anything?

Professor Collins: I will make a few comments on that and respond to the initial question about

whether the UK is being dealt with as any third country would be. The TCA is a very good agreement that exceeds GATS—the general agreement on trade in services. The WTO agreement, which would apply to all the countries that do not have preferential free trade agreements with the EU, was covered by the GATS, and the TCA is better than that, but only in a small way.

I mentioned that several categories of personnel that are mentioned in the TCA are not included in the GATS—for example, independent professionals, short-term business visitors and graduate trainees. The real value of the TCA is its potential, because, again, it creates the framework. The trade partnership committee and the trade specialised committee on services, investment and digital trade meet, I believe, annually. Those committees are designed to promote integration with regards to mutual recognition and so on. It is quite an extensive framework. The most recent set of minutes that are available from those meetings are from the services committee meeting of October 2023. They talk about progress towards transparency and mutual recognition for legal services. Legal services are expressly mentioned, but you would never see that in Geneva under the GATS and the WTO. It simply does not have that enthusiasm for liberalising under the GATS.

I can make this sort of sweeping statement: the future of liberalisation of all services around the world will not be through the GATS. It will be done bilaterally. The interesting question is, has the EU made any commitments as good as the TCA under any of its other free trade agreements? My limited research shows that the comprehensive economic and trade agreement with Canada is the most comparable one, and, again, that is better than the GATS. It is all about creating the framework.

My reading of the political tea leaves is that the EU does not seem to be willing to negotiate mutual recognition agreements for services but the UK would like to. I think that the Prime Minister has identified that he prioritises that, but I am not convinced that the EU has much appetite for it right now, so the question becomes, if we genuinely want these commitments for mutual recognition, what can the UK offer reciprocally in order to gain those concessions? It might be access to our legal services, but I think that we have been quite a bit more open, or it could be greater access with respect to goods, but again, we have been pretty open there. The problem with the UK is that it has run out of things to offer reciprocally to the EU as negotiation chips.

Stephen Kerr: I will pick up on that point. I am not a lawyer, and I do not quite grasp some of this, so you will have to help. On reciprocation, particularly in relation to Dr Anderson's comments about right of audience, when we were members of the European Union, was there a high incidence of EU lawyers appearing before British courts? You used the term "a major aspect" in relation to advocates appearing in EU courts.

Dr Anderson: Yes.

Stephen Kerr: What about the other direction?

Dr Anderson: The first aspect in relation to the central EU courts was that that applied to all EU lawyers, so a German lawyer, for example, could appear before the EU courts.

When it comes to the issue of reciprocity at the national level, that is a good question. That was the third aspect that I mentioned. A right of audience to appear in the European courts was the second aspect. The third was the ability to appear before the national courts. It is correct to say that that was of less practical importance. It did happen from time to time—

Stephen Kerr: But not much.

Dr Anderson: —but not commonly.

Stephen Kerr: I am interested in the relative quantum of that happening here and our advocates appearing in an EU setting. I understand what you are saying about the EU courts, but I am talking about the national setting.

Dr Anderson: It is quite hard to find statistics or figures, because the extent to which Scottish lawyers would have sought to have registered in, say, France and appeared under their home title before a French court are not kept, for obvious reasons. That happened relatively infrequently for reasons such as language. Ultimately, clients normally want to be represented before a national court by somebody who is recognised and has pled before those national courts. That was why I said that, to be frank, it was the first two—

Stephen Kerr: So, you are really talking about appearances before EU courts.

Dr Anderson: That is correct. Appearance before national courts did happen, whether it was European lawyers appearing here or—

Stephen Kerr: But not much.

Dr Anderson: Not so much.

Stephen Kerr: That was because of people preferring to have someone in situ who understood the nuances of the legal system and its procedures.

Dr Anderson: It was to do with much more practical and commercial considerations, rather than a legal consideration related to the framework.

Stephen Kerr: Dr Marks, in relation to FIFO, you talked about people flying in and doing some legal business. I imagine that most that work would be commercial and contract related.

Dr Marks: Yes, that is what we are talking about.

Stephen Kerr: Under the agreement, a lawyer who flies in to another country would be permitted to give legal advice on UK or Scotland-related matters and international legal matters, but you said that, even with the permission to provide legal services for commercial and contract work, they cannot invoice for that—or can they?

Dr Marks: They could invoice for that, as long as they had entered the country under the appropriate visa, because it is the visa system that is the issue, rather than what people can and cannot do. It is a case of ensuring that you have a short-term business mobility visa for whichever country you are going to be in, whether that is France, Belgium, Luxembourg or Germany, for example—it does not matter.

Stephen Kerr: So, it is all theoretical, because without the ability to invoice, there is no point in going.

Dr Marks: That is the problem. At the moment, everyone has to apply for a country-by-country visa, which is complicated.

Stephen Kerr: That is a transparency issue.

Dr Marks: Yes. That is why I was hoping that legal services could be added to the list of activities that are permitted for short-term business visitors under article 126 of the TCA. If that were to happen, people would automatically have the ability to do the work and invoice for it.

Stephen Kerr: That would mean that they would not have to get the local—

Dr Marks: That is correct. They could just do the work without having to worry about all the different rules and regulations.

Stephen Kerr: Currently, is it the case that if you fly in to a country with the necessary visa, you can invoice for any work done?

Dr Marks: As long as you have the right visa.

Stephen Kerr: That is clear.

The scale of the issue interests me. I will read out something that Professor Collins sent us:

"Although the incomplete coverage of legal services (both market access and mobility) in the TCA is a cause of concern for some UK lawyers, whether it is a significant practical problem for the UK legal profession as a whole is unclear. The number of UK-qualified lawyers that had been providing advice on EU law or the laws of EU Member States was almost certainly small relative to the size of the profession and the value of transactions, even before Brexit."

I am not going to ask Professor Collins whether he agrees with that, because he wrote it. Dr Marks and Dr Anderson, do you agree with Professor Collins's statement?

Dr Anderson: I highlighted that passage myself. I would not disagree with that in relation to advice on the laws of EU member states because, inevitably, a British lawyer, whether they are based in Scotland or England, is unlikely to want to give advice on the laws of Germany or France. However, our members would have considered their ability to give advice on EU law to clients based in Britain or clients based in the EU to be a significant aspect of the practice that they undertook.

Stephen Kerr: What about members of the Law Society? Dr Marks, what is your response to Professor Collins's statement?

Dr Marks: That was certainly an important issue for our larger firms. It quickly gets very difficult to provide data to show what the impact is, but the issue is raised regularly by our larger member firms.

Stephen Kerr: Do they raise it as a nuisance factor or as a real impediment to business?

Dr Marks: To some extent, members who are already overseas have worked out ways to make it work for now. There is a fear about whether that work will wither on the vine, rather than growing. There are future considerations, such as, "Should we develop new clients? Are we meeting new clients, because we're not doing the body of work that we were doing previously? How is this going to develop? What's the future of the firm in the region?" Those are the areas that firms are worried about.

On the grand scale of things, if we consider the English solicitor profession and the scale of the magic circle firms and their economy and compare that with Scotland, we can take everything and divide it by 10. In Scotland, legal services form a pretty similar section of the economy as they do in England; in terms of our membership, it is a case of dividing by 10, pretty much. In terms of international representation, the Law Society of England and Wales has 10 members of staff, whereas in Scotland there is just me. Everything divides by 10 quite neatly. We are at the same level; such work is significant and an important part of what we do.

10:15

It is worth remembering that it is not just in legal services that you end up with this situation. Often, although you would not do local court

appearances with them, having your own solicitor—who you know—is the sort of glue that binds a lot of everything else together. If you are looking to defend your intellectual property or to sign a contract, for example, you will need somebody to advise you. There is a cumulative effect in other sectors that comes from legal services, just as the energy sector drives a lot of in-house work that provides work for legal services. A more-than-just-us element runs through a lot of this, so although a significant part of it relates to legal services, it builds beyond that, too.

Stephen Kerr: However, there has always been a significant element of cross-border collaboration, has there not?

Dr Marks: Sure.

Stephen Kerr: If you are a Scottish business, you will go to your Scottish lawyer, but they will then speak to a French lawyer, for example, and that practice continues, does it not?

Dr Marks: Yes.

Stephen Kerr: Professor Collins, on what basis did you reach your conclusion?

Professor Collins: I am glad that you asked me that. Just so that you know, I wrote that piece some three years ago and I am reacquainting myself with it. I think that I wrote a more substantial piece as an academic legal article, which I could have looked into had known that I was going to be asked about it, but I can answer your question anyway.

As I mentioned, I was on the international issues committee of the Law Society of England and Wales for about 10 years. We had many discussions about these issues, and, on the basis of conversations with practitioners, my sense was exactly the point that you just made—namely that, if you have business in the Czech Republic, you do not fly to the Czech Republic; you hire the Czech guy who you know. You have your Czech guy and your Spanish guy, and law firms—not just big but medium-sized and smallish law firms—have their go-to professionals in all the member states. It does not make sense to send people to each place to do that work, and the people in those jurisdictions do not want the British guy to show up and say, "I'm exercising my establishment rights and I'm going to tell you about EU law." They want someone who is an expert in that country and who knows the Spanish legal system and the EU system—that is just how business is done.

That was why, as Brexit unfolded, I had the sense that the legal services profession was probably not going to be harmed by it as much as had been thought. In fact, the legal services profession probably benefited from providing advice to clients on how to deal with Brexit in the short term. Therefore, it was perhaps one of the myths about trade in legal services that there would be a huge interruption as a result of Brexit. There has not really been an interruption, because there is a way around the situation, which is to phone the guy who you know and who you can hire.

I do not have the statistics at hand, but I would say that the trade in legal services has not dropped significantly. That is not to say that the situation has not affected the livelihood of particular members of the bars of Scotland—I am sure that it has—but, on the macro level, its significance has probably been rather small.

Stephen Kerr: I will reiterate that point. From your point of view—this was also my experience before I became a member of Parliament—in that situation, you would talk to your corporate lawyer, if you had one, who would end up speaking to another lawyer, who would speak to another lawyer in another jurisdiction, and that practice has continued as it did before—Brexit has made no difference to that whatsoever. Is that what you are saying?

Professor Collins: Yes, I would say so.

Stephen Kerr: Therefore, with regard to opportunities for legal services, in the context of us dealing with commercial transactions and contract-related issues, things are pretty much as they were.

Professor Collins: Yes. Adapting to the change was a business cost, and that caused a lot of anxiety in what we could call a transition period, with a small "t" and a small "p", as opposed to the Brexit transition period. Now that the adaptation process is settling down, I do not think that there will be a massive difference.

Stephen Kerr: I will quickly go back to Dr Marks. You said that solicitors who are based in Scotland and are used to flying in and out have, in the period since Brexit, established a way of working around all this where they need to, whether in relation to visas or whatever, but that there are still things that can be improved.

Dr Marks: I think that that is fair, to a degree, although I would push back slightly on the sense that it has all turned out all right, so to speak. Dr Anderson has clearly outlined some of the things that we have lost from the process.

I think that it is fair to say that a lot of law firms have proved quite adept and nimble at working around some of the problems, and that a lot of the individuals concerned have also proved quite adept and nimble, to some extent at pretty significant financial cost, in that regard.

It is also fair to say that, without the mobility that existed before, which we could try to rebuild, the business opportunities will simply not develop in the way that they previously did. In looking to the future, it is slightly different. Again, with regard to youth mobility, there are issues such as who is going to go out on intercorporate transfers, what the interests of people are and whether those contacts and clients will be built up. As you point out, it is a business that involves meeting people and building personal relationships, and if you are simply not doing that, those relationships will not build up. That is an issue for the future.

Stephen Kerr: I have one last question, which is about other jurisdictions outside the European Union that have shown a path to making the situation even better than it is currently assessed as being.

From a commercial point of view—I am not sure whether this is true for the legal profession; that is why I am asking—one good example is Switzerland, which is outside the European Union but has a long-term relationship of almost constant negotiating and nudging in order to try to smooth things out. Can we learn something from Switzerland, or is there another jurisdiction that we can see as a bit of a trailblazer in that regard?

Dr Marks: I think that we are going to be very different from all of them, to a degree, simply because of our size and our proximity. What we can learn from Switzerland is that we will be talking about these issues for a very long time.

Stephen Kerr: Yes—I think that we can all agree on that.

Dr Anderson, do you want to say anything?

Dr Anderson: I do not have much to add, although I have some knowledge of the Swiss position. The fundamental difference there is that although Switzerland is, like us, not in the European Economic Area, it is a European Free Trade Association state.

Stephen Kerr: That is a fair point.

Professor Collins, do you want to add anything?

Professor Collins: I have two points to add. If you want to look to a jurisdiction for inspiration, you can look at the extent to which the UK has tried to achieve recognition and mobility with respect to the United States, where there are 50—or 51, if we include Washington DC—jurisdictions that are governed at the state level.

In a sense, that is quite similar to the issue with the 27 member states in the EU. There has not been much success in that respect at all. Some of the US states allow British-educated lawyers to take the bar exams—it is not much, but there is a route there with some of the states. The Law Society of England and Wales has been trying to chip away at that for years. We also tried it with India, where we had a little bit of success.

At the sub-state level, there may be some progress. It would be a question of trying to maintain open dialogue with each of the EU member states to see how far they are willing to take it.

Rather than taking a jurisdictional perspective, it might be interesting and illustrative to look at another profession as an example. The profession that is most instructive here, in my view, is architecture. Perhaps the committee knows about this. There was going to be a mutual recognition agreement for architects between the UK and the EU—that was going to be the groundbreaking MRA, but it did not go through. The EU pulled away from it because it was unhappy with the terms.

From speaking to people, my sense is that—as I think that I said earlier—the EU does not seem to be interested in mutual recognition agreements in a sweeping sense that would cover all the member states. Perhaps more worryingly, my understanding is that, in addition to that, the European Commission does not like the member states negotiating MRAs on their own. There is a lot of internal European politics going on in that regard.

The architects could not do it. I am not an architect, but I would not think that they would have the same issues that we lawyers would have, which are by nature jurisdictionally specific. If the architects could not get an MRA, why would legal services get one? I am a bit pessimistic that there will be any sort of formal mutual recognition at a pan-EU level that can filter down to the member states, but that does not mean that we should stop trying. We absolutely should keep trying. The frameworks are there, the committees are there, and I wish the best of luck to anyone who is advocating on behalf of that.

The Convener: I have a quick supplementary. Everyone has mentioned the overheads and business costs that are associated with working their way through the regulations. Indeed, we saw the same thing in our trade of goods inquiry, in which it was clear that bigger organisations, such as Scottish Salmon, were more able to absorb such costs. However, some of our smaller manufacturers have had to stop trading with the EU because they cannot absorb the costs. I understand that you do not have a lot of data on the actual numbers and the volume of legal work that was happening, but have you had any indication from your members that smaller firms have been affected in a way that some of the bigger firms in Edinburgh have not?

Dr Marks: That is a slightly difficult question, just because of the structure of the Scottish solicitor market. There are some medium-sized firms, but there are quite a lot of very small high street solicitors and a few very large firms. That caveat aside, I think that, inevitably, smaller firms will struggle more than larger firms. Equally, it very much depends on the firm itself. Some of the smaller firms are very niche and focused boutique firms that look at specific topics. They have probably been fine and will, at least, understand the issues. Again, the question is this: who, in the future, would develop and set up this sort of thing, and what would be the structures around it?

I carried out a sort of survey of our EU members—not just the firms, but individuals who have ended up in various places—about what they have done post-Brexit. I think that I caught them all in a slightly sort of whimsical mood, when they looked back on it all, and I would hear senior partners in firms talking about youth mobility schemes like Erasmus. They would say, "Well, I never came here originally to be a solicitor. I came here for something else—I just happened to be here, and things developed." If we are looking to the future and at how we can build up businesses—and anything else—I think that the structures that we hang around all that will be important.

The Convener: Are there any other sources of data or information that the committee could look at to gauge the scale of the change?

Dr Anderson: We are all independent sole traders; in that regard, we are independent professionals. You cannot really get a smaller business than what is, essentially, a one-man or one-woman band. However, we are also independent professionals in the context of annex 22, which was mentioned earlier, and the issues with regard to the defined terms in that annex do not arise for us.

At a practical level, one need look only at the number of applicants to the Irish legal profession from the United Kingdom over the past few years to see the extent to which the situation is enough of an issue for those who are professionally qualified in the United Kingdom to look to become qualified elsewhere. No doubt Irish colleagues might be able to help you with that; certainly that is what some of our members have done, while others have joined the Belgian bar. So, at an individual level, some people have had to go elsewhere to get the professional qualification that will allow them to do what they want to do.

The Convener: Thank you. That was helpful. I call Mr Brown.

Keith Brown (Clackmannanshire and Dunblane) (SNP): I have a fairly quick question to which the answer is probably obvious and is something that I should probably know. It goes back to Stephen Kerr's second question, which was about reciprocity. Obviously, Brexit has been a complete mess on the goods side, as UK suppliers have had restrictions imposed, but for various reasons to do with infrastructure and so on, the same restrictions have not been imposed on EU goods coming into the country. Is reciprocity in relation to services, as it affects your organisations, being pretty well observed, or is there a sense in which the situation is one sided? In areas in which you are restricted from going into the EU, is that being observed in relation to EU representatives coming to this country, in your experience?

10:30

Dr Anderson: Before Brexit, there was reciprocity, but post-Brexit there is not. I cannot think of examples in which it has become one sided.

Dr Marks: As a jurisdiction, in Scotland, lawyers can, under home title, do international law and so on, as they can in the EU, without registering with us. One of the questions that we regularly get is about how many EU lawyers there are in Scotland. The answer is that we honestly do not know, because they do not have to register with the Law Society of Scotland unless they want to do something that is reserved to the activities of Scottish solicitors. Therefore, to a degree, the answer is no.

On access requirements, that is about Home Office visa regimes and what those will look like going forward. However, I am afraid that we are straying a little from my area of expertise if we are moving on to Home Office visa regimes.

Keith Brown: Do you have anything to add, Professor Collins?

Professor Collins: I think that what has been said is correct. England and Wales have always had a very open legal profession. My law degree is from Canada, and I did a two-hour exam to qualify as a solicitor. There are common law overlaps but, as jurisdictions go, certainly England and Wales—I could not speak for Scotland—have been among the most open jurisdictions in the world for allowing people with foreign qualifications to come and practise law. That is probably to their credit.

You draw a great parallel with the situation in relation to goods, and what you said is more or less true. The UK opened up its doors to European goods, but in the other direction, there were all the restrictions. An economist would probably tell you that free trade is good whether or not it is reciprocal and that we get the benefits of

cheap EU goods. If you play that out to services, we get all these amazing lawyers coming in who can increase the level of competition, quality and so on, but the problem with that is that we surrender our bargaining chips. As, I think, I said earlier, I do not see what the UK could exchange for greater access to the European legal profession. What would we surrender to get that? That is a much larger debate that is probably beyond this committee's remit. However, as things stand, the situation seems to be fairly consistent in terms of reciprocity on legal services.

Keith Brown: I think that a lot of economists would not agree with a structurally imposed lack of reciprocity, if I can put it that way.

My other question is about the comments that Dr Anderson made on the achievements of the faculty and the Law Society in getting agreements with other countries when they want to be involved in work in those countries. In my view, Brexit has been a complete disaster, to be honest. Professor Collins talked about our being slightly above GATS or WTO level, which is a disaster for the economy, and we are seeing that in the lost billions.

However, it is now some time since Brexit happened—although it is not so much time since the agreement happened—but surely it should be possible for many agreements to be made more quickly. I know that such things tend not to move very fast. I suppose that what I am interested in—as most politicians would be—is accountability. I am probably asking the wrong people here, but who should we be looking to for accountability for the lack of progress? Is there an extent to which organisations could do more to get the recognition that they are looking for, or is it structurally very difficult to do that without member-state involvement? In my experience, because of the system that we have in Scotland and the UK, many organisations wait for the Government to move on lots of things. Is it not possible for organisations to do more in the meantime, or is that structurally difficult or a resource question?

Dr Anderson: It might depend on what we are talking about. Some of the issues that I highlighted at the beginning of the meeting—for example, regarding the definition of "designated legal services" in the TCA—are really issues for the EU level. It is difficult to see, therefore, how anyone below that negotiating level can have any influence, other than through the appropriate channels such as the domestic advisory group and so on. I do not see that as something that we can negotiate with the Anwaltskammer in Berlin, for example, to try to sort it out—that is not within the gift of such bodies.

What I was referring to earlier was much more on a practical level, with regard to the co-operation that one sees among professional bodies throughout the world, in which one has professional colleagues. That is the case with Europe in particular, with which we have, essentially, a shared legal tradition and long-standing ties and links. Those are continuing, irrespective of what is happening politically.

On your question about who is accountable, therefore, it depends on what we are talking about. Mutual recognition of professional qualifications and other such matters are big issues because they have implications more widely and internationally in relation to other WTO partners.

There are also aspects that are internal to the United Kingdom. Within the UK, we have different jurisdictions; an English barrister does not appear in Scottish courts, and I cannot appear in the English courts and so on. There is a wider context to all that.

With regard to whom we hold accountable, I fear that we might not be the right people to ask, whatever our personal views might be.

Keith Brown: Dr Marks, do you want to add anything?

Dr Marks: I do not have a huge amount to add on that specifically. With regard to examples of the kind of work that we, as representative bodies, have done on our own, we have sought memoranda of understanding with other bars and law societies. In particular, post-Brexit, we have worked with Belgium, with the bars and law societies of Brussels and more widely across the country.

Those processes definitely take time. We had an MOU before Brexit, and we are now—we hope—coming to the conclusion of updating it as a post-Brexit MOU. I believe that the latest hope is that we will sign it some time this year, or early next year. Again, that involves all the individual bars, law societies and regulators across the UK and across Belgium, which has more of them—or at least as many as us—so the process of getting agreement from everyone involves a certain amount of time.

I do not think that that means that it is not worth trying—the agreements at least bring everyone to the room to talk. In addition, it raises a wider question around the fact that any agreement, in particular from a services point of view, needs support after it is reached. The reality is that with goods, to a degree, if a barrier is changed the situation is solved—it does not require a huge amount of effort afterwards, except in promoting the fact that that has been done so that companies can take advantage of it.

With services, a lot of the process involves conversations between regulators. It is slightly

different, for example, in relation to the Australia trade deal that was signed by the UK. There is a legal services regulatory dialogue between us and the various bars and law societies in Australia. There is a resource question about how many of those individual regulators and representative bodies can attend; how much capacity we have; and what support comes to those from Government. It is important that we do not forget that, having got through the excitement of signing the deal, because from the services side, the advantage comes from the work that is done afterwards, and not really from the work that is done before the deal.

Keith Brown: Professor Collins, at some distance, you may be more able to point a finger of accountability. Could more be done by non-governmental service bodies to advance their interests, or does that have to wait for revision of the trade agreement? Once that is done, of course, that will be it for another few years. Is there more of a role for organisations themselves to get involved in order to achieve what they want to achieve, without Governments necessarily being involved?

Professor Collins: As the other witnesses have said, there is such a role. My experience is that the Law Society of England and Wales did a fantastic job. That organisation had contacts all over the world, with the bars of 200-plus jurisdictions; it was always sending out missions to various places. So much work was put into the Indian aspect, and I think that there was finally some kind of MOU with India. Therefore there is work that such organisations can do, and progress can be achieved.

Ultimately, though, it comes down to the elected representatives and redrafting of the TCA, if that is what transpires, and especially the work in the TCA committee. One of my criticisms of how the TCA has unfolded is that so many committees were created. My sense is that they have not had meetings as regularly as they were meant to meet. I checked out what I think was called the trade services and digital trade committee, or something similar. It seems to have met only once a year, and, from the minutes that I could see, it had not really achieved much. The framework is there, but I wonder whether perhaps the will to have those meetings achieve concrete solutions is not quite there.

Keith Brown: I will come back on that point.

You mentioned the Indian MOU. I know that there is no trade agreement with India even yet, but is that MOU active and producing benefits now? If it is, it shows that we can do these things outwith trade agreements.

Professor Collins: I do not know exactly what happened on the MOU with India. However, to answer your more general question, I agree that you do not need a free trade agreement in order to have an MOU or a mutual recognition agreement. You can have a stand-alone mutual recognition agreement that floats around outside a free trade agreement. That was specifically contemplated under GATS, and a number of such agreements are in place. They are associated more with goods, but it is absolutely possible to have an MRA outside of a free trade agreement.

The Convener: I want to ask about people registering with the bar in Ireland. One aspect that we have been considering is whether there is any detriment to businesses in Scotland compared with those in Northern Ireland, which of course is still in the free trade agreement. Could you expand on that? What is the benefit to Scottish lawyers of registering there? Is there mutual recognition between Ireland and Scotland on the aspects that we have just discussed? Perhaps you could explain that a bit more for us.

Dr Anderson: Is there mutual recognition? The short answer to that is no. I understand that there are certain mutual recognitions between England and Ireland. What tends to happen is that Scottish lawyers will acquire dual qualification in England and will then use the appropriate route. However, I do not understand it to be automatic for them to seek qualification in Ireland. Ireland has become the obvious route for many London-based colleagues as well, because of the shared language and the fact that it has a similar legal system to that in England. The reason for doing it, though, is because Ireland is a member state of the European Union. Subject to free movement considerations and passport and visa requirements, someone who has been admitted as a lawyer in a European Union country will have a right of audience before the EU courts. They can also provide advice on EU law not just to EU-based clients but to international clients who have operations in the EU, and they can ensure that such advice is subject to legal professional privilege. That is the rationale for colleagues who have sought to become admitted in that jurisdiction.

The Convener: Effectively, they are taking their business from Scotland or England to Ireland.

Dr Anderson: They may be. I cannot comment on the precise arrangements for their establishments, where they invoice from and where they pay taxes. The arrangements might vary depending on each individual concern.

Dr Marks: I do not have a huge amount to add. I am loth to go into that aspect today, at least in part because I do not have my notes on it in front

of me. However, if anyone has specific questions, I could get back to them afterwards.

There have been some shifts and changes in how the route to qualification via Ireland has worked. The Law Society of Ireland changed some of its practices on handing out certificates for Irish solicitors in the EU shortly after Brexit, which I know caused problems for those who had qualified with Irish certificates.

10:45

A number of our members who worked on EU law went down the Belgian route instead, and there is now another year or so before they will finally come out at the end of the process and will then be fully qualified EU lawyers.

If anyone wants me to, I could probably get back to you afterwards, but I know that the Irish route has had its hiccups, shall we say.

The Convener: If someone is based in Northern Ireland, can they bill from Northern Ireland in a way that a Scottish company or individual cannot, because they are based in Northern Ireland, or will we have to get an answer to that from elsewhere?

Dr Anderson: I am not sure that I understand the question. Even if you reformulated it, I am not sure that I would be in a position to answer it.

The Convener: Professor Collins, do you want to respond?

Professor Collins: For what it is worth, I can respond quickly on the Irish issue. Anecdotally, when I was a member of the international committee of the Law Society of England and Wales, I remember there being a flurry of activity of English lawyers getting qualified in Ireland. There was a huge uptake. I remember seeing the numbers, and it was quite remarkable. Then there was a change, as Dr Marks alluded to, and it died out. That was my experience witnessing that from afar.

Northern Ireland is complicated. Northern Ireland is more or less still inside the EU single market so I am not quite sure if the establishment directive will apply. That is a good question. I am not sure about that, but it would probably be fairly easy to get an answer. If you were qualified in Northern Ireland, would you still have rights of audience before the European Court of Justice? I suspect that you probably would. I imagine it would still apply, yes.

The Convener: Thank you. We will certainly be looking for some clarity on that issue.

Neil Bibby (West Scotland) (Lab): Good morning. Erasmus has been mentioned, most recently by Dr Marks. Clearly, withdrawing from Erasmus has had an impact on opportunities for young people generally, but also on opportunities for law students from Scotland and the whole of the UK. There has obviously also been an impact on the EU in terms of helping people to achieve qualifications that can be recognised there in the first place. What are your thoughts on the extent of that impact on opportunities and achieving qualifications in the law and the legal profession?

Have you any thoughts on the replacement programmes for Erasmus? There has been a delay to a replacement programme in Scotland, but Wales has made more progress. Has there been any impact on opportunities for law students or lawyers in Wales as a result?

Dr Marks: I suspect that, for law students specifically, it is going to be a very similar tale to that for students in general. As I say, there will be a long-term impact because, if people do not go to other universities and countries to study, they do not build up the contacts and the links to end up working with those people in the longer term. They do not see them as clients at that point—they are friends and contacts—but it develops down the line.

Broadly speaking, we would be delighted to rejoin something like Erasmus. I am happy to be supportive of that, but I do not know whether I can add anything more specific.

Dr Anderson: The question about youth mobility generally, of which Erasmus traditionally formed a significant part, is a wider one. From my previous life as an academic, I think that much could be said about the Erasmus programme in universities and about the role of the Scottish law schools in particular, but I am probably not best placed to talk about that today.

The one empirical example that the faculty has in relation to youth mobility is that, for about 40 years, we ran a scheme known as the Eurodevil scheme, which allowed young—there was no age limit, but they were generally young—European lawyers to spend a period of months in Scotland. The exchange was originally funded by the British Council and then by the Scottish Government.

Latterly, there was no Government funding, but the programme continued, at least until Covid. There are hundreds of alumni all over Europe who participated in the scheme in Edinburgh and who meet anually. The scheme, which ran for about 40 years, has just come to an end because of uncertainty around freedom of movement, visas and whether the participants need an immigration sponsor. They are not providing services, so where do they fit into all of that?

That is the one example that we have of a scheme that we ran, which has run into inertia and bureaucracy as a result of where we now are. That

is the main example that we have of youth mobility and the difficulties that we have experienced.

Professor Collins: I would like to speak to that. Personally, although I work for a university, I am not disappointed with the end of Erasmus because I think that the Turing scheme is much better. Britain was losing money on Erasmus. I went on Erasmus visits to Europe, so I am someone who benefited from the scheme, but the Turing scheme that replaced it is much better. The Turing scheme is only for students, so faculty like me cannot use it. Why should I get a grant to go to Iceland as a working professional? I took the opportunity and I enjoyed it, but I do not think that it was value for money. Far more Europeans used Erasmus to come here than British students used it to go to Europe. The Turing scheme is very good, and it is a good example of where savings have been made as a result of Brexit. People have fond memories of Erasmus—again, so do I—but the Turing scheme that replaced it is just as good. It has excellent opportunities for young people to go to Europe on exchange programmes during their studies.

I am not quite sure of the relevance of that discussion to this committee or our topic today, but, more broadly, I am not disappointed about the termination of the Erasmus project.

Dr Anderson: I am here to represent the Faculty of Advocates, so I cannot speak to that. All that I can say, from my experience of working in Scottish law schools, is that I am not sure that the view that has just been expressed is necessarily reflective of the views of other people in Scottish law schools. You would need to take evidence from them.

Keith Brown: Our route for students was the stagiaire system, which was very successful and was used by many students to get real experience in Brussels. They got virtually no salary, but it was very useful. Of course, because we are no longer a member of the EU, we can no longer use those opportunities. I am just pointing that out.

The Convener: I will wind up with a final question, which is for Dr Marks and Dr Anderson in particular. Thank you for mentioning the previous work of the committee, Dr Marks, and the fact that you are now on the domestic advisory group. Why was that such an important step for you, and how do you see your role on that group going forward?

Dr Anderson: In the wider discussion of the legal services market in the United Kingdom, there is sometimes a tendency for there to be a very London-centric focus and an assumption that what is appropriate and suitable for the interests of the London legal market applies automatically across the UK.

As I have indicated, the internal constitutional set-up of the United Kingdom, from its inception, preserved the Scottish legal system as a separate jurisdiction. We have our own professional bodies and providers of legal services. Therefore, to that extent, it was always felt important that the constituent professional bodies in the United Kingdom that make up the legal services market were all equally represented.

With regard to EU relations, the contribution of Scottish lawyers in particular—whether they were judges of the Court of Justice or those who worked there—has been significant. As a legal system, we have something to offer to the wider discussion in relation to services. As I said, we were grateful for the support that allowed us to participate in that way.

We certainly foresee that we will be able to reflect the positions and challenges that our members face in the post-Brexit TCA world.

Dr Marks: I do not have a huge amount to add, because Dr Anderson summed it up very well.

Ultimately, the domestic advisory group is one of the higher decision-making bodies, as much as there are decision-making and advisory bodies around the TCA. It is very useful and appropriate for the Scottish jurisdiction to have a voice there. We will be able to represent our members in a way that was not possible before. That was summed up best when the domestic advisory group met in Edinburgh, before we were members. We were in the jurisdiction in which the domestic advisory group was meeting, but we were observers in the corner of the room, which was curious. It is nice that that has been resolved. I look forward to many years of the two of us working together on the group.

The Convener: That is very helpful.

Professor Collins, Dr Anderson and Dr Marks, thank you very much for attending the committee this morning.

Meeting closed at 10:56.

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