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This interview was conducted by academics at Queens University Belfast, as part of the Brexit Witness Ireland/Northern Ireland (BWIP) project – which is collecting and archiving for future use the experiences of those involved in the Brexit process on the island of Ireland.

We are grateful to Mr McCormick for allowing his interview to be made public in the UK in a Changing Europe Brexit Witness Archive.

Context and Background

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): So, just to begin, to put this all in context, could give us a succinct overview of your career? Particularly we're interested in your experience with regards to the intergovernmental dynamics, and maybe a little bit in terms of North-South cooperation, as well as the role you played before you actually came into the final position that you held in the civil service.

Andrew McCormick (AMcC): Fine, so, my very first job in the civil service in 1980 was dealing with European funding. So, I was conscious of European issues from very, very early times and saw a few of the issues – this is the early Thatcher era – engagement with Brussels, the whole issue of the rebate and how it would be spent and how it would be audited and overseen. Also, a lot of time in the first 20 years in my career would have been intergovernmental

in the sense of dealing with the Treasury in London. There was very little North-South engagement in that period. I got involved a lot in that I suppose from '98 onwards.

Just after the Good Friday Agreement I moved into a role where I was basically the head of finance for the Northern Ireland Executive and was dealing then with the whole management of the budget. That involved relationships with London but also European funding, and the establishment of the North-South institutions. I worked with the central teams from the NI Civil Service (NICS) and the Irish Government as the finance lead dealing with the Department of Finance in Dublin. Our role was to work out how the North-South bodies would operate in practice and how North-South co-operation would be governed.

I was involved in Peace II then, working with DG Regio (Directorate-General for Regional and Urban Policy) on the design, development, and policy content of Peace II. Ronnie Hall, who had been an NICS economist, was at that stage Deputy Chef de Cabinet to Michel Barnier who was the Commissioner for Regio. So, European funding, European policy, time in Brussels, were right at the heart of what I was doing in that period. In fact, I first went to Brussels in 1995, when I was in Department of Education, because Education had a small part in Peace I.

Fast forward then through my DHSSPS [NI Dept of Health, Social Services and Public Safety] days from 2007 to 2014: I was working on European partnerships in health, so seeing how regions could work together on health innovation. I moved then to the economic side in 2014. And I was heavily involved in the run-up to the Brexit referendum, so that was interesting in itself. And then in the autumn of 2017, David Sterling [Head of NICS] said to me would I consider leaving the Department for the Economy and working as the NICS lead on Brexit. So, that's how I got into the role of Director General of International Relations which was essentially 90% Brexit and 10% rest of the world.

BWIP: And this was a newly created post, wasn't it?

AMcC: Yes, Colm Shannon had been the lead on Brexit issues between the referendum and when he retired in January 2018. So, Colm covered the process that led to the Joint Report of the negotiators in December 2017.

BWIP: And just one last question in relation to that: when devolution was restored in 2007, obviously it was on a very different setting to the way it was established, this is quite a broad question but in terms of the culture, if you like, of the civil service, was that affected by the fact that we now had Sinn Féin and the DUP sharing power?

AMcC: It was very different. I guess when we reflected on the first period of devolution, we identified a whole lot of stuff that we weren't ready for. And we tried to draw on that learning in preparing for 2007 but the new phase was a bit more of a whirlwind because DUP and Sinn Féin were much less willing to compromise with each other. I think we had found a way of going with the teams around David Trimble [UUP First Minister 1998-2002] and Seamus Mallon [SDLP deputy First Minister 1998-2001], and then Mark Durkan [successor to Mallon until 2002], but the post-2007 phase was significantly more challenging.

BWIP: That's very interesting. And during that time when you were going out to Brussels vis-à-vis Peace et cetera, what was it like? What was there in Brussels for Northern Ireland and how effective was that?

AMcC: So, part of my role in the period from 1998 to 2002 was creating the Northern Ireland Executive Office there. Colm Larkin, as Seamus Mallon's chief Spad, had then the clearest view of what would work for the Executive in Brussels. So, we set up the office, and I think from that point onwards we were getting pretty good access. The Peace programme gave us an ongoing commitment and important engagement with the then-Commissioner Barnier. There were a lot of open doors, a lot of goodwill. We had consistent support, and good working relationships with the UK Perm Rep. Our Ministers enjoyed good access to the Commissioners, to the secretariat, and the Parliament. So, I think there was a lot of understanding. At that stage there was more balance to the views in the interpretation of the Belfast/ Good Friday Agreement.

BWIP: We'll definitely get onto that. So, the office continued during the period of direct rule.

AMcC: Yes.

BWIP: And the MEPs were still there, I guess. And they also had an informal

role in making connections and helping people understand the situation in Northern Ireland. Would you say the majority of their work was focused on matters relating to funding for Northern Ireland?

AMcC: Yes. That was very significant, yes. But there was a bit of soft power going on as well, a bit of more general networking, relationship building with less direct envisaged return, you know? And we spent a lot of time in Health working with Brussels. Minister Edwin Poots met Rafael Bengoa over dinner in Brussels because they were on a panel together, speaking about health innovation. That was all really positive and beneficial.

BWIP: How was the work of the Office [of the Northern Ireland Executive in Brussels] and the informal access to EU institutions received in Whitehall?

AMcC: In that period, before the referendum came on the horizon, they were pretty relaxed. It was generally seen as a good thing. And the Scots and the Welsh would probably have had a similar experience. London wanted us to be successful in most of what we were trying to do. I don't recall any clashes and indeed at times, they would have wanted us to make the most of the opportunities including at times keeping a post in UKRep open for the NICS.

BWIP: And on the Commission Task Force on Northern Ireland?

AMcC: Yes, the Barroso Task Force was associated with the restoration of devolution from 2007 onwards. Ronnie Hall as the leader, secretary of that or convenor. As I was in Health, I didn't have much direct involvement. But there weren't many regions, member states that had that kind of president-level backing in that sense.

BWIP: So, if we move into post-Bloomberg speech and it becoming Conservative Party policy to hold a referendum, as far as you know was there any political and/or official reaction to that in preparation for the likelihood for a referendum here?

AMcC: So, what I remember most vividly from the period in the run-up to the referendum was any contact wherever I travelled, any contact with Irish Government representatives was, '*Are you ready? Have you thought about this? Are you prepared?*' Very striking. Tony Connelly's book brings this out

very well. They could see all the risks from way ahead of the referendum and were active. I think there was not a lot done at a NICS level or ministerial level, basically because there was a working assumption that it was 'it'll be all right, nothing will change'. That Remain would win. That, I think that was very strong and complacent as an attitude. Both Ministers and civil servants in the Northern Ireland system were, focused on other things.

BWIP: So, there hadn't been any preparation?

AMcC: No. And Jeremy Heywood [Cabinet Secretary 2014-2018] acknowledged this in his time working at Whitehall. In July 2016 I was at a Civil Service Leadership event – the Top 200, as Gus O'Donnell called them. Heywood basically said we used to work for a government that was campaigning to stay in, we're now working for a government that is committed to make Brexit happen, so let's turn around and work. That was the civil service serving the government of the day and adapting to a massive change of policy. So, Whitehall was not ready, Whitehall had consciously and deliberately not prepared, all on the assumption that the government would win the referendum.

BWIP: In terms of the Northern Ireland Civil Service and the lack of preparation, was that because the civil service was essentially following the Whitehall lead?

AMcC: Yes.

BWIP: Or were there local considerations driving that as well?

AMcC: Well, as you said, there was no lead from London and there was no particular perspective from us. We weren't focused on Brexit – there were lots of other things, such as the reorganisation of Departments in May 2016. And all this was before the RHI [Renewable Heating Incentive scheme] blew up.

The 2016 Referendum: the Border Issue arises

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): So, we have the result of the referendum. What was the reaction in Stormont?

Andrew McCormick (AMcC): I think everyone was surprised. The most tangible development arising from that was the joint letter from the First Minister and deputy First Minister, in August 2016, that was really pretty quick and Executive Office held the pen mostly for that. A few of us were involved in the drafting. We were all very surprised the draft didn't get delayed as can happen when the Spads don't agree, but it emerged very quickly. But on that we thought we'd done a reasonable job in presenting a balanced view of what the issues were. Looking back on it there was no anxiety about the movement of goods between Great Britain and Northern Ireland (in either direction). That wasn't even a cloud on the horizon, but everyone was very concerned about the land border. And so the letter was direct on that point. And that's just the way things played out.

The letter led to some difficult political reactions and left some wondering whether the DUP had been too quick to agree the letter. I thought the letter was fine actually in terms of representing Northern Ireland's interests. And it's not far away from what they agreed the following November in the NSMC [North South Ministerial Council] principles.

BWIP: What work was done on a follow-up or was there any?

AMcC: We were working to understand the options. But it took a while for the May administration to sort out what they wanted and what to ask for. There is a whole realm of speculation in there as to what was going on within the May administration. We weren't able to do a vast amount because the parameters – well, there was nothing, there was nothing to get a hold of coming out of London.

BWIP: What about the Lancaster House speech? Was that a surprise?

AMcC: Yes. The people I was talking to in Whitehall were talking a bit about the merits of staying aligned with the Single Market. It was hard to read what they were wanting and one of May's consistent lines was "it's not about binary choices". They seemed to refuse to recognise that there would be hard choices. And there was a lot of shadow boxing.

BWIP: There are things we see immediately after May triggered Article 50 that are relevant to Northern Ireland. For example, the European Council coming

back and saying “look at our involvement in the Peace Process” and talking about the need to avoid a hard border and the need for “flexible and imaginative solutions”. Were you part of any of those discussions, feeding into those?

AMcC: Not really, no.

BWIP: Was there any consultation by Dublin on any of that activity that they were pursuing in terms of the implications of Brexit?

AMcC: We did have good engagement with Martin Fraser [Secretary General, Department of the Taoiseach] and a core group of Secretaries General from autumn 2016 onwards. So, there was certainly some engagement but, always limited by the fact that we were far from clear what we were aiming at. But what stands out of course is the ritual, perpetual rhetoric about “*no hard border*”. So, my impatience about that escalated gradually from “*I wonder how they’re going to do that*” to “*how on earth are you going to do that!*” Everyone would keep saying it, as a mantra (and of course it’s in the FM/ dFM letter of August 2016) right through to today. But the key question was and is “*How?*” I was increasingly reacting along the line that “*If you can’t be specific about **how**, you might as well not say it.*”

BWIP: The other thing about the autumn of 2016 is that Dublin started running the civic dialogue events where we did have participation from Northern Ireland in some of those, but we did not have Unionist participation. What sort of engagement was there behind the scenes?

AMcC: I went to a few of those, including the event at Dundalk in April 2018, where Michel Barnier spoke, with SDLP, Sinn Féin and Alliance in attendance.

BWIP: But that was after the collapse of the Executive. The dynamic, I’m presuming, was different then compared to how it was the previous October.

AMcC: That’s right, we had the sheer challenge of that non-ministerial period, but we tried to make the most of the two things we could cling onto as in the August 2016 letter and the NSMC conclusions [from November 2016]: all we could do with any semblance of authority was to repeat those quite simplistic points. In that period, there was expectation of either another Assembly

election, a return of devolved ministers or direct rule and all through that, that various talks periods and so on, our attention was primarily on the local difficulties arising from that.

But trying to understand where this would leave us in terms of implications of Brexit, a key take-away from the Barnier speech at Dundalk, was when he said that if the land border is open, then anything entering Northern Ireland would have to be compliant with the Single Market. That very, very direct statement at that event stands out. So, we were, I guess, seeing and understanding the parameters, points that turned into red lines, and beginning to see the shape of negotiating positions. But not influencing. I don't think anybody was listening to us in that period.

The Negotiations under the May Administration

BWIP: In the period through the Lancaster House and Mansion House speeches, and in the Article 50 letter, when Theresa May made various commitments on Northern Ireland, what sort of engagement were you getting from Whitehall into answering your “how” question about avoiding a hard land border?

AMcC: Engagement was pretty limited and I can't recall Whitehall engaging us directly on the question of how to avoid a hard land border at all.

I guess one of the first things that crystallised for us as a practical difficulty was electricity. I remember spending a lot of time over the operation of the Single Electricity Market (SEM) and that goes back to quite an early part of the process, because there were contracts to be awarded. As with the border issue in general, the rhetoric was “we want to keep this going” but with very limited attempts to resolve precisely how. But for us, this was an urgent practicality, given that we needed private sector bodies to continue entering into contracts to supply electricity into then SEM. The issue of legal clarity could have created the risk that bidders would price in uncertainty that the SEM would not have an enduring legal base. It was in that context that I first came into discussions around the jurisdiction of the EU Court of Justice [CJEU].

BWIP: How did engagement with DExEU [Department for Exiting the EU] work in that period?

AMcC: The team in DExEU opened a line to us in terms of engagement and we did begin to build pretty good working relationships. They had put in some people who had good knowledge of Northern Ireland.

BWIP: And to what extent at the time was Northern Ireland needing something distinctive?

AMcC: So, I think that goes to how the border issue was going to be addressed. So, eventually I channelled my impatience into writing something. That does take us into autumn of 2017. I can't think of much that was real on those things or tangible substantive engagement before then.

BWIP: Because we had the UK government's Position Paper on Northern Ireland, didn't we, in the summer [August 2017] – did they liaise with you over that?

AMcC: We had to spend considerable time considering the customs options such as "max fac", but we weren't consulted in any detail. But we always came away feeling the ideas were different ways to avoid the issue actually rather than credible real proposals. We didn't get much sense that they were being realistic about what was possible.

BWIP: In June/July of 2017, we get the opening of the withdrawal negotiations. If we go back a year to Theresa May's statement, I think, after she became Prime Minister, about consultation with the devolved administrations, did anything ever come of that and were there any structures put in place such that the Northern Ireland Civil Service was involved in the preparations for the UK presence at the negotiations?

AMcC: There were at least some meetings of JMC(EN) [Joint Ministerial Committee (European Negotiations)], but I wasn't personally involved in that until I moved to the Executive Office in February 2018. So, all through autumn of 2016 (with our Ministers attending) and then in 2017, NICS officials were present, but not able to contribute substantively, as we had no Ministers. On the face of it JMC(EN) looked like a proper engagement forum. I guess by the time I started going to those meetings, Scottish and Welsh frustration was already palpable: UKG [UK Government] had created an expectation and not delivered on it.

BWIP: Were there efforts within the Northern Ireland Civil Service led by Executive Office to develop a co-ordinated position?

AMcC: Yes. David Sterling and I co-chaired the “Future Relations Programme Board”. That was set up quite early and began meeting pretty regularly, trying to keep an eye on what was going on, trying to assess what was likely to happen, so looking at, thinking through the practical implications. For example, there was a meeting in May 2017 where we were looking at agri-food, justice and legislation as three of the live topics for discussion at that meeting. So, there was preparatory work in that sense but it was all a bit false because we didn’t know the shape of how it was going to emerge and the big issues, such as the potential nature of the relationship with the Single Market were not sorted.

BWIP: That future relations programme board, that’s internal to the NI Civil Service then?

AMcC: Yes. NIO [Northern Ireland Office] officials were occasionally invited and attended, but we had to be careful. In the absence of Ministers, and especially when the Confidence and Supply Agreement was in place between the Conservatives and the DUP, the NICS was wary of any risk of compromising our neutrality and our ability to serve Ministers from all the NI parties once devolution was restored. We had on-off involvement of Food Standards Agency and I think that probably should have been more consistently inclusive, because they obviously have quite a significant role to play.

BWIP: Please say a little more about the official team on Brexit.

AMcC: We had a small dedicated team in the Executive Office with a responsibility to build relationships with London, Dublin and Brussels. Our Brussels Office headed at that time by Andrew Elliott was critically important as well. Later, one of the real upsides of Zoom was that we could have the Brussels office in every meeting. Back in 2017, the mission was to rebuild a very damaged department [Department for the Economy] after the RHI catastrophe. But then it was autumn 2017 and things began to take more shape.

BWIP: What was NICS' involvement in the run-up to the Joint Report of the negotiators in 2017?

AMcC: We played a key role in the work with the Commission on North-South co-ordination through the autumn of 2017 – the so-called “mapping exercise”. It was not that we were representing a view, obviously, in the absence of Ministers. It was a factual thing, with our participation being alongside those in the UKG team who were in the lead. We brought expertise on the detail, because a key part of the question was what's the underpinning EU legislation? What's the significance of EU legislation in relation to all these areas of co-operation? But, for a while in autumn 2017, I couldn't work out what on earth this was all about. I had a moment of revelation when the Commission text appeared. The Irish Government knew what was coming from before the referendum and they were highly motivated and determined to protect their interests, in what was (and indeed still is) a very risky scenario for their trade and their economy. As Rory Montgomery [former senior Irish diplomat] has said publicly, they expected London to push back with a more balanced perspective on the Good Friday Agreement. What they were doing in the “mapping exercise” was demonstrating to the Commission and the Member States that the Good Friday Agreement was underpinned by European legislation and North-South co-operation was under threat as a result of Brexit and they did a fantastic job.

BWIP: What about the response to this from UKG?

AMcC: I don't have a detailed knowledge of what was going on in the UKG team. I do just suspect that they had a more limited grasp of the Good Friday Agreement and its significance, or maybe they were inhibited by the need to accommodate both sides (though this in the context of the Confidence and Supply Agreement with the DUP). I can remember that months after that, going to meetings with the Brexit leads in some of the Member State perm reps and hearing them lead with a totally Irish-based perspective on the Good Friday Agreement. I don't think it is fair to criticise Dublin for the approach they took because this was a matter of existential significance for them. They wanted and needed a soft Brexit for their own economic reasons. But my recollection is that the UKG team did not anticipate what was coming until the draft Commission text appeared, prompting quite an angry reaction.

BWIP: Did they sign off on it though?

AMcC: Yes, and then you have the history where they, in the end, accepted, something very close to the Commission text of the Joint Report. And after that came the very difficult day for UKG when the strength of the DUP's opposition became clear.

BWIP: So this leads us into the whole question of regulatory alignment. Can you comment further on that issue, which was at the heart of the discussions on the Joint Report of the negotiators.

AMcC: So, I think a key question in this context is: what was the intent of the May administration at that time? The Joint Report has an important ambiguity, and my understanding is that was conscious and deliberate. The ambiguity is around the backstop, and whether it was to be Northern Ireland specific or whether the Joint Report allowed for a UK-wide backstop. I have come to the impression that the May administration were relatively comfortable with regulatory alignment, despite the rhetoric of leaving the Single Market and Customs Union, that actually the Prime Minister and the core of her administration were quite happy with a highly aligned Brexit. And, therefore, it is possible that in December 2017 they saw the UK-wide backstop as a possible destination. I can remember the Irish and the Commission protesting to me in about May 2018 that, oh no, the backstop is definitely Northern Ireland-specific only. But I was also told separately that it was known in December 2017 that the wording was deliberately ambiguous. There is also the possibility that the May administration saw the Northern Ireland issue and North-South co-operation as helpful towards securing a highly aligned outcome for the UK as a whole.

BWIP: And it fits. Because ultimately when the May government issued commitments for Northern Ireland after the Withdrawal Agreement was signed, it was quite explicit about maintaining regulatory alignment in areas covered by the protocol.

AMcC: Yes, the "unilateral commitments" paper, which they issued in January 2019 in a last gasp attempt to secure DUP support for their withdrawal agreement, would have implied precisely that, extensive regulatory alignment across the UK. I remember thinking at that time: how on earth could the ERG

[European Research Group within the Conservative Party] or any of the Brexiteers go along with that?

BWIP: But it's funny though when you think of where we ended up, because Article 11 [of the Protocol on North-South cooperation] is so weak. Actually, we're not anywhere near what the Irish had been hoping for in terms of what you'd imagine would be protected or identified by the mapping exercise.

AMcC: I still think that the Protocol as settled has an immense amount of rhetoric about North-South co-operation and protecting North-South co-operation and that tells me a lot about its genesis. One thing I tried to do towards the end of my time before leaving office was to actually do a textual comparison of the November 2018 backstop and the final version of the Protocol in the October 2019 Withdrawal Agreement and there's a vast amount that is identical.

BWIP: The commitment to the all-island economy went in the Johnson version of the Protocol. When we look at the extent of the mapping exercise and the areas identified as being underpinned by EU legislation, and then we look at what's actually in the annexes, it is reduced down to goods. Electricity is there but there seems to be a lot which is arguably missing.

AMcC: I guess there must have been some judgements in Dublin especially as to what was achievable. That's the inference I take from that.

BWIP: In light of the Joint Report which provided the basis for the Commission to pull together the draft withdrawal agreement, the initial version of which did not have the content of the annexes, they were still to be negotiated, what role, was there any consultation with yourselves on what was actually needed in order to support North-South co-operation?

AMcC: There was no detailed consultation. There was a bit of contact, between December 2017 and the emergence of the Commission text. I was told in January 2018 that TF50 [Commission's Article 50 Taskforce] was expecting the UK to follow up with a legal text arising from the difficult discussions on regulatory alignment, and that if the UK didn't come up with a proposal pretty quickly they (TF50) would put something on the table which the UK would not like – which is precisely what happened.

Could the Commission have done something different in that period? Could they have come up with a text that wouldn't have caused such a reaction from the UK? I think the problem is that Theresa May had had to sign up to the December report, and even with the DUP-based amendments, it was highly problematic. But they knew what they were doing and I find it hard to rationalise other than that the May team were ultimately looking for an outcome that was a soft Brexit. I cannot go along with any notion that they were under duress – other than the constraints imposed by the UK's own red lines and the way it had failed to manage the time between the triggering of Article 50 and the deadline for “sufficient progress”.

BWIP: This brings us to the work on the “channels paper”. Please can you tell us about that.

AMcC: In October 2017, I was one of a group of five senior NICS colleagues, led by David Sterling as Head of the Civil Service, who had a series of meetings in Brussels. I asked TF50 about their view of the risks arising from an open land border (which as I said earlier, was a mantra in everyone's speeches, but without any realistic definition or viable practical solution). TF50 acknowledged a degree of risk tolerance around tariffs etc, but said the EU had zero tolerance of health-related risks. That comment was very influential in my approach to the border issue (and remains relevant and valid in the context now).

Back at our office in Chaussée d'Etterbeek, we began to discuss a risk-based approach to the movement of goods. The general idea was that goods moving within the UK would be allowed to use a “Green Channel” so that only goods that were moving between the EU (ie Ireland) and Great Britain would be subject to checks and controls (the “Red Channel”). It was probably not wholly original, but we developed and tested the rough concept over a period of several months, to identify the details. I followed it up with colleagues in Department for the Economy and later also engaged with DAERA [Department of Agriculture, Environment and Rural Affairs] and Department of Justice. I also floated some ideas with my key contacts in UKG who encouraged me to write it up – I formed the impression that they welcomed any additional potential creative solutions to the fundamental dilemma of the land border.

Now I was clear in my paper that the “channels” approach could not work for

agri-food goods, as the issue there is health-related, and there is no practical way to prevent disease spreading between the two parts of Ireland. It is worth noting that the advocates of “alternative arrangements” (which we will come onto later, I expect) share that analysis and the protection of the health status of the island as a “single epidemiological unit” is at the heart of the issues around the border now as well as then.

I did a fresh draft on 3 February 2018. A few weeks later, the possibility was put to me of presenting the idea to DExEU Ministers. At that point I said to myself I don't work for them, I work for the NI Executive, and even with Ministers out of office, I have more responsibility to local political leaders than to UKG. So, I sent the paper to the DUP and Sinn Féin. That was my personal decision.

A few days later, I was on my way to Strasbourg for meetings in the European Parliament when I took a phone call at Schiphol Airport from UKG saying stop, spike it. Kill the whole thing.

Now, with hindsight, maybe it was a mistake to have sent it to the DUP and Sinn Féin. But maybe it wouldn't have made any difference at all anyway because the paper is explicit in saying that this only works if the DUP could have lived with the idea. Paragraph 18 of the paper identified three tests of the idea: would it provide appropriate management of the risks; would it facilitate the flow of goods without an unacceptable burden on traders; and would it be politically acceptable – especially to unionism. What I most wanted was to get a meeting with the DUP to explore the ideas more fully.

BWIP: Was that the end of the idea?

AMcC: Almost, but not quite. The paper was sent to the media, as far as I know from Sinn Féin, and on the evening of 4 May 2018. I had a call from TF50 asking about it, so I emailed it to them. They reached out for a meeting which happened a few weeks later. However, by that stage the idea was actually unhelpful to the UK negotiators, who were clearly moving towards the possibility of the UK-wide backstop. The “Channels Paper” was an attempt to take head on the UK's commitment to leave the Single Market and the Customs Union, but by May/ June/ July 2018, they were building more subtle and complex ideas, culminating in the Chequers proposals of 6 July 2018. So,

by then I was out of line with the zeitgeist, and had to stand back from any further engagement. But one of my major inferences from the whole of 2018 was that the May administration was not against a high alignment Brexit. The clearest evidence for that remains the unilateral commitments paper.

BWIP: In January 2019?

AMcC: Yes, where, UKG said we'll minimise the impact of the backstop through UK wide alignment – despite the risk that this would be perceived as BRINO – and that was probably part of what finally lost her the party. But the conclusion I reach is that the May administration was trying very hard to walk a tightrope, not necessarily because of concern about Northern Ireland, but about what would work for the UK as a whole – or what might be acceptable at UK level.

BWIP: Was there any engagement with NIO on the unilateral commitments paper?

AMcC: We were told it was coming. In fairness, NIO did all they reasonably could to alert us to things coming down the track. It was just clearly part of that incredible parliamentary struggle and intra-Conservative Party struggle they were having through that winter.

BWIP: And how did you see the backstop itself at that time?

AMcC: Well, I guess most of us within our discussions within the NI civil service would deem the backstop to be as sensible an outcome as possible in the context. We had had no agency over it, but in terms of an outcome it was as reasonable and manageable a position as we could see given the irresistible force of Brexit and the immovable object of the EU acquis.

When they briefed us on the emerging agreement in November 2018, they tried to say that the backstop was temporary, and we had to point out that we could read the words, including the phrase “*unless and until*”. And that means that unless and until there's a viable alternative the backstop would stand, and we had no evidence that there was a viable alternative. But of course that was at the centre of why the May Withdrawal Agreement fell, as they tried and tried not to be trapped in the backstop.

BWIP: Just going back to Chequers, was there any involvement, any consultation with yourselves around what the UK Government was going to be putting forward as the alternative to the backstop proposal?

AMcC: Not consultation or engagement on the detail. Our contacts in UKG did their best and we were aware of some of the ideas that were around and, especially, of the tendency of the May administration to deny that the process involved “binary choices”, or to accept the logic of Barnier’s so-called “staircase”.

BWIP: And then what about the period from Chequers through to actually the agreement on the backstop proposal in the agreement which was adopted in the autumn? How would you describe the consultation with NICS around this?

AMcC: It was pretty limited. We tried hard to get our points across on issues of analysis and fact. We wrote quite a lot of letters which got no substantive response, which was frustrating, but in that period they knew we had no authority. So, there wasn’t much point engaging us. We tried to get points across but not with any great effect. As our own thinking developed, we just looked at various stages and at times we said, you know, we should say something about this. And either David Sterling or I would write to DExEU, NIO or Cabinet Office, but we usually received only acknowledgments, rather than substantive engagement on the points we were making.

BWIP: Obviously prior to this period you had been developing contacts with the Commission on this. Any engagement during that period informally at least by the Commission with yourselves on what was happening in the negotiations?

AMcC: Yes, TF50 and others in the EU institutions tried hard to keep us in touch and were always very welcoming. Contact was not very frequent before the summer of 2017, but from then on, we had very good access to TF50 and others. But there were limits on what they could do and say to us that I think they had to respect the process. They knew that we were not tied into the negotiating team in that sense outsiders, like anybody else. We also tried to keep in close touch with colleagues in the Irish Government, in DFAT [Department of Foreign Affairs and Trade], the Department of the Taoiseach and, especially through the team in the Irish Perm Rep in Brussels who were

incredibly helpful. As much as they could, they would help us see what was happening, and very often, the message really was that UKG was not getting it, not understanding the point.

BWIP: What do you think explains that limited engagement on the part of UK Government with yourselves during this period? Because obviously there was expertise, there was an understanding of the local situation.

AMcC: I guess they knew that we were not under their control and maybe the fact that I had given my paper to Sinn Féin was a precedent that they were conscious of – so they maybe couldn't risk anything too sensitive getting to Sinn Féin, and hence to their "opponents" in the EU, through us. But it is fundamental to the role of the NICS that we don't only work for one side or one party, but neutrally and with respect for all the local parties and their mandates under the Good Friday Agreement.

BWIP: So, that leads me nicely into the next question which is the quest for alternative arrangements. I'd be interested to know: were you contacted by people who were seeking such alternative arrangements? And, if yes, what form did that take?

AMcC: Yes, there was the official strand, in which we were asked to participate – but there was not much momentum to it, and we weren't deeply involved. It didn't produce much as an official set of proposals, I guess because sensible people in HMRC and other Departments would have been realistic about the limitations they faced. They have had complex systems in relation to their own normal border arrangements, so it seems to me too much to have expected magical technological solutions to everything – notably to pass the three tests of knowing what is moving; knowing what is legitimate; and being able to stop illegitimate movement of goods.

And then there was the Alternative Arrangements Commission [convened by Prosperity UK] and I remember going to one day-long seminar. I also had a few private meetings with some of the group working on the ideas.

I think the point that stands out for me is that no-one had any alternative arrangements for SPS controls. They recognised, and have said so clearly and publicly, that the only way to do the SPS controls is on an all-island basis and

obviously that was in the Johnson Government's proposals as sent to the Commission on 2 October 2019.

The Withdrawal Agreement of October 2019

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): Moving on to the negotiations under the Johnson Government, what input if any did NICS have in relation to the set of proposals in October 2019?

Andrew McCormick (AMcC): We didn't even see them in advance, there was no prior engagement. I don't know if DAERA had any access through DEFRA [Department for Environment, Food and Rural Affairs], as engagement on the agriculture front is probably most regular and mature. So, the most obvious point for engagement would have been the concept of the animal health single epidemiological unit.

BWIP: And at the meeting in the Wirral between Johnson and Varadkar, behind the scenes, what sort of communications were you having with the Irish officials?

AMcC: We had a bit of contact around that time – obviously they were very pleased the way it turned out. And looking back they probably overachieved. But they were helpful in explaining things to us and making their positions as clear as position. Specifically, around the Wirral meeting, they held to their point of view and continued to be working in complete solidarity with the rest of the EU. But as the NIO said in the weeks and months that followed, the Irish gave very little to get the deal. I don't think you can blame Dublin for that, but the only material concession from their side was the inclusion of a provision for consent, which could easily be calculated as always favourable to the EU perspective.

BWIP: Was there any consultation on the creation of the consent mechanism?

AMcC: No, but we were briefed on it once it had been agreed, and UKG officials were very clear that it was not in contradiction with the Good Friday Agreement, and did not, in law, require cross-community support. The rationale was as stated publicly, namely that as it was an international agreement, the arrangements for voting on devolved matters did not apply – specifically that

the issue of cross-community consent and voting only applied to devolved matters. The very fact that the Protocol makes specific provision for consent either with or without cross-community support is manifest proof that the UKG (as well as the EU, and the Irish Government) envisaged the clear possibility that the Protocol might well have to operate for many years ahead without unionist consent. What was said at the time was that “*no side could have a veto*”.

BWIP: Do you know where the idea of the consent mechanism came from?

AMcC: Not directly, but there was tide of opinion at that stage that was questioning the legitimacy of the backstop.

BWIP: So after the deal was agreed, were you raising particular concerns about?

AMcC: So, that was a really interesting couple of months. So, we wanted to unpack the whole thing, understand the detail, but we were not getting much of substance from our UKG contacts. I took the view again in our neutral position, we had a responsibility to understand and interpret the implications. Hence, I asked the Commission, and in that period, we had several really good meetings with TF50 who were very happy to engage with us and tell us what was going on. The most vivid memory is of a meeting where we were discussing medicines and TF50 showed us the enormous dossier of requirements that would apply – they wanted us to understand how detailed and complicated this would be. Had we been able to get to grips with that (as a key example of a hard issue) it seems possible to me that much earlier progress could have been made.

However, neither London nor Dublin were comfortable with what we were doing at that stage. I think they were saying that the actual implications of the Protocol would depend on the final settlement. Dublin, especially, were probably hoping that the trade negotiations would lead to sufficiently close final arrangement to meet their key concerns. So, they were very wary of TF50 adding detailed definitions, in response to our enquiries, that might have prejudiced that outcome. However, I look back at a major missed opportunity to get a start made to identifying the practical implications and perhaps even finding some mitigations much sooner. But the mood seemed to be adversarial

rather than focussed on problem solving.

Early in 2020, we asked UKG to help us draw out systematically the implications, line by line, of each of the main provisions in the Protocol. We wanted to look at a best-case/worst-case approach, the former being an outcome where the UK secured an extensive FTA, with many hard issues resolved; worst case, was of course, no trade deal at all.

So, I see a parallel universe where, had we and UK Government and the Irish got into that process, and understood things, in detail, from October 2019 onwards, we could have reached the end of 2020 with a lot of detail worked out, and resolved.

BWIP: Does the EU not share some of the responsibility for this all being so difficult?

AMcC: My strongest criticism of the Commission is that they went along with some very Delphic language in the Protocol. I think the wording should have been clearer – especially on the key fact that the many aspects of EU law that were still to apply in Northern Ireland would mean significant and extensive controls: the recital referring to the “*shared aim*” of “*avoiding controls at the ports and airports to the extent possible...*” strikes me as actually misleading – it’s a bit like saying: “*I will cross a busy motorway avoiding the traffic to the extent possible*”. Even the reference of unfettered access on the movement of goods from Northern Ireland to Great Britain was a bit Delphic. Maybe I can excuse them if they were expecting a free trade agreement that would retain some agreements that would have facilitated movement of goods across the Irish Sea.

BWIP: My understanding is that the rewrite between the original Commission proposal of February 2018 which May rejected and the later versions was part of the de-dramatisation requested by the UK.

AMcC: That makes sense.

Negotiations on the Protocol in 2020

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): Could you

say a little about the tricky issues that you became aware of in the months after the Protocol was agreed?

Andrew McCormick (AMcC): Rolling forward, the whole SPS issue is still highly relevant to the present day, especially the concern about supermarket consignments. We knew from the spring of 2020 that the Protocol meant that the nature of the supply of agri-food goods from Great Britain to Northern Ireland would mean very large numbers of Export Health Certificates (EHCs) would be required – more than you could imagine. DEFRA and DAERA would have talked about it – they knew and understood the scale of the issue. The business leaders, especially the retail sector, were saying very clearly from the spring of 2020 onwards that the issue would be unmanageable. So, for the UKG to say recently that they didn't expect the Commission to enforce it this way is manifestly wrong. UKG officials knew precisely what was going to happen, and made detailed proposals that would have mitigated the problem.

I attended a few of the technical meetings with the Commission in the summer of 2020. And what we wanted to say was there was nowhere around the EU where there was a region getting a large proportion of its food supply in the form of supermarket consignments that come across a border: it doesn't happen between Serbia and Croatia, or Turkey and Greece or anywhere else. Hence, for the supply of agri-food goods from Great Britain to Northern Ireland to represent a very large proportion of the checks at the EU's external border, is not surprising when it is understood that the number of checks is a function, not simply of the volume of goods moving, but the very fragmented and complex "just in time" supply chain arrangements that apply – each lorry has many containers, with a diverse range of goods, ideally organised for rapid delivery to retail outlets. It's a very successful and efficient business model, in a low margin sector. But the EU legislation in the Protocol, as known and understood certainly from early 2020 – but surely from before the Protocol was agreed in October 2019, and perhaps from as early as summer 2018 – created new and clear requirements.

The October 2019 deal contains much that is an exact replication of the backstop text, so I am in no doubt that UKG Ministers and officials must have understood fully the implications of the deal they did on the Protocol. So maybe my passionate belief, that it would have been helpful to have got down to practical discussion about what the Protocol meant, starting in October 2019,

was naïve: I now have a worry that they wouldn't do that not because they didn't understand it, not because their expectations were wrong, but because they actually **did** understand it, but had some reason not to really get down to the detail – notably on SPS and medicines – at a much earlier stage.

In a parallel universe where there was fact-based analysis of how our system actually worked, I would hope there would have been a much better chance of identifying the problems at an early stage, with, hopefully, DG SANTE and others, coming to realise that this was quite uniquely difficult.

BWIP: If the UKG approach towards the arrangements to apply in Northern Ireland at end of the transition period wasn't driven by fact-based analysis, what was at play instead?

AMcC: It is very important to note that, after months of discussions on the Protocol, including attempts to persuade the EU to accept unique arrangements to address issues such as the supermarket problem, the UK seemed to be satisfied with the agreement reached at the Joint Committee in December 2020. In his statement to Parliament on 9 December 2020, Michael Gove said that that agreement delivered on the Government's promise to *"...ensure that the important Great Britain-Northern Ireland trade flows, on which lives and livelihoods depend, were not disrupted..."*. In response to questions, he went on to say: *"... we have been talking to traders, supermarkets in particular, to make sure that they are ready for any export health certificate requirements. We know that some supermarkets are already ready. One or two others need time in order to get ready, and they requested a grace period. ... We have managed to secure three months, which is sufficient time, we understand, to ensure that supermarkets are ready."*

Yet, before the end of February 2021, the Government was saying instead that the supermarkets needed over a year to be ready, and indeed since then the grace periods have been extended indefinitely. I find it hard to believe that, in December 2019, the supermarkets had, in truth, given the Government the assurances that they could ready within three months.

BWIP: So why do you think Michael Gove said what he did?

AMcC: The timing would suggest a possible link between the Protocol

negotiations and the main trade negotiations. In a nutshell, it was necessary for there to be a good enough deal on the Protocol in order to provide an adequate context for the withdrawal of the ‘notwithstanding’ clauses in the Internal Market Bill.

London had created the connection between the Protocol and the TCA negotiations by putting the clauses into the Bill in September 2020. So looking again at my parallel universe, what could have happened instead was for the Protocol to be addressed objectively as an “all-weather agreement” which would apply in all circumstances. So, in theory, we could have spent the first half of 2020 sorting it out, working out the detail, getting the key issues to the Joint Committee. I don’t accept that it was essential for those Joint Committee decisions to wait until December 2020.

It appears possible that London decided for political reasons to make the link, to use the Internal Market Bill as a tactical manoeuvre, to bring the Protocol into the disputed context the main negotiations. It may even be the case that there is a view that that tactic worked, but I struggle to see what they secured as a result. Before the tactic was adopted, I was not seeing or hearing any evidence that the discussions on the Protocol were stuck or proving impossible: maybe it was necessary for UKG to say they were for tactical reasons, but what I was hearing was that the process, while challenging, was proceeding much as expected.

It is really interesting that the issues that they saw as legislative priorities were tariffs, state aid and exit declarations. Maybe we should come back to the issue of exit declarations later. Very conspicuously, they did not seem to consider a legislative intervention on the SPS issue; and medicines do not seem to have even had a mention. On tariffs, the plan to legislate to change the default to tariffs not applying to anything was a very pessimistic view of the prospects for the negotiations in the Joint Committee – our contacts with TFUK [Commission’s renamed unit dealing with the Transition Period post Brexit, in succession to TF50] left us confident that a sensible outcome on that issue was possible. I have always suspected that state aid – which was such a central issue in the main negotiations – was as big a driver as anything in the Internal Market Bill, as the Protocol’s “reach back” provisions meant that Commission control and CJEU jurisdiction extended to GB producers trading into Northern Ireland.

All our discussions underlined the EU's public position that there could be no trade deal while the "notwithstanding" clauses were in the Internal Market Bill – senior contacts in the EU institutions made this point directly to us privately. Later in autumn 2020, the EU representatives were saying to me that further new clauses in the Finance Bill would create another enormous problem. The solution was achieved by doing a deal in the Joint Committee – and what I am suggesting is that it appears that the imperative of securing a deal was more important than that deal actually being sustainable and deliverable.

BWIP: It does seem possible that, if that detail had come out, the pressure would have been on the UK Government to move into a process of continued alignment in the TCA. It would have destroyed the narrative of no regulatory alignment.

AMcC: Well, I can only see two credible interpretations of their agreement to the Protocol in October 2019. One is the astonishing thought, as claimed by Dominic Cummings and Ian Paisley Jr, that the UKG never had any intention of adhering to the Protocol and planned all along to renege on their acceptance – indeed their own proposals of 2 October 2019 – of checks on the controls on goods moving from Great Britain to Northern Ireland.

I suppose there is also the possibility that London changed its view of things. I can just about accept a line that says they hoped for the best in signing the deal and thought well, if things go well, we can make this work. And if the DUP don't react too strongly and we sell the benefits and work things out, if we throw lots of money at the Trader Support Service, and allow DEFRA to spend multi-millions on digitising EHCs, maybe it'll be okay. But if not, we can back out of the Protocol and declare it isn't workable.

That fits with I was seeing in my last few months in Executive Office. UKG officials, especially in DEFRA and HMRC, and the team in the TSS [Trader Support Service] were working very intensely and urgently on ways and means to make the Protocol work, and to smooth as many of the procedural rough edges as possible, at a cost of many hundreds of millions of pounds: in my nearly 41 years of experience, I don't imagine there were ever so many officials working on issues specific to Northern Ireland.

This behaviour could very easily be interpreted as sincerity. Certainly, it is

consistent with the attempts by UKG Ministers between October 2019 and January 2021 to sell the benefits of the Protocol and to play down the “Irish Sea Border”.

BWIP: Just looking at the Protocol more as a whole, what was your reaction to the actual content regarding, say, rights, North-South co-operation, the single electricity market, did those raise concerns?

AMcC: Those were all pretty fine. The Joint Report of the negotiators in December 2017 (paragraphs 52 and 53) included important commitments to ensure no “*diminution of [the] rights...*” of the people of Northern Ireland that were and are central to the Belfast/ Good Friday Agreement of 1998. This issue is covered in Article 2 of the Protocol, which is not subject to the provision on consent in Article 18. I had several meetings with human rights groups in Northern Ireland in that period and I didn’t hear any material concerns about that aspect of the Protocol.

Similarly, there were no concerns about the extensive provisions in the Protocol on north-south cooperation, though of course that aspect can only progress with the active, cooperative engagement of both the Northern Ireland Executive and the Irish Government, which is not always politically possible – it wasn’t at the time and it isn’t now.

As I said earlier, the single electricity market was the subject of my earliest detailed engagement with DExEU, in the summer and autumn of 2017 while I was in the Department for the Economy. But the issues were largely settled even in the May draft of the Withdrawal Agreement, and the arrangements in the Protocol are now fine. But I think this was a very interesting indicator of a process, of the journey I was on towards understanding the consequences of Brexit.

No deal preparations

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): What I haven’t asked about yet is the no-deal preparations which you had to do twice, obviously. And how much was that exercise a good one in terms of communication between departments and then recognising the significance of the Protocol at the final stages in 2020?

Andrew McCormick (AMcC): That whole aspect of the work was vastly better in terms of openness and engagement with Whitehall. Sir David Sterling and Sir Jonathan Stephens, the PUS [Permanent Under-Secretary of State] of the NIO, co-chaired weekly stock-take meetings. NIO put us through our paces and asked us lots of hard questions but both on a bilateral basis with the NIO, and in our input to the collective Whitehall machine, the chance to contribute was very good. David and I had speaking parts at ministerial meetings including the Cabinet Sub-committee EUXT (P) [European Union Exit and Trade (Preparedness)]. I guess Whitehall knew that we needed that as the NICS acting with no Ministers had to do very important preparatory work.

We took the opportunities to explain factually what would happen under a “no deal” scenario – for example, on one occasion, I talked about three specific example of companies – one in pharma, one in food and drink supply and one in agri-food – and basically my point was if we left with no deal, these three organisations would all face really serious breakdown. So, we advised strongly that no deal was really problematic because of the land border issues, and I think my points were recognised and understood by UKG Ministers.

David and I were regularly at those meetings. Some were held by video link but in those days, I made a point of travelling because the video links were never that reliable: when we were needing to make points, the access was good and David Lidington, who chaired many of the meetings was superb actually.

BWIP: If access was good in those meetings and there was an increased understanding of the substantive issues which no deal would create, did that actually translate into that deeper understanding of the implications of the Protocol and the TCA?

AMcC: So, under the May administration, I think there was very good understanding of what we were saying. I also give pretty strong credence to the view that the Johnson administration realised that no deal would be very destabilising in Northern Ireland, partly because of the analysis we had presented and, also, I think through the strong advice from PSNI [Police Service of Northern Ireland] – I think it is reasonable to conclude that that was real factor in the enormous decision to accept the Withdrawal Agreement that was negotiated in October 2019 – including the necessity of the Protocol: the alternative was nothing like as manageable as some Brexiteers were claiming.

On the more detailed contingency planning in the Johnson era, XO [Brexit Exit Operations committee] was a bit more ritualistic when Gove would have been chairing those meetings and I think our impact was rather less than before, but we continued to have good access. Also, of course, from January 2020 onwards our Ministers were invited to XO, and attended a good proportion – but their opportunity to comment and influence was limited and it was rarely based on a considered, pre-agreed line based on discussion at the Executive or between the relevant Ministers. Sometimes they were not available and we ended up representing them anyway.

BWIP: How did the dynamic change in terms of your interaction with Whitehall once you'd got ministers back?

AMcC: It was pretty good and I think there was a lot that worked well. We settled into a rhythm of regular official level meetings. We had access to a regular forum chaired by the Transition Task Force in Cabinet Office which involved all the relevant Whitehall Departments and the three Devolved Administrations: that group looked across the whole portfolio of projects that were underway to prepare for exit (on whatever terms). There was also something called the Northern Ireland Readiness Group (NIRG) which NIO led very well and which had good attendance across the Whitehall departments as well as our departments. They did get a bit frustrated that as NICS officials we could hardly ever come to them with an agreed Executive position, but the longer it went on, the more it became clear that there was hardly anything that the Executive could ever agree on about any aspect of Brexit.

Border control posts

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): Is there an example that illustrated that problem?

Andrew McCormick (AMcC): Maybe this is a good time to talk about border control posts. The NIO would ask: “*what’s the Executive’s position on that*”. “*Well, sorry, the Executive doesn’t have an agreed position.*”

Now, that leads clearly to the substance of that issue, where there was a chasm between Boris Johnson’s rhetoric about no controls and what UKG officials were doing and saying. We were concerned that the only

communication we got about the BCPs came at an official level (from DEFRA to DAERA and from NIO to me in the Executive Office). They provided their legal analysis that showed that the powers in relation to the operation of SPS controls were devolved and they did not have a legal basis to build and operate, though the Secretary of State had power to direct the NI Executive. But the correspondence made it very clear that UKG wanted the BCPs to be established as quickly as possible.

A key stage was triggered by a letter from DG SANTE to DEFRA saying that if the UK did not establish BCPs, and have them designated and approved by DG SANTE – as the detailed provisions of the Protocol require – by the end of December 2020, there would be no legal basis for bringing food into Northern Ireland. That shouldn't have been a surprise, as it is clearly stated in the relevant EU legislation which applied to the UK as a whole before exit. I was told in the spring of 2020 that this very clear and basic requirement became the touchstone (and, notably, UKG officials were not disputing the alarming fact as stated, because, as I said earlier, they knew and understood what the Protocol meant). If the EU couldn't see the UK making visible progress on that, nothing else would have any credibility – but only we as the devolved administration could fulfil the obligation. Stepping back from the detail, this now looks like a burden far too great for the immature and divided devolved administration to carry, so I feel strongly that the key responsibility for all that happened subsequently is with the UKG.

And again I can't help imagining naively a parallel universe, where there was analysis, detail, understanding and implementation, in a mood of shared responsibility for problem-solving through 2020. Instead, the position appeared to be hoping for something to turn up, hoping that the negotiations will make things easier, hoping that it'll be all right, and therefore not doing anything. And, of course, the mindset in London was that the EU was its opponent, and everything was a matter of winning or losing. The totally inadequate preparation right up to December 2020 was the real cause of a lot of the problems that arose – not so much from what the Protocol says but from the fact that there was no preparation. So it is hard to understand UKG's actions, as I think they knew enough about the implications of the Protocol to have acted in a way that would have minimised the difficulties and opposition, but did not do so.

BWIP: How does that square with your emphasis earlier on all that UKG was doing, including spending large sums of money on the Protocol?

AMcC: Yes, I accept there are deep contradictions. I think it is worth focusing on the UKG Command Paper of May 2020, which included two very important sections on customs and SPS. On the former, the key message was “no new infrastructure”. What I knew it said was that they were saying that customs declarations would be required for everything, but that it would all be done digitally – hence no new infrastructure.

But, clearly and explicitly, the Command Paper said there **was** a need for some new infrastructure for SPS controls. That was what allowed the DUP to say that they accepted that it was going to happen, and led to the agreement at the Executive meeting on 20 May 2020 that DAERA would follow through, and fulfil the legal obligations in relation to the BCPs.

BWIP: But later Edwin Poots tried to stop the work proceeding did he not?

AMcC: Yes, and that arose in a very difficult period (from September to November 2020) after David Sterling had retired and there was no Head of the NI Civil Service – for that period I was the most senior official in the Executive Office. Now the DUP had made it clear that the most difficult point for them was the appearance of new infrastructure – the visible manifestation of an internal “border”. But the very, very clear message from London was that it was necessary. When DAERA officials were instructed not to issue the tender documentation – the next key step on the critical path towards creation of the BCPs – we had clear responsibilities to advise Ministers on the implications of the possible courses of action.

This led to a very difficult meeting of the Executive on the evening of 10 September 2020, which has been reported extensively in the media, so that the only new point of fact I am stating here is to identify my own involvement. I had to set out the facts, notably that if the work did not proceed, the Executive would be in breach of domestic and international law. They agreed that legal advice from the Attorney General was needed. The next day, a letter arrived from the DEFRA Secretary of State, George Eustice, basically saying what I’d been saying, and underlining that the UK Government expected DAERA to proceed with the necessary work without delay. Hence by the time an opinion

from the Attorney General was available, Minister Poots had, in effect, acquiesced with the reality that the work was proceeding.

BWIP: How does any of this square with the line from the Prime Minister that there would be no checks on goods moving from Great Britain to Northern Ireland?

AMcC: That is, of course, the enormous question – and the answer is that it doesn't – not at all. All through 2020, UKG officials were clear in their communications to us that the BCPs were needed, and the legal basis for that is crystal clear in one of the many regulations listed in Annex 2 to the Protocol. UKG officials saw this very clearly and talked to me about it as soon as the position was clear in October 2019. I sat in meetings where UKG officials said to the EU that "*they had always been clear*" that they accepted the need for SPS checks on SPS goods moving from Great Britain to Northern Ireland – sometimes within days of one of the occasions when the Prime Minister flatly denied that clear and inevitable fact, most frequently at PMQs when asked by the DUP.

The Internal Market Bill

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): You made reference earlier to the UK Internal Market Bill but maybe we should take that from the beginning – was there any forewarning of it coming?

Andrew McCormick (AMcC): We knew a Bill was coming and had some inkling of the ideas around the functioning of regulation post exit, but we had no warning of the two enormously controversial dimensions of the Bill as it was introduced in September 2020. The clauses that would have broken international law in a "specific and limited way" were a complete surprise, as were the provisions for spending by UKG on devolved functions (which caused immense concern in Edinburgh and Cardiff).

The tactical reasons for proposing the "notwithstanding" clauses struck me as bizarre. So, they were saying Joint Committee isn't working. Well, the Joint Committee hadn't met. There hadn't been substantive proposals. My understanding was that the process had been proceeding much as had been expected for that stage in the process. Nothing untoward. No sign of a reason

to say there was a need for a *force majeure* intervention of some sort. So my inference is that the reasons were tactical.

BWIP: What is your understanding of the significance of that Bill for post-Protocol Northern Ireland in particular?

AMcC: Our analysis of the Internal Market Bill was that it had quite distinct sections. Large parts of the Bill (Parts 1-4) were relatively straightforward provisions on the way the market would operate with provisions for the regulation and oversight of trade to address the post-exit scenario. It then made specific provisions for the movement of goods from Northern Ireland to Great Britain, in fulfilment of the NDNA commitment of January 2020 (Clauses 42-43 as introduced, Section 46-7 of the Act) – which is worth coming back to in some detail in a moment. Unfettered access also gave rise to the first of the “notwithstanding” clauses (Clause 44), on the whole issue of exit declarations, which is also a very important detail. There was the state aid bit (Clauses 45-47, finalised as Section 48 of the Act) which to me was really what London was concerned about – not to protect our economy, but because it left too much of the GB economy under EU, and specifically CJEU, influence – they were unhappy with the reach-back of the state aid implications into GB. Finally, there were the provisions dealing with finance in Part 6, which alarmed the Scottish and Welsh Governments, because they cut across the responsibilities of the devolved administrations. This last bit was strongly opposed by Sinn Féin, and the DUP seemed at one stage to share that opposition, but in deeper truth they were quite happy for London to be able to spend money in Northern Ireland on things that they, the DUP, would want without having to agree them with Sinn Féin.

So, we saw Bill as a curate’s egg. There was little or no prospect of an agreed position in the Executive about the “notwithstanding” clauses, or the impact of the financial provisions on devolution. However, I thought that the Executive really should have welcomed and supported the important provisions about unfettered access of goods moving from Northern Ireland to Great Britain – they probably went as far as was possible to address our economic interests, but I felt it would have helped to underline their importance and to push against any hint of indirect means of excluding our goods from the GB market or limiting their acceptability.

BWIP: What was the problem with that aspect of the Bill?

AMcC: It only really became clear to me later, but the DUP began during 2020 to use the line that unfettered access in one direction wasn't good enough, and my inference is that they could not express support for something that was good, helpful, possible and on offer, because of the absence of something that was not deliverable.

Now the phrase "unfettered access" first appeared in the final sentence of paragraph 50 of the Joint Report of the Negotiators in December 2017, where it is explicitly in one direction: "*..unfettered access for **Northern Ireland's businesses to the whole of the United Kingdom internal market.***" (emphasis added). The Protocol itself (recitals and Article 6) as agreed in October 2019 is even clearer on this point.

The statement in NDNA (paragraph 10 of Annex A) is consistent with that position: "*To address the issues raised by the parties, we will legislate to guarantee unfettered access **for Northern Ireland's businesses to the whole of the UK internal market, and ensure that this legislation is in force for 1 January 2021.***" (emphasis added – to the identical phrase as used in December 2017). It was self-evidently impossible for the UKG to make a commitment to unfettered access in both directions as that would have been obviously going beyond the Protocol. Furthermore, the Irish Government could not have gone along with NDNA had they tried to go further. The same paragraph in NDNA includes the point that the DUP has focussed on ("*The Government is absolutely committed to ensuring that Northern Ireland remains an integral part of the UK internal market,....*") but that is short of what they want it to mean and even that statement is qualified by a link to the explicit terms of the Protocol, and the rather Delphic explanation that Northern Ireland is part of the UK's customs territory.

I think there was at least some awareness within the DUP around January 2020 that there was a tension – to put it mildly – between what they read in the words of the Protocol and what they were hearing the Prime Minister saying – "*which is right?*". So rather than recognise that the Protocol as agreed had significant challenges that needed to be resolved or at least mitigated by negotiation and, if possible, agreement, UKG Ministers either pretended that there was no problem, or denied the clear factual implications of what they had

agreed – perhaps trying to say that the Protocol meant what they hoped and intended it should mean, rather than the words as committed into Treaty status.

BWIP: But even “unfettered access” on Northern Ireland goods moving to Great Britain isn’t all plain sailing (excuse the pun)?

AMcC: Yes, exactly. The Internal Market Bill introduced the concept of “qualifying Northern Ireland goods” – ie it made a distinction between goods that would qualify for unfettered access and other goods – in broad terms goods coming across the land border from the EU – which should not benefit from unfettered access. From the signing of the Protocol onwards, we were aware of the tension between totally unfettered access as in “no checks on anything moving from Northern Ireland to Great Britain”, as against some kind of distinction between qualifying and non-qualifying goods. It is a bit like the Channels paper concept: you know some goods have the right to move and some goods don’t – but the really difficult question is “how do you distinguish the two?” And lots of people have said if you introduce any documentary check or control mechanism, that is in itself a “fetter”, and therefore it is contrary to the principle on unfettered access. So a lot of people have argued for a continuation of the status quo – which is actually both the pre-Brexit position, and the “temporary” arrangement that the UKG introduced under the Internal Market Act. ‘

Now politically, my sense is that it is a double-edged issue from a unionist point of view. So, at one level unionists want no fetters, but I could imagine some also championing a test that says ‘*we want to make sure that only proper Northern Ireland goods have unfettered access. We don’t want the free loaders from a “foreign country” taking advantage of our unfettered access*’ – I think at least some senior unionists did want a distinction. But the only way to do that is to have some kind of mechanism, based on a source of information that allows you to make that distinction.

And economically, it is the agri-food sector in Northern Ireland which would be probably the most concerned to have a distinction. They want their reputation preserved and if the status quo continues and there is no distinction between qualifying Northern Ireland goods and essentially the rest of the EU goods, primarily Irish of course, then how do you know what is moving? But the

different sectors, such red meat, dairy all have different business models, different patterns, different degrees of integration north and south; on the other hand, most of the non-agri-food manufacturing sector was very averse to any additional burden. Hence you have got a very mixed set of signals from industry as to what to do.

BWIP: You mentioned the “notwithstanding” clause about exit declarations – why was that significant?

AMcC: So that story begins almost immediately after the Protocol was signed and what emerged very quickly was that despite the references to “unfettered access”: there **was** an obligation for documentation on goods leaving the Northern Ireland. Steve Barclay had to correct what he had said to a Commons Committee and acknowledge that inconvenient truth. The obligation on exit declarations arises as I understand it not just from EU customs legislation but from wider international law and there are some very specific things on specialist areas like CITES (ie endangered species); rough diamonds... I discovered rough diamonds were a thing in the context of all this work. But more generally it’s about knowing what is leaving your territory in relation to issues of security and fraud prevention. At a meeting with the EU soon after the Protocol was agreed, we were told, “no one said anything about unfettered **exit**”. And the Protocol says very carefully – again perhaps Delphicly – that “**nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to other parts of the United Kingdom’s internal market.**” (Article 6, emphasis added).

I think that the UKG saw this as such a major difficulty that they included it in the Internal Market Bill, as one of the “notwithstanding” clauses. But I do think it was very striking that this issue was escalated in that context, whereas the much starker and deeper problems that arose in relation to the movement of goods from Great Britain to Northern Ireland. The Miliband-Johnson exchange in Parliament on 14 September 2020 exposed very clearly the fact that they were playing a Northern Ireland card – but not really. And I have to say it that, given the real delicacy of the political situation in Northern Ireland, it would surely have been more responsible to have focussed on trying to solve the issues around the Protocol rather than using it tactically.

So, then a big “triumph” for Michael Gove in December 2020 was the

agreement with the Commission on not having the formal exit declaration, but to have an alternative way of providing essentially the same information. This was one of the agreements of the Joint Committee – it was one of the unilateral declarations by the UK which the Commission noted and essentially said ‘that’s okay, we will work on that basis’, even though it was outside the strict terms of the relevant legal provisions. And the imperative was, as I said in relation to the issue of SPS and supermarket consignments, was that if they couldn’t find a defensible basis for withdrawing the “notwithstanding” clauses, they would not be able to secure a trade deal. I think that drove the timing and tactics – but it was clearly presented as a significant solution and a major step forward.

BWIP: Do you know how they designed that alternative?

AMcC: I don’t. I did have some discussions with DExEU in 2018 when I was working on the Channels paper about information and ships’ manifests – some basic information is required in relation to ferry transportation, and it may have been possible to build on that in a low key, non-dramatic way, to have a degree of knowledge as to what goods would be moving. The absence of statistics on NI/GB movement is a problem,

However, I didn’t realise until quite far into 2021 that essentially the UK hadn’t done anything about the commitment they had made in December 2020. So, when they did the unilateral extension grace periods at the end of February 2021, the Commission protested ‘*how can we trust you to do these things when you haven’t even fulfilled what you said you would do?*’, and the alternative to exit declarations was among the things the Commission was concerned about.

BWIP: And not so long ago, Lord Frost announced a further delay in introducing checks on goods moving from anywhere on the island of Ireland to Great Britain.

AMcC: That was a very interesting development. I’m tempted to infer that it means they still haven’t found an acceptable answer to the issue of qualifying goods we were discussing a short time ago.

I do wonder if there is not a connection between the issue of qualifying goods

and the “alternative to exit declarations”. At one stage, it seemed to me that the latter would provide the mechanism needed to make the distinction between “qualifying” and “non-qualifying” goods. However, maybe the bigger point is that the UKG doesn’t seem to have done anything to create the relevant information flow – which is a further bone of contention with the EU. I don’t really know if there are practical constraints – but it just feels odd to me.

Joint Committee Issues in 2020

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): Just going back a stage, the Internal Market Bill obviously had an impact on the dynamics within the negotiations on the Joint Committee decisions which we got in December. How closely was NICS involved in the development of the UK position for the Joint Committee then?

Andrew McCormick (AMcC): We – and most strongly DAERA – had some involvement on the SPS and other agri-food issues, but on most issues we were hardly involved at all. We kept asking and kept asking especially about at-risk goods and the other big decisions that were outstanding. The sausages issue took me by surprise, as I wasn’t aware of that definitive prohibition until October 2020 – in the end my inference is that the agriculture Departments in Whitehall and the NICS knew of that issue but had seen it as just too difficult.

So, on my hobby horse again, I have to wonder whether, had that come out into the open in the spring of 2020, people might have said well either here’s a way to deal with it or we need to find a way to resolve it at an earlier stage in a different mood, a different atmosphere. That seems so much preferable to the confrontational context set by the Internal Market Bill.

BWIP: On this particular issue of the content of annex 2 to the Protocol as agreed in October 2019, did the detail first appear when the UK Government and the EU agreed the first version of the Withdrawal Agreement in October 2018?

AMcC: Yes. I can’t imagine how they could possibly have got as deep into that – formally agreeing the backstop – without detail. The process between the UK negotiators and TF50 must have been pretty intense through the summer of 2018.

BWIP: So, jumping back to the Joint Committee decisions of December 2020, what were the main reactions to the agreements that were reached?

AMcC: So, it all seemed fine at that time. And Michael Gove was talking it up. So, there was a bilateral agreement between Michael Gove and Maros Šef?ovi?, and then the UK published the drafts, at the risk of annoying the Member States who, we were told, were concerned that the Commission might be going too far. On “at-risk” goods, some UKG comment placed the deal as implying that over 90% of trade would be treated as not at risk. And they claimed to have solved the exit declaration issue.

However, by the time I left work at the end of May 2021, they hadn’t actually delivered it. Hence the Commission were quite understandably saying in effect “*you said you’d do it, but you haven’t done it, so how can you expect us to give you more concessions when you haven’t fulfilled the things you accepted as needing to be done*”. My inference is that they knew that the alternative method of getting the information was also a burden on businesses and they weren’t geared, either politically or systematically to do it.

I think the two agriculture and fisheries decisions of the Joint Committee ones were okay – DAERA were involved in detailed meetings on those. The issue of a Commission presence one was clearly very sensitive, and it was the one point on which Maros Šef?ovi? gave ground more readily than Michel Barnier. The issue of access to information followed the pattern of the UK making a promise and then not delivering. Their “push back” was that the Commission did not appear to be fulfilling the obligation to use “*best endeavours to facilitate the trade between Northern Ireland and other parts of the United Kingdom...*” (Article 6(2)), but of course that commitment is hedged about by the necessity of upholding the legal order.

BWIP: Going back to what you were saying about the agreements in December 2020, when various decisions and declarations were presented as resolving issues but we then moved into the situation where trust was diminishing critically.

AMcC: That’s the bit that doesn’t seem to get much attention from the commentators on the UK’s attempts to renegotiate the Protocol. I don’t think anyone can take seriously the idea that they didn’t really expect the Protocol

to be as problematic, that they were duped or that the EU were not clear in what the provisions of the Protocol would imply. Any attempt to run that argument ignores the plain fact that there were intense and detailed discussions **throughout 2020**. All the points that have been described as overly demanding – or pettifogging – were addressed in that process. So having asked for certain mitigations, it's not remotely credible to say that the UK expected the EU to have granted them – are they in effect saying – *“you see all those things we asked for and which you said weren't possible – we thought you would actually give them to us”!*

So at best, there is a serious problem of mixed messages. It is hardly surprising that the EU distrusts them when they changed their stance so radically.

The TCA and the Protocol

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): If we look at 2020, there's obviously the two parallel processes going on, one is addressing the implementation of the protocol and getting agreement on the outstanding issues remitted to the Joint Committee decisions and on the other hand you've got the ongoing UK-EU negotiations on the TCA. So, if we take the second of those, can you talk through the engagement between UKG and the NICS over the trade issues directly and also with regard to how some of the issues which obviously had been highlighted with the Protocol would be affected by the TCA.

Andrew McCormick (AMcC): UKG officials were really very helpful indeed through the trade negotiation process. For most of the rounds of negotiations we were participants in a detailed and pretty thorough debrief alongside the Scots and the Welsh, led by senior participants in the UKG negotiating team. In some respects, this was the best and most systematic engagement process at any stage between the Referendum and the end of the Transition Period. But – big but – we said at almost every meeting, are you looking at the implications of what you're doing for how Protocol will work. And the answer was usually that another team was dealing with the Protocol. When we spoke to that team to ask about their input to the trade negotiations, the answer was that they had only a limited line of sight. They were parallel processes with immense implications, one for the other. We briefed our Ministers and they made that

same point at JMC (EN) meetings. And in November 2020, the First Minister and the deputy First Minister wrote to the UKG summarising their agreed key “asks” from the trade negotiations – a rare but very positive development. And that included a request for a veterinary agreement, or some clear alignment on the SPS issue.

BWIP: What was the response to presumably the question that was put about how this interacted with the protocol once we got the text? Was it essentially left to yourselves to work that out in practice?

AMcC: No, there was a bit of helpful briefing from Whitehall on that. The team had given us some time, we’d several sessions into January 2021 where there was detailed explanation to us and the Scots and the Welsh. However, for example, the absence of an SPS agreement was conspicuous. It was clear that this was a difficult, limited deal. And the comment in the Prime Minister’s speech about the TCA meaning no non-tariff barriers stands out as pretty breath-taking. But we had UKG officials genuinely explaining the details and that there was no difficulty about that process.

BWIP: Was there any surprise at the absence of an SPS in the January agreement, and had there been any contingency planning for the absence of such an arrangement?

AMcC: In the debriefing meetings, TFE [UKG Task Force Europe, headed by David Frost] had said enough to leave my expectations low, so I was reasonably conditioned by their continuous focus on the primacy of sovereignty etc. But on that enormous issue, as so many others, there was very limited contingency planning. The focus had been on what would arise in a “no deal” scenario: we had key meetings with UKG, where we were continually asked if we were prepared to address the issues that would fall directly on the NI Civil Service. In the event, many of the issues that were exposed in the early months of 2021 were UKG responsibilities, the SPS issue was mainly relieved by the grace periods. But the need to do that seems to me to have arisen from the absence of any process of foreseeing, analysing, assessing and communicating at an earlier stage. I am left with the cynical suspicion that they couldn’t do that because it would have exposed the SPS issues that were troublesome for so many GB traders exporting to the EU, including Scottish shell fisheries etc.

BWIP: If we look back at, say, the implementation of the protocol issues from the beginning of 2020, plus the TCA issues, what sort of engagement with Dublin was there over that 2020-2021 period?

AMcC: I think they were as helpful as they could be. They were pretty constrained in what they could do in that it was probably the mirror image of London's concern about our confidentiality. All parts of the Irish system were helpful – DFAT, Department of the Taoiseach and the Irish Perm Rep.

BWIP: Did that change at all once we got ministers back?

AMcC: No, they were still willing to talk, but before long COVID was consuming a lot of the bandwidth and so some of our key contacts were having to spend very large proportions of their time on that issue, so I have no complaints on that period.

BWIP: And in terms of engagement with contacts in Brussels, to what extent was that being sustained during the TCA negotiations?

AMcC: Yeah, that was harder. We – and they – had to be careful. I think we were wary of being too direct in our conversations with the Commission at that stage because we had only limited insight into the negotiations. We tried to keep in touch with the main institutional leaders, in the Commission, the Council Secretariat, MEPs, and representatives of the key Member States such as France, Germany and the Netherlands. What we were hearing, from the French, Dutch and Germans in particular, was that the Protocol applied in all circumstances, so “just get on with it” – they wanted to see progress, with the BCPs a particular focus of attention. At one stage, I had to make material interventions to try and explain where we were, namely that the checks and balances of the Good Friday Agreement protect minority rights, including the minority that don't like the Protocol. I was acknowledging that even if the legal position was crystal clear (as we thought it was) that didn't crystallise in the realpolitik at the Executive level.

We also kept in touch with some key MEPs, and had some really good meetings with them and had not only a chance to explain ourselves and put our points of view across, but also to hear and understand where they were coming from. So, for example, while the UKG was making the very most of it

could of the Commission's mistake on 29 January 2021 about vaccines and Article 16, others saw that as deeply hypocritical and also, importantly, solely a Commission error which could not be laid at their door.

BWIP: Did Ministers not appreciate the significance of you not having instructions?

AMcC: I don't think it mattered much to them, and in fairness, given the deep political differences, it was probably inevitable that DUP would be seeing influence through London as much more relevant than anything on the formal channels, as the latter would require agreement with Sinn Féin – and that applies the other way round as well, with Sinn Féin working through their MEPs and other contacts.

BWIP: Did the absence of having a ministerial line or line from ministers inhibit your participation in the Specialised Committee? Obviously you're there at the invitation of the UK Government – did that sort of hierarchy limit your opportunities to contribute?

AMcC: Yes. I was there as a member of the UK delegation. It would have been better had the Executive been there on its own behalf, if they could have found some way to empower the two sides of the Executive to say their different things. And actually, it could also be argued that that the Irish Government could have been speaking for itself, rather than as part of the EU delegation. The DFAT contributions at the Specialised Committee meetings were very limited as they had to stick on script to the Commission line.

Intergovernmental institutions

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): A few other things. Just looking back over the whole period, anything to say about the role that the secretariat of the BIC [British Irish Council] or NSMC played here?

Andrew McCormick (AMcC): Okay, nothing really on BIC as that did not provide a genuine forum for discussion of any of the issues. NSMC secretariat were heavily involved in the mapping exercise on North South co-operation in the autumn of 2017. NSMC met a few times before period without Ministers and then there were some discussions at plenary and institutional meetings

when they resumed in 2020. But it wasn't possible for the secretariat to be an effective channel for making anything work because of the absence of effective engagement at political level. I think we relied a lot more on the direct channel to DFAT and/ or Department of the Taoiseach which was really positive. Actually we had a lot of heavy-going discussions in the early part of 2021 when the Protocol took effect and we were addressing practical issues such as those affecting trade going through Dublin Port.

BWIP: And what about intergovernmental relations within the UK?

AMcC: Arrrgh. So, the best, the apogee, was Cardiff in January 2020, at a meeting of the JMC(EN). Just after Ministers were back, there was constructive discussion on the "three rooms" model – the negotiating room, a ministerial anteroom where the devolved administrations would meet with the UKG negotiators, and, supporting that, an official anteroom. It seemed to be accepted that the second room was where there would be discussion that would genuinely influence what the UK would take into the negotiations with the Commission. And the third room was official level brokering and preparation to inform ministerial discussions. The UKG appeared to accept that, so that's why I'd describe that as a high point.

But the three-room model was never applied. There were some discussions with officials but there was never a real opportunity for devolved ministers to influence the negotiations. Now, maybe the reality was that that was never going to be possible when the positions of the Scottish and Welsh administrations were so contrary to the aspirations of the UKG negotiators, but the terms of reference of JMC(EN) were that there should have been an attempt to engage which was clearly only honoured in the breach. Then when the Internal Market Bill appeared, the Scottish and Welsh Governments were very angry that affected the mood at JMC(EN).

There was also an agreement in January 2020 to have a workstream on the Protocol which the Scots and the Welsh would participate in. They had some interests in aspects of the we had enough difficulty getting progress without them and their different angles, both which would be anti-UK Government for different reasons. In the event, it wasn't a big problem because, again, UKG didn't really engage as the devolved Ministers had hoped.

BWIP: Was there ever any discussions about putting in place particular arrangements for managing the Protocol internally within the UK?

AMcC: Again no, what was noticeable was the distinct absence of a plan. We wanted to be more on top of it all and clear on what it all meant, as I said earlier. And London knew that there were some things that only we as the devolved side could do, especially on the DAERA front. However, from a relatively high point in May 2020 when the Executive formally agreed to work on the BCPs, everything went downhill from there.

Engagement with the parties in Northern Ireland

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): Can you say a bit more about what level of engagement there was, at least informally, with political parties prior to ministers coming back?

Andrew McCormick (AMcC): There wasn't a great deal, to be honest. There was one briefing on Brexit to one of the "Talks" groups in the summer of 2019. And that was all-party, but in practice was a pretty limited event. Their bandwidth was all taken up in the main talks issues that led into NDNA, so there was not a vast amount of contact on Brexit.

BWIP: And then how did engagement progress once they were back?

AMcC: As planned in NDNA, the Brexit sub-committee of the Executive was established. In that context, it was agreed that each minister would have the right to share papers on what was going on with two named party colleagues. Because they recognised that for, especially for the smaller parties, they maybe didn't have strong departmental interests or support – for example, until the medicines issue came into focus, Department of Health wasn't seen as a big Brexit player. So, we had several informal discussions with the support group, as it were, though the DUP did not attend. These were opportunities for constructive engagement, but limited because not everyone was there.

BWIP: And the operation of that Brexit sub-committee?

AMcC: In the early months of 2020, there were some long and substantive discussions, but as time went on, it just became impossible. I think there was

an unspoken agreement there was no point in any discussion.

BWIP: Okay. You mentioned that the government should have done more planning or at least allowed more systematic planning or scenario planning around implementation of the Protocol. In retrospect would, could or should NICS have done differently?

AMcC: Well, I wish I'd pushed harder for us to write our own version of a narrative and tried to take some form of presentation to UKG, with more pointed questions and greater persistence to press for answers. But we were stretched, especially when ministers came back, and then COVID hit and half the team were actually diverted onto COVID work. I still think we ought to have done more to analyse and then to challenge London with that analysis and say look, this is our understanding: one, do you agree with all of this factually? two, are you representing this to the Commission? But maybe that might be a bit of a counsel of perfection.

Overview

Brexit Witness Archive Ireland/Northern Ireland Project (BWIP): And then, very general question, in retrospect, what might have made a difference to the outcomes that we have today? I suppose structural issues, resourcing issues, political issues.

Andrew McCormick (AMcC): Well, I think the fundamental point for me is that I find it hard to dispute the idea that London did not actually prioritise solving the issues arising from Brexit that affect Northern Ireland, but used those issues as tactical considerations in the bigger game. They accuse the EU of using Northern Ireland as a pawn, but I think the key difference is that the EU spelled out the choices that London would have to make. The commitment to avoid a hard land border was strongly expressed by all sides, and the dilemma – or the famous “trilemma” – all flows from that. So, could we as Northern Ireland have stuck up for ourselves more? Maybe, if it had been possible to get something thrashed out between the DUP and Sinn Féin, they did in the McGuinness-Foster letter of August 2016, but maybe it was never possible.

BWIP: I suppose here also one of the big things that we did not have in Northern Ireland was the Executive in place. Do you think that would have

actually created a situation where there could have been more exposure of what London was doing?

AMcC: Yes. And I think much more chance, you know, much more chance of a local voice being listened to. Again, getting an agreed position would have been difficult. I go back to Martin McGuinness' resignation letter in January 2017: RHI was the pretext, but Brexit was among the reasons that I think it was part of why the Executive fell in January 2017. Maybe Sinn Féin thought there was no chance of progressing Brexit constructively and that, actually, there was an electoral advantage for them in exploiting the issue. I just struggle to see how things could have been better. It requires somebody to be in a much more responsible, constructive approach, either DUP, Sinn Féin, UK Government, whatever. Could Dublin have done more? My explanation of Dublin's position is that they were apprehensive. They had seen the risk and mounted an incredibly rigorous and determined defence of their own position and who can blame them? Could they have been more sensitive to Unionism? Well, as has been said, it's not for them to defend the Unionist position on the Good Friday Agreement.

BWIP: There's a general criticism about the lack of recognition in the process of the east-west dimension to Brexit, but that begs the question of why did that not pervade the UK position more?

AMcC: I don't have a good answer to that question.