PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

First Sitting

Tuesday 19 June 2012

(Morning)

CONTENTS

Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Written evidence reported to the House.
Examination of witnesses.
Adjourned till this day at Four o'clock.

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Saturday 23 June 2012

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The Committee consisted of the following Members:

Chairs: HUGH BAYLEY, † MR GRAHAM BRADY

Anderson, Mr David *(Blaydon)* (Lab)
† Bingham, Andrew *(High Peak)* (Con)
† Bridgen, Andrew *(North West Leicestershire)* (Con)
† Burt, Lorely *(Solihull)* (LD)
† Carmichael, Neil *(Stroud)* (Con)
Cryer, John *(Leyton and Wanstead)* (Lab)
† Danczuk, Simon *(Rochdale)* (Lab)
† Davies, Geraint *(Swansea West)* (Lab/Co-op)
† Evans, Graham *(Weaver Vale)* (Con)
† Johnson, Joseph *(Orpington)* (Con)
† Lamb, Norman *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† Morris, Anne Marie *(Newton Abbot)* (Con)
† Mowat, David *(Warrington South)* (Con)
† Murray, Ian *(Edinburgh South)* (Lab)
O'Donnell, Fiona *(East Lothian)* (Lab)
† Ollerenshaw, Eric *(Lancaster and Fleetwood)* (Con)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Prisk, Mr Mark *(Minister of State, Department for Business, Innovation and Skills)*
† Ruane, Chris *(Vale of Clwyd)* (Lab)
† Simpson, David *(Upper Bann)* (DUP)
† Smith, Julian *(Skipton and Ripon)* (Con)
† Wright, Mr Iain *(Hartlepool)* (Lab)
† Wright, Jeremy *(Lord Commissioner of Her Majesty's Treasury)*

James Rhys, Steven Mark, *Committee Clerks*

† attended the Committee

Witnesses

Katja Hall, Chief Policy Director, Confederation of British Industry

Tim Thomas, Head of Employment Policy, EEF

Alexander Ehmann, Head of Regulatory & Parliamentary Affairs, Institute of Directors

Dr Adam Marshall, Director of Policy and External Affairs, British Chamber of Commerce

Mike Cherry, National Policy Chairman, Federation of Small Businesses

Sarah Veale CBE, Head, Equality and Employment Rights Department, TUC

Howard Beckett, Director of Legal and Affiliated Services, Unite

Paul Kenny, General Secretary, GMB

Public Bill Committee

Tuesday 19 June 2012

(Morning)

[MR GRAHAM BRADY *in the Chair*]

Enterprise and Regulatory Reform Bill

10.30 am

The Chair: Before we begin, I have a few preliminary announcements. First, Members may remove their jackets during sittings if they wish. Please will all Members ensure that mobile phones, pagers and such like are turned off or switched to silent mode during sittings? I should also tell Members that as a general rule, I and my fellow Chair do not intend to call starred amendments, which have not been tabled with adequate notice. The required notice period in Public Bill Committees is three working days, so amendments should be tabled by the rise of the House on Monday for consideration on Thursday, and by the rise of the House on Thursday for consideration on Tuesday.

Not everyone is familiar with the process of taking oral evidence in Public Bill Committees, so it may help if I briefly explain how we will proceed. The Committee will first be asked to consider the programme motion on the amendment paper, for which debate is limited to half an hour. We will then proceed to a motion to report written evidence, and then to a motion to permit the Committee to deliberate in private before the oral evidence sessions—I hope we can take those motions formally. Assuming that the second motion is agreed to, the Committee will move into private session. Once it has deliberated, witnesses and members of the public will be invited back into the room and our oral evidence session will begin. If the Committee agrees the programme motion, it will hear oral evidence this morning.

Motion made, and Question proposed,

That—

(1) the Committee shall (in addition to its first meeting at 10.30 am on Tuesday 19 June) meet—

(a) at 4.00 pm on Tuesday 19 June;

(b) at 9.00 am on Thursday 21 June;

(c) at 10.30 am and 4.00 pm on Tuesday 26 June;

(d) at 9.00 am and 1.00 pm on Thursday 28 June;

(e) at 10.30 am and 4.00 pm on Tuesday 3 July;

(f) at 9.00 am and 1.00 pm on Thursday 5 July;

(g) at 10.30 am and 4.00 pm on Tuesday 10 July;

(h) at 9.00 am and 1.00 pm on Thursday 12 July;

(i) at 10.30 am and 4.00 pm on Tuesday 17 July;

(2) the Committee shall hear oral evidence in accordance with the following Table:

TABLE

Date	*Time*	*Witness*
Tuesday 19 June	Until no later than 11.15 am	Confederation of British Industry; EEF; Institute of Directors
Tuesday 19 June	Until no later than 11.45 am	British Chambers of Commerce; Federation of Small Businesses
Tuesday 19 June	Until no later than 1.00 pm	Trades Union Congress; Unite; GMB
Tuesday 19 June	Until no later than 4.45 pm	Association of British Insurers; Hermes Equity Ownership Services Ltd.; National Association of Pension Funds
Tuesday 19 June	Until no later than 5.45 pm	Chartered Institute of Personnel and Development; Free Representation Unit; Public Concern at Work; Advisory, Conciliation and Arbitration Service
Tuesday 19 June	Until no later than 6.15 pm	Equality and Human Rights Commission
Thursday 21 June	Until no later than 9.30 am	Citizens Advice; Professor Sir John Vickers (Warden, All Souls College, Oxford)
Thursday 21 June	Until no later than 10.25 am	Law Society; Law Society of Scotland; Allen and Overy LLP; Simpson Millar LLP
Thursday 21 June	Until no later than 11.25 am	Malcolm Nicholson (Reporting Panel Member, Competition Commission); City of London Law Society; Professor Catherine Waddams (Professor of Regulation, University of East Anglia)
Thursday 21 June	Until no later than 12 noon	Renewable UK; E3G; Friends of the Earth
Thursday 21 June	Until no later than 1.15 pm	Local Government Association; Trading Standards Institute; West Yorkshire Joint Services; British Retail Consortium
Thursday 21 June	Until no later than 2.15 pm	Sir David Walker (author of 'Walker Review of Corporate Governance of UK Banking Industry'); High Pay Centre; Adrian Beecroft (author of Beecroft report on employment law)

(3) proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 7; Schedule 1; Clause 8; Schedule 2; Clauses 9 to 13; Schedule 3; Clauses 14 to 18; Schedule 4; Clause 19; Schedules 5 and 6; Clause 20; Clause 24; Schedule 8; Clauses 21 and 22; Schedule 7; Clause 23; Clauses 25 and 26; Schedule 9; Clause 30; Schedule 12; Clause 28; Schedule 11; Clause 27; Schedule 10; Clause 29; Clauses 31 to 33; Schedule 13; Clauses 34 to 43; Schedule 14; Clauses 44 to 47; Schedule 15; Clauses 48 to 50; Schedule 16; Clauses 51 to 54; Schedule 17; Clauses 55 to 63; new Clauses, new Schedules; remaining proceedings on the Bill;

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 8.00 pm on Tuesday 17 July.—*(Norman Lamb.)*

Mr Iain Wright (Hartlepool) (Lab): On behalf of Her Majesty's Opposition, I welcome every hon. Member to the Committee. I particularly welcome you, Mr Brady. I am sure that you will keep us all in order.

We had a good debate on Second Reading, in which we started to expose the weaknesses in the Bill and the poverty of ideas on facilitating economic growth and enterprise. Many hon. Members described it as a rag-tag of a Bill, and I agree. It will be difficult to scrutinise its different aspects properly in the time that we have,

especially if the Government table amendments that substantially extend or alter its scope. In the Programming Sub-Committee meeting, I told the Minister that we would not be happy if he introduced amendments that would substantially alter the Bill's scope and we did not have time to debate them. He kindly said that we could extend the sittings into the evening and, if possible, through the night. Hon. Members will be delighted to hear that, and we will certainly hold him to it. On that basis, and bearing in mind my reservations, the Opposition are happy to support the programme motion.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): I thank the Opposition spokesman for his generous comments on the Bill—starting as he means to go on. I think I do not need to respond other than to confirm that if extra time is needed, we will be happy to sit for longer in the sittings that have been set.

Question put and agreed to.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Norman Lamb.*)

The Chair: Copies of memorandums the Committee receives will be made available in the Committee room.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—*(Norman Lamb.)*

Written evidence to be reported to the House

ERR 01 CBI

10.34 am

The Committee deliberated in private.

Examination of Witnesses

Katja Hall, Tim Thomas and Alexander Ehmann gave evidence.

10.40 am

The Chair: Good morning. I thank the witnesses for coming along to help us this morning. I first ask all the witnesses to identify themselves for the record.

Katja Hall: My name is Katja Hall and I am the chief policy director at the CBI.

Alexander Ehmann: I am Alexander Ehmann, head of parliamentary and regulatory affairs at the Institute of Directors.

Tim Thomas: I am Tim Thomas, head of employment policy at EEF, the manufacturers organisation.

The Chair: This evidence session needs to conclude by 11.15, so that is the only constraint on the questions that are being asked, other than staying within the terms of the Bill. I ask the shadow Minister to start.

Q1 Mr Iain Wright: Good morning. This question is for all three witnesses. In the CBI submission, it says: "The Enterprise & Regulatory Reform Bill needs to support UK growth. All measures in the Bill should be judged against whether they boost business confidence, free up businesses from unnecessary regulation and avoid creating new barriers to growth." Does it do that? Do the measures in the Bill help provide that?

Katja Hall: I think there are some welcome measures in the Bill and I would highlight as an example the clause on sunset clauses, which we support and welcome. One key test will be the amendments on executive pay. The challenge there will be to find a way to ensure that shareholders have the right information they need to hold boards to account without undermining the corporate governance structure in the UK.

Tim Thomas: I am only going to comment on part 2 of the Bill, which covers employment law. I want to highlight one provision that I do not think will support growth, which is fines for employers. That is an area that we have followed for some time. We regard fines for employers as unlikely to support growth in the economy as a whole or to achieve the Bill's aim, which is to ensure greater employer compliance with employment law in general. It is likely to increase the settlement regime and lead to more expensive settlements for employers and simply add to their costs, quite frankly.

Alexander Ehmann: Quite simply, I would add that there is very little in the Bill that is not an enabler of growth. Tim has touched on one element—the fines for employers during the tribunal process are a disappointing addition to the Bill and there are a few others that we will touch on later. Broadly, however, the thrust of the Bill is in the right direction. Our main observation is that the Bill could have gone a great deal further and that is the greatest disappointment about it.

Q2 Mr Iain Wright: Miss Hall, you mentioned sunset clauses. Can you give me an example of where sunset clauses can be a positive thing when it comes to regulation? Where have they worked in the past?

Katja Hall: I think that in general it is good practice to properly review regulations after a few years to see whether they are working and how they are embedding. Sunset clauses should in some ways be the norm, rather than the exception. I will give one example, which I think illustrates the point, which is the right to request flexible working. When the legislation was introduced, the aim was to encourage the employer and the employee to have a constructive discussion about flexible working, but the way that society has changed since and the way that the legislation has been successful means that there is less of a need for the legislation, so in some cases the sunset clause could be there because the legislation has achieved its purpose. In other cases, it may need to be there, and used, because the labour market or whatever it is has changed in such a way that it is no longer appropriate.

Q3 Mr Iain Wright: Finally, a question to all three of you on the clauses that concern the Green investment bank. Do the measures go far enough to enact real change and provide real transformation to allow us to be a leading competitor in the global economy when it comes to green and clean technologies?

Katja Hall: The clauses in the Bill are welcome, and we welcome the fact that they make the Green investment bank a legal reality. We think it can have a really important role in helping investment into low-carbon technologies in the UK. It is part of a solution. On its own it will be helpful, but we also need policy certainty on, for example, the electricity market reforms.

Q4 Mr Iain Wright: Does the Bill go far enough? Should the bank be allowed to borrow, for example?

Katja Hall: We think that it should be allowed to borrow as soon as fiscally possible.

Tim Thomas: I do not think I can add or assist.

Alexander Ehmann: I have nothing to add to that.

The Chair: That takes us on to other questions about the Green investment bank. A couple of colleagues have signalled their interest.

Q5 David Mowat (Warrington South) (Con): The fact that the Government are setting up the Green investment bank implies that there is some kind of market failure, and that the private sector cannot do that. Why do you think that has happened?

Katja Hall: I think it is about encouraging investment into technologies that are not entirely proven yet, or that will require a little assistance to get going. The Green investment bank is part of helping private sector investment and it could have a role in topping up investment in new technologies. We do not see it as being just a vehicle for promoting one technology over other technologies. It needs to be able to aid investment in a range of renewables.

Q6 David Mowat: You use the word renewables, but it is about low carbon. As I understand it, that means that the bank's brief would include, for example, other types of low-carbon technology and potentially nuclear and the supply chain around that.

Katja Hall: Yes. It is not just renewables; it is low carbon.

Q7 Geraint Davies (Swansea West) (Lab/Co-op): Do you think the Government's strategy would be more effective in making markets in green products if they used their procurement power to focus in on encouraging the creation of and buying, for example, solar tiles for council houses, rather than having a bank that gives to companies to provide productive capacity? In other words, you supply to the demand rather than the supply side.

Katja Hall: The Green investment bank is very welcome and it has a role to play. I would not have thought that would preclude the Government from also being smarter in their use of procurement. We feel that procurement should be about promoting growth, and we should realise the power that Government have in their role as a buyer of goods and services from the private sector. The Government might have a role in procurement as well, but there is still a need for the Green investment bank. There is also a wider need to look at how we can get investment into infrastructure more generally, and we have been doing quite a lot of work on that.

Q8 Geraint Davies: Does not that mean that there is a great big hole in the Bill? If the raison d'être is about growth, why is there not something about procurement? In Wales, for instance, something like 70% of procurement is done through small and medium-sized enterprises, half of which are based in Wales. In England the figure is about 6%. If that were refocused on SMEs, particularly on green growth, it would do something for growth, but these measures are just messing around at the edges, are they not?

Katja Hall: I am not familiar with the details, but my sense is that the issue on procurement is not a legislative problem. We need to build on the progress that we have made through the publication of the Government's pledge on procurement and the departmental pipelines that have been published. We must build on those and provide more detail in the pipelines, and we must ensure that we have more of them. That has been a welcome initiative on procurement, and I am not sure what the legislative gap is.

Q9 Neil Carmichael (Stroud) (Con): To what extent do you think the Green investment bank should be equipped with expertise in terms of the kind of advice it can give to businesses that seek support? Do you think it will be appropriately equipped in that regard?

Katja Hall: The bank must be able to give good-quality advice and support for businesses, and I hope that it will be properly equipped. I do not have much more to add.

The Chair: We move on to competition law.

Q10 Anne Marie Morris (Newton Abbot) (Con): Do you think that the proposed consolidation of the Office of Fair Trading and the Competition Commission will achieve the objective of ensuring that overall our systems are more efficient and quicker? Those are the main criticisms that the external bodies have of our current arrangements.

Katja Hall: We very much welcome the proposed merger, and yes, I think it should do. It should help to reduce duplication, in particular, which is our members' key frustration with the current system. You would think that a merger would reduce the need to ask the same questions again, because all the information will be held in one body. We welcome the merger, but of course the proof of the pudding is in the eating.

Alexander Ehmann: In principle, the consolidation makes a great deal of sense. However, I draw the Committee's attention to the fact that the competition regime for growth proposals that are impact-assessed has shown that there is a net burden to business from those changes. We would be keen to ensure that that was minimised.

Q11 Chi Onwurah (Newcastle upon Tyne Central) (Lab): The UK has one of the best competition regimes in the world, according to independent assessments. The merger was not in any of the coalition parties' manifestos. Do you think that the benefits of the merger outweigh the risks, and will it deliver growth?

Alexander Ehmann: The UK may have one of the best competition regimes in the world, but it also has one of the slowest. Arguably, the measures here are part of a process to ensure that the regime is proportionate and delivers results effectively. Provided that it reaches those outcomes, and we have every hope that it will, we will be content with the outcome.

Q12 Chi Onwurah: Katja, in your submission you say that the Competition and Markets Authority's being able to consider the public interest is a "retrograde step" in comparison with leaving the public interest test as the responsibility of the Secretary of State. Could you explain why?

Katja Hall: Our concern is about the risk of blurring the responsibility of the new Competition and Markets Authority. What is the benefit of giving the CMA the right to look at wider public interest issues rather than just leaving those with the Secretary of State? That would be our concern: why is that change necessary and is there a risk that it would blur the duties of the CMA?

Q13 Chi Onwurah: Also in your submission you argue that "only the worst forms of cartel" should be criminalised. Could you explain what you mean by the worst forms of cartel?

Katja Hall: Yes. On this whole issue around the cartel offence and removing dishonesty, I think we understand the intention behind the proposal. We accept that at the moment it is a high hurdle and therefore difficult to prove dishonesty. Our concern is about getting the change, but in a way that is practical for businesses. Our concern is that if you just remove dishonesty and leave it as it is proposed, you will catch a lot of legitimate business activity, such as joint partnerships. Given that the sanctions are so severe, that is a worry for us and for our members. We would be interested in looking for solutions so that you can get a system that works and can deal appropriately with cartel offences without catching out legitimate business activity. One thought we had was whether there was something in the phrase "intent to deceive" that could be used in the Bill to try to distinguish between genuine business activity and criminal activity.

The Chair: We move on to the employment aspects of the Bill.

Q14 Julian Smith (Skipton and Ripon) (Con): There has been a lot of hysteria about the Government's proposals to make amendments to employment law, but you have all defended them. The Government are essentially trying to create the environment for the businesses that you represent to take on more people. Can you talk about the opportunity that there is, if we move ahead with this Bill, for your members to take on more staff with the modest liberalisation of employment law that is described in the clauses?

Tim Thomas: Employment burdens are a serious issue for employers of all sizes, particularly in the manufacturing sector. Our members operate in a global marketplace where flexibility among the labour force is so important for them to retain their global competiveness. Some of the measures in the Bill will help improve that global competiveness and improve employer flexibility. For example, our members tell us that one of the issues that they have is dealing with older workers and ascertaining when they intend to retire. It is a logical fear of employers that having discussions with older workers may give rise to claims for discrimination. If, as part of this Bill, we can have enshrined a provision that will allow employers to have a conversation with elder workers in an adult way, which helps them plan for their work forces of the future—we are talking about succession planning and bringing more apprentices on—and in a secure place for employers, that will encourage growth and lead to more jobs.

Katja Hall: I would agree with the point about protecting conversations and also with the point that employment regulation is a burden for employers. We do an employment trends survey every year and 67% of respondents to the survey we did a few weeks ago said that employment regulation was a threat to the UK's competitiveness. I think that the way to think about it is that there is an issue in some cases with the laws themselves—I would use the agency workers regulations as an example here—but often the biggest problem is the application of the law. The biggest problem for our members by far is the employment tribunal system. Small firms in particular feel that the tribunal system is not working at the moment. We know that a quarter of firms settle tribunal claims, even where the legal advice is that they would win that claim in court. We are particularly interested in the proposals to reform tribunals in the Bill and we think that there is probably scope to go further at some stage.

Q15 Julian Smith: Just to be clear, the businesses that you represent have largely got human resources departments and are larger, so some of the issues that you have for your members may be quite distinct from those of smaller and medium-sized businesses. Would that be correct?

Katja Hall: The CBI represents large and small firms, so we would have quite a few companies and memberships without professional human resources departments. They might have one person who does finance and HR or something like that. I think that it would cover the whole thing. Clearly, employment law is more of a worry for companies who do not have in-house lawyers, for example.

Alexander Ehmann: Employment law has been the most significant area of regulatory concern among our Members, certainly for as long as I have been working for the institute. There is an awful lot of evidence to suggest that the UK has moved backwards over the past few years in its competitiveness in this area. The World Bank's "Doing Business" report in 2010—the last time that it evaluated labour market flexibility—saw the UK down in 35th when in 2007 it was in 17th.

Specifically on the measures on employment law that are in the Bill, we would say that on issues such as settlement agreements, which we may well get on to, 60% of our members say that the changes would relieve a burden on their business. Importantly, about a quarter of them say that they would be more inclined to take on staff as a result of these changes. The critical point that I want to convey to the Committee is that a lot of the measures that are discussed around dismissal and tribunal changes are actually measures that slightly counterintuitively incentivise employment on the part of employers. They are not measures to try to reduce the size of work forces or to arbitrarily dismiss staff.

Q16 Julian Smith: Alexander, could you and the other witnesses talk a bit about the benefits or any concerns that you have about the amendments that the Government are likely to put forward on settlement agreements?

Tim Thomas: Yes, the better use of compromise agreements, making them settlement agreements and refocusing them are all welcome from the perspective of the EEF as an employers organisation. We would like to see there being a single statutory provision for settlement agreements. Currently, when you look at a compromise agreement, the back of it usually lists many, many

statutory provisions cast around in the statute book. Bringing them all together in one place would be of benefit. Making sure that they are a full and final settlement—where the parties agree—of all matters that are in dispute would be another plus.

Making agreements available when there is no need for a dispute between the parties would also be a benefit. It may be that the parties just want to untie the knot, go their separate ways and have no active dispute between them. In some cases, the current provisions actively encourage, almost, the creation of a dispute between the parties to make sure that they come within the current legislative framework. All those things are areas in which we would like to see progress.

Q17 Ian Murray (Edinburgh South) (Lab): The Beecroft proposals, which you will be very familiar with, suggested that compensated no-fault dismissal was a potential way forward. I am pleased to see that it has been rejected by many major organisations. Indeed, a poll today shows that many employers are rejecting that approach, too. It seems that the settlement agreements in the Bill that were trailed on Second Reading by the Secretary of State and the Minister can be put in place before any formal dispute arises. Is that not compensated no-fault dismissal by the back door?

Tim Thomas: No, because compensated no-fault dismissal is a model that does not require the consent or agreement of the employee, whereas a settlement agreement, by its very nature, requires agreement.

Q18 Ian Murray: But is there not an issue in that an employer can offer a settlement and suggest that it might have to be withdrawn or reduced as the time scales pass, and so can potentially bribe an employee to leave the company?

Tim Thomas: It is not "bribe an employee"; it depends on the level of settlement—of compensation—offered by the employer. In the current framework, employees receive independent advice in any event. As long as there is something that enshrines the employee's ability to assess the realistic nature of the agreement, or potential agreement, I do not see that as a difficulty.

Alexander Ehmann: The Institute of Directors would have preferred to see the Government pursue compensated no-fault dismissal, because evidence among our membership base showed that more than a third of our members would have been minded to employ extra staff on the basis of such a change, whereas the settlement agreement proposal generates only about 25% greater willingness to employ. On those grounds, the distinction between the two is pretty clear.

As Tim said, compensated no-fault dismissal is a unilateral decision on the part of the employer to award, effectively, a minimum sum for the termination of a contract. As we understand it, the settlement agreement proposal enables both parties to discuss whether they can reach a form of compensation that they are content with, which stops them from having to go through a tribunal process. It is important to recognise that tribunals very rarely get someone their job back, so all we are doing is front-loading a form of compensation that ensures that both parties can move on with both their business and their personal lives in a reasonable way.

The Chair: We have about 13 minutes, and there are a lot of questions.

Q19 Ian Murray: I have a very quick question: we welcome the early conciliation process, but is ACAS properly funded to carry it out effectively?

Katja Hall: I think it needs to be, and I hope it is for now. Over time, we hope that we would need less money to put into the tribunal system because we would have fewer cases going to tribunal, so some of that money, if needed, could be reallocated to ACAS. I want to say on record that we support settlement agreements and the proposal on them.

Q20 Lorely Burt (Solihull) (LD): Ian has asked the main question about how ACAS is going to cope. I hope that we will tease out from the Minister whether there might be additional funding, because the tribunal system is so clogged up that it is unable effectively to serve people. I do not think that is the fault of ACAS. Katja Hall, when you said that you would like to take this further, did you mean the compromise agreements that Tim Thomas was talking about or would you like to see something else?

Katja Hall: Yes, it was more to do with the functioning of tribunals themselves. Our concern is that when tribunals were initially set up, they were meant to be informal, non-legalistic vehicles for resolving disputes in the workplace. Now they are anything but; they are highly legalistic, often complex and expensive, as you have said. We think there is a case for looking at how we could make tribunals into what they were originally intended to be, namely a way for the employer and the employee to resolve disputes without huge amounts of legal complexity and cross-examinations in a very formal environment. One of the ideas that we are working on, which we will continue to develop, is whether there is a case for having a tribunal chair hearing cases in an informal setting, perhaps in the conference room of a hotel. Both sides would submit their case; that would be taken as read, and then the judge would ask questions for clarification. That is just a proposal, but it perhaps gives you some idea of how radical we think reform needs to be.

Q21 Chris Ruane (Vale of Clwyd) (Lab): I think there were 19 pieces of legislation in the Queen's Speech. This is the great hope for the economy. We have just entered a double-dip recession. Within this Bill there are six parts, and one of those six parts makes it easier and speedier—streamlines the ability—to sack workers. Is that your priority? Of all the things that could have been included in this Bill, or indeed other Bills, is the ability to sack workers the No. 1 priority? Is it within your members' top six priorities? Is that what is slowing down growth in the British economy?

The Chair: Maybe a quick answer from each of you.

Alexander Ehmann: I would never accept the characterisation of this measure as a licence to sack workers. Employment law has become the single largest area of constraint on businesses taking on staff. Our members have told us consistently that if employment law were simplified and if they were able to finish contracts with employees more easily, they would be more willing to take risks in the first place.

Q22 Chris Ruane: Is it the top priority?

Alexander Ehmann: It is one of our top priorities, absolutely.

Q23 Chris Ruane: In the top six?

Alexander Ehmann: It is definitely within the top three.

Katja Hall: Our top priority on employment reform would be reform of tribunals.

Tim Thomas: Our top priority, from EEF's point of view, is to be able to resolve disputes in the workplace without having to go to tribunal in the first place.

Q24 Chris Ruane: Can I ask Mr Ehmann if he could supply the statistics for that?

Alexander Ehmann: Absolutely. I can show you that our members are in favour of those changes.

Q25 Andrew Bridgen (North West Leicestershire) (Con): What information have the panel seen about the growth in the number of tribunals over the past 10 years, the percentage of those claims that are successful or upheld at tribunal, and the size of the claims? Are the panel aware of the view of a lot of businesses that do not want to go to a tribunal because they feel that even when you win you lose, given the huge costs of time and money to the employer?

Tim Thomas: In terms of the number of claims, the latest figures I saw from BIS—in fact, they were published last year—indicated that there were about 400,000 cases in the ET that were unresolved. The ETs have some KPIs, including, I think, resolution within 26 weeks, and there are many cases that do not reach resolution within that time period. There are, therefore, many claims floating around the ET that are unresolved. To an extent, the proposals in the Bill are an admission of that state of affairs, given the suggestions for rapid resolution and early conciliation. We are talking about preventing claims from getting to the ET in the first place. I have to say that we support that idea.

In terms of the wider aims of what we should be doing in the ET, we should be incentivising settlement at the earliest possible opportunity. There are various other measures that could be used in conjunction with this Bill, and the one that I would highlight is fees for litigants. That is a consultation that closed with the Ministry of Justice some time ago. The use of fees to incentivise earlier settlement is another tool that can be used to attack the large number of litigants that go to ETs. They may think twice if they have a fee to pay.

Alexander Ehmann: From memory, I think that one in 10 cases that are filed for tribunal make it to tribunal. From memory again, I think that about one in 10 of those are actually successful on the part of the claimant. That demonstrates to us that the tribunal system at present is broken and it needs substantial reform. The measures in the Bill go some way to improving that system.

Q26 Geraint Davies: The key problem for business at the moment, in my evaluation, is low consumer demand for products. In that context, businesses are looking to reduce overheads. Do you feel this change will create a cultural shift whereby businesses feel that they can more easily move towards reducing their headcount in a way that they could not before? Will they say, "We have got to get rid of some costs so we will get rid of Anne and Andrew"—or whoever it happens to be—"even though they are not really doing anything particularly wrong." Is this, therefore, a retrograde cultural change that will breed fear rather than hope in the workplace?

Alexander Ehmann: Our evidence showed that on both settlement agreements and compensated no-fault dismissal it would result in an increase of employers' propensity to performance-manage individuals out of their business. The net contribution, however, as I said earlier, is to increase the overall number of staff within businesses. There would be a change—there would be employees let go—but all of our evidence demonstrates that individuals would be replaced in those roles and that businesses would be more minded to take on more. We see no evidence whatever for a desire to press down on overall headcount as a result of employment law changes.

Q27 Geraint Davies: Would it make it easier, if an employer wants to reduce cost, which is quite understandable if demand has been deflated, to reduce headcount in a less damaging way to the business?

Alexander Ehmann: It will make it easier to remove poorly performing members of staff; it will not just be arbitrary usage to reduce headcount.

The Chair: May we have quick responses, please? We are running up against time.

Katja Hall: The key test is making sure that we increase confidence for employers, confidence to take on an extra person.

Tim Thomas: In that sort of context you have the manufacturing sector. Many of our members invest in the skills of their work force and have done so for many years. They are unlikely to want to get rid of those members of staff precipitously in any event.

Q28 Eric Ollerenshaw (Lancaster and Fleetwood) (Con): This follows on from that point. I think, Mr Ehmann, twice you said that you had evidence that 25% of your members would be prepared to take on more workers as a result of the Bill. I wonder if the CBI and the EEF had any similar quantification of the impact.

Katja Hall: No, we have not asked directly in a survey what the impact would be on job creation. What we ask about is the threat to competitiveness in the UK from employment regulation, and then we talk every day to companies about what is preventing them from hiring more people or what is worrying them, and employment regulation does come up there, in particular tribunals.

Tim Thomas: We are in a similar position. We speak to and survey our members regularly, and one of the top areas that they highlight other than the deficiency of skills development in the UK is the burden of employment regulation.

Q29 Simon Danczuk (Rochdale) (Lab): How often should shareholders get to vote on directors' remuneration?

Alexander Ehmann: I should say that the Institute of Directors is in favour of the remuneration policy having a binding vote.

Q30 Simon Danczuk: Annually?

Alexander Ehmann: We had considered that annually would be an acceptable period but, on further consideration, three years, as suggested elsewhere, strikes us as allowing a slightly longer-term analysis of remuneration policy, unless that policy changes, in which case it would be necessary to have a subsequent vote.

Q31 Simon Danczuk: So three years.

Alexander Ehmann: Three years is our favoured option.

Katja Hall: Three years would be our favoured option as well. We, too, have accepted that there may be a case for a binding vote for shareholders, although recent events suggest that shareholders already have quite a lot of influence. We can accept the principle of a binding vote. The issue of how often to do it is a practical one, and most companies would not expect to change their policy annually—investors would not expect it either—so three years seems about right.

Tim Thomas: I have nothing to add.

Q32 Simon Danczuk: Do you agree or disagree?

Tim Thomas: I broadly agree with the comments of my colleagues.

Q33 Anne Marie Morris: Regarding the directors' remuneration, how many companies do you think will actually take the opportunity of changing their articles so that there could be a binding vote? How would we ensure that shareholders are sufficiently educated to make a sensible rather than a knee-jerk reaction when they vote?

Katja Hall: The second point is important, and that is about good engagement and good dialogue, and it is about good engagement and good dialogue in the run-up to the AGM, not about leaving it all until the AGM. Increased transparency and better disclosure are important in getting more information to shareholders, to enable them to do their job. On the binding vote, we will wait to see what the amendments say, but it seemed to me from the consultation that the proposal was to make binding votes a legislative requirement.

Q34 Mr Iain Wright: Do you think that FTSE executives are paid too much? Is there a disconnect between pay and performance and, if so, what should the measures in the Bill be doing to address that?

The Chair: In just seconds for each of you.

Katja Hall: I think that high pay for exceptional performance is perfectly justified. I do not think high pay for mediocre performance is justified, and failure should never be rewarded. I think the link between pay and performance needs to be clearer, strengthened, and to stand up to scrutiny.

Q35 The Chair: I am afraid that that brings us to the end of the time allotted for the Committee to ask questions of these witnesses. I thank them on behalf of the Committee. We will now hear oral evidence from British Chambers of Commerce and the Federation of Small Businesses.

Examination of Witnesses

Dr Adam Marshall and Mike Cherry gave evidence.

11.15 am

Q36 The Chair: We have just half an hour for this session. Will the two witnesses identify themselves for the record? It may be helpful to the Committee if you indicate whether there are particular aspects of the Bill on which you would prefer not to answer questions because they are outside your specialty.

Dr Marshall: Shall I start? I am Adam Marshall. I am director of policy and external affairs for British Chambers of Commerce. I am very happy to take questions on any aspect of the Bill.

Mike Cherry: I am Mike Cherry. I am the policy chairman for the Federation of Small Businesses, and we would not have any comments to make on executive pay.

Q37 Mr Iain Wright: Good morning, gentleman. The purpose of the Enterprise and Regulatory Reform Bill is to support growth in the British economy. Does it do enough to support growth? What other measures should be in the Bill to allow that to happen?

Dr Marshall: I start by saying that many of the measures in the Bill are indeed welcome, and build on recommendations that we and other business organisations have made. For example, tribunal reforms, the establishment legally of the Green investment bank, and a number of other factors in the Bill are positive moves forward. However, it will be clear from many of the comments that we have made in the press in recent days that we would like additional and more radical measures to support growth in the economy. I completely understand if the Government have a particular legislative agenda that they must get through in the Bill, but we would like to see those measures taken forward at the earliest possible opportunity.

Q38 Mr Iain Wright: Like what? Can you summarise for the Committee what they are?

Dr Marshall: Of course, we would like to see the establishment of a business bank solve some of the issues of access to finance, which particularly plague new and growing businesses—those with a big investment to make but who do not necessarily have a track record—and more innovative ways of getting resource into infrastructure, something that I know the Government have concentrated on, but to date we have not seen the fruits of that work.

Mike Cherry: We broadly welcome a lot of the things in the Bill. Clearly, for most of our members the legislative burden from employment legislation and other regulatory burdens has a hugely disproportionate impact on small businesses predominantly. We welcome the initiative around the Green investment bank, and we would like further consultation on how that will be implemented and how it can benefit small businesses. We also welcome the discussion around employment changes and the changes to employment tribunals. As to whether it goes far enough, no of course it does not at the moment. We need confidence to be restored, and we need further initiatives for growth, but this is a good start.

Q39 Mr Iain Wright: Thank you, Mr Cherry. You mentioned the Green investment bank. What additional measures should be put in place to allow the bank to

effect real transformational change to help the competitiveness of our economy? In particular, should clause 2 of the Bill explicitly mention small and medium-sized enterprises to allow the Green investment bank to support UK SMEs in terms of the transformation to a low-carbon economy?

Mike Cherry: If I may start on that, yes it should mention SMEs because we see them as a critical part of any supply chain, and they need stimulating as much as larger businesses. The problem we have with this is, first, we have reservations about whether there is enough money to support the Green investment bank going forward, and we think that a lot more money probably needs to go into it to ensure that it works comprehensively.

Q40 Mr Iain Wright: I am sorry to interrupt. Do you think that on that basis the bank should be allowed to borrow as quickly as possible, to lever in private sector money?

Mike Cherry: Yes, we do. As to SMEs, we have some real reservations about how this will work in practice. For instance, we would be really concerned about there being primary contractors and business not being able to go down the supply chain into the smaller businesses. However, clearly, there is some market failure around trying to stimulate the economy, and that is why the Government are introducing this. We would always advocate that where there could be market failure, a change, particularly around consumers and what they need to do to support the carbon agenda, should be welcomed.

Dr Marshall: I agree with Mike—I would love to see many SMEs actively involved in the supply chains of these projects, but I would be concerned if the bank's objects were so narrowly and prescriptively drawn that it could not have the appropriate flexibility that it needs in future.

Q41 Mr Iain Wright: On that point, do you think that at the moment it is the opposite end of the spectrum? Are the objects of the bank in clause 2 so big that they can invest in anything—even in a new coal-fired powered station?

Dr Marshall: No, I do not; I would make the opposite point. We regard the objects, as written, as broadly appropriate, but they could be interpreted too narrowly following the passage of the legislation. We want any projects with the potential to have either a direct or indirect positive impact on the environmental sustainability of our future economy to be included in the bank's scope. You might see some counter-intuitive things emerge, such as a clean fossil fuel investment or a road project, both of which could improve those aims. I would be very careful not to draw the objects narrowly, and that is a matter for the Bill.

The second thing that must go hand in hand with the measure is some consistency and long-termism around energy and infrastructure policy. That is something that I am perfectly happy to put at the door of both the previous and the current Governments. We do not have enough long-termism in the system. Policies change too much and political cycles become the determinants rather than the long-term needs of the economy and the environment. It has been no different in British politics in the past 20 years, and a longer-term approach will make the bank work better, but equally, it will make our infrastructure work better for business.

Q42 David Mowat: Mr Cherry, you mentioned that you would like specific reference to SMEs in the Bill. Would you set a size limit on turnover in the drafting? How would you do that?

Mike Cherry: It is very difficult to be as prescriptive as that, because businesses can have a small number of employees and a high turnover, and a large number of employees and a low turnover, so any definition would be too prescriptive. It is critical to ensure that SMEs in general can access the funds and carry out the work themselves. We need to see that rather than so-called large suppliers getting all the cake and divvying it out disproportionately so that SMEs do not have the advantage of supplying.

Q43 David Mowat: Just so that I understand, when you said that you would like to see reference in the Bill itself, that was an operational matter rather than a legislative one.

Mike Cherry: Indeed, yes.

Q44 David Mowat: Okay. Do SMEs have a particular problem with getting access to finance? I know that everyone has an issue with finance at the moment, but I mean getting access to green finance. Is there a specific problem that we are trying to solve?

Mike Cherry: I could go on for a long time about access to finance, but I will not; I will restrict my answer to the question. Anything that can stimulate access to finance for small businesses is imperative at the moment. If such access is available through the Green investment bank, it is to be welcomed for those engaged in that sector or sectors.

Q45 Geraint Davies: Do you agree that, alongside the Green investment bank, there should be a strategy for focusing procurement into green products, in particular to SMEs? I think I am right in saying that 70% of procurement in Wales is through SMEs, but it is something like 7% in England. Dr Marshall said something about a business bank and the big problem being that some businesses have a trajectory of forward orders, but do not have collateral and cannot borrow from banks. They try to expand and then go bust. In the green sphere, however, is there a case for the Government's taking a joined-up approach between procurement on the one hand and productive capacity on the other, focused on SMEs? Otherwise, we might end up with a load of German companies coming in and doing green projects, with people saying, "We've done what we can", and there are no British jobs.

Dr Marshall: Certainly we would like to see a more joined-up approach to public procurement. You will not have had a business lobbyist before you in the past 20 years who would have said anything different. I think that there have been some positive steps recently on that. If you look at Contracts Finder and CompeteFor and if you look at the number of SMEs getting involvement through those supply chains, it has gone up. If you look at central Government's procurement from SMEs, it has doubled from a very low base. There are some positive things afoot and we should welcome that. In so far as finance and the Green investment bank are concerned, the Green investment bank is set up by the public sector to correct what it sees to be a market failure. We would

hope that the Green investment bank would look at projects that entail significant risk in the early stages, whether an SME or a larger organisation is involved, so that those projects can get off the ground and those investments can be made. It will have to, by its very nature, have a somewhat higher risk profile than a traditional lender responsible to shareholders and regulators.

Q46 Anne Marie Morris: Back to SMEs and their access to the Green investment bank. Would it be helpful if there was a requirement on the bank to report annually on the number or amount of funds that have been made available at the different levels of small business, using the EU's definition of micro, small and medium? SMEs in the round make up more than 90% of businesses in this country by number, so that would enable us to measure whether the Government have been successful in supporting all the different levels of small business.

Dr Marshall: I think it might be a difficult one. As an organisation that represents micro, small, medium-sized and large businesses, clearly there would be different views through the chamber of commerce movement on that point. What is important is the value of contracts that are delivered by SMEs, even when in supply chains, rather than reporting on what has gone directly from the Green investment bank into the bank account of a particular sized company. I would be more interested in seeing that kind of scrutiny and that kind of reporting, so that if a large company were to secure an investment from the GIB and then see that percolate down through the supply chain, that is as good an outcome for us as direct lending to that SME.

Mike Cherry: I think I will add that I would prefer to have proper scrutiny on what the GIB is actually investing in, as opposed to being too prescriptive about whether it is micros or small as against SMEs. The important thing here is ensuring that adequate finance is available to all those businesses that need to get it and which are not getting it at the moment.

Q47 Chris Ruane: If public procurement has improved in the devolved Administration areas—I am thinking specifically of Wales, if Geraint's statistics are correct—do you think that the national Government have recognised what is going on in other areas of the UK? The Prime Minister likes to point out the negatives, especially in Labour-controlled Administrations, but if there are positives there, is there something that we could learn from those devolved Administrations that should be in this Bill?

Mike Cherry: The federation obviously has its devolved areas, which work very well with their respective parliaments and assemblies. We get a lot of very strong information on how well they are doing on different issues, which we then try to replicate here in Westminster. As to central procurement and wider public procurement, central Government have got the message, but the wider public sector needs to take it on board and the federation has just carried out a survey of local governments to see what they are doing on procurement at the moment and that will be reported on fairly shortly, in time for the autumn party political conferences. We are trying to get a better handle on this, as well as working with all the public sector to ensure that small businesses get the procurement that we feel they should be able to attract and also that the Government reach their aspirational target of 25%.

Dr Marshall: Briefly, you learn the lessons from where lessons can be learned. There are local authorities in this country which are exemplars in involving SMEs in public procurement and there are local authorities that are frankly shocking at it. In the devolved Administrations I am sure that we have positive cases and cases that are not so positive. The question is on hoovering up all of that good practice and trying to inject some of it into central Government where the trend most recently has been positive.

Q48 Neil Carmichael: Dr Marshall, you mentioned the importance of recognising enhanced risk for Green investment bank investment. Presumably you would agree with me that it is important to have the right kind of expertise in that bank to calibrate that risk. From what you have read and seen so far, do you think that that will be the case?

Dr Marshall: I certainly have every hope that it will be the case. I am not sure at this stage of the game whether the Green investment bank has its entire staff complement and all of its risk elements in place, as it is a new and evolving institution—we have a tendency in this country to create these institutions and then expect them to emerge out of the ether fully formed sometimes. We need to see those risk attitudes being significantly different to the ones that we see very often in mainstream banks at the moment on some investment propositions. You can understand why those risk attitudes have changed to a certain degree, given what we have been through over the past five years. However, as both Mike and I would probably agree, given the area—the market failure that the Green investment bank has been set up to correct—the appetite for risk will have to be significantly greater.

The Chair: We need to move on to the competition aspects.

Q49 Chi Onwurah: The competition parts of the Bill introduce numerous checks and balances with regard to the reviewing and appeals process, and that must have a disproportionately heavy effect on under-resourced smaller businesses. At the same time, the Government chose not to give small business representatives such as yourself a super-complainant status, which would have enabled them better to represent their members' interests, with less demand on their own resources and time. Do you believe that the Bill does all it can to help small businesses, which often have to take on powerful vested interests with anti-competitive practices to be able to compete fairly and leave consumers better off?

Mike Cherry: We would very much welcome the merging of the Office of Fair Trading and the Competition Commission. Clearly, if you look back at where the OFT has come from in the past and looking at class actions, our key message would be that, in very many cases, small businesses are, in fact, no different from consumers and need the same or similar protection. As for the FSB itself, we are not set up to enable us, at this moment in time, to take on any advantages that may or may not be around super-complainants.

Q50 Chi Onwurah: Whereas consumer representative bodies do have super-complainant status. If you feel that small businesses are similar, that would suggest that a similar level of protection is required.

Mike Cherry: I thought that was what I just said.

Chi Onwurah: I understand, I was just clarifying.

Dr Marshall: We would have a conflict of interest, obviously, in accepting any status as super-complainant—we are very likely to have some of the largest companies in the land as well some of the smallest in our membership, so I can neatly sidestep that one.

On the larger point of the competition impact in the Bill, there are three principles that we need to bear in mind. One is the clarity of the changes being undertaken for businesses of all sizes up and down the country; future stability and consistency in the system, with no more changes of brass nameplates on doors, please, as one set of changes is enough; and a really thorough communication of what those changes entail for businesses of all sizes. Too often, we have institutional reorganisations of this sort in response to crises in the system or to economic events, and businesses are not adequately informed and kept involved as they develop thereafter. So that would be my earnest and honest plea as that particular element of the Bill goes through.

Q51 Chi Onwurah: Just a quick follow-up, because we have spoken a lot about the difficulties of finance for businesses of all sizes—smaller businesses in particular. Are you surprised or disappointed that the competition parts of the Bill make no mention of the finance and banking market in which 85% of SME bank accounts are with the same four banks?

Mike Cherry: The Federation has long been calling for far more competition to be available and asking the Government to support our initiatives around alternative finance.

Dr Marshall: We would also like to see more competition in the system. I do not know whether it is a matter for the Bill or for the existing powers to sort out. Equally, we now see the emergence in the system of would-be challengers, for example through the sale and divestment of branches. We would like to see that deliver some more competition perhaps. Even then, alongside that, we would like to see a business bank for those new and growing businesses that are unlikely to get access to any mainstream lenders simply because they do not have the track record to do so.

Q52 Anne Marie Morris: Merger for small businesses is traumatic at the best of times. Do you think that there should be a limit below which some of the current rules and regulations about referrals should not apply? I know that it has been discussed and considered at the moment to be in the "too hard" basket, even if it is not fair, but what would be your view? Do you have an alternative suggestion about how we could make mergers of the very smallest businesses easier?

Mike Cherry: I am not aware of the detail of that and would have to come back to the Committee on that point.

Dr Marshall: The only thing that I would add is that it depends on the market in question. If you have a market that is 100% controlled by two 10-employee businesses, there might well be a case for a referral if those two businesses were to merge. It is down to the instance in question.

The Chair: Let us move on to the employment aspects of the Bill.

Q53 Julian Smith: Many of your businesses have had a tough time recently. First, some of the people running the businesses that you represent will have been struggling to reach average earnings, or even the level of the benefit cap, in their personal income levels. First, will you describe how the employment law burden is affecting those people? How will some of the Government's modest changes, which are designed to encourage your members to take on more staff, help? Any statistics you have on that will be helpful.

Secondly, on financial penalties, do you think that there should be exemptions for smaller businesses in the Bill's proposals? Thirdly, should there be variated levels of compensation for unfair dismissal? How would such changes give your members even more confidence to take on more employees?

Dr Marshall: I will start with the financial penalties question: I would like to see it struck from the Bill. It threatens to undo a lot of the good in the Bill around tribunal reforms, settlement agreements and many of the other aspects that were discussed in the previous session. Suggesting to an employer that you might go through the system to defend your reputation and honour against a vexatious claim, only—if you are found against—to face a financial penalty, will encourage you only to settle early, which is precisely the opposite of what we see everywhere else in the Bill. Everywhere else, we have seen an opportunity to reconcile claims and deal with them early. We would like financial penalties to be struck entirely from the Bill.

On the wider point about employment law, it creates both a real and a psychological burden for our business members. I like to say that they often think half with their head and half with their gut. The half that thinks with the head is upset about the levels of compliance and process required in employment legislation; the half that is governed by the gut says, "I don't have the confidence to take on more staff because of the number of rules that I face, and the complexity and expense associated with them." Although, as we said, we certainly welcome the introduction of tribunal reforms and the prospect of settlement agreements and other measures, there is and always will be more that can be done. However, this is a good start, and it will help deliver some of that gut confidence that employers want.

Mike Cherry: We think that the financial penalties are totally disproportionate. We are seeing this in other areas of legislation, where the big stick is the fine on the business, even to the extent of fining people for failing on the procedure, for instance—through no fault of their own, but purely through not knowing what needs to be done. We need to stop that as soon as we can.

I am not sure about variated levels of compensation. In our surveys, our members' current aspirations are to grow their businesses, generally. Anything that can be done to reduce the legislative burdens, around employment legislation in particular, has to be welcomed. We frequently say that it is often the time that owners have to take out to defend themselves, rather than the pure cost, that is hugely damaging to business. Any simplification of the employment tribunal system has to be a priority going forward, in our opinion.

Q54 Geraint Davies: The biggest focus for small businesses is generating more demand through procurement, infrastructure, investment, easier access to finance and

[Geraint Davies]

so on. However, in a situation of deflated demand and zero growth, many small businesses will be looking to downsize, so will the changes in employment legislation make it easier for them to reduce their head count?

Mike Cherry: I do not think that small businesses look to reduce their head count; I think they look to grow their businesses in most cases. That is what our survey has shown their aspirations to be. I think when you have a problem perhaps with an employee, which may or may not have been recognised, for whatever reason, a simplified process has to be advantageous for both the employee and the employer.

Q55 Geraint Davies: You don't think it will create a culture of fear, with the power pushed towards the employer being able to reduce the number of employees?

Mike Cherry: I tend to get a little concerned when people throw something at me like that, because in my experience that is certainly not the case with the majority of our members. They want to grow their businesses, and they need employees who are coming out of school and able to be trained to do the jobs they want. It is as simple as that, and that is surely to the benefit of business and the individuals concerned.

Q56 The Chair: We have five minutes left, and five hon. Members wanting to ask questions. Do you have something to add quickly?

Dr Marshall: I may be more frank than some of my colleagues. If reducing the head count were the objective, businesses already have tools at hand to do that. I was with a business last week that is facing difficult trading conditions, and is considering voluntary and possibly involuntary redundancies. Those are mechanisms for reducing the head count when cost pressures are high. Changes to employment law are about boosting confidence overall and I do not see this as being in any way something that businesses would use to reduce their head count.

Q57 Lorely Burt: We understand that tribunals, or the threat of a tribunal, can have a greater disproportionate effect on a small business than on a larger business because of resources. However, the idea that if you break the law there should be a financial penalty of up to £5,000 does not seem huge to me. Employers have a responsibility to act within the law. On the other side, do you think that the measures go far enough specifically for SMEs, or are there additional things that we should put into the Bill, particularly for SMEs?

The Chair: Very brief answers, please.

Dr Marshall: On financial penalties, I do not agree. I actually think that the potential for reputational damage to a business is so great that it will settle up front if it is threatened with a penalty of any kind. Businesses value their reputation, their goodwill, their customer networks and so on far more than £5,000. All that it is creating, as Mike said, is a big stick to threaten businesses with. It is not conducive to creating a culture of hiring or optimism for business.

Mike Cherry: I have a problem with £5,000. It is a significant amount of money that most businesses could not find easily, and would cause them severe problems.

Lorely Burt: It is only up to £5,000.

The Chair: Lorely, we are very tight for time.

Q58 Ian Murray: I am mainly addressing Mike because of the time constraints. You said in your response to the Bill that you have some concerns about the compulsory ACAS early conciliation, and that you would want to be reassured on those key concerns. Can you unpack what those key concerns are, and what changes you are looking for?

Mike Cherry: Our key concerns are, first and foremost, that ACAS does not have the resources to enable this to happen at the moment, and that it would need significant resources putting in. Our other concern is that, in many of our members' opinion, ACAS is not neutral or employer-friendly, and does not help the employer as much as it could, so there would need to be some sort of cultural shift within ACAS to ensure that it is seen to be truly independent and able to help both sides properly.

Dr Marshall: We are more positive on ACAS. We think it will probably need more resourcing to deal with pre-claim conciliation. When we put forward the idea of pre-claim conciliation and compulsory referral to ACAS in 2009-10, we said that it would require resourcing appropriate to need. If more cases are not being heard at tribunal because they are being moved into the ACAS system, obviously the resource consequentials would have to be dealt with.

The Chair: Final question, Andrew Bingham.

Q59 Andrew Bingham (High Peak) (Con): Would you agree that, for micro-businesses that have to run very lean, firing and getting rid of staff willy-nilly is a foolish premise because they invest so much time in employees when they take them on and train them up? Saying that the Bill is there to enable people to get rid of staff is wrong; quite the opposite is true. Getting rid of people is the last resort, because they have invested so much in them.

A supplementary to that is: have you any idea of the figures—

The Chair: You must be very quick.

Q60 Andrew Bingham: Sorry. I will be quick. Have you any idea of figures, and how the reduction in employment legislation might increase the number of jobs created?

Mike Cherry: I think that, yes, of course, it is a last resort. In micro-businesses in particular, as with most small businesses, we know our employees, we value them, we give them flexible time off if they need it when we possibly can, and we respect their rights to the utmost, when we possibly can. Inevitably, sometimes things go wrong and for whatever reason, you have to downsize. As Adam has said—

The Chair: Order. I am afraid that that brings us to the end of the time allotted to the Committee to ask questions of these witnesses. I thank them on behalf of

the Committee. We will now hear evidence from the Trades Union Congress, Unite and the GMB. Thank you very much.

Examination of Witnesses

Sarah Veale, Howard Beckett and Paul Kenny gave evidence.

11.46 am

Q61 The Chair: Welcome. Can I just ask the witnesses to identify themselves for the record and to say if there are any aspects of the Bill on which they do not feel qualified to comment?

Howard Beckett: My name is Howard Beckett and I am the legal and affiliate director at Unite. My main area of expertise is on the employment side and I might be a touch weak on the competition side.

Sarah Veale: I am Sarah Veale, head of the equality and employment rights department at the Trades Union Congress. Similarly, I am strongest on the employment rights and Equality and Human Rights Commission areas, but the TUC does have an interest in other aspects of the Bill, so I will do my best on those as well.

Paul Kenny: Paul Kenny from the GMB. I mostly focus on employment rights, but, a bit like most trade union officials, I have an opinion on most things.

Q62 Mr Iain Wright: May I just bring to the Committee's attention that I am a member of the GMB union?

This is an enterprise Bill, designed to promote economic growth. In your view, do the provisions in the Bill help provide economic growth for this country?

Howard Beckett: In my view, they certainly do not. I was interested to hear plenty of the comments that came whenever the last attendees were giving their opinions. In my view, legislation has a number of purposes: it can either be effective or it can be considered in the round in relation to other legislation and what has been happening elsewhere. Alternatively, it can be a sideshow. This is not what small businesses need at all. Small businesses are crying out for credit lines and economic growth. They are not crying out for the facility to sack people willy-nilly. I should just say that, from Unite's position, bad legislation equals bad legislation. Promoting bad industrial relations is not effective. We have examples all over the place in respect of good industrial relations and what they can achieve. Legislation should be there to balance inequality of arms between employers and employees, not to promote employers going down the line of bad industrial relations.

Sarah Veale: I agree with what my colleague has just said. There are one or two aspects of this Bill which support growth. We are particularly enthusiastic about the Green investment bank, although, if people want to ask further questions on that, I can go into a bit more detail about what we think are some shortcomings in the Bill—wasted opportunities, perhaps. Similarly to my colleague, I worry that the employment rights aspects of this start from the perspective of dismissing people, rather than from the perspective of trying to keep people in work and ensure that there is a constructive and productive relationship. To that end, we have some concerns about some of the drafting, and some of the absence of detail in some other areas. I am very happy to elaborate on that as we go through the different clauses.

Paul Kenny: I think the elements of the Green investment bank are very interesting. Part of the debate is, from the employers that I go round and talk to, on continuity of energy costs, which would be a really important thing for us to tackle. Not knowing exactly what you are going to be paying in 12 or 18 months' time is very difficult and there is the ability to control the costs of some of that. I think that the issue is confidence. I also know that there were not any great answers to the Committee about how many jobs this particular element will create. I hope that the most important creative factor in the Bill will be the ability to get money to SMEs and other businesses to employ people and restore confidence. That seems to me the most practical and confident part of the Bill.

Q63 Mr Iain Wright: Can I mention something specific, which is clause 51, dealing with the Equality and Human Rights Commission? That comes as a bit of a surprise. I am surprised that it is in an enterprise Bill. What are your views regarding clause 51?

Howard Beckett: I am sure Sarah will want to deal with that domain in respect of our contribution. It is a concern that the Bill has put together elements that do not seem to be natural sisters and brothers. It is a considerable concern that the Equality and Human Rights Commission should be looked at in the way that cutting it is progressive for society. That is not something we would support.

Q64 Mr Iain Wright: Would it help enterprise? Does clause 51 in an enterprise Bill help enterprise?

Howard Beckett: No, it has no place in an enterprise Bill.

Paul Kenny: It is impossible to see how it does. If anyone can enlighten me, I would be grateful. The general duty on promoting equality and good relations seems to me an emphatic part of business. I do not understand why you would remove or seek to remove that responsibility. I think that is a retrograde step. I do not understand what it brings. I can see some damage but I cannot understand what it brings. We would be very much opposed to that.

Sarah Veale: I share that cynicism. I suspect this is something that has been loaded into the Bill because the Government wanted some primary legislation and this was a convenient place to put it. I agree with the comments made by my colleagues. I had the privilege of being on the transition committee that oversaw the three previous equality commissions going into the merged Equality and Human Rights Commission.

One thing that was particularly impressive was the cross-party support for the commission and the grounds on which it was established. That particularly applied to the "good relations" clause, which was a purpose clause in the legislation to ensure that the commission had in mind that it was there to promote good relations, not to take sides between one group and another. To that extent, the work of the EHRC has broadly been to assist business. It had a helpline, which sadly has been vastly contracted, that provided a lot of help for small businesses and others—employers and employees—in how to deal with what are sometimes the most difficult employment relations issues that companies have to face, to help them through the rather labyrinthine discrimination laws they come up against.

I know people will later talk about various employment rights issues and how these are particularly difficult when you have discrimination to handle. The currently constituted commission is well suited to that. I do not think that any of the proposed moves are going to make the commission more effective. They are punitive and politically motivated. It is deeply regrettable that there is an attitude of, "We will keep what we have to keep of the EHRC in order to comply with European and other international requirements." That kind of cheese-paring attitude to what should be one of our proudest institutions is highly regrettable and certainly will not contribute to growth or the development of enterprise in the UK.

Q65 Mr Iain Wright: My final line of questioning is about employment legislation. I shall mention some specifics. Clause 12 allows the Secretary of State to vary limits for compensation awards in unfair dismissal cases, and clause 14 concerns whistleblowing. Neither of those clauses had consultation before being included in the Bill. I have two lines of questioning. First, what do you think of the specifics of clauses 12 and 14? There is also a more general policy-making point. There is concern that there was no consultation on quite important employment rights. What are your views on that?

Sarah Veale: I agree with you. It is highly regrettable that there has been no consultation on those. My organisation certainly gets alarmed about big pieces of legislation on which there has not been even any stakeholder discussion, at least not with my organisation. Those were genuine surprises.

Q66 Mr Iain Wright: Can I just clarify? There was no consultation with the TUC on an important piece of employment legislation.

Sarah Veale: We knew about the whistleblowing clause, although no more detail than is in the Bill, and we have some concerns about that. We did not know about the proposal on compensatory awards for unfair dismissal. On that more specifically, we have a real worry that already the median award for unfair dismissal is pretty low—it is just over £6,000. Our particular concern about this proposal is that it is likely to bring down the award far more, and it will hit middle-income employees, professionals, in particular. There is a specific impact on those that we think any political party ought to be quite concerned about.

On whistleblowing, again, we understand the intention and accept that the Court's decision has had unintended consequences for people's contractual rights and in relation to misuse of the legislation, but our worry is that you are introducing a public interest test that is much tougher than the current requirement for reasonable belief that there has been an incident where someone feels compelled to blow the whistle. On health and safety issues in particular—where time is often critical—we fear that people will not feel confident to blow the whistle, when to do so could save the lives of fellow employees and members of the public. We very much urge the Government to look at the measure carefully and to think about redrafting it, so that you lower the standard of the test and, at the same time, remove the unintended consequence caused by the Court decision in the Sodexho case.

Howard Beckett: Unite would agree with that. If any areas of the Bill required consultation, it was these two. The reality of the cap on damages is that it will affect professionals and those with pensions. Whenever you deal with pensions, you are aiming for employees who have been with a company for a long time. The point was made earlier that employers consider dismissal to be the last resort, which I accept with regard to good employers. The problem is that legislation can facilitate bad employers to take bad actions. It can facilitate a situation in which an employer inherits a company where he does not like an employee who has been there for a long time and then summarily dismisses them in the knowledge that there is a cap on it—that is, effectively, a no-fault dismissal. That is a big concern.

Whistleblowing is complicated and consultation is needed on it. To introduce new legislation without any facility for others to contribute to it is reckless.

Paul Kenny: On the Secretary of State's involvement, I am not sure where that will lead. It is not entirely clear whether there will be interventions on individual cases. There will be lorry-loads of documents and appeals flying around, and you will need extra office space if we get to that ridiculous level.

Tribunals hear the facts of the case. They are balanced and do not always come out in favour of the respondent or the defendant. It just does not work like that. The first fear and danger is that the new levels will be used to downgrade the number of awards over time. That is a real concern—it looks like the thin end of the wedge. Secondly, they will, in many cases, undervalue the damage done to individuals.

You have to go back to the process of why industrial tribunals, which is what they were, were first thought of. It was originally a simple system. It has become very legalistic now, but it was supposed to be a simplistic system whereby people got an opportunity to see whether they had been unfairly treated and to receive recompense for that. It does not effectively work out that you can arbitrarily decide that, because someone who is really badly treated happens to work in a company that has only 25 employees, that, somehow, is worth a lot less than somebody who works for a company with 2,000 employees. It is about the nature of the injury.

Whistleblowing is an incredibly dangerous area to get into. Thousands of UK citizens—perhaps some of them from your own constituencies—have been blacklisted in the construction industry and it took years for people to have the courage to come forward. Any restriction of encouraging people to come forward to blow that whistle is damaging to freedoms. It is a dangerous route to go down. It goes in an opposite direction to that followed by places such as America, which is offering much larger rewards for people to come forward and blow the whistle to highlight corruption, particularly in relation to contracts. If the measure is designed to stop people telling the truth about lawbreaking, it is a misdirected approach.

The Chair: We have up to an hour, which I hope will allow for more questions and answers rather than longer ones. I propose that we first take the two short sections on the Green investment bank and the competition aspects. I suspect there might be more focus on the employment aspects later.

Q67 David Mowat: Sarah, you mentioned that you had some reservations about the Bill. What are they?

Sarah Veale: As I said, we very much welcome it in principle, so I do not want this to come out as too negative, but our main concern is that the bank will initially not be allowed to borrow anything. I understand that it will be given £3 billion by the Government to start off with, but our calculations suggest that you would need something like £200 billion up to 2020 in order to ensure that the UK's low-carbon energy infrastructure is given the support that it needs from the bank to stimulate growth and to actually achieve what it was intended that the bank achieve in the first place. We feel that the mandate will have to be quite tightly drawn, and we hope that subsequent regulation will do that to ensure that there is promotion of low-carbon technologies and that the money does not go off into high-carbon or other general infrastructure projects. In other words, it should be targeted where it is intended to be targeted.

We would also suggest that the particular sectors that would make use of this are crying out for capital. Conventional finance for this is not available much of the time, which is the whole point of having the bank. The bank needs to be able to tap the capital markets for funds to increase its ability to leverage private investment, which is presumably the long-term aim of all this.

The issues so far are of borrowing and of the lack of ambition in what is written in the Bill, and we hope that that might be changed, but we are basically pleased with it. We also note that the German state bank, which is the nearest equivalent, invested nearly five times as much as is proposed to be invested in the UK one, so that will not do much for our competitive edge in that particular area.

One other point, as I have the floor, is that we have some concerns about the bank's public accountability and transparency. We would want it to be required to operate at the highest possible levels. At the moment, the legislation does not provide for any formal or public-facing view of how the bank is progressing and reviewing its development as a new institution. There are no requirements for stakeholder or public consultation, and we would urge the Committee to consider whether those sorts of safeguards should be put into the Bill.

Q68 David Mowat: Thank you for that. You are right that people say that we need £200 billion for infrastructure projects. I do not think that many people think all of that will come from the Green investment bank. There are other sources.

Mr Kenny, you mentioned that your members are concerned about energy prices. Do you see the Green investment bank helping with that?

Paul Kenny: I do not know. It may do. I was talking more in a lateral sense in that one of the biggest single issues for many of the employers that I deal with is their inability to forecast costs because of the energy markets. I have always been thinking of slightly different things than just the Green investment bank—although that may help in terms of the new technologies available and investment in changes—such as whether the market can be effectively stabilised, so that business could say, "In 12 month's time, the price of fuel will be x." That requires the Government taking a big stake in buying into the market and controlling the market a bit. That is what employers say to me on regular basis, but it is virtually impossible. Looking at some of the big logistics fleets, they can suddenly have a 10%, 15% or 20% increase in their fuel costs without warning, which directly impacts on their profitability and their ability to deliver goods to customers. They are pulling their hair out, and that is in some cases a bigger holdback for creating jobs than some of the other things that we have heard today.

Q69 David Mowat: Just to be clear, are you saying that the problem is with the variability of energy prices or with the level of energy prices?

Paul Kenny: I think it is both, and if that is the point of the Green investment bank, then it can help to encourage lots of people.

Q70 Geraint Davies: Do you feel that the money available to the Green investment bank should be focused on SMEs, local employment, and growth and not just generally focused on green issues, which could encourage international companies more? Should that be alongside a broader strategy for sustainable development that included positive procurement, again, for local jobs and a focus on green technology alongside an infrastructure plan? Is the Green investment bank something that is on its own and not really joined up and may not maximise the opportunities for growth in local economies?

Sarah Veale: The two things should clearly be joined up, and I do not think that they are mutually exclusive. I am not the world's greatest expert on this at all, as I think I said earlier. I am very happy to supply the Committee with the TUC's formal work on sustainable investment and so on, because I am sure there is an interest in that. There are economists in the TUC who know an awful lot more about this than I do, but, broadly speaking, the answer is both. It is important to do this with the small and medium-sized enterprise sector as well, but one would hope the two things could be done simultaneously and in a joined-up fashion.

Howard Beckett: Similarly, Unite would be happy to provide a written response to this, because it is a very important area. It is unfortunate that certain aspects overlap in respect of this Bill and the areas of expertise. Certainly, it would be our view that procurement filters down, so the importance of a procurement policy filters down to small businesses. It would also be our view that any resource in respect of trying to create credit funds should not be limited and should have its primary focus in getting out to small businesses.

Geraint Davies: I should declare that I am a member of the GMB, before I forget.

Q71 Neil Carmichael: I am not a member of the GMB. The Green investment bank is obviously geared towards encouraging investment in new technologies, new sectors and so forth. One would suppose that that would require a relatively flexible labour market so that we could see fluidity in terms of jobs and employment. Do you think that this legislation provides that?

Howard Beckett: I certainly do not. Not to get into an area that is not particularly my expertise, although I am quite happy to get into it in a written response, but we have countless examples of how we work with employers to provide flexible arrangements and to work with employers for the gaining of new contracts. I could name employers. Unite's role in respect of Vauxhall in

Ellesmere Port is presumably well known to you. We have great relationships with employers such as Gist, E.ON and Nestlé—large employers who look on their relationship with Unite as being a furtherance of their HR and not as something that is a competition. The problem with this legislation is that it does not promote good relations between employees and employers, or between employers and unions. It tries to create an environment of conflict, which is damaging to industrial relations, to flexibility and to business.

Sarah Veale: The only thing I would add to that is that there are a number of very productive and successful green reps in workplaces—union reps who specialise in the promotion of environmental and green issues—and I would not want that to be overlooked. Often in the workplace, people will put their names forward to become representatives of unions, or representatives possibly outside the trade union-organised sector, and they provide invaluable ideas and help. Exactly as Howard said, they work with employers in a flexible way, which is quite often overlooked. The trouble with the Bill is that it appears to start with the conflict and work backwards, rather than starting in the workplace, looking at what is good and encouraging more of that. That is what we would want to see in terms of growth in this area, as in others.

Paul Kenny: I think your question was: does it create a flexible work force? There are some things in the Bill that I think we are going to say some positive things about, and I hope we get to those. However, there was a recent survey by the OECD or somebody, which showed that out of the top 36 richest countries in the world Britain ranked 35th in terms of its labour laws. We are not overburdened with labour laws, so let us try to put it into perspective.

The truth of the matter is that, as Howard said, during the recent difficulties we concluded incredible labour changes to major household companies such as JCB, which kept them afloat. They were incredible changes, which showed the flexibility of the British work force and the ingenuity of the management and the union. We just concluded massive deals with Asda Walmart. I think it is the first time anywhere in the world that anyone has agreed a collective bargaining agreement with Asda Walmart. There are lots of good, positive stories that show that you can create growth and flexibility. You do that, effectively, by taking people with you.

The problem about the Bill is that effectively it focuses on conflict. That is one of the big difficulties and the big deficits. If you take somebody on and employ them, basically within 12 months, which presumably will be two years at some stage, you can effectively decide that it is not working out. If you do that, truthfully speaking it is not the employee that has made a mistake; it is the employer, because the employer actually offered the job. Sometimes people make mistakes and it does not work out. Beyond that point, people who have worked for years actually have rights, but it takes years to get those rights in employment tribunals. Maybe they are not performing, and you look at a whole range of issues—whether training, performance or whatever—and you deal with that under capability procedures that already exist.

A third area is, of course, when people break works rules or break their contracts, and there are procedures and disciplinary procedures. That is actually a system in which good managers manage—that is the truth of it. Of course, in any system, there is going to be a difficulty, but to design a whole piece of legislation to remove rights from the vast majority of working people is not the answer; the answer is actually to be smarter in how you handle people. I do not think that flexibility in the market is the key issue; the key issue is actually getting procedures that are fair to people.

The Chair: I am confident that we will get back to those issues. Does anyone have a final question on the Green investment bank? No, so perhaps we will move on to the competition aspects? If there are no questions on that, we are now on the employment aspects.

Q72 Chris Ruane: Earlier, we heard from the Institute of Directors that the third biggest issue facing the British economy today is employment regulation. I was quite surprised about that, and I asked for the statistical back-up, which Mr Ehmann is going to provide. However, the BIS small business survey shows that the level of concern of businesses about regulation overall is 6%, so concern about employment regulation is within that 6%. BIS says that it is not all that important; the Institute of Directors says that it is the third most important thing to their members. Where would you factor it in? Where would you rank it in order of priority for the British economy and growth? What is the threat to the British economy from employment regulation?

Howard Beckett: I heard that comment from a previous contributor, and I just do not accept it. I think it is fictitious, to be honest. In a previous life, prior to being legal director of Unite, I was a small business man—I had about 150 employees—and employment regulation did not appear on the scale anywhere in respect of that. Quite the contrary—as a small business man who invests in training and promotes the loyalty of staff, you understand that good employment practice leads to good business. It is not something you can dissect: you cannot, on the one hand, be a bad employer of individuals and then, on the other hand, be a good business man. It does not work like that as a small business. You have to be good at what you do; it is in the round.

I just do not accept that it appears in the scale for a small business man anywhere. In reality, you are concerned about maintaining the loyalty of the staff you have who are high achievers within your business, and to do that you need them to value their security of employment. In my view, if I was an employer, I would be telling the employment federation not only that it does not appear on my scale, but that it is incredibly damaging for me.

Q73 Chris Ruane: Sorry; may I just say that it was the Institute of Directors? The FSB is onside.

Howard Beckett: Well, I would be telling it that it is damaging, because the promotion of loyalty between employee and employer is an important industrial relation, and to bring in legislation that damages that relationship between an employer and employee can ultimately only lead to the damage of a business. I just do not accept that it appears in the scale anywhere.

Sarah Veale: I think the BIS evidence is very important because it is objective. It was done with the help of academics, and it was commissioned by BIS for all the right reasons. I worry about any survey that has been conducted by an organisation that obviously has an interest. I am not particularly criticising the IOD for

that, but I think you have to look at the question that was asked. You can lead people into reaching particular conclusions about something. If you suggest that there is a problem, they will tend to respond, if it is your organisation, in a way that backs up what you are trying to say, so I would take those sorts of contributions with a pinch of salt, I must say.

What has particularly irked us about this whole debate about regulation and the economy is that, if you look at reputable organisations such as the OECD, which has done huge amounts of longitudinal survey work, it is quite obvious that there is no demonstrable causal link between economic performance or the propensity of employers to grow their businesses and the amount of employment regulation that is around. Not only that but, if you come back to the UK and look for some causal links, and if you take the qualifying period for unfair dismissal as your example, when it was reduced—whenever it was; when the Labour Government first came into power—in 1998 or 1999, it in fact had completely the opposite effect to what business organisations were saying. Employment levels shot up, and if it had any causal link, it was completely the opposite of what they were suggesting. I suspect that that will always be what happens. There will not be any demonstrable causal evidence to show that there is a direct link between the two, so it is worrying to start putting legislation into a Bill that appears to be based largely on perception rather than on any serious economic evidence. That is certainly the case if there is a lack of any such evidence or, in our view, no positive evidence to suggest that you need to do these things in order to make the economy improve and businesses grow.

The TUC would be 100% in favour of doing anything to incentivise business and to make the economy get back to where it should be. We are absolutely unconvinced that there is any evidence that weakening employment regulation, which, as Paul said, is pretty basic and low level in the UK, will make any demonstrable difference in that sense. I worry that this has become an iconic political issue, which gets tossed around between political parties and sometimes between unions and industry, without people looking at the actual evidence.

I encourage members of the Committee to look at the real hard economic evidence, which does not suggest that there is that kind of causal link at all. If you listen to small businesses—we do that and we have good relations with the small business organisations—and go out and talk at mixed meetings organised by ACAS and so on, what you hear is an enormous amount of woe about capitalisation. Small businesses worry about other regulations, such as planning regulations and other such things. In the TUC, we are instinctively in favour of good regulation and minimal regulation as long as it is effective and properly enforced. We are not in favour of piling on the red tape for the sake of it. We listen to the economic argument.

Q74 Chris Ruane: Could you supply the Committee with any information that you think we should have?

Sarah Veale: I will certainly do that, yes.

Q75 Andrew Bridgen: Following on from that, I have two questions, and I will accept a yes or no answer. Does the panel believe that the huge increase in employment legislation over the years is acting as a disincentive to employers to take on extra staff and therefore lowering economic growth, and that this legislation has a disproportionate effect on small and micro-businesses?

Sarah Veale: Obviously, small businesses have less resource in terms of HR departments; you would be silly not to accept that. Of course it is more difficult to cope with things such as maternity legislation if you do not have an in-house HR department that has people who understand it all. So, that is obviously the case. Again, as long as the same protections are there, we are quite relaxed about having ways of enforcing it that are suitable for the particular business. As long as the individual employment rights are not weakened simply on the basis that the business is of a particular size—that the size of the business is not the relevant determinant of the level of protection that you give somebody. It is flexibility with a basic core.

As I have said before, I am not convinced that the increase in employment protection legislation has really made any difference. I say that because most of it does not impinge on business unless something goes wrong. I am talking about a business that is well run broadly speaking, that has employees who buy into the business, who are broadly content and who will not be after pursuing the employer on what technically they might be able to pursue them on. It is only when they are disgruntled that they start looking for issues on which to pursue the employer. In a sense, it is a bit of a chicken and egg situation.

What I want to do is to encourage, through the use of ACAS, businesses to have systems that are discussed with their employees and that their employees broadly buy into and have been talked to about, whether through unions or, more likely in the small business sector, direct conversations. Once people are broadly happy within the parameter in which they are operating and they feel that it is fair, you will not have this sword of Damocles hanging over you.

What happens is that small businesses and others who do not have the benefit of in-house HR will often reach for legal advice at a point where they absolutely do not need it. Often it is when there is a dispute that could be settled by someone saying, "Come into my office. Let us start at the beginning again and talk this through." Both sides calm down—this is where ACAS comes in again. The trouble is they work from the basis that it will end up in the tribunal and therefore they need a lot of expensive legal advice to put in all sorts of protective systems that will protect them against things that are not going to happen if, basically, they are getting things right and they are engaging with their work force.

Howard Beckett: I would agree with that. The legislation unfortunately promotes bad practices rather than good practices, and that is the danger with this, and it needs to be taken in the round. I am sure that we will move on to protected conversations in a bit, but that is the danger with the legislation. At the moment, we are talking to organisations that believe in workplace resolution. We have no incentive to see matters end up in the tribunal. It is a costly process for us in respect of representation of members and not something that

we promote; we promote workplace resolution. Albeit that we have organised workplaces to promote that, we believe that those practices are good practices, even for small businesses.

At the moment, you are dealing with legislation that allows employers two years to work out whether their business model is correct in respect of working out whether the employment of somebody will make them a profit, and whether that person is suitable for their organisation—how they mix with other employees. That is the safety level employers have at the moment—two years. They do not need to be encouraged to go down the line of bad practices, such as protected conversations, and we do not need to go down the line of effectively no-fault dismissals because of a cap on damages. We need to promote good workplace relationships.

Paul Kenny: Can I just say that I do not see the link? While a lot of this legislation was flowing through, either domestically or from Europe, the number of jobs in the economy was growing pretty rapidly, so it does not look like there is a connection. I have not seen any evidence—I would be interested to see the evidence—but it is more to do with jobs growing with demand in the economy, because jobs are clearly linked to the economy, not hire and fire on demand. That does not stimulate the economy.

We have agreements with companies with under 10 employees up to 200,000, a pretty wide range of issues, and from my discussions it is exactly as Sarah said. The real problem at the bottom end is a lack of resources to deal with certain issues, and two elements. First, there is a whole army of consultants who surf this system, making vast amounts of money and frightening the death out of people at times when a very simple solution is available. That is why the ACAS system and conciliation can be a very useful starting point, but I would like to see it go much further. What those companies need is back-up and support from ACAS, so that they do not have to get engaged in a whole range of outside bodies who are charging them the earth and giving them advice because it is in their interests to make the system go longer and longer. What you want are quick resolutions. You want problems solved, not more meetings arranged. The problem there, one of the previous speakers—from small business, I think—said is that ACAS will need more resources. But that would be an investment, because that is what people are crying out for. They need that back-up and support, because a lot of this legislation can sometimes be a mystery if you do not have somebody who can tell you dead straight what it is.

Q76 Ian Murray: We have had a lot of evidence before the Committee commenced, but also during the previous two sessions, about ACAS being under-resourced for the early conciliation. Indeed, given ACAS's own figures, it may cost it somewhere in the region of £10 million to deal with the increase in cases to 44,000. I think everyone is fairly comfortable that the early conciliation process is a step forward, if it is done properly. Is there a danger that it could be undermined?

Sarah Veale: I had the privilege of serving on the ACAS council for seven and a half years, so I am familiar with how good it is at managing within quite tight resource. Obviously, there is a fear that it will not do as well as it could. I do not have any fear that it would be unable to do what will be required of it under the new PCC system. I do feel that it could do it a lot better if it had some more resource, possibly allocated to them specifically, maybe pump-priming for the first two or three years of this. It will get complicated. You have such things as employment tribunal fees coming and there are going to be difficult issues for employers and unions about how that interrelates with the ACAS procedure in the early stages of the tribunal procedure, and to get all this working properly.

I think we are all instinctively in one place about the importance of solving things in the workplace and not going into the tribunal, but ACAS would do it much less well on a relatively tight budget. I do not underestimate its abilities, though, to do a very good job with what it has got. I am sure it would, quite rightly—I would not like to second-guess the ACAS council—want to make this a big priority, because this is bread and butter stuff for them. As Paul said, though, it obviously does need more money. If we want this to work, I urge the Business Department to consider at least a one-off pump-priming grant to ACAS to concentrate specifically on getting this right. This, in the Bill, unlike a lot of the rest of it, is actually—potentially—going to be of assistance in terms of growth, especially to the small business sector which needs ACAS for advice work, probably rather more than the larger companies do.

Howard Beckett: The problem with this potentially is that almost a quarter of those who are dismissed are out of work for 12 months or more. Ultimately, employment tribunals are about compensating people for lost income, primarily—90% of it, in any event—so the problem with ACAS being under-resourced is whether it just puts an additional delay in the process and takes longer for those who have been unfairly dismissed to receive a resolution in respect of that. If you asked most contributors in respect of employment tribunals, everyone would agree that trade unions do not prosecute vexatious cases. We act effectively as a filter of cases ourselves, and it is only those cases that have merit that we proceed with. I do worry that an organisation—even as well meaning as ACAS is—if under-resourced, either will not be able to perform the job, which will mean lots of delays, or will find its task has become a check list. We will reach a situation in which what was well meaning in respect of conciliation processes is ineffectual and loses any impact as a result. So I do worry about resources as a rule, yes.

Paul Kenny: To bring that particular element in and to make it work for small employers and for many people who do not have trade unions to give them advice, it has to be resourced. In a sense, this is just putting smart money into solving problems effectively at the first available opportunity. There is a fair chance that if we invest effectively in it, it will deal with a lot of those issues and avoid some of the long, protracted legal disputes that exist. That seems to me to be a smart thing to do, but the question is whether people are going to do it or not. There is no point hanging your hat on a conciliation peg if you do not fund it. The previous trials showed that there were lengthy delays—when ACAS trialled this—and there were some problems with some people who were using it for the first time. There would be a bedding-in system, but I think that it is definitely one of the elements of the Bill that we should actually give a bit of support to.

Q77 Julian Smith: Congratulations on Ellesmere Port. I think that all of you do important work, in different ways, on employment relations. There is a concern, however, that on the comments that you are making on very small businesses—on micro-businesses—that just by the very nature of your organisations you do not have experience of speaking to employers or employees within those bodies. Could you just describe for us this afternoon your level of contact with small companies—I define those as having from two or three to 100 people—or what meetings you are having, either with employees or employers?

Howard Beckett: Vast really. Obviously, as for any membership organisation, we have a number of ways in which members can join us. They can join us through an organised workplace, in which case, by definition, it is more likely than not to be a medium-sized or large employer. But they also join us online, and they quite commonly join us online because they are fearful of what their employment rights are and they do not have any access to employment advice. In our experience, in Unite, we have more than 400 officers who come from work places and are extremely familiar with them and with the operation of HR. Daily they are dealing with employers, and dealing with them to reach resolutions.

Q78 Julian Smith: May I press you, Howard? What is the percentage of your membership who are working at a company of fewer than 50 people?

Howard Beckett: I would not know that.

Q79 Julian Smith: Could you provide us with that?

Howard Beckett: Yes, I can. *[Interruption.]* I am told that it is 25% or 30%, but I will come back on that.

Paul Kenny: I am going to have to check that. I knew there was a "but" coming in your question somewhere: "You are doing a great job, but—". My experience is in coming up from the shop floor, working in many small establishments and for a number of big companies as well. We have a union that is 620,000 strong—and growing, I might say—and 50% of our membership is in the private sector. We are acutely aware of some of the problems. I would not know what the specific level is, but I would guess we have probably 15% to 20% of people who are working in companies of fewer than 100 people—I would say that is about it, but I will certainly go and check and provide the figure to you. How do we know? Well, those people participate in all the activities of the organisation and, clearly, we get to see and interact—I do not do it as much now as general secretary, but I do make a point of making sure that I meet as many employers as I can—because obviously it is not just the business, but it is as well to find out what their concerns are. I would say that our interaction is directly with employees, but also with the employers, but on the real bread-and-butter issues rather than on the macroeconomic issues.

Q80 Julian Smith: Can I ask a second question supplementary to that? You have all talked passionately about the need for informal mediation and workplace discussion in resolving disputes. Do you think that it is right that ACAS needs to seek the permission of an employee in order for ACAS, during mediation, to contact the employer? If you think that that is right, could you say why?

Sarah Veale: The problem with mediation is that it would never work if it is perceived—it is all about perception—to be inequitable and somebody feels that they have been shoehorned into it. By definition, it will not work. It is a process that has to be inclusive. It is right that the employee should be consulted and involved in it, or it will simply backfire.

Q81 Julian Smith: As I understand the current situation, in mediation you have to seek the permission of the employee.

Howard Beckett: It is right, and Sarah's explanation is correct. This is about a trust process. Mediation is a highly skilled form now. Obviously, it is something that we are anxious that our officers are daily improving on in respect of their own skills, so that they understand that relationship. But mediation, whenever you get to your point of conflict, is all about trust. The idea that ACAS could contact an employer without an employee's knowledge would break that trust. ACAS would be in an invidious position, unable to perform its tasks. More importantly, going forward, it would make our members less likely to interact. Without naming the industrial disputes that this has been relevant for, in the most difficult of industrial disputes—the most high profile—the role of mediators in respect of resolution of those disputes has been eye-opening for me personally, and that has come about in respect of the trust from both sides in respect of the independence of the mediator.

Q82 Julian Smith: Why do you think ACAS has made representations informally that this would be a good idea?

Howard Beckett: I presume that ACAS is thinking more about how its role will develop going forward. It is natural for ACAS to see itself in many ways as almost becoming a new employment tribunal if this is going forward, and clearly ACAS will be making lots of representations that would presumably result in it asking for more funding. I think that it needs more funding, anyway. If I was talking to ACAS here and now, I would be telling it that that is a mistake. It would be a mistake that would cause difficulty for us to interact with it or promote our members to interact with it, and I think it would find that it is a mistake whenever it is dealing with individuals also.

Paul Kenny: The whole process that we are talking about is the conciliation process. It is important that we do that. My view is that you are rolling out something completely new here. It would be much better to give it a chance and then to look at that and see how effective it is. Rather than damage the reputation of ACAS as conciliators by just saying this is a compulsory element, I think sometimes in life it is better to try to get people to co-operate. It may well be a suck-it-and-see situation.

Q83 Geraint Davies: I have two quick questions on different issues. First, people will know that the construction industry is now very much on its knees, and therefore I wonder whether you agree with me that introducing constraints on whistleblowing at a time when there is not much work about and people are cutting costs is more likely to lead to industrial injury, and therefore the dilution of whistleblowing could have disastrous consequences. Secondly, on the issue of equality and

human rights that was referenced a while ago, people will also know that in the public sector some 60% of employees are women, and indeed a fairer proportion of people are from ethnic communities, so reductions in the headcount there—700,000 is the latest objective of the Government—have consequences. If those people are looking at other employment issues such as maternity rights and so on, do you think, in the round, that reducing the influence of equality and human rights in terms of employment is a retrograde step?

Howard Beckett: It is a retrograde step. I am sure Sarah will want to deal with that in more detail. There is obviously a variety of unions here involved in the construction sector particularly, but we do have a large membership in the construction sector. We have considerable problems over blacklisting, which Sarah referred to earlier. We also tragically have deaths in the construction industry. One death is terrible. Sarah will have the precise detail but I think that 171 people died last year in the construction industry. This is about legislation promoting good practice.

When we legislate in respect of whistleblowing, we are not dealing with action taken vexatiously by people. It is not a measure that small businesses need to protect themselves in order for growth. We are talking about the most extreme circumstances where people who have been blacklisted lose their entitlement to work for years and years. Or alternatively, families suffer bereavement as a result of breaches of health and safety regulation.

The only point I would make is that I would absolutely support Sarah's previous point: we are not after regulation for its own sake. We are only after effective regulation. Trade unions believe in collectivity as the workplace resolution, not in essence regulation. We need good regulation not regulation for its own sake. The problem with this legislation is that it goes against good regulation.

Sarah Veale: I would add to that on the construction industry point. I would have thought that most employers—I cannot imagine any not agreeing—would rather have an ill-founded whistleblowing, which could be dealt with and the issue addressed. If it turned out there was no present danger, then fine, that is the end of that. They would rather have that than have the possibility of damage to life or limb or long-term ill health being perpetrated on the work force or public.

This legislation had cross-party support when it first came in. Nothing would have been done about this, if it had not been for that one unfortunate case in the employment tribunal where there was an interpretation that allowed the legislation to be opened up rather more than it could have been, to allow contractual claims that were not really anything to do with whistleblowing, to use the legislation mischievously. The Bill is right to look at that but I think it has gone too far. I do not think there will be too much loss of pride in rowing back a bit and saying, "No, we do not want those risks in the construction industry or anywhere else for that matter. We do want to address the problem. Let us have another look at the drafting of this to ensure that we do not inadvertently fatally weaken the legislation."

I completely agree on the Equality and Human Rights Commission. There are particular impacts of the current recession on protected groups: women and BME communities. The current rate of unemployment among young men is three times as high for young black men as for young white men. That is statistically the fact of the matter. The importance of institutions such as the EHCR is that they can do overall investigations into why that might be the case, with no fingers pointing. They are not out there to get anyone, but they can devote their resources to looking into what lies behind all this, and whether at some point there is some help that could be given to employers or in the public sector where the majority of these people are employed, to get things better, to create more employment opportunities, to improve training opportunities.

The TUC feels strongly it is one of the midwives of the new commission and was very much involved in the work of the predecessor commissions. They did work on disability hate crime, tricky workplace issues to do with interracial tensions and handling all those dilemmas when you have sexual orientation legislation as well as religion and belief. There are conflicting views among employees. What do you do in a large company? What on earth do you do in a small business, if you have two people in the same place who loathe each other? You do not know what to do; you are not quite sure how the law works. It is so much better if you can pick up the phone and speak to someone who knows what they are talking about and will give you dispassionate, good, one-to-one spoken, dialogue-based information, which will help you to get beyond the problem, keep them both in employment, because they are probably both good employees, and avoid having to go to the tribunal on ugly and difficult issues.

We feel that the amount of money that is going to be saved by what is happening to the commission is so minimal as to make no difference in a larger sense. The damage that will be done by these measures, and by some of the other areas of contraction in equality law, is going to be much greater than they are worth. They will have a negative effect, almost entirely. It is very hard for me to sit here and think of any positives that are going to come out of what the Government are proposing to do to the Equality and Human Rights Commission. I cannot think of any reason other than political spite, quite honestly, which is disappointing when the whole thing was set up originally with cross-party support.

We should not be having these discussions at all, really. I do not think there was any need to create this legislation on the EHRC. The Equality Act 2010 was settled; the Equality Act 2006 was settled and this is just unnecessary meddling, which could have hugely damaging consequences. I suspect that a lot of small businesses will very much come to regret, when they peel away the political rhetoric, the fact that they will not be able to get this kind of assistance based on the EHRC's duty to promote good relations, which is what it is there for. Stripping away those powers and reducing the size of the commission is just petty and spiteful, and will reduce the kind of expertise that it had within it.

Paul Kenny: I will just deal with blacklisting. This is a real issue. You talked about the construction industry, so I will confine my remarks to that. People in the industry have been blacklisted simply on the basis that they were noted attending a public meeting. The information officer recently seized about 3,500 files that had been compiled on people within the construction industry, some of whom had asked health and safety questions and so on. The idea that you have got good employers who treat people fairly and comply with the relevant

laws of the land, including health and safety laws, and yet other people will go to extreme lengths to stop employing people who may ask those questions, is unfair to the employers that actually do comply. In some senses, we are bending the bow towards those who have something to hide, rather than supporting those who comply with the law of the land.

There are thousands of UK citizens on that list. People have come in here and you have asked them for facts about what will create jobs. I can tell you that these are facts. The Government have the names and addresses of those people. They are facts about weakening whistleblowing. It is unlikely that we would have got to the bottom of this and found out who was responsible had it not been for the ability of an employee to speak out at a tribunal.

Q84 Lorely Burt: I totally accept the points that Sarah Veale has made about how a good employer with a good, positive culture will result in fewer industrial tribunal claims. Although I also take your point about employers surveying themselves, I speak to a lot of businesses—particularly small businesses—which are fearful of vexatious claims. There is definitely a sense that we need to take much more effective action on this. Do you think that a requirement to consult before going to tribunal is a good thing both for employers, to encourage them to be less fearful about taking on new employees, and for employees?

Sarah Veale: The answer to that, obviously, is yes. I reiterate what Howard said about us having no interest in pursuing litigation. It costs us money, and we at the TUC train trade union officers and reps to understand that if you end up in the tribunal, you have failed. The aim is to get employment relations back to where they should be; to protect your member's job—why would you want one of your members to become unemployed?—and to try to make sure that any systemic issues that are underlying that particular dispute are being dealt with properly.

The point about vexatious is that that term has been much misused. There is a legal term "vexatious," and an absolutely minuscule proportion of claims that go to tribunals really are vexatious. A claim is much more likely to be misconceived, where somebody thinks that they have an employment right that they do not have—through no fault of their own—or they feel, because they are passionate about it, that they really have been badly treated and they want to have their say. It is difficult to prevent those sorts of cases from going into tribunals. The tribunals already have pretty good pre-hearing procedures to deal with genuinely weak claims. We notice that the deposit into court has gone up, the amount that you can ask somebody to put into the court has already gone up and the costs awards have gone up to £20,000, so there are already systems that can deter weak cases. The tribunals can also declare someone to be a vexatious litigant and push them out, if that is really what they are.

The point is that you have to allow people in a democracy to go to court, if they have a genuine belief that their rights have been breached and the other processes have not shown that it is a weak, ill-founded or vexatious claim. If you take that away, I think ultimately it will not do employers any good. As Paul said earlier, you do not want employment relations to be governed by fear and mistrust. Exactly as you say, they should be governed by the opposite.

Again, we come back to these old friends of ours—the consultants. My feeling is that a lot of small businesses are wound up by consultants on health and safety issues. They are told that if they do not have a £3,000 risk assessment, they will almost certainly end up in court being sued for zillions of pounds. In fact, particularly if they have a union, they can do a perfectly good risk assessment without all that expert input, which will assure the insurance companies that they are compliant, and they will not end up in the courts anyway. The trouble with consultants is that they are invidious, and I accept that it is difficult because in a free market you cannot stop people trying to make money. I hesitate to suggest that we start to try to regulate, but there really is an issue with consultants who go round putting the fear of God into employers.

You can understand it; you are new in business and someone who sounds as though they know what they are talking about—they might have a law qualification—says, "If you don't do this, this, this, this, this and this, you will end up in a tribunal, and here's what will happen", when all those things are very unlikely. It is the wrong way round. If they are going to spend money on getting help, they need to spend money on people who will work with them to develop good employment relations and get things right, not on the law and the other end of the telescope. I broadly agree with you, but I am trying to reiterate those points that we are all trying to put across today.

Howard Beckett: I would agree that consultation is good. We would prefer to see it happen in the workplace, but I disagree with the whole tenor of the question. I took it that the question presumes that employers talking to you are expressing a concern in respect of employment rights and the taking of claims, and that is preventing them from bringing on new employees. I do not accept that. There is everything that Sarah said, but just to reiterate, an employer has two years of security before anyone can make a claim against them in respect of unfair dismissal or redundancy. I just do not accept it.

Perhaps employers—the ones who you are talking to—just do not understand what they need to understand, but with my experience interacting with businesses in my current role and previously, I do not accept that employers do not take on people who they think ultimately will make them a profit for fear of the fact that they have only two years to dismiss the person. I do not accept it.

Paul Kenny: If you say to somebody, "Do you think that you want more training?" invariably the answer is yes. If you say—and I hear it all the time—"Do you think that there are too many regulations?" the answer is yes. Then when you say, "Which regulations are you talking about?" you invariably get a blank expression. It is a perception, and as a small business man said earlier, it is people's gut reaction.

There are vexatious cases—no question about it. Howard made the point that when they come through the system, unions have incredibly good systems to ensure that no union-supported cases going through to tribunal fit into that category. You will know and I know that sometimes a case can be decided on the balance of the evidence that a witness gives or the impression

that a witness gives in evidence, so it cannot always be perfect. The truth of the matter is that the relevant number of those cases is small.

That does not mean that I am dismissing the point you make about the fears of employers. To go back to that point, they effectively need support, explanation and backup from a simple, recognised body, which is where ACAS can be so important, so they do not have to rely on paying thousands of pounds to outside people whose interest is in pursuing and prolonging the issue rather than getting it settled.

Q85 Eric Ollerenshaw: I want to ask a question along that line. In the spirit of conciliation, I presume that you will agree that solving the problems in the workplace is the solution. But what I am trying to find out is whether you accept that, as the FSB says, 400,000 tribunal cases a year is a massive cost on business in terms of money and time. Mr Kenny talked about consultants. Is it just down to consultants that we have got to that state of affairs, or where is the problem?

Howard Beckett: I personally do not accept the figure that was quoted previously. I wrote to the Department for Business, Innovation and Skills, and was given the figure of 260,000, I think, as being the accurate figure. I do not accept the figure of 400,000. I am not sure why it jumped by almost 50%, but there you go.

When I looked at the figures, I saw that there had been a decrease recently in respect of cases that were taken to tribunals, and that it had decreased year on year. When I looked at the figures to see what explained an increase around 2008, it is probably better explained by an increase in equal pay cases, and an increase in working directive cases. I do not think it is explained by an increase in unfair dismissal cases. The stats just don't show that. We are on a different track here.

Do I believe that that is a massive cost to business? Well, going to a tribunal has a cost. How do I believe that that cost is best resolved? By promoting good standards in respect of employers and not by promoting bad standards. We must remember that in respect of all of this cases that get to tribunals are cases in which someone believes that they have been unfairly dismissed, and the tribunal must make a decision on that. We are talking about someone's basic human right to proceed with an allegation that they have been unfairly dismissed.

The relevance of the figure is how many of those cases were successful, and how many were unsuccessful. That shows the importance of it. But you have dealt with your concern by increasing the limit from one year to two years in respect of unfair dismissal. You have built into the process your safety net for what you perceive to be the problem. I don't, but you have built it in. Going down the line of then promoting bad practice to cope with it is just not right.

Sarah Veale: I would add that there is a problem perhaps particularly with small businesses not being aware of all the various avenues they can go down, and I hope we will come on to compromise/settlement agreements in a moment. Compromise agreements are a way of legally compromising someone's employment tribunal claim. They are used by unions, and they are used by law firms. I think a lot more awareness building is needed out there so that small firms in particular know what is available to them, and in relatively simple terms what procedures they need to follow if someone's performance is not what it should be. It is not nearly as difficult as I think people fear it will be.

Paul Kenny: The figure I have is closer to yours, Howard, but whatever it is, it is a lot.

Equal pay cases are an important factor in this because they ran into tens of thousands. In my union, there were something like 35,000. They had to be registered, and that comes on to another point. Time limits are very strictly enforced, and even while trying to get a settlement, the cases have to be put in. If they are not, and you are an adviser, as a union would be deemed to be, the union effectively becomes responsible. People have learned through experience that it is better to lodge the claim than to risk continuing discussion or looking for conciliation and then suddenly realising you are two days out of date. Of the cases lodged, it would be better to look at how many were settled, how many were withdrawn, and how many finally ended up inside the system.

Another element that would really help is that tribunals are under pressure to get cases dealt with, and I understand that. Lots of people want to get them out of the way. But not everyone always wants to do that. There are cases when the parties are still talking over complex issues involving sometimes many hundreds of employees, and are effectively pushed into litigation, so there should be the ability, when both parties agree, to effectively adjourn it for a period. I have practical experience of when that has occurred when neither we nor the employers wanted to go to court, but we were effectively forced into that situation instead of being able to find a resolution separately, which we were both committed to doing.

Another thing is that lawyers in some parts have picked up easily that this is an interesting way of looking for a living. It is a sad fact that, while trade unions provide a service for free as part of someone's membership, other people have been surfing the system in order to find ways and means of entering cases and making money out of the system and out of both the employer and the employee.

The Chair: We have five minutes. I will call two colleagues who have not yet had an opportunity to ask questions to this panel. I also have a list of colleagues who would like another bite of the cherry, but I doubt that we will have time for that.

Q86 Graham Evans: We all agree that Britain has to pay its way in the world. We face highly competitive, dog-eat-dog competition throughout the world, and we need a highly skilled, flexible work force. What would you say to a young entrepreneur who starts up a small business with the prospect of good business growth and whose focus means that he has put his house on the line and taken risks? What would you say to him about growing his business? How would you convince him to take organisations such as yours on board? In other words, why would anybody take a third-party organisation such as yours into their growing business? Can you justify your role with growing businesses and jobs in the 21st century?

Sarah Veale: The problem is that we are anxious to get our points across in relation to a couple of issues in the Bill. In response to your question, there is a lot of

documentary evidence from the TUC and others about the add-on that trade unions bring to a business in terms of encouraging productivity and good relations.

If I may be so incredibly cheeky, we have a principal worry—this relates to your question—about the clause on compromise agreements and settlements. We are all in favour of that instinct, but our worry is that you are entering territory that has not been explored before. There is a worry that this is getting into Beecroft-lite territory, whereby if people were not given rights to be properly represented in those conversations, or to at least seek legal or professional advice—as is the case with a compromise agreement before you sign off—you will end up in huge difficulties, with employees being bullied and with unintended consequences. There is a particular fear that if you have a claim relating to discrimination and you are not given the kind of advice that you should have been given before you sign away your rights, the Government themselves, by introducing legislation that did not safeguard people's rights, would be in contravention of a whole range of different international and European legal requirements. I know that that is slightly off the question, but it is important.

Howard Beckett: I would say to a young entrepreneur who is starting up a business, "Good practice with your employees is good practice with those you do business with, so make sure that you adhere to good practice. By having a representative in the workplace, you can promote good practice." I would also say to him, "Good luck in finding a bank that will give you credit," because I would not be able to find one if I was trying to start up.

Paul Kenny: I would say, "How can I help?" Unions have a whole range of skills, such as legal and business skills, and they can provide help for the self-employed. We can provide all sorts of agreements that would help. We could do a whole range of things, so my opening line would be, "How can I help you?" Establishing a relationship with that entrepreneur—that small business man—could turn their company into one that employs 10,000 people. That is incredibly good for my business.

Q87 Ian Murray: I have two questions and will make them quick, because time is running out. First, I was interested to read Mr Beckett's views of the Bill. You have expressed the opinion that the new settlement agreements and what the Secretary of State announced on Second Reading, as well as the Secretary of State's ability to make an arbitrary decision to restrict compensation in an unfair dismissal to whichever level he wishes between median earnings and three times earnings, are fundamentally related to compensating no-fault dismissal, particularly by the back door. Could you give us some examples of that? If you cannot do so in the time remaining, will you write to the Committee to give us an idea of your thought process?

Howard Beckett: I certainly could, but our point is that this Bill needs to be taken in the round. It comes at a time when trade union facility rights are being reduced and when there are other attacks on trade unions. We need to ask whether this is about promoting good relationships, or is it about promoting an exit route for those who indulge in bad relationships? For me, it is about promoting that exit route.

There are areas of the Bill on which there has been no consultation. My fear in respect of the settlement is that it will become, effectively, a no-fault dismissal. If an employer knows that there is a maximum compensation that they can give to somebody, they will know that they can indulge themselves in whatever bad practices they want. Protected conversations and without-prejudice conversations are two different things. The Court has decided what in a conversation should remain without prejudice, and it is not discriminatory elements. The idea of a protected conversation overlapping into what is clear discrimination and of that not being allowed to be told to a tribunal at a future stage is high-risk stuff. Our position is that industrial relations are about a balanced relationship between the employee and the employer.

The Chair: I am afraid that that brings us to the end of the time allotted for the Committee to ask questions to the witnesses, whom I thank on behalf of the Committee. There have been some requests for written submissions, for which we would be grateful.

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Four o'clock.