PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Second Sitting

Tuesday 19 June 2012

(Afternoon)

CONTENTS

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Saturday 23 June 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

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

Otto Thoresen, Director General, Association of British Insurers

Paul Lee, Director, Hermes

David Paterson, Head of Governance, National Association of Pension Funds

Mike Emmott, Employee Relations Adviser, Chartered Institute of Personnel and Development

Michael Reed, Principal Legal Officer, Employment, Free Representation Unit

Cathy James, Chief Executive, Public Concern at Work (PCAW)

Edward Sweeney, Chair, ACAS

John Wadham, General Counsel, Equality and Human Rights Commission

Public Bill Committee

Tuesday 19 June 2012

(Afternoon)

[Mr Graham Brady *in the Chair*]

Enterprise and Regulatory Reform Bill

Written evidence to be reported to the House

ERR 02 Stop43
ERR 03 Public Concern at Work
ERR 04 Transform UK and ClientEarth

4 pm

The Committee deliberated in private.

Examination of Witnesses

Otto Thoresen, Paul Lee and David Paterson gave evidence.

4.1 pm

The Chair: We will now hear oral evidence from the Association of British Insurers, Hermes Equity Ownership Services Ltd and the National Association of Pension Funds. For the record, please introduce yourselves to the Committee.

David Paterson: I am David Paterson, head of corporate governance at the National Association of Pension Funds.

Otto Thoresen: I am Otto Thoresen, director general of the Association of British Insurers.

Paul Lee: I am Paul Lee, a director at Hermes Equity Ownership Services.

The Chair: It might be helpful to the Committee if you say whether there are any aspects of the Bill on which you do not feel qualified to comment, or if you are happy to be drawn on all aspects.

David Paterson: Chair, as a corporate governance specialist, clearly my interest is particularly in the remuneration changes proposed. Rather than saying what I am not interested in, may I say what I am interested in?

Otto Thoresen: I am more or less in exactly the same place as David.

Paul Lee: As well as the remuneration side, I am happy to talk about the Green investment bank.

The Chair: Excellent. Members may wish to direct questions to specific witnesses; otherwise direct them among yourselves as appropriate.

Before calling the first Member to ask a question, I remind all Members that the question should be limited to matters within the scope of the Bill and that we must stick strictly to the timings in the programme order the Committee agreed. I hope that I do not have to interrupt mid-sentence but will do so if need be.

First, on the Green investment bank, I call David Mowat.

Q88 David Mowat (Warrington South) (Con): Mr Lee, I have just been looking through your written evidence and a sentence in it caught my eye:

> "A number of pension funds have made clear that they will not be able to buy green bonds unless they have yields which compensate them for the lower liquidity or credit risk".

For clarity, what do you mean by that?

Paul Lee: The point a number of pension schemes have been making is that they cannot buy green bonds simply because they are green; they need to be attractive financially in specific ways for the schemes to feel able to invest in the bonds. Specifically, because presumably those bonds will be specifically attached to the Green investment bank or other green vehicles, the likelihood is that they will be of lower liquidity and therefore less attractive financially for schemes to invest in, so there would need to be some commensurate compensation for that lower liquidity in terms of a higher yield.

Q89 David Mowat: Is the issue liquidity risk, or is it that the projects might be regarded as higher risk in themselves?

Paul Lee: No. The project, assuming that the design is reasonable, need not be problematic. It is a liquidity question. There may be a credit and guarantee issue as well, but largely, it is just a liquidity question.

Q90 David Mowat: In your evidence, you say that there is pent-up demand for people to invest in such green activities. If that is the case, why do we need the Green investment bank for it to happen? What is causing the market failure that the Green investment bank is addressing?

Paul Lee: There is pent-up demand for infrastructure investment. Clearly, that infrastructure investment could, but does not have to, be green infrastructure.

Where is the market failure? Frankly, there is an issue with the bulk of infrastructure vehicles that are available for pension schemes and others to invest in. Those vehicles are structured very much like private-equity-style vehicles, so they have a specific, limited time span, and they tend to gear up the returns. The attractive thing about infrastructure investment for pension funds, insurers and other long-term investors is that they should provide bond-like returns in perpetuity, or something close to perpetuity. If the Green investment bank can assist the market to create infrastructure vehicles that deliver that bond-like return, then absolutely there is pent-up demand.

Q91 David Mowat: If I could just press you, why has that not happened, if pent-up demand is there? Why has someone else not put into place the products that would meet that demand?

Paul Lee: That is a frustration that we and a number of pension schemes feel.

David Paterson: Perhaps I could amplify a little bit on that. The NAPF, in conjunction with the Pension Protection Fund, is in the process of putting together such a fund, which would be aimed specifically at pension funds. It is designed to address some of the drawbacks that Paul has outlined. That is literally in the market as we speak, in terms of trying to generate interest from the pension funds.

Otto Thoresen: From the insurance sector's point of view, we are working jointly with the Treasury at the moment to try to identify how those types of projects can be structured to make them investable from the

insurance perspective. Of course, what is happening there is the development of European regulation—Solvency II—which creates more demands on the types of investment that we can commit assets to.

Q92 David Mowat: What are the demands in terms of quality?

Otto Thoresen: It is to do with risk, which is quality looked at through a different lens. David is absolutely right that the match in terms of the long-term nature of the income that can flow from such investments is interesting to us. However, it has become increasingly difficult, as the Solvency II regulation develops, to be able to invest substantial amounts of our assets in such projects.

Paul Lee: It is perhaps worth adding, just on that last point, that one of the major concerns among pension funds is that those same Solvency II regulations might be applied to pension funds as well.

David Mowat: We can probably spend all afternoon on Solvency II.

Q93 Mr Iain Wright (Hartlepool) (Lab): Good afternoon, gentlemen. Does the Bill as it stands with regard to the Green investment bank give you the investment and your members the confidence to invest in a low-carbon economy? If not, what else needs to be included in the Bill?

Paul Lee: I think the Bill is fit for purpose. The question is what the Green investment bank delivers under the Bill. The two key things that we need the Green investment bank to deliver are the infrastructure side of it that we have just discussed and assistance in ensuring that we have the right sort of vehicles available for it; and an effective channel for the market to communicate with the Government, particularly to ensure that there is consistency in regulation and in the return opportunities from the various green investments that might be made alongside and through the Green investment bank. Without that certainty, no pension fund and no insurer will feel confident to make the long-term investments that are necessary.

Q94 Mr Iain Wright: Could you give us some examples? What would give the market confidence, and what does the role of the Green investment bank in that respect look like? Does the Green investment bank take on the risk on behalf of the market? Does it leverage in additional private sector money? What would a good investment look like?

Paul Lee: There are a number of different ways that it might be structured. The Green investment bank could take the top layer of risk, leaving a more secure return for the private markets—something closer to that bond-like return that pension funds and insurers need. It could facilitate investment alongside the Green investment bank, and structuring of vehicles that are capable of investing and delivering those bond-like returns. It is very possible for the Green investment bank to do that under the terms of the Bill. It is how it chooses to deliver in respect of its responsibilities.

Q95 Mr Iain Wright: Is the question of the bank being allowed to borrow an issue for you? Would it provide additional confidence if the bank was allowed to borrow before 2016?

Paul Lee: I actually think that there is enough funding available before that date for the bank to do anything that would realistically be needed, so that probably is not an issue. Of course, 2016 is only the first date at which it might be able to borrow; should that date get pushed out, that might become more problematic. I think as long as that timetable is roughly stuck to, it should be satisfactory.

Q96 Mr Iain Wright: May I ask all three gentlemen a final question about the Green investment bank? Are there any improvements or recommendations that you can make to the Committee about the governance, or proposed governance, of the Green investment bank to make sure that it is the best in class, given that it is, I understand, the first public bank since about 1848?

Paul Lee: We think it is well structured. Colleagues have met with key individuals involved and we have a good deal of confidence in the governance and, indeed, the individuals.

Otto Thoresen: If I may broaden it slightly into the general issue around infrastructure, I agree with Paul that what is in the Bill looks fit for purpose. The practical proof of the pudding is in the eating; it is in how we engage as projects begin to be identified, and the extent to which we can make the structures work. That is about good consultation and engagement with the people who are likely to provide the investment to make it happen.

David Paterson: I cannot add anything to what my colleagues have said. The BT pension scheme, which Paul represents, has been a leading player in this for our industry, so I defer to his superior knowledge.

Q97 Geraint Davies (Swansea West) (Lab/Co-op): The Green investment bank will also have to act as the quality controller and risk assessor—as a gateway to leveraging private sector money on the supply side. I was wondering how important you thought, on the demand side, a programme of public sector procurement focused in on the green economy would be to support further private sector investment? The public sector would be pulling through and creating a market, which would lower private sector risk. How important would that be to maximise the amount of private sector investment supporting green investment?

Paul Lee: I have to say that we tend to favour the private markets rather than the public demand. As long as the regulatory framework is clear, there ought to be clear demand for this sort of green infrastructure, as long as there is an effective price of carbon and consistent regulation, and returns available for solar, wind and the various forms of generation, waste disposal and all the other aspects of green investment that are needed. I am not sure that public procurement needs to have that big a role in this. It ought to be possible through the private sector.

Q98 Geraint Davies: By way of example, imagine that I could design a simple roof tile that doubled as a solar panel, which would cover every school in Britain and generate economies of scale, and which could be scaled up to exportable volumes. If we needed public sector procurement to do that, would it provide a big platform for future profit purposes? Do you not envisage any such opportunity in either consumer or infrastructure markets at all?

Paul Lee: One would hope that if somebody generated exactly that sort of product, there would be demand from schools and the public sector just as there was from the private sector.

Q99 Geraint Davies: Do you have any comments, Mr Thoresen?

Otto Thoresen: I think what I am hearing is that for something to be investable you have to understand the extent to which the business case is sound. In a situation such as this, a large part of the business case will be about renewing the infrastructure in the UK, some of which will be private but much of which will be public. That is my observation, but it is not an area in which I have particular expertise.

Q100 Geraint Davies: But in key strategic things such as the Severn barrage, which had £30 billion of private equity, you do not necessarily need public sector money at all. Is that the view?

Paul Lee: One would hope that that sort of project could be designed to generate returns within the regulatory regime that is there, and will be there consistently for the next 30 years.

Q101 Mr Iain Wright: Mr Thoresen, I am interested in your views about how the new Competition and Markets Authority established by the Bill will link in with the Financial Conduct Authority, which was set up by the Financial Services Act 2010. Can you explain your concerns and the risks involved in changing the competitive landscape at the same time in both areas?

Otto Thoresen: Clearly, the financial services sector and the insurance sector operate in some markets that are substantially about financial risk and risk to consumers through financial outcomes, and some markets that service consumer needs, which are far more broadly based, and where this entity will operate in terms of ensuring good competition. Just as within the Financial Services Authority's new regime—where prudential regulation and conduct regulation take place under the twin peaks model and you have to be clear about how the operation of those two entities will mesh and work together effectively—and given that the conduct authority, under the new twin peaks model for financial regulation, has a competition objective in terms of the operation of the market, a competition authority such as this one must be clear about how it will operate with the FCA. Some sort of modus operandi or memorandum of understanding, which explains where the roles overlap and where they are separate, will be necessary to ensure that we do not end up with duplication or conflict in how regulation is imposed.

Q102 Mr Iain Wright: Is the industry concerned about that? It seems to me that changing one regulatory regime is complex enough, and changing two is hazardous, but changing two that interact at the same time means that the wings are really going to fall off in a vital area such as the financial services industry. Are you concerned about that?

Otto Thoresen: At the moment we have to operate with more than one regulator, and in the new world we will do that also. The need for quality conduct regulation in the financial services sector is clear, and we support strongly what the Government are attempting to achieve here. All we are saying is that we should keep an eye on this as we develop the detail, to minimise the risks of overlap and confusion.

Q103 Mr Iain Wright: Are you getting clarity from Government, or—with respect to Ministers here—do you get conflicting pieces of advice and opinion from, say, the Treasury and the Department for Business, Innovation and Skills?

Otto Thoresen: The financial services regulatory developments are running ahead of this one, so our main focus is engagement with the Treasury around the development of the FCA. Nothing in our engagement with BIS or any other Department suggests that we will not be listened to on this issue, and I am quite happy with the level of engagement we are getting.

Q104 Mr Iain Wright: Do you think that there is a problem with executive pay?

David Paterson: I suppose I should speak on this. The answer is yes, there is a problem with executive pay. We all know that pay at the top of UK industry has moved well ahead of the growth in average earnings and, for that matter, the level of stock markets over the past 10 or 15 years, so there are sensible questions to be asked about the linkage between pay and performance and whether that is working as effectively as it ought to do. It is one the key questions that we as investors have been trying to address in our discussions with companies, going back for the past two or three years in fact. We wrote to the chairmen of the FTSE 350 companies three years ago, and we put down a marker on three points that we have continued to emphasise: we want restraint in the structure of pay, transparency around the measures used to measure success and simplicity around the way in which these sometimes quite complex pay packets are put together for the benefit of the senior staff at our larger companies. We continue to press that message home whenever we have an opportunity. I think that we are seeing a certain amount of movement, but there is still quite a long way to go.

Q105 Mr Iain Wright: Does the Bill go as far as it could in terms of the legislative framework for directors' remuneration?

David Paterson: I think the Bill is helpful, in the sense that the binding vote on pay, which is not something that we had advocated, frankly, is in fact a constructive move. If it is to be really effective, the piece that will work best from the point of view of shareholders is actually the advisory vote on what has been implemented by way of pay in the previous year. That is something that I think will give the binding vote more meaning than simply leaving the binding vote on its own. The combination is actually quite a powerful one.

Q106 Mr Iain Wright: Mr Paterson, may I push you on this? Previously, my understanding was that the NAPF was not in favour of binding votes on pay. Have you changed your position now?

David Paterson: Yes we have.

Q107 Mr Iain Wright: What is your view of the remuneration committee? I read your really interesting discussion paper on this, and your recommendation was that you did not need a binding vote but could vote

against the chairman or members of the remuneration committee. Do you still stand by that? Could you give me examples where that has worked successfully and pay has been restrained as a result?

David Paterson: Shareholders in the UK are in an unusual position by comparison with many other countries in that they actually have a vote every year on the re-election of the directors of the board. That power only came into play this year, and we have seen it being used a little bit this year. It is a power that investors, frankly, used advisedly and relatively infrequently, and that is how it ought to be used. There have been examples in the course of just the past few weeks when it has been used and significant votes against individual directors have been lodged. The impact of those negative votes, because they have never got to the 50% mark, will be seen in the course of the rest of this year, as boards review the significance of those votes and work out how they ought to respond to their investors.

Q108 Mr Iain Wright: In general, do big institutional shareholders like pension funds and insurance managers need to be doing a lot more when it comes to directors' remuneration?

David Paterson: They do not run the companies. The companies are run by the boards on behalf of the shareholders and of the company at large. There is already a significant amount of engagement between shareholders and companies, and that is going to become an increasingly important feature of the investing landscape as we go forward. So there is scope to do things better, and more of it.

Paul Lee: David is quite right that the one key thing is not to usurp the power of the board. It has to be the board's responsibility to get pay right. Our role as shareholders is to call the board to account—

Q109 Mr Wright: But shareholders own the business. That is the key point, isn't it? They need to have more power to allow them to direct the strategy for their business.

Paul Lee: We can never direct the strategy. We have no interest in becoming shadow directors and actually controlling the board and the company. Our role as shareholders is to call the board to account, to challenge them, to press them and to push them to do their job better. It is crucial in binding or advisory votes on remuneration or any other issue to ensure that the dialogue between shareholders and boards is made more effective rather than less effective. Votes are not the end of the story. They are just part of a continuum of dialogue between shareholders and boards, and it is extremely important that that dialogue is encouraged, and that the focus is not solely on votes. Votes are important, and clearly we vote actively on behalf of our clients, but we also engage actively with the directors to ensure that those votes and what we intend by them is fully understood and responded to.

Q110 Mr Wright: Following on from that—this is my final question, Mr Brady—are we looking at this in the wrong way, and focusing solely on directors' remuneration when this is a good opportunity to think about how we could improve corporate governance and make the UK's corporate governance framework still the best in class for the 21st century? Mr Lee, you have written eloquently about the management of risk, and how boards often fail on that. What is the Bill missing in respect of making sure that the UK's corporate governance code is the best it can possibly be? That question is to all three of you, please.

Paul Lee: I will start. I think the UK's governance code is already the best in class. You will probably be aware that there is ongoing consultation right now, which closes next month, and is making some changes, particularly on the audit committee side, which in most companies has responsibility for risk. Those changes in our view are extremely helpful and positive, and will continue to ensure that the UK's governance code is the best in the world.

Our perspective is strongly that legislation will rarely be the solution for better governance. Better governance will be delivered by codes, and best practice guidance that is considered, thought about, and then delivered by boards, rather than imposed on boards in a way that constrains them and forces them into a particular mode of action. What we need is boards that are empowered and cajoled to do the best they can, rather than being constrained and limited to only one set of tramlines.

Otto Thoresen: I would start with the point that Paul made earlier, and David also made about the role of the board to provide governance oversight on executive management, how the business is being run, and the extent to which the business's strategy, direction and risk management are appropriate. Shareholder engagement is with the board of the entity, and the pressures and challenges that we should bring are through that board.

What you have seen in the last six months with the shareholder spring is a number of different areas of tension or frustration which had built up in the relationship between investors and boards, manifesting itself through significant votes on an advisory basis on remuneration reports. What has been going on is perhaps more frustration about moderate performance in a business being rewarded with high rewards—something about the linkage between performance and reward—and poor consultation between firms and the investment community, so not consultation so much as one-way communication with not much listening. Certainly, when we went public with the letter we wrote to the banks in December from the ABI, it was because we felt that our consultation was not getting anywhere, or was not changing things. We have seen many of those frustrations shown in the last six months. For me, the move to a prospective binding vote gives one an opportunity to engage in strategy for the business as well as remuneration—an alignment of remuneration with strategy.

The other point that is really important to the members of the ABI is, how is the value that is created in the firm being shared between shareholders through dividends, employees and executives through reward and, particularly in financial businesses, how is capital retained in the firm to ensure that it can weather whatever economic storms it might have to face? I believe that that discussion gives us an opportunity to step up the quality and richness of the engagement with the boards of companies

Q111 The Chair: I am keen to bring other witnesses in for a brief response.

David Paterson: There is not much I would add, except to say that Otto has finished in the right place: the key is effective engagement with those companies where there are seen to be significant issues for shareholders.

The code, and the stewardship code, look as though they have all the right ingredients. It is execution that is important as much as re-codifying or new codes.

Q112 Julian Smith (Skipton and Ripon) (Con): I am going to press you a bit. I do not buy much of what you said. In the bubble, you and your members had hundreds of billions of pounds under management. Given that we are being asked to legislate now, we need frankness from you about what you should have done in the good times. I think there has been a dereliction of responsibility. You have not been activist. The dinosaur is just waking up. What should you have done better? What should your members have done? What is the failure that you and your members were part of? We need to work out whether the Government proposals are sensible. We need more frankness from you. Sorry; that might have come across as a bit full-on.

David Paterson: When I look back at the crisis—I have seen several, being quite an old man in this world—I think that one of the key differences this time has been the mismatch between, if you like, the encouragement to take risk and the need to deliver returns for shareholders. I think that is where things went wrong. As shareholders we should probably have been more cognisant of the risk issues. There were a number of occasions when we said to companies, "I think that particular performance target for your executive is pretty ambitious. Is that going to create the wrong atmosphere and the wrong culture in the business?" But we did not say that very often, frankly, and we certainly did not say it at many banks, which is where one ought to have been saying it. If one is looking at things that might have been done differently, that is something that we can reflect on.

Q113 Julian Smith: I think that is really useful. Can I take one mea culpa each, because that was really helpful?

Otto Thoresen: I will keep going until I find one that passes your test. I will tend to talk about the financial sector—not surprisingly, given the economic events of the last few years. For me, we have allowed complexity to get built into executive remuneration. The driver for complexity was to try and align outcomes more closely with shareholder outcomes. In fact, it has got in the way of understanding exactly what drives outcomes, and therefore it makes it more difficult to engage around whether it is appropriate or not.

If I am allowed one more, I think there has been something about an acceptance or not enough challenge around how effective boards actually are. What is the make-up of the board? What skills are within the non-executive directors of the board? To what extent is there a push towards diversity on boards? There has been a recent focus on that from a gender point of view, but diversity is a far bigger issue than just gender. Because of that, you have a risk of allowing groupthink to continue in organisations, when in fact if you could address that more aggressively, you could get a more sustainable governance system to deal with the next unexpected event. At the moment, we are quite focused on how we should have dealt with what has just happened and how we should have avoided it happening, rather than thinking about what could be happening next and what we might have to deal with next.

Paul Lee: I am not sure whether this will count as a mea culpa. When I look back at our engagement with the banks—the financial sector—I tend to think we were talking about the right issues and pushing on the right issues, but in retrospect we were not pushing hard enough. Particularly, we were not pushing hard enough when those banks were unresponsive to the dialogue that we were seeking to have.

At the time, we at Hermes EOS were a smaller organisation with fewer clients. We therefore had less clout in those dialogues. In the past few years, not least because of the crisis, we have added a number of clients for our service of assisting them to be good owners of companies, and that gives us more influence, and more confidence that we can push harder—and we will continue to push harder. The more asset owners who join that sort of activity who become good stewards of the companies in which they invest, the better off we will all be. Innovations such as the stewardship code in the UK, which also happens to be out for consultation at the moment and is already a major stride forward in the governance of the investment chain as a whole, have been hugely positive in driving asset owners to think much more actively about their responsibilities as owners of companies. That can only be positive, and it is working through the system, not least in some of the votes that we have seen in the last little while.

The Chair: We have only 10 minutes and six Members want to ask questions.

Q114 Simon Danczuk (Rochdale) (Lab): Briefly then, and for the sake of clarity, what additional powers do you want for shareholders that are not currently in the Bill?

Otto Thoresen: From the ABI's point of view, we feel that the proposals, particularly those on the binding vote on prospective pay policy, are a very positive addition to what is already in place. I think that that gives us enough with which to follow through on the engagement that we have started over the past 12 months to keep, as Paul said, the pressure on. We feel comfortable with what we believe is being proposed here.

Q115 Simon Danczuk: Nothing more?

Otto Thoresen: For us, it is about how you make it work in practice. Going back to a bit of the history, discussions were going on between organisations and investors for years and years, but somehow the impact has not been what one was looking for.

Q116 Simon Danczuk: I will ask your colleagues for their views, but if I were an ordinary shareholder I would have a great sense of conservatism regarding how you guys approach things, and great concerns, because you are not proposing anything more or anything stronger.

Otto Thoresen: I have a very quick comment. I understand that, but remember a comment that has been made a number of times: that the really important thing here is to allow boards to be effective in providing oversight of executive management's running of businesses. The balance that you have to strike is to have enough leverage to apply pressure and challenge but also to allow people to get on with running their business. That is why we are conservative about laying more regulation or legislation on top of a system that substantially works in many sectors but has not worked as well as we would have liked in some sectors.

Q117 Anne Marie Morris (Newton Abbot) (Con): I have a few very brief questions. First, do you think that the Bill gets the balance right when it asks members to vote on policy issues compared with voting on specific things such as exit payments? Secondly, Paul made the point that a lot of it is about getting the education and communication right, so what specific suggestions do you have about what could be done differently to get it right?

Thirdly, if we are focused on linking pay and performance, if the Bill goes through, what impact will it have on how boards change the overall pay structure and strategy? There is probably some confusion—dare I say; and I think that some of it is on purpose—about what a job is worth in terms of basic pay, and what the bonus is. If I look at different industry sectors, what gets paid and is considered to be the pay for the job, and what the bonus is, are weighted in a way that is different from that in other sectors. In some sectors part of the bonus is seen as standard pay.

David Paterson: May I start by saying that I would not underestimate the impact that the changes that have been proposed by Government will have on how those who participate in corporate governance and remuneration go about and think about their jobs? The changes are much more far-reaching than perhaps you recognise, because they will have an impact on how we do our jobs.

As far as the specifics are concerned, there is a challenge in the Bill for investors, in that it is up to us in the first instance to describe to companies what we think is an appropriate disclosure of forward-looking remuneration policy. Companies will not always agree with us: this is part of the give and take of the business we are in. If we do not collectively say that we think these are the standards we are looking for, in terms of future policy, base pay, bonus, share awards and other benefits, we will have missed a trick, frankly, and that is something that I have been discussing with my colleagues at the Investment Management Association and the Association of British Insurers in recent days. There is a challenge for us there, which we have to address.

There is also scope for improved clarity of disclosures, as I mentioned earlier. Transparency is really important in this area. Part of that will be helped—there are different views—in the single number, which people have been talking about as a way of trying to get all this pay stuff into one bucket. It is a complex number, frankly, but if every company applies the same regime to identifying that single number, we will then have an easier job in comparing the BPs, the BTs and the BAs—for the sake of the Bs—across industry. That will, I think, help us.

I think that I have asked two thirds of your question. I have not answered the end, I am afraid.

Q118 The Chair: Are the other members of the panel happy with that?

Paul Lee: Just to add specifically that, clearly, the communication and statement of policy that David has talked about would need to include something on the exit. That is probably the right place for exit payments to be covered, rather than as a separate stand-alone topic.

Q119 Ian Murray (Edinburgh South) (Lab): Welcome to the panel. In the NAPF response to the BIS executive remuneration discussion paper, with regard to question 7, you said: "The NAPF do not believe that an employee vote on remuneration would be beneficial; however we do see merit in employee consultation on remuneration." How would that work in practice? Would you like that included in the Bill?

David Paterson: I am a great believer in best practice—compliance-based regimes rather than legislation—but I will answer the question. It seems to us that there is a need, as I said earlier, several times, for more transparency around the whole remuneration issue. It is not a question simply of boards and management explaining to shareholders. I think they have to explain within their companies as well.

There is a real need to set out the company's policy for paying staff across the piece, so that everyone can understand exactly why they are entitled to this slice, as against the different slice that is paid, say, to a senior executive. There is a lot of room for improved communication within companies, as well as between companies and shareholders.

Q120 Ian Murray: But are you suggesting that that should be done with guidance and not legislation?

David Paterson: That is what I am suggesting, yes.

The Chair: We will try to squeeze in two more questions, if possible.

Q121 Andrew Bridgen (North West Leicestershire) (Con): In my opinion, short-term appointments or terms imposed on FTSE 100 boards can lead to short-term strategies, which can be higher-risk. I should like to have your view on that. Is it not a fact that the Bill should deliver on directors' remuneration, despite Mr Wright's hobby-horse of lower directors' pay? It is not a matter of lower pay or higher pay, but the right pay for the right performance. Do you believe that the Bill can deliver that? If not, what does it need to do to deliver that? Surely, the right pay must be the aim.

Otto Thoresen: I agree with your last point. Some of the votes that have happened in the last six months have been about people feeling that there is a disconnect between the company's performance and the level of pay awarded, rather than being, as they have sometimes been interpreted as, a vote against high pay per se. I think the disconnect has been driving the voting.

The prospective binding vote is where the opportunity arises for us to engage well on that subject. One of the risks we run, which we have to guard against in the execution, is that it might just become a box-ticking exercise, with a boilerplate solution to communication and engagement with shareholders. It should be an opportunity to get under the skin of where the business is going and whether the incentive packages are being designed the right way to reward people for success and not for failure. It should be, but that will be in the way we—

Q122 Andrew Bridgen: So if it gets to the point where they have to vote it down, the system of consultation has already failed at that point, hasn't it?

Otto Thoresen: Yes, absolutely.

David Paterson: I would simply add to that the link I made earlier between the advisory vote on the implementation of policy and the forward-looking binding vote. The connection is very important because on the one hand there will be a proposal for what we are going to do as a remuneration committee, as a board, and on the other hand it will be, "Here's how we've done it." The two must connect.

The Chair: Order. I am afraid that brings us to the end of the time available for the Committee to ask questions of the witnesses. I thank all the witnesses on behalf of the Committee.

Examination of Witnesses

Edward Sweeney, Cathy James, Michael Reed and Mike Emmott gave evidence.

4.45 pm

Q123 The Chair: Good afternoon. We will now hear oral evidence from the Chartered Institute of Personnel and Development, the Free Representation Unit, Public Concern at Work and the Advisory, Conciliation and Arbitration Service. Perhaps I could ask the witnesses to identify themselves for the record and to indicate whether there are any aspects of the Bill on which you would prefer not to answer questions or on which you have areas of specialism.

Edward Sweeney: Good afternoon. My name is Ed Sweeney. I am the chair of ACAS. Areas of concern and interest for us would be the process of early conciliation, so I would be happy to answer questions on that, on how it might look and on how we have been modelling it so far, and I will deal with any substantial questions from that.

Cathy James: Good afternoon. I am Cathy James. I am the chief executive of Public Concern at Work, so I am obviously very interested in clause 14 which inserts a public interest test into the Public Interest Disclosure Act 1998. That would be the area in which I have most expertise, and I will have limited input on other areas of the Bill.

Michael Reed: I am Michael Reed. I am the legal officer, employment, at the Free Representation Unit, so I may be able to assist with the employment areas. I should say that voluntary sector legal advice has not equipped me to help you with directors' pay in any way.

Mike Emmott: I am Mike Emmott. I am an employee relations adviser at the Chartered Institute of Personnel and Development. My special interests are employment law and employee relations, so I will be focusing, if I may, on the part of the Bill that deals particularly with employment regulation. I would be happy to comment on whistleblowing if anybody is interested in my opinion on that.

Q124 Mr Iain Wright: What came out loud and clear in this morning's session was, I think everybody agrees, about the merits of early conciliation. There are, however, real concerns about whether ACAS is adequately resourced to deal with that, and I would like to hear comments from all members of the panel. Mr Sweeney, in the submission pack you state:

"We are currently discussing with BIS the extra resources we might need to operate the new service but we are confident that BIS will ensure that we are adequately resourced to take on the task."

Is that not a bit naive?

Edward Sweeney: If we are not, you will be the first to hear about it. As an independent and impartial organisation, we have had a good relationship with BIS. It has been a sensible discussion, but we realised that there were constraints. We have been asked to do something, and we will try and make the thing fit as best we possibly can. I am confident, however, given the conversations that we have had so far and provided that we get the modelling right and deal with some of the other factors in the Bill, that we can probably make early conciliation work.

Q125 Mr Iain Wright: What do other members of the panel think?

Cathy James: The resourcing issue is obviously really important, and as a small organisation that deals with whistleblowers, we understand that strains that can come across an organisation when calls rise. When economic times become difficult, employment disputes become more difficult to deal with and resources will be really important. Yes, I agree.

Michael Reed: Everyone who you talk to will always agree that early conciliation is in everybody's best interests, because it can offer much better solutions for employers and employees, and it can be cheaper. The danger is often that it is seen as a panacea and, in particular, as a way of saving a great deal of money. It can save money, but it also needs adequate resource, without which there is a real danger that it just lengthens and makes more difficult the whole process and has a counter-productive effect that is the opposite of what people want. We have seen that historically with the previous statutory dispute resolution procedure. In this process, what is being proposed looks better, and as long as ACAS is adequately resourced, it is a good thing, but there is an "if".

Mike Emmott: I agree with that. ACAS conciliation undoubtedly saves money. The worries about funding probably reflect a history of years in which ACAS has been a bit short-changed on resource, partly because of worries in parts of the Government about how it was using its resource. Now that ACAS has this high-profile job and the cost of its not doing it is so obvious in relation to employment tribunal claims and so on, the Government cannot afford to leave themselves open to criticisms that they will not resource their chosen tool.

Q126 Mr Iain Wright: Mr Sweeney, I do not want you to play your hand in public too much.

Edward Sweeney: Actually, I would like to try, as everyone is so in favour of giving me money.

Q127 Mr Iain Wright: I was going to ask about that. Do you need extra money to be able to carry out the task in the Bill?

Edward Sweeney: I think we need some extra money—the big question is, how much? We do not know yet. It depends on the number of cases that we have and the economic circumstances. I know that this morning some figures were mentioned on what sort of money we have asked for. Publicly or privately, we have asked for no

money yet. We have been looking at the situation and discussing what it might look like with our colleagues in BIS.

Q128 Julian Smith: Edward, mediation seems to work well. Your stats are good—congratulations. You have 75% resolution of cases that your organisation mediates. Why cannot other organisations get involved with mediation? There are many small companies out there that are very good firms. Why can they not be involved?

Edward Sweeney: Probably the best way of looking at it is, "Here's one you made earlier." We have a long reputation in relation to mediation and conciliation. We have been around a long time, with antecedents going back to the 1890s in real terms. That reputation for impartiality and independence is hard won and hard defended. I would have some concerns about whether outside organisations—third parties—could command that sort of impartiality and independence. The question would be, how would it be paid for? At the moment, the taxpayer pays for ACAS, and the simple fact is that it is good value for money.

Q129 Julian Smith: What is your view on claimants having to give ACAS permission before you contact their employer?

Edward Sweeney: If you are dealing with a conciliation of any type, whether an individual or a collective one, you have to have the agreement of the party to approach the other party. If that party says, "I don't want you talking to my employer," or "I don't want you talking to my employee," conciliation will simply not work. It is a process of two parties coming together that need to feel trust.

Q130 Julian Smith: Surely, there are two sides to a story. Sometimes, there must be vexatious or daft claims, and a quick call from ACAS to the employer to check them out would clarify the situation quite easily.

Edward Sweeney: That may be possible, but if we do that, the risk to our reputation is tremendous. People might say, "We put our faith and trust in ACAS, and you broke that trust." It does not take much for those sorts of stories to start to permeate around the workplace.

We have considerable experience of handling such situations, and the best way to deal with them is to say to the party, "Look, we're going to contact your employer to seek where we are," or "We are going to contact your employee," because it can be either way, "Are you comfortable with that?" If the answer is yes, we are at least half way to making the approach and finding a sensible solution. If you simply cold call one of the parties, the reaction from either side may be quite difficult for the parties to deal with later, when we are no longer there.

Q131 Julian Smith: Cathy, you know that people have been making out like bandits with the whistleblower situation. It is a sensible reform—huge amounts of money are spent by companies to settle cases—so what is the problem with it?

Cathy James: I agree that it is a perception that the system is being used as a bolt-on to an employment dispute, and I agree that something needs to be done to deal with it.

Q132 Julian Smith: So you would agree that people have been making a lot of money out of it?

Cathy James: I do not think that people have been making a lot of money. When we assess the cases that come through the employment tribunal, 10% of the final cases that go through to a hearing have a private employment dispute at their heart. So it is not that every single case being fought in the employment tribunal is ending up with a private employment dispute at all, but the perception is—I think that this will become stronger as the period of time that you have for bringing a normal unfair dismissal claim is extended from one to two years—that you have no other rights and therefore throw in the Public Interest Disclosure Act. Certainly, anecdotally, that is what we have heard. But our primary issue here is that the law is straining with all sorts of other gaps and loopholes. There is an issue around vicarious liability. There is an issue around the workers who are covered by the legislation—the original intention of the Act to cover student nurses, student doctors. Perhaps non-executive directors should be more clearly covered in the whistleblowing legislation. That would help with financial accountability in the financial sector and in boards—talking about the discussion just now. So there are a lot of areas where the law needs further consideration and that is our primary issue. This is an issue that needs to be dealt with, but in addition to a number of other issues around the protection.

Q133 Julian Smith: So you accept that it has been abused reasonably heavily?

Cathy James: No, I do not accept that it has been abused heavily. I do not accept that at all. I think the perception among lawyers, and they are the people who end up with the difficult case on their desk, is that you throw it in. So, among claimant lawyers, you throw it in perhaps. But I do not think it is played out in the employment tribunal process that everybody is being successful in bringing these types of claims, or that it is being abused to the extent that perhaps the perception is that that is the case. But that does not mean that we do not think it needs to be looked at, but it needs to be looked at in the balance, looking perhaps at the issue of good faith and the motive of the whistleblower. Could that be a countervailing issue that could be taken away from the legislation to justify having a public interest test in the legislation?

Q134 Ian Murray: Can I go back to the ACAS early conciliation points again, Mr Sweeney? Given some of ACAS's own figures and from the analysis it has undertaken, you are looking at an increase of some 24,000 early conciliation cases, which, again on ACAS's own figures, may cost up to an extra £10 million. In response to a question from my hon. Friend the Member for Hartlepool, you said that you were trying to make it fit. Is it the case that you need substantial amounts of additional money, or are you basically taking a good idea and trying to make it fit into the organisation you have currently got, which may be to the detriment to the process working properly for employers and employees?

Edward Sweeney: No. It has to be an element of the former, but we have to the get the figure work reasonably right. We cannot simply pluck a figure out of the air. There have been one or two figures bandied around in the economic impact assessment, but they are not our

figures from ACAS. We want to be able to scope this particular work sensibly, trial it out and see where it goes. We have a fair idea of how it might work from our pre-claim conciliation, on that side of it, but we keep being asked the question by everybody, "How much do you want?" It is a bit like, "How long do you want a piece of string?" We are determined to try and get it as accurate as we possibly can and it will depend on the number of cases.

If I may, there is a slight misconception about the number of cases. If you look at the number of tribunal cases that go through, we get an extra 60,000 to 75,000 a year, but we count them differently than the way others do. For instance, if we have an equal pay case with 200 or 300 people against a trust, we class that as only one case because that is only one conciliation, even though it may be 300 tribunal applications. So we are looking for a sort of steady-state approach. We think that we might get 27,000 or 28,000 pre-claim conciliation, which is what we have now, and we may get the additional figures on top. But that is dependent on the economy and on where we need to be. I do not want the organisation to take a shot in the dark, because that is a reputational risk. A lot of people are putting faith in our early conciliation. We are saying that we want to do it. We are saying that we need to be equipped to do it. In terms of measuring that arrangement, I want to get it as accurate as we possibly can for all our sakes.

Q135 Ian Murray: That is a very useful answer. Can I broaden this out slightly more in general terms and ask if any of the panel members can point to any significant evidence that shows that the Bill would generate additional employment or growth in the economy?

Michael Reed: It is an interesting question. It is perhaps an interesting question for an economist, rather than an employment lawyer, as to whether changing employment regulation can have a significant effect on growth and matters like that. I can only speak as an employment lawyer. From the point of view of what rights and employment laws it affects, this is a relatively low-impact Bill in terms of people's rights. It does not make massive, significant changes to most employment rights and most people's cases. The most significant impact is around conciliation and possibly changes to settlement agreements. We all have views on whether some of those are good or bad things. To be honest, I do not think that it is the sort of radical change that is likely to revolutionise what is going on.

Mike Emmott: I think that both the proposals on conciliation and on settlement agreements have the potential to be useful in terms of making workplaces more harmonious and taking out some of the conflict. There is no doubt that conflict undermines employee engagement, and there is a direct link between engagement and output. The question on settlement agreements is how they will be used. At the moment, they are a safety valve for the tribunal system.

The tribunal system is too intimidating and expensive in every sense for both employers and employees to use as a first choice. So compromise agreements have developed as a way of letting off the pressure. Settlement agreements have the potential to expand the area in which compromise agreements are used and to give employers some confidence that, simply by broaching the subject of performance, they are not going to be subject to some sort of claim at a tribunal, for example, of discrimination or constructive dismissal.

The impact of the change in law on settlement agreements and opening up the possibility for more without-prejudice conversations depends on how it is used. We have not seen the Bill yet. There is the potential, if the door is open too wide on those conversations and there is no protection for the individual taking part, it could be quite damaging and encourage a lot of bad practice.

Cathy James: I was just going to add something around protected conversations. I would mirror concerns raised by the unions earlier today. There is already an extension of the time for somebody to have entitlement to employment protection. I can see all sorts of areas where that might be a door open to bad practice, especially where somebody has raised a concern about malpractice. It is a common route for a bad employer to question the performance of an employee who has raised a concern. Suddenly, they have a route to get rid of them like that. We would be very worried about that development.

Q136 Ian Murray: My final question relates to what Mr Emmott just said. In terms of settlement agreements, if the Secretary of State, as provisioned in the Bill, has the power to alter the amount of compensation to anything as low as median earnings at £25,000 or £26,000, does that not essentially give rise to compensated no-fault dismissal by the back door? Somebody could be earning significant amounts in addition to that and, therefore, it is easier just to go through this process to pay the money in compensation and get rid of an employee than go through the process properly.

Mike Emmott: The obvious difference between settlement agreements and no-fault dismissal is that settlement agreements require an agreement and that is quite important. Obviously there is a disparity of power in many cases, which means that the employee needs a bit of looking after. I do not see expanding without prejudice conversations as Beecroft by the back door.

I have not understood that through a greater use of settlement agreements there is any intention to prescribe how much employers might agree by way of compensation. In some cases, the people who leave might be quite highly paid. Compromise agreements are quite often used for high-value individuals as a way of moving them out of the door without too much hard feeling. I cannot anticipate that it would work. This is an area where employers have flexibility. It would be a great shame, under the banner of settlement agreements, to start trying to second-guess what a sensible level of compensation would be.

Michael Reed: The particular difficulty with settlement agreements is not around settling cases once they have crystallised and once both employer and employee know that they are in dispute and are negotiating. The difficulty is that the current regime provides protection for employees, because it requires there to be legal advice so that they can be told what the settlement agreement means and can have their options explained to them. The real danger that I see is employees being dismissed, sacked, offered a settlement agreement there and then and put under significant pressure to sign on the dotted line, particularly because when employees are dismissed, they have immediate concerns such as about receiving their

latest wage packet. Unfortunately, there are many employers who will take the opportunity to say, "We are letting you go. If you sign this piece of paper, you can have your cheque now, but we are not giving it to you unless you sign."

The current regime, in which you require legal advice in order for the agreement to be binding, prevents that sort of unscrupulous behaviour. And the fact is that there is nothing in employment law that prevents an employer having discussions with their employees about their performance or work. Sometimes you can get the impression in the press that employment judges and the tribunals who decide these cases are terribly unworldly sorts who would regard the very suggestion that someone might be underperforming and therefore might be let go as something uniquely shocking. We are talking about people who deal with a lot of employment tribunal cases and who have seen a lot of employer and employee behaviour. Certainly my experience from appearing in front of them is that, if one runs that sort of point, one is met very quickly with robust good sense from the panel, who say, "You are reading far too much into this sort of behaviour. We know what is common and what is ordinary in employment situations."

Q137 Anne Marie Morris: It seems to me that, of the two objectives of the changes in the employment regime, the first is surely the need to simplify and speed up the process and, secondly, we need to reduce the cost, both to the employer and to the employee. Does the Bill achieve that, or is there a risk of the law of unintended consequences? Let me explain. Before the Bill, there was no such concept as the settlement agreement. After the Bill, we will have settlement agreements, ACAS conciliation if you do not reach agreement under the settlement and then, if ACAS does not work, the tribunal. So in fact, whether you are employee or employer, you land up with three possible stages. Clearly, the intention must be to keep both sides at the earlier stages, to reduce the cost and, frankly, the emotional trauma. Do we run the risk of unintended consequences, and how might we avoid it by making sure that at least the first stage works in the best way possible?

Michael Reed: The reason, as I think I alluded to in passing, is that there is this sort of protection and restriction on how you can settle in a public case—it is to protect employees, and it is there so you cannot be told, as a condition of your employment, "You have got to agree never to sue us for unfair dismissal." That means that there are more limited options of settling an employment dispute than there are other disputes. One of those is through ACAS, and the other is what we currently call compromise agreements, which are to be renamed settlement agreements. My experience of practice is that that does not cause any confusion. People either settle through ACAS or through compromise agreements. Although there are two different options, that does not in practice cause any problems, and I would not envisage any problems being caused by the change of name.

Equally, I have to say, whether you call them settlement agreements or compromise agreements seems to me to be a matter of complete indifference. The real issue is around the sort of protections that you need and whether or not it is right that, out of the blue, employers can have conversations with an employee that the employee is never allowed to refer to later in the course of tribunal proceedings. That is exactly the sort of evidence that Cathy talks about. You know—"On Monday, I raised all of these concerns about our business practices and my concern that something was going very wrong, and on Tuesday you said, 'Your performance is not very good and we are going to have to let you go.'" It is often that timeline evidence that is important in establishing a claim later. It also risks undermining good industrial practice. If you are an employer and you have a problem with the performance of one of your employees, the sensible and proper thing to do is to have a conversation with them and say, "Look, Mr Smith, you haven't been doing your work very well recently. What is the problem? Can we help?" It is later that you go through the process around dismissal and other such consequences. Simply saying, "Well, we'll give you £500 or £1,000 to go away quietly" is not a good thing to encourage employers to be doing.

Q138 Anne Marie Morris: Do you have a view, Mike?

Mike Emmott: In so far as conciliation and settlement agreements do encourage more people not to use tribunals and to find alternative ways of getting along with their lives, then probably they do reduce costs. I cannot see much evidence for simplification. Compromise agreements have been straightforward partly because they have been untouched and more or less little understood. If compromise agreements as such become a matter of more legislative finessing then I would be slightly worried that it would just exacerbate the problem that tribunals already cause. The cost of tribunals is not just financial; there are also serious costs in terms of health. Almost anything is worth looking at if it reduces the volume of tribunals.

Q139 Anne Marie Morris: Is there anything that could be done in terms of these settlement agreements, or the process around settlement agreements, that would mean that they would not be hijacked or face what happened to tribunals, which were originally meant to be nice, cheap, easy ways of resolving problems? What is it that any piece of legislation should or should not do to try to keep things simple, without involving all the advisers, consultants and—forgive me—lawyers?

Mike Emmott: My bid would be to protect good practice and performance management, which is the gold standard for how to deal with difficulties in the workplace. Protecting that means giving more support to small firms. I do not need to discuss that at length because it is a non-statutory approach. Other than that, I cannot think of anything else.

Edward Sweeney: I think that our point of view at ACAS is that the idea of a compromise agreement or settlement agreement does not become the default action of an employer. Most people and employers do not go to work to see what damage they can do to each other. We need to keep a sense of perspective on this particular arrangement. We have set out our view on the settlement arrangements.

Going back to your point on simplifying and cost, the whole process of early conciliation is to see if we can take some costs out of tribunals. Mike is right to say that the implications are not just financial; there is also the stress involved. I regularly talk to employers of all sizes and employees. The only people who enjoy tribunals are lawyers who get paid for them. By and large, the

applicants and respondents find them very difficult and stressful arrangements. Any approach that we can produce at ACAS to try to limit the number of tribunals would be sensible. We do well now, but early conciliation could help us to improve on that particular process.

Cathy James: I suppose there is a risk that the whole process could be lengthened by having a compulsory conciliation process. Presumably, by putting in a discussion with ACAS, you will stop time running in relation to the time that it would take to lodge your claim. There is a risk that the unintended consequence of that, especially if ACAS is not resourced, is that that takes a long, long time so that you are then dealing with the employment tribunal claim months and months after the event, which is already the case. It is certainly true of whistleblowing cases because they tend to be complicated, listed for long periods of time and involve reams and reams of paper. They can be the ones that take 18 months before they get anywhere near an employment tribunal. That is one unintended consequence that I would definitely highlight. The second is around the public interest test itself and the fact that we think that that will result in a field day for lawyers looking at what the public interest is. As far as I can see at the moment, the only legislation where there is a public interest test is with the Freedom of Information Act, where public authorities are required to work out what is in the public interest in relation to the disclosure of information. To have that on an individual's shoulders will have a chilling effect where they are unrepresented, and will lead to an increase in the costs of ligation where they are represented, with many more satellite pieces of litigation—interim applications—around whether it is a protected disclosure at all because of whether it is in the public interest. I can see that absolutely having an unintended consequence.

Q140 Simon Danczuk: I will start with you, Mike, but I want to ask this question of the entire panel. On balance, overall, and in just a couple of words, will workers be better or less protected following this Bill?

Mike Emmott: I find that hard to answer. It depends on the fine print on settlement agreements. We know that employees who sign up to a settlement agreement will be able to bring claims on grounds of discrimination. Whether they are successful does not matter, but the right to claim that they have been discriminated against on one of many grounds remains. Whether they will be able to bring claims for constructive dismissal, I am less clear. If they cannot, then to that extent I think their protection will have been reduced.

Q141 Simon Danczuk: So better or less protected in just a few words then.

Mike Emmott: It is an open verdict as far as I am concerned.

Cathy James: I have no doubt that they will be less protected.

Michael Reed: Obviously less protected.

Edward Sweeney: We have already changed the rules to two years, so that means less protection for everybody. *[Interruption.]* I would have liked to finish, but I am quite happy to talk about resources if you want to.

Simon Danczuk: I do not want to.

Edward Sweeney: The question about the two years is there for everyone to see. The question for everybody to look back on is whether the early conciliation produces, through the law of unintended consequences, a new form of three-step process. We have to try to work to ensure that that does not happen. If the proposal is introduced and done well, I think it is of benefit to employer and employee, trade unions, trade union officials, employer representatives, and not necessarily to lawyers, which I do not think is a bad thing.

Q142 Andrew Bridgen: We are getting into a lot of the minutiae and actually forgetting that the whole aim of this Bill is to stimulate growth and not to get people sacked, but rather to create more jobs. Will the panel give their opinion of how they think employers are going to view the proposals? How the behaviour of employers will change is important. Does the panel believe that employers feel that there has been huge increase in employment legislation and that that is a disincentive for them to take on more staff? Is that a given that we are presuming? Does the panel believe, as perhaps I hope, that these moderate—rather than radical—changes will have a psychological effect on employers in that they are seeing the tide turn back disproportionately to the reduction in regulations? There are about three questions there. First of all, as a premise, do you honestly believe that employers perceive that this employment legislation is a disincentive to take on more staff?

Michael Reed: It may be a perception of employers, but equally it is the perception of—

Q143 Andrew Bridgen: It really does not matter what your perception is. What matters is the perception of employers, as they are the ones who employ people.

Michael Reed: Equally, it is the perception of employees that they are at the mercy of their employers and that they cannot enforce any rights unless they bring a long, arduous tribunal case, which may not get them very much money. What ought to be considered in terms of making policy is what the reality of employment protection is—

Q144 Andrew Bridgen: We are trying to deliver growth, so can we just stick to answering the question?

Michael Reed: What employers or employees perceive about employment law is one thing, but I would hope that both groups' perceptions are based on reality. The reality is that if you take on a new member of staff, you will not have to worry about any unfair dismissal claims for two years. After the two years, if you want to dismiss an employee for misconduct, you will have to honestly believe that they did it; you will have to have some reason for believing that; you will have to have carried out a reasonable investigation into that misconduct; and you will have to give the employee—after all, they have worked for you for two years—a chance to respond to the allegations and to say what they want to say. I do not think that that is an arduous burden to put on an employer.

If you go to a tribunal, the tribunal will take account of your size and resources, and often, if you are a small employer, those issues will be decisive when the tribunal decides whether you have acted reasonably. If we are saying that employers believe that the law is something different from that, the way of addressing their perceptions

about it is through education, rather than through changing the law on the principle that their perception of it is wrong. If their perception of it is wrong, it does not help to change the law to something else.

Mike Emmott: The debate on the link between the Bill and growth is essentially rather symbolic. I do not think there is much evidence that the Bill could conceivably have a significant impact on growth. How could it do so? I do not see it as a deregulatory Bill but, in any case—I am sure the people this morning told you this—the OECD thinks that the UK is a very lightly regulated country anyway. I think that that is a false debate. There is a debate to be had about the impact not on employers, but on employees. That is about whether the Bill encourages better management and whether it encourages a more engaged work force, which is a source of growth. The idea that this Bill impacts directly on growth through employers' attitudes is probably mistaken.

Cathy James: I have not seen any evidence that the protection of employment rights affects growth. I was listening to the evidence this morning, and I did not see that. It is not a proven fact. On whistleblowing in particular, most employers would want to receive an ill-founded whistleblowing concern rather than have a culture of silence, as happened, for example, in Mid Staffs hospital and in some of our newspapers. Questions about when the whistle is not blown far outweigh the question of whether the law protects people—well, the law should protect people.

Edward Sweeney: I do not think the empirical evidence is there, but I think that perceptions need to be addressed. There is an argument about perceptions among some employers, particularly small employers, on that side of it, so I think that that has to be addressed.

Q145 Geraint Davies: I want to come back briefly, Mr Sweeney, to the point about ACAS resources. First, it seems to me that, at a time when we are essentially moving from the divorce courts to mediation—obviously, we are moving from tribunals to settlements—the number of tribunals may vastly underestimate the number of people who would come forward for mediation or settlements. There may be a hidden or lower part of the iceberg that will emerge.

Secondly, the economic conditions that we face—basically, zero growth through austerity, and a greater number of part-time staff and people who are insecure—may well again generate more people wanting to go towards settlements. I just find it rather strange that you should run an organisation, in which your resources are presumably almost fully utilised, that will take on this new burden. I am wondering what different scenarios you have pictured of different futures and how big an increment of extra resources you might need in those scenarios. You seem to be saying, "We'll see how it goes, and thank you very much for offering us some more money, but we don't really know."

Edward Sweeney: I am sure you are very aware as an MP that the negotiation that takes place between Departments is a long and strained one on occasions. The reality, from our point of view as the chair of ACAS, is that we are pretty confident, from the conversations that we have had with BIS, that we can find the resources that we would need to make it work, because if it does not work it falls on everybody.

Q146 Geraint Davies: You are going to do that, but what is the upper limit? How many times do you think your turnover might have to go up?

Edward Sweeney: It is impossible to say, at this point in time, if you look at the number of scenarios. For instance, we do not know whether charging for tribunals would have an adverse effect on either employers or employees. We have to model to find out whether the impact of charging result in fewer calls coming through, or will it result in more calls coming through, because people feel that they have paid their money, and so they are going to go to tribunal? Will there be less, from an employer's point of view, of engaging in conciliation, and the process we have, because people think employers will not have the money to put up front? We have to look at that side of the equation.

The people who come to us for early conciliation, or conciliation now, normally have a bigger issue than what goes on in their day-to-day lives. The question for us in terms of the process—Mike's people in the CIPD have done a great deal of work on this—is to make sure that the management processes and the management we have are good managers. They must know how to have difficult conversations, without racing to some form of quick solution that they think will get rid of an employee. It does not work that way, and it never has.

Q147 Geraint Davies: But in the round, if there is much more settlement activity than there has been tribunal, because people are coming to the surface, and because there are other things such as withdrawal of various rights and human rights and diversity and so on, and whistleblowing—all the other changes in this Bill, which pretends to be about growth—then that may even provoke greater activity at your end?

Edward Sweeney: It may well do, and we have to be ready and quick enough, and astute enough, to see that coming down the track. The helpline we run at the moment is a pretty good barometer of the sort of work we do, in terms of what is coming through in the workplace, so we can see the shape. We take about 1.5 million calls on our helpline. At the moment, that is the access point for pre-claim conciliation. The new process will mean people who are contemplating a tribunal will have to come to us directly first. That is the significant change in this process.

In terms of the volume, it is difficult to say. We have seen, when economic activity rises and falls, that that impacts on our casework. But if people are saying to me, "How much will we actually need?" then at this point in time I am not able to say, accurately. I want to be able to have those conversations with BIS, in an open and honest way, to say, "I need this." Let me give the assurance: if I feel I am not getting it, then I will simply complain and say "We cannot do what you are asking. It will not work."

I cannot simply drop off my other activity to try to fit this one in, because the other activity is equally important. People would want me to settle the petrol tankers dispute. The resources I need for that have to go through. People would want me to do the good practice services, going out and explaining new changes. There is a finite amount of money. I do not think what we have now in our budget would cover any sizeable increase. I am quite clear that we would need some additional resource, but I am not sure yet what level of additional resource.

Q148 Geraint Davies: May I ask the other witnesses, given their expertise, whether they instinctively feel that ACAS will be short of a few bob, to put it mildly, if they are not able to ignore some of these big disputes, and therefore people's rights and hearings may fall off the edge in the short term, while Ministers are scratching their heads and looking for money they have not got?

Mike Emmott: I think time scales for claims being considered and the effect of resource on the time it takes to deal with tribunal claims have gone up and down over the years, so I think it might take a few months before we know what the impact has been. I would not be particularly alarmed by the impact on volumes in the short term, because I think if there is an impact it will just be to move ACAS's intervention a bit further upstream. Hopefully it will actually catch things a bit earlier and reduce the likelihood that individual claims get to tribunal.

Michael Reed: I am very glad to hear that ACAS is so optimistic. I am less optimistic. This is a very significant extra amount of work that they will have to do, and it is certainly possible that some of the other changes in employment tribunals are going to make some elements of their work reduce, or make it easier. However, for example, once people are paying fees to go to employment tribunals, that will make claims harder to settle, because there will be a sunk cost issue, which will make elements of their work harder. I suspect it will come out in the wash, but that still leaves them with a significant expansion of work in pre-claim conciliation.

Cathy James: Will the fee be payable for the conciliation, or after the conciliation? What will happen with that? I would question that, and I think that whistleblowing cases are likely to give you your biggest challenge in relation to making a difference at an early stage, because the early-stage advice is really important with whistleblowing cases. We certainly do not encourage people to take employment tribunal claims, because they are lengthy, stressful and difficult, so I can see a benefit to having that service available—that is, intervening early before issues become really significant interventions.

Michael Reed: There is a real issue around what impact things like these will have on issues such as early conciliation. Under the current proposals—you are waiting to hear back on conciliation—people are going to have to pay a significant fee shortly before getting to an employment tribunal. I am sure that employers will look at pre-claim conciliation, and indeed post-claim conciliation, and say, "Why don't we just wait and see if they come up with that £1,000, because they might not and then we are out of it?" That will not be good employers and it might not be most employers, or a significant minority, but some will.

One problem with all consultation processes around employment law is that people like us come and talk, and we are the reasonable employees and employers. We are not the badly confused employees and employers who do not know what is going on and find it difficult to navigate the process, nor are we the outright unpleasant employees and employers who are not interested in behaving reasonably.

Q149 Chris Ruane (Vale of Clwyd) (Lab): This morning, we heard from the Institute of Directors that the issue of workers, workers' rights and regulation is the third biggest issue facing the British economy. Our own BIS survey said that regulation rates at 6% as an overall concern for businesses, and regulating workers' rights is within that 6%. You, more than anyone we will interview, are at the coal face, or the chalk face of contact with employers and workers. Do you detect any great movement out there for weakening workers' rights? Is it the third biggest issue, or is it part of the 6%? Is the Institute of Directors right, or is it the BIS survey? Is there a great demand out there from the employers you meet on these issues for weakening workers' rights?

Mike Emmott: Not at all, although I have to say that many of our members are medium and large organisations, rather than tiny ones. There is a perception problem. I prefer the BIS evidence, and the BIS survey evidence, and I see no reason to doubt it. On the other hand, people are always putting themselves in other people's shoes and saying, "Yes, I can see that that would be a problem, wouldn't it?" It is partly a matter of confidence. When I talk to people who run small businesses, I am always impressed by how they are—I hesitate to say this—normal, humane, intelligent and competent guys. The fact that their business is small does not mean that they are lacking in any way—no more than the people who run big businesses are lacking. There is a perception problem, but we tell each other stories and we believe them, because they are plausible.

I do not get the impression that employment regulation is a major burden on small firms. The surveys that I see, other than the BIS one, talk about taxation, demand, loans and so on, and those are the issues that businesses really care about.

Q150 Chris Ruane: Are those issues that you have come across addressed in the Bill—yes or no?

Mike Emmott: I will say no. If you could tackle the issue of the confidence of the smallest employers in their ability to cope if they recruited—if you can tackle that by reassuring them—it would be fantastic, because it is a real issue. I do not think you could persuade them, for example, that it is worth taking away a lot of actual legislation. It is not the rights that people object to; it is the machinery that is used for enforcing compliance with rights that I think is the real problem.

Q151 Chris Ruane: Can I ask the rest of the panel their opinion?

Cathy James: I would just say that in terms of whistleblowing, enlightened organisations see that it is in their own best interests to have good whistleblowing policies. They see it as part of good governance, risk management and critical information, and they want to know if they are unknowingly harbouring malpractice. Therefore I have yet to see an employer who has said to us, "Oh isn't it a pain having this protection?" If you get it right you are not at risk in relation to the legislation. It is only if you get it wrong and there has been a failure in some way that people resort to the law. I do not get the impression that business is complaining about the Public Interest Disclosure Act 1998 at all. It has always had cross-party, cross-business support from trade unions and business interests.

Q152 Chris Ruane: Is it the third biggest issue?

Edward Sweeney: From my own experience talking to employers of all sizes, particularly small employers, their biggest concern is probably access to sensible finance.

Q153 Chris Ruane: Is that addressed in this Bill?

Edward Sweeney: It is not part of the Finance Bill is it, on that side of it? I will talk about that for investment in ACAS. The BIS analysis is pretty solid in terms of those arrangements. The biggest concern is a perception issue about employment rights. It impacts on some small businesses. But bad cases make bad law. Anecdotes make bad law. Someone coming up and saying, "I had this bloke come to me last Tuesday."

Mr Iain Wright: You leave Beecroft alone.

Edward Sweeney: I am not going anywhere near that, Chair. As you all know as Members of Parliament, good law requires good empirical analysis. Bad examples are not necessarily sensible for any employment for employers or employees, whether they are large, medium or small.

Q154 Julian Smith: With all due respect, you are so living in a parallel universe on what small businesses in this country need. You can come to Skipton and Ripon any day you want and I will introduce you to risk takers who definitely need this burden lifted. Can I clarify very clearly the points you made about settlement agreements? To summarise, you are all positive about settling pre-tribunal, whether through a settlement agreement or through conciliation? As long as that settlement agreement is voluntary and there is no long conversation that could be exempt from lots of legal questions, perhaps in the form of a letter—a voluntary offer—that is fine? As long as there is no predetermined compensation you would be happy? As long as at the end of the day there is a compromise agreement where there is legal representation on both sides you would feel on balance, even though you do not love settlement agreements, even though you will never think they are the panacea that we need, you are all okay with them? Could I go through with you one by one whether that is the case?

Mike Emmott: Yes. The one thing that is not the case is that I would support settlement agreements any more than I would support compromise agreements, as they now are, at the expense of decent management. You only get there when you have screwed up or when you are worried about something that you are not prepared to face in a more intelligent way.

Q155 Julian Smith: But broadly my four points were fair?

Mike Emmott: Yes.

Michael Reed: Conciliation at the earliest possible stage is always good and mechanisms that make that easier are good, but the fact is, it is not difficult at the moment and there is a risk that if you try to make it easier by removing the protections we will find that the protections were there for a good reason.

Cathy James: I would agree save for one really important issue with whistleblowing, which is that there should not be any gagging. We have put forward an amendment that could make it a positive requirement for lawyers who advise on settlement agreements to highlight the anti-gagging provisions in the Public Interest Disclosure Act.

Edward Sweeney: I would not demur from it, no. As long as, as Mike rightly says, it does not become the default reaction for most employers.

Q156 Andrew Bridgen: A small employer said to me, "The employees have got the rights and the employers have the responsibilities. The balance has tipped too far. At the end of the week I haven't got a right to a profit. When I don't make a profit I don't have any more employees." Mike Emmott has said that small employers are bothered about taxation. Well, vexation is the equivalent of taxation and regulation is vexation. That is what they see this as. It is almost a form of taxation by regulation.

Mike Emmott: I think what employers worry about is when the law is changed. They always struggle to adapt. I do not think many people would want to take away maternity rights. I do not think that many people are opposed to flexible working. The employers I talk to do not ask us to remove the actual rights. That is why I said it is the machinery and legislative change that cause the problem. That is when you get the actual protests.

Michael Reed: There is a real danger of having this debate by anecdote. Some small employers struggle with employment rights, get confused and have difficulty, and some small employers believe that paying their employees should be optional, and that it is absolutely outrageous if someone brings a claim. They are not the majority of employers, any more than it is the majority of employees who are vexatious and out to con something out of their employer by bringing a claim. However, if you are going to have employment rights, you must have a mechanism by which they are enforced.

Further on the small employer point, there is a real difficulty if you begin excluding small employers from certain employment rights—

Q157 Andrew Bridgen: So do you believe that employment rights can only ever move in one direction? They have moved in only one direction for the past 50 years. Is that your aim—that they should always move in that direction?

Edward Sweeney: Can I just go into the mediation part of ACAS, in terms of Michael's response? It is a mixed world out there. There are some very poor employers as there are some very poor employees; that is the reality. To be fair to Michael, FRU does a fantastic job at some of the sharp end of some very difficult cases that no one else wants to represent, so I can understand that. I would not share his view that there are lots of employers who do not—

Michael Reed: I said some.

Edward Sweeney: I would not even say it was some. I think it is a very small percentage, and it gives the wrong impression of work image. That is certainly not the experience of ACAS, and we deal with all types of employers—some good, some bad—and all types of employees—some good, some bad—and, dare I say it, some difficult trade union general secretaries.

Q158 Mr Iain Wright: Good legislation needs good analysis, not good anecdotes. It also needs good consultation. May I bring you back to clause 14, as I do not think we covered that as much as we should have done? I do not think we have a particularly good settlement when it comes to clause 14 and whistleblowing. This, from you, Ms James, is an absolutely excellent submission, but could you summarise what you think the problems are in the lack of consultation—I think you say that it is a missed opportunity—on what clause 14 should look like in order to make it better?

Cathy James: Our primary point is that it should be removed and there should be a consultation on it, so that there is consideration of the other areas in the Public Interest Disclosure Act 1998. The interplay between the public interest test and the good faith test were mentioned by Dame Janet Smith in the Shipman inquiry—that it would be a good idea to remove the good faith test. We have put in a number of ideas regarding the amendment of that, and one of them is to remove it entirely and have a public interest test. However, we are not suggesting that we have all the answers. There needs to be a proper public debate on that matter.

The other problematic issue is that there is a gaping hole in relation to vicarious liability. There are no vicarious liability mechanisms in the Public Interest Disclosure Act. That has come out in a recent Court of Appeal decision, and it needs to be dealt with. It can be quite easily dealt with by mirroring what is in the Equality Act 2010, but again, with the debate going on the protection in the 2010 Act, we would suggest that there should be a proper consultation on this—the protection of workers, public appointments, non-executive directors, student nurses, GPs, student doctors, volunteers and interns. There are a lot of areas where fresh eyes can come into an organisation and be the first to see something go wrong, but non-executive directors are the least protected in the boardroom, and obviously employees. There needs to be some discussion about those fundamental points. Should the police be a second-tier regulator? Should it always have to be on the shoulders of Government to consider prescribing a regulator every time there is a change in regulation, with the loss of the Audit Commission? What happens with that regulatory point? All those issues need to be considered. Our primary point would be: let us start again here and have a proper consultation, as opposed to merely narrowing the scope without thinking about the wider issues.

The Chair: We have just a few seconds left. Does anyone have a last word on this point?

Mr Iain Wright: A bloke in my constituency told me—*[Laughter.]*

The Chair: I am afraid that brings us to the end of the time allotted to the Committee to ask questions of these witnesses, whom I thank on behalf of the Committee. We will now move on to oral evidence from the Equality and Human Rights Commission.

Examination of Witness

John Wadham, General Counsel, Equality and Human Rights Commission, gave evidence.

5.46 pm

Q159 The Chair: Good afternoon. May I ask you to identify yourself for the record, Mr Wadham? I suspect that you anticipate more questioning on employment aspects of the Bill, so let me know if I am mistaken.

John Wadham: Hello. I am John Wadham. I am the general counsel—the head lawyer—for the Equality and Human Rights Commission. I did expect to deal with some of the employment issues in the Bill, but, given the session you have just had, I am very happy to concentrate on the work of the commission and the amendments that are in the Bill.

I should correct one tiny point in the last sentence of our statement, where we said, "The Commission notes the International Coordinating Committee has written to the government". They wrote to the Government some time ago in relation to the consultation paper. We are expecting them to write again about this Bill, but two things have been conflated there, and I am sorry that we got that wrong.

Q160 Mr Iain Wright: I want to concentrate on clause 51. This is the Government's flagship Bill to facilitate enterprise and economic growth. How does clause 51 do that?

John Wadham: Well, it is about a bus, isn't it? They wanted to change some of the provisions that govern the Equality and Human Rights Commission, and this is the bus they attached that to.

Q161 Mr Iain Wright: Does it help facilitate economic growth in any shape or form?

John Wadham: I have some comments on the details of the amendments, but in practice I cannot see that it would have any effect, realistically, one way or the other. There may be some issues about how the commission itself works, but I cannot see that that is going to make any difference to growth. I am not an expert in economics, but I have not seen any evidence as to why it is that provision. It would be wrong for me to comment in detail on that, because I think this is an appropriate Bill for these amendments to be made, if you believe the amendments should be made.

Q162 Mr Iain Wright: My understanding being that there was cross-party, almost universal acceptance of the need for a high-quality Commission for Equality and Human Rights, do you think that what is being proposed in clause 51, in conjunction with cuts to its budget of some 60%, is a negative step?

John Wadham: I think I need to give a slightly longer answer to that question. Obviously, in relation to the issue of resources, if the commission is given fewer resources, we will have fewer staff and less money to do the work that we would want to do. However, that is a matter not for my commission but for the Government, and you should be asking your questions of the Government as to how much money they wish to give us. Certainly we are using this opportunity to become leaner and more effective. The three-year strategy that we produced, which was published by Parliament, and our recent business plan set out a whole series of proposals that we intend to deliver on and that are about doing the best possible job we can do with the resources that are made available to us.

Part of the Government's approach is to change the remit of the commission by tendering for the public service helpline that we currently run, reducing the resources of the commission by removing the money that we previously spent on grants to voluntary sector organisations, which were about the development of equality and human rights issues, but also the provision of legal advice—law centres, advice services—and ending the conciliation service that we provided. One amendment in the Bill would take away the power to provide conciliation. The complaints process that we run for air travel, where individuals—particularly people with disabilities—want

to consider whether to make a complaint against airlines because of issues about reasonable adjustment, etc., will move to the Civil Aviation Authority.

Nevertheless, in a sense many of those decisions are for the Government, not for us, so we will do the very best we can with the resources and the remit that we have, to make a difference and to improve and protect equality and human rights in future.

Q163 David Mowat: I am just following up on the question that you were just asked about whether the changes being made would affect growth. To what extent is your organisation a driver for growth in the economy? That is the implication of the question.

John Wadham: Well, I am a lawyer, so I am reluctant to step into that arena. I can tell you that I have not seen any evidence one way or the other.

Q164 David Mowat: How many people are in the organisation?

John Wadham: At the end of March, we had 371 people working for us. The proposals that we are just about to make to our staff will lead eventually to a complement of 150, so that is a reduction from 371 to 150 over the next year or so, depending on issues of selection and redundancies.

Q165 David Mowat: Is part of that in relation to the changes of emphasis caused by the Bill and part of it relating to efficiency changes?

John Wadham: No, those are to do with the reductions in the resources provided by the Government; the amount of grant—

Q166 David Mowat: Sorry, I understand, but for example I think you do not have the requirement to promote good relations, which was a previous requirement, and the Bill is changing that. Is that facilitating some of the headcount reduction or not?

John Wadham: Not to any significant extent.

Q167 David Mowat: Right. I suppose the question that is left is what will give as a consequence of losing 60% of your organisation. Which part of your service that you currently offer will be diminished? Or do you see it being—

John Wadham: I have mentioned specific issues to do with running the helpline, which will be provided independently by others, subject to a tender. I have mentioned the issues about the money that we provide to voluntary sector organisations dealing with grants and about conciliation and air travel. But the other thing that I mentioned, of course, is that we will have to do a better job with fewer resources, and that is what we intend to do.

We will announce some changes to our staff on Thursday, setting out some of those changes, which obviously we are happy to provide to the Committee. But the driver for those changes is the reduction in resources that the Government are going to provide us with, not the changes in the Bill—I am happy to go through the changes in much more detail—which are not going to be driving those changes. That is the truth.

Q168 Simon Danczuk: John, we may judge how civilised our society is by looking at how we treat the disadvantaged and marginalised. I understand you are a lawyer, but —*[Interruption.]* I genuinely want your view—in all seriousness, how you feel—about the Bill. Does the Bill, as it relates to the work of the Equality and Human Rights Commission, paint our country as becoming more civilised or less civilised?

John Wadham: That is a big question. The evidence that you were receiving before raises questions about the interrelationship between the proposals in this Bill, for instance the employment tribunal process, compromises as opposed to agreements, and the role of ACAS. That is only part of the picture. Not only are there other proposals being implemented by the Government in relation to employment law, but there are other proposals at the moment subject to consultation. This Bill is only a small part of that.

Simon Danczuk: There is a reason why I said I knew you were a lawyer. I was trying not to get a lawyer's answer. The question is: does this Bill as it relates to the work of the Equality and Human Rights Commission paint our country as more civilised or less? What do you genuinely and honestly think?

John Wadham: I want to be as accurate as I can. The proposals that change the remit of the Equality and Human Rights Commission in clause 51 will not make a significant difference to the work of the commission. Therefore, to the extent that the commission promotes the kind of society that you have mentioned, it will not make a significant difference to that society. We would want to keep some of the provisions that are being taken away, but they are not as significant as they might perhaps seem looking at the legislation.

There were other proposals that the Government originally made, such as cutting down the remit that the commission has in section 8 of the Equality Act 2006, which is no longer being suggested. However, this is a missed opportunity by the Government to bring in some provisions that we would like to see. These are the harmonisation between our equality and our human rights remit; and perhaps most importantly, a process whereby we are accountable to you, Parliament, rather than to the Government. We are a non-departmental public body, which means that we have a sponsor Department, currently the Government Equalities Office, which is part of the Home Office. Although that is a traditional approach that Government take to such bodies where they have to have some kind of arm's length independence, we believe that a better and proper independence, preferred by the United Nations when it set out the Paris principles for bodies like ourselves, is the case of the Parliamentary Ombudsman and Electoral Commission. It is easier to demonstrate our independence.

To give you an example: we were considering taking judicial review proceedings against a number of police forces and the Secretary of State—the Home Secretary—about compliance with article 8, which is currently being debated elsewhere; and more importantly about the disproportionality of how stop and search was used. I was debating whether or not to do that at the same time that the Secretary of State was deciding on our remit and, presumably our existence. That raises a question in a lawyer's head—and perhaps in everyone else's—about the separation of powers. We would see

the long-term future of a body like ourselves—whether it is the same or a different one—as subject to your accountability, so that you could decide how much money we should have. You could decide who should be the chair, which is an issue that is going to be debated by the Secretary of State, who can choose the new chair—although I understand that there will be a confirmation process by Committees of Parliament. That would give us the opportunity to tell you more about what we do, whether it is in our annual report or our strategic plan, etc.

The Government's missed opportunity in this Bill in relation to the commission is to make us accountable to you and not to a Government Department—however lovely it is. Obviously it has a different agenda from ours, especially when sometimes we think it is not doing as much as it should be, whether that is about stop and search, equality or human rights.

Q169 Andrew Bridgen: How long has the Equality and Human Rights Commission been in existence?

John Wadham: Five years, since 2007.

Q170 Andrew Bridgen: Not for the first time this afternoon, I am diametrically opposed to the views of the Opposition, who say, basically, "The more we spend in your Department, the more civilised a country we become." I think that we would become a very civilised country if we did not have to spend any money on having an Equality and Human Rights Commission. What is your view on that? Are you a supporter of the entropy theory, whereby if we do not spend lots of money, or you reduce back, we will become, de facto, a less civilised country? Is that anything that you believe? Where do you sit on that spectrum?

John Wadham: Not surprisingly, I believe that the work we do makes us a better society, in terms of equality and human rights. We try to ensure that what we do is about encouraging good practice and ensuring that people do a better job when they are selecting staff or in their procedures, and that the public sector particularly supports and understands what equality and human rights is about.

Q171 Andrew Bridgen: Have you not now done a lot of the heavy lifting in the first five years? Have you not done all the work, or is it a constant flow that you have to keep quelling? Are people not getting the message?

John Wadham: There is a real issue, which I am sure everyone here understands. We can look around at the number of men here compared with the number of women that perhaps there should be—whether they are MPs or sitting on boards—and at whether they are being paid the same as the rest of us. Our evidence is that they are not being paid the same, and that is not just because they take time off to have children. I have already mentioned stop and search. Significant numbers of people seem to be stopped and searched statistically differently in relation to their race, and there are many other issues, particularly about disability. I have had a whole series of cases about how people with disabilities, particularly those in wheelchairs and others with mobility issues, are treated by airlines.

There is a long list of things that we should collectively, as a society, fix. In a sense, whether we exist to help with that fixing is partly a decision for the Secretary of State, regarding how much money she gives us, but also one for you. We were set up by Parliament and were given a remit and powers. I think that we are doing a good job. If we were accountable to you, you could ask us more of these detailed questions, but at the moment the bizarre situation is that when you ask a question about us it goes to the Government Equalities Office to answer—it does not go to us.

Q172 Geraint Davies: The remit of the Committee is enterprise and regulatory reform and I want to ask specifically about the role of the Equality and Human Rights Commission in relation to that. You will be aware, of course, that something like 60% of public sector employees are women, and there is a greater number of opportunities for people from ethnic communities in that sector. The sector has been reduced by something like 700,000—that is the Government objective—so there will be more diversity and equality issues in small businesses, in terms of generating new opportunities. In that context, do you think that you have something special to bring to the table, given that a lot of the driving force of the Bill is about conciliation, which is what you do?

John Wadham: Conciliation is a good thing. There is little point in taking cases to tribunals if they can be resolved amicably beforehand. That is one of the things that we try to do in relation to disability in our conciliation process. There is little point in punishing people if they have done something bad in terms of equality and human rights; it is better that we all understand what the rules are to begin with. That is one of the approaches that we will take in the future, working with partners and others to ensure that people understand the basis and the logic of the process.

Most people want to treat people fairly, and it is not too difficult to understand why they would believe that. A lot of the issues now are about unintended consequences, whether of equal pay or anything else, so that is what we would want to work on. If we continue to exist and have significant resources to do so, we will make a difference.

Q173 Geraint Davies: I guess my point is that if the objective of this part of the Bill is to move away from tribunal-based confrontation and towards upstream conciliation and an understanding of where problems come from—I understand the objective as such from the Government's point of view, and I think that that is everyone's point of view—those insights should be in the conciliation arena, because a lot of the problems may come from equality and human rights issues that may be drivers for misunderstanding; you pointed to issues with people working with disabilities and different genders and ethnicities. First, however, I understand that your resource is being cut and, secondly, your rights to engage are being cut. Do you think that that is a lost opportunity and that the Government should be moving in the other direction if they want more conciliation and less confrontation?

John Wadham: The provision that deals with us specifically is a tiny part of a massive Bill.

Q174 Geraint Davies: But do you think that you should have a greater share, rather than less?

John Wadham: Of the Bill?

Q175 Geraint Davies: Of conciliation.

John Wadham: I think the issue for conciliation is that ACAS does a really good job in conciliation and some of the proposals in the Bill are very good and it should have the resources to do that conciliation. The same degree of conciliation does not exist outside of the employment field. A lot of the cases that we were doing on conciliation concerned individuals who had disputes with service providers, restaurants and banks. It was particularly people with wheelchairs wanting access, although there were other things as well. The remedy that someone has when they allege that a service provider discriminated against them in relation to their disability is to go to the county court. There are lots of reasons why people are anxious about going to county courts. There are internal conciliation processes and small claims procedures that work very well, but many people prefer to have a conciliation process that we pay for, and so do those service providers that have used the service. I do not think that it is particularly important for us to provide the service for conciliation. The issue is who does and that cannot be provided by ACAS, because its service is defined by employment contractual issues, rather than the delivery of services or the absence of services.

Q176 Neil Carmichael (Stroud) (Con): I was seeking clarification. Do you think that, at the end of the day, this Bill does or does not alter your powers or duties?

John Wadham: This Bill reduces our powers and our remit, but not in a way that we are overly concerned about. One of the issues that we are a little concerned about is the issue of good relations, which is about the development of better relationships between different protected characteristics—groups of people. Some of that work that we do can be derived from our equality remit in any event, so the issues in the Bill are not as significant to us as perhaps they would be. They are a missed opportunity. I have mentioned why we think that there should be more provisions extending our remit and/or ensuring that we are accountable to Parliament and not to a Government Department.

Q177 Ian Murray: A quick question. The Secretary of State on Second Reading, when being questioned on clause 51, said that it was merely an administrative tidying-up. Is that your view on this as well?

John Wadham: I would not quite agree with that, but it is not a significant attack on our remit. There are some things which are unproblematic. Different people have different philosophical views about, for instance, section 3. Section 3 of the current Act, which is being abolished, sets out a vision for a kind of society that I guess most people here would want to live in and that is the primary aim of everything that the commission has to do. If that is abolished, it lowers the vision, but nevertheless, I do not think that it is so problematic, because other parts of the legislation provide sufficient clarity on what our job really is. Again, you can have arguments about whether it is necessary to keep that vision, but we will carry on doing our job and doing it well, I hope.

Q178 Ian Murray: Just for clarity, you are saying to the Committee that you are comfortable with the changes in clause 51, alongside a 60% cut in your budget.

John Wadham: No, that is not what I am saying.

Q179 Ian Murray: Can you clarify what you are saying?

The Chair: Very briefly.

Chris Ruane: That was my question, Chair.

John Wadham: We would prefer to keep the remit we have, so we have not promoted the amendments in the Bill. How much money we are given is not our decision. Whatever large or small amount of money we are given, we will do our best to promote the aims and objectives of the organisation, which are the promotion of equality and human rights. Inevitably, the less money we get, the fewer things we can do.

Q180 Julian Smith: There is a variety of proposals on conciliation and early conciliation, and you heard the debate earlier on settlement agreements. Would you confirm for the Committee that, from an equalities and human rights point of view, nothing that the Government are suggesting or proposing will affect in any way day-one rights as you understand them?

John Wadham: In this Bill, I think that it is a good idea to have ACAS involved in the process as early as possible. I also think that changing the name from "compromises" to "agreements" makes no difference at all. The commission is not opposed to the Bill. As we have said in our notice, there are provisions about early resolution of disputes and issues about giving powers to tribunals to impose financial penalties, all of which are good things.

Q181 Julian Smith: Would you agree with the statement that anyone seeking to raise fears in employees that this will affect their day-one rights would be being untruthful and would not be reflecting the Bill?

John Wadham: Well, I have said what I think the commission thinks about this Bill.

The Chair: If there are no further questions from Members to the witness, that brings us to the end of our business for the afternoon. I thank Mr Wadham on behalf of the Committee.

Ordered, That further consideration be now adjourned. *—(Jeremy Wright.)*

6.12 pm

Adjourned till Thursday 21 June at Nine o'clock.