PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Third Sitting

Thursday 21 June 2012

CONTENTS

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Monday 25 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

Katie Lane, Head of Welfare Policy Team, Citizens Advice Bureau

Professor Sir John Vickers, Warden, All Souls College, Oxford

John Morris, Chair of Employment Law Committee, Law Society

Stephen Miller, Member of Employment Law Sub-Committee, Law Society Scotland

Simon Pritchard, Partner, Allen and Overy LLP

Joy Drummond, Partner, Simpson Millar LLP

Malcolm Nicholson, independent panel member, Competition Commission

Robert Bell, Chair of the City of London Law Society's Competition Law Committee, City of London Law Society

Professor Catherine Waddams, Professor of Regulation, University of East Anglia

Dr Gordon Edge, Director of Policy, RenewableUK

Nick Mabey, Chief Executive, E3G

David Powell, Economist, Friends of the Earth

Cllr Nilgun Canver, Licensing Champion, Local Government Association

Ron Gainsford OBE, Chief Executive, Trading Standards Institute

Graham Hebblethwaite, Chief Officer, West Yorkshire Joint Services

Jane Bevis, Director of Public Affairs, British Retail Consortium

Sir David Walker, Author, Walker Review of Corporate Governance

Deborah Hargreaves, Chair, High Pay Centre

Adrian Beecroft, Author, Employment Law Reform Report

Public Bill Committee

Thursday 21 June 2012

[Mr Graham Brady *in the Chair*]

Enterprise and Regulatory Reform Bill

Written evidence to be reported to the House

ERR 05 Mr R Richards
ERR 06 Law Society
ERR 07 Aldersgate Group
ERR 08 TUC

The Chair: We will now hear oral evidence from Citizens Advice and Professor Sir John Vickers. For the record, may I ask witnesses to introduce themselves? If there are particular aspects of the Bill on which you feel unqualified or less qualified to comment, please feel free to say so and that will help members of the Committee to direct their questions.

Examination of Witnesses

Katie Lane and Professor Sir John Vickers gave evidence.

9.1 am

Katie Lane: I am Katie Lane, head of welfare policy at Citizens Advice. I am here to talk about part 2 of the Bill and the employment aspects. Those are the issues that I am briefed to speak on today.

Sir John Vickers: I am John Vickers, an economist from Oxford university. I am here in a personal capacity. The formation of the Competition and Markets Authority is the part of the Bill that I would do best to focus on.

The Chair: Before calling the first Member to ask a question, I should remind all members of the Committee that questions should be limited to matters within the scope of the Bill. We must stick strictly to the timings in the programme motion that the Committee agreed. I hope that I do not have to interrupt anybody mid-sentence, but I will do so if needs be, as colleagues now know. I call Iain Wright.

Q182 Mr Iain Wright (Hartlepool) (Lab): I am a bit concerned that you were looking at me as you made that statement, Mr Brady. I hope that you will not rule me out of order.

One of the purposes of the Bill is to improve the competition regime of this country, in some respects providing a better deal for consumers. Do you think that the Bill does that? What additional measures could be put in the Bill to improve it?

Sir John Vickers: I completely share the aims that the Bill has in that regard. As may be clear from the short note that I sent to the Committee a couple of days ago, I am not sure that combining the Competition Commission and the Office of Fair Trading into a single competition authority will be positive for that. It may be, but I would question that.

Q183 Mr Iain Wright: Could you elaborate a little further? Your note was important and will help the Committee's deliberations when we get to that part of the Bill, but could you elaborate for the Committee now?

Sir John Vickers: Certainly. I should say first that I have been remote from this area of policy since I left the OFT, so I would rather put the points as questions rather than as definite doubts that I have. The most important thing for UK competition policy, which has had a good legal basis for the past decade or so, is to improve the robustness and speed of decision taking in the casework. In the area of mergers, I believe that combining the OFT and the CC has a very good prospect of doing that. In the area of market investigation references, in which the UK has a special regime, it will be of paramount importance to have very strong separations between the case initiation part of the CMA and the part of the CMA that reaches conclusions and introduces remedies. Those separations will have to be so strong that the efficiency gains from combining the two bodies will be rather limited. Given all the institutional upheaval to get from where we are to the new regime, it is an open question whether the benefits for the casework would outweigh the cost of doing that.

Q184 Mr Iain Wright: Do you think that the Bill benefits consumers?

Katie Lane: As I said, I am going to focus on part 2 of the Bill, on employment tribunal reform. Although we broadly welcome the reforms, particularly the measures for early conciliation and settlements, we think that there is some overstating of the rise in employment tribunal claims, which is the Government's justification for the need for the measures. That is largely because of the way in which some of the figures are presented for the rise in claims. The combined figures for single claims and workers included in multiple claims suggest a rise over recent years, but that is largely owing to the number of workers included in multiple claims. When you take single and multiple claims together, the actual net cases show a slight decline in the past year. The rise was a little blip at beginning of the economic downturn. The strong case for urgency might therefore be slightly overstated, but we think that some of the measures relating to the form of employment tribunals will be good for employers and employees.

Q185 Mr Iain Wright: My final question is to you, Sir John. It is on directors' remuneration, which is a slightly different topic that is apart from the Bill. You may be aware that the Secretary of State for Business, Innovation and Skills, made a statement to the House yesterday. He has talked about annual binding votes on shareholders regarding executive remuneration, but votes will now be every three years, unless there is a change to the policy. The word "change" was not defined; it is ambiguous. What is your general view about the measure in the Bill regarding directors' remuneration? What do you think about an annual binding vote for shareholders?

Sir John Vickers: It is not a question that I have considered in sufficient detail to give a detailed response. On general grounds, I welcome measures to enhance transparency in that general area. Of course, in the banking work with which I was involved in the past couple of years, that was and remains an important set

of issues. The work that the Banking Commission did was not directly on that, but indirectly, it was certainly relevant to it. One of our main concerns—it is by no means the only one—was to ensure that the taxpayer was not on the hook for future losses that banks might make.

Your question has an additional twist in a banking context, because such large amounts of taxpayer money have gone into institutions at a time when the remuneration—in some parts of the sector, at any rate—has continued to be quite handsome.

Q186 Julian Smith (Skipton and Ripon) (Con): Congratulations on your report, Sir John. First, will you go into further detail on the concern you have about the merging of the institutions and why you think there is a problem between the case investigations and the remedies? My second question is about UK competitiveness in financial services. Do you have any concerns, arising from the announcements that the Secretary of Sate made yesterday on directors' pay, about attracting talent to this country?

Sir John Vickers: First, I will elaborate on the point I made earlier. Any good competition law regime has at least these three elements: merger control, a prohibition on anti-competitive agreements and a prohibition on the abuse of dominance. Through the Enterprise Act 2002—and the Competition Act 1998, which came a few years before it—we have those elements in place. What is unusual in the UK regime is a system where markets can be investigated and remedies applied, which can change market conditions very significantly, even though no one has broken any prohibition in the law. That has existed for decades in one form or another and many people regard it as a very valuable part of our system and, on balance, I agree with that view.

When I was at the Office of Fair Trading and Sir Derek Morris was chairing the Competition Commission, he would sometimes be questioned in international forums about this because through American eyes, for example, it would look like an unusual part of the regime. His response, which I think was very strong, was that no case that comes to the Competition Commission as a market investigation reference has been initiated by the Competition Commission. It is issued by an entirely separate body: the OFT. That sharp and total separation between initiation and decision has enhanced the robustness of this aspect of our regime, which is unusual by international standards but positive.

With mergers it is different, because a merger case is initiated not by the authorities but by the merging parties. In any regime, when merging parties want to do a significant merger, there will be scrutiny of that. My worry is that by combining these functions into one organisation, even though it may be entirely consistent with human rights legislation, it weakens that element of the system. When you have two organisations under one roof, you need an extra strong wall between the two parts. That will necessarily limit the efficiency gains that may come from the combination.

There is a rider that I might add, which is the final paragraph of my note. Along with the combination of the competition functions of the OFT and the Competition Commission, there will be a removal of a good deal of the consumer policy role that the OFT has had. I am not entirely clear from Government statements how far that will go. I found, when I was at the OFT, that a very important thing to try to do was to make competition law enforcement consumer-focused and, at the same time, to have a proper market context and understanding for consumer policy interventions. All those things can be achieved with the separation of powers, but it can be a bit harder and it would be important to have safeguards on that front.

Q187 Julian Smith: Is there anything that you would recommend to this Committee to be introduced into these proposals to give the safeguards that you want, or do you just want the Committee to be aware of these concerns? Do you think that there should be something more in the law that we are making?

Sir John Vickers: It is not for me to give advice; I am here to answer your questions. On the last point about whether a CC-OFT merger on the competition front will lead to a separation between competition and consumer policy, I suspect that that is not a question for legislation, so long as the OFT continues to have the powers. It will be more about how it will work in practice, and what the division of labour is between trading standards and the OFT. There are a number of markets where I believe that it was a very healthy thing, including within the organisation, to have competition and consumer matters together. That is consistent with what I have seen in Government statements, but I think that it will be a soft rather than hard legislative solution.

Q188 Chi Onwurah (Newcastle upon Tyne Central) (Lab): I, too, congratulate you on your report and on your note, which was very helpful. I want to concentrate on banking for my question. The Bill and supporting documentation is silent on banking. You can argue that that is because there has been a lot of discussion and debate on banking already, part of which was initiated by your report, but the banking sector has significant competition failings—85% of all small business loans come from only four banks. Why does the Bill not refer to banking? Do you have concerns about competition in banking and how that will be addressed following the changes your report suggests?

Sir John Vickers: Of course, the Bill does refer to the Green bank. I do not think it is any criticism of the Bill that its competition aspects do not refer specifically to banking, because this is about the general competition and consumer law of the land and the institutions that administer it, so I would not expect banking-specific parts of this legislation.

As to the competition issues in the sector and more general consumer issues around conditions for informed choice, we in the Banking Commission made recommendations under three broad headings. One was the importance, as we see it, of ensuring that an effective challenger results from the Lloyds divestiture that is under way and is the subject of commercial discussions; second was a big step forward in ease of switching between current accounts, and consumer confidence that that switching will go well; the third, which is relevant for another piece of legislation, was that the new Financial Conduct Authority should have a clear central competition duty in carrying out its work for the future.

Q189 Anne Marie Morris (Newton Abbot) (Con): Sir John, I have two questions on mergers. First, were you surprised that small mergers were not excluded?

[Anne Marie Morris]

There was some debate about that, but ultimately the very small was not taken out of the regime. Secondly, with regard to the changes, clearly we retain the voluntary reporting of mergers, but there is a new power to unpick mergers which move forward, in a way which is not helpful. Will that work in practice, or will it make mergers more complicated and frustrate them?

Sir John Vickers: Those are both long-standing questions about the UK merger regime and, indeed, others internationally. On balance, I think that it is entirely reasonable to continue without a special carve-out for small mergers. One of the problems is that some mergers may be between relatively small companies, but in relation to the markets that they serve, they might not be so small in relative terms and there is a danger that there could be, incrementally, a substantial loss of competition if there is not some check on that.

On your second question, as between mandatory notification and the self-notification system, there is, in some ways, a higher regulatory burden with mandatory notification. There is, however, the risk that mergers will go through the net, without mandatory notification, that would be caught otherwise. Again, I think that it is a reasonable judgment on balance. In fact, either way; when I was at the OFT and we thought about this we were comfortable at the time without a mandatory notification system, because the incentives on the parties, I believe, are quite strong to notify; in part because of what can happen, even under current law, if an anti-competitive merger were to go through unnoticed, and also because the information available to the authorities is pretty good. I do not think that we have had many cases of things going through the net unnoticed, so I would not criticise the Bill on those counts.

Q190 Ian Murray (Edinburgh South) (Lab): I have three quick questions, mainly directed to Katie. You very much welcome the provisions in the Bill, with some provisos, but what impact do you think the insertion of fees into any of these processes may have on the provisions?

Katie Lane: We are concerned about the introduction of the fees regime. We think that that will increase the obligation on the Government to do more to ensure enforcement of the payment of employment tribunal awards once they have been made. We are concerned that at the moment we are still looking at figures showing that one in four employment tribunal awards are never actually enforced. Even under the new scheme set up a couple of years ago for awards to be enforced by High Court enforcement officers, latest figures show that only 50% of those are enforced and 50% are found to be unenforceable within a year, even though employees who have won their award have paid an extra fee to have a fast-track service.

We think that fees to use the employment tribunal service risk causing a further barrier to justice, although in our response to the consultation we did propose an alternative fees regime that we think would limit that barrier to justice and ensure that people would still use the service. That was given recognition and I think that was firmly on the Government's mind, but we thought that the system that we proposed would make that fairer.

Q191 Ian Murray: Can I just pick you up on the issue you raised about compensation awards not being paid? I think you said that one in four never get paid or are never enforced. Clause 13 puts financial penalties on employers—obviously, financial penalties from the Government. Do you think that that could make that one in four worse on the basis that employers are more likely to pay the Government, because of the potential enforcement, rather than paying the compensatory awards?

Katie Lane: It is a really interesting question. We welcome the inclusion of financial penalties for employers in the Bill. That was suggested in the consultation last year. At that time it was suggested for every case where the employer had failed to comply with their employee obligations. We suggested that that was perhaps not appropriate. If employers were shown to have been repeat offenders, it would be more appropriate. There is a big question about how those penalties will be enforced, and the Bill does not say anything about that. It is something that we are interested in, because we assume that there will be a high number that are not paid, so the enforcement regime for those penalties would be really important. Whatever the Government suggest in relation to ensuring that they are enforced, we would like the same mechanism to be used for the payment of unpaid awards won by the employee.

Q192 Ian Murray: The Bill proposes that compensatory awards could be varied for different sizes of business. The Employment Lawyers Association has said that that may make people think twice about joining small businesses. What is the Citizens Advice view?

Katie Lane: On that, we are waiting for clarification about how those decisions will be made, but there is a concern. Again, obviously, we have to take account of the enforceability of those awards, but it is something that we would wait to hear more about. The largest penalties and awards are not usually the ones that we see. We generally see those from lower income and more vulnerable workers with smaller awards given. We are interested in that, but we would like to see more and the justification for that.

Q193 Lorely Burt (Solihull) (LD): I was interested in your opening comments when you said that the increase in the number of tribunal applications is a blip. Perhaps I am wrong, but it is my perception that in fact the tribunal system has not worked very effectively for a long time and that there have been long delays—inordinate delays—to get justice for employers and employees for some time. We heard on Tuesday from employer organisations that said that a lot of employers will settle out of court, even though they have been advised that they have a really good case, because of the fear of the whole tribunal system and of losing reputation and things like that. Do you think that the introduction of the conciliation stage will be helpful, and will clause 12's proposed changes to cap unfair dismissal awards be helpful?

Katie Lane: First, on the comment about whether the system is working or not, we accept and recognise that there are long delays in processing of current tribunals, so the measures taken in the Bill to improve that are welcome. My introductory comments were not to say that it is working well, but more to say that the kind of figures the Government use show a huge spike that is to some degree misleading.

Commenting on the use of ACAS for any case before it goes to tribunal; no, we welcome that and we think that early conciliation and early settlement are always preferable to going through to an employment tribunal. Our concern and question is that we would like assurance that ACAS will be sufficiently resourced to ensure that it is a gateway to resolution, rather than a logjam that will just put the delays in a different place. On the issue of early resolution, we have seen advice given by citizens advice bureaux and law centres prevent many cases from going through to tribunal, so we regret the fact that employment is coming out of legal aid scope. We think that there is a risk that that could result in more cases going to tribunals as a result of the changes.

Q194 Fiona O'Donnell (East Lothian) (Lab): I wonder, Katie, whether I may take you to clause 14, which deals with whistleblowing? Whistleblowing has a really important role, as we saw recently when it exposed abuse in the care sector. Given the proposed changes to employment law, which I realise are not within the scope of the Bill, do you think that the Government's claim that we do not need prior consultation on the clause because it will be scrutinised by Parliament is adequate? Would we have benefited from prior consultation on the clause?

Katie Lane: I think that we always have concerns on whether there could be more consultation early on. We are aware of some of the alternatives being put forward on this by others, but it is not something that we have looked at in great detail.

Q195 Neil Carmichael (Stroud) (Con): We heard on Tuesday, from the CBI in particular, that a main concern about business growth is employment law. An objective of the Bill is to encourage employers to employ more people. Do you think that the measures will encourage them to do exactly that?

Katie Lane: It is difficult to say really. I do not think that we really think that the current regulation is causing huge problems. Some of these will make small steps. On settlement agreements, we were encouraged by the new clause as we had some worries about that. We would still value some further clarifications of that, but I know that that may be something that is encouraging to employers, and we think that is perhaps less worrying than we initially thought. They can be used in discrimination cases and only not used in unfair dismissal cases. I think that is an important clarification—that it is not eroding employment rights. For us it is a balance—risking the eroding of employment rights is a real concern, if there is not a clear case that it will improve things for business.

We certainly very much welcomed that on Second Reading the Secretary of State confirmed that he does not intend in any way, shape or form to introduce some of the Beecroft measures, particularly the hire and fire aspect that would be very worrying and not necessarily help employment growth. It would actually be of huge detriment to employees.

Q196 Mr David Anderson (Blaydon) (Lab): Can you expand on what you said about the numbers going to tribunals? Is the reality that most of the volume of tribunals over the past few years has been collective cases, particularly on equal pay for women? Can you mention, if possible, your view on the removal of lay members from tribunals?

Katie Lane: On the first point, particularly, the growth seems to be the larger number of workers included in a multiple claim. When you take the single claims and the multiple claims together, the figures have not changed. I have got the figures to hand, but I might lose myself if I go through them all. The figures have not seen growth at all; it is the larger number of workers included in the multiple claims.

The Chair: I am sorry, but that brings us to the end of the time allotted to the Committee to ask questions of these witnesses. I thank you both on behalf of the Committee. We will now hear oral evidence from the Law Society, the Law Society of Scotland, Allen and Overy LLP, and Simpson Millar LLP.

Examination of Witnesses

John Morris, Stephen Miller, Simon Pritchard and Joy Drummond gave evidence.

9.31 am

Q197 The Chair: Good morning. Welcome to all the witnesses. May I ask you each to introduce yourself for the record? If there are particular areas of the Bill on which you feel unqualified or less qualified to comment, or areas on which you would particularly welcome questions, please say so.

Joy Drummond: I am Joy Drummond, a solicitor with about 30 years' experience specialising in employment law, from Simpson Millar. The areas of the Bill that I most think need further discussion are how it is envisaged that pre-action conciliation will be implemented—I think that there is a much better way of doing it—and the confidentiality of negotiations before the termination of employment; I have a bit to say about that too. There are other aspects, but those are the two main ones.

Simon Pritchard: I am Simon Pritchard, a competition partner at Allen and Overy, formerly of the OFT. I will be speaking in a personal capacity on the competition aspects of the Bill.

Stephen Miller: My name is Stephen Miller, and I am a solicitor in private practice in a firm called MacRoberts. I am also a member of the employment law sub-committee of the Law Society of Scotland, not the tax law sub-committee, as it says in one of your papers. You will probably gather from that that I will be speaking about the employment aspects. I am particularly interested in the reduction of the compensation limit and the introduction of protected compensations, and the definitions surrounding that.

John Morris: My name is John Morris, and I am senior partner of a firm called Burnetts in Carlisle. I have practiced employment law since 1974. I am a member of the employment law committee of the Law Society—the immediate past chairman—and I have been a part-time, fee-paid employment judge since 2000.

Q198 Mr Iain Wright: I would like to focus on part 2 of the Bill—so, Mr Pritchard, you can relax for a couple of minutes—and three aspects in particular. May I start with clauses 7 to 9? I was really interested in the Law Society's submission, because sitting on the Committee one could be forgiven for thinking that the reason why we are in a double-dip recession is the number of employment tribunal cases going through at the moment, but Mr Morris's submission says that they are actually

[Mr Iain Wright]

falling. What is your view in terms of the number of tribunals and the impact that that is having on economic growth in this country?

John Morris: The Bill is predicated on the increasing number of employment tribunal claims—unmeritorious claims, at that—which simply is not supported by the evidence that we have seen. I was at a meeting on Monday afternoon with senior members from ACAS, the employment tribunal system and other such organisations, where the statistics were given. The figures have fallen year on year, except for the multiples, equal pay, as someone mentioned, and the airline dispute with the repeated submission of claim every three months. Take those out, and the figures have fallen year on year.

Q199 Mr Iain Wright: Is that your experience as well, Mr Miller?

Stephen Miller: Yes.

Q200 Mr Iain Wright: Is that your experience, Ms Drummond?

Joy Drummond: Yes. Delays are mentioned, but I think that is more to do with resource. We have had situations where tribunals cannot sit for as many sessions as they might be able to because of budgetary constraints; they are getting near to the end of the time. In fact, I am involved in the airline litigation. We are lodging claims every three months against about eight airlines—there are hundreds and, sometimes, thousands of claimants—so no doubt that will affect the figures, quite apart from the equal pay claims.

Q201 Mr Iain Wright: Everybody seems to recognise the general point that early conciliation is a good thing, although some reservations have been expressed that the proposals in the Bill are somehow too complex or technical. Will you expand on that? What do you think could be done to amend what is in the Bill to allow early conciliation to be much more fluid and efficient? May I start with you, Ms Drummond?

Joy Drummond: I agree: pre-action conciliation is a very good idea, and I am not even against the idea of making it compulsory that people try conciliation before an employer has to respond to a claim. The difficulty is that the method proposed by the Bill, as currently drafted, is unnecessarily complicated and will lead to more uncertainty, more litigation, more cost and management time for employers—not to mention that it places additional hurdles in front of claimants with valid claims.

I can expand on that, if you like, to say why. Briefly, it is completely unnecessary, because there is a solution that is much more simple and straightforward, which will not have all those adverse effects. The problem with what is drafted is that, whereas now you lodge one claim on one form within one time limit and then the tribunal sends it to ACAS for conciliation, under the new proposed arrangements you would have to lodge two prescribed forms within two different time limits, and the second time limit is going to be hard to work out. I tried to work through the Bill with an actual example and I would say, as an employment lawyer, that I found it quite difficult.

The arrangement is also based on uncertainty. One thing that it depends on is that you have to take away the time at the ACAS conciliation, which is calculated by deducting the period of time between when ACAS receives the prescribed form and when the claimant receives or is treated as receiving the certificate from ACAS. I can see all kinds of problems with that, both evidential and legal. I do not know whether you recall the disciplinary and grievance procedures that people had to go through before going to a tribunal, when there was all that satellite litigation, but that will look like a picnic compared with this.

Q202 Mr Iain Wright: Is that your view as well, Mr Morris?

John Morris: It is, indeed.

Q203 Mr Iain Wright: Mr Miller, do you think that the arrangement will be too technical, too complicated?

Stephen Miller: I take a slightly different view. I think it is complicated, but not unnecessarily so. Of course, ACAS already does pre-claim conciliation—it has very high success rates—and one reason it puts that down to is the fact that nobody is putting anything on paper at the moment, so ACAS catches things before people, usually with the benefit of lawyers, take entrenched positions.

We have dual needs here: we have the need for ACAS to do the pre-claim conciliation with as little on paper as possible and then, when it is handed to us, we need quite a lot on paper. The underlying problem is really that very aggressive time prescription—usually three months—operates in employment law, so claims have to be raised quickly. That is generally a good thing, but that builds in its own complexity and means that if the ACAS pre-claim conciliation fails, which it probably will in the majority of cases, there is a need for people to state, with appropriate specification, all the claims they are taking and to get them in.

I agree with Joy that in some cases the period will be as short as a month, after the conciliation fails, for getting a claim in. But I take some comfort from the fact that the individuals will have been through the hands of ACAS, and if ACAS has not effected a pre-claim settlement, it will at least have been able to give them some guidance as to what to do next. That is one of ACAS's strengths.

Q204 Mr Iain Wright: On clause 13, which is about the imposition of financial penalties on employers, it seems that nobody wins, except perhaps the Government through a tax-raising power. Employers do not win, because there is the sense that financial penalties will provide employees with "additional leverage", which is the actual phrase used in the Law Society's submission. Claimants do not benefit from the penalty either. What should clause 13 look like? Should it just be scrapped from the Bill?

Stephen Miller: I said in my three quarters of a page that I thought this was long overdue. Successive Governments have spent a lot of time laying down legislative conditions to improve employment relations, and a lot of employers ignore that. I have some issues around the level of fine and so forth, but in principle I have no difficulty with this. It gives an incentive to good employers who pay attention to what they have been told and comply.

Q205 Mr Iain Wright: Mr Morris, do you agree with Mr Miller?

John Morris: I would not take great issue with the principle of what he says, but employment tribunals started by compensating employees for various things. Penalties were then introduced for not having a contract or not consulting in transfer situations, and the penalty goes to the claimant. This is the first example where the money goes to the Exchequer. If the trigger for that is "aggravating features", which is what the Bill says, who has been aggravated by those features? Answer: the claimant. So who should get recompense? The claimant.

Joy Drummond: I agree with Mr Morris, but I would add one more point: if they are to come in, I feel very strongly that, in circumstances where the claimant has been granted an award but the employer has not paid it, any penalty should first go to compensate the claimant, because it seems unfair that the employer is likely to pay the Government first, partly because the sooner they pay, the less they have to pay. It would be unfair to have a situation in which the Government benefit but the claimant does not, and possibly has to go through enforcement procedures, which will be particularly difficult for people acting in person.

Q206 Mr Iain Wright: My final question is on clause 14, which is about whistleblowing. Do the Bill and the clause as it stands achieve their objectives? We heard some very interesting evidence on Tuesday that suggested that they do not. What are your views?

John Morris: The problem that is being addressed arises from the decision in the case of Parkins *v.* Sodexho Ltd, where the Public Interest Disclosure Act 1998 had introduced the provision that if someone discloses a breach of a legal obligation, that person is protected, which is fine. That case, however, said that that could be a discrete breach of obligation in a contract of employment between employer and employee. It is hard to see what the public interest is in that, if it is about the contract between you and me. That is the mischief to be addressed, but it has been addressed by introducing the requirement for public interest and applying that to all the strands—health and safety, environmental safety and disclosure of a criminal offence—which, by implication, are already in the public interest. The requirement for public interest has been introduced for all the strands and not just for breach of a legal obligation. That is the first point.

The second point is that the requirement for public interest has been introduced in terms that the claimant reasonably believes that it is in the public interest, but the test should surely be that the employment tribunal is satisfied that it is in the public interest.

The Chair: In opening questioning out to other Members, may I suggest that we first focus on the competition aspects and then move back to employment?

Q207 Anne Marie Morris: This is a question for Simon. The intention was to strengthen the anti-trust regime and make it more efficient. Do you think that the changes in the Bill achieve that?

Simon Pritchard: They might. It is one of the most controversial topics, as I set out in my written remarks, and, somewhat ironically, it is not really an issue that directly relates to the merger of the OFT and the CC. It is an issue that has been around for many years and has not gone away. If anything, it has got more serious recently. There is a part of me that says that if we are going to do something bold and ambitious—in a way, this reform is bold and ambitious, and I have a lot of sympathy with Sir John Vickers's view that it could go well or it could go wrong—we will not know for sure until we try. I see a strong case for the prosecution model, which obviously was consulted on. I accept all the risks that that more bold, ambitious and revolutionary change would bring. I think that where I tentatively come out is that the current reforms in which the OFT is engaged should be given a chance. The spirit of where the Bill is at is that the OFT is on probation to deliver on these internal reforms. I think that they are broadly all in the right direction. Had it been all up to me, I might have been bold, but given where everybody else is, a reasonable balance is to go down the intended path—tweaking the administrative model to make it as efficient and robust as possible, but keeping the situation under review, whether by a reserve power or by Parliament revisiting the issue, to give it a chance to move and, in some ways, embrace the logic of our common-law litigation model.

Almost everybody agrees that full-merits review by the Competition Appeal Tribunal is of paramount importance. Once you take that as a cardinal principle, the move to the prosecution model is in some ways still revolutionary, but not as radical as some would suggest. Speaking as a lawyer, that is where I come out. I wish the OFT the very best for delivering in that way over the next couple of years, but I think that there should be a degree of putting to the proof.

Q208 Chi Onwurah: On the merger between the OFT and the CC, your submission indicates that you are largely in favour, but you emphasise the importance of having a fresh-pair-of-eyes review. We have heard that strong organisational separation will be required. What are the implications for resourcing in that case, particularly in reference to the predicted savings associated with the merger?

My second question is about removing the dishonesty requirement with regard to entering into cartels. You have said that that is one of the more contentious provisions. Is that the right way to address the lack of successful action by the OFT?

Simon Pritchard: On the first question about the OFT-CC merger, and the cost savings and resource implications, one of the key reasons for reform at the outset was to reduce duplication, increase efficiency and save costs. It soon became apparent that that was a small part of the proposition in favour of regime reform. There is certainly potential for that in merger cases, but one should not place too much weight on it. It became apparent that the emphasis on robustness, thoroughness and getting the answer right is also a principle that is at least as important, and probably more important, than efficiency, so you inevitably end up with a trade-off. One thing I like about this country is that the principle of getting it right and being very thorough and robust in decision making means that the Bill has checks and balances—in this case, the grafting of the CC panel model. Once you do that, you sensibly tilt the regime in favour of robustness, but things will not necessarily be a lot quicker.

The case for reform—this is why I am broadly supportive of it, although still somewhat tentative—is that you will get more bang for your buck. It will not be direct savings, in the sense that everything goes through a lot quicker, although you can shave a bit of time off merger cases and market cases. However, there will be an impact on the overall costs of running the OFT and the CC, because the human talent that resides in both those organisations is not necessarily utilised for maximum effect. They are two very separate institutions, which can be a good thing, but, to some degree, they are competitors for reputational capital, with all the bickering that can arise from that. If they are harnessed properly, you could get productivity gains—more output and more cases. That is the economic, cost-benefit side of it, and that is why I am tentatively in favour.

The other reason is—this is more my policy background—that you would get more coherence. Many of these issues are debatable. They are complex, but they would be debated in house, so you would get an answer from a single competition regime to a lot of questions, which would also be valuable for merger policy and predictability for business, and therefore a public good. That is the case for reform, but it is very different from where things started out. Unfortunately, it is certainly not about saving the taxpayer large sums.

On dishonesty, which is perhaps the question I have sweated about most, I should say that I am not an expert in the area. As you well know, there have not been many criminal cartel cases, so I cannot speak from personal experience of having been on either the receiving or the giving end of one. However, I have spoken to my former colleagues at the OFT. My conclusion is that I am in favour of removing dishonesty, because I see the logic, but a lot more work should be done soon to hammer out what you replace it with. Taking the provisions of the Bill and the publication requirements lock, stock and barrel raises a lot of practical issues. I am very sympathetic to the concerns, which are mainstream anti-trust concerns, about how that would work when the rubber hits the road.

From listening to what the CBI representative said on Tuesday, it sounds like I am in a similar place. I was interested to hear that the CBI could see the logic of the case for change, rather than saying, "This is outrageous," as many did to begin with. The knee-jerk reaction is to say, "The criminal offence and the sanctions are particularly severe. It seems perfectly fitting that they should be limited to dishonest conduct. That is the way of separating the small minority of cases that are really egregious and criminal from others that should still be punished, but in a civil way, via sanctions on the companies—financial penalties."

I did not find the case on paper compelling, but then I listened to people for whom I have a lot of respect who are trying to bring these cases and are under great pressure to do so. The reality is a little more complicated when it comes to jury trials, dishonesty and the subjective element of people knowing that what they did was dishonest. On that element, people are very good at rationalising that what they are doing is perhaps not strictly above board or something that they would shout from the rooftops, but nor is it that bad either. We have all been able to rationalise aspects of our past when we were perhaps not at our best. You find ways of saying, "There was good a reason for it." That is not the only reason why the dishonesty offence is a problem, but it is a key one, so I very much see the logic of tweaking it.

Q209 Neil Carmichael: Do you think that the powers to investigate practice across markets are sufficient? Will they have the desired effect of ensuring that competitiveness and consumer protection are the order of the day?

Simon Pritchard: If I remember correctly, the OFT said that the power would be rarely used, but that it was useful to have. I certainly agree that it would be rarely used in respect of market investigation references, in part because other tools are available, not because a practice that was causing an issue would necessarily be left unchecked.

I can see the argument for the idea that it should be in a toolkit. That is a respectable position. I would caution against expectations that it would be used many times, which relates to a more general point about market investigation references. I was interested to hear what Sir John Vickers said about that. It is a valuable tool, but for much more sparing use than mainstream opinion suggests. It is a very heavy tool. In some ways, it is a sledgehammer—it is suitable for boulders. In many cases, the problem is not a boulder; it might be a bowling ball or a walnut, but it certainly does not lend itself to that kind of instrument. As Sir John said, this is a case where nobody has done anything wrong in terms of breaking the law, and yet one is intervening to tweak how markets work. I support the logic of that. It is just that a lot can go wrong, and it is far and away often not the best tool. I think the idea of a steady diet of five or four market investigation references a year, although I accept that was the original premise, is misguided. I would be worried if the CMA, as part of its programme, had n of these investigations a year. They are part of a toolkit, and every now and then they deserve to be used.

Q210 Neil Carmichael: Another tool in the kit—I would suggest that it is a smaller one—is the power of the Secretary of State to think about public interest issues and to ask the new organisation to explore those issues in parallel with competition issues and so on. Do you think that that will be useful?

Simon Pritchard: It makes me very nervous, perhaps unjustifiably. I was interested to read that the OFT was, on balance, opposed to the idea and I very much sympathise with the reasons for that. It is true that in merger cases the Competition Commission has been asked to investigate public interest issues, and I would say that in the case of Sky-ITV, there were media plurality issues. That worked very well and the CC did a very good job of that—that is neat.

The big thing I think is a difference is that in a merger case, the issue is what difference the merger makes to plurality, national security, or indeed financial stability. That is one thing. It is very different in the market context to involve the CMA in tricky public interest questions, and although at the moment it is only national security that is one of the specified things, I would worry about expanding that list. As a former competition official, I do not think that the OFT was very comfortable or very good with those kinds of issues. One could of course bring in the expertise, but that raises the question

of whether it would be more sensible to have these very important issues looked at in parallel, but not necessarily woven together under the same roof.

Q211 Fiona O'Donnell: My question is to Simon. In his evidence, Sir John spoke about the importance of CMA decision making being consumer-focused. I was just thinking about what you were saying earlier, about where there is a conflict between public interest and competition, and how the CMA might deal with that. One example to bring that to life would be the recent Competition Commission inquiry into the bus industry, where the public interest would have called for re-regulation of bus services, but competition did not. Do you think there will be a greater focus on the consumer as a result?

Simon Pritchard: I would say that competition policy is, and certainly should be, very consumer-focused. To the extent that there is a view from the outside of the authority that competition policy is not being consumer-focused and that other public interest reasons point in favour of something different—for example with small shops or the various kinds of issues that can arise—I am nervous about the CMA making essentially political judgments to weigh up complex issues. I am more comfortable with such judgments being made by democratically elected politicians rather than by CMA officials, no matter how brilliant those officials may be. Ultimately, they are members of an authority who have specific expertise. Obviously they are very good looking at evidence—it is useful to have evidence-based decision making on these public policy issues. Ultimately, however, there is a point about if you want one public policy good to trump another. On financial stability, for example, whatever one thinks about the Lloyds-HBOS case, it was absolutely right that it was not the authority that said that financial stability was more important than competition in that case, and it was absolutely right that a political judgment should have been made by the Government. I am worried that there will be an outsourcing of such judgments by essentially delegating that process, even if there is simply a recommendation, and ultimately just following what the CMA says. I think that that muddies the waters in a way that, again, makes me quite nervous.

Q212 Andrew Bridgen (North West Leicestershire) (Con): Would the panel agree that the original thought behind tribunals was that they would be a sort of informal forum in which the applicant and responder could represent themselves and resolve employment disputes, but that that has now moved somewhat to there being far more legal involvement? Would the panel agree that as the award limit has increased, the whole area of employment law has become of more interest to the legal profession?

Secondly, does the panel agree that tribunals are very difficult for small and micro-businesses, who are disadvantaged by and very fearful of the system? If you are only employing three, four or five people, it is highly possible—and it may be in the applicant's interest—that every member of staff will be called as a witness and spend a day there. Effectively, the business will then cease to function for the time of the tribunal. A great fear for the owners of small and micro-businesses is that they actually will not have a business because there could be several days when they will not be able to trade.

Stephen Miller: I am happy to go first on that because I have some views about what you say. It is regularly cast up that tribunals are no longer as informal as they once were. It can sometimes get lost that about half of parties are still unrepresented, and even if one party is represented and the other is not, the judge gives a lot of assistance to create an informal atmosphere in the proceedings in which people can ventilate their cases. Cases are definitely getting longer and more complicated, but that is only because the law has got more complicated.

As has probably become evident from the discussions about protected disclosures, many claims have a number of different aspects to them and it is no longer in the province of the ordinary lay person to comprehend the different dimensions of a claim. That feature brings in representatives, although not always qualified representatives.

When it comes to the concept of micro-businesses, which, as practitioners, we are just getting a feel for, there is a lot to be said for allowing small businesses a slightly more relaxed regime to spare them the rigours of a long and difficult court case that can be expensive and have financial ramifications way beyond their means.

John Morris: I would add that you are right in what you say about the original intention of industrial tribunals, as they were. However, if you take a right of appeal from an industrial tribunal—employment tribunal—into the court system and then you get legal rulings and precedents from the appeal tribunal, the Court of Appeal and the Supreme Court, it is inevitable that the employment tribunals have to comply with those legal complexities.

I agree with what has just been said—there are more cases in which both parties are not represented than there are with full representation. Cases are getting more complex because of the legal principles that we have to follow. As Stephen Miller says, as an employment judge, I am very aware of the overriding objective to ensure that all parties are on an equal footing and to assist unrepresented parties as much as I can.

Joy Drummond: On the question of the informality of tribunals and the complexity of the law, it is true that when I started 30 years ago, you could count on the fingers of one hand the employment lawyers in London who specialised—certainly on the employees' side. However, it has increased with the complexity of the law, which has been a result of the policy decisions of society—on race discrimination, sex discrimination and all the other types of discrimination that have followed. It is true that ideally people should be able to act in person; in many cases, they can. What concerns me about the Bill is that it adds to the complications. Regardless of whether you agree with the principles or policies behind the Bill, I have great concerns that the way it is drafted will add to the difficulties of employers—small and large—and employees, especially those trying to act in person.

Regarding micro-businesses, I can appreciate that they have particular problems. However, in my experience, the people who are most in need of basic employment rights—not at the fringes of the new employment law, but the very basics—are very often the lowest paid. Those people are very often employed by small businesses, so small businesses are not always angels. In my experience, it is very often just that those people do not know how to treat employees, or even other people.

If you are an employer, you have responsibilities. Yes, that has to be balanced against being able to run a business and to hire people. Although the Bill tries to encourage small businesses to hire, which is of course a good thing, I fear partly that it will lead to more problems for both employers and employees in litigation, and partly that it will lay traps for unsuspecting employers to fall in—I can explain that later if you want. I do not think that it will help small businesses. You could say, "Well, even if it is not going to help them, if they think that it will help them and make them hire more people, isn't that a good thing?" I would say, however, "Isn't it more responsible for a Government to educate small employers and publicise the traps and how they should behave, rather than to legislate on the basis of a myth which, in itself, will, through implementation in such a way, cause more problems for everybody?"

Q213 Mr Anderson: May I come back to a question that I tried to raise earlier about the absence of lay officials from tribunals? Will the panel comment on whether they think that that will help or hinder the work of tribunals?

John Morris: They have been removed only recently—I assume that you are referring to the recent change on 6 April. They have been removed only in the unfair dismissal jurisdiction. It depends on your point of view. I sit as an employment judge. There is no doubt that I used to find lay members of considerable assistance in finding facts. If the view is to speed through the tribunal process, as was mentioned earlier, the absence of lay members has had that result, as has the related point about taking witness statements as read.

Q214 Mr Anderson: So it will be faster law, but possibly worse law.

John Morris: That is a view, yes.

Joy Drummond: I agree. Lay members were introduced at the outset for a very good reason: to bring practical industrial experience from both sides. I think that something will be lost if they are no longer to be used. Really, that is the beginning and end of it.

Stephen Miller: I think that if there is anywhere in the employment jurisdiction where you can make a case for lay members, it is in unfair dismissal, which turns on the question of what is reasonable. Going back to this question about creating an environment in which lay people are comfortable enough about taking cases, what could be better than going in front of a panel that is majority lay and not professional? As professional representatives, we probably underestimate how much comfort lay people get to see a panel of three when all but one are not legally qualified.

Q215 Mr Anderson: Coming on to clause 10, it is suggested that legal officers should be given responsibility to make decisions. Both Mr Morris and Ms Drummond made the point that that should only be allowed when there is access to a judge afterwards. Is not that potentially going to make the process even more cumbersome than it is now?

Joy Drummond: Well, yes, but if you are going to take away judges having an input at the outset, the only alternative would be for an appeal to be to the Employment Appeal Tribunal, if somebody felt that a legal officer had made the wrong decision, and that would be on a point of law. The costs and delays involved in running an appeal to the Employment Appeal Tribunal would be greater.

Q216 Mr Anderson: Would that happen regularly?

Joy Drummond: It is very difficult to know. I think that it might well. Normally appeals can only be on points of law, and errors in points of law are more likely to arise when you have a legal officer who is not a judge making the decision.

John Morris: I agree. There is scant information about these legal officers and about what their qualifications, experience and so on are, so our answers have to be somewhat guarded on that basis. At least initially, one can expect legal officers not to command the same respect as judges. Therefore, their judgments and decisions are likely to be questioned, and therefore the only route, if it is not to a judge locally, is to the employment appeal tribunal, with cost and delay. That is why we say that it should be open, first, to review and then to appeal to an employment tribunal.

Stephen Miller: I agree with those points. I would just say that, as you probably know, there is a parallel review based on the tribunal rules themselves. From the information we have had so far, the rules are going to be slightly relaxed as to how you apply for a review, so, like my colleagues, I think it is essential that if legal officials are taking the decisions, there should be access to a review. As I say, I think the environment will be easier for that with the new rules when they are published.

Q217 Mr Anderson: On clause 16, you commented, Ms Drummond, on the renaming of compromise agreements. Can you expand on that somewhat?

Joy Drummond: The Bill as originally drafted was just talking about renaming compromise agreements settlement agreements. You may say there is no big issue with that. I do think that it is probably going to be more confusing, because lots of things are settlement agreements, whereas "compromise agreement" has a particular meaning.

Would you like me to talk about the amendment that was tabled yesterday? It followed on from the press release saying that there was a policy desire to have protected offers. This is a policy that I do think is wrong in principle. The reason why it is wrong is illustrated by the fact that in the drafting, first of all, it has been restricted to unfair dismissal claims. Secondly, the amendment that was tabled yesterday—or Tuesday night, I think—has wide and fairly uncertain exceptions. So the idea that employers can now be confident of having discussions leading to a settlement agreement that will not be admissible to a tribunal is simply wrong. If the Bill is amended as proposed at the moment, I could not advise any employer to rely on that, partly because it applies only in a very narrow circumstance—unfair dismissal, not including automatic unfair dismissals. Secondly, because of the exceptions that were in the clause put forward yesterday, you would have to give evidence about what the discussions were in order to decide whether you fell within that.

In a way, this goes back to the point I was making earlier. You may think employers will think this will make their lives easier and will hire more people. That is a myth and, again, this is going to lead to tremendous

amounts of litigation. Firstly, it would be necessary, when an employee is leaving, to separate out the parts of the conversation about entering into an agreement. In a normal small business, it will be part of another discussion, so you have to tease out that part, and that is completely artificial. Then there is the exception about anything that was said or done that was improper—well, employment law does not have a definition of "improper", so you are going to have all kinds of litigation about that, in which the evidence of what was actually said would have to be given.

I think the whole thing was an idea that was thought up quickly when maybe support was waning for protected conversations generally, and it has not been thought through, will not be good for anyone and is wrong in principle.

Q218 Anne Marie Morris: Perhaps I can ask John about template settlement agreements. In a sense, they almost overcome the problems that Joy has identified, given that we would like people to be able, in a less emotional way, to settle issues when it is simply a matter of "It's not working"—the job has changed or the employer's market has changed. How can we create a system? What do we need to put in legislation and what do we need to put in guidance—nothing to do with legislation—to make these issues simple and not subject to lawyers, dare I say it, running like a rat all over them, so that they work? We would probably all like to see these things dealt with in a way that is less contentious and emotionally draining, and allows both parties to go heads high on to the next role.

John Morris: The first answer is not with this amendment. This is a trap for the unwary. It is a trap for the micro-businesses that are not alert to the pitfalls of what is improper. It applies to unfair dismissal, not to other jurisdictions, so the amendment that came out on Tuesday night will create great difficulties for employers.

The objective is actually not that difficult. It is the sort of conversation that employers have every day regarding performance—at least, a good employer will be having a conversation with an underperforming employee. They will be upfront and say, "We are thinking of taking this into a formal process, unless it can be resolved in another way." There is nothing wrong with that.

Q219 Anne Marie Morris: Is there anything that we can do in legislation to achieve what we are trying to achieve? You are saying that what we have does not work, so what would?

John Morris: The existing practices, supported with the existing without-prejudice rule, are adequate. That is my personal view.

Q220 Anne Marie Morris: Which then takes us to without prejudice, and Joy's point about what you do on evidential issues. How would you deal with that, because currently, there is a hole where without prejudice does not work?

John Morris: The hole—to use your word—that has been identified is that there has to be an existing dispute. It is not difficult for there to be an existing dispute. You talk to the employee, as I have just mentioned, and say, "We have issues about your performance. We are going to take this forward in a formal process"—there is the dispute. "However, we can talk about a settlement if you prefer, without prejudice."

Q221 Ian Murray: May I ask a specific question to Stephen? I was very interested in your opening remarks, when you conflated settlement agreements and protected conversations. Will you unpack that for the Committee?

Stephen Miller: Perhaps you can just remind me of how I put it, because I am struggling to remember. How did I open that one up?

Q222 Ian Murray: At the beginning, you mentioned the parts of the Bill on settlement agreements and you immediately said that it was a protected conversation. Obviously, we have had the consultation about protected conversations on one side, but I was interested in your view on how you conflated the two, and whether you see settlement agreements as being protected conversations.

Stephen Miller: Now I have been reminded of that, I think I was saying no more than my colleagues have said, that we are trading in what we have seen about the renaming of compromise agreements, as connected with the protected conversation as it was originally termed. Obviously, if that works—in the paradigm situation we have been describing, it would be changed business needs where there is no fault—the settlement or compromise agreement would be the appropriate way to get it on paper and have clarity and finality.

Listening to the debate, if one feature has to be considered, it is that you must exclude misconduct cases. So far, as I say, redundancy or changed business needs are no fault, but misconduct cases can involve, for example, what happened the night before at the office party, when there has been an indiscretion. If there is a conversation about that—"We want you to leave"—it is very difficult to see how, if the employee refuses to leave, there can be a fair disciplinary process, when the employer has already taken the position that the employee has to go. At the moment, my anticipation is that judges will take a lot of persuasion to exclude evidence about that, and therefore, they will use the elasticity around the word "improper", saying, "It was improper to do that, therefore we can hear evidence about it."

Q223 Ian Murray: I will not ask you to give us practical examples of office party indiscretions.

Stephen Miller: You can use your imagination.

Q224 Ian Murray: I want to ask the whole panel a question, which is similar to the one I asked Citizens Advice. Does the insertion of a fee, which is obviously not part of the Bill, but is being taken forward by the Ministry of Justice, into the system before employment tribunals undermine the role of ACAS in pre-claim conciliation?

Stephen Miller: Perhaps I can pick up from where I left off. Imagine that pre-claim conciliation has failed, and it probably will in the majority of cases, but that is not a criticism, because it only needs to succeed in a certain percentage for it to be worthwhile. I spoke about ACAS leaving the claimant with guidance on what to do next; that is all very well, but they may have only a month to raise what could be quite a substantial sum of money. I have a concern that because this is a known

fact, it might inform an employer's position in the conciliation process. They might say, "We will make this our final offer, because we know that if you reject it, not only do you not get any money, but you immediately have to do some fundraising to get the claim into the system in really quite a short space of time."

John Morris: If an employer is approached in the early conciliation, and one of their employees has a complaint about them, and if the employer knows that the fee must be paid before it can be progressed, a canny employer will say that they will not engage in conciliation until they have seen the colour of their money.

Q225 Ian Murray: May I ask a quick question on the back of that?

The Chair: No. Sorry, but we have only five minutes left.

Q226 Julian Smith: I feel as if I am part of a Grimm's fairy tale with the employers cast as the big, bad wolf. The evidence from many of you is highly biased. A couple of your witness statements refer to compensation. John, you state:

"By definition, compensation is intended to compensate an employee for having been unfairly dismissed by his or her employer. That being so it is difficult to understand an argument that the employee should not be fully compensated."

What do you mean by "fully compensated"?

Joy, you say about clause 12:

"The power to decrease the unfair dismissal compensation cap…will mean inadequate compensation especially for the middle earners".

What do you both mean by those statements?

John Morris: Fully compensated means the same compensation that applies in every jurisdiction of employment tribunals and in the civil courts, other than for unfair dismissal. If I have lost an amount of money as a result of my employer's actions, I should be compensated to that effect. That applies to race discrimination, sex discrimination and the like.

Q227 Julian Smith: It is surely a great idea to define different levels, and different sized employers. Surely a very small company that has just been set up should not face the same compensation levels as a very big company. That is sensible and logical.

John Morris: It depends where you start with your logic. My logic starts: if I have lost £70,000 as a result of my employer's conduct, why should I be compensated to the tune of only £28,000?

Joy Drummond: I agree—

Q228 Julian Smith: No, on the statement that you made in the submission.

Joy Drummond: Yes. I would agree. If you would like me to take time to repeat what Mr Morris said, I will, but to save time I am saying that I agree with him. I would add only one point, which is one that I made in my submission. This will have a greater effect on middle earners. Most claims for people who are low paid will get nowhere near these levels anyway.

Q229 Julian Smith: So you think a cap at the moment of three times average earnings is fair.

Joy Drummond: Do you mean the cap proposed?

Q230 Julian Smith: The current situation—three times average earnings in this country, which is about £70,000.

Joy Drummond: Any cap is arbitrary.

Q231 Julian Smith: Going up from £12,000 in 1999 to £72,000 or whatever today, is that reasonable?

Joy Drummond: That is true, and that is because successive Governments felt that the policy to properly compensate unfair dismissal was not to have a significantly lower level of compensation for people who have been unfairly dismissed not on discriminatory grounds.

Q232 Geraint Davies (Swansea West) (Lab/Co-op): I would like you to expand on the last point you were making before the Chair invited me to ask a question.

Joy Drummond: I would not like to second-guess why Governments have set the level for unfair dismissal, but I think it may well be that it was felt that by comparison with discrimination awards, on which there is no cap, to have a fairly derisory level of unfair dismissal would generally be thought to be unfair. As I said, in most claims, this will affect middle and high earners, not low earners who are most in need of employment protection.

Q233 Geraint Davies: There was a suggestion earlier that you thought the legislation would generate more employment, that somehow that would generate more problems, and that the processes here would be counter-productive in terms of complexity. Is that right?

Joy Drummond: On the second point, I think that even when the ideas behind the proposals are good ones and should be pursued, the method employed by the Bill will cause more litigation, which is bad for everybody.

The Chair: We are seconds away from the deadline, so I am afraid that that brings us to the end of the time allotted for the Committee to ask questions of the witnesses. I thank you all, on behalf of the Committee. We will now hear oral evidence from Malcolm Nicholson, the City of London Law Society and Professor Catherine Waddams.

Examination of Witnesses

Malcolm Nicholson, Robert Bell and Professor Catherine Waddams gave evidence.

10.25 am

The Chair: Good morning. Will the witnesses identify themselves for the record and indicate whether there are particular aspects of the Bill that they feel either more qualified or unqualified to comment on?

Malcolm Nicholson: My name is Malcolm Nicholson and I am a solicitor. I have been a lawyer in private practice for more than 30 years, specialising in competition and antitrust law in the UK and European contexts. Since retiring from my day job, I have been a panel member of the Competition Commission, so I have some insight of its internal workings, although I am not appearing here as a representative of the commission.

Professor Waddams: My name is Catherine Waddams and I am an academic economist interested in regulation and in competition issues. I have been a reporting member of the Competition Commission, but am no longer. I work in an Economic and Social Research Council-funded organisation called the Centre for

Competition Policy, which looks more generally at the issues, so I will draw on the wisdom of my colleagues as well as, I hope, my own.

Robert Bell: My name is Robert Bell and I am a partner at a City law firm, Speechly Bircham. I am a competition lawyer with more than 20 years' experience. I also chair the City of London Law Society competition law committee, on whose behalf I am speaking today. We strongly support the Bill in broad terms on the competition side, although we have serious reservations about the cartel offence and the increased powers of the Secretary of State to intervene in public interest matters and market investigations, and have a number of points to raise in relation to merger investigations.

Q234 Mr Wright: Could each of the panel tell us how the proposed merger of the Competition Commission and the Office of Fair Training will help improve the competition regime in this country?

Robert Bell: In terms of the policy objectives that it sets out to achieve, namely the saving of money to the taxpayer, I do not think that that will be the predominant theme. It will help competition policy be more cohesive, and it will help streamline the regulatory process, which, in turn, will provide efficiencies and boost business confidence in the rigour of the competition system in this country.

Malcolm Nicholson: This is not a cost-saving merger—the estimate is that it is 2.2% to 2.5% of the annual cost-savings. These are not two not-fit-for-purpose quangos; they are efficient, effective, well-respected organisations.

Q235 Mr Wright: So why do it?

Malcolm Nicholson: That is quite an interesting question, because what you are producing is a single authority. The way in which the Bill is structured, we have a single unitary authority built on the OFT format with a kind of a goitre on the face, which is the Competition Commission and which will conduct phase 2 enquiries. There may be marginal improvements across the system. You may get slightly greater efficiencies in the system, although I have some concerns about how significant those are. You may get what I call soft merger benefits of an increased pool of talent and possible ability to allocate resources across the system a bit better—that sort of thing.

The risk that you have is taking two systems that have worked quite well, but with a degree of dynamic tension between them, because that is the way that the phase 1 and phase 2 system works, and possibly lose some of the benefits of that by putting them all in one structure, so I am pretty neutral about the benefits of the merger.

Professor Waddams: I would agree on that. It is a vertical merger in the sense that you are taking two organisations at different stages. On the whole, that offers the sorts of benefits that we have heard about, but I do not think that it will save much money. I think that it will be costly to bring them together. They have very different cultures at the moment, partly because they do different things. I think it is going to be quite hard work to bring them together in a single organisation in which you can establish a common culture that is positive and not conflicting.

There are some advantages. There are anomalous situations: only the OFT is the competition representative for the UK and that puts the Competition Commission in an anomalous situation, so you can see that there are some advantages, but I would be pretty neutral. There are some costs and potential problems in merging them.

Q236 Mr Iain Wright: I am very conscious of time, so I will ask three questions that warrant only a yes or no answer. On the basis of those very interesting opening statements, does the panel agree with Sir John Vickers, who said this morning—I think I am right—that this institutional reform might result in weaknesses to the competition regime?

Professor Waddams: Yes.

Malcolm Nicholson: Yes.

Robert Bell: No, I don't believe so.

Q237 Mr Iain Wright: Do you think that the CMA's ability to consider the public interest is a retrograde step?

Professor Waddams: Yes.

Malcolm Nicholson: No.

Robert Bell: Yes. Does that make things clear?

Q238 Mr Iain Wright: That is making it very clear. My final question: should the Bill allow for the deregulation of small mergers?

Professor Waddams: Probably not.

Malcolm Nicholson: The jury is out on that.

Robert Bell: Were we to be introducing a mandatory control regime, I would say yes, but in the event that we are retaining the voluntary system I would say no.

The Chair: Let's see if we can all follow this.

Q239 David Mowat (Warrington South) (Con): A change is being made to the definition of a cartel. In particular, the dishonesty provision is being amended. Do you agree with that?

Professor Waddams: Are we having yes/no answers again?

Q240 David Mowat: No.

Professor Waddams: Yes, I agree with it on the grounds that it has been difficult to prove dishonesty. I am worried about the replacement by "it's okay if you tell people," because of the practicalities of it. Even if I know that the suppliers in a particular area—whether I am a business or a final consumer—are in a cartel, will I necessarily have much choice about buying elsewhere? I am worried about the right people being notified—all the potential consumers and customers—and whether that is sufficient to enable me to say, "Okay, I'm not going to do this, then." Perhaps we should think about registering again. I do not know whether that would address some of those issues. There was a sharp intake of breath on my right here.

Malcolm Nicholson: I have an understanding that people view with a degree of concern that having scored a spectacular own goal in the British Airways executives' case, you are then trying to widen the goalposts at the other end to make it easier to score. I have, however, two points. The first is a practical point, and the second is a policy point.

The practical point is that I have had some quite close involvement with what is known as the "gosh! dishonest" test, because I had a client who was or was not guilty of that offence. If he had been guilty of that offence, I would have had a legal obligation to report him to the Serious Organised Crime Agency, so I was quite focused on it. The "gosh!" test is a very difficult one to meet. It requires something to be dishonest—so, stealing—by the standards of ordinary, reasonable men. If you are in a business where it is understood that you sell in one area, someone else sells in the other area and you tell each other off if you cross-sell, is that dishonest by "gosh!" standards?

The second element is that the individual has to understand that something is dishonest by the standards of ordinary and reasonable people. If you have left school at 16 and you go on to work in a business where that is how business is done, do you really think it is dishonest? It is a difficult test to meet.

If you amend it, it makes it easier to get convictions. You then have to look at the matter in policy terms—what the authority is after, which I hope is the deterrent effect. You want one or two high-profile heads on pikes, so that the lesson is learned and understood across industry as a whole. It may be a price worth paying to get a couple of heads on pikes, but it should not be something that people will be prosecuting on a regular, month-in, month-out basis. That would not be an effective way of doing it.

Robert Bell: I have considerable sympathy with the policy aspect behind this, because of course we all want to detect, root out and punish cartelists. However, I question the route that the Government have taken in this proposal by removing dishonesty and introducing the publication offences. The case for removing dishonesty has not yet been made out, so it is premature to do so. The fact that no contested cases under the cartel offence have actually been put before a jury seems to render rather hollow the argument that we need to change the law. Perhaps what we need to do is to find the right sort of cases to prosecute.

On that issue, you have to bear in mind that the offence probably came into effect in around 2003. We have had too few UK cartel cases. In the European sphere, because of the primacy of EU competition law, there have been cartel cases that have been going through very lengthy appeal procedures, and therefore it has not been within the UK prosecutorial gift to prosecute them.

I say that there have not been the right sort of cases. If you asked me, "What are the right sort of cases?" I would say the sort of cases where you see in the civil arena the fact that companies have consorted together to raise the cost of purchasing for the NHS, thereby ripping off the public purse. Another type would be the cartelists that give themselves the names of vegetables to conceal what they are actually doing. They meet in restaurants for different covert purposes and they give code names in relation to what they are doing. I would have thought that any judge or jury would know that type of dishonesty when they see it, and that the judge would direct the jury appropriately.

I think, therefore, that it is premature to make the change. If you do make the change, you have to realise that it will considerably lower the bar for criminal prosecution and you will catch a wide range of potentially benign agreements within the scope of the new offence. That would mean that you would have to rely on prosecutorial discretion. Quite frankly, we operate in a system of parliamentary democracy where people have to know with certainty the limits of a criminal offence, so we have to question whether catching all types of agreements and subsequently deciding whom you are going to prosecute is perhaps the right way to go about it.

Q241 David Mowat: May I ask a follow-up question? My understanding is that toughening the law in this way will make it more like it currently is in the United States, where this is taken incredibly seriously. I do not know if that is correct or not. The impression I have, having worked there quite a lot, is that the business community is immensely aware of not doing anything that could be perceived as acting as a cartel, even to the extent of not having a drink with a fellow supplier, because it could be seen as going down that route. Therefore, the measure would change the business environment, which people may agree or disagree with. Is that the way that you would see it happening as well, if the legislation came in?

Robert Bell: Obviously, there is a slight difference with the US in that we also have quite a powerful tradition of civil enforcement of competition law and civil fines. The cartel offence should be saved for those really serious hard-core cartels, so it is slightly different. I take the point that the US system is based on wide prosecutorial discretion. From my limited knowledge, in the UK system it is not really an English tradition.

Q242 David Mowat: It could be a good thing for competition, though, couldn't it?

Robert Bell: The danger is that it will catch far more agreements than just cartelist-type agreements. It will bring in benign agreements. You will subject those people to widespread publication requirements, and there is an issue of whether those agreements might well be exempted under EU and UK law. You would therefore have a system that criminalises something that could otherwise merit an exemption under the civil procedure which would make it lawful, which would be a nonsense.

Professor Waddams: Can I respond to your earlier bit? You talked about the US and a different kind of atmosphere. In the energy sector, which I study a lot, we certainly already have a very strong awareness of what they may and may not discuss, whom they may discuss it with and whether they need other people there. It is coming here even under the present situation.

Q243 Chi Onwurah: I want to get a better idea of what is at risk. It is clear that there are some significant concerns about the merger of the Competition Commission and the OFT, but it is not so clear what the stake is. The OFT and the CC estimate that the benefit to the economy of their competitive regime is about £600 million. Would you say that that is an accurate reflection of the benefits to the economy of a competitive environment? Does the Bill do enough to maximise those benefits? It is particularly important at a time of double-dip recession.

Malcolm Nicholson: I would say that there were considerable benefits to the UK economy of an effective competitive environment. The £600 million a year valuation is, frankly, for the birds. I just do not think that you can quantify it in that sort of way.

Professor Waddams: I have just come from a seminar over in the Department for Business, Innovation and Skills. Nick Crafts was there talking about the real evidence of increased productivity when competition measures are taken from economic history here—I back up what you are saying about measuring it. It is something almost immeasurable, in terms of the whole nature of the productivity of the economy, which, as you say, is very important right now. I think that there is no doubt that the historical evidence shows that vigorous competition policy does have those benefits. Sorry, Malcolm.

Robert Bell: I would agree with the previous two speakers that a vigorous and efficient competition system increases business confidence, saves money for the economy and attracts inward investment.

Q244 Chi Onwurah: So there is a huge amount at risk here.

Robert Bell: There are benefits to be gained. On the merger of the CC and the OFT, we do not really have a very strong position, but we are pleased to see in the Bill that the checks and balances between first-stage and second-stage merger investigations and market investigations have been retained. There is potential to streamline the regulatory process and make it faster.

Q245 Chi Onwurah: This is a specific question for Professor Waddams. As is the case now, we have concurrent competition powers between regulators in certain sectors, such as energy and telecoms—I should declare an interest that I worked for Ofcom for six years—but we have seen a reluctance for regulators to use those competition powers, as they tend to rely instead on their sectoral and regulatory powers. We specifically see that in the energy industry. Obviously, that has a cost to the consumer. We have just seen the importance of competition. Does the Bill do enough to ensure that the regulators use their powers, where they have them, in the interests of consumers, or is there more that should be done to ensure that the current regime works better? Have the smaller regulators got the resources to take on competition issues?

Professor Waddams: I think that there might be an issue there. The principle that I am worried about with this Bill is what happens when competition policy conflicts with other objectives. In terms of the overall objective of the Bill, it is further competition and delivering benefits for consumers. But supposing there were more benefits for consumers in another way, how would the Competition and Markets Authority deal with that?

The same thing applies to the regulators. The regulators have additional duties that the CMA will not have, and the Government, or policy makers, have to decide which will dominate. At the moment the problem that can arise is that the regulators try to deliver something as well as competition—they want to deliver competition, too. Where there is a conflict, it is not clear how that will be resolved. I am not sure whether this Bill makes that clear either. The difficulty is that you might have a regulator trying to deliver social and environmental objectives in line with its duties, and a competition authority that is trying to deliver only competition. Actually, competition is a really bad vehicle for delivering social ends. It may bring down general prices but it will not bring down anybody's price in particular. It is very bad at that sort of targeting. That is just an inherent problem in this area, and I do not think the Bill resolves it at the moment. That does not quite answer your question directly, but I hope that it gives you a sense of those difficulties.

Q246 Chi Onwurah: It certainly does that, but do you have any suggestions as to how the Bill could help resolve it, especially in your area of expertise, energy, where we see real consumer disbenefits from the lack of effective competition?

Professor Waddams: I am not sure that we know we do, but there are lots of people who would like investigations that have not happened. That is certainly true. If the regulators have these additional obligations, we have to let them use them. It is a bit like the public interest; we have to let them fulfil them. Saying that we must have a competition solution, when that does not deliver their objectives, does not work. If the regulators are going to have those additional objectives, they need to trump competition on occasion. I am not sure whether I would agree with that on any particular case, but either they have those duties or they do not. It is difficult at the moment because they have duties that are not always compatible

Malcolm Nicholson: May I add a couple of points? First, on the whole the regulators are under-resourced and underskilled in dealing with competition issues. That is to say you need a body of experience and breadth of understanding and other people to be bouncing ideas off to be operating competition rules effectively, and I do not think that the regulators necessarily have that. It is also very easy for the regulators to say, "We will use our licence modification powers because it keeps it in-house and we know and understand that and it is just so much easier." It is infrequent that the problem is the balancing of different public interest concerns.

Robert Bell: There has been a shift over time away from ex ante regulations to the implementation of competition both at an EU and UK level. There is a certain tension where sectoral regulators have their ex ante powers. They probably have an easier jurisdictional ride of things to use those than they do to use the competition powers. As Professor Waddams says, they are trying to do both things and to reconcile them—ex ante powers and competition law. I would welcome—this may well be a solution—the CMA becoming a centre of competition excellence. That is stated in the Government's response to the consultation. I also welcome the emphasis on the fact that the CMA is going to be a resource and get more involved in concurrent regulation. If the conditions are right and the working relationships are good, it will be a positive benefit.

Q247 Anne Marie Morris: May I turn to antitrust? The aim of the Bill is certainly to create a stronger regime. It looks at separating investigation from decision making; it looks at absolute privilege from defamation; it looks at lowering the threshold before interim measures can be imposed; and it looks at guidance on penalties. Do you think those are the right things to be doing, and will they have the right effect? Are there other things you would like to see in the Bill that would help?

Robert Bell: First, clause 34(4) provides for the CMA to use its powers to have different groups of individuals investigating the antitrust offences. So you will have a distinct separation between investigators and decision

makers. We greatly support that and we think that it will remove all allegations of confirmation bias and install greater confidence from the business community. But what I would say is that the power in clause 34(4) is an enabling power. We would like to see it enshrined in the Bill that there will be an adequate separation between investigation and decision-making competencies within the CMA.

In terms of interim measures, unfortunately the OFT has not got a very good track record. Since the London Metal Exchange case, there have been no interim measure cases. That has had a knock-on effect, such as in relation to incentivising the Government to bring forward the private actions consultation to mean that small and medium-sized enterprises and others have to take the law into their own hands to enforce their rights. I greatly welcome the changes in relation to interim measures, but they must come with an endorsement that the OFT will use all its powers in its competition toolkit to enforce. That includes interim measures.

Malcolm Nicholson: I think we need to set the antitrust in context. Business hates the antitrust rules because you get a detailed investigation, at the end of which you are told you have committed an offence, you are fined tens of millions of pounds and you are publicly vilified. You open yourself to the prospect of damages actions and to the prospect that senior executives will end up in jail or be disqualified as directors. There is a huge tension in the system initially between regulator and business.

Secondly, there is an inequality of arms and resources between big business, which will throw endless resources at something, and the regulator, which has fewer resources, public sector salaries and what have you. You have a real problem with an administrative process that hitherto has had the same team dealing with investigation, prosecution and decision making. It just does not feel fair. I personally have a visceral objection to it—I have been scarred by it in Brussels over many years—so there is a real problem there.

The Bill is going some considerable way to address that. The OFT consultation paper, in distinguishing between investigation and prosecution and the decision takers—albeit within the same organisation—and having a panel of decision makers, is clearly going in the right direction. I agree that there would be some sense in making that mandatory in the Bill, rather than simply facilitating it. I feel that, in the area of antitrusts, the Government have slightly opted out. Roughly speaking, they have dealt with it by saying, "You can do this. We are not going to impose time limits on investigations yet. We will come back and look at it in five years' time." They could be a bit firmer.

In terms of improvements, there are a couple of quite easy additional tricks to play. First, there are probably a dozen people among the Competition Commission panel membership who, as lawyers or economists, have many years' experience of working the regime, so that is a resource that should sensibly and naturally be tapped. The ability to do so seems sensible. There is another issue as to whether the right cut-off point between investigation and decision taking comes when the whole case has been fully worked up in what is known as a statement of objections. If you look at the other regimes, you will see that the division between phase 1 and phase 2 comes earlier in the process. It seems to me that the skill set available among the staffers and panel members at the Competition Commission could properly be deployed to deal with some of the antitrust issues.

Professor Waddams: My only concern is about the complete independence of the two phases and the possibility—this is not clear at the moment, although it may become clear as a result of the OFT's consultation—that somebody who has been involved early on may not come back later as part of the decision-making process. That is the single bit on which we need to be absolutely clear that there is a robust separation so that that cannot happen. That will ensure that we do not have a confirmation bias, which the current structure has avoided so well.

Q248 Anne Marie Morris: That is very helpful.

Not one of you commented on the guidance on penalties with regard to defamation. Is that because you have no thoughts on it, or because you do not think that it really adds anything?

Robert Bell: I am sorry, but what is that about?

Anne Marie Morris: The absolute privilege for defamation that is being introduced and the guidance on penalties, the idea behind which is to avoid appeals.

Robert Bell: On the guidance on penalties, are you referring to the bit of the Bill where the Competition Appeal Tribunal has to have due regard to the way in which penalties are set? There is obviously a background to that case in the construction cartel appeals, where the CAT decided to go its own way on what it saw as the acceptable assessment of penalties, which did not happen to coincide with the OFT's guidance. I think this is trying to bring everything back to the centre and say that there has to be a central single policy on the assessment of fines and that everyone has to buy into it. It is a good thing.

Q249 Neil Carmichael: Professor Waddams, why do you say that the extensive possibility for intervening in the public interest raises concerns?

Professor Waddams: Because it is very difficult for people who feel that they have the public interest at heart to avoid using it in a way that is contrary to the benefit of competition policy. I am a bit divided on this. There are legitimate public interests and, where they exist, I really welcome the fact that there is a way for them to be expressed, rather than in any kind of behind-the-scenes, invisible way. I like the visibility very much, but I worry a lot that, for short-term reasons, which might not really be in the long-term interest—again, it is a trade-off thing—there will be an encouragement to interfere "too much".

Q250 Neil Carmichael: Do you think that that would be an excessive political interference in the new authority?

Professor Waddams: Yes. On cases in which I have been involved with the Competition Commission, I know that there have been letters from local MPs saying, "Please hurry up with this market inquiry, because my constituents are feeling the weight of it and it is depressing their business. Moreover, please find in their favour." Of course, the Competition Commission knows how to write back a very neutral letter that says, so to speak,

"None of your business." Sometimes there will be public interest and, as I say, I welcome the fact that that will be publicly known and people will see it, but I think it will encourage too much public interest, if you like.

Q251 Neil Carmichael: What safeguards would you like to see in the Bill to prevent that?

Professor Waddams: Making it extremely difficult so that people are very reluctant to intervene on those grounds, which means that it is very difficult for that to happen.

Q252 Neil Carmichael: Mr Nicholson, you also mentioned this issue in your evidence.

Malcolm Nicholson: I did, and I have a slightly different take on it from Professor Waddams. The key, of course, is the independence of the authority—independence from public influence. I think that for as long as that can be assured, there is a lot of merit in the regulatory authority—the CMA—having the ability to look, if asked, at public interest issues in addition to the competition issues. It is a fallacy to think that competition policy exists in a void without an internal reference to public policy issues. We take markets as we find them. We see that public interest pressures may be present in particular markets, whether they are environmental considerations or security-of-supply considerations—I do not know what they are, but you do take account of them.

Moving on from that, the skill set of an independent regulator of the sort that we have should mean that it is quite well placed to consider public interest issues alongside competition issues. I could certainly conceive of a competition inquiry looking at competition in wholesale and retail energy markets while having regard to security-of-supply considerations. You could look at any number of competition issues in the health service while dealing with the public interest considerations that obviously arise there. I think there is scope here for doing something quite useful.

Robert Bell: We are very much against the introduction of these extra powers. We feel that issues of public interest in markets are for Ministers and Parliament, not for competition authorities. I think you have to remember that back in 2002, when the Enterprise Act was passed, there was a very distinct attempt to separate the assessment of competition grounds in markets and mergers from that of the public interest. It has been retained in relation to mergers, for the simple reason that if you have a structural change in the market, you might well have to take a very quick position on it for national security reasons, so therefore it is appropriate. In market investigations, however, a different set of criteria is at play. We feel that, by injecting these new powers, myriad public interest issues are going to distract competition authorities from looking at the competition grounds that they are meant to be addressing. Parties are going to be exposed to escalating costs due to dealing with public interest issues alongside competition issues. In many cases, there is not the right skill base on the investigating panel to look at public interest issues.

At proposed new sections 140A(7) and 141B of the Enterprise Act, there is a discretionary power, in relation to the CMA, to appoint public interest experts. I think that if you are going to allow this power to go through, there should be a very distinct separation. It should not just be a question of discretion. If there is a public interest element referred under a market investigation, there should be public interest experts who look at the public interest issues separately from the competition panel.

The Chair: It seems that Members have no further questions for these witnesses. I thank you all very much for your time and very full answers. We are slightly ahead of schedule, so the sitting will be suspended until 11.25 am.

11.5 am

Sitting suspended.

Examination of Witnesses

Dr Gordon Edge, Nick Mabey and David Powell gave evidence.

11.25 am

Q253 The Chair: May I welcome the witnesses and ask you please to introduce yourselves for the record? I am anticipating that most of the questions in this session will be about the Green investment bank, but if there are other aspects of the Bill that you would particularly like to comment on please say so now, so that the Committee can be aware of that.

Dr Edge: I am Dr Gordon Edge and I am policy director at RenewableUK, the leading trade association for the wind, wave and tidal stream industries in the UK.

Nick Mabey: My name is Nick Mabey. I am the CEO of E3G. We are a non-profit organisation based across Europe, the US and China.

David Powell: My name is David Powell. I am an economic campaigner at Friends of the Earth England, Wales and Northern Ireland.

Q254 Mr Iain Wright: Good morning, gentlemen. The UK has a fantastic opportunity to be a leading player in the world markets for green and clean technology. Does the UK Green investment bank, as currently envisaged in the Bill, help to achieve that?

Dr Edge: It helps, but it is a fairly limited amount of help. While £3 billion is a lot of money, the amount of money that is on the table—in the face of the tens of billions that are required for offshore wind alone, which is one of the significant industrial opportunities for the UK—will be small, which the bank would have to use very creatively to maximise the impact on UK industry.

Nick Mabey: I support that. There is an issue about scale. The Green investment bank is sized well below its potential and that reduces its ability to innovate in the provision of financial services, and is an area where we have a huge amount of interest from our work in China, for example, Australia, the US, who are looking at the Green investment bank and wishing they had one, or inventing it, actually, following up earlier. Particularly because of the issues of scale, its potential role in the industrial policy area—looking at supply chains, small and medium-sized enterprises, even going further into the more clean-tech area, which we discussed all the way through the design period of the Green investment bank, we were very involved—is now off the table because there are not enough funds to expand its remit.

David Powell: Friends of the Earth was really pleased that the Green investment bank is in legislation and that we are at this stage, but I endorse the comments that have been made so far. The bank could and should be the engine of the green economic recovery. It could and should be a conduit for the investment that is looking for a home to find the green investment in the billions that we need. The way it is currently envisaged, there is too much risk that it will not be the engine that it needs to be, and we are very concerned about that.

Q255 Mr Iain Wright: May I ask about the scale of funds needed? Some £3 billion is available in the lifetime of this Parliament as a result of the UK Green investment bank. Can you give us an idea about what is needed,? The second part of that question is, can you tell us what our economic rivals are doing—for example, KFW in Germany? What are they investing in this particular part of the economy?

Dr Edge: If I can answer the first part of that for offshore wind, we are anticipating an investment requirement of approximately £60 billion up to 2020. Equity would take a chunk of that. Finance would require two thirds of that to be in place from the private and the GIB. I would also add that one of the technologies where we think the GIB needs to be playing, and which is currently not in the priority sector, is the nation's wave and tidal industry, where a relatively small amount of money—in the £100 million league—can help establish an industry in the UK that will then be world-leading for the 2020s and beyond.

Nick Mabey: Let me talk about some of the scale issues. KFW in Germany disburses approximately €25 billion a year on the climate clean energy sector.

Q256 Mr Iain Wright: A year?

Nick Mabey: A year. And the European Investment Bank approximately €18 billion. The German targets are actually less ambitious than UK targets for a range of reasons, especially in places like offshore wind. They still have a €5 billion fund only on offshore wind, despite building less offshore wind than we do. In particular, they are much stronger on energy efficiency. Just on energy efficiency, just to match current spending going forward, which we know will shrink, and if the green deal expands to where it was, we are looking at £10 billion to £12 billion in the next three years alone. Plus we need to accelerate that, so if we move to large area-based programmes, backed by some of the big local authorities, such as Birmingham, Leeds or Newcastle, who are looking at much stronger programmes, that is where we saw the Green investment bank having an important role in funding in those areas. You could see, just on efficiency alone, that you would be in the tens of billions, just over the next three years, let alone ramping up those industries.

We know the overall scale is in the hundreds of billions over the next 15 years. There is an issue of how fast you can grow. But we can grow a lot faster than we are doing now, and now is a good time to grow, because interest rates are so low and our construction industry is underpowered. Now is not the time to be cautious; now is the time to be bold and get to scale quickly.

David Powell: KFW has spent €24 billion just on energy efficiency over the last three years. Their investment over there is quite significant and has had a macro-economic impact and has supported, it is estimated, 200,000 jobs over that time. So it has had a significant role just in that area.

Q257 Mr Iain Wright: Given our opportunities and given the scale of the challenge needed, and given that the time to do things is now, should the bank be allowed to borrow on day one?

Dr Edge: As soon as possible, I think, would be our view.

Q258 Mr Iain Wright: Could you give us a time scale for that, Dr Edge?

Dr Edge: With offshore wind, at the moment we have an interesting point where we have a bit of a lull in projects coming forward. That was because there was a big gap between rounds 2 and 3 of offshore site awards. So you could argue that we have a couple of years. But we need to know that this money is going to be there from 2013-14 onwards, for people to think, "Okay, I can keep developing the projects in the knowledge that the finance will be coming forward at that time."

Nick Mabey: And we think the bank's power to borrow needs to be in the Bill, clearly. Starting the state aid application as quickly as possible, we should be able to get the Commission's approval by the mid to end of next year. Talking to the Directorate General for Competition, they look favourably on this type of state aid application. They are looking to reform state aids at the moment and looking to make it easy to get such applications for green innovation and infrastructure through. As they said to me, "Less money into bad companies with unsustainable business models. More money to modernisation and environmental support." We do not think that will be a problem and we honestly do not see why you would restrict their ability to make wise choices about borrowing: remember, they have a board and risk-management systems and only borrow if they need to. Leave that to the professionals, who we have established in this institution with a proper risk-management system to decide. It should not be an arbitrary decision from Whitehall on constraint.

David Powell: The date in the public domain that people might have in their heads is 2015. That is the date that is out there, subject to the financial constraint of the Treasury. So 2015 would seem to us to be a sensible date to go for. It is out there in the public domain, it adds real certainty and it is enough time to do the state aid application, but it is not so far in the future that you are rushing up to 2020 and having to catch up ground. By 2015 would seem sensible.

Q259 Mr Iain Wright: My final question is about clause 1, "The green purposes". Does the clause as drafted provide a degree of targeted investment or is it so vague as to be almost meaningless? What should clause 1 look like?

Nick Mabey: We had a lot of discussion in the Green investment bank commission about purposes. You can get too hung up about these things, because in a way it is how the bank operates over time and how it sets its detailed policies on lending that affects a lot of issues. The major thing we thought was necessary was a link back to the Climate Change Act 2008, because that sets the pace and scale of the challenge and means that,

rather than looking at incremental change, the bank should look to make transformational change in line with that scale. That also has the benefit of avoiding investing in incompatible things that are lower-carbon in the early stage, but in the end are a carbon lock-in investment.

We think that there should be in the purposes a reference to investment compatible with the 2008 Act and the advice that flows from that over time and an explicit requirement to avoid high-carbon investment and investment with lock-in. You need to have the link to the 2008 Act to know what lock-in is, because that gives you the baseline. But that gives an approach that we have been talking to the European Investment Bank about: how to have a practical approach to ensuring you get the right portfolio over time, which is dynamic and based on what you are trying to do, as opposed to just vague greenery, which in the end will be overtaken by operational rules.

David Powell: We would support the title of the definition. Linking it to the 2008 Act makes a lot of sense for a lot of reasons, not least because it removes the danger of well-meaning but not long-sighted investments in something that is a slighter greener investment today, but which by 2025 or 2030 will not be the sort of equipment that we need to meet our climate obligations. That is what carbon budgets do: they avoid the lock-in; they look forward to the future. They make it so that if you were taking the right sort of economic landscape, you would not be investing now in, say, a slightly greener coal-fired power station, which could—who is to say whether it would happen in practice, but it certainly could with the way the purposes are currently written—sneak in under that definition. It is about tightening it, linking it to the strategy framework and linking it to the other things going on in the Government—for example, in the energy Bill.

Dr Edge: I completely agree with that. When the energy Bill comes to Parliament, we will be looking to include that same link to the Climate Change Act.

Q260 David Mowat: I was interested in your answer in terms of the green purpose and linking it to the Climate Change Act, which implies—I believe this too—that we are looking to decarbonisation, not necessarily just to renewables. It is therefore pretty clear that if an organisation such as Sheffield Forgemasters, for example, was to avail itself of the bank, you would support that.

David Powell: If you frame the purposes in the right way, if you have that clear link to the Climate Change Act, if you have the bank up and running as soon as possible with a track record, then you minimise the danger of investing in something that is undesirable, to be perfectly honest. I do not think it is for us sitting here to say specifically what the bank should or should not invest in, but that is precisely why we want that statutory link—to fit in with what is going on across the whole of the Government.

Q261 David Mowat: My specific point was that the nuclear supply chain may also need to have access to the funds, as part of the decarbonisation programme. Although you have not necessarily been associated with that technology, I am asking whether you are happy with that.

David Powell: As you correctly allude, Friends of the Earth does not support new nuclear build in the UK. We do not think that it needs the money. There are the economics—you have to remember that the green bank has to make a return on its investment, and the economics of nuclear are not spectacular. But rather than go into the detail of specific things here and now, we would restrict ourselves to linking the framework to the national—

Q262 David Mowat: To the Climate Change Act.

David Powell: Yes, the Climate Change Act, and I think that that is probably expected.

Nick Mabey: One thing I would like to point out is that we see the bank evolving in a very dynamic way, particularly in looking to invest in areas that are not priorities now—such as local transport schemes, adaptation technologies, infrastructure—but which deal with some of the consequences of climate change. Again, that is why we are not looking to tighten up too much the purposes in other areas. We want the bank to evolve to deal with future necessities that we do not anticipate. Rather than try to have all our policy fights now, let us leave a few until later.

Q263 David Mowat: To be clear, you mentioned shorter-term technologies that perhaps you would not—I think you used this term—"lock in". For example, the way the mandate is written, it could be perceived that investment in shale gas would reduce carbon, because in the short term it would obviously reduce the use of coal, which is a decarbonisation technology. Therefore, in my reading of the mandate, that is included. Do you have a concern about that?

Nick Mabey: We think that there is a right place to have that debate, which is quite complicated. We work across Europe, and here it is different from in Poland or in Germany. Whether it displaces coal or renewables from the mix and what the associated emissions are—the board of the bank is not tooled up to make that decision. Referring that back to the Climate Change Act and the Committee on Climate Change, and to the discussions around that, should mean that the bank can call on evidence from a group of experts to say whether such investments are in line or not. Shale gas might be for the next 10 years and not afterwards. At the moment, we are discussing when the last unabated gas power station will be built in different European countries. That is not a now question, but as a question for the IB it is quite important. That is why we think the link back is good—it allows the bank to draw on evidence and not try to pretend that it is an expert on the whole low-carbon trajectory. That is not its job; it is to support, not to define.

Q264 David Mowat: The Government have two ways of financing low-carbon technology. One is a regime of subsidies, the renewables obligation certificates and all the rest of it, and the other is to fund it with a bank such as this. We are actually doing both, because we will have it through the bank and we will continue with the subsidy regime. Do you have a preference about which of the two is used or do you think both are necessary?

Nick Mabey: The Green investment bank commission that I was a part of decided that the bank's purpose is to achieve the Government's goals at least cost to the

taxpayer and consumer, which precisely comes down to your point. We saw that the cheapest way of dealing with virtually everything in this area is to have a blend. If you try to do it through subsidy or carbon price, you can overpay, because you are not dealing with risk directly, and if you try to use risk instruments but you do not have the right incentive, it does not work either. In most places, we saw that it was cheapest to use a dynamic mix of direct use of a Green investment bank, particularly to cover direct financial risk and deal with direct funding issues, and to use the subsidies and the carbon price to deal with what it is good at.

When we did intensive consultation, it became clear that there was no magic bullet and that you needed a dynamic blend. The bank's role is to choose the blend that is cheapest for consumer and taxpayer—because we are all both, I hope—so that we get the best deal. That is the other reason for having this institution, which can change over time, withdrawing support as things mature and increasing it as demands in the marketplace evolve.

Q265 David Mowat: Is there not a risk that this method smacks a bit of the Government's choosing winners, whereas having a carbon price just prices in properly the cost of carbon and lets the various technologies sort it out?

Dr Edge: We should not be shying away from picking areas in which the UK will benefit most. It needs to be said that the bank will have a zero net cost, because it has a financial return built into its double bottom line.

We also think that attention must be paid to the third leg of the sustainability triangle, with the social aspects. Investments should have cognisance of the benefit to the UK economy, and social aspects more widely. For instance, if you have two comparable investments, and one ends up supporting an industry employing tens of thousands of people in the UK but the other does not, you should choose the former. For us, that is offshore wind and, in the longer term, wave and tidal. We think those are fantastic opportunities for the UK.

Q266 Ian Murray: It is obvious that in the process of the Green investment bank's formulation, the Treasury has put a stranglehold on borrowing, which will suppress the amount of money available. Is there a danger that the UK will end up behind the curve in relation to the advancement in technologies and will think that it is a real missed opportunity?

Nick Mabey: The UK is behind the curve. It is ahead of the curve on setting climate policy and understanding climate science and the strategic importance of decarbonisation. It needs to invest earlier than every other European country we work in, because we are losing the coal power stations, but in terms of delivering the machinery to deliver investment, it is behind everywhere else we work—pretty much western Europe. That is where we are. This makes up for the fact that we do not have a development bank to help the process, unlike the Germans, the French and the Dutch.

It is particularly regrettable that the decision to constrict borrowing was made about 18 months ago, when growth forecasts were much higher and the economy was in a very different place—Treasury orthodoxy was in a different place. The world has moved on. The need to move growth has changed enormously, and the Treasury is exploring every instrument available, from guarantees to direct funding, to move investment forward. We feel that new environment should be reflected in the way that it treats the Green investment bank. We are in danger of looking like we are going to hypothecate vehicle excise duty to roads, which are backed by Government guarantee, but deny that support for the Green investment bank, as if green is a sector that we are not trying to support. Green investment policies should reflect the current economic situation and give the Green investment bank the powers it needs to do as much as it can.

Dr Edge: I come back to my triple bottom line point. So far, the bank has rebuffed our attempts to persuade it that it needs to be funding the wave and tidal sector, which is one where we can win really big. Because it is not paying attention to those issues, it is so far not playing in that sphere.

David Powell: I recently saw a fascinating presentation by Lord Stern, who has been going into the Treasury and making these points. I will happily share it with the Committee. He talks about the biggest and the next industrial revolution being just around the corner—you have graphs that show the scale of market for oil and so on. What is around the corner—the sheer market capacity that is out there for low-carbon, and green goods and services—is staggering. You only have to look at the political impact of some of the Treasury's moves on the green economy over the past 18 months, with everything that happened around feed-in tariffs—I do not know whether the Committee is aware of them. The investment community reports material increases in the cost of capital, because people do not think that the Government are serious about this. For as long as there is this stranglehold—it is a good word, so let us use it—there will be a risk that this never happens, or at least never happens to the extent that it needs to happen. I would have thought that the investment community does not need that sort of uncertainty.

Q267 Ian Murray: I am going to shock the Ministers here by prefacing my very short question by saying that I give the Government tremendous credit for locating the Green investment bank in Edinburgh. It is the best decision they have ever made, but here comes the "but". You may or may not be able to answer this question but it is about an issue that is a significant concern not only to the operation of the Green investment bank but to the investments that it is making. In your opinion, do you think that, if there was a separate Scotland, where the Green investment bank is based will undermine its operation, and do you think the bank may move across the border, should a separate Scotland come to fruition?

Mr Iain Wright: To Hartlepool.

Nick Mabey: I must admit that the Green investment bank commission has a very short paragraph on dealing with devolution in its report. You may have seen that it says that we should consider the issues around devolved administrations; that is perhaps because those issues were too complicated to go into. I do not really have a view on that. What I do have a view on is that I am really pleased that it was located outside London. I know that other people were not pleased about that. That is because one of the points of the green economy

is that it is for all of the country; it is not biased to the south-east. Having a financial institution outside London reinforces that and it was great to see the competition for the location. I hope that we will see the money flow in a way that deals with all parts of the United Kingdom—whatever that United Kingdom looks like—over the next few years, and that it does not look like it is just big infrastructure projects going through the centre and out again.

Q268 Eric Ollerenshaw (Lancaster and Fleetwood) (Con): I will not suggest, as others have done, where this bank should go, but we have some spare capacity in Lancashire. Let me go back to the amount of money. I know that we will never agree how much money the bank has got; it will never have enough money, in that sense. In one sense, all credit to the Government that they have actually got the bank started, given the lack of money that we were left, as it were. But I will not go into that.

I want to go into the balance of money. Dr Edge, even within what you are suggesting is the allocation of about 80%—I think you said it was about 80% in your written submission—probably half of that 80% will go into offshore wind, which leaves about 20% for tidal and so on. Are you suggesting the initial balance is wrong with the existing money? Is that the point you are trying to make?

Dr Edge: It was just that, with the 20% that is being left to the bank to decide on, it is not making a decision. We think that a chunk of that money would very helpfully go towards wave and tidal, and that does not need billions; it needs hundreds of millions, or less, which is in the kind of scale that is there. So we think that the bank should exercise its judgment and ability to fund different sectors, and go for wave and tidal with a portion of that money.

Q269 Fiona O'Donnell: Nick, I was pleased to hear you say that this would not just be about big infrastructure projects. I wanted to ask you all about the possible impact on SMEs. In my constituency, there is a company that is involved in very exciting research and development. With the last project that it was involved in, when it came to the stage of going to market it sold to a foreign company, because it could not raise the capital. Do you think the Green investment bank has the potential to drive innovation in SMEs while also allowing them to grow?

Nick Mabey: There is a lot of discussion about the very early stage of venture capital, and whether or not the GIB is really designed to do that. It could be, but that is not at its core. But we see the next stage—as you say, growing into market—as a critical area, another area where the GIB could make a huge difference. The GIB is already looking at that in waste. But you just have to think about what the energy efficiency targets imply. What is the supply chain on renewables? At a time when it is impossible to get bank lending and everybody, including the Treasury, knows that we will see a huge drying-up of lending in the next few years as banks consolidate their balance sheets, now is the time to get in there. That is the worry about our fighting over which brilliant project the £3 billion should be allocated to, when it is very clear that we are facing a financial crisis that is affecting SMEs now and when we have created demand through policy but cannot meet it and cannot help to finance it. So we could soak up a lot more sensible money. I would like the GIB to start building out that SME focus, bringing in retail banks in the constituencies, to give them the presence in the regions to do it. It will take a bit of time to make the architecture work, but it could fulfil a really big gap, which everyone has recognised, in the current financial landscape of the UK.

Q270 Fiona O'Donnell: But that is a pro-growth, anti-austerity point of view that we have there. That is encouraging.

David Powell: It does underline, does it not, that the less money you have to play with, by definition the less you can do with it. There is a real risk that if you have £3 billion to allocate and you are under pressure to allocate it to big projects and there is not much more that you can do with that, this longer-term, more complicated agglomerating activity will fall by the wayside. If you look into what KfW has been doing, you see that it has been agglomerating loans for householders to insulate their homes, but you do not get that unless you have the capacity and the means to do so. That is a real concern.

Q271 Anne Marie Morris: Carrying on the theme with regard to SMEs and the smallest of businesses, many green ideas come from very small businesses. It could be a one, two or three-man band, so I was interested in your response to Fiona's reply, which was that this is intended for the start-ups and that it is next stage. The challenge is, if a lot of these good ideas are coming from these very small businesses—they may be start-ups, but they are often very intelligent start-ups—where is the link into the Green investment bank? Should there be within the Green investment bank an infrastructure to enable bodies that will suck up these start-ups to bid for money, so that we get the funding for those very small businesses? Do you think that it would be helpful for there to be a requirement to report annually on the size of businesses that the Green investment bank is making funds available to, so that we at least get a sense of where in the SME markets the money is going? Because SMEs range from the micros at 10 employees to 150 employees, and that is quite a big spread.

Nick Mabey: Yes, is the answer to your question. That information would be useful. It slightly depends on a bigger question, which is the broken nature of the innovation policy chain of funding in the UK, which I think this is an example of. The Green investment bank cannot lend all of that at once, but it can mend some important parts of it, because there are other issues, such as ensuring that the energy market reform incentivises small-scale renewables and demand-side response and tech companies doing things such as storage. At the moment we are biased towards big in this country and that is why we are losing relative to Germany and other places, which are much better at drawing in smaller and medium.

It is a broad piece and this can be part of it. It should be part of this development programme. Again, if it spends all its money, it will not have a development programme into the SME sector. Look at how it works on venture capital and other areas. 3i was a part of the

process and it saw a big role for this. There have been a lot of financial groups saying that there was a role, but it was about priorities—it was not about whether it should; it was about whether it had enough money. With more money, you can cover the full gamut, but there is a bigger question that I would love to come back and talk about on that line.

Q272 Geraint Davies: As I understand it, the growth rate in China is something like 6%, but the cost to the environment is something like 9% of their GDP value, which is obviously not sustainable. Clearly, as you have mentioned, with Stern we are about to see a revolutionary change in the opportunities for the green economy—indeed, there are opportunities for low-cost tradable start-up initiatives, which can be scaled up.

I have a couple of questions. First, with that in mind, what is your feeling about the potential spending map, within that very small context of £3 billion? Secondly, given that the scale of funding is not very great in comparison with elsewhere, should we be using procurement, which is massive—hundreds of billions of pounds over these three years—in a smarter way, targeting it at SMEs and green technologies to provide the demand side to support the £3 billion, which is basically supply-side production technology, and to draw that through? How do you think that that should be done?

In Wales, just by way of comparison, 70% of procurement is in SMEs, half of which are in Wales, and in England the figure is about 7%. The obvious advantage of SMEs is that they pay tax and employ local people. Having more focused, small-scale, procurement strategies alongside development opportunities on the bank side might set these business in train. Do you agree that that should be the two-sided strategy?

David Powell: I shall leave the question of the spending map for now, but I want to endorse Nick's point, which leads to your procurement point. The Green investment bank is a critical part of the infrastructure, but it cannot be all of it. You need policies working across the whole of Government because we have the legal Climate Change Act with targets to do so, but also because you need that network, that mesh of policies working together, to bring demand, as well as the Green investment bank working on the supply side. The Green investment bank can help to create demand as well—by having a bank out there that is borrowing, that is seen to be borrowing and seen to be powerful, you can start to create the demand in the first place. It is one reason why in the energy Bill, for example, we are strongly pushing to put on the face of the Bill a decarbonisation target for 2030 that creates that demand. You need all the policies working together. It would be a mistake to see the Green investment bank as the only thing you are doing, but it is the critical part for providing the finance, we think.

Dr Edge: The major benefit of the Green investment bank to the business community widely, including SMEs, is to provide more confidence in Government policy and reduce the policy risk. If the Government have skin in the game, if their money is on the table and in investments in these areas, then if they mess up their own policy, they lose their own money. The more the Government are invested—literally invested—in their own policy, the more confidence everyone else, including SMEs, which are going to be pretty risk-averse because they are not huge companies, has to invest in the green economy.

Nick Mabey: China will have a renewables investment the scale of Europe's over this decade, but it is building a lot more in grid—£450 billion in just the distribution and smart-grid side over the next 10 years—and in urban infrastructure. I do not even know the numbers, but they are building the whole of the EU15 housing stock in the next ten years, however much that costs, so there is a lot in construction, The big markets are: efficient and smart infrastructure, which is mainly Government procurement, but we have no incentives to make it smarter and more efficient—I sit on the Infrastructure UK Advisory Council, so that is a point I often make; smart grid, where our smart grid policy is broken and the bank is not focusing on it, but that is an enormous market across Europe and in China; and offshore wind and marine, which is a huge global growth market, so why not support it? We have put skin in the game, but why not go to the next level?

Dr Edge: The Chinese and the Koreans are already interested in offshore wind, wave and tidal and are doing co-operation deals with the UK in order to share technology.

Andrew Bridgen: Given that the Green investment bank will always have limited resources, should it look at the commercial and effective time scale of any investment? Should it favour long-term benefits, in the way that energy efficiency is longer term than building a wind farm, because whereas wind farms can have a 20-year lifespan and deteriorate in efficiency over that time, nuclear would have a longer lifespan? Should that be a consideration in what the Green investment bank invests in, given that we know there will never be enough money to go around?

Nick Mabey: The issue was to fill gaps in areas where it was either too expensive to raise the price without reducing the risk, or we were building a new market. The whole point was to phase out the Green investment bank from markets as they matured, and then it would go into new places. It is not just based on the duration of the asset; it is about the complicated risk structures in a particular market, which include the size of companies, the availability of credit, and the risk structure of that investment. So the answer is yes, in principle, but the calculation is made on more variables than just length of time.

I do not necessarily see that the Green investment bank at this moment should be cash constrained. The Bank of England is printing money; it is using that money to buy bad assets from commercial banks in the hope that they will then lend. It could buy a Green investment bank bond, and the Green investment bank would use the money to invest in good assets, which are backed by Government policy. There is no constraint at the moment of either Government-created money or private sector money. The constraint is in the fact that there is an arbitrary cap being put on the amount of risk the Green investment bank can take, and as we are looking to use the Government balance sheet in lots of other ways, that just seems really out of kilter. The constraint issue is something we can get over creatively. In the end, the Bank has its own rules about investing in good projects. It has to maintain a rating, like the IAB—

The Chair: Order. I am afraid that that brings us to the end of the time allotted for the Committee to question these witnesses. Thank you all very much for your time and assistance.

12 pm

Sitting suspended.

Examination of Witnesses

Councillor Canver, Ron Gainsford, Graham Hebblethwaite and Jane Bevis gave evidence.

12.15 pm

Q273 The Chair: We will now hear oral evidence from the Local Government Association, the Trading Standards Institute, West Yorkshire Joint Services and the British Retail Consortium. I welcome the witnesses and ask you please to identify yourself for the record. Also, in order to inform the Committee, if you have particular aspects of the Bill on which you feel particularly qualified or particularly unqualified to comment, please say so.

Jane Bevis: I am Jane Bevis, director of public affairs at the British Retail Consortium. Several aspects of the Bill are of interest to us. You will not be surprised to hear that employment law is a big one, but we are also very interested in primary authorities and the Competition and Markets Authority. We would not particularly want to comment on executive pay.

Graham Hebblethwaite: Hello everyone. My name is Graham Hebblethwaite. I am the chief officer of West Yorkshire Joint Services, which operates the trading standards service. I am the chief trading standards officer. I am also an active member of the Association of Chief Trading Standards Officers, and my area of expertise, if that is the correct word, is on the primary authority aspects of the Bill.

Councillor Canver: Hello everyone. I am Councillor Nilgun Canver. I am here from the Local Government Association. I am its licensing champion and, in my member authority, I am responsible for all licensing and regulatory services. The LGA interest is mainly around clauses 52 and 53.

Ron Gainsford: Hello, I am Ron Gainsford, chief executive of the Trading Standards Institute, which is the professional body for trading standards practitioners in the private and public sector. We have been around for 130 years. We have a broad interest in the Bill and, more specifically, those matters relating to the primary authority and the CMA.

The Chair: Thank you very much. I propose that we broadly group the questions into the primary authorities and competition aspects and then the employment aspects. I call Iain Wright.

Q274 Mr Iain Wright: I have a very broad question. Will the drafting of clause 52, on the extension of the primary authority scheme, help you in your objectives to reduce regulatory burdens and facilitate a degree of greater enterprise within the country? Can I ask all four of you that, please? Ms Bevis, do you want to start and I will go to the right—not politically, of course.

Jane Bevis: We very much endorse primary authorities as an extremely useful way of ensuring that there is rigorous enforcement of the regulations, but in a way that suits business models. We think that, particularly for national retailers, it is very advantageous, but we know that, for example, some of our small and specialist retailers are looking forward to the opportunity of trade associations also being able to play a role in this and provide them with some of the advantages. We think it is also a reassurance to consumers, who know that the right standard is being applied and that there is no postcode lottery element to their protection. There are also advantages for local authorities because, if you like, the bread and butter parts of enforcement are done in a very resource-effective way. That enables them to focus their resources on the rogue traders and persistent offenders, which is where we think most of the effort should be. We think that primary authorities and earned recognition are an extremely important way of getting the proportionate enforcement of regulations.

Q275 Mr Iain Wright: Following up from your comments, let me play devil's advocate. Does that not conflict with the idea of localism—ensuring that people enact things according to what local circumstances want? Secondly, you mention things being done in a more resource-efficient way, but is there a danger of a more of a tick-box attitude to things, because it is not as relevant to the local situation? Have you got a view on that?

Jane Bevis: I would say that because of the very close relationship and rigorous overview of the system and so on in a national retailer, for example, by the primary authority, actually you get a much better understanding of what is happening in that business and where the potential risk points are, and those can then be addressed. That then leaves the individual local authority that is not the primary authority free to look at complaint-driven aspects and other things, and I would say that that supports localism rather than erodes it.

Graham Hebblethwaite: West Yorkshire trading standards, and I from a personal point of view, have long supported the primary authority and the former home authority. There is long-standing recognition that helping businesses to get it right in the first place is the way to go—partnership, not conflict. The proposed extension to franchises and trade associations is welcome as far as I am concerned, as long as implementation is done sensibly.

Councillor Canver: In principle, the Local Government Association supports the primary authority scheme. With regard to expansion of the scheme to other businesses to bring in assurance schemes or membership bodies, we are in favour of that in principle, because we think that reducing regulation and enabling more businesses to be part of that scheme will raise standards for businesses more widely across the board. It will be more helpful, because everyone will have access to assured advice. Reducing regulation to achieve that will be one way of doing it.

However, a slight health warning is that if membership bodies are part of that scheme, it needs to be noted that as they work with different businesses with different processes and different rules, they will need a set of minimum standards with regard to the primary authority. Therefore, when they become a member, they will know that their membership will adhere to those minimum standards and that quality will rise as a result. That is a little health warning.

Ron Gainsford: We are generally supportive of clause 52; it is a natural extension. I have spent my entire professional life promoting the concept of supporting business, rationalising the use of enforcement resources and concentrating on where they are most needed. That has never been more important than in these times of austerity funding measures that we as a country are experiencing. I think it is a natural thing to do.

It is worth the Committee noting that the home authority principle was, in a way, invented by trading standards in the 1970s and has been the bedrock of the relationship with business for many years. I spent many years at the local government central body responsible for monitoring that home authority principle, just as my institute is now responsible for its stewardship. In that time, we saw it as a natural extension of that principle to move towards trade associations and franchise operators, and indeed to introduce more rigour into the home authority principle, where that was appropriate.

When the Regulatory Enforcement and Sanctions Bill was going through Parliament, we were supportive as a professional body, together with our sister professional body, the Chartered Institute of Environmental Health. Now that we have engagement between the home and primary authorities, we are working very well, closely and productively with the Better Regulation Delivery Office, the Local Government Association, and the Chartered Institute of Environmental Health, in ensuring that when business wants a choice between the less codified and the more codified scheme, it has it.

We are supportive in principle. I think the measure imposes significant responsibilities on trade associations and franchisers, as well as franchisees, in terms of the rigour of their own arrangements and the relationship between those associations and their members. In a sense, they assume a different sort of relationship than now in the context of the assured advice that they will be giving. From our point of view, we see that as something that is achievable and manageable, and we are generally supportive of the proposals in clause 52.

Q276 Mr Iain Wright: Mr Gainsford, may I start with you? In terms of trading standards and what clause 52 and, to some extent, clause 53 propose, are you concerned that in the light of quite substantial budget cuts to local authorities, where trading standards may not be a particularly prominent area—especially when there are libraries, care homes and that sort of thing—you have the budget across local government to carry out the responsibilities in the Bill and more generally?

Ron Gainsford: No, we were very worried about the funding position of services such as trading standards. Indeed that is why we welcomed Mr Lamb's proposals—I see that he is here today—for the National Trading Standards Board and a way in which we might apply consumer law on a national basis.

Mr Wright: He is in a very generous mood. If you ask for money—*[Laughter.]*

Ron Gainsford: No, I have asked many times. In that case, he must be more generous than normal. None the less, there is this difficulty about the support that we may get from the centre, from that part of Government, via the National Trading Standards Board—my institute is acting on behalf of BIS as the financial steward for that—and what is happening locally. Local authorities are in a very difficult place. I fear the outcomes of the next comprehensive spending review. Small services of all sorts, not least trading standards, stand to suffer significantly more in that regard. That is all the more reason, to be quite frank, why we have to look at better ways of spending that money.

I know that Graham and many of my professional colleagues share that concern. There is a contest between their professional beliefs, their ambitions and their logic in terms of their cultural and practical support for business and consumer protection, and the issues that they need to address in their local authorities in these difficult times. I am worried. As some Members may be aware, I gave evidence to the Public Accounts Committee, whose report talked of enforcement deserts in trading standards. That is something that we are hugely concerned about. We need mechanisms that help to drive focus, by way of intelligence and otherwise, on activities where they are best needed, as well as to allow the efficiencies that are needed in support of the economy and businesses. So to summarise, it a big worry, yes, but that is one reason why we think the proposals in clause 52 are timely.

Councillor Canver: Of course we in local government are worried. In the current economic climate, there is not enough money available in many boroughs to do more than what the core business requires. To overcome that, increasingly boroughs are working together and formulating partnerships to carry out joint trading standards functions across their relevant boroughs or authorities.

Q277 Mr Iain Wright: Councillor, does that spread the jam too thinly?

Councillor Canver: We have concerns about doing that, but it is totally finances driven. Yes, we would like to have more resources to be able to carry out our functions on our own, but this is a solution that people are coming up with in a desperate situation. It is not desirable but there are no other ways of addressing these issues in a better way because that function cannot survive on its own any more. There are not enough resources.

Graham Hebblethwaite: To answer your question and pick up on Ron's point, there are reduced and reducing resources available to us. As a chief trading standards officer, I would say that I have never got enough resources, but we have to work smarter. First, West Yorkshire is a shared service—it has been since 1986—covering five local authorities with a population of more than 2 million. We have economies of scale, so it can work, and yet we can still deliver locally within the districts. We are already following that line.

Trading standards has often been referred to as a Cinderella service that you only need when there is a problem, or when one of your constituents has problems. However, what I have recognised over the years is that you just have to work smarter. We recognised many years ago that the vast majority of businesses are compliant and want to comply—they might make mistakes, but they want to comply. We understand that, so through the primary authority scheme, you can have much more effective regulation on a much wider basis, where with adequate trust, common sense and support from colleagues in other local authorities, an individual primary authority working well with its primary authority business can

facilitate greatly reduced activity in other areas of the country. It might be a burden for the individual authority that has to manage that when setting up the relationship, but in effect, if you set up a good system with a good set of controls, and other authorities gradually recognise that and accept that the controls are in place, they can concentrate their resources on rogue traders, as one of my colleagues mentioned.

Jane Bevis: It is the same tension that any large national retailer faces. You want to provide a locally focused service because that is what your customers ask for, but although they may well have different tastes and want to see different ranges of products, you have to achieve it at maximum efficiency. You need to tailor a service that achieves that balance.

Within retail businesses, most of those decisions will be made centrally. It therefore makes the most sense for us to be able to have one major point of contact with which to have those discussions. That drives efficiencies in the business as well. If you have management time able to focus on commercial opportunities within the current circumstances, that is likely to help drive economic and job growth, because you do not need to have the same conversation 300 times. You have it in depth, once, and ensure that you get it right once.

We would be concerned if sufficient resources were not put into such activities, because good business does not want rogue traders to persist. We want to have them tackled. We welcome the move towards the national approach and regional sharing of information on trading standards, because scams and rogue operators do not operate in one local authority area. They go wherever opportunities can be found, and it is very important to pick those activities up, too.

Q278 Julian Smith: Jane, I pay tribute to you and your members for creating a significant number of jobs in difficult times, for giving work placements to young people and for all the opportunities that your members have provided in the past year. The Government's reforms are singly designed to help small companies and organisations such as those you represent to have confidence to take on even more staff and create more jobs for young and old people. How will these reforms help? What are your concerns, and what are you happy about?

Jane Bevis: Thank you. Yes, we employ 3 million people and 1 million of them aged under 25, so we think we have a particularly important role in helping young people on to the employment ladder and giving them skills. Perhaps they have emerged from school without too many skills or formal qualifications, but nevertheless, they can gain workplace skills and often go on into other sectors.

We think that, for example, the sort of reforms envisaged on employment tribunals and introducing the statutory conciliation process and so on will be really helpful in being able to deal with things in a much more common-sense way, in a much less hostile environment. Hopefully, they will be able to come up with the right conclusion for both parties without it escalating into a very costly, adversarial arrangement. We think that something like that is very helpful.

We think that the proposals on no longer having to notify TV sales for licensing areas, for example, will be of enormous help to those of our members—

Q279 Julian Smith: Could you confine your comments to employment law at the moment? Are things such as settlement agreements going to be helpful? What do you think about fines for employers? Those sorts of things.

Jane Bevis: We would rather keep the phrase "compromise agreements", rather than move to "settlement agreements", because we think that that describes what they are rather more accurately. They are a very useful device, and we would very much support them being available. We welcome the reassurance that the fact that one has come to a compromise agreement will not, in itself, mean that you will automatically move to an employment tribunal case, having put one of those in place. That is very welcome.

We are keen to preserve a single system for all sizes of business. We do not think that a two-tier approach to employment law is the right answer for business or employees—we would not want to go down that route. We like the move towards using a legal officer on uncontroversial and low-value claims. Those sorts of approaches are really helpful.

Q280 Julian Smith: You have created tens of thousands of jobs in the past year. Will the reforms help you or your members to create more jobs or fewer? Is it a positive move by the Government?

Jane Bevis: It is definitely a positive move. As I mentioned earlier, the more management can focus on running the commercial side of the business, rather than dealing with red tape, the more likely that business is to prosper and therefore create jobs. This is not about weakening protections, but about ensuring that the way we enforce those protections is proportionate.

Q281 Julian Smith: Will you remind the Committee how many jobs your members are actually responsible for?

Jane Bevis: We have 3 million people in employment.

Q282 Chi Onwurah: I was interested, Mr Gainsford, to hear in your introduction that you would be keen to speak about the CMA, as well as clauses 52 and 53. Do you expect the abolition of the OFT and the subsequent formation of the CMA to impact on your work and on fair trading in the country?

Ron Gainsford: It will obviously impact. We have been in discussion with Government and others for two years on that particular issue, because of our concern to ensure that the CMA, when created, has the right balance, in terms of its responsibilities for consumer law and structural market issues vis-à-vis the roles and responsibilities that trading standards already and increasingly bear in relation to that. From that point of view, we feel that the current proposals strike about the right balance on the relationship that we anticipate having with the CMA, in the context of determining who should most appropriately deal with a particular market or consumer market issue. We certainly anticipate an impact.

There is also the transfer of issues such as consumer education and business education. The Minister's announcements, as the Committee will know, transfer consumer education to Citizens Advice, but we in trading standards will continue to have a close relationship with Citizens Advice in that regard. My institute runs a

national consumer week "young consumer of the year" competition. We will continue to do that, because it is inherent in trading standards culture and activity.

As far as business education is concerned, that will transfer to my institute. Again, that sits comfortably with our existing activities and the activities of many of my colleagues around the country, including Graham and those similar to him. We see it as an opportunity to invigorate that area in a way that we think will be helpful to the British Retail Consortium's members and many others. In that sense, we welcome that.

My institute will be responsible for taking forward consumer codes, which I have been involved in for more than 40 years. I passionately believe in their role in sector management and improvement. I think that they help good business and help consumers better to understand those market sectors. We will assume responsibility for that. Yes, it will have a significant impact on us, but we are ready for that challenge and are talking to the Minister's office about transitional funding and similar issues, which are really important in terms of establishing some of those subsequent procedures. Obviously, we look forward to further dialogue on the Bill and, therefore, our developing dialogue with the CMA.

I should also mention that another Bill, the Financial Services Bill, deals with financial services and trading standards. We have a relationship with the Office of Fair Trading that dates back to 1974 and the inception of the Consumer Credit Act 1974. That has been fundamental to our activity. We are now in the midst of change in that regime as well. We are engaged, as a professional body, in the necessary discussions in this place and elsewhere as that Bill works its way through Parliament. As your question implies, a number of aspects are relevant to us.

Q283 Chi Onwurah: To follow up on one point, I am sure that we all hope that the extensive transfer of responsibilities, which you have just described so eloquently, is accompanied by the appropriate transfer of resources, both financial and human. However, it sounds as if all the consumer responsibilities of the CMA and the OFT are being transferred to different groups. What kind of ongoing relationship will you have with the CMA, and how do you envisage it being able to focus on consumers if it does not have the coal-face experience of consumer concerns that it had in the past through the OFT?

Ron Gainsford: We hope that we can give it that coal-face experience. To be frank, nobody is better placed than trading standards in that regard, which is why we spent so much time in our consideration of the Government's proposals ensuring that we have—and have grounds for having—that appropriate relationship between our national trading standards board and the CMA, and that the CMA itself has statutory empowerment and responsibility to ensure that that relationship is properly underwritten. We think that is incredibly important. We feel that the Bill is going in the right direction in that regard.

We will be the eyes and ears on the coal face—it is incredibly important that we have that relationship with the CMA—just as we will be the eyes and ears of the new Financial Conduct Authority in dealing with consumer credit matters and ancillary credit business when it comes to the new regime, whatever shape or form it takes. That is a key relationship between localism and the importance of what is right for the national purpose.

The Chair: I call Graham Evans.

Graham Evans (Weaver Vale) (Con): Thank you, Mr Brady, but my line of questioning has been covered.

Q284 Fiona O'Donnell: I am keen to hear the views of any member of the panel on the primary authority scheme. Jane, you said that it would mean the end of postcode lotteries, but do you think there is a danger that this could become a race to the bottom? The proposals allow any local authority to enter into a partnership with a business. Is there not a danger that businesses will seek out local authorities that will give them a weak plan, and that that will then force other local authorities to implement those standards as well?

Jane Bevis: It does not give any advantage in the long term, because the primary authority scheme does not preclude the non-primary-authority local authority from having activity on a complaint-driven basis. If you are consistently getting something wrong, despite having agreed a certain approach with a primary authority, you will still have a lot of inspections and a lot of enforcement activity as other local authorities pick up the fact that something is not going right. Therefore, as a business, it is in your interest to ensure that you are working with a primary authority that makes sure you are compliant. I do not see that there is any advantage in seeking out the weakest local authority that will let you get away with things, because you are not going to get away with them.

Graham Hebblethwaite: I do not think that is a real problem. Under the current process, I do not think that companies can actively seek out a weak local authority; I do not know how they would do that. There are checks and balances in the situation, in that initially there has generally got to be a reason why a particular primary authority takes that role. Usually it is because the head office or its main operation is based in a particular area. The better regulation delivery office has also got to agree to that. That primary authority relationship has to be strong in the first place. As Jane has just mentioned, if a company is getting it wrong, it will still get it wrong if it has a weak authority, but other authorities will pick that up and effectively the process will be in place to tackle the lack of compliance. I do not see that as a real problem.

Councillor Canver: From the councils' point of view, the primary authority scheme is only one of the tools available; there are others as well, as mentioned earlier. In that sense, there are other checks and balances to identify the problem with a business. From our point of view, having that local relationship with the business and getting into partnership is more worthy than imposing on it—for example, by making inspection plans compulsory—because in many authorities that close partnership with businesses works better than any sanction that you can impose on them. We do not want to lose that; we want to keep it.

The Local Government Association is not, in these circumstances and at this stage, in favour of making inspection plans compulsory, because we have not had enough time. The whole thing was implemented in 2009, and it has been in operation for only two or three years. The whole process has been quite cumbersome, in

terms of introducing, and encouraging businesses to take up, this option. There is not enough evidence at the moment for this situation to change.

We are strongly in favour of encouraging authorities to deepen further their partnerships with businesses, especially in the current climate. It is deepening more than ever, because we all have to work together to create job opportunities and other advantages and benefits to our local residents. In that sense, we propose that the LGA can take positive action and liaise with all the councils to highlight the current level of the scheme, and encourage them to deepen their relationship with local business, but at this stage we would not introduce inspection plans as a compulsory function in the Bill.

Ron Gainsford: From my point of view, the good news is that we have had 40 years of practice, in the sense set out in my comments earlier on home authorities, so in some ways we are moving into a seamless arrangement. As a professional body, we have set a lot of store by competence, because for all the structure, the important point is that there are competent officers within local authorities. That is something that you would expect a professional body to do. Again, we are working closely with our colleagues at the better regulation delivery office and my colleagues in the Chartered Institute of Environmental Health to create the synergy with respect to the proposals in the Bill and the competency framework that will underpin many of the proposals before the Committee. That important point is worth remembering.

I do not think there will be a race to the bottom. I should like to think there would be a race to the top. Of course, companies can now take their business wherever they choose to take it, and there are significant examples of that. I am not against that—it is a good thing—but it creates, of course, a competitive environment, perhaps, between some local authorities, and that may be to the disadvantage of other local authorities that are not equipped or prepared to enter that race. We are concerned about that monitoring element. We do not want to see a different range of local authorities in that way.

We are also concerned to ensure that it does not undermine local authorities and businesses that want to continue with their home authority—unpaid, obviously. The shift in business rates is an important part of that and will help to create an important relationship between local authorities and businesses that is, perhaps, not there now. For me, it is important that we do not lose sight of the mixed economy. In my written submission to the Committee, I talked of the importance of the mixed economy. It is important that we do not polarise on to one scheme at the expense of others. It is important that businesses and local authorities have that right of choice in achieving that mixed economy.

The week before last, I hosted a meeting of my European counterparts to try to encourage them towards the principles that we practice in the United Kingdom in support of business—that is, home and primary authority. That is about helping UK businesses that are marketing products in other European member states, and more broadly, to avoid the frustrations that they currently have when those products are cleared by our primary or home authority in the UK. That should be good enough, based on European directives and our implementation of them, to enable those products to enjoy free circulation within the European community, but of course that is not always so, and that can be incredibly frustrating for businesses, which want to see us. We are in the lead on that. My professional body, working with the BRDO and others, is taking that lead to Europe, on behalf of British business. That is important.

Q285 Fiona O'Donnell: What evidence is there for your assertion that the Bill would create more jobs in your sector? Businesses in my constituency tell me that consumer demand and business confidence is a better driver of job creation.

Jane Bevis: It is true that consumer confidence and demand are the crucial points. My point was that enabling a business to be more efficient, and enabling management time and talent to be focused on creating wealth, rather than dealing with administration, has an indirect impact on that firm's ability to grow jobs.

Q286 Andrew Bridgen: Mr Gainsford's answer to the previous question leads on to mine. Could the panel share any views and/or evidence on how the funding and resources available, and the performance of trading standards activities, in the UK compare with what happens in other EU and developed countries around the world?

Ron Gainsford: I am happy to try to answer that. First, the institution is unique to the United Kingdom, so when I go to Europe—we have a lot to do with it, as has been the case for many years—and around the globe, it is difficult to find a similar institution. It is much easier for business to enjoy that one-stop-shop approach in the UK, and this is part of the enhancement. I persist in saying that this is worth keeping and that it helps business enormously.

Many of our colleagues in the Trading Standards Institute work in the private sector for businesses engaged in primary and home-authority relationships. They constantly tell me how difficult it is for them to set up their businesses overseas—in Europe as much as anywhere—and to deal with the fragmentation of regulatory and enforcement responsibility in other member states. We enjoy a very good position. To return to my earlier comment, many of our endeavours are about trying to take the best of what we have into that European forum, in particular. I think we are succeeding at that culturally, but the test will come from succeeding pragmatically.

This is something that is unique. We are particularly well placed and certainly ahead of the market in other parts of Europe. From the point of the view of the TSI, we lead on spreading competency skills across Europe. The European Commission has asked us to lead a one-year project on what is being called the European lead authority scheme. As I said, our primary motive is about helping UK businesses, or businesses based in the UK, to take their products freely across the European Community, as they should be able to do.

Graham Hebblethwaite: I bow to Ron's greater knowledge of the international scene, but I can give you one practical example, which you might find amusing. I was speaking to one of West Yorkshire's large national supermarkets a little while ago. It had invited some colleagues from its American headquarters, so I was speaking to the international vice-presidents representing south America, south-east Asia—you name it. For about 20 minutes, I spoke about our relationship with

Asda—oops, sorry! At the conclusion of my presentation, I asked for questions and one of the guys put his hand up and said, "We'd be arrested if we had such a supportive relationship. They'd suspect that there was some collusion and collaboration with business." What we take as a natural attitude of business support is not universally reflected. That is probably an amusing example, but it is true.

Jane Bevis: Just to back up, it is of great concern to us that the European single market should actually become a single market. It is still a very long way from that, particularly in the services sector, and one of the things that our members tell us gets in the way of their expansion in overseas markets, including the EU, is having to go through the whole set of approvals on products that are sold perfectly legally here, but which need to be reapproved if they go somewhere else. Any movement in that direction would be a huge help.

Councillor Canver: I am part of the UK delegation to the European Union Committee of the Regions. I do not deal with trading standards issues there, but the limited anecdotal evidence is in line with what colleagues are saying here—businesses in Britain are better supported, with checks and balances. We are better placed here in Britain.

I understand that the green deal investment is on your agenda at the moment. A while back, when I raised the green deal, no one in Europe knew anything about it, so we are ahead of the game in many aspects.

Q287 Ian Murray: I have a quick question for Ron Gainsford. You spoke about the funding problem in trading standards. I know that it is very difficult to aggregate individual local authorities, particularly when going across the devolved Administrations, but can you give us some indication of what the funding has been like, and what you estimate the aggregate funding will look like in the future?

Ron Gainsford: In my evidence to the Public Accounts Committee on consumer law enforcement, and indeed in our evidence to Mr Lamb's review, we advised that we saw quite a significant reduction emerging. We think that a realistic estimate is that the current GB aggregate sum of £230 million-plus will reduce to about £140 million by 2014. We still have concerns that that might be unrealistic, if the comprehensive spending review is as difficult as we expect it to be, given the difficult choices the local authorities and individual councils will have to make about their services. As I say, the difficulty for services such as trading standards is that they do not have the immediate visibility of other services—it is not like if your bins are not collected. In that sense, it is more difficult to convince councillors of the merits, hence the importance of this sort of Committee.

In Scotland, as you may well know, funding for trading standards is in a particularly difficult position. I think the largest service is now in North Lanarkshire—not in Glasgow nor Edinburgh, as was once the case. I have just seen failure in terms of three authorities that were working to share services, but have now decided not to do so because, to be frank, the savings to be gained were too small on services that were already being cut to the bone. That is a disincentive to sharing services, and something to which we need to have regard when convincing local government of the merits.

The Chair: Do any Members wish to pursue the employment aspects further? If there are no further questions for these witnesses, we will move on to the next panel.

Ian Murray: On a point of order, Mr Brady. We have heard a lot of evidence in the past two days about the impact of the clauses in the employment section and the way in which they interact. The Ministry of Justice is undertaking a major piece of work on fees and where they may be inserted into the process. I think that that will have an impact on how the clauses operate, so is there any mechanism to get written information about that before the Committee to assist our deliberations?

The Chair: Thank you for your point of order. There is nothing to prevent any organisation from submitting written evidence to the Committee. It may be that your point of order and my response will be taken by some organisations as an invitation to do so. Is that helpful?

Ian Murray: I think the Minister might have heard.

The Chair: On behalf of the Committee, I thank all the witnesses for giving up their time.

Examination of Witnesses

Sir David Walker, Deborah Hargreaves and Adrian Beecroft gave evidence.

1.5 pm

Q288 The Chair: May I welcome the witnesses to the Committee? For the record, please introduce yourselves. I assume that the weight of questions in this session is likely to be on a combination of directors' remuneration and employment rights, but if there are other aspects that you are particularly keen to comment on, you might wish to alert the Committee to that.

Deborah Hargreaves: I am Deborah Hargreaves, director of the High Pay Centre. My interest is, obviously, executive pay.

Adrian Beecroft: I am Adrian Beecroft. I am the chairman of a small venture capital fund called Dawn Capital, and I have been in the venture capital, private equity business for nearly 30 years.

Sir David Walker: I am David Walker. I think I am here because I was author of a report on corporate governance in financial institutions a couple of years ago.

The Chair: I propose that we take remuneration issues first and the wider issues of employment rights later.

Q289 Mr Iain Wright: This question is to all three of you but, Sir David, I think you said in your evidence to the Treasury Committee a couple of weeks ago that there is a need for enhancement in the quality of corporate governance in all corporates, particularly with regard to the management of risk, and the need to be accountable to the providers of capital and the ultimate owners of the business. Is the Bill missing a trick by not incorporating wider points of corporate governance into legislation to ensure that we can tackle directors' excessive remuneration?

Sir David Walker: If the question is solely about executive remuneration, the Bill needs to be looked at, obviously in the light of what the Secretary of State said yesterday. Subject to seeing the detailed drafting—as we all know, the devil is sometimes in the detail—my view is that if what he was proposing yesterday is incorporated into the Bill in some way, that is just about right for what is needed in the remuneration area.

Your question was also wider. I think that tricks are not being missed. Certainly since I produced my report, which principally focused on financial institutions, banks and life assurance companies but had wider implications, the Financial Reporting Council, which reports to the Treasury Committee and the Business, Innovation and Skills Committee, has done a lot, certainly in line with my recommendations, and I think more widely. I think it is now a time when we watch. Leaving aside the remuneration area, where there is immediately more to be done through this legislation, I think that for the rest a lot of plants have been planted and it is now time to watch them grow.

On the early signs, I can give two examples. On engagement by shareholders with the boards of the companies that are accountable to them, it is early days, but I think that shows a lot of promise. In the remuneration case, the shareholder spring is part of that, but it is a much wider thing. In the other area, certainly in financial institutions, alongside regulation, an improvement in the quality of board-level decision taking through more serious approaches to risk at board level is now palpably in place.

Q290 Mr Iain Wright: Do you agree?

Deborah Hargreaves: Could I just make a point about boardroom diversity, because I think that the Bill is missing a trick in that sense and particularly with regard to remuneration committees? In some research that we did, we found that remuneration committees consisted broadly of ex-directors, serving directors and bankers. Only 10% of remuneration committee members in the FTSE 100 come from diverse backgrounds. There is evidence to show that more diverse boards make better decisions. We recommended that an employee should sit on the remuneration committee. That is important to present some sort of challenge in the making of executive pay decisions, which tend to be rubber-stamped by the remuneration committee. There is not enough challenge. The thinking tends to be very similar among people who are very comfortable with large numbers. We felt that more diversity in boards in general, and in remuneration committees in particular, would start to address some of the excesses in executive pay.

Q291 Mr Iain Wright: Mr Beecroft, do you agree that there is somehow a bit of a cosy club in the boardroom? Is there a direct link between remuneration committees, remuneration consultants and the ratcheting up of executive pay in recent years?

Adrian Beecroft: This is not my special subject in the way that it might be for other people, but yes, I do think that there is a problem with the circular nature of directorships, with people being on other people's boards and there not being more of an independent voice on remuneration committees.

Q292 Mr Iain Wright: Do you agree—I will ask you this as well, Sir David, if I may—with the recommendation in the High Pay Commission report that we should have employees on remuneration committees to improve accountability and even transparency of decision making? The chief executive would need to look the worker in the eye and say, "This is why I'm worth what I want to be paid."

Sir David Walker: No, I don't agree with that. I hesitate to differ, but I am some distance from Deborah Hargreaves on this. I am for diversity in the general sense, but worker representation is not diversity in the normal sense of the term. When we talk about diversity, we have in mind gender, ethnicity and so on. There is an argument to be made for worker representation, but I think it is part of a much larger argument, which I would preface by asking why there should be worker representation only on the remuneration issue. If you take a financial institution, for the future of the entity and the well-being of those who are employed within it, the determination of the risk appetite or the strategy of the entity is actually for the employees a much bigger question than the remuneration of the executive board. Worker representation in remuneration committees is a proposition with much wider implications.

Mr Iain Wright: Mr Beecroft, have you anything to add?

Adrian Beecroft: I have not spent much time thinking about the pros and cons of employee representation on those committees, but my first impression is that I do think it probably would be a good idea.

Deborah Hargreaves: I am of course in favour of an employee representative on the board as well. Only one FTSE 100 company has an employee on the board, and that is FirstGroup. The employee representative is a ticket collector from south Wales. When we interviewed Tim O'Toole, the chief executive of FirstGroup, he said he made a very valid and important contribution to discussions that went on at board level.

Q293 Mr Iain Wright: Could I ask about the statement that the Secretary of State made to the House yesterday, particularly with regard to annual binding votes on future remuneration policy? I was sitting on my Front Bench when the Secretary of State made his statement, and it was very vague in respect of when an annual binding vote would be necessary. What would constitute change to the policy? He refused to answer that properly. Do you have any notion of what change would mean? Also, do you agree with the comment in the *Financial Times* editorial today that the Secretary of State has missed a trick when it comes to annual binding votes? Sir David, I will start with you, but I would like comments from all three of you.

Sir David Walker: There are two questions I draw from that. First, what is a change in policy? I do not expect there is a difference between Deborah Hargreaves and me on this; we will see. I have been chairman of a remuneration committee for a long time—I am no longer but I was until last year—and I am pleased to say it got awards for the best remuneration report, or something or other. I say that because I spent a lot of time on the policy. Good remuneration committees—of which there probably are not enough, so what Vince Cable is proposing

will, I think, improve their quality and performance—know when a policy change is likely to be material, and they will have a lot of discussions about changing the long-term incentive plan or the bonus deferment arrangements. I think that remuneration committees know when something material is being changed, and I am totally supportive of the proposition that a binding vote should be required every three years if the policy approved two years ago is changed next year.

There is an added reason for being satisfied with what Mr Cable proposed. If a remuneration committee said that it had not changed its policy but shareholders came to the view that it had, when they vote in an advisory way on what happened in 2011 or 2010, they can reflect their dissatisfaction with what was done, and that will force, under these ingenious proposals, a binding vote on policy for the next period. I think that that is a satisfactory outcome.

Q294 Mr Iain Wright: Deborah, what did you think of the Secretary of State's statement yesterday? Did it go far enough?

Deborah Hargreaves: If you vote every three years on pay policy, it is important that that policy is detailed enough for you to have an effect. The danger is that it could turn into a box-ticking exercise, where you vote on general boilerplate policy recommendations, rather than nitty-gritty details and figures. I felt that an annual vote would include more figures and more detail, and give shareholders more power to make informed decisions about what is going on in relation to pay at the company. If it happened every three years, the fear is that they may be voting on something vaguer and more bland.

Mr Iain Wright: Mr Beecroft, do you have a view?

Adrian Beecroft: I worry about people having power without understanding when it comes to voting on what the pay policy should be.

Q295 Mr Iain Wright: But they do on the business.

Adrian Beecroft: They have appointed people to run it who have a lot more internal knowledge of the business, the competition and what is happening around the world. Where I was going in my response was to say that I think it is more sensible to do it every three years, rather than every year, because people will pay more attention, focus and get more understanding if they only have to do it every three years.

Sir David Walker: I agree with Deborah Hargreaves. The concern that it might just be boilerplate and bland platitude is a real one. I do not think it will be. Having been involved in the writing of remuneration reports, I know that it is very hard to do it without being pretty specific. If people are not specific, it is up to the shareholders to say, "We are not satisfied with this and we will vote it down." Powers are being given to the shareholders and, in the balance and perspective of all this, I think it is right that we are laying additional obligations on boards. We are also trying to lay obligations on shareholders to engage properly. To go back to your first question about the performance of boards, if this exercise is to succeed, it depends as much on the engagement of shareholders as it does on how boards behave on matters such as remuneration.

Q296 David Mowat: The Bill's proposals on high pay focus on FTSE directors, but are we missing something, Deborah, because other highly paid groups are excluded? For some reason, we seem to be a lot less concerned about partners in accounting firms, law firms and consultancy firms, directors of American banks who work here and are not covered by the proposals, and about other types of employee, such as footballers. Are we focusing on the wrong thing? At least the people on whom we are focusing run something.

Deborah Hargreaves: The focus is specifically on executives, but do not forget that, as a group, they have huge influence in setting pay references across the board, not for footballers perhaps, but certainly for high-paid law firms and accountancy firms. The pay of FTSE 100 directors is very visible and has to be laid out in a specific form in the annual report, so there is more information available about what they get paid, which is why the focus has tended to shift towards them. They are a very influential group of people and they tend to affect pay scales in the public sector as well, given that there is some movement between the two. I think it is right to focus on executive directors in the FTSE 100, but the focus should also be broader and we should be concerned with pay levels and pay differentials within the economy as a whole.

Q297 David Mowat: So what about directors of subsidiaries of US banks, such as a director of Goldman Sachs working in London? Should that be included?

Deborah Hargreaves: We have called for broader transparency particularly at banks, in the tier below board level and for those who are taking risks where big bonuses are paid, because at the moment very little information is available. Sir David knows better than I do that there is not very much information available about who is paid what in financial services companies.

Q298 David Mowat: To paraphrase, what you are suggesting is that the thrust of this legislation on publicly quoted companies may affect remuneration at City firms of solicitors, many of whom earn far more than most directors of public companies?

Deborah Hargreaves: It could have an impact, yes. I think in general we need to look at pay scales across the economy, although that group of individuals is very influential.

Q299 David Mowat: Do you not think that we might disincentivise people from running our great companies? We would have them effectively operating in other sorts of organisations, such as the ones that I have mentioned, which might have less added value. Is there a risk of that?

Deborah Hargreaves: It is wrong to assume that everyone is motivated purely by money. Most executives have a lot of other motivations. Money is important, and it is important in terms of how they compare with their peers, but they are motivated by much more than that, including leaving a legacy and bringing on company strategy. A lot of the executives we interviewed had been approached with offers for higher paid jobs elsewhere, but they had turned them down because they were

committed to that company and were keen to pursue their strategy there. I think it is wrong to say that they are all motivated by money.

Q300 David Mowat: No; I completely agree with that, although we are talking about money here, which is the reason why we have got the legislation and all that goes with it.

Deborah Hargreaves: But I am saying that that might be a reason why they would not leave and go to other areas.

Q301 Chi Onwurah: One of the reasons given most often for the very high pay of FTSE 100 and other executives is the necessity of attracting talent from a very small but global and very moveable talent pool. Is the supply of top talent so small? Given that it is generally drawn from a very narrow section of society—we have talked about diversity, and the lack of women and ethnic minorities on boards—do you think that that is a credible justification for such high salaries?

Deborah Hargreaves: No, I do not. It is interesting that pay at the top is seen as an investment in global talent, whereas pay for the rest of the work force is just seen as a cost. There is some justification, given that executives are in a global talent pool, but if you look at the figures such people tend to move around a lot less than they say they do. It is very seldom that a top executive from Britain, for example, will go and lead a big company in the US, where pay levels are a lot higher.

The recruitment process to the executive ranks is fairly rigid, and it is one of the reasons why there is not more competition for these jobs. Executives are encouraged to bring on their successor—grooming a successor is one of their most important jobs—but the successor often does not come from within the company, and companies always pay more to bring in an outside director. There is something about planning succession that is not going right.

The global talent pool is often cited as a reason for paying huge amounts, as is competing with other countries, but executives tend not to move. In addition, this pay debate is going on around the world; Britain is not the only country that is having such discussions. Top pay is on the agenda politically in many other countries, so it is not necessarily going to be the case that you can leave and go to a higher paying job elsewhere.

Q302 Julian Smith: Deborah, I think your organisation has raised some really important issues, particularly in the last year. But would you accept that ultimately in a capitalist system there is a real limit to what Government can do, and that those actions are largely nudges and maybe firm nudges sometimes? There has to be a clear message to populations that with globalisation and capitalism, which may not be a perfect system, there will be extremes of pay. Would you accept that?

Deborah Hargreaves: Yes. I think there is a limit to what Government can do. These businesses are obviously owned by shareholders and it is up to shareholders to take action, but we have also said that there are other stakeholders involved here and employees have just as much—if not more—at stake in a company doing well as the shareholders do. So we have said that there should be a place for employees in making these decisions, and in having their voice heard in the boardroom. And the public has a legitimate interest in some of these issues. This pay debate has become so toxic now that some chief executives have started to question whether it affects their licence to operate in the UK; I think that trust in companies has been undermined to such an extent. Therefore pay becomes a public policy issue, although I would say that if you get the structures right I think it can resolve itself.

Q303 Julian Smith: Thank you, and I refer members of the Committee to my declaration in the Register of Members' Financial Interests.

Sir David Walker, the bank that you were involved with was competing at the epicentre of a global industry about which there has obviously been a lot of debate recently, but which was bringing huge amounts of tax revenue to this country. Could you describe a little more—I guess that it is in answer to Chi's question—about what it is like competing for global talent?

The Chair: I am sorry, but before the answers, I must say that I do not think that Mr Smith has referred to his entry in the Register of Members' Financial Interests before this morning. I wonder if you could elucidate a little, Mr Smith.

Julian Smith: I used to run a headhunting company and I have an interest in a recruitment company; it does not do board-level work.

The Chair: Thank you. I am sorry to have interrupted.

Sir David Walker: I preface my remarks by saying—this may surprise Deborah Hargreaves and members of the Committee—that I think these pay levels in the banking sector have been excessive, so I am in the critical end. But I will respond to your question, Mr Smith, a little bit in line with the response I made to an earlier question. As you will know in the profession that you described, the key thing in any business that is important—such as a major bank, or a major anything—is to get the best people to do the most significant jobs. So pay is an ingredient in that, but it is not where you start. You start thinking of the specification of the job and then the equipment of the individual who is being proposed to fill it, and there might be a long list.

It is the case that in the business in which I have spent much of the last 20 years, which is, widely, finance and, in particular, investment banking—but not only that—pay has been at very high levels and pay is very probably a bigger ingredient in the motivation of individuals working in that industry than it is in other industries. And I have to say that I regret that.

However, we now have a combination of initiatives that are in train that I think are bringing moderation. We have a recession, which applies to the banking industry and is having a very dampening effect, and we have much tougher financial regulation, which has now extended its tentacles—it is not the subject of this Bill, but financial regulation in respect of banks and others itself has very clear guidelines on the remuneration parameters. And now we have the pressure being brought by an initiative of this kind, not only in relation to banks.

Therefore I think the public sector initiative that is being taken is now very strong and I would be at the end of the spectrum that expects to see—over the next year or two—quite a lot of change in this space, in a direction that I think probably most of us would welcome, which is moderation.

Q304 Andrew Bridgen: I would just like to get something on the record and see the response from the panel. I am slightly uncomfortable with the phrase "high pay", because that is a very relative term. There is nothing wrong at all with high pay if it is accompanied by high performance. The problem is if you have high pay and average or poor performance; at any level, whatever high pay is, that will is always be a problem for an organisation. I would just like to see whether the panel agrees with that.

I hear what Deborah Hargreaves said about diverse boards and I am willing to think that it could be correct. However, it really does not matter what I think. Boards wish to run successful companies. If diverse boards are going to make companies more successful, they will outcompete their competitors. Market forces will take place, and market forces are completely gender-blind and colour-blind. They are not discriminatory. There is no need, therefore, for Governments to do anything because the market will sort itself out and these diverse boards will take over the marketplace. How can anyone disagree with that?

Deborah Hargreaves: I would like to think that market forces would assert themselves and boards would become more diverse, but we have had very restrictive recruitment processes for boards.

Q305 Andrew Bridgen: You say that these diverse boards are outcompeting their competitors. In that case, they will, will they not, and they will take over. There is no need then for the dead hand of government to land on the chairman's shoulder again.

Deborah Hargreaves: One of our recommendations as the High Pay Commission was that all non-executive appointments should be publicly advertised, which seems a very modest recommendation but is not the case at present. So, anyone who wants to join a board has to be known to headhunters, who then approach individuals and set up a shortlist. The shortlist is always required to have a couple of women on it. Women I know who sit on boards tell me that they have been approached time and again to go on shortlists for other boards because once you are in the system it is easier to get on to the shortlist. If you are an outsider trying to get in, it is much harder. The appointment process is not particularly open.

Q306 Andrew Bridgen: Mr Beecroft, do you argue with the logic that I presented?

Adrian Beecroft: Not particularly, no.

The Chair: In that case, we can move on to the broader employment rights area.

Q307 Mr Iain Wright: My question is to you, Mr Beecroft. After my line of questioning, you may want to call me a socialist. If you can, that would be very helpful to me, certainly in my local area.

Following No. 10's request to you to carry out your piece of work on employment law, in compiling your report did you meet with the following people or organisations? A yes or no will suffice. The Prime Minister?

Adrian Beecroft: No.

Q308 Mr Wright: The Chancellor of the Exchequer?

Adrian Beecroft: No.

Q309 Mr Wright: The Secretary of State for Business?

Adrian Beecroft: No. I did meet with the Minister in BIS who was responsible for this particular area.

Q310 Mr Wright: The CBI?

Adrian Beecroft: Yes.

Q311 Mr Wright: How many times?

Adrian Beecroft: Once.

Q312 Mr Wright: The Institute of Directors?

Adrian Beecroft: Once.

Q313 Mr Wright: The General Secretary of the TUC?

Adrian Beecroft: I spoke to Sarah Veale, one of his colleagues.

Q314 Mr Wright: Any general secretaries of any trade unions?

Adrian Beecroft: No.

Q315 Mr Wright: The Association of Mortgage Lenders?

Adrian Beecroft: No.

Q316 Mr Wright: The British Retail Consortium?

Adrian Beecroft: I met a number of employer groups. I cannot be certain whether or not that was one.

Q317 Mr Wright: EEF, the manufacturers organisation?

Adrian Beecroft: No.

Q318 Mr Wright: The Federation of Small Businesses?

Adrian Beecroft: Yes.

Q319 Mr Wright: How many times?

Adrian Beecroft: Once.

The Chair: Mr Wright, I am sure that you will make the question directly pertinent to the Bill.

Q320 Mr Wright: I certainly will. Mr Beecroft, did you meet anybody who has gone through the employment tribunal procedure?

Adrian Beecroft: Yes.

Q321 Mr Wright: How many?

Adrian Beecroft: Ten on the employer side and probably four or five on the employee side.

Q322 Mr Wright: My final question is, did you meet the Gangmasters Licensing Authority?

Adrian Beecroft: Yes. I met with the Department responsible and I tried to meet with the people running the authority and they declined.

Q323 Lorely Burt: My question is for Mr Beecroft as well. The Secretary of State has indicated that he will not implement the Beecroft review. Obviously, a number of the aspects of the review have been very controversial—for example, no-fault dismissal, or "fire at will" as it has been termed. I just wondered on reflection, if you could choose one or two things, what do you think we as a Committee should still be reconsidering to put into the Bill?

Adrian Beecroft: I would make the point that the Secretary of State has made it clear that something like 17 of the recommendations, which were not particularly politically contentious and which are generally viewed as sensible, are being implemented. I think the distinction between small and large businesses is important. The burden on the management of businesses employing five, 10 or 15 people of complying with large numbers of regulations distracts both from their ability to develop and grow the business and from their wish to employ more people. My suggestions for exceptions for smaller businesses are worthy of a lot of thought.

The Labour party in Australia has implemented my suggestions for businesses of less than 15, in terms of no-fault dismissal, on the basis of prior experience with a wider scheme implemented by the Conservative party there. In Germany, where they experimented with eliminating regulations for businesses of up to five people, after seeing what happened they extended that to businesses of up to 10 people.

In September 2009, 13% of businesses said that regulation was the most important thing stopping them from growing, second only to the state of the economy. I know the statistics are a bit different now, but that was the case three years ago and I am sure the problems of regulation have not moved down the list, and if they have got less it is because other things have got more important. But if so many small businesses—the SME study—feel that that is the second biggest thing stopping them from growing, it needs attention.

Q324 Lorely Burt: I take your point entirely on the burden of regulation being disproportionate to small businesses. Do you think, though, that any employee should be entitled to the same employment rights, whether they happen to be working for a small or big business?

Adrian Beecroft: I think you have to balance up the rights of current employees and the rights of people who are unemployed, but who might be employed if the people running small businesses had the time left to grow the business and the enthusiasm to hire more employees. My judgment, although no doubt people will disagree, is that a modest disadvantage to a small number of people—the Lamb amendment—is strongly outweighed by the benefits there would be to growth and unemployment.

Q325 Ian Murray: I am directing my comments to Mr Beecroft. Relating to what you have just said, did not the number of claims of unfair dismissal in Australia triple when those regulations were brought in? A BIS analysis showed that. We should get some of those figures, if we can.

Adrian Beecroft: Actually, they do not have unfair dismissal any more in Australia in the way we do; they have something called Fair Work Australia, which is a different, non-legalistic process, which I am told by people in Australia, including left-wing labour specialists, is working very well.

Q326 Ian Murray: We received evidence on Tuesday from Ed Sweeney at ACAS, who will be responsible for taking forward some of the major pillars of the clauses in the Bill. He said that

"good law requires good empirical"

evidence and

"Anecdotes make bad law."—[Official Report, Enterprise and Regulatory Reform Public Bill Committee, 19 June 2012; c. 71, Q153.]

Do you agree with him?

Adrian Beecroft: I do not think my report was based entirely on anecdotal evidence. I have just told you that BIS's own service said a couple of years ago that 13% of businesses thought that this was the biggest impediment to growing their businesses. That is not anecdotal.

Q327 Ian Murray: The figures that we have been talking about are 6% for regulation—all regulation—for small businesses, in terms of the small business index.

Adrian Beecroft: You may not have noticed that I said that 13% was the figure in September 2009; it was 6% in November and 7% in February.

Q328 Ian Murray: Thank you for that clarification.

There has been a contention that there might be some compensated no-fault dismissal by the back door when we take all these issues together. In your report, you said that

"even making it easier to remove underperforming employees will in the short run not increase unemployment as they will be replaced by more competent employees."

What is your empirical evidence and research for that?

Adrian Beecroft: I think that is rather self-evident. If people are doing a job that is required but they are not doing it very well, they will be replaced; if they are doing a job that is unnecessary, they will be made redundant.

Q329 Ian Murray: So the net effect would be zero?

Adrian Beecroft: Yes.

Q330 Ian Murray: On your recommendation on compensated no-fault dismissal, you state:

"Such a change would, in my view, produce an instant improvement in performance in a significant part of the national workforce while providing major encouragement to those contemplating increasing their workforce."

What is your empirical evidence and research for that statement?

Adrian Beecroft: We have heard the results of the various surveys—about the fact that the current legislation discourages people from hiring people, so that half is straightforward. I should say that I was asked to do a

two-month piece of work covering all employment law, so I was not able to generate new statistics. I accept the accusation that my views on whether the change would improve the efficiency of people working in businesses are based on conversations with a sample of people, which is not statistically valid.

Q331 Ian Murray: With regard to the clauses in the Bill, your report states that

"at present many claimants who have unfortunately not found a new job have time on their hands and view a free employment tribunal as a no cost option on winning an award."

Again, which evidence base is that taken from?

Adrian Beecroft: I think if you find employment lawyers in an honest frame of mind, that is what they will tell you applies to a reasonable proportion—

Q332 Ian Murray: An honest lawyer? Is that a contradiction in terms? Who commissioned the report?

Adrian Beecroft: I think your own Minister with responsibility for small businesses is an employment lawyer, so I am sure he would agree with that observation.

Q333 Ian Murray: The Minister is, indeed, an employment lawyer.

Will you tell the Committee who commissioned the report?

Adrian Beecroft: It was commissioned by the Department for Business, Innovation and Skills.

Q334 Ian Murray: Are you aware that the UK has the third most liberal employment regime in the world, whereas Germany and Australia rank in the high twenties and early thirties out of 36?

Adrian Beecroft: First, having read the bases on which those surveys of international competitiveness are drawn up, I think there are some very arbitrary weightings to different aspects of employment law. Secondly, we need to remember that we are competing with India, China and America, and not just Europe. In many cases, we are doing much better than European countries, so I am not entirely convinced that those statistics are right or that they are relevant.

Q335 Ian Murray: So the evidence base for those statistics is wrong. Would that be a fair assessment of what you have said?

Adrian Beecroft: No; I said that I think the weightings that are applied in reaching those conclusions are wrong.

Q336 Ian Murray: On that basis, if the UK is not third, where would you place it out of 36 countries in the world, given your experience?

Adrian Beecroft: I do not know.

Q337 Graham Evans: My question is aimed at Mr Beecroft—and I would really appreciate it if you did not refer to me as a socialist.

Adrian Beecroft: Provided you do not refer to me as bonkers, I will not refer to you as a socialist.

Q338 Graham Evans: That is very kind.

Your report created a big mailbag from particular segments of my constituency. The Bill will turn the pre-claim conciliation process from a voluntary one into a mandatory one. Are you in favour of that change, and how will it benefit businesses in the UK? Secondly, based on your considerable experience, if there was one thing that you could do to encourage growth in the UK, what would it be?

Adrian Beecroft: I think that the mandatory pre-tribunal consultation is an excellent suggestion. The latest statistics that I have seen show that 22,400 out of 50,000 employee tribunal cases were settled by consultation after the tribunal had started, which obviously takes more time and creates more cost for everyone concerned. To move that step to before having the tribunal seems extremely sensible.

As I have said before, the answer to your second question is to start to realise that you need to treat small businesses differently from large ones where regulation is concerned.

Q339 Chris Ruane (Vale of Clwyd) (Lab): This question is just to Mr Beecroft. You are a trained scientist who sponsors the Beecroft institute of particle astrophysics and cosmology. As a trained scientist, why have you failed to use empirical evidence, and research and analysis? Why have you relied on anecdotes, stories and personal perspectives from the lawyer down the road? Your report proposes policy by parable and legislation by anecdote. Two statistics that this Committee must have are: how many jobs would be created if your report was fully implemented; and how many jobs, if any, will the Bill create? It is your report, and while it is the Government's Bill, I am sure you have a perspective on it.

The Chair: I am delighted that we got to the Bill in that question. I hope that hon. Members will bear in mind the purpose of these hearings.

Adrian Beecroft: I researched all the available work on these issues. Unfortunately, not much work is available—

Q340 Chris Ruane: So you don't know.

Adrian Beecroft: I researched all the information that is available—

Q341 Chris Ruane: So you do know.

Adrian Beecroft: That research led me to the conclusion that I came to. I think that there is scope for more research.

Q342 Chris Ruane: So how many—approximately?

Adrian Beecroft: I did not say that I knew the answer to your question. I said that I had looked at all the research and I am convinced that there would be more jobs.

Q343 Chris Ruane: Why are you convinced that there would be more jobs? What empirical evidence has led you to believe that?

Adrian Beecroft: If you make anything extremely time-consuming, very expensive and very stressful, people will be less inclined to take it on. That is the situation with employment, as many small and medium-sized business people see it.

Q344 Chris Ruane: So you still do not know how many jobs.

Adrian Beecroft: I have lived in the world—

Q345 Chris Ruane: It is not whether you have studied it or even looked at it. After your report and all your analysis, you still do not know how many jobs.

Adrian Beecroft: Could anybody know how many jobs?

Q346 Chris Ruane: I am asking the questions. Do you know how many jobs—yes or no? You either know or you do not know.

Adrian Beecroft: I certainly do not know precisely how many jobs would be created.

Q347 Chris Ruane: Approximately.

Adrian Beecroft: If you take the fact that there are 4.5 million people employed in small businesses at present, and you say that they will be encouraged to recruit 1% or 2% more people, that would mean that some 50,000 to 100,000 people would gain employment.

Chris Ruane: I don't know about astrophysics; that is more like astrology.

Adrian Beecroft: Can I just have one more go? One of the statistics is that the introduction of pensions auto-enrolment will reduce the number of jobs in the country by 60,000, and a large proportion of those jobs will be in small businesses. That is what the official Government report on pensions auto-enrolment states.

The Chair: Next question.

Q348 Andrew Bingham (High Peak) (Con): Do you feel that the proposals on financial penalties of up to £5,000 on employers who breach workers' rights has the potential to hit SMEs disproportionately, and particularly micro-businesses?

Adrian Beecroft: I do. Again, you have to weigh up the need to encourage people to follow the ACAS guidelines and so forth with the negative impacts that introducing this £5,000 fine would have. I am sure that a few people would be encouraged to stick to the rules more closely, but most people already know that if you do not stick to the rules, you will have to give a relatively large sum in compensation to the employee, even if the tribunal thinks that they deserved to be fired. I do not think it will have much impact on compliance, which is the objective, but I do think it will enter into the mythology of people saying, "Well, you already had all these costs associated with employing people. If it goes wrong, here's another £5,000." While the small print says it may be less for small businesses and so on, the small businesses will never read the small print.

Q349 Andrew Bingham: That was my next question. The explanatory notes refer to aggravating features meaning that a tribunal may be less likely to find that the law has been breached, and there is a reference to micro-businesses and a limited human resources function. I suspect that I know the answer, but is that sufficient to provide reassurance to micro-business that they are not going to get—

Adrian Beecroft: No, because they will never read it. They do not have time to read those notes.

Q350 Andrew Bingham: So that should be made more obvious to reassure the micro-businesses men who do not have an HR department and are creating employment.

Adrian Beecroft: I do think it is an example of creeping regulation—it is a sort of regulation frame of mind: "We might be able to get a few people more to comply with a bit of regulation, so let's ignore the secondary effects that it might have." Government's urge—more the previous Government than the current one—to regulate anything in sight is very damaging.

Q351 Mr Anderson: I agree totally with Mr Brady that we should focus on the Bill, the point of which is to regulate employment in a different way. Mr Beecroft, the report you produced was clearly about advising the Government on how best to do that. Can I ask you specifically about a quote from the report? It states:

"Quantifying the loss of jobs arising from the burden of regulation, and the economic value of those jobs, is an impossible task."

What empirical evidence and research did you look at to consider any connection between regulation, and economic and employment growth?

Adrian Beecroft: I think I have answered that question already.

Mr Anderson: You have not, because it has not been asked.

Adrian Beecroft: Will you ask it again? Sorry.

Q352 Mr Anderson: I am asking you specifically what empirical evidence and research you looked at to arrive at any connection between regulation, and economic and employment growth.

Adrian Beecroft: The evidence of the Business Department's own report about small businesses, which says that 13% of small businesses view that as the second most important factor restricting their growth and increases in employment.

Q353 Mr Anderson: So that means that 87% did not think it was that important.

Adrian Beecroft: No, it means that this was viewed as the second most important factor by a number of people. It does not say who thought it was the third or fourth most important. The idea put forward in the House—that just because it is not the most important thing, you should not do anything about it—seems totally fallacious. If you go to the doctor and you are ill with three things, you do not decide to treat just one of them.

Q354 Mr Anderson: I agree, and that is why we need to get this right, because I worry that if we do not get this right, people at work will end up in a state of insecurity, and potentially at risk because of a reduction in things like health and safety. Can I ask—

Adrian Beecroft: Can I respond to that? The current suggestion, which I think we are here to discuss, of having protected conversations will help to reduce a climate of fear. At present, quite a lot of people claim

constructive dismissal because they are under the impression that somebody is secretly trying to dismiss them. In future, people will be able to have open conversations with employees without the fear that they will get quoted in some tribunal down the line. It is that fear that reduces the openness of employers and does quite a lot to create uncertainty in employees.

Q355 Mr Anderson: Do you have any evidence for that statement?

Adrian Beecroft: Um—

Q356 Mr Anderson: I have worked as a trade union activist for years with people who were in a much more protective environment than the areas you are talking about with small businesses, and they were very worried before approaching their employers about many things.

Adrian Beecroft: It seems to me that that is equally anecdotal as the evidence that you accuse me of giving.

Q357 Mr Anderson: If you wish, Mr Brady, I can find the evidence, but I shall move on.

The shadow Minister asked about who you had spoken to. When putting your report together, did you speak—

The Chair: Order. I am sorry, Mr Anderson, but I did try to suggest to the shadow Minister that it should be possible to tie questions more closely to the Bill, rather than the report. I hope that you will do the same.

Mr Anderson: That is exactly what I am doing. I am talking about what is happening in the real world.

The Chair: In the context of the Bill.

Q358 Mr Anderson: Absolutely; in the context of what will happen in future if we get this Bill wrong.

Let me give an example. I live in a constituency where Somerfield used to have a supermarket. It was closed as a direct result of the activities of companies that you were involved in, Mr Beecroft. People lost their jobs in that supermarket, and traders had to stop trading because people stopped using the town. Did you speak to anyone like that with real-life experience before you came forward with your proposals?

Adrian Beecroft: It is interesting to read the Unite union's latest report, which says that it is reducing the number of its employees because it needs to make its income balance with its expenditure.

Q359 Mr Anderson: Is there any chance of you answering the question I asked?

Adrian Beecroft: Yes.

Q360 Mr Anderson: Have you talked to anyone in the real world such as the people I mentioned—the people I represent? They are out of work because of the activities of the company you ran—a company that made a 42% profit.

Adrian Beecroft: I have talked to an awful lot of people who have been made redundant, and I assure you that if we had not taken those steps with Somerfield, a much larger number of people would have been made redundant. Somerfield might well have gone bust if we had not reduced the costs and turned it into a profitable business. Is that a bad thing?

The Chair: I am sorry to interrupt, Mr Beecroft, but we do not want to be drawn into matters that are entirely outside the scope of the Bill.

Q361 Julian Smith: I have a declaration: I recently purchased two halves of lager and a bag of crisps from Mr Beecroft in order to understand his report better.

I thank you for writing this report. You have raised a number of issues for millions of entrepreneurs and people taking risks throughout the country. Some of those have been controversial, and some have been less controversial, but I thank you for the report. How many jobs have you created, or been involved in creating, during your 20 or 30-year career?

Adrian Beecroft: As I said in the document I sent, we have invested in more than 200 British start-ups, which now employ several hundred thousand people.

The Chair: Again, I am confident that you are going to move swiftly to the point of the Bill.

Q362 Julian Smith: When you consider the evidence that the Opposition say they require, do you agree that it is difficult to get it, because one of the biggest barriers for companies is the confidence to take on staff? It is very difficult to produce evidence on that. Could you talk a little more about it?

Adrian Beecroft: It is very difficult to produce evidence on that, but I think the Department for Business could change some of the questions in its SME survey so that they are put more directly and will produce more useful statistics.

Q363 Julian Smith: Do you agree that compromise agreements—now settlement agreements—are a good halfway house regarding some of the proposals you made and a voluntary agreement into which no one would be asked to enter without their good will, and where there would be legal representations before anything was concluded? Do you agree that that is quite a reasonable compromise?

Adrian Beecroft: I think it is a very reasonable compromise because, as I said, I think it will encourage open and free conversation. When Paul Kenny spoke to the Committee a couple days ago he said he thought the problem was that employers do not talk to employees enough. This will fix that problem.

Q364 Julian Smith: Would you agree that it is a perfect coalition conclusion—a Tory report, a Labour overreaction, a Minister with subject matter expertise, and a Liberal solution?

Adrian Beecroft: I could not have put it better myself. Could I make one detailed point? The amendment proposing this particular thing talks about the conversations not being confidential if there is any provision in the unfair dismissal legislation that would make the dismissal unfair. To a lay person—I do not know about a lawyer—that seems to say that it will be confidential unless people think they have been unfairly dismissed, in which case it will not. I now understand that it actually means that that applies only to automatic dismissal. There are a number of categories where a dismissal is automatically unfair—they mostly relate to union activity. That could made clearer, if I may dare to say so.

Q365 Chi Onwurah: Mr Beecroft, you are a graduate in physics with an MBA from Harvard, and I am a graduate in electrical engineering with an MBA from Manchester, so I hope we can agree on the importance of the scientific method, by which conclusions are

tested through questioning and evidence. Do you agree that decisions about the employment security of individuals should be taken using a scientific approach to evidence and analysis?

Adrian Beecroft: I would.

Q366 Chi Onwurah: Very good. Thank you. I will take a specific example and I will refer to Mr Beecroft's report, principally because it deals with an issue about the small business and employee approach to employment rights that I think is important for the Committee. In your report, with regard to the proposed changes on unfair dismissal, you say:

"The result of this change would be that the onus would then be squarely on the employee to perform well enough for the employer to value them as an employee."

It strikes me that that assumes that the employee is deliberately not performing well enough to be valued, and that that change is entirely in the hands of the employee. However, you also say in your report that those in small business have very few administration skills and very few academic qualifications. Is it not the case that small businesses need to be supported and improved in management skills generally, and that to assume that leaving the employee in fear of being sacked is the only way to improve performance is to condemn employees to a life of insecurity?

Adrian Beecroft: No. I think that only a very small proportion of employees do not give their best, but I do think a small proportion are in that category. The changes that the Bill is making, which I believe will lead to greater communication between employers and employees, can only be good for employee morale.

Q367 Chi Onwurah: With a small proportion of employees not giving of their best, do you agree that good management can make a real difference in employee performance?

Adrian Beecroft: I could not agree more, but there will still be some people who are not able to do the job that they are currently in.

Q368 Chi Onwurah: And there will be some employers who are not able to bring out the best in their employees.

Adrian Beecroft: Absolutely.

Q369 Chi Onwurah: But the measures in the Bill seem mainly to change the roles and rights of employees, rather than to give more support and education skill sets to employers.

Adrian Beecroft: I do not think a great deal of research was done when the employee legislation was first brought in. I think that it has gone slightly too far.

Q370 David Mowat: I guess that what we are trying to do here is increase the competitiveness of our economy—our labour force—in a way that is fair. I think that we would probably all agree with that. Therefore, the devil is in the detail as to what "fair" is. I was struck by your comment that you can be fair to existing workers and you can be fair to people who do not have jobs at the moment. I guess that I am interested in getting your view, or perhaps the views of the other panellists who have been listening to this section, on whether we wish our labour force to be more competitive and generate jobs like the US. There they can generate small businesses at a far higher rate than we can in my constituency, and I suspect the constituencies of Opposition Members. Are we progressing towards that with this Bill?

Adrian Beecroft: I think that we are. I think that the protected conversations and the consultation pre going to a tribunal will help us to move in that direction. I think that the third proposal of fines will not help in the least and will be a negative force.

Q371 David Mowat: So you would expect small businesses to be generated in my constituency that would not have been generated had we not gone forward with the legislation.

Adrian Beecroft: Yes, I would. People may feel that this is anecdotal evidence, but I have one friend who developed his business and sold it when he was 50 and would quite like to start another, but he cannot take on the problems of employee relations that we have been talking about. If my suggestions had been implemented, he would have started a new business. I believe that a large number of people are in that camp.

Q372 David Mowat: Do you think that we will get to the state over the next decade or so where we are able to generate small businesses in our country in the way that they have been able to in America?

Adrian Beecroft: Do I think that we will get there or not get there?

David Mowat: We all hope that we will.

Adrian Beecroft: I think that we can move towards that. People have asked why, if there is no demand, this will make a difference. If you create new businesses, you create new products for which there is new demand. The demand may be in the UK, but it may also be abroad.

Q373 David Mowat: I would be interested to know whether the other panellists agree that this might help us to generate the new businesses that the country and my constituents need.

Sir David Walker: If I could make an observation very supportive of what I understand Mr Beecroft to be proposing here, I would say, sadly, that the principal block on making progress on this at the moment, as I see it, is not this regulatory stuff, on which change is no doubt needed for the sorts of reasons that Mr Beecroft mentions, but the inability of companies to get credit. The bank problem in circumstances in which the banks are deleveraging and not lending is very serious, and it needs to be put—

Q374 David Mowat: I agree with that, but two wrongs do not make a right. To that point, the credit issues also apply in the US—

Sir David Walker: Less seriously than here.

Q375 David Mowat: Yet it seems to be able to generate so many more small businesses than we can. Why do you think that is?

Sir David Walker: The squeeze on bank lending in the US is much less severe than the squeeze on bank lending here—that is the short answer.

Q376 Geraint Davies: Mr Beecroft, the OECD has said:

"There appears to be little or no association between employment protection legislation strictness and overall unemployment".

Did you take its work into account?

Adrian Beecroft: I looked at that, but when you try to compare different countries as to what the various factors in their economies might be—natural resources and the whole economic situation in different countries—it is very hard to draw a correlation.

Q377 Geraint Davies: In other words, instead of using an econometric quantitative study that has international status with a large amount of data, you relied on, as you quoted, 13% of responses to an out-of-date opinion survey, which is qualitative. It just seems to me that you have failed to look at robust empirical evidence and relied on unreliable out-of-date anecdotal evidence to come to these prejudicial conclusions—

The Chair: In the context of the Bill.

Geraint Davies: —that have led to the Bill. If you put forward proposals that you should beat workers with sticks, and end up with other proposals that you should just be allowed to poke them and intimidate them, then obviously that has a bearing on the Bill.

I just want to know why you did not look at reliable quantitative studies, and instead relied on unreliable, out-of-date opinion data that did not translate into the real world. It was just people asking, "Are you concerned about regulation?" "Yes." From that, you came up with a load of proposals that seem to be an open door for intimidation and bullying. Do you agree?

Adrian Beecroft: No.

Q378 Geraint Davies: Obviously, you did not take the OECD stuff seriously into account.

The Chair: We are here to investigate matters relating to the Bill.

Q379 Geraint Davies: What I was going to ask next was, did you undertake—

Julian Smith: On a point of order, Mr Brady. Is stream of consciousness acceptable at Committee stage?

The Chair: After a very long morning at 11 minutes past 2, I think any consciousness is probably acceptable. *[Laughter.]* I would ask Mr Davies to move quickly to his point.

Q380 Geraint Davies: The Secretary of State has suggested, in relation to the Beecroft proposals for the changes, that undermining job security and consumer confidence would be crazy, and that your proposals were in danger of doing that. Did you make an assessment or an analysis on how the proposals might affect or undermine the reputation of business or consumer confidence?

Adrian Beecroft: I thought about the issue and was not persuaded, given what I have said about there being an increase of openness in the businesses concerned, that it would affect consumer confidence at all.

Q381 Geraint Davies: Why do you think that the FSB in Wales came out against your proposals, in terms of the reputation of business and consumer confidence and the reputation of their businesses, and the feeling that there was an open door to allow businesses not to have a balanced relationship with employees?

Adrian Beecroft: I think you should ask them that.

The Chair: I think we probably have time for just one more crisp and relevant question.

Q382 Andrew Bridgen: We have heard in Committee about the real world experience of Opposition Members. It seems more like some sort of parallel universe where ever-increasing regulation has no effect on employers. If it has no effect on employers, what is the point of bringing it in?

The importance of the Bill, Mr Beecroft, and I hope you agree with me, is immense, and is on two levels. The real rolling back of regulation—though not, perhaps, as drastically as we might like—for the first time in living memory, is, for most employers, a totemic point, a watershed.

Mr Iain Wright: Will the hon. Gentleman give way?

Andrew Bridgen: No. You have had your go.

It also has a symbolic and placebo effect. Most small businesses out there do not believe that regulation will ever stop, and that it is ever-increasing. This will be a demonstration that that is not the case. Both of those things, the real effect and the effect on morale—

The Chair: Mr Bridgen, please leave some time for the answer.

Andrew Bridgen: —will have a big effect on business.

Adrian Beecroft: I think if you look at the two countries that have done things akin to what I was suggesting, Germany and Australia, both with centre or left-wing Governments, they are both pleased that they have done it, and are happy with the results. They believe that it has been very good for consumer confidence, growth and employment.

The Chair: I don't really have time to take another question. I have seconds left.

Ian Murray: May I ask a point of clarity?

The Chair: You may ask a point of clarity, Mr Murray, but if we reach a quarter past I have to call order.

Q383 Ian Murray: Mr Beecroft suggests that there is no evidence at all for current employment law, but I wondered whether he was aware of the three Donovan commissions from 1965 to 1968 and the International Labour Organisation recommendation 199 that took years to come to fruition?

Adrian Beecroft: No.

2.15 pm

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

Adjourned till Tuesday 26 June at half-past Ten o'clock.