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Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Seventh Sitting

Thursday 28 June 2012

(Afternoon)

CONTENTS

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Monday 2 July 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

Public Bill Committee

Thursday 28 June 2012

(Afternoon)

[Hugh Bayley *in the Chair*]

Enterprise and Regulatory Reform Bill

Clause 7

Conciliation before institution of proceedings

Amendment moved (this day): 10, in clause 7, page 4, leave out lines 26 and 27 and insert

'the conciliation officer may extend the prescribed period if the conciliation officer deems it necessary to reach a settlement between the persons who would be parties to the proceedings, with the consent of both parties.'.—*(Ian Murray.)*

1 pm

Ian Murray (Edinburgh South) (Lab): Nothing disappoints me more, Mr Bayley, than the fact that you were not subject to this morning's exciting and vigorous debate on clause 7.

The Chair: We will doubtless make amends.

Ian Murray: We will not go over amendments 9 and 11 again, but we have been rattling through the Bill at a swift pace. The number of Opposition members of the Committee is slightly diminished at present, but—as I have said to my hon. Friend the Member for Hartlepool—we are more interested in quality, not quantity. He is currently considering whether that statement is correct.

Before the Committee adjourned this morning, I was explaining that amendment 10 is fairly self-explanatory. Like amendments 9 and 11, it seeks to address the clause's potential unintended consequences. The idea of pre-conciliation has cross-party support, a principle that I must have emphasised some seven or eight times during this Committee. We welcome the input of ACAS, which we discussed earlier. However, an overly prescribed and complicated process could give rise to similar problems with satellite litigation, as we have seen in the new repealed statutory dispute resolution that I mentioned earlier. We have discussed some of the issues already. We must avoid a situation whereby this ragbag Bill, as it was described on Tuesday and in some of the witness statements, creates a new landscape in employment law where a lawyer's dream is predominant at the expense of the rights of employees and, indeed, of employers. We have to make sure that that does not happen.

Clause 7 proposes that a potential claimant must first provide ACAS with details relating to their claim before making a complaint to an employment tribunal. The process is complex, which is why I think some employment lawyers, including those in the Law Society, expressed concern about this part of the Bill when we took evidence. We have tabled the amendment to try to be helpful and to eke out some of the clause's problems and potential pitfalls. We support the measure and want it to be effective, but we need to at least examine some of the issues, particularly if there is a consultation to come.

Mr Iain Wright (Hartlepool) (Lab): Welcome to the Chair, Mr Bayley; it is a pleasure to see you again. I hope that I am not going to pre-empt what my hon. Friend the shadow Minister is going to say, but I was struck by Joy Drummond's evidence last week when she stated, in stark language:

"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."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 21 June 2012; c. 89, Q201.]

What does my hon. Friend think of those strong words?

Ian Murray: I am grateful to my hon. Friend for that intervention. The comments of Joy Drummond, who has more than 30 years' experience in employment law, are key to the amendment and the clause. She said that one of the potential pitfalls of including an ill-thought-out, ill-advised and rash ragbag clause in a ragbag Bill—I am desperately trying to think of something else that is ragbag—is that it might make the process worse. She is an extremely experienced employment lawyer who has warned against the potential dangers.

Julian Smith (Skipton and Ripon) (Con): Could the hon. Gentleman confirm that the biography of the witness to whom he and his colleagues have referred several times states that she advises mostly trade unions and their members?

Ian Murray: The hon. Gentleman never fails to disappoint with his interventions. The panel of expert witnesses was agreed to by the Committee on a cross-party basis. We cross-examined them, and all Committee members had an equal opportunity to do so. Indeed, some of Ms Drummond's responses that we have quoted were from her answers to the hon. Gentleman's questions. It is perfectly legitimate to quote someone with more than 30 years' experience. To go back to my opening remarks, I say to the Minister and Government Members that we support early conciliation and that we are genuinely trying to improve the clauses.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): Before my hon. Friend moves on from answering the supposed point made by the hon. Member for Skipton and Ripon, does he agree that part of the role of trade unions is to save businesses and the economy money by reconciling and working with their members to minimise the number of cases that require tribunals, and that having advised trade unions qualifies someone to speak on this subject?

Ian Murray: I am grateful for my hon. Friend's intervention. The Government tend to bandy around "unions" as a dirty word, although they provide so much to our economy. Frankly, I would rather take the word of an employment lawyer who has 30-odd years' experience and is an expert in the field, than a venture capitalist who writes an ideological report without any evidence whatever.

Graham Evans (Weaver Vale) (Con): Most small and medium-sized enterprises do not have any union representation, so that point is not relevant. Are not the hon. Gentleman and his party in danger of becoming the party of employment lawyers?

Ian Murray: Intervention after intervention has been irrelevant and founded on ideological prejudice. *[Interruption.]* Some of my richest friends are employment lawyers.

To put all the interventions in context, we congratulate the unions on what has happened at Ellesmere Port. That shows the strength of the trade union movement, which is working with employers and employees to create growth and employment in this country. The movement is a great part of British society and should remain so.

I am delighted that the hon. Member for Skipton and Ripon mentioned the biography of the employment lawyer Joy Drummond, because we can also advertise her book. I hope that, after his intervention, it will sell more copies than this solitary copy of the Minister's book—incidentally, I am deeply disappointed that my hon. Friend the Member for Hartlepool spilt water on it earlier.

The hon. Member for Weaver Vale is correct to suggest that SMEs do not have the same support as larger companies do. It is critical to ensure that clause 7 is absolutely right because, if it is, the main beneficiaries will be employees and particularly small businesses. We have tabled the amendments in good faith to try to ensure that the clause is as responsive as possible to small businesses.

Mr Iain Wright: While my hon. Friend is responding to the hon. Member for Weaver Vale, does he accept that although SMEs are not often unionised workplaces, they have their own excellent organisations? The Federation of Small Businesses springs to mind, and I would also mention the manufacturers' organisation EEF, which is fantastic at pushing for the best for its members. Does he agree that they also have rights and that it is important to consider them in a wider context?

Ian Murray: Absolutely. Small business organisations do a wonderful job. A few Fridays ago, I met Scottish Engineering, which has a very affordable package of legal support, particularly in the employment field. Many hundreds of members have signed up to that, and they receive wonderful legal support in going through the system.

To return to the amendments, I want to highlight the complexity of the conciliation clauses. A form prescribed by the Secretary of State must be lodged with ACAS within the current time limit for an ET1 form, which must be submitted one month after an ACAS certificate has been issued to show that early conciliation has been exhausted or completed. Schedule 2 states that during early conciliation the time limit for employment tribunal cases will be effectively frozen and claimants will always have at least one month to file their ET1 claim form for an employment tribunal at the end of the ACAS early conciliation.

Will the Minister clarify the time limits that would apply to the proposed ACAS form? I will run through two or three of the main ones to show how complicated this can become. With unfair dismissal claims, a person gets three months less one day from the date of termination of employment. Discrimination claims must be within three months starting with the date the act or actions took place or such period as the tribunal considers just and equitable. Disability discrimination claims must be within three months of the act of discrimination. Equal pay must be within six months of the employee employment. Deduction from wages must be within three months from the date of the deduction. Wrongful dismissal is three months starting with the effective date of termination or later if it was not reasonably practicable for the claim to be presented within three months. On redundancy payments, employees must have two years' continuous service, must be an employee, and must not be within an excluded class.

The time limits are written in law and are well established, but we can see that this is already a rather complicated process, and access to justice should not be hindered by what should be an ACAS gateway turning into a significant hurdle. We are essentially running a system with two different forms and parallel time scales. This would particularly affect those without representation or with literacy or language issues—as with the first group of amendments proposed this morning—because they would need to lodge two forms within two different time limits.

The amendment seeks to make the process as easy as possible for employees and employers to ensure that we do not end up with a situation in which satellite litigation becomes the order of the day. As already mentioned, several law firms have expressed concerns that the measure will lead to more satellite litigation about whether the requirements have been met in the time limits. They had said that this was the case with the former requirement for pre-claim disciplinary and grievance procedures, which we spoke about this morning and which were introduced in 2004. They had to be abolished in 2008, because the intended purpose—positive purpose—of those requirements ended up with the employment tribunal system grinding to a halt.

Such precedents are in danger of being repeated. The Gibbons review, which resulted in the abolition of the pre-claim grievance procedures, stated that the main problems with the statutory dispute resolution procedures —let us see whether there are any parallels—included unnecessary high administrative burdens on all parties; disputes were becoming formalised that could have been resolved informally; the one size fits all approach did not work for smaller employers; and the procedures were too bureaucratic and complicated. If the claim form had more than one jurisdiction, differing time limits led to employees submitting more than one claim form covering the same event. Vulnerable employees could be deterred from accessing the tribunal system. The adjustments to the compensation were not applied by tribunals, and employers and employees were now seeking legal advice earlier because the procedures were too complex.

Such problems sound rather familiar and remind us of what we spoke about this morning and indeed this afternoon's amendments. The amendment proposes that the clock should not start on the employment tribunal procedure until the conciliation officer is clear that there is not going to be a settlement. This could be easily achieved by the prospective claimant having to submit only one form to one time limit. This would remove

[Ian Murray]

the two time limits and would ensure that the long established statutory time limits remain in place for the formal employment tribunal process. Indeed, the Secretary of State can accommodate this through clause 7(1)(11):

"The Secretary of State may by employment tribunal procedure regulations make such further provision as appears to the Secretary of State to be necessary or expedient with respect to the conciliation process provided for by subsections (1) to (8)."

Our amendment is intended to prevent the implementation of clause 7(1)(4)(b) where the prescribed period expires without a settlement having been reached. That means that the clock is not ticking on the formal employment tribunal process as clause 7(1)(5) suggests that ACAS can still endeavour to reach a settlement after the expiry of the prescribed period. With our amendment, ACAS could have the flexibility to use additional time, should that be required on top of the prescribed period, in order to settle the claim and keep it out of the employment tribunal system—if the ACAS conciliation officer feels that that is necessary to settle the case. If one party does not agree, the ET1 form, alongside the certificate from ACAS, would then be sent to the employment tribunal for its procedures to commence formally. This simple amendment merely says that, in this process, if a conciliation officer, with the consent of both parties, feels that, the prescribed period having expired, he would like to continue to try to reach a settlement, the clock would stop permanently on that issue until such time as he thought it appropriate to issue the certificate to the employment tribunal to take the case forward.

1.15 pm

That is why we are proposing this amendment. We are making sure that both parties agree, so that the conciliation ethos continues and the well established employment tribunal time scale process remains in place.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): May I say, Mr Bayley, that it is a pleasure to serve under your chairmanship—for the first time in a speaking role. I will do my best to stick to the proper procedural rules that you impose upon us.

The shadow Minister seems to be devoting a lot of time to quoting employment lawyers. I just caution him about spending too much time in the company of lawyers—it is not good for the hon. Gentleman. We must always bear in mind—I say no more than this—that lawyers have a vested interest in this process. We should remember that when we hear what they say. The quotation he made from Joy Drummond, suggesting that this will lead to more litigation, more claims, is exaggerated, given that this is about taking lawyers out of the process and settling claims without using Joy Drummond and her colleagues. To suggest that this will lead to more litigation, more work for lawyers, undermines the credibility of evidence—it is clear that this clause is designed to achieve precisely the opposite.

Ian Murray: I do not disagree with anything that the Minister has just said about trying to take some of the legal processes out of this: this is precisely why we are proposing these amendments—to make this as efficient a process as possible, so that we do not end up with the legal profession looking at this system as an opportunity to add more on to their fee structure. They will litigate on the basis of forms that are incorrect or prescribed periods of time that are lapsed and this would just give ACAS the flexibility to deal with that.

Norman Lamb: I know the point that the hon. Gentleman makes and I accept his bona fides in accepting that, in principle, this is a good reform. I just say that Joy Drummond said something in her evidence that I agreed with, which was that pre-action conciliation is a very good idea—I endorse that at least.

Ian Murray: I accept the Minister's point that employment lawyers, like every other group, have vested interests, but if it was in the interests of employment lawyers to increase their fees as a result of what the Government are proposing, surely Joy Drummond and others would be supporting in full what the Minister is suggesting. However, in stark language to the Committee, that proved otherwise. They are trying to help provide a middle way forward for the Minister. Does he not accept that?

Norman Lamb: The tone of some of the evidence, although accepting, in principle, that the conciliation proposals are a good idea, was to raise all sorts of concerns about the potential for them to create extra litigation—concerns which I do not share. It suggests to me that tampering with a system in a way that involves a lot of lawyers and a lot of expense for both employers and employees is not a good thing. That is where I disagree with Joy Drummond's evidence.

The hon. Member for Edinburgh South referred to the fact that different rights have different limitation periods. One of the many problems that has grown up over the years with this horribly complex area of law, which is completely contrary to the original purpose of a simple tribunal process for lay people to use without lawyers, is that there are differences in the ways different limitation periods are defined. In a sense, we do not have to worry about any of that as far as the clause is concerned, because it is simply designed to stop the clock, whatever the limitation period is, for a defined period in order to allow conciliation to take place. That is all it is designed to do.

Ian Murray: The Minister has just said that the clause is in place to, in his words, stop the clock and allow pre-conciliation to take place for a defined period. Our amendment would do exactly that, but allow flexibility in that defined period if a conciliation officer decides that more time is required.

Norman Lamb: Let me get on to that, because I agree with the hon. Gentleman's sentiment, and I hope I can reassure him.

I agree entirely with the sentiment underpinning the suggestion that the expiry of the prescribed period for early conciliation should not be allowed to thwart the achievement of a settlement for want of a few more days; that is where we are at. If the discussions are going nowhere, there is no point in just extending the time. However, if there is a sense that parties are within touching distance of a settlement, it would be crazy if the system simply brought it to an end.

I accept the sentiment behind the amendment, and that is why, as we set out in the Government's response to the "Resolving workplace disputes" consultation, our intention is to allow the early conciliation period to be extended where the conciliation officer believes that there is a reasonable prospect of a settlement and, critically, where both parties agree. In a scenario where they are close to a settlement and both parties think it is worth giving it a few more days to seal the deal, the conciliation officer will have that power, as the hon. Gentleman wants through the amendment.

We will deal with the issue through secondary legislation, as is appropriate, and, critically, after consultation. However, we recognise that any extension cannot be indefinite, and that is the problem with the amendment, which would provide no time limit to the framework. Parties must have a final deadline, both to focus their minds and to provide reassurance that the process will not simply drag on indefinitely. We therefore intend to use secondary legislation to prescribe the period for early conciliation and to use those regulations to give ACAS conciliators the power to extend that period by up to two weeks.

We do not think that provisions on the duration of conciliation or about extensions to that period need to be contained in the Bill. It is more properly a matter for procedural regulations. The order-making power in proposed new section 18A(12)(c) will allow us to make such extensions. Having the provision in secondary legislation will allow us to monitor how the system is working. We can also look at whether, in light of experience, it makes more sense to limit the extension period or even extend it. Let us look at how the system works. Secondary legislation will allow us the flexibility to make changes in light of experience.

Finally, the amendment would have an unintended consequence, which I think will lead the hon. Gentleman to accept that it would make sense to withdraw it. I have tried to make the point that we accept the sentiment behind the amendment. The problem is in the lines that the amendment would delete. It would remove the obligation on the conciliation officer to serve a certificate on a prospective claimant. Without the certificate, the claimant would not be able to present their claim to the tribunal. I am sure that on reflection, the hon. Gentleman will not want to prevent claimants from bringing claims to the tribunal; he has already said that he wants the conciliation process to work. In light of that, I hope that he will agree to withdraw his amendment.

Ian Murray: I am delighted by the Minister's response. I am pleased that he has used terminology such as "accepting the sentiment", because we have tabled the amendments in the spirit of trying to make the clause as responsive as possible to what it is trying to do. I am delighted that the conciliation officer will have more power to look at the flexibility around the timings of the conciliation process, and I am happy to accept the Minister's assurances that the Government will look at this issue quite seriously when consulting on the process of how it would work, perhaps extending by up to two weeks. There may be unintended consequences, but the purpose of the amendment was to seek those assurances and to obtain some comfort that, where two parties are almost at the stage where they might be able to come to some kind of agreement, the ability for them to do so will exist. That may take away some of the issues around brinksmanship, which may come to pass with these pre-conciliation hearings.

Having received those particular assurances from the Minister, I am happy to ask to beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Ian Murray: I beg to move amendment 12, in clause 7, page 6, line 17, at end add—

'(3) The Secretary of State must within 12 months of the coming into force of this Act, and afterwards annually, prepare and lay before both Houses of Parliament a report on the workings and implementation of this Section.'.

The Chair: With this, it will be convenient to consider clause 7 stand part. Therefore, we will not have a separate stand part debate for the clause.

Ian Murray: We are all experts now—probably—on early conciliation at ACAS, so hopefully we will be able to get through the stand part debate and indeed the debate on amendment 12.

It is fairly clear what we are trying to achieve with amendment 12; it really just encapsulates the other amendments that we have tabled this morning and earlier this afternoon. It aims to ensure that early conciliation is operating properly and gives an opportunity for the Secretary of State and indeed the Minister to come back to both Houses of Parliament and give us an update on how it is working, to ensure that any unintended consequences—satellite litigation, the involvement of the legal profession—are better balanced, so that they do not turn this idea of early conciliation into something that it is not intended to be.

We heard the Government proudly declare before the Queen's Speech that this Parliament was going to be focused on one thing and one thing only—growth. This Enterprise and Regulatory Reform Bill could not be less appropriately named. As we discussed in the Committee on Tuesday and earlier this afternoon, it is a ragbag of BIS proposals that have been brought together as some kind of panacea for economic growth. It could not be further from the actualities of what it is trying to achieve.

It is important to put in context the rhetoric and narrative of the Government in proposing clause 7 and subsequent clauses. At the outset, I must say that we recognise, we have always recognised and it is on record that we recognise that reform is needed in the employment tribunal system, but that reform must be strongly evidence-based.

The chair of ACAS gave evidence to the Committee last week; for the benefit of the hon. Member for Skipton and Ripon, I emphasise that I will not be quoting an employment lawyer but the chair of ACAS. He said:

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

That is what concerns me about the clause.

The economy is in double-dip recession, not because of the hard-won rights of millions of workers but because of the lack of a growth strategy and the ideologically driven austerity that has gone too far and too fast. With more than 2.7 million people unemployed, the Government

[Ian Murray]

should be using the Bill to make it easier for employers to hire staff, rather than making it easier for them to fire staff.

The unintended consequences of not getting the clause right are immeasurable. They could result in a further loss of job security and confidence in the jobs market. That would ultimately lead to even lower consumer confidence, which is already at an historically low level. That would be bad for business and bad for the future of this country.

The spectre of Beecroft hanging over the heads of workers up and down the country is not about economic growth but about ideology and anecdote. That was exposed to the Committee just a week ago, when we interviewed Mr Beecroft himself.

Norman Lamb: It is not in the Bill.

Ian Murray: The Minister says from a sedentary position, "It is not in the Bill." Perhaps if I look through the papers here, I may find the analysis that has been done on the Beecroft proposals. I believe that, of the 33 Beecroft proposals, 17 are either contained in legislation that has already been passed or they are being consulted on. So, more than 50% of the Beecroft proposals are in there, and perhaps we could play a piece of Beecroft bingo later on and find out who has got "House" in terms of all the Beecroft issues that are contained in the Bill.

Julian Smith: Is there any reason why the hon. Gentleman continues to ignore the submissions from the IOD, the CBI, the EEF—the manufacturers' organisation—and from micro-businesses that have been in touch with parliamentary groups and say that employment law is stopping them from having the confidence to take on staff? Why is he ignoring those submissions?

1.30 pm

Ian Murray: That is a very similar question to the one we had this morning. We are not ignoring the evidence; the evidence points to the fact that the BIS small business survey showed that only 6% of small businesses rated regulations as a problem, and less than half of that 6% said that employment regulation was an issue. The evidence is there. We are not ignoring the CBI and IOD—in fact, some of the later clauses in the Bill support what the CBI and IOD said to the Committee last week—but it has to be measured up with evidence and, as ACAS said last week, we cannot be making law through anecdote.

Julian Smith: It is time to come clean. Every Labour hon. Gentleman on the Committee has either a trade union link or a trade union sponsorship. That is fine—I thought that the trade unions performed very well last week in evidence sessions—but that background to every Labour hon. Gentleman on the Committee means that their focus is on protecting those in work, while we those our Benches focus not only on workers' rights, but also on the rights of those risk-takers that we need to create jobs, and the unemployed. It is that balance that these reforms are intended to ensure.

Ian Murray: I am delighted with that intervention, because only 1.8% of the constituents of the hon. Member for Skipton and Ripon are unemployed. In the constituencies that I and many of my colleagues represent, where the figure is 11.8% or 15%, issues around employment are starker. None of those employers is saying that resolving the employment rights issues that he portrays in an anecdotal way would make them take on more staff. What will make them take on more staff is access to finance and an economy that looks as though it may be coming out of the double-dip recession and recovering. Those are the two biggest issues that employers speak to us about. If you asked the IOD and the CBI to choose the measure by which the Government would get the economy back on track, and the choice was between clause 7—changing the qualification period for unfair dismissal—and injecting money into the economy so that money could get to small businesses, I am sure they would take the latter. I would not be exaggerating to say that.

Chi Onwurah: Before my hon. Friend moves on, does he agree that the hon. Member for Skipton and Ripon was implying that membership of a trade union—he spoke of a trade union link: I am not sponsored by a trade union, but I am a member of one—makes it impossible for one to be objective about such important national economic issues as employment rights and ACAS tribunals? Does my hon. Friend think that the hon. Member for Skipton and Ripon would apply that to the millions of trade union members up and down the country who have a right to have their voice heard in these matters?

Ian Murray: Absolutely. Indeed, the trade union movement up and down the country numbers 7, 8 or 9 million people—those are the individual levy payers of unions which represent workers. Just to correct the hon. Member for Skipton and Ripon, I am not sponsored by a trade union. My constituency Labour party is, and proudly so, and indeed is sponsored by the largest private sector union.

John Cryer (Leyton and Wanstead) (Lab): Is my hon. Friend aware that both the Queen Mother and George VI were members of the Transport and General Workers Union? Presumably the hon. Member for Skipton and Ripon believes that they were involved in a far-left, wild-eyed plot to destabilise democracy and destroy prosperity.

Ian Murray: This is probably slightly pushing the boundaries of clause 7, but my hon. Friend deserves some recognition for his historical take on trade union membership.

The Chair: It was right for the hon. Gentleman to reply to the hon. Member for Leyton and Wanstead, but we could be here for 100 years if we debated the whole of the TUC's history and that is not the question in front of us. The question is about the use of conciliation services at an early stage in employment disputes and we must concentrate on that.

Ian Murray: I could not agree more, but I was trying to set out some of the rhetoric that has led us to this position and part of the rhetoric is about the historically

high number of employment tribunals that there are in the system. I fundamentally agree with the Minister when he said that anything in the employment field that undermines consumer confidence and job security would be crazy. However, the Opposition contest that some of the issues regarding the rhetoric of how we have arrived at the Bill undermine job security.

Norman Lamb: And clause 7.

Ian Murray: I thank the Minister for reminding me from a sedentary position about clause 7. I want to demonstrate that if we do not have a proper evidence base to take the issues forward, we will end up with a law that will not satisfy the properties for what it is there to do. We wholeheartedly support the spirit of clause 7 and what it is there to do, but we want to ensure that it is done on the basis of proper evidence.

The hon. Member for Skipton and Ripon will be pleased to hear that John Morris from the Law Society said that the purported increase in vexatious claims was not supported by the evidence. The increase in employment tribunals, as we discussed briefly this morning, is due mainly to airline disputes regarding the working time directive and equal pay.

In seeking to justify their package of reforms in clause 7, the Government have stated, for example, that employment tribunal claims

"rose to 236,000 [in 2009/10], a record figure and a rise of 56% on [2008/09]…there were 218,100 claims in 2010/11, a 44% increase on 2008/09".

Reading those figures on their own, one would see that the employment tribunal system is under extreme pressure, and the number of claims going through has gone up by a disproportionate and unacceptable number. Someone reading those figures on their own would probably come to that conclusion.

In fact, as the Minister conceded this morning, the number of employment tribunal claims fell in 2010-11. The headline figures of 236,000 claims in 2009-10 and 218,000 claims in 2010-11, used by Ministers and the Government, give a highly misleading impression of the actual work load of the employment tribunals system. The headline figures include both the number of claims by individual workers and the total number of worker claimants covered by multiple claim cases, in which two or more workers claim against the same employer.

It is important to use the real figures when discussing clause 7. The year 2008-09, for example, had a headline figure of 151,000 claims, but that was made up of 63,000 single claims and 88,000 multiple claims, of which there were only 7,400 multiple claim cases. That is just over 70,000, not the vast number being quoted to justify changes to employment law.

In 2009-10, when the headline figure rose by 56% from 151,000 to 236,000, used by the Government to justify their package of reforms, in actuality it went up through multiple claims going from 88,000 to 164,800. Government arguments that many claims are vexatious, that there is a massive increase in claims, that the employment tribunal system is grinding to a halt and that everyone is on the side of employees do not bear fruit in the figures. We must bear in mind that the number of individual claims rose by only 12%, which is historically relatively modest, given the state of the economy at the time.

I know that the issue is not directly related to clause 7, but it is important to put it on the record that the justification that the Government have been using for making their changes is a false premise based on anecdote, not on the hard figures of evidence; the figures are from the Ministry of Justice's own website.

Clause 7 will, as we have heard, make employees with a claim submit their claim to ACAS before they can proceed to lodge a claim in an employment tribunal. If the conciliation officer concludes that no settlement is possible, or the time period ends with no conciliation, the officer will issue a certificate that allows the employee to take his claim before the tribunal. An employee will have one month after the end of early conciliation to take their claim to the tribunal.

The Bill envisages that every case must go to ACAS before it can go to a tribunal. The explanatory notes point out that that is a significant expansion of the role of ACAS. Of all the claims lodged at an employment tribunal at the moment, less than a fifth of claimants contacted ACAS for advice before submitting their claim. It would require a significant redesign of the services provided by ACAS, and the chair of ACAS made precisely that point in his evidence to the Committee last week. However, it is not yet clear—my hon. Friend the Member for Hartlepool raised this key point this morning—how much additional resource ACAS will require or will be granted for the process.

The changes in clause 7 must be read alongside the Ministry of Justice's introduction of fees. As I said this morning and in a point of order last week, nothing in the documentation provides a proper analysis of the impact of the introduction of fees on the proposed system. The Department for Business, Innovation and Skills produced a useful schematic diagram showing the old and new employment tribunal processes, but that did not mention fees. Fees will have a significant impact on the operation not only of the clause, but of the entire package of measures in the Bill. The prospective claimant diagram that has been circulated to the Committee does not mention fees, and the Minister must therefore address the significant issue of how the process will then operate. I have written to him to ask for his comments on that, and it would be useful for the Committee to have an analysis of the impact of the introduction of fees.

Conciliation is not entirely new, because ACAS has provided a conciliation service, although it is not compulsory, since 2009. We all appreciate the role that the ACAS helpline plays in the conciliation process. As I said this morning, we listened in to calls to ACAS for a few hours, and they were dealt with incredibly professionally. Some call handlers were slightly frustrated that they did not have the ability, without forcing the issue, to send a claimant for conciliation when they knew that that would be a way to resolve the case.

ACAS and BIS economists have estimated that the process will save a significant amount of money, as is set out in the BIS impact assessment. We carried out an analysis using data collected in the "Evaluation of the First Year of Acas' Pre-Claim Conciliation Service" from 2008, and in the ACAS management information data about the "2010 Annual Survey of Hours and Earnings". The average cost of resolving a claim through pre-claim conciliation is about £475 for employers, compared with the average cost of about £5,500 for dealing with an employment tribunal claim, which is a

[Ian Murray]

significant difference of £5,000. The average cost for employees of resolving a pre-claim conciliation case is about £80, compared with almost £3,000 for dealing with an employment tribunal claim. Therefore, the process will help not only employers, but employees. Indeed, for the benefit of the hon. Member for Skipton and Ripon, it will also save the trade union movement a considerable amount of money—as it should do, given the issues that they have to deal with in representing their members.

Pre-claim conciliation cases also reduce the amount of time—a key issue in relation to the clause—that both employers and employees spend on dealing with disputes. Employers spend an average of five days on employment tribunal cases, compared with one day or less than eight hours in a pre-claim conciliation case. Employees spend an average of seven days dealing with an employment tribunal case, compared with 5.7 hours in a pre-claim conciliation case. In addition to the significant money saving, there will therefore also be a significant time saving.

It has been estimated that early conciliation through ACAS in such a form could lead to 44,000 early conciliation cases, compared with just under 20,000 cases at the moment. When he gave evidence last week, Ed Sweeney did not press the Minister, who was in a generous mood. There was a suggestion that money would be forthcoming for ACAS if that was necessary. *[Interruption.]* It is amazing how Front Benchers' ears prick up when we mention money.

If we put together the figures from the evaluation of what ACAS currently does and the increase in the number of early conciliation cases that ACAS predicts will come its way, we are looking at costs of up to £10 million. All the witnesses to the Committee, whether they were employment lawyers, trade unions, ACAS or employers' organisations, said that they found it difficult to see how ACAS could cope with that increase in business without additional resources to provide the proposed new service.

1.45 pm

Early conciliation will prove effective only if enough conciliators are deployed and have sufficient time to explore the options for a settlement between employers and the individual. The individual case loads for each conciliator could be considerable. If so, the system may grind to a halt, because people would not be able to go to an employment tribunal until either their ACAS conciliation period had expired or a certificate had been issued.

The amendment highlights the assistance that some clients may need to ensure that the process is properly followed up. ACAS needs to be funded properly, and parliamentary questions have shown that its budget was £8 million less in 2009-10 than it was just a few years previously.

Julian Smith: I am sure the hon. Gentleman questioned Ed Sweeney hard on that when he met him at ACAS, but my assessment is that the money required by ACAS is more like £4 million or £5 million than £10 million. I am sure the hon. Gentleman checked the figures, being a rigorous financial obsessive. If he has not, I urge him to do so, so that we get the best value for money in these difficult times.

Ian Murray: Whether the figure is £5 million or £10 million, it is £5 million or £10 million more than ACAS has at the moment. We are putting a lot of responsibility on ACAS to put through one of the biggest changes in the employment tribunal service that we have probably ever seen. Unless ACAS is well resourced—every single witness last week had concerns about whether ACAS is well resourced—there will be a fundamental impact on ACAS's ability to conduct its business properly.

I will share my analysis of the figures with the hon. Gentleman. Whether the figure is £4 million or £5 million, or £9 million or £10 million, is neither here nor there, because ACAS still requires more money, which the Government have so far failed to commit or provide. Take that on top of ACAS's £8 million reduction in the past few years and we are now up to £13 million or £14 million, or, indeed, £17 million or £18 million. On that scale, the measure could have a fundamental impact on the way in which ACAS conducts itself.

There is a danger, and many witnesses have said this, that the ACAS pre-conciliation system might turn into little more than a tick list because ACAS does not have the resources to provide proper conciliation. That would be a real shame, because we support the spirit of clause 7.

Finally, amendment 12 would require the Secretary of State to prepare a report to be laid before the House on the workings of early conciliation. Again, I say that in the best possible spirit of trying to ensure that we get this right. If the provision does not appear to be right, at least the House would have the opportunity to debate amendments or changes.

The report should consider—and this is not an exhaustive list—the number of settlements agreed; the number of cases in which settlements are not achieved; the impact on the number of employment tribunals; an analysis of any satellite litigation; and a full equality impact assessment of the system's operation. The report should also include the overall cost for employees, employers, ACAS and the Treasury; the number of approaches to ACAS that are not taken forward; the impact of fees on the ability to settle claims, which I think is a key aspect; the overall ACAS funding requirement and staffing levels; and the impact on the ACAS helpline. More people might use the early conciliation service, rather than taking advice on the helpline, so that might be one unintended consequence worth considering. The report should also consider ease of use; the relationship between the system and the employment tribunal system; and an analysis of the legal implications of the new system as a whole.

The Opposition support early conciliation, as I have said nine times, but we have some fundamental concerns about the system's operation. We have fundamental concerns about the funding of ACAS and its ability to be a supportive gateway for the employment law redress system, rather than just a hurdle for genuine claimants to navigate. We will not vote against the clause, but we encourage the Minister to address the issues on Report to ensure that the process that comes out of clause 7 is something of which we can all be proud.

John Cryer: It is a pleasure to serve under your chairmanship, Mr Bayley. Like the Minister, I will do my best to observe the rules of order, or at least get away with what I can. I do not want to fuel the paranoia

of the hon. Member for Skipton and Ripon any more, but I would point out that when Ernie Bevin died in 1951, one prominent member of the royal family said that he was a splendid Englishman of the old school, so that is enough material for the hon. Gentleman to raise an urgent question on Monday afternoon asking for an enquiry into the leftist activities of the royal family.

Mr Iain Wright: Subversive!

John Cryer: Indeed. I want to pick up briefly on three of the points that the Minister made earlier. First, there was the point that because a large number of cases—actually, all cases with a very few exceptions; there are exceptions in the Bill, which I assume will be clarified in the statutory instruments that will follow—will go through the ACAS early conciliation procedure, a lot of cases will not go to tribunal. In reality, I do not see the numbers of cases going to tribunal being cut, because already only 20% of cases go to a full hearing with a conclusion. That is actually a small number of the cases that go into dispute every year, and that has been the case for a long time.

Secondly, the Minister argued that too many cases go through a complex legal procedure. That is probably a fair point in that context. He seems to be arguing for increased trade union membership, because trade unions tend to act as filters to industrial complaint cases. I worked for a trade union for several years, and a union will often say, "We are not going to pursue that particular case, because we don't think that you have sufficient grounds for going to a tribunal", or, "We will pursue that particular case, because we think you have." Of course, if individual members of a work force who are not members of a trade union go to a no win, no fee lawyer—I am not attacking the legal profession—there will inevitably be a greater temptation for such lawyers to say, "Well, it's more of a 50:50 case, but we're tempted to pursue it, anyway." Trade union officers will tend not to say that. They will tend to say that if it is 50:50, the odds are not particularly great on winning, so they act as a filter on cases going through to tribunals.

The Minister talked about the issue of vulnerable workers: an issue that was raised by the shadow Minister, my hon. Friend the Member for Edinburgh South. The matter of vulnerable workers has become an increasingly important issue in the past few years. A high proportion of the work force in this country—including in my constituency, by the way—do not have English as a first language. In many cases, they do not have any English at all and their command of English is virtually non-existent. I am thinking of eastern European workers who generally do not intend staying in Britain, but intend to work here for perhaps two, three, four or five years.

Like the Indian work force that came over in the 1940s, 1950s and 1960s, the eastern Europeans intend to stay in Britain for a relatively brief period and then go back, so there is no great incentive to learn how the ropes work or to acquire English. That is not a criticism of eastern Europeans. I have had experience of such matters. I worked for an organisation that dealt with a large employer in the west country. I will not name it, because the case is very complicated and controversial, but it is a big agricultural producer and a significant player in the British market. The employees were treated absolutely appallingly. When they became members of a trade union, the union was able to make representations and reach an agreement with the employer. Hardly any of the work force could speak English. If they were asked to start filling in forms and perhaps having to comply with certain regulations, they would struggle to do so.

The Minister said that people could always approach the local Citizens Advice office, but, as was pointed out earlier, and this is certainly the case in my constituency, the CAB offices are being cut left, right and centre. In the next year or two, a lot of CAB offices will be closing. Even the one in my borough might be facing closure in the next couple of years. I am not impugning the Minister's motives. I just think that he is he is too optimistic if he thinks that the CAB can provide the sort of advice and concern that the Government are starting to expect.

Moving on to points that have been discussed, the statutory disciplinary grievance procedures were, as I said in an earlier intervention, abolished two or three years ago. They were abolished on the grounds that it led to all sorts of satellite litigation. It did not really work, it did not prevent cases going to tribunal, it just made the procedure more complicated, more difficult, and it meant that lawyers ended up in fights with each other over whether the conditions had been observed. I think that that may well be replicated in the new system. I can see no evidence—I have read the Bill and many of the briefings that have come in—or solid argument to say that this will cut the number of cases going to tribunal, or be different from the previous system that existed until two or three years ago.

It was at that point—again, I mentioned this earlier—that judicial mediation was introduced. That seems to have worked. I am afraid that I do not have figures to demonstrate this, but I have talked to a number of lawyers who deal with judicial mediation, and the argument has been put to me that the system works well. For one thing, it is in front of not just a judge, but somebody with experience of industrial relations and tribunals. It is in an informal atmosphere, not in a courtroom, so arguments can be put in circumstances that are not particularly pressured, but the judge brings experience of the workplace, of industrial legislation and industrial relations to the case, which seems to me to be a good way of doing things. I am not sure that ACAS, for all sorts of reasons—mainly lack of resources—will be able to cope with what they face.

That leads me to another question—I do not think that we have had an adequate answer to the question of what extra resources and staffing will be available to ACAS. Earlier, I raised the fact, which the shadow Minister dealt with, that in 2010-11, 218,000 cases went to the employment tribunal service. The shadow Minister rightly pointed out that only 60,000 of those are individual cases, the rest being group cases. Because we do not know how large or small the group cases were, it is very difficult to say what number over and above the 60,000 will actually go to the employment tribunal service. It could be 80,000, it could be 100,000. I think 80,000 is probably a fair figure, but the shadow Minister is quite right to say that it will not be 200,000. Nevertheless, the volume going to the employment tribunal service will be hugely greater than it is now and I do not see how ACAS has the resources to deal with it.

[John Cryer]

There has been no indication, apart from one or two hints, that the falling demands on the tribunals will release finance and resources that can go to ACAS—that was in a House of Commons paper that I read. As I said earlier, I do not see that that cut is going to happen because I do not anticipate an enormous reduction in the cases going to the employment tribunal service; therefore there will be a shortfall in the resources and cash available to ACAS. The Government have to take that on board.

Finally, it has not been discussed yet that sometimes early conciliation is a completely inappropriate path to go down. In cases, for instance, of discrimination or harassment, the last thing that an employee or ex-employee who may have been subjected to racism or something equivalent wants to face—I have dealt with such cases, by the way, and I am sure many of us have, as MPs—is going into a room with the person who is accused of that harassment or discrimination. You are putting two people in a room who may have a visceral hatred and dislike of one another. In such cases, people should not be forced to go into a room together, even with representation. They should be allowed to go down the traditional path of the tribunal. *[Interruption.]* Does somebody want to intervene on the far side?

Chris Ruane (Vale of Clwyd) (Lab): On the far right.

John Cryer: I did not say the far right, but I meant it.

2 pm

Andrew Bridgen (North West Leicestershire) (Con): Is the hon. Gentleman suggesting that when the two individuals who have a visceral hatred of each other go to a tribunal, they will not be placed in the same room, with legal representation? What is the difference between that and early conciliation?

John Cryer: Not necessarily. In a tribunal, that is not always the case. In ACAS, there would be a far more formal procedure. Early conciliation is not a formal procedure but a much cosier one. It will make someone who has been on the receiving end of harassment or discrimination feel far more vulnerable than in a formal court procedure. They do not always have to be together; it is in the hands of the chair whether they are together in the same room, and it is decided on a case-by-case basis.

Returning to my point, will the Minister respond to that? It has not been raised before.

Lorely Burt (Solihull) (LD): It is a pleasure to serve under your chairmanship, Mr Bayley.

I want to make a few brief comments in the stand part debate of this important clause. I begin by declaring an interest: in my previous life, I worked as an HR professional. It was a long time ago—*[Interruption.]* That was so kind. The memory of going to ACAS is seared into my mind. It was a big deal then. By the time we got to that stage, matters would have irretrievably broken down. We would have gone a long way down the line, and negotiations would have failed. In those days—in the previous century—that was how things were. Therefore I wholeheartedly welcome the clause and the move to pre-conciliation. ACAS does an excellent job. It will be able to give its wisdom and help when it is wanted before things get to a worse stage.

I have a question for my hon. Friend the Minister regarding resources, which has been raised by the Opposition. I totally agree that there is no requirement for resources to be placed in the Bill and that it can all be sorted out, not even through secondary legislation. However, it is important to think about the early stages. We have no idea, unless the Minister has a crystal ball underneath his desk, how things will pan out. We do not know how much time will be saved by transferring conciliation to the earlier stages, and we do not know how many negotiations will fail and end up in a tribunal.

However, I think we can predict one thing, which is that in the early stages, ACAS will be dealing with the backlog of cases that have not been through a pre-conciliation process as well as new pre-conciliation cases. We can predict a growth in demand for ACAS's services at the early, tender stages. Can we ensure, particularly at those early stages, that if there are early indications that ACAS needs additional help, even temporarily until things shape down, it will be possible to furnish it with the resources that it needs?

Ian Murray: I have tremendous respect for the hon. Lady, who is making a strong case for ensuring that ACAS is properly resourced so that early conciliation is as grounded as possible into the employment tribunal system for it to succeed. Does she not agree that amendment 12 covers many of her suggestions and will she consider voting with us on it?

Lorely Burt: I am grateful to the hon. Gentleman, and I am tempted by his kind offer. However, I shall listen to my hon. Friend the Minister, and I am sure that I will be reassured by him.

Mr Iain Wright: I rise briefly—*[Interruption.]* That sounds like a challenge. I support my hon. Friend the Member for Edinburgh South on amendment 12. He put across a perfectly reasonable point of view, and I do not see how Committee members can argue against the amendment, which would improve parliamentary scrutiny.

On clause 7, I listened closely to the hon. Member for Solihull, and she emphasised what I said this morning on how little evidence there is for the likely number of early conciliation claims and about what will happen. She supported my view that the change is to some extent a leap in the dark. Nevertheless, we fully support the notion and concept of early conciliation, which makes perfect sense.

I wanted to catch your eye, Mr Bayley, to put on the record the fact that the number of employment tribunal cases is not why the British economy is in a double-dip recession. Although we fully support early conciliation, I want the Minister to make the point that although the change is welcome, that is not why the economy is spluttering.

Julian Smith: Will the hon. Gentleman give way?

The Chair: Order. I will stop that debate at this point, because we are not here to discuss the double-dip recession. We are debating pre-hearing conciliations, which I know Mr Wright was just moving on to.

Mr Wright: Thank you, Mr Bayley—I shall skate delicately.

I want to draw to the attention of the Committee the evidence submitted by the Law Society. It states:

> "The justification for this package of reforms is that there has been a significant rise in Employment Tribunal claims caused by a prevalence of weaker cases and an insufficient use of mediation and conciliation, combined with over-long Tribunal hearings...The evidence does not support this."

As my hon. Friend the Member for Edinburgh South eloquently pointed out, the combined number of single claims and multiple claim cases fell by 15% in 2010-11. Today, figures have been published for the number of claims in 2011-12, showing another fall of 15%—a drop of 31,800 cases—with multiple claims down by 19%, which probably reflects the fruition of the equal pay claim process.

Lorely Burt: I am heartened by the figures that the hon. Gentleman is citing. Does he not agree that we should consider being very flexible on resources? As the number of claims is falling, it may well be that the resources are adequate and that savings can be made, so we should wait to see what to do about the whole matter of resources.

Mr Wright: The hon. Lady makes the fair point that we have to be flexible. However, I think she would agree with me that the first and foremost principle is that ACAS should be given the resources to enable it to do its job. That is absolutely what needs doing. In Committee last week, we heard evidence from a wide variety of stakeholders who are concerned that the funding will not be made available, so we need to press the Minister on that. To back up what my hon. Friend the Member for Edinburgh South said, the amendment would allow Parliament to reconsider in a sensible and balanced manner, and I hope that the hon. Lady will support us if we press it to a Division.

In conclusion, it is important to set the context. As the Law Society has said, there is no evidence to suggest that the number of employment tribunal cases is spiralling out of control and ensuring that enterprise cannot be encouraged. We are considering an enterprise Bill. Opposition Members want to ensure that measures are in place to promote and facilitate enterprise. I hope that the Minister will put it on the record that clause 7—important though it is; supportive though we are—is not hindering the ability of British firms to expand.

Julian Smith: Can I just ask the shadow Minister, as I asked his colleague, is it the Labour party's position that employment law burdens do not cause entrepreneurs, start-up businesses and businesses generally any worry at all, and that they are of no consequence in their decisions about whether to take on staff? That is what he seems to be saying. It would be good to know what the Labour party's policy is.

Mr Wright: I go back to what my hon. Friend the Member for Edinburgh South has said about this. When businesses' own evidence shows that 6% of small businesses think that regulatory barriers are a big hindrance to growth, we should take that into account. That is important. Do we want to support an environment in which regulation is flexible and conducive to businesses growing and expanding? Of course we do, but let us put to rest the myth that the employment tribunal process is somehow hindering the British economy in its attempt to grow, because it is not. When the Minister sums up, I hope he will acknowledge that Opposition Members are going to support clause 7 and acknowledge the context in which this is set.

Norman Lamb: I will resist the temptation to stray into the broader debate about the state of the economy. Suffice it to say that one of the fundamental problems facing the British economy is the disastrous state of the public finances left by the Labour Government. This country had the biggest deficit of any G20 country, with rising debt levels. We were spending £150 billion per year more than we were bringing in in taxes.

The Chair: Order. In fairness to both sides of the Committee, in the same way that a double-dip recession goes beyond this clause, so does the state of the public finances two years ago. I think perhaps we should now move on to the conciliation matters, which are part of this clause.

Norman Lamb: Thank you, Mr Bayley. You have rescued me from myself in wanting to talk more about the disastrous state of the finances left by the Labour Government. I will make one other comment about the Bill itself. The shadow Minister likes to condemn it as a ragbag Bill, and yet when we talk about each of the individual measures, it turns out that Opposition Members support the principle of them. So when we talk about competition, there is support for the Competition and Markets Authority. When we talk about the Green investment bank, we suddenly find that they support it. When we talk about employment, we find that there is support for clause 7. No doubt we will see support for the principle of dealing with directors' high levels of pay, and indeed the measures that will make a real difference on copyright. Although Opposition Members condemn the whole, in the parts they support the principles.

I will now follow the instruction of the Chair and focus on the clause. The shadow Minister conceded early in our discussion of the clause that there is not simply a perception of complexity; there is a problem of complexity. The legislation is very complex. The processes are complex and that is bad for both employers and employees. Anything that can be done to make systems and processes simpler must improve the environment for business and therefore encourage businesses to take on new employees. I am sure that if Opposition Members think about it, that is something that they would support. We are trying to make this country an attractive place for inward investment. We want an environment that is attractive for setting up companies and for taking on employees.

Mr Wright: Will the Minister give way?

Norman Lamb: Let me focus on the issues in the clause. The hon. Gentleman referred to the number of claims brought to employment tribunals. I do not rely on that as the justification for the measures. I rely on the justification that this is a good reform. It helps employers and employees and for that reason should be supported.

2.15 pm

The hon. Gentleman quoted interesting statistics about the cost to employees of a tribunal claim. Steps taken by the coalition Government to reduce the cost to employees when they lose their jobs should be wholeheartedly welcomed by the Opposition. That is why the proposals on conciliation in clause 7 and on settlement agreements achieve a win for employees who lose their jobs and who, instead of having to wait four or five months for their claim to be heard in tribunal, at enormous cost in legal fees, get the matter settled quickly so that they can move on in their lives.

The hon. Member for Leyton and Wanstead mentioned judicial conciliation. I share his view that it is an interesting concept. That is one issue being looked at by Mr Justice Underhill in his review of employment procedure rules. It seems there is a place for that in the overall architecture.

I will also mention the concept of workplace mediation. Pilots of workplace mediation have been launched in Cambridge and Manchester. That is a mechanism whereby companies can group together to help each other sort out problems before a dismissal takes place, to resolve disputes. That again is a highly attractive proposition pioneered by the Government that will prevent unnecessary dismissals and help keep people in their jobs. I thoroughly welcome those pilots.

The hon. Gentleman also mentioned the role of the trade union officer or official. I share his view that they often take a more pragmatic view than employment lawyers. One of the problems we have with the system is that if a claimant comes for advice about pursuing a possible claim to a tribunal, the lawyer's duty is to the client and the lawyer is pretty much obliged to advise them to issue a claim, however spurious, to the tribunal, because it gives a bargaining position from which to claim money. That is not a good position to be in. That is not something that public policy ought to encourage. If there is no claim to be pursued on merit, there ought not to be a position where lawyers encourage clients to issue claims. That is what happens at the moment. That is why the issue of fees has merit. There has to be some mechanism to make the potential applicant at least think about the consequences from their perspective of issuing a claim in the tribunal.

The hon. Gentleman also mentioned the issue of non-English speakers and the fear that they might be put off completing a form for ACAS. I have already tried to explain that the details required will be basic and limited, vastly simpler than on ET1, the claim form to the tribunal. For that same non-English speaker who might be in his constituency, the hurdle they will have to overcome to issue a claim in the tribunal is far greater, in terms of completing forms, than initiating a conciliation process. I suggest that this informal process is a good way to give extra rights to those non-English speakers who might otherwise be dumbfounded by the complexity of issuing a full tribunal claim. It at least gives them the chance of a conversation that might help to settle their claim.

The hon. Gentleman also mentioned concerns about race discrimination, where it might be inappropriate for early conciliation. He talked about bringing the two parties into a room together. That suggests a misunderstanding of what is proposed. We are not suggesting an informal hearing. That might be why he has expressed concerns about the cost of all that. The way that ACAS operates, and has always operated, is that it would make phone calls to the employer and the employee and go back and forth to explore the possibilities of achieving a settlement. The way a settlement is achieved through ACAS, both under the previous Government's voluntary scheme and under the current conciliation that takes place later on in tribunal applications, is that an ACAS officer explores whether there is common ground and tries to bring the two parties to a common position.

Therefore, I do not think that there is any fear that someone who has suffered outrageous behaviour—perhaps racial or sexual discrimination—will be required to come into the same room together with a respondent. In fact, the process will provide an early means for settling a claim for someone who may have been appallingly treated by a rogue employer. At present, they are left waiting for five months, often suffering an awful lot of stress while waiting for their tribunal hearing.

I will deal with issues of the cost of the process to ACAS, raised by my hon. Friend the Member for Solihull, in a moment. First I will make some additional comments on the shadow Minister's contribution.

As members of the Committee know, either through personal experience, as I do, or through conversations with their constituents and others, going through the tribunal process is a daunting experience for all concerned. It costs time and money, not only for the respondent but for the claimant and the taxpayer. It is right, therefore, that we take what steps we can to encourage and support parties to resolve their disputes outside the tribunal. That is why we are introducing the requirement for prospective claimants to first submit details of their case to ACAS before they are able to lodge a claim with a tribunal.

While the requirement to submit details to ACAS will be mandatory, it will be for the claimant and the respondent to decide whether they wish to accept the offer of conciliation. Where both parties agree and it is successful, they will set out the terms of their agreement in a binding document and no tribunal claim will be made. Where either party declines to enter conciliation—they will be entirely free to do so—the claimant will then at least have received information from the ACAS conciliator about what is involved in taking the matter to a tribunal, so that they can make an informed decision about whether to proceed. We know from the current voluntary system that 75% of those who go to ACAS end up not pursuing a claim in a tribunal.

ACAS currently offers a limited but highly effective pre-claim conciliation service. We believe that it is right to make the opportunity to resolve disputes before a claim is lodged available to all who want it. We have received broad support for such an extension from business, employee representatives and the Opposition, for which I am grateful. However, many have expressed concerns about ACAS's funding. The Committee heard from Ed Sweeney, the chair of ACAS, at its evidence session last week. He said that work is under way to develop the process for early conciliation. That will, in turn, inform discussions about what additional resource may be needed. I assure the Committee that once that work is finalised and any additional funding requirements are identified, we will ensure that ACAS has what it needs to deliver the new duty. To respond specifically to

my hon. Friend the Member for Solihull, we will ensure that if there is a brief period of overlap between the old and new systems, ACAS will have interim funding and resources to get through that period.

The default position of the Opposition is always, "If there is a problem, just throw money at it." To be blunt, that is why we have got ourselves into the mess that we are in with public spending. ACAS's first obligation is to ensure that it operates with maximum efficiency. We should ensure that we have analysed the processes as carefully as we can to ensure that public money is being spent with maximum efficiency.

Julian Smith: I agree wholeheartedly with the Minister's comment. Does he agree that we also need a change to the advisory council at ACAS? If we look at the biographies of everyone on the advisory council—all very good, all very qualified—we notice that there is no one from a very small business on it and there are no inward investors on it. If we are to make the Minister's vision work, we need to ensure that the ACAS council represents every type of employer in this country.

Norman Lamb: I am grateful for that intervention. I have not looked at the advisory council, but I will consider my hon. Friend's point, which is a fair one. That body is highly regarded on all sides. It does invaluable work not only for individuals, but in seeking to settle disputes. In performing its role, interests from both sides of industry are relevant, so that is a fair point.

Mr Iain Wright: I absolutely agree with the Minister that every public sector organisation—indeed, every organisation—should be run at maximum efficiency to provide value for money, especially when it comes to the taxpayer. Does he think ACAS is inefficient?

Norman Lamb: I have not undertaken any assessment of the efficiency of the organisation. ACAS seems to be very enthusiastic about undertaking this new system, which I welcome, and as I have said, it is a highly regarded organisation All I am saying, absolutely genuinely, is that when we look at new pressures on an organisation, the first step we should take, as I am sure the hon. Gentleman would agree, is to ask whether we can make it operate more efficiently and whether we could take steps to get better value for money—I do not know whether such is the case, but that should be considered—before we proceed to the step of agreeing to extra funding. The point is that the process for examining that must be robust.

In addition, we have tabled a new clause on settlement agreements, which I honestly believe can be used to bring employment relationships to an end in a consensual way, without the big battle that takes so long, costs so much and is so beneficial to lawyers. If that option is taken up by employers and employees—indeed, trade unions can play a very sensible role in helping to facilitate the whole process—we will see a reduction in the number of claims that ACAS has to deal with, which would be very good.

Ian Murray: The Minister is making a thoughtful contribution. It was slightly unkind to suggest that the Opposition are merely looking to throw money at the problem. The EEF, the Federation of Small Businesses, the CBI, the IOD, the TUC, the Law Society and every single legal representative who gave evidence to the Committee was concerned that ACAS is under-resourced. That is the nub of the problem we are trying to get at; to suggest that we are looking to throw money at it is rather unkind. Indeed, in his reply to the hon. Member for Solihull, the Minister has just said that the Government are going to throw some money at it.

Norman Lamb: I am really grateful to the hon. Gentleman for his intervention. I again reiterate that when we look at a new process, we first look at efficiencies —we ask whether we can achieve any—and then, if necessary, we look at whether additional funding is needed. The Government have said that we will ensure ACAS has the funding it needs to make the process work.

Mr Iain Wright: I fully support what the Minister is saying. I want him to go away, think about efficiencies in ACAS and report back to the House on his findings. On that basis, and given the level of cross-party support, will he support our amendment 12, which would give him that opportunity to go away, think about efficiencies in the organisation and report to Parliament?

Norman Lamb: On that very point, I have just received inspiration—from my left. ACAS has been selected by the Department for Business, Innovation and Skills as one of the first non-departmental public bodies to participate in the current triennial review process. That process will look at governance, including of course the whole issue of funding, and should be completed by the end of this year. I am sure that the hon. Gentleman would support the Government in going through that important process with those bodies in order to ensure that the taxpayer always gets value for money, which is not something that has always happened in the past.

2.30 pm

As I have said, there is still much to be determined in respect of the detail of the early conciliation process and this will be set down in procedural regulations in due course, following public consultation. I am as concerned as Opposition Members to ensure that early conciliation achieves its objectives—the greater use of early dispute resolution to settle differences, rather than referring the matter to an employment tribunal—and the benefits that that brings to employers, claimants and the Exchequer.

However, I think that the proposed amendment would achieve little given that ACAS is already under a duty to report annually on its activities to the Secretary of State under section 253 of the Trade Union and Labour Relations (Consolidation) Act 1992. I am sure Opposition Members will be familiar with the provision. That report is published and indeed laid before Parliament. In addition, we will consider whether and how to obtain further information on the use of early conciliation, in particular on its effectiveness in resolving disputes through the survey of employment tribunal applicants—SETA—which is run periodically. The data obtained from the survey is published and widely analysed by academics and others. It could be a mechanism to gain a real insight into how the early conciliation process is working.

I hope that hon. Members are reassured that, in light of the existing statutory requirement, there seems little point in adding an additional duty to provide an additional report, given that everything that this is about will be covered in ACAS's report to Parliament. There is no need for any additional reports. It is therefore appropriate for the amendment to be withdrawn. I commend the clause to the Committee.

Ian Murray: We have had a robust and wide-ranging debate. For the tenth time—I think my mathematics is correct—we support the Government's intention with regard to clause 7. We will, as the Minister challenged us at the start of his contribution, try to do everything we can to improve the landscape for business. Within the boundaries of staying in order, Opposition Members have tried to emphasise that such changes, while welcome, are not a recipe for economic growth.

Julian Smith: I have been contacted during this debate by a business in Edinburgh East, a neighbouring constituency of the hon. Member for Edinburgh South, saying that it will take on more workers if the Government push ahead with the reforms. Would he welcome that development from Mike Martin in Edinburgh East?

Ian Murray: It is wonderful that we have modern technology and that a constituent from a neighbouring constituency has made contact. In accordance with parliamentary protocol, I could not possibly comment on a constituent of my colleague and hon. Friend the Member for Edinburgh East (Sheila Gilmore). Again, I challenge the hon. Member for Skipton and Ripon. If he can send us the information, which we will keep utterly and completely confidential, I will ensure that my hon. Friend the Member for Edinburgh East meets that business. However, I can pretty much guarantee that that business will be looking to raise finance and trying to grow their business. I cannot believe that an early conciliation clause in any Bill will make people run to the Jobcentre and put up cards that say, "We are now taking on staff." I appreciate that the hon. Gentleman has that information and I would like to see it if he will share it in confidence.

We are trying to make a point in terms of improving the landscape for business and in terms of the inward investment that was referred to by the Minister. I am sure that any inward investor, if they wanted to come to this country, would do one of two things. They would view the overall economic landscape, but they would also refer to organisations such as the OECD, which said quite clearly that we have the third most liberal employment regime in the world. That would not be something that would stop me from investing.

Norman Lamb: Would you welcome that?

Ian Murray: Of course we welcome that, because most of the landscape that is in place to make us the third most liberal regime was put in by the Labour Government.

I want to touch on one or two things that the Minister said. I agree wholeheartedly with the Minister about making the system cheaper for both employers and employees. He rightly emphasised employees. However, I want to make a strong point about that. The Law Society said that the Government were trying to justify the changes they were putting in the Bill on the basis of a massive increase in employment tribunal numbers. That is not the case. As my hon. Friend the Member for Hartlepool has said, the number of employment tribunal cases in the past 12 months has just gone down by another 19%.

Norman Lamb: The Law Society makes that assertion, but the Government do not rest their case on the increasing numbers in the employment tribunal. We make the case on the absolutely strong basis of reducing complexity to make it more attractive for employers to take on more staff.

Ian Murray: I appreciate that, and I have the utmost respect for the Minister. He does these things in the spirit that he has portrayed, but why did it take my office to produce the figures for how much it would cost an individual employee or employer under this new process? It was my office that produced those figures because they were not available when the Government proposed these reforms. I would have thought that it would have been an incredibly strong argument for the Department to say, "This is how much cheaper it would be for an employee and an employer to do this." I am happy to share the information with the Minister, but it emphasises the wrong rhetoric that we hear in the promotion of some of these issues.

Mr Iain Wright: In reflecting on the Minister's intervention—I hope I have correctly interpreted what he said—to the effect that the Government do not base their policy on employment tribunal claims on the hiring behaviour of firms, I note that the impact assessment states that

"it is apparent that the costs and risks faced by employers from employment tribunal claims can affect their hiring behaviour."

Does my hon. Friend agree that that sounds as though the Government are indeed hinging their proposals on the hiring behaviour of firms?

Ian Murray: My hon. Friend highlights a point from the Government's impact assessment. I remember the robust debate that we had on the statutory instrument on changing the qualification period for unfair dismissal from one year to two years, when the Minister was promoting a policy that was entirely against the impact assessment that had been presented by his Department. So it does not surprise me that the impact assessment for this Bill says that.

We welcome workplace mediation, and there is little in what the Minister said that we would disagree with. But workplace mediation happens every single day in workplaces up and down this country, facilitated by workplace representatives through facilities time and the trade union movement. Mediation between management and employees happens continually.

Norman Lamb: I accept that, but the attraction of this scheme—as I am sure the hon. Gentleman will welcome—is that it is a mechanism that allows small businesses to group together to help to resolve disputes that might be resolvable in bigger workplaces, with which he might be more familiar. That seems to me to be an entirely good thing.

Ian Murray: I am delighted by that intervention, because it shows the power of what happens in large workplaces that are organised by trade unions or other workplace reps if the aim is to replicate that in smaller businesses. Such workplace mediation helps because it stops people even going to ACAS. There are conversations day in and day out between management and workplace representatives on a plethora of issues, from health and safety to terms and conditions to general grievances. The devil is in the detail, but that is something that we will seek to support.

My hon. Friend the Member for Leyton and Wanstead mentioned mediation, and I understand that the figures show success. There were 525 mediations in the UK in 2011, with a 71% success rate. Indeed, there have been 443 this year already, saving nearly 2,500 hearing days. So it does work, and I am sure that the Minister will reflect on that point.

Another issue concerning vexatious claims is slightly anecdotal and shows that the rhetoric and evidence behind these policies is based on the wrong foundation. It is not in the interests of the legal profession or the trade unions to knowingly take a vexatious claim to an employment tribunal. That would almost verge on professional misconduct, and the risk for the organisation that took a vexatious claim—not just in having costs awarded against it, but in reputational damage—would be huge. We have to bear that in mind—lawyers and trade unions are not taking vexatious claims to employment tribunals.

Norman Lamb: I agree that the number of claims in the vexatious category is small, but the assumption by the Opposition seems to be that every claim that goes to tribunal is necessarily related to an unfair dismissal. We know that a very substantial proportion of claims fail, because the dismissals are found to be fair. The problem that Labour members have to grapple with is that sometimes employees are guilty of misconduct, sometimes they underperform or there is a genuine redundancy, and companies, particularly small employers, have to deal with those problems. The Government are interested in making that easier for employers, while not taking away basic rights for employees.

Ian Murray: I am at risk of sounding like a stuck record, because I again agree with the Minister. When I was a small business owner myself, with anything between 12 and 60 staff, these would have been the issues that I dealt with. People do not want to end up in an employment tribunal situation, so he is absolutely right to make that point. However it goes back to the fundamental point that everyone on this side of the Chamber has made in this stand part debate on clause 7: the evidence base and foundation for making these changes is wrong. If the Government want to change that evidence base to one that is supportive of these issues and in conjunction with what all the witnesses have said, it would solidify their arguments and give us confidence that what they are promoting is done in the best interests, rather than on anecdotal evidence.

I have two quick points. The hon. Member for Solihull is right to question the resourcing to ACAS. I hope that the Government will come forward with proposals that will support ACAS financially. I am delighted with the reassurance the Minister gave that there may be some transitional funding, but I hope that the ongoing funding will help ACAS. There could be tens of thousands of pre-conciliation procedures in cases going through ACAS. Its funding has been cut by £8 million already and we have debated whether or not anywhere between £5 million and £10 million additional resources may be required. That is a huge amount of money to be denying an organisation that has been given the responsibility of being the gateway to employees' rights in this country.

My last point would be that we support most of this Bill, but the issue about it being a ragbag Bill is that all these individual elements have been brought together under this umbrella of enterprise. In fact, there is very little in this Bill that promotes enterprise. It is merely a regulatory reform Bill and perhaps the word "enterprise" should be dropped. So we support the individual elements, but not on the basis that this is a recipe for economic growth and that we will all be tripping down gold-plated pavements in the next 10 years because of the growth that this Bill is going to generate in the United Kingdom. It will not do that and it is slightly disingenuous to use the word "enterprise". On the basis of the Minister's reassurances I beg leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 7 ordered to stand part of the Bill.

The Chair: We now come to a number of clauses and schedules to which there are no amendments and on which we may be able to make progress quite quickly, although Members may speak if they wish. The next question is the quaintly worded question that Schedule 1 be the first schedule, which for those of you who studied archaic English is, in effect, a stand part question in relation to the schedule.

Schedule 1 agreed to.

Clause 8 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 9 ordered to stand part of the Bill.

Clause 10

Decisions by legal officers

2.45 pm

Ian Murray: I beg to move amendment 13, in clause 10, page 7, line 14, at end insert—

'(6E) The Secretary of State and the Lord Chancellor acting jointly, shall consult on—

(a) the level of professional attainment required by legal officers to carry out provisions in subsection (6D).

(b) the appropriate remit of proceedings that an appointed legal officer could determine, and

(c) the appropriate mechanism for appeal,

with regards to the provisions of subsection (6D).

Thank you, Mr Bayley. I hope that no one is spinning with dizziness at the break-neck speed at which we are going through the clauses of the Bill. We are up to double figures, and at mid-afternoon on a Thursday, that is great testament to the pace at which we are dealing with the Bill.

Mr Iain Wright: Double figures, double dip.

Ian Murray: "Double figures, double dip," I hear from a sedentary position.

Norman Lamb: Cheap.

Ian Murray: Which is, yes, you are correct, quite cheap, but none the less effective. Clause 10 is about the use of legal officers and rapid resolution, as it has been termed. Again, we agree in principle with the Government in their desire to introduce a rapid resolution system to deal with employee/employer disputes.

Too often low-paid workers wait for months to recover wages or holiday pay from employers, which leaves them out of pocket. For example, Ministry of Justice research in 2009 found that an astonishing four out of 10 awards are simply not paid at all, and fewer than half of all awards are paid in full. It is sad that too many rogue employers fail to give these workers what they are due and we hope that this part of the Bill will help. Indeed, it has been suggested that at least 10% of all employment tribunal claims are simple claims that could be handled without an employment tribunal hearing. Not only would there be a significant saving to the taxpayer, but the stress and worry of the employment tribunal process itself would be removed from both employer and employee.

As we know, some key workplace rights are additionally policed by five separate enforcement bodies. What is the position of those enforcement bodies in relation to this clause and what will their future be? The national minimum wage is enforced by a unit within Her Majesty's Revenue and Customs; the agricultural minimum wage and other aspects of the agricultural wages order are enforced by a unit within the Department for Environment, Food and Rural Affairs; the right not to have to work more than 48 hours a week, on average, is enforced by the Health and Safety Executive; rules governing the conduct of employment agencies are enforced by the employment agency standards inspectorate; and rules governing the conduct of licensed gangmasters are enforced by the Gangmasters Licensing Authority. I know that the bodies I have just mentioned are wide-ranging bodies with different statutory functions, but is the Minister able to say whether this clause will have any impact on those bodies in terms of the enforcement functions of the employment tribunal system?

Citizens Advice, which is often at the forefront of helping vulnerable workers such as restaurant and bar staff, cleaners, retail staff, couriers and clerical staff, has countless examples of people who have lost out on relatively small sums of money. In one case a woman, having been made redundant from her job with a bakery, made an employment tribunal claim in respect of £240 holiday pay that her former employer had failed to pay her upon her redundancy. The company did not respond to the tribunal claim and did not attend the tribunal hearing. As a result, a default judgment of £240 was entered in the claimant's favour by the tribunal. However, the company did not pay the award and as of April this year she has not received a penny of the £240 of statutory holiday pay denied to her. This is why the rapid resolution system in this clause is critical to allow such cases involving sums of money that are small in comparison to the employment tribunal system, but are critical sums in terms of natural justice to people who deserve to have their rights upheld.

Citizens Advice has produced a useful document with some statistics relating to cases going through the tribunal system and some of the figures are stark. They make some of the other issues that we have been dealing with this morning almost pale into insignificance. Of the case studies that went through their pay and work rights helpline between 2007-08 and 2009-10, the last year for which figures are available, there were some 87,000 claims that either fell into one of the national enforcement bodies that I mentioned earlier, or involved holiday pay or otherwise fell into the employment tribunal system. Of all of those, 23% related to paid holiday, 6% sick pay and 5% redundancy pay. It is important to recognise that there could be a fast-track system to deal with some of these issues that are fundamental to people who are being made redundant or have not been paid holiday pay or sick pay.

As we recognised when we were in government, vulnerable workers' access to enforcement options is complicated because five separate bodies may be involved, each with its own helpline and statutory obligations. That is why in 2009 the pay and work rights helpline was established as a single gateway to enforcement bodies. I wonder what the relationship will be between that helpline and any rapid resolution process that is put in place.

The principle of rapid resolution is well established, as is the principle of early conciliation through ACAS, which has been operating since 2009. The Gibbons review, which was mentioned earlier, stated that

"a new, simple process to settle monetary disputes on issues such as wages, redundancy and holiday pay, without the need for tribunal hearings"

is essential. Has the Minister thought about whether other enforcement bodies could take some of the slack on small monetary claims? The HMRC's national minimum wage enforcement body, for example, could take responsibility for holiday pay.

The previous Government considered the measure in some detail, and the position back then was to leave it in the employment tribunal system. Will the Minister update the Committee on whether he has had any thoughts about taking some of the employment tribunal issues out of the tribunal system and into some of the other enforcement bodies or, vice-versa, whether some of the enforcement body procedures could go into the new rapid resolution procedure?

Julian Smith: I agree with much of what the hon. Gentleman is saying. He seems to be contradicting much of what he said earlier this afternoon. In fact, there are huge problems with the system as it stands, and I welcome the fact that he has finally admitted that the Government are right to think about radical reform.

Ian Murray: The reason I have been tallying up how many times I have said that I support the Government is because I expected that intervention from the hon. Gentleman. Indeed, I hope he wisely spends his weekend reading this morning's debates in *Hansard*, because he would realise that this is the 11th time I have expressed my support for the Government on the Bill's early clauses. We support these clauses because they will make the system easier. Nobody ever said that the employment tribunal system does not need reform, but the Opposition are saying that the system has to be reformed properly.

I apologise to the Committee, because I must be doing something wrong if the hon. Gentleman agrees with me on any of the points I have raised. I will chastise myself seriously this evening and ensure that my contributions next week are on a different scale.

Norman Lamb: Move on! Move on!

Ian Murray: I may even produce a book, like the Minister.

The Government's failure to flesh out how the rapid resolution system will work is disappointing and concerns us because the clause permits legal officers to determine employment disputes. The amendment would establish the ability of legal officers, as well as the appropriate remit for their decisions, and importantly, that any subsequent appeal should be to an employment tribunal, a fully qualified legal judge, or the Employment Appeal Tribunal. I want the Minister to respond robustly, because if a legal officer is determining something that previously would have had the status of an employment tribunal, would it be more efficient to allow a judge to redress the system or does the appeal have to go through the full Employment Appeal Tribunal process?

Fundamentally, however, the Secretary of State and Lord Chancellor must consult widely with, for example, businesses and the trade union movement to establish a suitable sphere of activity. I suspect that businesses and employees who have been through the process could easily suggest amendments to the Minister that would make the system far more effective. Crucially, the Minister has to ensure that the employer and employee sides both buy into the proposed system, which we hope will benefit both. If they do not buy into the system, there might be the concerning consequence of satellite litigation.

Concerns have been expressed that legal officers do not receive the equivalent training to employment judges and may not be employment law specialists—perhaps I should refer them to the Minister's book. That is dangerous, because decisions made by a legal officer would have the same status as employment tribunal decisions. Our amendment would therefore require the Government to undertake a consultation to establish what that training should be, and how it compares with the training of a fully qualified employment tribunal judge or an Employment Appeal Tribunal judge.

As I have explained, the decision-making remit of legal officers has not been clearly set out, but it has been suggested that that might include more straightforward cases, such as those involving unfair deduction from wages, non-payment of the national minimum wage and holiday pay. Our amendment would require the Government to consult on the matter.

Julian Smith: Does the hon. Gentleman agree that the ultimate direction of travel should be to get almost every case solved outwith the tribunal system, leaving only the most complex cases—day one rights cases and discrimination cases—for the judicial system?

Ian Murray: I am delighted that the hon. Gentleman has intervened, because we are now going to agree for the second time in the past 15 minutes. On Second Reading, the shadow Secretary of State suggested just such a four-pronged system. He proposed that there should be a rapid resolution system that would deal with some of the simpler issues, a specialist system that would deal quickly with equal pay cases, an employment tribunal system for unfair dismissal and discrimination cases, and a fourth element that would send high-value cases straight to the High Court. The shadow Secretary of State has already trailed that proposal, and it is worth consideration. Perhaps it might form part of the consultation that we hope the Department for Business, Innovation and Skills will carry out on the clause to see how it can be improved, and to see how we can get as much as possible out of the tribunal system. We agree on that.

Finally, if legal officers are to determine some basic cases, it is essential to ensure that any decision can be appealed formally either to an employment tribunal or, as the legislation suggests, to the Employment Appeal Tribunal. I must raise the issue of fees again at this point. Will the Minister confirm whether someone who brought a fact-based claim for holiday pay would have to pay a fee for its enforcement after any conciliation through ACAS? Will the fee system be inserted before or after rapid resolution? It seems to me that the insertion of fees at this point in the system would make the enforcement of small claims—such as the example I gave of £240 of holiday pay—impossible, because the employee could not afford to pay a fee to recover such a small amount of money.

For the 12th time, we welcome the principle of rapid resolution. The question is whether any decisions that a legal officer makes will be enforced. Given the kind of employer that is likely to be involved in many of the cases that will be dealt with under the proposed scheme, it is likely that a significant proportion of legal officers' determinations will never be complied with. That brings us to the current arrangements for enforcing unpaid employment awards. They are clearly inadequate, which is one of the reasons why we have tabled amendments to clause 13.

Norman Lamb: First of all, I will pick up one or two of the points that the shadow Minister has raised. I want to clear up a possible misunderstanding. The rapid resolution process would be confined—of course, everything will go through consultation before any scheme is introduced—to a subset of simple claims that currently go to the employment tribunal, including "wages at" claims and holiday pay. There is a view, which I think many people share, that those very simple claims can be dealt with much more simply and quickly by a legal officer, rather than by waiting five months for a full tribunal hearing.

3 pm

The hon. Gentleman mentioned other bodies he represented. He talked about agricultural wages, the national minimum wage and so on. It has no bearing on that at all. I make two observations. The hon. Gentleman pointed to a myriad different bodies and enforcement processes, which, as my hon. Friend the Member for Skipton and Ripon remarked, is highly complex and unsatisfactory. It is worth exploring whether there is scope for rationalisation. However, that is not what the Bill and the measures in the clause are about.

My other observation is about the payment of awards made in employment tribunals. The levels at the moment are unsatisfactory. We have to look at ways to improve the enforcement of awards, so that those claimants found to have been unfairly treated or discriminated against get the compensation awarded to them.

The hon. Gentleman referred to the relationship between early conciliation and rapid resolution. What would happen is that the claimant would go through the early conciliation process and an attempt would be made to settle. If that was successful, all well and good, the matter would be at an end, the COT3 form would be signed and the parties could move on. If it was not successfully settled and the claimant made the claim to the tribunal, and if the claim fell within a category relevant to the rapid resolution scheme, according to the secondary legislation that we will consult on, the parties could opt for rapid resolution as an alternative process to the main tribunal process. Both parties would have to agree to that.

The hon. Gentleman mentioned fees. Officials are exploring various options for a rapid resolution scheme and will consider whether a fee is appropriate once the options have been developed in more detail. We will, of course, as I have said repeatedly, consult on those proposed arrangements.

Julian Smith: I urge the Minister to be radical in his thinking about changes to employment tribunals and how far he can go with the reforms. The Underhill review is ongoing but it is limited in scope. I hope that as he continues as Minister for Employment Relations he will push forward with more radical proposals.

Norman Lamb: I am always open to ideas. One should always be prepared to look at the nature of the problem. The shadow Minister has conceded that the system is complex. Most people recognise that the way the employment tribunal has developed since it was introduced, as a layman's court for parties to use without having to resort to expensive legal advice, has gone off course. It has become highly legalistic. The body of case law is enormous, as is the burden it imposes on employers. Critically, the cost to employees who seek to pursue a claim is burdensome. There is always a case for exploring what changes can be made to address those problems.

Clause 10 is an enabling clause; it provides one solution to deliver the rapid resolution scheme that we committed to consider in the Government response to the "Resolving workplace disputes" consultation.

Officials continue to explore whether and how such a scheme might work to provide determinations in less complex cases. One option under consideration is to give legal officers the power to make determinations in specific instances. Clause 10 simply ensures that we have the necessary statutory authority, should we choose, as I hope we will, to pursue an option for rapid resolution that involves legal officers.

Much work still needs to be done on understanding what any rapid resolution scheme will look like. Opposition Members have raised valid points, and in due course we will consult on precisely such questions. I recognise the value of having a consultation on rapid resolution and I will undertake one before I introduce any such scheme, but it is not the norm to stipulate a requirement to consult in statute. Hon. Members will be aware that the Employment Tribunals Act 1996 recognised legal officers as valid decision makers for interlocutory work in tribunals, and there is no existing statutory requirement to consult on the appropriate qualifications for such officers.

Interestingly, in a debate on 20 March 1998, the then Minister, Mr Ian McCartney—that colossus—argued the case for the introduction of legal officers and sought to reassure the then Opposition that there was no need for a provision to require a consultation. On the basis of his reassurance that the Government would consult—as we are guaranteeing that we will consult—the Opposition withdrew their amendment. It is perhaps instructive that Labour legislated in 1998, but never quite got round to implementing the scheme for which it had legislated, which is a rather sad reflection on too much of what happened during its period in government.

On the basis of my reassurance to the hon. Member for Edinburgh South that there is an absolute commitment to consult, I hope that he will withdraw his amendment.

Ian Murray: I appreciate everything that the Minister has said, but it is important to lay a very strong foundation in the clause, and there are real concerns about how the changes will impact on and lock together with the rest of the tribunal system.

Norman Lamb: I thank the hon. Gentleman for giving way, as there was one other point that I wanted to mention. On appeals, the proposal is that the appeal will apply exactly as it would to a full tribunal decision. There must of course be a right of appeal against a decision made by a legal officer in a case pursued through any future rapid resolution scheme.

Ian Murray: I am grateful to the Minister for intervening, and perhaps I can ask him to do so again. If he gives me an assurance that the consultation, which he has said is forthcoming, will cover the attainment of legal officers, their remit and the appropriate mechanism for appeal, I would be willing to withdraw the amendment. However, if he cannot give me such an assurance, I will want to seek the Committee's approval by pressing the amendment to a vote.

Norman Lamb: The first two things will be part of the consultation. It will of course be right to look at the sort of claims that are appropriate for rapid resolution and the qualifications of the individuals who will adjudicate on those claims. There is simply no need to consult on the appeal, because—I say this on the record—the appeal will apply in exactly the same way as one for a claim that is taken to the full tribunal.

Ian Murray: I am still uncomfortable about the mechanism for appeal. To take such an issue straight to the Employment Appeal Tribunal may make the system overly complicated. We should consult on the best mechanism for an appeal, particularly if all the legal officers look only at the interlocutory aspects of an employment tribunal system in terms of administration and so on. It would be cumbersome to say that a case should go straight to the appeal tribunal.

Norman Lamb: We have to remember that we are talking about what, typically, is a claim for holiday pay of £100 or something like that. In those circumstances, the claimant and indeed the employer would see absolute merit in speedily concluding the complaint, without having to wait for five months for a full tribunal hearing. As in an employment tribunal, an appeal to the Employment Appeal Tribunal can be made only on a point of law, and that would also apply in this determination. Changes will be consulted on before secondary legislation is introduced, but when the claims are relatively minor—of course, I absolutely agree with the hon. Gentleman that they may be important to the individual—and modest in scale, it seems entirely appropriate to have a mechanism that the two parties can opt into, which is all that has been suggested, for speedy resolution. Introducing an internal appeal within the employment tribunal adds complexity and cost, and it seems that that would completely defeat the purpose of having a speedy process to deal with modest claims.

Ian Murray: I am still slightly uncomfortable that the whole process in clauses 7 to 10 is about making the system more responsive, and for such small claims, it seems unnecessary then to take an appeal to the Employment Appeal Tribunal, for all the pitfalls that the Minister has discussed. All we ask is that the consultation takes into account the best mechanism for appealing, which will be used rarely, because the claims are very small, are almost on a point of law, and they relate to administrative issues. It would be useful for any consultation to allow that to be looked at.

Norman Lamb: It might help the shadow Minister if I refer him to the existing right to review in the employment tribunal rules. That process runs short of appeal, but the judge in the employment tribunal could review a legal officer's decision. The power exists in the employment tribunal rules and will remain in place. I hope that that reassures the hon. Gentleman enough to allow him to withdraw the amendment.

Ian Murray: I am reassured by the review aspect, but it emphasises the issue of whether the review system in the employment tribunal system is right, or whether a person should appeal to the Employment Appeal Tribunal. Does that not just highlight the need for popping that point into the consultation to see if there is a better mechanism, or existing mechanisms, that could be used to allow an appeal? On that basis, I wish to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 12.

Division No. 8]

AYES

Cryer, John	Ruane, Chris
Murray, Ian	
Onwurah, Chi	Wright, Mr Iain

NOES

Bridgen, Andrew	Evans, Graham
Burt, Lorely	Johnson, Joseph
Carmichael, Neil	Lamb, Norman
Morris, Anne Marie	Prisk, Mr Mark
Mowat, David	Smith, Julian
Ollerenshaw, Eric	Wright, Jeremy

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Mr Iain Wright: I rise for two reasons. First, I want to express concern about the Minister's hacking cough. I suggest that he gets that seen to at the weekend, because Opposition Members are worried about him.

Secondly, on the rapid resolution of claims, I refer the Minister to the impact assessment. For the moment, I will leave aside the idea of legislating before consultation, because the Minister has dealt with that eloquently. I am concerned about the costs, however, because he has no idea about them. The impact assessment states:

"To avoid over-resourcing the service"—

which we would agree with—

"we would propose to pilot HRS before deciding whether to roll-out nationally."

Will the Minister talk about what sort of preliminary ideas he and the Department have regarding rolling the scheme out in particular areas?

3.15 pm

Norman Lamb: I simply say that we will consult fully, as I have already indicated. Officials are still working on the design of the scheme. When we reach the point where we have a proposal, we will put it out for full consultation. Then, depending on the reaction to that, one can look at the process of implementing the scheme.

I assure the hon. Gentleman that we will act more speedily than the Labour Government, which legislated in 1998 but had failed by 2010 to do anything about it. I assure him that, if it looks like a scheme is workable, we will take full advantage of the facility that the provision will provide for us.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

COMPOSITION OF EMPLOYMENT APPEAL TRIBUNAL

Ian Murray: I beg to move amendment 14, in clause 11, page 7, line 23, at end insert

'with the consent of both parties.'.

The Chair: With this it will be convenient to discuss amendment 15, in clause 11, page 7, leave out lines 32 to 39.

Ian Murray: We are picking up the pace somewhat. I will start my remarks on the amendment by doing what I have not done in the past few hours of the Committee, which is to disagree with the Government's proposals—in fact, disagree fundamentally. The Minister may recall that on only his first day, he brought a statutory instrument to the House to take lay members off employment tribunals. We had a rather robust debate then, and he will not be surprised to hear that we disagree with him

[Ian Murray]

again on the Employment Appeal Tribunal. Indeed, the argument for keeping lay members on the Employment Appeal Tribunal is stronger than that for keeping them on employment tribunals.

As a responsible Opposition, as we are, we are genuinely trying to be helpful, so while we fundamentally disagree with the provisions of the clause, we have tabled an amendment not to oppose them completely, but to propose a compromise that would allow us to go through a process where parties to any appeal would agree that that is the case; that is the right way to go. The hon. Member for Skipton and Ripon will be pleased to hear that the compromise is one that has been promoted for some time by the Institute of Directors, and the Minister should consider it.

Clause 11 proposes substantial changes to the composition of the Employment Appeal Tribunal. Currently, cases are usually determined by a panel comprising a judge and either two or four lay members, with an equal number of employer and employee representatives.

The clause also says that when cases have been decided by a judge sitting alone in an employment tribunal, any appeal will usually be heard by a judge sitting alone in the Employment Appeal Tribunal. Appeal cases may also be determined by a panel of a judge plus one or three lay members, but only with the consent of both parties. If a judge can determine cases by a panel plus one or three lay members with the consent of both parties, why should it not be the case that a compromise can be found for all Employment Appeal Tribunal hearings where, if both parties agree, judges sitting alone can be helped?

It is also strange to see that if both parties agree, there will be one or three members. That will surely give an unbalanced tribunal, where either the employee reps or the employer reps are over-represented. Why is it not two and four, with equal representation? I look forward to the Minister's justification for allowing one or three members on the Employment Appeal Tribunal. What composition will that one or three-member representation have?

We are firmly opposed to clause 11 as it stands, as it will significantly reduce the role of lay members in the Employment Appeal Tribunal and undermine the tripartite nature of the system. There is substantial evidence that lay members contribute significantly to the quality of decision-making in employment tribunals, and especially in the appeals process, through their experience in industrial relations, business and human resources. Their insights would be lost if clause 11 was adopted in full.

Amendments 14 and 15 would substantially improve clause 11. Amendment 14 provides that proceedings in the Employment Appeal Tribunal would be heard by a judge sitting alone only if both the employer and the employee agree. That seems a sensible approach, and encouragement could be given to representatives to allow that to happen, but the option must remain for complicated cases.

Amendment 15 would delete subsections (5) to (7) which contain measures that could result in uneven and unbalanced Employment Appeal Tribunal panels, with different numbers of employer and worker representatives. That would seriously threaten the principle of the Employment Appeal Tribunal, which is underpinned by statute and by precedent, and which is respected in many other judicial systems in the EU and other industrialised countries.

We are promoting the amendments for those reasons. If the Minister commits to bringing back a sensible compromise on Report, I will withdraw the amendments and support his proposal.

Norman Lamb: I am grateful to the hon. Member for Edinburgh South for his suggested amendment, but hon. Members will be aware that unlike the employment tribunals, proceedings brought in the Employment Appeal Tribunal relate only to points of law. That means that consideration must be limited to the legal issues in question rather than any debate on the merits of the case. The Employment Appeal Tribunal looks at the decision of the employment tribunal and it must make a judgment as to whether there is a misunderstanding or a misapplication of the law in the decision that has been reached. When one thinks about that process, it supports the case for the reform that we have proposed.

Undoubtedly, there is a role for lay members in determining some factual issues at employment tribunal level. The statutory instrument to which the hon. Gentleman referred, and which we debated soon after my appointment, dealt specifically with unfair dismissal cases, adding to a list that the previous Government had introduced, whereby some cases would be considered by a tribunal chairman alone. The principle had already been accepted by the previous Government that in some cases it would be appropriate for a judge to sit alone in the employment tribunal. None the less, we accept that there will some cases in that tribunal where it is appropriate to have lay members present. In unfair dismissal cases, the judge can bring in lay members if he or she deems it appropriate. In discrimination cases, and so forth, the panel would sit in most cases.

The experience that those lay members bring of the wider employment landscape can often be invaluable in reaching a decision on whether a claim should succeed or not. However, as I have explained, proceedings in the EAT are of a completely different character. Findings of fact have already been made by the first instance tribunal. That cannot be returned to—the process is complete. It is solely points of law that require to be determined. Judges are clearly the most competent people to hear such matters. Indeed it is difficult to argue to the contrary, but we have built in appropriate flexibility and discretion in the clause as it stands. When judges feel that there would be a benefit from having the input of lay members, they will be able to direct that a panel should sit. A party appealing to the tribunal, or those facing an appeal, could make a request that that be considered before the matter is heard by the Employment Appeal Tribunal. However, it will be at the discretion of the judge to decide on the request.

Judges are the experts in case management. It is only right that we should trust the judiciary when it comes to panel composition in particular proceedings. It is not right that the parties to litigation should necessarily have a veto on matters that affect the management and use of tribunal resources.

I mentioned previously the need to ensure that flexibility is embedded in the new structure. In that context, we recognise that there may be certain proceedings in which

it is always desirable for the judge to be accompanied by lay members, which is why we have made provision in new subsection (6) for the Lord Chancellor to make an order to that effect. We have no intention of using that power in the foreseeable future in any specific circumstances, but it is only right that we build in the flexibility for circumstances that may arise in which it would be deemed appropriate for the Lord Chancellor to designate a specific category of case as appropriate for lay members to sit.

I hope on that basis that the hon. Member for Edinburgh South will be prepared to withdraw amendment 14.

Ian Murray: Before the Minister sits down, will he explain why the Government have chosen an uneven number of potential lay members, if the judge wishes to use them, rather than an equal representation?

Norman Lamb: My understanding is that if the judge deemed it appropriate, he or she would have equal members from the two sides, as would apply in the Employment Appeal Tribunal. Only with the consent of both parties would there be uneven numbers. I hope that reassures the hon. Gentleman.

Ian Murray: In amendments 14 and 15 we have promoted a sensible compromise to the clause. I am disappointed that the Minister has disregarded the views of the Institute of Directors and has not given serious consideration to inserting a provision whereby the Employment Appeal Tribunal judge could sit alone if both parties agree. A mechanism could be put in place that encourages both parties to agree to allow the Employment Appeal Tribunal judge to sit alone, for the very reasons that the Minister has given to justify the Government's proposal. I am uncomfortable about allowing the clause to go through unamended, so I would like to test the Committee's opinion on the amendment.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 11.

Division No. 9]

AYES

Cryer, John	Ruane, Chris
Murray, Ian	
Onwurah, Chi	Wright, Mr Iain

NOES

Bridgen, Andrew	Mowat, David
Carmichael, Neil	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy
Morris, Anne Marie	

Question accordingly negatived.

Lorely Burt: On a point of order, Mr Bayley. I was in the room. I heard the Division being called and I was in the room. I am struggling to understand why—

The Chair: Let me explain the procedure, because it is extremely frustrating for any Member when this happens. The procedure is for the Chair to catch the eye of the two Whips. When the Whips deem that it is safe for the doors to be locked, I call out, "Lock the doors." If a Member enters the room after I have called, "Lock the doors," they are deemed to be outside the Committee at the time of the Division. This matter was discussed by the Panel of Chairs a couple of months ago and guidance was issued by the Chairman of Ways and Means. The guidance explains the procedure. I fully understand your frustration. If it helps, I will put on the record the fact that not only has the hon. Member for Solihull been in Committee all afternoon, but she has been actively participating.

3.30 pm

Amendment proposed: 15, in clause 11, page 7, leave out lines 32 to 39.—*(Ian Murray.)*

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 12.

Division No. 10]

AYES

Cryer, John	Ruane, Chris
Murray, Ian	
Onwurah, Chi	Wright, Mr Iain

NOES

Bridgen, Andrew	Morris, Anne Marie
Burt, Lorely	Mowat, David
Carmichael, Neil	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Ian Murray: I know that people are starting to look at their watches, given the late hour of the day, and that people have trains to catch. Hopefully I will be done before it is dark. *[Interruption.]* Honesty is always the best policy.

Given the fact that the Government have not accepted the amendments—measured amendments that were not fundamental to the changing of what the Government are trying to achieve in taking lay members off the Employment Appeal Tribunal—it is important to ensure that the Minister is aware of all the evidence that suggests that the amendment should have been accepted. We will be voting against clause stand part on the basis that it should not be standing part of the Bill as it is.

I will draw the Committee's attention to Mr Justice Browne-Wilkinson, a former President of the Employment Appeal Tribunal. He addressed the Industrial Law Society in 1982. He said:

"There is a tendency to regard the lay members as mere window dressing in a tribunal whose jurisdiction is limited to appeals on points of law. Nothing could be further from the truth. Their role has been, and still is, crucial because the presiding judge knows nothing of the practicalities of industrial relations. Even on a pure point of law"—

to which the Minister referred—

"when it is uncertain what the law is, it is the lay members who can give guidance on the practical repercussions of any particular decision."

[Ian Murray]

Clause 11 proposes that we remove lay members from the Employment Appeal Tribunal so that they are heard by a judge alone. I will quickly run through why we need lay members on the Employment Appeal Tribunal. First, there is no simple problem of delays. Having lay members on employment tribunals did not delay the system any more than the process running through.

Secondly, appeals in employment law are set firmly in the context of employment practice. What the wider community of employers and employees consider to be good practice, or within the band of reasonable practice, is often critical in our decisions. Lay members, with their specialist expertise of the world of work, make an invaluable contribution to those decisions. Lay members also bring to the panel expertise and good practice in HR. Earlier today, the hon. Member for Solihull cited some of her experience of working in HR, which was welcome to hear. That is what those lay members offer. The EAT has the long-standing respect of employers, and unions, who generally adopt and abide by its decisions. That is crucial. If we want to engender confidence in the system, employers and employees' organisations already have significant confidence in the appeal tribunal system. That is not to disregard the fact that the lay members are on employment appeal tribunals. Their presence helps to solidify the confidence that people have in the system.

The Government are persisting with this proposal. I challenge the Minister, when he responds, to say whether he is making these decisions on the basis of cost or whether he is making them genuinely to make the EAT system more efficient. I suspect that the Treasury is dictating on some of these issues, rather than the need to keep in place an employment tribunal system that works and that already has the confidence of all the organisations that use it.

Let me put this issue into context. Taking lay members off the EAT entirely, without looking at the specifics of putting them on the tribunal for particular purposes at the judge's discretion, would only save £300,000 a year. When we discussed the statutory instrument that took lay members off employment tribunals in unfair dismissal claims we heard that that change would only save £140,000. I hope that those very small amounts of money are not driving the particular proposals.

Andrew Bridgen: Will the hon. Gentleman inform the Committee where he got that information from? Was it from his union paymasters?

Ian Murray: Oh dear, oh dear. At this late stage in the day, I would have expected—well, I would have expected nothing better from the hon. Gentleman. This information has come from a paper that was produced by Mr Justice Browne-Wilkinson, who was the President of the Employment Appeal Tribunal. It may well appear in other documentation from the TUC, but that particular piece of information came from a long-standing lay member of the EAT system—he has been a member for 16 years—and I will circulate that information to the Committee for the sake of clarity and confidence. *[Interruption.]* He does have an interest in it, but if he has been on the EAT for that length of time, and done the analysis, we should heed it. It is not anecdotal; it is experience. He has calculated how much money will be saved. If the Minister has done a similar analysis, perhaps he could intervene and tell us how much money would be saved.

It is important to consider all the analyses, whether or not it is from a union paymaster. As much as I like the hon. Member for North West Leicestershire, he undermines his own arguments by consistently ploughing that lone furrow with his hon. Friend the Member for Skipton and Ripon.

We all want the EAT to come to the correct adjudications and that can only be achieved by maintaining the confidence of those who use the system, and that can only be done by keeping lay members. According to EAT judges themselves, and this is not anecdotal, because we can all ask them for their opinion, lay members' most important contribution is in providing workplace experience and giving parties confidence because decisions are reached by three persons, not one, even on points of law.

The research that I mentioned involved sending questionnaires to all EAT judges and all their lay members, and the response rate was as high as 53%. That came directly from information from the EAT.

So far, we have not voted against any clause stand part because we have agreed that the Government can put forward clauses to make the employment tribunal process much better. I wish that they had taken some of the amendments on board, but none more so than the amendments to clause 11. That is why we will vote against clause 11 stand part. We will do so with great regret because our compromise was a sensible way forward.

Norman Lamb: We set out our intention in our response to the "Resolving workplace disputes" consultation to amend the default constitution of the EAT.

At present, the EAT generally hears proceedings in a way that mirrors the composition of the tribunal from which the appeal arises. If the matter is heard by a judge sitting with two lay members in the employment tribunal, then the EAT will sit with a judge and two lay members. However, unlike in the tribunal, where cases will sometimes involve matters of fact and require an assessment of reasonableness, and where the tribunal chair in unfair dismissal cases, and in a number of other claims, has the power to sit with a panel, appeals before the EAT are taken solely on points of law. Although the presence of lay members on the employment tribunal may sometimes provide the judge with a wider perspective on workplace practices, that is not an EAT requirement and lay members have a much less valuable role to play. The measure was supported by the majority—60%—in our recent consultation "Resolving workplace disputes."

As Opposition Members have pointed out, only a matter of months ago we extended the jurisdiction of employment tribunals in which judges sit alone to include unfair dismissal. We did so because we are committed to creating a tribunal system that offers not only efficiency for its users, but value for money for the taxpayer. The change will deliver savings of £120,000 to £130,000 a year. Although that may seem a relatively small amount, surely we are right to take every opportunity to reduce the burden on those who fund the system. It is entirely the wrong attitude to think, "Oh, it's £120,000 to £130,000.

That's a piffling amount. Why worry about it?" We are talking about public money, so, without compromising basic principles, we should seek every level of saving.

Andrew Bridgen: Is the Minister aware of this old saying, which I hear is popular in Scotland: "Look after the pennies and the pounds will look after themselves"?

Norman Lamb: I am aware of that saying. If the previous Government had followed that principle, we might not be in the mess we are in today.

As we provided discretion for judges to sit with lay members in unfair dismissal cases, where they considered it appropriate, we are making the same provision here. Where an employment appeal judge considers that there is a need for lay members, they will be appointed. The hon. Member for Edinburgh South said that EAT judges have strong views on the importance of lay members. Well, they will have the discretion to bring in lay members, which addresses his concern.

Although we do not believe there is a need at present to make provision for any proceedings to be exempted from the new arrangements, we recognise that that may not always be the case. With that in mind, the clause provides for the Lord Chancellor to make an order specifying that particular proceedings are to be heard by a panel and the composition of that panel. Any such order would be subject to the affirmative procedure.

We know there are some who believe that the clause erodes the industrial nature of tribunals, which is why we have built in judicial discretion. Lord Justice Browne-Wilkinson's comments were made in, I think, 1982. At that stage, the EAT was a relatively new body feeling its way. Thirty years down the line, the EAT is significantly more experienced than in those early days. What may have been appropriate then does not seem appropriate now.

I repeat, any EAT judge who genuinely feels the need to sit with lay members to interpret a point of law in an appeal has the discretion to do so. No principle is undermined, and we are saving public money by making the system more efficient.

As I mentioned earlier, the majority of consultation respondents supported the proposal. Appeals are brought only on points of law, which judges are more than qualified to determine alone. The needs of users are central to our reforms, and we believe that neither claimants nor respondents will be disadvantaged by the change.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 11, Noes 5.

Division No. 11]

AYES

Bridgen, Andrew	Mowat, David
Burt, Lorely	Ollerenshaw, Eric
Evans, Graham	Prisk, Mr Mark
Johnson, Joseph	Smith, Julian
Lamb, Norman	Wright, Jeremy
Morris, Anne Marie	

NOES

Cryer, John	Ruane, Chris
Murray, Ian	
Onwurah, Chi	Wright, Mr Iain

Question accordingly agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

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

3.45 pm

Adjourned till Tuesday 3 July at half-past Ten o'clock.