PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

ENTERPRISE AND REGULATORY REFORM BILL

Eighth Sitting

Tuesday 3 July 2012

(Morning)

CONTENTS

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Saturday 7 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, Martin Caton, Mr Charles Walker

† 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

Tuesday 3 July 2012

(Morning)

[Mr Graham Brady *in the Chair*]

Enterprise and Regulatory Reform Bill

Written evidence to be reported to the House

ERR 24 The Heritage Alliance

ERR 25 The Authors' Licensing and Collecting Society Limited (ALCS)

ERR 26 Institute of Directors

Clause 12

Power by order to increase or decrease limit of compensatory award

10.30 am

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

Ian Murray (Edinburgh South) (Lab): Good morning, Mr Brady. As we commence another week, it is great to be under your chairmanship again. On Thursday we went through some clauses at breakneck speed. You will be pleased to hear that we are picking up the pace slightly today. I am delighted that my hon. Friend the Member for Hartlepool, also known as the former Minister, has got back safely to Committee from a Stone Roses concert. I believe his visit to the mosh pit was successful. Is there a mosh pit at a Stone Roses concert? I have no idea. I am sure he was there, anyway.

Clause 12 confers a power to increase or decrease the limit on a compensatory award. We have not tabled amendments, because we do not agree that the Secretary of State should be given powers to increase awards. I will explain our reasons. We do not support any reduction in compensation levels that can be awarded in unfair dismissal cases. The proposal is bad for both business and employers. First, it is likely that it will disincentivise employers to treat staff fairly and comply with basic unfair dismissal rights. Secondly, it will increase the likelihood that employees will be minded to make a claim through a discrimination case, which is uncapped and will cost business more to defend.

We dealt with the issues in great detail when we debated the statutory instrument for the increase in the qualification period for unfair dismissal from one to two years. All practitioners said quite clearly that there would be a direct correlation between people being able to make a day one claim in discrimination cases and the disincentive for employers to comply in terms of whether an employee had worked there for two years. A similar argument applies to the compensatory elements of awards.

Julian Smith (Skipton and Ripon) (Con): Could the hon. Gentleman confirm the context of the clause? Under the previous Government, the limit for unfair dismissal rose from £12,000 to £50,000 in 1999 and has now risen to more than £70,000. Will he explain why such a big increase was deemed necessary and does he agree with that increase, which the Labour Government facilitated?

Ian Murray: Well, good morning to the hon. Gentleman. It has taken him just under three minutes to make his first intervention. Although my office has been pressing him to come up with the evidence for his interventions last week, we are still waiting. However, we look forward to receiving it.

It was perfectly right to increase the level of compensatory awards. We disagree with giving the Secretary of State power to drastically reduce them. The unintended consequences could be really bad for both employers and employees. It was right to link awards to inflation. Wages were increasing substantially over that period. The impact of reducing compensatory awards back to around £25,000 or £26,000—should the Secretary of State have the power to do that—will have a disproportionate effect. I will go through the evidence as we debate this morning.

John Cryer (Leyton and Wanstead) (Lab): Does my hon. Friend recall that prior to that big increase to £50,000, compensation awards had actually been held down for many years? They had not increased either by prices or by wages. Clearly, that does not particularly bother the hon. Member for Skipton and Ripon, who possibly thinks that people should not get any compensation.

Ian Murray: I am delighted with that intervention. The figures show that average compensation is somewhere between £3,000 and £5,000, depending on the level. It has always been under £12,000. We will show that the average compensatory award would reduce even further if the Secretary of State used the power to reduce the level to £26,000. The increase from £50,000 to the current level of £76,200 was in line with the retail prices index, so it is clear that the increase has kept up with the level of prices and, except in one or two years, with the pace of wages.

Andrew Bridgen (North West Leicestershire) (Con): Is the shadow Minister claiming that average wages increased by almost 600% during that period, and has he not noticed that as the upper limit for compensation has increased, the interest of the legal profession in getting involved in employment disputes has increased? That is why we are in the mess we are in today and need to have this Bill.

Ian Murray: I agree with the second part of the hon. Gentleman's question, about the involvement of the legal profession in the employment tribunal system. The system was not set up in that way; it was supposed to be a lay person's court that dealt with disputes between employees and employers. I do not think that there is a direct correlation between the level of

compensation and the involvement of the legal profession; the legal profession has become involved because of the complexity of the system.

The hon. Gentleman is conflating two separate things. I point him to the Minister's book, which the Opposition are championing. It states on the back that it is a great source about tax and pension loss, and that it is a great checklist for maximising compensation at an employment tribunal.

The Parliamentary Under-Secretary of State for Business, Innovation and Skills (Norman Lamb): I am concerned that the book may be overdue. Will the hon. Gentleman check the return date, because I do not want him to end up with a fine from the Library?

The hon. Gentleman said that the compensatory award has gone up by the rate of inflation. Does he accept that that is not, in fact, the case? It has gone up by significantly more due to the design of the formula, which involves always rounding up and has sometimes resulted in increases that are significantly above the rate of inflation.

Ian Murray: To clarify the Minister's first issue, the book is due back on 21 August 2012—right in the middle of the recess—but I shall make sure that it goes back after the Committee.

The system was designed in that way, and we will not oppose the clause that relates to rounding, so that issue has been taken into account. The increase from £12,000 to £50,000 was decided by the previous Government, and the increase from £50,000 to £76,200 followed the RPI, which is how the current system operates. I accept that that is the case, but we are trying to address the consequences of giving the Secretary of State the power to reduce the level of compensation.

The Secretary of State may not use such a power and may keep compensation at the same level, but Government Members' interventions and questions give me the impression that the purpose of the clause is to ensure that the Secretary of State can reduce it. The Minister is also giving me the feeling that the level is too high and increasingly disproportionate. If the Government wish to limit the increase of the compensatory award for unfair dismissal cases, perhaps they should tag the increase to the consumer prices index. As we know, the Government have made several changes in indexation from RPI to CPI, which is a lower measure.

Julian Smith: Does the hon. Gentleman know what research was done and what evidence there was in 1999 for the impact on new jobs or employment of the fears of small employers about taking on staff? What was the evidence for the huge rise from £12,000 to £50,000 in 1999?

The Chair: Mr Murray, I think it would be more helpful if you concentrated on evidence that relates to the clause, not to the 1999 legislation.

Ian Murray: Mr Brady, I am grateful for your intervention, because I do not have that evidence in my extensive papers. One piece of evidence that relates directly to the clause is that all the employment law changes from Labour's success in 1997 to today were done on the basis that 1.75 million jobs and 1 million small businesses were created in that period. The actual empirical evidence shows that the changes have been beneficial not only to people seeking redress but to the economy.

Mr David Anderson (Blaydon) (Lab): May I make the point that we are debating the limits? Their impact should have been that employers acted properly and did not dismiss people unfairly. It is surely right to make employers think that if they do things wrongly, it will cost them a lot of money, and that if they do so, people should be compensated properly.

Ian Murray: My hon. Friend is absolutely right. We are discussing a compensatory award to compensate an individual for a loss after an employment tribunal judge has found that an employer is guilty and that redress is required. That is not an employment tribunal judge deciding that a blank cheque should be given to an employee on a whim, but an evidence-based court system in which an employment tribunal judge makes a particular judgment and decides, because of that judgment and the redress sought by the employee, that some sort of compensation has to be paid. The key fact is that compensation is paid only where wrongdoing has been established. Altering those compensatory payments—I will go on to give examples of the difference such payments make to individuals—will have a significant impact on the system.

Let me go back to almost where I started before the interventions. Government Members have intimated that they wish the Secretary of State to use the power set out in the Bill to reduce the compensatory awards. I think that is quite clear, and I challenge the Minister, when he replies to this stand part debate, to indicate whether the Secretary of State will reduce the compensatory awards and to explain why that is not in the Bill. The Bill states that the Secretary of State has the power to alter the compensatory award from average earnings to three times earnings, which is somewhere between £26,000 and around the level of the current compensatory awards. If the Minister is saying that the Government want to reduce that amount, why is that not in the Bill? Why does the Bill not state double earnings or, indeed, a figure that the Minister wants to bring in line?

Some of the rhetoric we have already heard this morning from Government Members is propagated on a little bit of Beecroft: non-evidential, anecdotal evidence whereby everyone thinks that £76,000 is too high and should be reduced. If that is the case, the Bill does not say so and the Secretary of State could keep the compensatory element at its current level.

There is also a significant danger—I go back to my second point—that this will have unintended consequences for satellite litigation, which we need to try to take out of the system. The Minister is right to say that lawyers have become heavily involved in an employment tribunal system that was not set up for that to be the case. The consequences for satellite litigation on such issues and on discrimination are quite high, because we will have a situation whereby someone who feels wronged will not think that the available compensatory award, if the award is capped at a certain level, is adequate. Therefore, any decent lawyer—I am sure the Minister was a decent lawyer—would find other avenues through discrimination or whistleblowing to increase the compensatory element.

Fiona O'Donnell (East Lothian) (Lab): I am glad that my hon. Friend has moved on to the question of certainty for those who decide to seek justice. This is about justice, which is important to remember. Can he think of any other situation in which someone going through a judicial process seeking a compensatory award could effectively have that award taken away by a politician?

Ian Murray: I am delighted that my hon. Friend raises that, because I cannot think of a situation in which that would be the case. The system of redress in this country operates, in the main, in all other sectors with the certainty of compensation for certain losses that have been incurred. If—my hon. Friend the Member for Blaydon has raised this already—a judge, a legally qualified professional, decides that an employee has been unfairly dismissed by an employer for a plethora of reasons, right up to aggravated reasons, which we will address this afternoon when we consider financial penalties, the compensatory element has to redress the loss that has been incurred. I cannot think of another example, in answer to my hon. Friend the Member for East Lothian, where that might be the case.

Norman Lamb: I am most grateful to the hon. Gentleman for giving way. He suggests that there will be a risk of satellite litigation, which is a phrase he comes back to quite often. What reason would there be for more satellite litigation on one level of cap than on another level of cap? The current cap is, by definition, an arbitrary cap and means that some people do not get full compensation for loss suffered. It will be a very small number, but there will be some who lose out as a result of the cap introduced by Labour. Why is there any more likelihood of satellite litigation at another level of cap?

10.45 am

Ian Murray: I am grateful to the Minister. Perhaps the terminology "satellite litigation" does not quite explain the point I was trying to achieve. The lower the cap goes in terms of unfair dismissal, the more likely it is for an individual to take a dual claim at the employment tribunal for a day one uncapped compensatory award, which would be whistleblowing or any of the characteristics in terms of discrimination. So I agree with the Minister. Perhaps satellite litigation is not the terminology, but the point is that the lower the cap goes, the more likely it is that there will be other forms of day one uncapped compensatory claims.

Norman Lamb: Does the hon. Gentleman think that if an applicant goes to see a solicitor now and the solicitor thinks there is a potential discrimination claim—or another day one claim—the solicitor would not issue a claim on that basis? Does the hon. Gentleman really think that this is a group of pent-up claims waiting to burst out, simply because of a different cap on the level of compensation for unfair dismissal?

Ian Murray: At the moment, the process works like that. If any lawyer takes a claim and analyses it and feels that the compensatory award at an unfair dismissal claim would not adequately compensate the employee for the required redress then he will run a dual claim, either on a discrimination case or whistleblowing. We see that all the time and will come on to the amendments around clause 14 later this month in terms of whistleblowing claims. Whistleblowing claims have ended up going down that route because the compensatory award for a high-salaried individual is currently capped too high. My point to the Minister is that if the Secretary of State reduces that cap—and the indications from his Front Bench are that he will use that power to reduce it, given the interventions that we have already had this morning—the likelihood of an increase in far more complex and expensive discrimination or whistleblowing claims will increase. That seems to me to correlate quite closely.

Andrew Bridgen: I have already detected a slight inconsistency in the hon. Gentleman's argument in this debate. He is asserting that changes in legislation could possibly change the behaviour of employees, yet earlier when we were taking evidence, he maintained that increasing regulation does not change the behaviour of employers. How does he explain that discrepancy in behaviour?

Ian Murray: I do not think there is a discrepancy. It is very consistent. Looking at the clause, it is quite clear that the current compensatory cap for unfair dismissal creates a set of circumstances whereby if people feel that they do not fit into that particular cap then their legal advisers or otherwise would issue a different kind of claim to allow a claim to go forward where there is no cap. *[Interruption.]* The Minister says from a sedentary position that this is not the case, but that is what the legal profession has consistently told us, particularly for high-salaried individuals. To talk about how that would then affect the behaviour of an employee is slightly different from saying that the thrust of what the Government are trying to do in the Bill, in all the clauses so far, is to change the behaviour of the employee and the employer to make them comply. The financial penalties, which we will come to later, are a way of trying to get employers to comply.

I refer to what Joy Drummond from Simpson Millar said—that if there was a perception there, or a behavioural change was required, the Government should concentrate on that, rather than changing legislation to fit employees and employers into a new style of working to make them compulsory.

Norman Lamb: Could I reassure the shadow Minister? If he thinks that lawyers are holding back on issuing discrimination claims because they think that it is fine just to issue an unfair dismissal claim because there is a reasonably high cap, and that suddenly their behaviour will change if the cap is lowered, it is just not true. If there is a potential discrimination claim now, any lawyer will advise their client to pursue it. Does the hon. Gentleman not accept that that is the case?

Ian Murray: I do accept that that is the case. Let me quote from the Law Society's written submission to the Committee—I was going to deal with it later, but it is worth airing now on the basis of that intervention—which states:

"The cap will prevent a substantial number of claimants who have been unfairly dismissed from recovering their full losses from the respondent. This is not mirrored in other jurisdictions

where the principle of 'polluter pays' presides and compensation means just that. Denial of full compensation to claimants could lead to an increase in discrimination claims where there is no cap."

That is the Law Society's view, and lawyers to whom we have spoken directly have said the same. *[Interruption.]* The Minister says that the Law Society will say that because it has a vested interest, but I cannot see what that would be; either its members will take the claim for compensation or they will take the claim for discrimination.

The Minister has introduced proposals that are based on anecdote, not on evidence. The Government have suggested several times that they want to reduce the compensatory award, and now they are saying that the Law Society has a vested interest and we should discard what it says. I am sure that Mr Beecroft had a vested interest when he wrote his report, and I am sure that that interest was helped by the £500 million cheque to the Conservative party. Before Government Members pop up and ask for the paymasters of the trade unions, I refer the Committee to my declaration of interests, which is available for the public to see.

David Mowat (Warrington South) (Con): The hon. Gentleman mentioned Beecroft and the Law Society. The difference between them is that the remuneration of those whom the Law Society represents is determined by the general environment of compensation, so the Law Society has an interest. Beecroft wrote a report and, in all fairness, as far as I know he did not get paid for it, whether the hon. Gentleman accepts that or not. The point about vested interests was right.

Ian Murray: There is a strange contradiction, to use the Minister's word, in saying that the Law Society has a vested interest. The Law Society is saying, "Do not do this, because there will be an increase in discrimination claims." Surely, it would be in the Law Society's interest to have more no win, no fee discrimination cases because its members' fees would be higher. There is a distinct contradiction inherent in saying that the Law Society has a vested interest. Surely, it would be in its interest to have no cap so that in a no win, no fee situation its members could gain as much as possible from fees. The Law Society is saying, however, that we should not go down that route because of that problem, so the vested interest argument does not wash and is incredibly weak. It simply highlights the fact that, as we hear in intervention after intervention, the Government want to reduce the amount of compensation. I would be delighted to be told that that was not the case.

Andrew Bridgen: I think that Mr Beecroft had a vested interest, namely that he is someone who has created hundreds of thousands of jobs. Every Member in this place should have a vested interest in people such as Mr Beecroft continuing their excellent work and creating more jobs, which is the whole point of the Bill.

Ian Murray: At the risk of being called out of order, what the hon. Gentleman has just said has not been supported by the Federation of Small Businesses or by the manufacturers' organisation the Engineering Employers Federation, and many parts of the CBI have not responded positively to Beecroft's main proposal for compensated no-fault dismissal. Indeed, if the hon. Gentleman thinks that we should scrap the Gangmasters Licensing Authority, that is shameful given that it was created to save lives on the basis of the cockle pickers who died at Morecambe bay some time ago.

We will discuss Beecroft later, but for now I will set out the current situation as background for the Committee. If an employee is dismissed after at least two years' service—it is two years now, because of the SI that was passed recently—and unfair dismissal is established, there are two elements to the award: a basic award and a compensatory one. To put in context our disagreement with the proposals, I will describe those two elements in more detail. The basic award is equivalent to a redundancy payment, and it is currently a week's pay, capped at £430, for each year of service aged under 41, and £615 for each year of service aged over 41. There are two levels of payment because it is more difficult for someone aged over 41 to find new employment than it is for someone aged under 41, which is a key point. The number of years of service is capped at 20, so the minimum possible award is £860 for two years' service, and the maximum is £12,090.

Compare that with many other countries in Europe, where a redundancy or dismissal payment would be a month's pay—or even a month and a half's pay—uncapped, for each year of service, and it is readily apparent why Britain is said to have one of the most flexible labour markets in the world. We have discussed the OECD analysis that brought it to that conclusion.

The second part is the compensatory award that we are discussing in the clause. The compensatory award is based on loss of earnings and is currently capped at £72,300. The median award last year was only £4,600—something that is worth bearing in mind when we talk about whether this is a burden on business. For an employee who can prove suffering substantial loss, the loss is capped at that amount. Our proposal in 1998, as mentioned by the hon. Member for Skipton and Ripon, in the White Paper "Fairness at Work" was to remove the cap, but we did not think it appropriate at that time. We implemented a one-off rise to £50,000, and subsequently index-linked that to its current figure of just over £72,000.

Norman Lamb: Will the hon. Gentleman explain why the Labour Government felt it inappropriate to remove the cap at that time?

Ian Murray: I do not know the answer, as I was not in this place. It was 14 years ago.

Mr Iain Wright (Hartlepool) (Lab): He was still at school.

Ian Murray: Yes, indeed. The Stone Roses had already disbanded 14 years ago, and have now just got back together. I am sure the Minister knows the answer to his rhetorical question. I will provide the answer in due course, although I do not know why I should provide answers to the Minister when he should be providing answers to us. That is the strange thing about this Committee; we are being challenged on our policies, rather than the Government being challenged on the Bill.

Clause 12 proposes that the Secretary of State be given the power to increase or decrease the limit of compensatory award for unfair dismissal, and the variation

[Ian Murray]

may be set at median earnings, which are approximately £26,000 at the moment, or three times median earnings of £78,600. Here is the challenge. The current level is £72,300 and the Secretary of State can increase it to £78,600. I am not sure he will use that power, given the questioning we hear from the Government Benches. It seems to me the Government are looking to reduce it. The second principle is the specified number of weeks' pay, which cannot be less than 52, or the lower of the two amounts.

Julian Smith: I am sorry to be late with my intervention, but I want to refer back to the international comparison. Will the hon. Gentleman confirm that Germany has exempted all very small businesses from unfair dismissal claims?

Ian Murray: Will the hon. Gentleman please repeat the question?

Julian Smith: Germany has exempted micro-businesses from unfair dismissal. When the hon. Gentleman makes his international comparisons, it should be put on record that Germany, the most productive economy in Europe, has exempted the smallest firms in the country from unfair dismissal claims on employers.

Ian Murray: The whole of the employment law structure is about balance. The UK overall in its balance of employment regulation is the third most liberal in the world, behind the USA and Canada.

Chris Ruane (Vale of Clwyd) (Lab): It was; it is seventh now.

Ian Murray: As my hon. Friend says, it is slipping down that league table. Germany is way down that league table. It has to be looked at in the round in terms of the overall employment package. In my view, that particular analysis of comparing just one small part of employment law with another in a different country cannot be made without looking at the overall structure.

Going back to the question that my hon. Friend the Member for East Lothian asked about compensation, Mr Beecroft himself said that the compensatory elements in this country seemed reasonable and that he would not look to change them. There is a contradiction coming from the Government, and it will be interesting to hear the justification for it. I am challenging the Minister to say whether the Secretary of State will use the power to increase or decrease the current compensatory awards. My guess is that they are only going one way.

Let me set out our concerns. First, this proposal is bad for business and bad for employees. It is likely to disincentivise employers to comply with basic unfair dismissal rights and treat staff fairly. Secondly, it will increase the likelihood that employees will be minded to make a claim through a discrimination case—as we have discussed already—which is uncapped and will cost business more to defend. That is much like the Government's measure to increase the qualification period. I have already intimated what the Law Society has said and we have already drawn a comparison showing why the Public Interest Disclosure Act 1998 regulations do not work for whistleblowing. We will perhaps touch on some of those issues later.

11 am

There is also a question of whether justice would be denied. The essence of the Government's proposals in the clause was crystallised in the Bill's evidence sessions a couple of weeks ago. In the response to the question on the compensation cap from the hon. Member for Skipton and Ripon, John Morris from the Law Society said:

"My logic starts"—

again the Government's suggestion that there is a vested interest here flies in the face of what he says—

"if I have lost £70,000 as a result of my employer's conduct, why should I be compensated to the tune of only £28,000?"—[*Official Report, Enterprise and Regulatory Reform Bill Public Bill Committee,* 21 June 2012; c. 101, Q227.]

That seems to me to be natural justice. There is a gap there. We can illustrate this with a number of examples just to show how giving the Secretary of State this power to reduce the compensatory cap could either have unintended consequences or fly in the face of natural justice.

Were the Government's proposals to be introduced, someone earning £52,000 a year would not be able to recover more than six months' loss even it if it reasonably takes them nine months to find another job. Obviously the compensatory period is linked into the circumstances of that individual. Someone earning £20,000 could not recover more than £20,000 even if they reasonably suffer a £26,000 loss. It seems to the Opposition that justice is being denied.

In his written submission to the Committee, Stephen Miller from the Law Society Scotland said:

"Imposing a radically lower limit would be a retrograde step, and would discourage employer compliance with employment protection legislation. It would also be likely to have an indirectly discriminatory effect because of the gender pay gap: any cap on compensation has a direct relationship to basis salary level and so is bound to impact on proportionately more men than women. This applies at any level but is more acute (and so harder to justify) the lower it is set."

Those are two pieces of evidence from the Law Society that this would be difficult to justify in terms of natural justice.

We have already said that the average settlement is £4,600. USDAW, the UK's largest private sector union, said that the average settlement for a shop worker in 2010 and 2011 was around £3,400. Of course, the reduction in any compensatory award would reduce that average level further. I should like to set out two scenarios to highlight what would happen if the Secretary of State invoked this power.

In scenario 1 the claimant is unemployed for 12 months. That is fairly easy to imagine in the current environment. According to labour market figures from the Office for National Statistics, 25% of claimants are out of work for 12 months and claim jobseeker's allowance throughout that time. The jobseeker's allowance for a year is around £3,000. The claimant has lost earnings of £26,020 net per year and a pension loss of £15,000, which is a total loss of £41,020.

The cap could be set at one times median earnings if the Secretary of State used differing levels for different sizes of business. However, with three times the cap or

at its current level, the claimant would be compensated for the full loss of £41,020 at 100%. If the cap were reduced to one times median earnings, as is proposed, the claimant would recover only 64% of their loss and lose more than £15,000. This is a median worker on median earnings who has a loss on the scale of compensatory awards which natural justice would suggest should be fully satisfied. That can only be satisfied if the Secretary of State decided to keep the compensatory award at its current level of more than £70,000.

Let us look at scenario 4, which is a claimant who earns the current MP's salary of just over £65,000. He is unemployed for eight months so loses income of £43,397. He does not have any pension loss, but after that he gets a new job at £58,000 which rises to the current level of the MP's salary of £65,000 after a six-month probationary period, and so for that period loses £3,869. The claimant's total loss over the period of being unfairly dismissed until regaining employment is £47,266. I am happy to circulate these figures to the Committee if it is useful. If the claimant had three times median earnings, as proposed in the Bill, he would be fully compensated £47,266. If the cap were set at one times median earnings, he would only recover just over half of what is lost to him. Those examples show that giving the Secretary of State power to increase or decrease the compensatory element creates great uncertainty, but also, in terms of natural justice, does not compensate people—I highlight again the intervention from my hon. Friend the Member for Blaydon—when the legal profession, the professional judges, have decided that wrongdoing has occurred and therefore they have to be compensated for that loss.

Looking at the squeezed middle, there is no doubt that this will disproportionately hit middle earners: architects; lawyers—maybe some poor lawyers will fall into that category; accountants, perhaps. I am wondering who else might fall into that category. Middle management fire officers might perhaps be at a similar earnings level. There will be a significant impact on those professional jobs that so many people up and down the country are involved in. In that sense, it fails the fairness test that we set for the Chancellor's Budget and if you look at the other consequences of what the Government have done over the past 18 months to two years, this cohort of our society—what has been termed the squeezed middle—get hit again when they are trying to seek redress.

Fiona O'Donnell: I hope that what is behind this is that the Minister is thinking that in the current recession it will be even more difficult for people such as that to find alternative employment. Maybe he is thinking about raising the level of compensation in recognition of a recession made in Downing street.

Ian Murray: Mr Brady, I can see you racking your brains as to how to call that out of order, so I will not address the point about the double-dip recession made in Downing street. It would be unkind for me even to mention it again.

Chris Ruane: Mention what?

Ian Murray: My hon. Friend the Member for East Lothian makes a critical point when she says that the clause gives the Secretary of State power, if he or she wishes, now or at any time in the future, to increase the award. That might be something that the Government might consider. I do not think the Government are considering that; indeed, I do not think that the interventions we have heard are giving any indication that they might be doing that. I wonder why that is in the Bill and why they do not come clean with the British people and tell them exactly what their intentions are.

I will give way to the Minister if he wishes. I thought that the Minister was looking to intervene; I do apologise.

Andrew Bridgen: Will the shadow Minister accept that the current level of cap favours higher-earning employees and could lead to a change in behaviour in employers? The way they treat higher-paid employees, where there would be a larger compensation claim for any unfair dismissal, might be different from how they treat lower-paid employees, whose level of compensation would remain unchanged if the cap were lowered.

Ian Murray: I think that that is the case. The hon. Gentlemen has essentially just said that people would be treated differently, which is exactly the point we are trying to make. What is quite clear from the compensatory awards that are made at employment tribunals is that they are designed to compensate for loss and give redress. If the hon. Gentlemen is saying that it is okay to get redress if you earn a certain amount of money, but over that amount you should not get fully compensated for any loss, I do not think that that complies with natural justice. We are not talking about someone earning £150,000 or £200,000 a year; people who earn just over the national average would be hit by this. In fact, if you lower the cap, as is being intimated in the legislation, it would be a direct hit on anyone with a job that pays slightly more than the national average and, indeed, even modest earners, if they have significant pension loss, because what the hon. Gentleman has not taken into account in that intervention is that pensions are calculable in these instances.

Norman Lamb: The hon. Gentlemen is making a number of exaggerated claims about the impact of any reduction in the cap, but does he accept that since, according to Ministry of Justice figures, only 1% to 2% of awards are of more than £50,000 at present, the impact at the higher level is minimal in any event?

Ian Murray: The Minister could actually be sitting on the Opposition Benches, because he is saying that, as only 1% or 2% of awards are over £50,000, we should increase that figure by reducing the compensatory element. If only 1% or 2% of awards are at such a level, why give the Secretary of State the power to change it? The system seems to be working fine as it is.

Let me provide another scenario to highlight how ludicrous the proposal is.

Andrew Bridgen: It is anecdotal.

Ian Murray: It is not anecdotal. Would the hon. Gentleman like to write the figures down, because some of his constituents may be earning at this level? I cannot see how it can be anecdotal when it is mathematical. That seems strange, because although we are referring

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to scenarios, any constituency with an average population will have those who earn at these particular levels with these particular pension contributions.

Let us look at the following scenario, which highlights why the Minister's intervention is clearly wrong. The claimant is unemployed for 12 months—as 25% of claimants are—and claims jobseeker's allowance to the tune of some £3,000. The claimant has lost earnings of just £52,040 a year. Now, a salary of some £52,000 seems quite high, but that highlights the fact that it hits the professionals—accountants, architects and so on—and there is a pension loss of £30,000. The total loss in this particular scenario is £82,040. If we look at the cap at three times median earnings, even if the Secretary of State decides to increase the award—I keep highlighting the fact that the Government have indicated that that is not the case—the claimant would recover 95% of the full loss only. With the cap reduced to one times median earnings, the claimant recovers only 31% of the loss.

The Minister was an employment lawyer and I am sure he would be quite frustrated for a client earning £52,000 a year who was able to recover only a third of the actual loss. We can see from some of these mathematical scenarios that there is a significant difference in what people would be compensated for. I again highlight that the people receiving such compensation are those who have actually gone through the employment tribunal system where a court of law has said that they have been wronged and should therefore be compensated. We are not discussing employers being dragged through the courts willy-nilly with vexatious claims and having to write cheques. In these examples, the employers have been found guilty and the compensatory reward follows from that.

I refer the Committee to the evidence of Howard Beckett from Unite. I am sorry for referring to a union—

Julian Smith *rose—*

Ian Murray: I was just about to say that I am sure that the interventions will come flooding in, and I was not disappointed.

Julian Smith: I am sure that the hon. Gentleman will later in his speech consider the needs of the 4.5 million small employers and their concerns, when taking on an employee, about the vastly inflated compensation—implemented by Labour—that puts them off. I am sure he will discuss the jobs that are lost as a result of that policy, which he cannot defend. There is not even any anecdotal evidence—nothing.

The Chair: I hope that it will not be too much later.

Ian Murray: Mr Brady, the hon. Member for Skipton and Ripon never disappoints with his interventions, but how can compensatory awards be inflated when the average award is only £4,500? How could it be a barrier to employment when it is quite clear that the economy is the barrier?

John Cryer: Would my hon. Friend agree that the argument put forward by the hon. Member for Skipton and Ripon seems to indicate that small businesses take on employees in order to sack them?

Ian Murray: As a small business owner myself—I refer the Committee to the Register of Members' Financial Interests—my first job when I left the house to go work every day was to look after my employees, and every decent employer in this country does that. There are rogue employers out there and we all know of such instances through our constituents. Indeed, some people get unfairly dismissed for what seem to be the best of reasons and an employment tribunal does ensue. Nobody is saying that the system is perfect, but I am trying to highlight the fact that when the compensatory elements are tinkered with, it all seems well and good just to lower the cap because it will create a million jobs, but if that were the case, the Chancellor would be scrapping all employment regulations.

Indeed, I was very interested to read the figures from the Institute of Directors, which were posted to all hon. Members following its evidence. The answers to the question that the IoD asked its employers did not bear out the answers that it gave to the Committee about people's views on the level of regulation. Rather than asking, "What is a burden on business?" it asked employers to rank certain types of regulations in order of the burden they placed on business. I think employment came out at 70%, but it did so on the basis of the question that was specifically asked about regulations; it was not about what affects business, as we had been led to believe.

11.15 am

Let me go on to the exemption for small businesses in subsection (3) of clause 12, creating a two-tier work force. We are opposed to that proposal, which will give the Secretary of State the power to vary the level of compensation dependent on the description of the business, as prescribed in the clause. If the amount of compensation for unfair dismissal is reduced for small companies, it will encourage exploitative small companies to treat staff unfairly, as they will know that even if they get taken to a tribunal, the amount of compensation will be very low.

Anne Marie Morris (Newton Abbot) (Con): On what does the hon. Gentleman base the assumption that because an employer is small, it will behave particularly badly, because it will not be required to pay the same level of compensation?

Ian Murray: The issue I want to highlight is that if a situation is created through a system of redress with two different levels of compensation, or two different tracks to take in employment tribunals, and if we distinguish between small and large businesses, we end up distinguishing between two different sorts of behaviour. Although I hope that such behaviour would not result in small businesses having a different perception of the employment tribunal system, the Government's changes to employment law in the Bill are being made on the basis of perceptions that small and large businesses have. The Government are changing the employment law system to fit in with those perceptions, rather than dealing with the perceptions and supporting small businesses to handle the potential pitfalls of employing staff.

Anne Marie Morris: The hon. Gentleman is still aligning a particular cultural behaviour with the size of a business, and he has given no evidence for why a small business should behave in such a way. Has any research

been done to see whether businesses are going out of business because of the existing levels of award, particularly if they are sole traders with only one employee?

Ian Murray: A plethora of businesses up and down the country go out of business for a whole host of reasons. I do not know whether any analysis has been done, but the Department for Business, Innovation and Skills conducted its small business index survey showing that only 6% of small businesses felt that all regulation had an impact on their business, and only 3% of that 6% said that employment regulation was the issue. Those are the Department's figures; I can only use its own impact assessment. *[Interruption.]* The Government Whip is shaking his head, but I can only go on what the Department says. It conducted that small business survey, and those figures came from that.

If we wanted to base an argument on anecdote, we would decide that the Beecroft report was the right way to go and we would happily go down that route. It is clear, however, that if we end up with different scenarios for different business sizes, behaviour will be affected. There is no doubt about that, and the other reason that behaviour will be affected disproportionately for small businesses is that larger businesses have large HR departments to deal with such issues. Therefore, the impact on small businesses will be disproportionate whatever change is made, whether positive or negative.

Let me try to make progress, as I have taken a number of interventions. The Opposition believe that there is a risk that the proposal could encourage employers artificially to reduce the size of their businesses or split them up and create a disaggregate of businesses in order to get them below a level at which they need to comply. Businesses might be fragmented into smaller units with holding companies. That, in turn, would have a knock-on effect on the enforcement of other legislation related to business size, and perhaps even collective redundancy, which is currently being consulted on by BIS.

Besides fragmentation, there is a risk that large companies—as I said to the hon. Member for Newton Abbot, such companies generally have better terms and conditions, pension schemes, training and career development schemes, HR departments, and so on—would use smaller companies as a way of reducing costs. That already happens to some extent in terms of outsourcing, with cleaning and security staff, the use of agency workers, and franchising, where lots of smaller businesses are created, rather than having everything under one umbrella. That is not to say that business transitions happen because of employment law; it is simply the way that business operates. It is right that business operates in a flexible fashion, but the consequence of changing things to allow a twin track encourages such thought processes.

The key is the two-tier work force. The impact on small businesses is disproportionate. There will be circumstances—hopefully, not in the too distant future—in which the employment market improves, unemployment falls considerably and consumer confidence increases. We will have a situation in which a potential employee will have to choose whether to work for a small or a large company. When we have a two-track approach to employment rights, we end up with a situation in which small businesses may find it difficult to recruit particularly skilled workers, because skilled workers, especially engineers who are in high demand, may decide that they want to work for a larger company that has larger protections, and the compensatory award and two-track approach would certainly influence them.

Andrew Bridgen: Will the shadow Minister accept that small and large businesses do not treat their employees differently? All businesses, especially small businesses, value their employees. They know that they are their biggest asset and that a well motivated work force will be more productive. The problem is the attitude of a small company compared with a large company going to a tribunal. Going to a tribunal can have a devastating effect on a micro-business where perhaps a large number of employees, or even all employees, could be required to be at the tribunal day after day. The micro-business cannot cope with that stress and will have no business at the end of the process.

Ian Murray: But this clause does not deal with that issue. It deals with the back end of that issue when someone has been found guilty of unfairly dismissing an employee. I could not agree more with the hon. Gentleman in his analysis of the perception and perhaps the reality that a small business has to go through in the employment tribunal system. We have been clear—I stopped at 11, but let us make it 12. We agreed with the Government on early conciliation and rapid resolution. We have tried to amend the legislation to make it better to ensure that the issues raised by the hon. Gentleman are dealt with, but that is not what this clause deals with. This clause is about compensation and a two-tier compensatory award scheme that will have a disproportionate impact on small businesses.

Let us look at the construction sector.

Geraint Davies (Swansea West) (Lab/Co-op): The Government should be sending a signal to micro-businesses that unfair dismissal is a bad thing for business and for people. There is an appropriate level of fines for unfair dismissal. The Government seem to be saying that unfair dismissal is okay for small businesses. That is how they operate. It is an "Only Fools and Horses" approach, which is an insult to small businesses.

Ian Murray: I am frantically trying not to use a "plonker" pun. The key point is that the Government's job should be to encourage agencies and organisations such as ACAS to give small and medium-sized enterprises all the support they need when taking on staff and training and nurturing staff. That is clear. I go back to the point that Joy Drummond made. It is fundamental to this ragbag Bill. She said that the Government should be supporting businesses through those particular minefields and loopholes rather than changing the law to fit a set of perceptions or anecdotal evidence that the Government are trying to portray.

Let me reach a conclusion. The construction union, UCATT, has stressed the disproportionate impact on the construction industry. I use construction as an example purely because it has been hit hardest by the economic downturn. UCATT has stressed that more than 90% of construction companies—for example, nearly 88% of civil engineering companies, 94% of specialist construction companies and 94.5% of building

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construction companies—employ fewer than 10 staff. Bogus self-employment is a huge issue for the construction industry at the moment. Defending the rights of those employees is particularly difficult at the moment, purely because many of them are just happy to have a job. We have constituents who have lost employment in the construction industry and have been unemployed for a long time, and for them the light at the end of the tunnel is certainly very dim. It is important to highlight the impact of the proposals on that industry.

Under employment law, if we want certainty for small and medium-sized businesses and multinationals, universal standards should apply across the employment system to ensure that all the rules are always consistently applied to all businesses. That will help to make sure that people understand the system, and it may deter the legal fraternity from infiltrating it more than it currently does.

One key aspect is that there has been no consultation on which route to do down. If there was a significant consultation, it might bring out some of the issues about evidence that Government Members have raised. I refer Members to the oral evidence session during which my hon. Friend the Member for Hartlepool, in a direct reference to the issue of compensation, asked Sarah Veale, the head of equality and employment rights at the TUC:

"Can I just clarify? There was no consultation with the TUC on an important piece of employment legislation."

She replied:

"We did not know about the proposal on compensatory awards for unfair dismissal. On that more specifically, we have a real worry that already the median award for unfair dismissal is pretty low... Our particular concern about this proposal is that it is likely to bring down the award far more, and it will hit middle-income employees, professionals, in particular."—[*Official Report, Enterprise and Regulatory Reform Public Bill Committee,* 19 June 2012; c. 25, Q66.]

There has been no consultation with the industry on the impact not only on the employment tribunals system, but on small, medium and large enterprises.

I will sound repetitive, but we still do not have an analysis of the impact of the insertion of employment tribunal fees on the process. The clauses that we are debating are completely separate from and sit outside the Ministry of Justice's assessment of the impact of fees. Until we receive that full analysis, we will not know whether the clauses are disproportionately affected by the introduction of fees, and how the clauses will interact with each other.

I want to give an example of how the proposal might be Beecroft-lite or compensated no-fault dismissal by the back door. In my earlier scenario, someone's compensatory award might be only about 30% of what they had lost, where the employer has been found guilty of unfair dismissal—they intended to dismiss someone and they dismissed them unfairly. For whatever reason, under the clause, someone might be awarded 30% of what they were due. There is an issue about whether, right at the start, an unscrupulous or rogue employer might, as part of a settlement agreement—we will move on to discuss new clause 2 sometime this year—say to the employee, "I have decided that we should discuss whether you stay in the business, and I am willing to offer you x pounds, but the x pounds will be on the table only for a few days and then it will be withdrawn or reduced." To some extent, there is some kind of coercion to that.

Under the Bill, the case might move to the second level, which is early conciliation at ACAS. Either the employer can then try to settle—to test whether the claimant can afford or has the will to produce a fee, which is where fees come in—or they could just take their chance that the employee comes up with the fee and goes through the employment tribunal system, knowing that they will be found guilty to the maximum possible extent but have an exposure of only £26,000. In that particular scenario, it is quite cheap for the employer to get rid of someone who has worked for them for 30 years at £55,000 a year, because it will cost them only £26,000. The employer might need some legal advice, but if they have a human resources department, it could provide that for them. I know that the example is simplistic, but I am essentially saying that, in relation to the issue of whether an employer offers compensation as part of a settlement—in this case, for a compensated fault dismissal—the introduction of fees and the interaction between the clauses will have consequences. That is why I suggest that Beecroft-lite is alive and well.

I conclude by re-emphasising that we are against this proposal, which the Government appear to have introduced to enable the Secretary of State to reduce the compensatory element. That has been highlighted by this morning's interventions. There are significant issues with the insertion of fees and the creation of a two-tier compensatory award system, which is why we will vote against the clause stand part later this morning.

11.30 am

Norman Lamb: The clause confers a power on the Secretary of State to amend by order, subject to the affirmative resolution procedure, the limit on compensatory awards for unfair dismissal. The power provides flexibility to change the limit to ensure that it strikes the right balance between providing reasonable redress for employees and maintaining employer confidence.

I want to address the shadow Minister's assertion, supported by the Law Society, that any change to the compensatory award limit will result in more day one claims. I totally reject that assertion. Any lawyer now faced with an applicant with a legitimate discrimination claim would be entirely negligent if they failed to advise the applicant to pursue that claim. Indeed, if—in a scenario with a lower cap—a claimant came along and the lawyer advised pursuing a spurious discrimination claim simply because it avoided the cap, the lawyer would face the risk of a wasted costs order and the applicant would risk an order for costs. Indeed, if the claim is spurious, the tribunal would be likely to throw it out in the first place. I do not accept that the proposal will change lawyer behaviour. Lawyers should be properly advising their clients, and in most cases they do, to issue the claims they have evidence to support, rather than being driven by any level of cap.

Ian Murray: I am grateful to the Minister for giving way so early in his contribution.

Does that not fly in the face of the Minister's initial comment that the Law Society has a vested interest? The Law Society is arguing for the clause not to be included in the Bill and for the current system to remain.

Norman Lamb: My point does not lead me to reject what the Law Society says, per se. The Law Society often gives extremely good advice: none the less, higher awards mean higher payments to lawyers—there is no doubt about that—and, therefore, the Law Society has an interest. That is all I am saying. Many claimants to the employment tribunal pursue claims on no win, no fee arrangements with lawyers, and the amount that the lawyer receives is directly related to the level of the award at the tribunal. So lawyers have an interest in high awards, which the Opposition need to recognise. I repeat that I think the Opposition are spending too much time in the company of lawyers, which is not good for their health.

Graham Evans (Weaver Vale) (Con): My hon. Friend may recall that last week I said that the Labour party was in danger of becoming the party of lawyers.

Norman Lamb: I agreed with my hon. Friend at the time, and I still agree that many of the contributions of Labour Members appear to be defending the interests of lawyers, which seems extraordinary to me.

John Cryer: Does the Minister agree that the average settlement is some £6,000 and that only a very tiny number of settlements reach anywhere near the top level?

Norman Lamb: Yes, I entirely agree. In fact, the median award for unfair dismissal is below £5,000. If we are talking about a change to the upper limit of the cap, the impact on the vast majority of settlements or awards will be negligible or nil. In a sense, we are talking about a concern that very high caps give some employees unrealistic expectations about what they may be able to secure through a tribunal claim. Indeed, employers might feel unrealistic fear about the potential impact of a dismissal resulting in an enormous award in the tribunal. As the hon. Gentleman rightly says, that rarely happens because the median award is below £5,000.

Andrew Bridgen: Will the Minister offer reassurance? I have slight concerns about subsection (2)(b) that would grant the power to determine a cap of a multiple of an individual's weekly earnings. That could lead to a lot more complexity; each employee could effectively have their own cap to be calculated by the employer. At the upper end of that scale, it could significantly increase the amount of compensation paid. It will be the 1% or 2% of claims that will hit the headlines and act as a big disincentive to employers, either going to tribunal or taking on high-paid staff in particular.

Norman Lamb: I am grateful to my hon. Friend for that intervention. Let me make it absolutely clear that the Government have no intention of introducing a limit linked to an individual's pay without also having a specified upper limit. Our consultation on amending the limit will not include any options that would lead to increases in potential awards for highly paid employees. I hope that reassures him.

Geraint Davies: It appears from what the Minister has said that the legislation is being driven by his alleged need to create various perceptions among employers and employees, as opposed to delivering fair awards for unfair dismissal. That is appalling. Surely he can do the marketing separately from the fairness.

Norman Lamb: Any cap has to strike the right balance. It is absolutely legitimate for Governments to be conscious of and hear the concerns of businesses, which say to us that the potentially high level of award in a tribunal provides a disincentive for people to take on new workers. I come back to the point I made at the start of the debate last week: our interest is in protecting the interests of those in work but also showing concern for those out of work, and creating an environment to ensure that businesses feel able to take on new employees.

Geraint Davies: *rose—*

Ian Murray: *rose—*

Norman Lamb: I want to make a little progress. As well as being subject to the affirmative resolution procedure, the power we seek to introduce is subject to additional constraints so that it cannot be used inappropriately. The power would allow the specified limit, which is set out in statute, to be varied within the range of an amount equivalent to full-time annual median earnings and three times full-time annual median earnings. The power would also allow for a limit based on a multiple of an individual's own earnings; where there is a specified limit and a limit based on an individual's earnings, the applicable limit would be the lower.

All Governments—this is an important point—have considered it necessary to have a limit on compensation for unfair dismissal. The hon. Member for Edinburgh South said, without explaining, that—in 1999, I think—the Labour Government deemed it not appropriate to remove the cap. A Labour Government decided it was right to have a cap. That self-evidently means that a small number of people are not fully compensated for the loss that they have suffered. All Governments accept that a balance has to be struck. Therefore, this is not a debate about principle, but about getting the balance right between fair compensation for individuals and creating an environment in which companies feel encouraged to take on new staff.

Ian Murray: The Minister is setting out his case for a cap, which is the right thing to do. What he is not saying is that the clause could potentially increase the compensatory award level for an individual. The Minister is giving a strong indication that the Secretary of State is going one way with compensatory awards, and that is down. The way the clause is written means that the compensatory award could go up. What message does that send to business? It flies in the face of the Minister's argument.

Norman Lamb: I have made clear, and I will repeat again, that this creates an order-making power and before any change is made we will consult fully, take into account all the submissions sent in as a result of that consultation from both sides, and make a measured judgment on any change that might be appropriate in the light of that consultation.

Simon Danczuk (Rochdale) (Lab): Will the Minister explain why a Government containing Liberal Democrats is obsessed with limiting the amount of compensation that poorly paid workers receive? Will he explain to the Committee whether there is anything in this proposed legislation that will limit the amount of money that senior executives or bankers receive when they are finished with a major company?

Norman Lamb: First, there is nothing here that will do anything to reduce the level of compensation for poorly paid workers. This is about the current cap of more than £72,000. I can assure the hon. Gentleman that no poorly paid worker that I have ever known would get an award of £72,000. The whole purpose of this is to strike the right balance between giving fair compensation and ensuring that poorly paid workers get their full compensation—which they will continue to do—and at the same time to create an environment in which businesses are encouraged to take on new workers. The proposals on directors' pay will directly address the other concern that he raises.

Fiona O'Donnell: For clarification, I seek a reassurance: the Minister is saying that any low-paid worker working in an SME or micro-business will not be adversely impacted by the Bill?

Norman Lamb: It is self-evident. We are talking about a cap on compensation of more than £72,000—is it £72,300? This cap affects people on good pay who may have a lot of fringe benefits. It is a very small number of people—at the moment only 1% to 2% of awards get more than £50,000. When you talk about those who hit the cap itself, it is a tiny percentage of people, who are on good pay, who have all sorts of fringe benefits, and the Labour Government deemed it appropriate to have a cap at that level, which will limit the compensation for some of those higher paid people—that is what we are talking about. For someone earning £10,000 to £20,000, the levels of compensation are invariably significantly lower; that is why the median award of compensation is less than £5,000. There are all sorts of exaggerated claims being made, sometimes by Opposition Members, about the effect of this, but it protects people on low pay, who will continue to get proper compensation for loss that they suffer.

The cap on the compensatory element of unfair dismissal awards has increased rapidly in recent years. The cap was subject to a large one-off increase in 1999, as the shadow Minister mentioned, from £12,000 to £50,000, and has subsequently increased according to a formula that has resulted in above-inflation increases in the cap in most years. These are not based on the inflation rate; because of the rounding-up arrangements, they have been above-inflation increases—bringing the cap up to its current level of £72,300. Furthermore, the Government are concerned that the current limit may lead to unrealistic perceptions—something we have to take into account—among both employees and employers about the level of tribunal awards. The median award for unfair dismissal, as I have said, is less than £5,000.

The shadow Minister raised concern about subsection 3. All this does is to provide a power. I agree with him that there may be drawbacks to introducing a different limit for small firms, so we are not minded, I can reassure him, to introduce a lower cap for small businesses. As I say, it only introduces a power.

Anne Marie Morris: Can the Minister explain why he decided not to put a cap in place for the smallest businesses? They can be defined under the European Small Business Act and if one looks at what has been happening in Germany, micro-businesses are specifically excluded from awards for unfair dismissal. If we want growth from the smallest of businesses, with 70% of our businesses being sole traders, surely we have still not got to a position where we have given comfort to those sole traders taking on an employee? Despite what has been said about the level of awards, without a lower cap they are still faced with a figure that may close the business.

11.45 am

Norman Lamb: I am grateful to my hon. Friend for that intervention. She raises a legitimate concern and I absolutely accept that. Certainly small businesses and their representatives can contribute to the consultation, so at the end of it we reach a measured and right judgment about how we proceed. No decisions will be taken on any of this until after that consultation has taken place. However, we have been taking other steps to aid small businesses and reassure them about taking on new workers. I will give one example, very much opposed by the party opposite. The extension of the qualifying period from one year to two years provides a significant reassurance. Employers will have a full two years before they could be taken to a tribunal for unfair dismissal. That is a significant help and was very much welcomed by small business organisations.

So we want to consider through consultation whether the limit on compensation for unfair dismissal is set at the appropriate level. As I say, this is not an issue of principle, but of getting the balance right. All parties accept the case for a cap. The proposals arising from this consultation would, of course, be subject to a debate in both Houses before they could be enacted. I commend the clause to the Committee.

Fiona O'Donnell: It is a pleasure that you are chairing with your usual tolerant and even-handed approach, Mr Brady. I am particularly grateful for the chance to debate clause 12 of this Bill, because—like all hon. Members—I frequently encounter voters who say, "All political parties are the same". What is very clear in the debate on this Bill is that all political parties are not the same, and the Lib Dems seem to be in a completely different parallel universe.

Mr Anderson: Far be it for me to contradict my hon. Friend but have the last two years not proved that the Liberal Democrats and Conservatives are very much alike?

Fiona O'Donnell: Indeed. I have spoken before about ladders: I wish to offer the hon. Member for Solihull an olive branch. I saw Lib Dem Members sitting on the green Benches during a Division last night and I have some faith that on this matter she will consider voting with this side. In talking about this clause, it is important that we set it in the context of what this Government have been doing for two years in relation to employment rights. We have seen action on the Gangmasters Licensing Authority and the Agricultural Wages Board, and the

extension to two years for the right to claim for unfair dismissal. This clause is very much set in the context of those earlier actions from the Government.

The Minister said we are spending far too much time in the company of lawyers. I have spent no time knowingly in the company of lawyers—unless they were lapsed lawyers—but I have been speaking to people who find that what we need from this Government is greater protection in the workplace. Increasingly with local authorities, more and more sub-contracting has been introduced into big construction contracts, with people's employment rights diminished by that process. More and more people are being casually employed, or employed for shorter hours and therefore have less access to justice. If this clause is to apply in particular to SMEs, it is extremely insulting to employers in that sector. I have worked in both the voluntary and private sectors for an SME. As is often the case with a small business, I had several roles and one was responsibility for HR. I took an employee all the way through our grievance and disciplinary procedure to a dismissal.

If anecdotal evidence from others is acceptable, Mr Brady, I hope the Committee will bear with me while I speak about my experience of that process. Good employers have nothing to fear from bad employees. If contracts are in place, if employers keep records and if they follow that disciplinary procedure, justice will prevail. The notion that small businesses are not employing people because of the employment legislation is certainly not the experience in my constituency. Indeed, the evidence given to the Committee by someone very senior in the retail sector confirmed that business confidence was far more of a factor.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I applaud the points that my hon. Friend is making. This matches my experience working in business for more than 20 years. Would she agree with me that the Bill focuses too much on employment rights when the real need among small businesses is for better education and understanding of the ways in which existing employment law works for the benefit of both employers and employees?

Fiona O'Donnell: I am astounded to hear that my hon. Friend has been in employment for 20 years. I can only assume that she was on the "Young Apprentice". I cannot do the maths on that one. Certainly in terms of what business needs I look forward to speaking about my own amendment to the Bill and the role of ACAS. My hon. Friend is absolutely right. That is what businesses need. They need to learn to manage employees and to value employees. I can personally vouch that my hon. Friend the Member for Edinburgh South is an excellent role model. When my No. 33 bus would pass his place of work I could see his employees skipping out of the door—*[Laughter.]*—with a barrel of Belhaven's best under their arm.

What we can see here is a Government who are out of touch. At the core of this clause is the fact that Government Members do not believe that they will ever find themselves in this situation. They cannot imagine that they will ever have to pursue an unfair dismissal claim or that anyone in their family or their street will be in that position, just as they do not think that they will ever be homeless or that their children will need an education maintenance allowance. This is at the heart of why the Government are so out of touch. It is beyond their ken that someone would have to seek justice in this setting. The Minister said that this is not about principle. I find that rather disappointing because I used to think that that was what Lib Dems were about. This is about justice. I do not understand why my access to justice should be determined by the number of employees in the company.

There are areas where we should give leeway to SMEs: health and safety law is one area where the Labour Government recognised that we could not place the same burdens on them. But this is about justice. This is about people who have lost their job unfairly and who should have recourse to justice and to compensation that is judged in a due and diligent process rather than having a Minister try to placate the right-wing Back Benchers by lowering awards for compensation. It also sends a bad message to SMEs. We have spoken about skills shortages and about graduates in science, technology, engineering, and mathematics. From what I hear from small businesses in my constituency, it is hard enough for them to recruit people with such skills when they are competing with big employers that can offer better pension plans and other benefits, but if we now add to that mix the fact that people may not have access to the same levels of compensation if they are unfairly dismissed, that will be another barrier for SMEs across the country in recruiting people with certain skills.

I appeal to Government Members, especially the hon. Member for Solihull, to put themselves in the place of someone seeking justice after being unfairly dismissed. This is not about economic growth, it is not about creating jobs and it is not about unreasonable and unfair burdens on business; it is about the most fundamental rights for workers in this country.

Geraint Davies: Does my hon. Friend agree that the traditional view of justice would be one of getting a fair settlement delivered by professional lawyers? Government Members have shown a sneering derision of lawyers, who are professionally trained people, alongside the idea that a fair settlement should be based on guesswork about what employers' and employees' perception might be, not on what is in fact a fair settlement in that case—and it stinks.

Fiona O'Donnell: My hon. Friend makes a pungent and forceful contribution, as ever. It is almost as if the party opposite is turning in on itself and devouring itself as it pours wrath on bankers, business people and lawyers. When they talk about who their people are, one wonders who is left.

Lorely Burt (Solihull) (LD): I want to get the record clear as to where the Liberal Democrat contingent of this group stands. We believe that there should be a fair balance in all things. We believe in employees' rights, but we also think that settlements must be fair and proportionate for the employer, so we will be supporting the clause.

Fiona O'Donnell: The hon. Lady has just caused me to lose my appetite for lunch. Some really tricky games are being played with words, on the meaning of "balance".

[Fiona O'Donnell]

I should have thought, thinking about the scales of justice, that balance was about equity, but where is the equity in the clause? It is not balance when the access to and the extent of justice for a worker who, after at least two years' employment, has been unfairly dismissed is less or more than for another person. That would not be balance; the word that describes the proposal would be inequity.

I thank Committee members for their patience in listening to me. I look forward to hearing the closing remarks and to opposing the clause.

Mr Anderson: It is a great pleasure to serve under your chairmanship, Mr Brady.

As someone who spent most of his life in the real world of work, I believe that getting people into work is by far the most important thing that any of us can do to improve the lot of the people we represent. I first met my right hon. Friend the Member for Kirkcaldy and Cowdenbeath (Mr Brown) back in 1994. [Hon. Members: "Where is he?"] Where is he, indeed? But he was the real saviour of the banks for me. As in so many things on which he has been proved right over the years, he was right then. He said to me, "If and when we get into power, the main thing that I will be driving is jobs, jobs and jobs." During the Parliaments that I was proud to be a Member of, we put 3 million more people into work—

An hon. Member: Mainly immigrants.

Mr Anderson: And there is something wrong with employing immigrants? I am afraid not. *[Interruption.]* Is everybody done? We move on. I have made myself very clear. If this report is about creating and enhancing more jobs in the work force, then I am up for that.

12 pm

In his report, Mr Beecroft had this to say. I will put on my glasses—that is how important it is. *[Interruption.]* Sorry, he said, "I'll put on my ear muffs." He said:

> "Quantifying the loss of jobs arising from the burden of regulation, and the economic value of those jobs is an impossible task. How many more businesses would there be, how many more people would they employ, how many more people would existing businesses employ, how profitable would all these businesses be?"

His answer?

> "Who knows?"

That was the expert brought in by the Prime Minister to help us solve the problem.

The OECD, though, said that there appears to be little or no association between employment protection legislation strictures and overall employment. So the basis that this whole debate is predicated on, as the Minister said earlier, is perceptions—the perception that if we do one thing, employees will say, "I might get a load of money here, so I'll take out an unfair dismissal case," and the perception that the employer will think, "If I sack this person they might take me to court and I will end up getting hammered with big figures." Well, that fear does not bear out. As we have heard today, the average is around £4,000 and let us remember that it is only paid after it has been proven that the employer has acted unfairly.

When we started off this debate two or three weeks ago, we said that this was legislation by anecdote, but it is now being found to be legislation by perception. If the Minister really wants us to get on board with this proposal over the next few weeks, can he provide us with a realistic assessment of the number of jobs that will be created if this Bill goes through in its current form in two or three weeks, so that when we go back into Parliament, we can say, "Well, this is where we have got to with this report; we have had a discussion between 19 or 20 of us in this room and we have the facts and figures here that show what the outcome will be"? Then, to a certain extent, our fox will have been shot. I cannot see that happening but I will be very happy to see that attempts have been made to prove the case that the Government are putting forward.

My view is simple. We should treat people properly at work. If we do that, they will not end up feeling that they have been abused and they will not need to take the actions that they have to get their redress. The shadow Minister discussed the situation of UCATT. Anybody who has lived in the world of work over the past 40 years will know of some of the excesses in the construction industry. It is an example of how not to run an industry. What could happen here is that employers might say, "It is better to subcontract it and get people away from settled employment." We could face a huge problem that will really have a negative effect on this country.

Instead of focusing on where we are now and saying that this is all about how we make employers and employees have a more balanced relationship, we should be looking at the wider picture and seeing how we get businesses to move forward. It would be interesting to have a debate of this intensity on how we start getting the banks to act properly instead of lying to us. If we really want to move business forward, we should invest in training, education and HR skills. As a nation and as a Government, why do we not say to people who are clearly saying, "We don't have the skills to deal with these very clever lawyers", that we will give them the skills. Let us provide money from the public purse to help out people who are trying to build up businesses and to employ our constituents.

There are some dodgy lawyers and I will come on to them. If they are undermining what is going on, let us give the businesses—*[Interruption.]* I will in a minute. Let us give the businesses what they need, because that is in the interests of them and their employees. I will say some good things about lawyers before I move on. I have had experience of representing people in the coalmines who suffered from vibration white finger, pneumoconiosis or other chest diseases and who would never have had the compensation they deserved if they had not been represented by lawyers and trade unions who did not give up when everybody was saying, "This is not fair, it will be too much for the public purse, you should forget about it and go away." Some of those people could hardly walk, and others had skills but could not get back to the world of work because of the way they had been ignored.

Andrew Bridgen: Is the hon. Gentleman talking about the same lawyers who claimed their remuneration both from the client and from the Coal Board; who double-claimed and are now going to court?

Mr Anderson: As I said earlier, I will come on to them. I have been very proud to work with lawyers representing people suffering from asbestos-related diseases; people with mesothelioma have been poisoned at work—deliberately, knowingly poisoned at work. Employers and insurers have tried to get out of their legal responsibilities, and lawyers and unions together have not let them do that. Instead of people in this House colluding to help insurers and employers get out of their responsibilities, we should be working with these people to make sure that they get their fair dues.

There is an issue which has raised its head again in this Parliament, as it did in the previous one, and that is people with thalidomide-related conditions. If these people had not had representation back in the 1960s, they would never have got the response they wanted. I have nearly finished, Mr Brady. I can see that you are being directed by the shadow Minister.

The Chair: Order. I assure the hon. Gentleman that I am not directed by Ministers or shadow Ministers.

Mr Anderson: I accept that rebuke.

There were, of course, dodgy lawyers. The hon. Member for North West Leicestershire is right—some lawyers exploited mineworkers' compensation schemes and, thankfully, some of them have been struck off. Also, some so-called union representatives from the Union of Democratic Mineworkers, which the previous Tory Government helped to set up, are now banged up behind bars in jail, quite rightly, and that is where they should remain. I have no doubt that when people act wrongly they should face the power of the law and that should hold for employers who act wrongly and treat their employees badly at work. We should not be restricting employees' chances to gain redress for that; we should support them. The Bill will make it harder for people at work to be looked after properly and that is why we should vote against it.

John Cryer: It is an honour to serve under your chairmanship for the first time, Mr Brady.

The Minister has said many times that we have been spending far too much time with lawyers. In my case, he is probably right, because I am married to one. The fact is that there are many decent lawyers and trade union officers, as my hon. Friend mentioned, who represent people in very difficult circumstances and get compensation for them.

I want to clarify a point I made in an earlier intervention. The hon. Member for Skipton and Ripon, among others, seems to be implying that small businesses only take on new employees with a view to subsequently sacking them unfairly, which seems to me to be bizarre. There are clearly good and bad large employers and good and bad SMEs, but there are very few employers in this country who consciously take on employees thinking that further down the line they want to be able to sack them unfairly. We are talking about people who are sacked unfairly, not people who are sacked fairly. We are talking about people who go in front of a tribunal and are found to have been sacked unfairly.

Government Members seem to have the idea that employers are completely up against it when it comes to removing somebody who is an inadequate employee; that it is an impossible process for them to go through; and they do not get any help at all. It is worth remembering the exact process that is gone through. When we come to an employment tribunal—remember that only 20% of cases that go to the tribunal service go through a full appeal ending in a conclusion—all an employer has to demonstrate is that he or she has acted within a range of reasonable responses. "A range of reasonable responses" is the key legal term. All an employer has to do is to demonstrate that he or she has behaved reasonably. If an employer has behaved unreasonably—and you have to go some way, by the way, to prove in front of a tribunal that an employer has behaved unreasonably—then, frankly, they deserve all they get.

An employer is not in the invidious position of having his or her back against a wall, or the impossible position of having taken somebody on who does not function properly, or does not do a proper day's work. As long as the employer has behaved reasonably and can demonstrate that they have behaved reasonably, they are in a completely unassailable position and there will no judgment of unfair dismissal.

As mentioned before, we have some of the most liberal labour relations legislation in the western world, according to the International Labour Organisation, and many other organisations. It is difficult to see how we could further liberalise British labour laws substantially, apart from going down the route of no-fault dismissal. If we went down that route, we would be adopting Mr Beecroft's recommendations which, as has been proved time and time again, are based on a few conversations with blokes down the pub whom he happened to bump into occasionally. They told him that no-fault dismissal was a terribly good idea and he seems to think that this was a great recommendation to put to Members of Parliament. It is not likely, but if he comes in front of us again, I hope he brings a bit of evidence to back up some of the claims that he makes.

As others have said, the average award for unfair dismissal is not £60,000 or £70,000. The Minister said it was just under £5,000. My understanding is that it is £6,000, but I will give way to the Minister's knowledge. A lot of compensation for unfair dismissal is a lot lower than that. As my hon. Friend the Member for Edinburgh South mentioned, a typical settlement for shop workers, bus workers, cleaners, administrative workers or clerical workers, would be in the region of £3,000 or £4,000. The Minister and others have admitted that only a tiny number of people get the top £72,000 payment or anywhere near it. The vast majority do not get anything like £72,000. It is extremely unusual to get £50,000 or £60,000. The argument that the Minister seems to be putting forward is not that the present system is unfair, but that there is the perception of unfairness among employers that if they have to get rid of somebody and are found guilty at a tribunal of unfair dismissal they will be forking out £70,000. Surely, if there is a perception of unfairness then to some extent that is a failure of Government—perhaps of successive Governments—to communicate with employers.

Ian Murray: My hon. Friend is making an incredibly powerful speech. I wish I had used some of it to generate my own notes. Does he agree that this clause actually gives the Secretary of State powers to increase the award from its current level, which flies in the face of all the evidence—anecdotal or otherwise—that the Minister has given the Committee?

John Cryer: That is true. The Minister could use the power through a statutory instrument to increase as well as decrease the levels of compensation. On the other hand, every comment we have heard from the Government side, including from the Minister, indicates a view that levels of compensation are too high. Either that or, in the Minister's words, not that they are too high but that there is a perception that levels of compensation are too high.

Andrew Bridgen: The hon. Gentleman speaks passionately and with great knowledge. Would he accept that those top-end awards get all the publicity, especially by the legal profession in promoting its services in this area? Those are the ones that are remembered by employers and employees.

John Cryer: To be honest, I cannot remember any claim for unfair dismissal getting an awful lot of coverage in the papers. Other court cases get a lot of coverage, such as discriminatory cases, but unfair dismissal tends to get very little coverage, if any at all. Surely this is a failure of communication by the Government and other agencies associated with them, though it may not entirely be the Government's fault. SMEs and other businesses do not know the situation regarding employment law. That seems to be the Minister's argument and it implies that there has to be greater communication with businesses to say that the reality of industrial relations legislation is that people do not walk away with £72,000. It hardly ever happens. That is the real situation and surely there is an onus on Government to make sure that businesses are apprised of the full information and know exactly what they are doing when it comes to the lead-up to industrial tribunals.

This has been mentioned by other hon. Members, so I will mention it only briefly. The reality—and all the evidence, including numerous surveys, points this way—is that what puts businesses off taking on new employees and expanding is not industrial relations legislation, but the economic climate and the failure of banks, which are now in the middle of another scandal, to lend. This is obviously anecdotal, but when I meet businesses in my constituency, as I do regularly, they do not complain about industrial relations legislation, or unfair dismissal legislation. They complain about the lack of access to funding from the banks. Well-established, long-serving businesses with good credit records are told by the banks to get lost because they are too busy, presumably because they are fiddling the books.

12.15 pm

Geraint Davies: It gives me great pleasure, Mr Brady, to serve under your chairmanship. What is being suggested is that there are very few cases in the band that we are talking about—£73,000—so it does not matter. I have come across people or groups of people who have started SMEs that have been successful, but some of the owners have tried to carve out the other owners to get rid of them so that they do not have to share the money. Those are real cases. It is not unusual, with the amount of money we are talking about—in terms of the equity value of small businesses, which may have that value for only a short period in the evolution of their product—that that happens. Cases exist of people being unfairly dismissed for those reasons when they have put a lot of effort into creating the company's value. Those are the cases that the Bill will legislate against.

I share the concerns of my colleagues about unfair dismissal of workers who do not have much money and so on, but we need to think specifically about what the arbitrary cap would do, and who it would hit. It would hit many partnership entrepreneurs, so it is wrong and not in the interests of SME entrepreneurial activity at all. We want a fair settlement, and if that is £73,000 as opposed to a lower amount, that is what it is. We have heard that the empirical evidence suggests that the average is around £5,000, so the tribunals are not delivering inflationary outcomes. We have also heard that only 20% of cases reach an outcome at all.

We have heard that the reason behind the arbitrary capping involves an alleged perception among employers and employees, and consequent fear of going to a tribunal. However, there is no evidence to support those alleged perceptions, whatever their level. I have a background in market research, and I know that it is possible to deliver the evidence. Levels of perception can be measured and tracked. There is science out there that the commercial community invests in to find out whether its advertising, promotions and brands are working.

The Government say they are concerned about the level of perception, how that relates to awards made by tribunals, the fear of going to a tribunal, and the level of awareness. Those levels can be measured and tracked, but that has not been done. SMEs might have built up equity in partnerships and have stuck their neck out to create a product in a competitive market and succeeded. If one of its partners does the dirty on another, there should be a fair settlement, even if that is judged by a tribunal. To do otherwise would be intrinsically unfair and very stupid.

Chi Onwurah: My hon. Friend makes some excellent points, and I am impressed by his knowledge of market research. Does he agree that if there is a perceived threat of a £70,000 settlement, when there is a huge disproportionate difference between that and the average settlement, which is under £5,000, the opportunity should be taken to address the understanding of risk and probability in small businesses to overcome those perception issues, rather than focusing on undermining the rights of employees?

Geraint Davies: I do, but I do not believe the task is as great as people may think. Only one in five cases gets to a tribunal, and when it does, the median pay-out is £5,000 although the upper cap is £73,000. Putting those few words on a bit of paper and delivering it to SMEs—there would be no need for a thorough educational campaign—would enable us to overcome the perception problem that is apparently driving the Government to reduce the cap.

When we talked to Beecroft it was clear that he was not driven by quantitative evidence bases, rigorously done across the country and over time and statistically robust. He was not even looking at subjective qualitative focus groups and the like. He was just talking about hearsay. There was reference to an out-of-date opinion poll showing 13% of people were concerned in general

about regulations, and now that is 6%. The whole argument is not evidence-based, yet there is evidence. That seems ridiculous.

There is also the argument that we had better not give high awards because it will give more to lawyers and we all hate lawyers. We all have a few jokes about lawyers. There are good and bad lawyers, but we need them to deliver the law professionally. When we look round the world at some of the lawyers who have stood up against tyrants, we see that the legal profession, which is a step removed from the political community, is a valuable thing to nurture and not just deride.

Finally, the driving force of the legislation is supposedly to help SMEs and economic growth. The most obvious means to do that would be for the Government to reconsider its procurement strategy to favour SMEs more heavily. As I have said before, in Wales 70% of procurement is through SMEs, half of which are in Wales. Those companies employ local people and they pay tax in Britain. In the current situation, we have 7% procurement going to SMEs. Most of it goes to big companies, many of which are abroad; the tax is not paid in Britain and the jobs are not created here. SMEs are crying out for Government work; that is what they want. They do not want something saying, "If you do unfairly dismiss someone, you will not have to pay so much." That is not on their agenda. We are missing the point; and the point that is being made is the wrong one being made in the wrong way.

Norman Lamb: I will first deal with the oft-repeated claim that there is no evidence that businesses are concerned about regulation. In a report last week, over half of firms say that regulation is a barrier to growth. Commenting on that report of a study commissioned by the Department and the National Audit Office, the Engineering Employers Federation, which the shadow Minister last week lauded as an extremely good organisation, said:

"With its own report showing that more than half of companies still cite regulation as an obstacle to growing their business, the government can and must do better. In particular, it must grasp opportunity with its forthcoming employment law reforms to take measurable actions that will make a real difference to business."

The EEF confirmed in its evidence to the Committee that it supports the steps the Government are taking.

There is a regularly repeated complaint that regulation is not a problem. The Institute of Directors says:

"Regulation has long been a top three concern for the Institute of Directors' members. Indeed, in our latest survey, regulation was the second most-significant issue. Economic conditions were unsurprisingly top of member concerns, followed by regulation and then issues of cash flow".

It had asked members:

"Which of the following factors… are having a negative impact on your organisation?"

At No. 2, 47% put Government regulation. They were asked:

"Consider the following list of regulatory areas, and select all those which have an adverse effect on your organisation."

At No. 1, 70% put employment. There is a lot of evidence that employers are extremely concerned about the level of regulation imposed by the previous Labour Government. There is a strong case for taking action to relieve the regulatory burden, while ensuring that rights are protected.

Mr Iain Wright: How does the Minister reconcile what he has just been saying with the evidence paper that he provided to members of the Committee just last week? It states:

"Compared to other countries the UK's employment regulation system tends to be both light and even".

It continues:

"The latest World Bank report on doing business…tends to confirm that UK businesses tend to regard employment regulation as fairly unrestrictive".

Those statements do not seem to match up with what he has just said.

Norman Lamb: There is no inconsistency. International comparisons show that the UK has a relatively flexible labour market. If the hon. Gentleman talks to people in other European countries, he will discover just how inflexible some other labour markets are. The interesting thing is that Governments of all political persuasions across Europe are taking action to make their labour markets more flexible; in the past decade, a Social Democratic Government in Germany took such action. So, if the UK simply sat back and took no steps to change the environment to ensure that this country is an attractive place to do business, we would be making a grave mistake.

Julian Smith: Does the Minister agree with the comment made by John Hutton in 1997 in a Fabian lecture that there is no point in having a whole host of employment protections if people cannot get a job in the first place? Was not Mr Hutton fairly prescient?

Norman Lamb: I absolutely agree with that comment by John Hutton. It comes back again to the point that we have to balance the interests of those in work with the interests of those who are out of work, and that is what this coalition Government will do.

Chris Ruane: Will the Minister give way?

Norman Lamb: I want to make progress, because we have debated this issue for a very long time. I have been very generous in giving way.

Chris Ruane: Not to me.

Norman Lamb: There may be reasons for that.

Let me try to make progress. The right to claim unfair dismissal is not affected by this measure, but realism about potential awards is important in the context of encouraging the settlement of employment disputes.

Again, let us focus on evidence. Academic and international evidence show that there is no single route to better labour market performance; I accept that absolutely. However, OECD studies have found, for example, that employment law that is too strict dampens productivity growth and increases incentives for informal, unregulated employment. That is why it is important that we strike the right balance between employers' concerns and employees' rights.

All parties agree that a cap is necessary. The last Labour Government chose not to remove the cap. They accepted that a cap was appropriate, thereby limiting

[Norman Lamb]

the compensation of some people on higher pay. This debate is not about principle, but about striking a balance.

Ian Murray: Will the Minister give way?

Norman Lamb: Let me make progress. The hon. Gentleman had a substantial amount of time to make his contributions and I want to make some progress, because I can see that the time is pressing on.

A lot of points were made during the debate, many of which have not been entirely relevant to the clause. The clause is an order-making power—no more, no less. There will be a full consultation before any decisions are taken. I have noted all the relevant points made by hon. Members and I repeat that we are not minded to invoke subsection (3). That response addresses the concerns of the hon. Member for East Lothian about small businesses and others. We have no intention of having no specified cap on the overall level of compensation. That response addresses the concern of my hon. Friend the Member for North West Leicestershire. We will listen to all those who make submissions. We will listen to what they say about the impact of the cap on employer and employee behaviour, and we will make a measured judgment to get the balance right.

12.30 pm

I accept that, as the hon. Member for Leyton and Wanstead pointed out, the Government have a role in improving understanding of the existing rules. It is fair to say that, through no fault of any business person who is doing their best to keep a business going, there is considerable ignorance about the rules, including the extent to which it is possible to terminate someone's employment where there is good cause. It is important that the Government get the messages out there about the existing rights of employers in dealing with genuine and legitimate problems. We have published an employers charter, which explains the steps that employers can take.

I know I will be accused of anecdote, but in my experience employers are frequently frozen in inaction, feeling unable to do anything about their legitimate concerns about employees' performance, but when it is explained to them what they can do under existing law, the fog lifts. I accept that the Government have a role in improving the level of knowledge, but they also have a role in getting the balance right between the interests of employees and giving them fair compensation, and employers' concerns about facing large awards if taken to a tribunal.

Fiona O'Donnell: Will the Minister give way?

Norman Lamb: I will not, because time is pressing on.

We intend to get the balance right, and I urge Members to support the clause.

Ian Murray: On a point of order, Mr Brady. We were looking to vote against the clause, but if the Minister can commit to tabling on Report the removal of subsection (3), which he says he will have in the Act but never invoke, and if he can commit to consultation, we will not vote against the provision.

The Chair: That is not technically a point of order, but another point of order might assist the Committee.

Norman Lamb: Further to that point of order, Mr Brady. I am not in a position to conclude that. We will reflect on the debate, absolutely—it is right to do so—and then we will make a judgment.

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

The Committee divided: Ayes 13, Noes 9.

Division No. 12]

AYES

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

NOES

Anderson, Mr David	O'Donnell, Fiona
Cryer, John	Onwurah, Chi
Danczuk, Simon	Ruane, Chris
Davies, Geraint	Wright, Mr Iain
Murray, Ian	

Question accordingly agreed to.

Clause 12 ordered to stand part of the Bill.

Clause 13

POWER OF EMPLOYMENT TRIBUNAL TO IMPOSE FINANCIAL PENALTY ON EMPLOYERS ETC

Ian Murray: I beg to move amendment 18, in clause 13, page 11, line 13, at end insert—

'(11) Any money paid by an employer purporting to meet a liability to pay a penalty under this section shall be treated instead as payment of any financial award on a claim against that employer to the extent that any such award has not been paid.'.

The Chair: With this it will be convenient to discuss amendment 68, in clause 13, page 11, line 13, at end add—

'(11) The Secretary of State may by order establish a mechanism for the enforcement of unpaid employment tribunal awards and ACAS settlements by HM Revenue and Customs.'.

Ian Murray: The power of the Minister's argument on the previous clause almost pushed me across to the dark side. I am glad that my colleagues, including the Whip, are close by to keep me in line.

Amendments 18 and 68 are important because they go right to the heart of natural justice and redress. Before I commence my remarks, I should tell the Minister that, as with the previous clause, I have prepared only two-and-a-half sheets of writing. I took so long to get through my previous contribution because of my generosity in taking interventions, rather than because of my deliberately trying to keep the Committee here any longer than required to discuss the issues.

Too often, employment tribunal awards are not enforced or paid to the very people who have sought and been successful in gaining redress, which is why we are asking the Minister to commit to a new and robust enforcement regime in the Bill.

Julian Smith: Does the shadow Minister agree that the previous Government failed to enforce such tribunal decisions? Does he accept that that is a further example of the previous Government's poor governance of employment law?

Ian Murray: In my current mood, I might just agree. What is not surprising is that, although it took the hon. Gentleman three minutes to intervene on my previous contribution, it took him less than that this time. Either he has a Whip's note in front of him or he is so completely and utterly obsessed with this issue that he cannot help himself from intervening before I even get to the substance of my argument. He is clearly not interested in discussing the real issues of the Bill, but he is interested in having a go at the previous Labour Government, whose employment regime created 1.75 million jobs. Indeed, he does not want to discuss the substantive issues of why people are unemployed in this country, which is because of the double-dip recession made in Downing street, as mentioned by my hon. Friend the Member for East Lothian.

Let us go to another body to develop the argument, given that the hon. Member for Skipton and Ripon does not agree with the trade union movement or the lawyers. Let us try Citizens Advice this time to see whether we can persuade Government Members to support the amendments. Citizens Advice states that every year some 15,000 employment tribunal claims conclude with a judgment in favour of the claimant and a monetary award of hundreds, thousands or even tens of thousands of pounds. However, in its report of late October 2008 entitled "Justice denied," Citizens Advice found that, for as many as one in 10 claimants, apparent success in a tribunal soon proves to be a hollow victory when the employer simply fails to pay up.

I agree with the hon. Gentleman that perhaps the previous Labour Government should have done more, but there is now an opportunity for the Government he supports to do something to allow the employment tribunal system to deliver justice.

Citizens Advice states:

"Employment Tribunals have no powers to enforce their awards, which"—

until April 2010—

"must be enforced through bewilderingly complex and costly legal action"

by the claimant themselves, which could be time-consuming, adding further to the uncertainty of the employment tribunal system and the costs for both employees and employers. The Citizens Advice report demonstrated that rogue employers could easily drag out and obstruct such enforcement action, causing many claimants to give up in frustration, empty handed and without justice.

The Ministry of Justice undertook its own research, which showed the true situation to be even worse. A shocking one in four of all employment tribunal awards were, and, as far as anyone knows, are still, going unpaid by employers. As a result, in April 2010 the then Labour Government established the so-called employment tribunal and ACAS fast-track enforcement regime for employment tribunal awards and ACAS settlements—the hon. Member for Skipton and Ripon missed out that achievement of the Labour Government. Under the regime, workers can pay a small fee to have their unpaid award or settlement enforced by one of the various firms of High Court enforcement officers. Figures recently released by the Ministry of Justice, however, show that all-too-rare policy win to be, like all too many employment tribunal awards and settlements, something of a hollow victory.

The figures are worth exploring. In the fast-track regime's first year of operation, some 1,500 workers accessed the system. Of the 1,300 completed cases for which the information is available, the award or settlement was fully or partially enforced in just 41% of them. In the other 59% of cases, the award or settlement was deemed to be unenforceable, and the individual paid the then £50 fast-track fee to no end.

In the financial year 2011-12, some 1,600 workers paid the £60 fee to access the regime. Of the 1,022 completed cases for which the information is available, the award or settlement was fully or partially enforced in just 50% of them. In the other 50%, the award or settlement was deemed to be unenforceable. Those figures were backed up in a parliamentary question by my right hon. Friend the Member for Southampton, Itchen (Mr Denham) when he was shadow Secretary of State for Business, Innovation and Skills.

This Bill is an attempt to improve the employment tribunal system and we have said many times—13 if my maths is right—that we support the Government in this aim insofar as it does improve the system for both employees and employers. The purpose of amendment 68 is to strengthen the enforcement regime and come back with a consultation or firm proposals to make the system work more effectively. Although it is clear that the ACAS fast-track system was working, the fact that 50% of claims remain unpaid is still unacceptable and clause 13 gives the Government an opportunity to address that issue.

There is an inherent contradiction with the Government wanting to introduce financial penalties for employers as the intention behind this provision is to

"encourage employers to take appropriate steps to ensure that they meet their obligations in respect of their employees, and to reduce deliberate and repeated breaches of employment laws."

Employers should be encouraged to meet their obligations in respect of awards granted to their current or former employees as well as their responsibilities in a normal employer and employee relationship. The clause also suggests a parking ticket-type mentality to any potential fine and, while we encourage the payment of any penalties paid under this clause, it would be wrong to ensure that the Treasury is paid first at the expense of the wronged employee being paid at all.

Norman Lamb: The hon. Gentleman referred in rather derogatory terms to a parking ticket mentality. I assume that he is referring to the fact that if the penalty is paid earlier, there is a reduction. That approach is entirely modelled on the legislation on the national minimum wage, which was introduced by his party.

Ian Murray: I appreciate that intervention. I am not arguing here that we should not be encouraging these fines to be paid quickly or the 50% reduction. What I am drawing a parallel with is the fact that the compensatory awards for employees in 50% of the cases that are taken through the fast-track system are not paid, but the

[Ian Murray]

Government are putting in a system to encourage employers to pay the penalties to the Treasury. We should be doing all that we possibly can to put in place a system to encourage employers to pay the compensatory awards to employees. That is what these two amendments are attempting to achieve.

I do understand the Minister asking, "Should we be reducing the compensatory award?" That is not what we are saying. If the Government are putting in a system that ensures that the Treasury get paid as quickly as possible—and putting in the reward of a 50% reduction to do that—there is no reason why a similar system cannot be put in place to ensure that employees are paid. That goes to the heart of amendment 18. The Minister said that it is slightly unfair to call it a parking ticket-type mentality, but that is exactly what happens with a parking ticket. In Edinburgh, we get fined £60, and if we pay it within 21 days, it is reduced to £30, so the words "parking ticket-type mentality" seem appropriate to me.

As these fines are likely to be levied on employers for repeated breaches or aggravated circumstances, it would seem sensible to ensure that either the compensation is paid at the same time as any penalty to the Treasury, or that the fine that is paid goes to the employee as part of the award and any further payments that are made clear the compensatory award in the first instance and then the Treasury is paid. That would ensure that the weight of the Government is behind ensuring that penalties are paid as well as compensatory awards.

The reason we are proposing this amendment is that there could be a scenario whereby the Government use all their mechanisms and levers of power to ensure that the penalties that are levied are paid. Such penalties will only be levied in aggravated circumstances, so, in cases when the compensatory awards are granted by the judge to the former or current employee, the circumstances will be pretty severe. The employer may think, "To get the Government and the Treasury off my back, I will pay this quickly because not only do I save money but it just gets rid of that burden." The compensatory award almost becomes a secondary element. Under amendment 18, if the employer came forward with such a proposal, the penalty paid to the Treasury would be part of the compensatory award. Any other moneys that come through would go to the compensatory award in the first instance, and the 21-day period would take effect from day one and would not be cleared until the penalty is paid in full.

12.45 pm

Andrew Bridgen: I think that the amendment has some merit, but it overly complicates the matter. Why not suggest that the 50% reduction in the penalty, if charged, is allowed only if the compensatory award has already been paid to the employee? In that way we do not need to be transferring money between the Government and the employee.

Ian Murray: I am concerned. I nearly voted with the hon. Member for North West Leicestershire, and now he is agreeing with me. Although he says that my amendment is overly complicated and he wants to simplify it, the principle is key. As I have said—this will be the 14th time I think, if my maths is correct—we agree with the Government on some of these clauses and we have not tried to vote against them. We must not, however, create a situation in which employers feel that they should first pay off the Government when a compensatory award could still be outstanding, and perhaps the Government will table an amendment on Report to resolve such possibilities. However, the Labour party is on the same page with regard to this matter, which is why amendment 18, tabled in the name of my hon. Friend, seeks to ensure that the balance is in favour of monies going to the wronged, and that the penalty enforcement is at the end of that process. The 21-day discount period should be calculated at the start of the process to encourage prompt payment of penalties and awards to employees. I do take the hon. Gentleman's point, however, and I hope that the Minister will reflect on that.

In conclusion, the amendments are intended to ensure that enforcement of awards is robust, that any penalties are used as rewards until the full amount is paid, and that the full force of the Government is used to ensure the prompt payment of both penalties and compensatory awards that are paid for redress of unfair dismissal in what will be the most extreme of circumstances.

Norman Lamb: I am grateful to Opposition Members for the amendments that they have suggested. Although I sympathise with the sentiment behind them, which is to address concerns about awards that currently go unpaid and to ensure that the claimant receives at least part of their award when they might otherwise have received nothing, I am afraid that they are neither an appropriate way to achieve that objective, nor appropriate to the clause.

Amendment 18 seeks to use the financial penalty as part-payment of the award. Setting aside the fact that penalties will be awarded only in circumstances with aggravating features—which are likely to be fewer in number than cases where the award itself goes unpaid—introducing such a system would, as my hon. Friend pointed out, add significantly to the cost and complexity of the process, for both the claimant and the Exchequer.

Where a penalty is imposed by the tribunal, we intend the respondent to make the payment to HMRC. The amendment would require HMRC to contact the claimant to obtain written confirmation that the award had not been paid in full before the financial penalty could be transferred. There would be an obligation on the part of the claimant to notify HMRC if they received the full award from the respondent, and to reimburse HMRC. The measure would therefore impose a significant extra burden on the claimant, and an administrative cost on HMRC.

Amendment 68 seeks to provide for the enforcement of awards through HMRC, rather than requiring the individual to take responsibility for pursuing the non-payment. The non-payment of awards is a problem with which previous Governments have wrestled. As has been pointed out, the current "fast-track" system allows individuals to use High Court enforcement officers to pursue payment, rather than having to negotiate the county court process. In return for a £60 fee, the officer will obtain a High Court writ and seek to recover the

amount outstanding, but improving access to the enforcement process has not resolved the problem entirely, as was pointed out. What is not clear, however, is why that is the case.

The HCEO scheme was intended to simplify the procedure for enforcing awards, and Ministry of Justice colleagues are currently evaluating whether it has been successful in enabling more claimants to start enforcement proceedings. Until that assessment is complete, I do not want to write off Labour's scheme as fast as Opposition Members appear to be willing to do. Let us get the evidence about how it is working and make a proper assessment of the problems.

Until the review is complete, I cannot take a view on whether, and what, further action may be needed. We may conclude that further action is needed, because we absolutely share the view of my hon. Friend the Member for Edinburgh South that it is abhorrent for companies and employers not to pay awards that have been properly made by the tribunal. For example, where the debtor is insolvent—as was the case in 171 of the cases passed to the HCEOs in 2011-2012—transferring responsibility for enforcement to HMRC would have no effect. That is self-evident.

I recognise the real concerns that Opposition Members have about the non-payment of tribunal awards. I recognise the failures so far, over many years, to get an effective system. I share their desire to look for ways to improve the situation, but I am afraid that this clause is not the right place for such a debate. This clause is about introducing a penalty for aggravated conduct by an employer. It introduces the power for a tribunal to impose a financial penalty on employers if the breach of the claimant's rights has involved aggravating features. It sets out how the penalty is to be calculated, the minimum and maximum amounts to be levied and the circumstances in which the amount can be discounted. It does not deal with the issue of non-payment of tribunal awards, nor is it appropriate for it to do so. I am, however, clear that we need to look at ways of ensuring that claimants get the award that they are due.

Julian Smith: Could the Minister clarify the appeal process for employers who feel that they have been badly treated by the tribunal?

Norman Lamb: There is an appeal to the Employment Appeal Tribunal on a point of law. It reflects entirely the basis for appeal in any other decision of the employment tribunal.

I have asked my officials to consider the whole issue of non-payment of awards, including whether there is a role for naming and shaming those who do not comply with either the tribunal's order or the terms of the ACAS agreement that they have signed. The public ought to be aware of any existing employer—not one that has gone out of business—that chooses not to pay an award properly made by the tribunal, so I want to look at all the options for addressing that.

Once the Ministry of Justice has completed the review to which I referred, we will consider what other action may be appropriate. On that basis, I hope that the hon. Gentleman will be prepared to withdraw amendments 18 and 68.

Ian Murray: I am grateful to the Minister for his reassurances. He has said that non-payment is a problem. We would all agree with that. He has also said that non-payment is an unresolved problem. I know that the hon. Member for Skipton and Ripon will want to blame the Labour Government for that. We have tried a fast-track system, which is working to a certain extent, but not to the full extent that we would wish. There is nothing worse than someone going through the employment tribunal system, being granted an award and then being unable to enforce that award or get the compensation that they require. I appreciate all the difficulties and intricacies around companies that have gone into liquidation or no longer exist, but there must be a way of finding a mechanism.

I am pleased that the Minister said we will get evidence from the Ministry of Justice review before we take the matter forward. We will support anything that is evidence-based. The Minister has committed to looking at this in the round and I will take his word for that. On that basis, we will seek to withdraw the two amendments. Perhaps on Report the Minister could reflect on the idea suggested by the hon. Member for North West Leicestershire and see whether a simpler mechanism could be put in place to ensure that the Government do not get their cheque before the person who is deemed to have been unfairly dismissed on aggravated circumstances, which will be pretty extreme in a lot of cases, gets his compensation. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Fiona O'Donnell: I beg to move amendment 19, in clause 13, page 11, line 13, at end insert—

'(11) All monies in respect of financial penalties collected under this section shall be hypothecated directly to ACAS.'.

I commented earlier on your good nature, Mr Brady and I should like to congratulate you again that so close to the lunching hour you are still so good natured. It is much appreciated. I will not test it too far because this is a straightforward amendment and I do not think it will take me too long to explain it. Members on both sides have spoken about the importance of information for employers on their rights and also for employees. The Minister said that there is a lot of ignorance out there in the business community. That is indeed the case. Thank goodness we still live in one United Kingdom and have one set of employment regulations for both employees and employers to contend with. We can all agree on that.

Ian Murray: Is my hon. Friend as surprised as I am that the Scottish Government have made no representations to the Minister about the Beecroft proposals?

Fiona O'Donnell: I am not in the least bit surprised at that. The Scottish Government are busily trying to conflate arguments for other issues which my hon. Friend and I are both aware of. I do not want to test your patience too much, Mr Brady, but their record in standing up for working people, whether on the minimum wage or other attacks from the previous Conservative Government, is not one they can be proud of.

ACAS plays a vital role. I can remember hearing about ACAS when my age was still in single figures which is a considerable number of years ago. Much knowledge and expertise has been built in up ACAS

[Fiona O'Donnell]

over that time as its role has expanded. It plays a vital role. Hon. Members on both sides of the Committee know from speaking to businesses in our constituencies that one of the barriers for them in employing people is being unclear about their responsibilities. ACAS plays a vital role in generating growth and jobs. Therefore it is disappointing, if not surprising, that as part of the Government's drive to reduce the deficit its budget should have been cut by £8 million. Yet the Bill seeks to ask ACAS to take on further responsibilities.

I am offering the Minister a way to return income, which the Treasury really has no right to have in its coffers, to ACAS and create opportunities for that organisation to do even more to encourage growth. On its website there is a list of just short of 100 areas on which it offers advice and support to employees and employers. If the Government are beginning to realise that to reduce the deficit there has to be growth, so that people are in work and businesses are making money and that there is demand in the economy, it is important for them to adequately resource that—sorry, I split my infinitive there. It is possible to go to a comprehensive school and still have a grasp of grammar. Incidentally, I always wondered why grammar schools are called that. That is a discussion for another time. It is one of those thoughts one has in the twilight hours in London when dreaming of home.

This is an opportunity for the Government. It is not an incentive but a way of acknowledging the role of ACAS and its part in the Bill and generally driving forward good practice.

1 pm

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

Adjourned till this day at Four o'clock.