



House of Commons
Scottish Affairs Committee

Blacklisting in Employment

Oral and written evidence



House of Commons
Scottish Affairs Committee

**Blacklisting in
Employment**

Oral and written evidence

*Oral evidence ordered by the House of Commons to be printed
22 May, 12 and 19 June, 10 and 17 July, 4 September, 16 and
30 October, 6 and 27 November 2012; 22 January, 5 and 12
February and 5 and 12 March 2013*

*Written evidence ordered by the House of Commons to be
printed on 26 March 2013*

The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

Current membership

Mr Ian Davidson MP (*Labour/Co-op, Glasgow South West*) (Chair)
Mike Crockart MP (*Liberal Democrat, Edinburgh West*)
Mrs Eleanor Laing MP (*Conservative, Epping Forest*)
Jim McGovern MP (*Labour, Dundee West*)
Graeme Morrice MP (*Labour, Livingston*)
Pamela Nash MP (*Labour, Airdrie and Shotts*)
Sir Jim Paice MP (*Conservative, South East Cambridgeshire*)
Simon Reeves MP (*Conservative, Dewsbury*)
Mr Alan Reid MP (*Liberal Democrat, Argyll and Bute*)
Lindsay Roy MP (*Labour, Glenrothes*)
Dr Eilidh Whiteford MP (*Scottish National Party, Banff and Buchan*)

The following members were also members of the committee during the Parliament:

Fiona Bruce MP (*Conservative, Congleton*)
Mike Freer MP (*Conservative, Finchley and Golders Green*)
Cathy Jamieson MP (*Labour/Co-op, Kilmarnock and Loudoun*)
Mark Menzies MP (*Conservative, Fylde*)
Iain McKenzie MP (*Labour, Inverclyde*)
David Mowat MP (*Conservative, Warrington South*)
Fiona O'Donnell MP (*Labour, East Lothian*)
Julian Smith MP (*Conservative, Skipton and Ripon*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/scotaffcom. A list of Reports of the Committee in the present parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Eliot Wilson (Clerk), Duma Langton (Inquiry Manager), Gabrielle Hill (Senior Committee Assistant) and Ravi Abhayaratne (Committee Support Assistant).

Contacts

All correspondence should be addressed to the Clerk of the Scottish Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6123; the Committee's email address is scotaffcom@parliament.uk

List of witnesses

Tuesday 22 May 2012	<i>Page</i>
Maria Fyfe , former Glasgow MP and leading anti-blacklisting campaigner	Ev 1
Tuesday 12 June 2012	
Dave Smith , Blacklist Support Group	Ev 6
Tuesday 19 June 2012	
Francis Graham and Steuart Merchant	Ev 23
Tuesday 10 July 2012	
Nancy Kelley , Joseph Rowntree Foundation, Dr Alistair Geddes , University of Dundee, and Professor Gary Craig , Durham University	Ev 32
Tuesday 17 July 2012	
Ian Livsey , Chief Executive Officer, and David Nix , Head of Licensing, Gangmasters Licensing Authority	Ev 56
John Picken , Vice-President, National Farmers Union of Scotland, and Melanie Leech , Director General, Food and Drink Federation	Ev 72
Tuesday 4 September 2012	
Gail Cartmail , Assistant General Secretary, Unite, Justin Bowden , National Officer, GMB, and Harry Donaldson , Regional Secretary, GMB Scotland	Ev 82
Tuesday 16 October 2012	
David Smith , Deputy Information Commissioner, and David Clancy , Investigations Manager, Information Commissioner's Office	Ev 95
Tuesday 30 October 2012	
Steve Murphy , General Secretary, Union of Construction, Allied Trades and Technicians, and Jim Kennedy , National Political Officer, Union of Construction, Allied Trades and Technicians	Ev 112
Tuesday 6 November 2012	
Alan Wainwright	Ev 123
Tuesday 27 November 2012	
Mr Ian Kerr , former Chief Officer of The Consulting Association	Ev 137

Tuesday 22 January 2013

Cullum McAlpine, Director, Sir Robert McAlpine Ltd Ev 168

Tuesday 5 February 2013

Jack Winder, former Director, Caprim Ltd Ev 186

Tuesday 12 February 2013

Stanley Hardy TD, former Director, Caprim Ltd Ev 202

Tuesday 5 March 2013

Harvey Francis, Executive Vice-President, Human Resources, Communications and IT, Skanska UK Ev 218

Tuesday 12 March 2013

Mike Peasland, CEO, Construction Services UK, Balfour Beatty Ev 235

List of written evidence

1	Kenny Newton	Ev 264
2	Joseph Rowntree Foundation	Ev 264
3	Unite	Ev 265
4	Supplementary Unite	Ev 269
5	Gangmasters Licensing Authority	Ev 269
6	Carillion	Ev 275
7	Additional Carrillion	Ev 280
8	Alan Wainwright	Ev 282
9	UCATT	Ev 289
10	Information Commissioner's Office	Ev 290
11	Ian Kerr	Ev 291
12	Cullum McAlpine, Director of Sir Robert McAlpine Ltd.	Ev 293
13	Supplementary Cullum McAlpine, Director of Sir Robert McAlpine Ltd.	Ev 294
14	John Swinney MSP	Ev 298
15	George Fuller	Ev 301
16	Harvey Francis, Skanska UK PLC	Ev 303
17	Balfour Beatty	Ev 304
18	Chidi Obihara	Ev 306
19	Mike Peasland	Ev 307

Oral evidence

Taken before the Scottish Affairs Committee on Tuesday 22 May 2012

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Pamela Nash

Lindsay Roy

Examination of Witness

Witness: **Maria Fyfe**, former Glasgow MP and leading anti-blacklisting campaigner, gave evidence.

Q1 Chair: Could I welcome you, Maria, to this meeting of the Scottish Affairs Select Committee on the subject of blacklisting in employment? You are our first witness, and we specifically wanted you to come along to give us some of the historical sweep, because you have been involved in this obviously for quite a while. If it is agreeable, we would ask you to start, so to speak, and then allow Members to interrupt maybe and raise points as we go rather than saving them all up to the end. Could you start off by telling us who you are and the various elements in your background where you have been involved in this?

Maria Fyfe: My name is Maria Fyfe. I retired from Parliament in 2001, having been MP for Glasgow Maryhill. When I was elected in 1987, in that year “World in Action” ran a series of television programmes about the Economic League and its activities. In one of those programmes a constituent of mine was named, a woman called Carol Craig, who was astonished to learn that she was on a blacklist and discovered it was because she was a keen activist for anti-apartheid and they had nothing else written about her. They did not apologise or withdraw it. They did nothing.

I had already been aware of blacklisting as an issue in the trade union movement, because my previous job before I was an MP was teaching classes for the TUC. I was not aware of anything having been done at the parliamentary level up until that time. It occurred to me that, while it was good to have television programmes exposing this kind of thing, the media rolls on and there is always something else hitting the headlines, it seemed to me right to organise a campaign to keep up the pressure about blacklisting. So I formed an all-party group in Parliament and a wider membership in the country at large, consisting of members of the public, trade unionists, academics, all sorts. I spent several years trying to push through legislation to tackle this problem.

The Committee has a brief summary of events as they transpired through these years, which you can look at. The first effort was to have an Access to Information Bill. One of the key things about the Economic League was that they drove a coach and horses through the data protection legislation because computerised files were able to be seen by people, but, if their records were written records or on card indexes, they escaped the law. That is precisely how they kept the records. Some 45,000 people had

records kept on them, and in 1986 alone they responded to an estimated 200,000 inquiries about applicants for jobs.

I would like to make the point here that, in all those names, it is quite possible that a large number of them were holding correct information but not information that most of us would think was detrimental to their characters. If, for example, somebody was a safety rep in a company, that would be held against them. Most of us would think that being a safety rep was a good thing to be and praiseworthy, if anything, and not something to be held against them. In an awful lot of cases—this is what transpired out of the “World in Action” programme—they found out that a great many people who were listed were listed for the most absurd reasons. Information was given against them that was plain wrong and sometimes ludicrously wrong. I can give you some examples, if the Committee would like.

Probably everyone here has heard of Sir Kenneth Alexander, a professor of economics, chancellor of Aberdeen university, and an ex-chairman of the Highland and Islands Development Board. He was listed as being a member of the Socialist Workers Party. It was this kind of absurdity that really got through to people.

Q2 Chair: I take it that he was not a member of the Socialist Workers Party.

Maria Fyfe: No, he was not.

Q3 Lindsay Roy: So what if he had been?

Maria Fyfe: Exactly. Let me tell you what the Economic League were doing. They said it themselves at the time. The way they formed their list was by combing letters to newspapers, especially the left-wing press. If someone stood as a candidate in an election who was left of Genghis Khan, they not only noted their names but they noted the names of people who gave them supporting nominations. We all know as elected Members, or having been an elected Member, that sometimes people get a neighbour to sign just because they know the person and they are willing to do that. So people who had no politics at all, who were not involved in anything, were actually getting blacklisted on account of things like that. As you rightly say, “So what if he had been?”, but he wasn’t.

22 May 2012 Maria Fyfe

It might amuse the Committee to learn that a man called Derek Ogg, who had been a former young Tory chairman in Dunfermline, who was by that time a leading advocate in Edinburgh and had been a Conservative candidate at district and regional levels, was listed as an anarchist. This was because he ran a magazine that was on sale in an anarchist bookshop. This was the kind of absurdity that got written about people.

I was particularly dismayed to see that a man called Sydney Scroggie, who had been blinded and lost a foot in a Highland regiment when fighting in Italy—

Q4 Jim McGovern: A Dundee man.

Maria Fyfe: Do you know this man?

Jim McGovern: Syd Scroggie, yes.

Maria Fyfe: Well, well. The Committee would like to know, perhaps, that this man was blinded and lost a foot when fighting for a Highland regiment in Italy during the second world war. This man, now a pensioner, wrote a letter to *The Scotsman* praising the fact that the council had bought a painting of Nelson Mandela. Not only is it ridiculous in itself to blacklist someone for a reason like that, but he was a pensioner by this time. He was not seeking employment. So they build up lists like this in the most silly and contemptible ways.

William McIlvanney, the well-known novelist, was listed as a Marxist, who says that he has never been committed to any party.

Recently, Wendy Henry, the then editor of the *News of the World*, because of her early involvement in the International Socialists, was listed. Roger Rosewell, a leader writer on the *Daily Mail*, had been a full-time officer with the International Socialists and in his youth had written *The Struggle for Workers' Power*, but by that time he had gone over to the *Daily Mail*. The chief reporter of the *Daily Record*, a man called Gordon Airs, was listed. The only reason he could think of was that he once spent a night in jail for contempt of court when he would not reveal a source. There was absolutely nothing else that he could think of in his whole life that would have led to him being blacklisted.

Of course there were several MPs who were dangerous to society, like Adam Ingram, Tom Clarke, Tommy McAvoy, Peter Hain and myself, of course, for campaigning against this, and many others. I could provide you with a list, but those cuttings give you a flavour of all the people who got blacklisted.

So we see here a system of secret vetting where, if someone suspects they are getting blacklisted, they were told by the Economic League, with some cheek, I think, to write in and ask and send them a small fee. This was literally to blacklist yourself, because their logic would be, "Why would you think you might be on it?" Then you would be blacklisted anyway. One man was actually told that he could be taken off the blacklist provided he named half a dozen others.

Let me conclude my opening statement by saying that this was described by one victim as McCarthyism in Britain, but he said, and I agree with him, it's worse than that because at least McCarthy was open enough to stand up in front of an American grand committee and say openly what he thought and believed, but all

of this was done in secret. So people are condemned. The Economic League was judge, jury and prosecutor, and people never even knew that they had been prevented from getting work. It is amazing for MPs to be blacklisted, but there were many thousands of people whose job chances were wrecked through this secret blacklisting and they never knew it had been done to them.

Q5 Pamela Nash: The purpose of our inquiry is to look at the effects particularly on the construction industry and construction workers, but you mentioned a lot of high profile people who are not in the construction industry. I was wondering if you could expand on the effect that that might have had on them and, indeed, the effect it had on you to know that you were on the blacklist.

Maria Fyfe: It just amused me because, as an MP, it was not going to hurt me in any way, but it angered me to think that people who were simply trying to do a job of work, and be employed in the trades that they knew were being blacklisted, with no opportunity to challenge what was said about them and no opportunity to take themselves off it. It is a serious business. When you think that the construction industry, in particular, has got a not very good record, shall we say, of safety—deaths and serious injuries happen more often in the construction trades than in most other industries—it is all the more important that responsible trade unionists have a right to act without being pushed out of a job for their pains.

Q6 Pamela Nash: I agree with that, but the figure that we hear is that three people working in the construction industry die every week. If there is anything that is preventing people from reporting health and safety issues, then that is costing lives in this country. Do you think that the blacklist is still a current problem in the UK?

Maria Fyfe: I hear that people working in the industry have good reason to believe that there is. I do not personally have any evidence of such, but I am concerned when I learn from people who work in the industry saying that they want this investigated. So I am very pleased that this Committee is opening up this issue.

Q7 Chair: Can I just clarify what the files were used for? As far as you are aware, these files were compiled by the Economic League from a variety of sources. What was the point of them?

Maria Fyfe: There were many British companies—a lot of famous names. I have passed on the list that was drawn up by "World in Action" to the Committee, but there are many hundreds of well-known British firms, including ones in the construction trades, who would phone up the Economic League, and other smaller agencies, but the Economic League had the reputation of being the biggest and the most widespread. They had eight offices around the country. They would simply say, "Right, here's this bloke, Joe Soap, applying for a job. What do you know about him?" They would say, "Oh, don't touch him because he is on our list." In some cases when "World in Action" reporters disguised themselves as

22 May 2012 Maria Fyfe

would-be employers of staff and asked them to check on people, the Economic League then said, “Well, all we’ve got is that he wrote a letter to these people”, or some such thing, “but we feel that if he is on a list you shouldn’t touch him anyway, just in case.”

Q8 Chair: You have given us the list of companies that were involved in this and we can circulate that later on to people on the Committee. How long a period did this cover and what happened at the end, as it were?

Maria Fyfe: The Economic League itself had been on the go since 1919. It was formed at a time when some British industrialists were afraid of Bolshevism breaking out in Britain and they formed it at that time. The date of my own involvement in these matters just starts, really, in 1987 at the time of the “World in Action” programmes. So I made attempts during the ensuing years to create legislation by bringing in a Bill to allow access to information and putting forward a clause in an Employment Bill once simply to make blacklisting illegal. I made various efforts, which again I have listed for the Committee; it is down on paper for you. It is in a note that I have typed up, and I hope you have it, with all the details of the efforts that I made at legislation during these years.

There is one thing and I don’t know if the Committee knows about this. I had thought that by 1999 the thing was finally settled because we passed a clause in an Employment Bill to make blacklisting illegal. When a few years later I read in the newspapers that construction industry workers were concerned that there was no law and they were saying there ought to be a law, I was saying, “What are they talking about? There is a law.” Then I gathered that somehow it did not work its way through finally to come into effect as a law. I heard at the time that Ministers in the then Labour Government thought that there was no point in going after the Economic League because they had disbanded themselves. At the time I thought, “Fair enough if they have disbanded themselves”, but it would seem that similar organisations are on the go once again. I really hope that this Committee can be an enormous help towards finally ending this.

Q9 Chair: Can I be clear? The Economic League, which was the main organisation involved in this, announced that it was closing itself down.

Maria Fyfe: Yes.

Q10 Chair: The assumption was that that was an end to the matter.

Maria Fyfe: Yes.

Q11 Chair: Was it known where the personnel and all the files of the Economic League went?

Maria Fyfe: No—apart from a little amount of information that was given to our campaign by a man who had been one of their top people and had fallen out with them. He gave us some information. Apart from that, no. They just destroyed their own information.

Q12 Chair: Can I just clarify that? You thought that they destroyed it?

Maria Fyfe: Yes.

Q13 Chair: But there was no evidence that they had destroyed it at all?

Maria Fyfe: No. We thought that, if they were going to disband themselves and no longer be active, then they might have destroyed it, but I do not positively know that they destroyed it. The thing is that they did disband themselves because major British companies had decided to pull out. They were not giving them donations any more. They were not seeking information from them because they were embarrassed with the amount of media coverage that was going on of these matters. They made decisions at directorate levels to pull out. Sometimes directors of those companies said that they hadn’t even known that their company was doing it; it was somebody lower down the food chain who had been doing it without their awareness of it. But, for one reason or another, the funding collapsed and then they disbanded.

Q14 Chair: When was it that the funding collapsed?

Maria Fyfe: I have got a date among my papers, but I have forgotten it just now¹.

Chair: Perhaps you could let us have that at a later stage.

Q15 Lindsay Roy: What evidence do you have of a revival of blacklisting?

Maria Fyfe: I personally don’t. I have not been looking at these matters myself for some years. It is just that I am concerned because I read in newspapers about concern being expressed by people who are actually working in the construction trades and I am sure they are not imagining it.

Q16 Lindsay Roy: It is anecdotal evidence from the press and, indeed, from personal contacts.

Maria Fyfe: Yes, from people speaking to the press and people working in the industry. No, I do not have any personal contacts with anyone involved. I spent several years teaching TUC classes. I am talking about responsible guys who don’t go round to the press with just imaginary grievances. If they are concerned, then we have a right to be concerned.

Q17 Jim McGovern: Thanks a lot for coming here today, Maria. I heard you say that you represented Maryhill, which is where I was born a lot of years ago. My own father worked in the construction industry and eventually we moved from Glasgow to Dundee because he could not get work in Glasgow just because of his attitude to employers’ bad practices.

Following on from what Lindsay said, given your interest in the subject, I would imagine that you are, probably, aware of the case of Ian Kerr and The Consulting Association.

Maria Fyfe: No, I am not.

Q18 Jim McGovern: It sounds very much like a resurrection of the Economic League. The Consulting Association did exactly the same thing. They gathered

¹ Wikipedia entry on Economic League gives a date of 1994.

22 May 2012 Maria Fyfe

information on people and blacklisted them. Are you aware that it still goes on to this day?

Maria Fyfe: Like I said, I do not have personal knowledge, but in its nature it is secretive. When I hear concerns being expressed by people who think they may well be victims of it, then I am not a bit surprised because it was going on to a very large extent back at the time when I was active in these matters.

Q19 Chair: Can I clarify how the list of companies that were involved with the Economic League was obtained? Did they admit being involved in the Economic League?

Maria Fyfe: “World in Action” themselves managed to obtain this kind of information. It is there in the transcripts of the actual programmes that I have passed on to the Committee. When I got that anti-blacklisting campaign up and running, one of the things we started doing was to write to firms that had been listed and ask them was it correct, were they still doing it and would they considering withdrawing from it in view of the fact that the Economic League had been demonstrated to be holding false, totally misleading and totally nonsensical information about people, and therefore they were wasting their money on them? Those companies wrote back. All of them sent friendly replies saying that they had already departed, perhaps two or three years before, but they were no longer subscribing to them. I only got one unfriendly reply out of all of them, and that was from Lord Weir, who said that it was no business of any MP how his company recruited people and he was not going to answer.

Q20 Chair: But none of the companies disputed that they had been members of the Economic League.

Maria Fyfe: Not the ones we wrote to.

Q21 Chair: Because there was evidence from the “World in Action” programme that they had been.

Maria Fyfe: Yes.

Q22 Chair: Informal suggestions have been made to us about which companies might or might not be supporting The Consulting Association, but in your experience the companies, when written to, admitted that they had been but denied that they still were.

Maria Fyfe: Correct.

Q23 Chair: Right. In terms of general campaigning against the operations of blacklists, are there any particular methodologies that you employed that you would suggest we should bear in mind when we are examining this in terms of how we should go about it? I do not know whether or not you had the opportunity to have witnesses in front of you, were called or were able to meet people organising the Economic League or anything similar at any stage to put points to them.

Maria Fyfe: No. We gave information to the media, and in particular *The Mirror*, the *Record* and the *Sunday Mail* were very active on this issue. *The Mirror* alone ran five pages’ worth of stories, which again I have copied for the Committee. They put a

reporting team on to it, who rang various people who had been named by the “World in Action” as having been blacklisted, asking for their views on it. They phoned up the Economic League and asked them what they had to say for themselves. Generally, it was done in that way where it enlivened interest throughout Britain and the whole issue.

Q24 Chair: In terms of the end of the campaign and the legislation—you have already made the point about some of the legislative changes not having been implemented until later on—with hindsight, are there any legislative gaps that you have subsequently identified that we ought to bear in mind as we look at this area?

Maria Fyfe: Quite simply, the whole idea of blacklisting should be illegal. We haven’t got to that point yet. I don’t think we have actually passed a law to say that blacklisting is certainly going to be against the law and you will get heavily fined or even imprisoned, depending on the seriousness of the offence. To the best of my knowledge I don’t think we’ve quite got to that point yet. That is what I would like to see. I had been attempting to do it in the way you can through ten-minute rule Bills and the like to make changes, but, because it is secretive and so thoroughly nasty, it is an attack on civil liberties and it is really important that Parliament deals with this once and for all.

Q25 Pamela Nash: Legislation was passed in 2010, but I suppose what you are saying is that there has not been a punishment so far for the perpetrators and that has to be clearer.

Maria Fyfe: Not to the best of my knowledge.

Chair: We have picked up already the loophole in the legislation about keeping files on cards rather than on computer or any electronic form. Are there any other points that any of my colleagues want to raise? What we normally say, once a witness has been to see us, is, “Are there any questions that you have got answers prepared to that we have not asked you?”, or, subsequently, if you realise that there are points you wanted to raise but you forgot or omitted, then we would welcome it if you wrote into us later on with any additional evidence. Pamela, you have another point.

Q26 Pamela Nash: I wanted to make the most of you being here, Maria. I know that a lot of people looking at this might not fully understand the issue. I wondered if you could expand a bit on the people whom you have met through your campaigning and the effect that being on a blacklist had on their lives.

Maria Fyfe: Funnily enough, only yesterday I was at the funeral of a 96-year-old man, Stuart Watson, who lived in my constituency. This was not part of my campaign, but it is just a typical instance. When he was an apprentice all those years ago, he realised that apprentices were being unfairly low paid considering the work they were carrying out, and he led a campaign about that in his workplace. As a result he was blacklisted and he never got a job in that line of work ever again. I can’t remember what his trade was, but he was a member of the Boilermakers’ Society. I

22 May 2012 Maria Fyfe

don't know precisely what he did. He was pushed out of his trade, as an enthusiastic young person, for something he was tackling in his place of work. That is the kind of thing that happens to people. "World in Action" interviewed people and so did the *Daily Mirror* and the other newspapers. I did not have the opportunity to go round the country doing that. You know what it is like. You are busy with a whole lot of other stuff, but I fed the newspapers information so that they could go and interview people.

Q27 Pamela Nash: Was there anyone that you met during your campaigning or since who managed to seek redress through the courts or was ever compensated?

Maria Fyfe: Not one.

Q28 Chair: So no one ever got any compensation, redress, apology or anything else of any sort.

Maria Fyfe: Not that I am aware of.

Q29 Chair: Was there any opportunity for people like Ken Alexander to have their records changed?

Maria Fyfe: The point I would make is that Ken Alexander could just laugh at that and not even bother asking. The Economic League certainly did not² respond to requests from people to check their records. If somebody felt that something wrong was written about them, they were told that they could write in, make an inquiry and pay a small fee, but people wouldn't do that because it was blacklisting themselves to do that. What they were doing was an inadequate response to a problem that somebody might have had. What we need, of course, is lack of secrecy. Such lists should be exposed to public view. In one of our efforts at legislation, I said that someone who has applied for a job should be entitled to know whether or not the would-be employer is seeking information about them from a source that keeps records about people so that they can know what they are saying about them and be able to refute anything they say. But that did not get into law so they never had any right to do it. They only ever had what the Economic League was willing to tell them. As I said, if they had anything on record, they would agree to tell you for a fee, but if they had nothing on your record you were blacklisting yourself. It is hardly satisfactory.

Q30 Jim McGovern: Maria, at the moment I have no evidence to suggest that the Economic League or

its successor organisation is driven politically, but it seems to me that it is certainly slanted against people who are politically active in the Labour party. For example, I have a file in front of me from a constituent of mine—I won't name him—which says that he is an electrician, and "One of many Local Authority electricians and has been on strike for more than 3 months. He will be speaking at a ... Contact meeting on November 12 at the Labour Club in Newcastle-upon-Tyne." Why would that be worthy of recording?

Maria Fyfe: All I can say is that people have been blacklisted for less. The Economic League in one of its own publications named organisations like Anti-Apartheid, Oxfam, the Child Poverty Action Group and so on as being suspect because they argued how modern revolutionaries, realising that the class struggle was at an end, would use organisations like this—that was their line of thinking—to try to disrupt society. They had a spy who was mentioned in one of the programmes done by "World in Action" who attended anti-apartheid meetings just to know what they might be saying about other issues. That kind of thing went on.

Q31 Jim McGovern: For myself, I don't know what is worse. If somebody is politically active, some of us might be on a file somewhere. We probably are. For an electrician who has gone on strike, who has withdrawn his labour in support of himself and his colleagues and because he chooses to speak at a Labour club—

Maria Fyfe: Indeed. That is the kind of thing that could easily have got you listed by the Economic League. They themselves claimed that they were equally interested in the far right, but investigations by "World in Action" of their actual lists and making inquiries pretty intensively showed that 90% of the lists were people who were active in one way or another on the left. Again, I would make the point that people were being blacklisted for perfectly legitimate activity, such as membership of a political party. Even being a Labour MP was enough to get you listed—for example, Tom Clarke and others.

Chair: That has been very helpful to set things in context. We have the files that you passed on to us and we have the cuttings. As I said before, if, upon reflection, there is anything that you think would be helpful to us, we would welcome that. Similarly, if during our discussions there is anything else that we want to come back to you on as the human repository of all information about and relating to the Economic League, then we will do so. Thank you very much.

² Witness correction—the Economic League did respond to requests.

Tuesday 12 June 2012

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Iain McKenzie

Pamela Nash
Mr Alan Reid

Examination of Witness

Witness: **Dave Smith**, Blacklist Support Group, gave evidence.

Q32 Chair: Could I welcome you, Dave, to this meeting of the Scottish Affairs Committee? As we indicated to you when we met privately, the Scottish Affairs Committee is interested in looking at blacklisting obviously in Scotland—because we are the Scottish Affairs Committee—but we recognise that it is necessary for us to take a wider view in order to assess what has been happening. Throughout the period of discussion, it would be more helpful than not if you were able to identify any particular Scottish dimension. If other House of Commons Committees want to pick up the general issue across the whole of the UK, that is up to them, but our remit is largely Scottish-based. I wonder whether you can start by telling us who you are, why we are seeing you and what experiences you have of blacklisting.

Dave Smith: Thank you very much for inviting me. My name is Dave Smith and I was originally a construction worker from London. I trained as an engineer and was a member of the construction workers union, UCATT, where I was a shop steward, a safety rep and a branch secretary for many years during the 1990s. I have been asked to come to speak and give evidence because I was also blacklisted for my trade union activities. I was blacklisted by an organisation called the Consulting Association, which was a conspiracy of 44 of the biggest construction firms in the country, including a number of Scottish firms.

Since 2009, I have been the secretary of the Blacklist Support Group, which is a network of blacklisted construction workers who have been blacklisted primarily because of their trade union activities. Our first meeting ever was in this building. John McDonnell helpfully chaired the meeting for us, and we set up a support group. Since then, we share information and have done campaigning. *Hazards* magazine, the well-respected health and safety magazine, runs an online blog for us. We have also brought in support from academics, lawyers, trade unions and investigative journalists, who have worked hand in hand with the support group over the last few years. We do a lot of campaigning at trade union events, but we have also had a private meeting in Brussels with an EU Commissioner, László Andor, whom Brian Higgins, Steve Acheson, Professor Keith Ewing and I visited to discuss blacklisting, with the help of some MEPs.

In addition, I have taken an employment tribunal claim against Carillion. Very few of the cases have ended up in full tribunal; my case did end up there. As part of my particular case, the court granted us a

court order that allowed me to view the entire unredacted Consulting Association blacklist, so I have seen every single document on individuals that is in the files of all 3,200 workers. I am one of the few people who have seen them. Probably the only other people who have seen them work either for the Information Commissioner's Office or for the Consulting Association itself. During my court case, over 400 pages of previously undisclosed material were given to the court. The variety of paperwork to which I will refer during today's session is all in the public domain, has been issued in a court case, has been used in evidence and discussed in open court, or has been reported previously in the press. The reason that I am bringing it forward is that sometimes it has not necessarily been reported very widely in the press. Also, as the secretary of the support group, inevitably I get lots of information that is probably not widely known from blacklisted workers in a variety of industries and from solicitors and academics. That is why I am doing this.

Q33 Chair: Let us make it clear that the material that you give us is publicly available. It is our intention to place it on the Committee's website, where it will be more publicly available. Can I clarify a couple of things? You mentioned 3,200 files. Is each of those on individuals?

Dave Smith: Yes.

Q34 Chair: Is that the entirety of the Consulting Association's files, or is it only the part that was relevant to your case?

Dave Smith: No. Should I set out very briefly the background to the Consulting Association?

Q35 Chair: We are going to come on to that; I will come back to it later. Could you tell us about the impact that having been blacklisted has had on you and your family? Has it made any difference to your lives?

Dave Smith: Yes. My blacklist file starts in 1992 and runs through to 2005. It is 36 pages, which makes it one of the larger files. Virtually everything in my file relates to where I have raised concerns about health and safety, asbestos, toilets overflowing on building sites and a young lad falling off the third floor of scaffolding. In one page in my blacklist file—I think all of you have a copy of it—my union health and safety rep's credentials, which are meant to give an individual union rep certain legal protection and certain rights, were photocopied with the company

12 June 2012 Dave Smith

office stamp on them and sent off to my blacklist file. Throughout my file, there is nothing that mentions my doing anything other than raising concerns about health and safety, conducting normal trade union activities, giving interviews to various organisations and raising concerns about unpaid wages. Nowhere am I accused of doing unofficial strikes or anything like that; that just isn't the case.

You ask how it affected me. During the first period in which I was on the blacklist, I found it almost impossible to get a job directly with a company. I could get work through employment agencies and sometimes through small subcontractors, but I could not get a job directly with any major contractor. I am trained and qualified as an engineer, and most engineers work for the main contractor rather than for small agencies.

During the building boom of the late '90s onwards, to a certain extent that did not really make a lot of difference. I had the normal ups and downs of any construction worker. But there was a point around 1999 when the blacklisting was very persistent; even my blacklist file talks about needing to check whether I was trying to get on to jobs via employment agencies. Employment agencies used to call me on virtually a daily basis, but that completely dried up overnight. When I did ring companies to ask whether they had any jobs for me, I remember an employment agency telling me at one point, "There is no point in you ringing us ever again because we are never going to employ you through the agency again, because on our system you are coming up as code 99." When I asked what code 99 was, they just said, "One of the big firms has rung us up and told us never to employ you or put you anywhere." Nowhere in my blacklist file am I accused of poor workmanship or of not being competent at my job; I was quite good at my job. From 1999 onwards, it became absolutely obvious that I could not get a job.

For my tribunal case, I had to do a schedule of loss, to work out how my income had been affected. In 1999, my income was in the region of £36,000; in the year 2000, my gross income, before tax, was £12,000. Within a 12-month period, my income was cut by two thirds. This was in the middle of a building boom, when the industry was crying out for skilled labour. There were adverts in the newspapers all the time, but if I ever applied to get a job I could not get one at all. I was a qualified engineer in the middle of the building boom, and my kids were on milk tokens.

A while after it became obvious that I was never going to get a job as an engineer, I got a job with someone I know who works in the industry and worked as a carpenter for about 18 months. To start with, that was okay—we worked together for 18 months—but it reached the point that I could not get a job even as a carpenter. Both the person I was working with and I would turn up for jobs; he would be given a job, but I would not, without even walking through the door. It was just so obvious what was happening, but you can't really prove it at the time. Now, you will see that the later pages of my blacklist file say, "He is now working as a carpenter. Check whether he is trying to get on your job as a carpenter."

It had a major impact. Inevitably, it puts pressures on your family life and on trying to pay the mortgage. In the industry that I had trained to be part of and I wanted to be part of and where I was quite good at my job, I couldn't do that any more. In 2001, it reached a point where, physically, I could not pay the bills. I made the decision that I could either carry on in the building industry, trying to fight this, or try to do something else. In 2001, I got a job working in further education, where I now teach.

Q36 Chair: Can I ask one question about your file? You mentioned that it says nothing other than about your involvement in health and safety and other industrial matters. Can you remind me whether it makes any reference to political views and opinions?

Dave Smith: It does. I have 36 pages. On a couple of pages, they talk about my politics, which have always been left of centre; I make no apologies for that. They make the point that I am a member of a number of organisations, including the Construction Safety Campaign and Militant. I make no bones about it—when I was a young man, I was a member of Militant, but at the time all this was going on I wasn't. In 1999 I was not a member of that organisation. In all honesty, all of the information in my file, when we talk about how it gets compiled, was compiled by managers on building sites. I would raise an issue about toilets or asbestos, and a manager on a building site would send that information up to their head office. The head of HR for that particular company would pass on the information to the Consulting Association. It was always about what I was doing on building sites, really.

Q37 Chair: Can I just clarify something? You made a sort of leap, as it were, when you said that the information went from the building site to the head of HR to the Consulting Association. How do you know that that was the route?

Dave Smith: Because in my employment tribunal case, Carillion told us that that was the route. In other employment tribunals, companies have admitted that that is the route by which the information got into the files.

Chair: Fine. There will be a number of points on which we ask you just for clarification. We want to be clear about whether what you are saying is an assertion or is supported by documentary evidence. Either after we finish this session or at the end of it, you may want to come back to confirm where some things are, if that has not been entirely clear.

Q38 Mr Reid: Dave, thanks for coming along this afternoon. I want to ask you about your experiences with the courts. Can you tell us what it was like trying to sort out the matter through the courts?

Dave Smith: There are a number of issues. I took an employment tribunal case against Carillion and a number of its subsidiaries: Schal International, which is a wholly owned subsidiary of Carillion; and a company called Carillion JM Ltd, which used to trade under the name John Mowlem. First, there was a very big dispute about physically putting cases into the tribunals on time. It may be common knowledge that

12 June 2012 Dave Smith

you get three months in which to complete an employment tribunal form, but all the incidents that happened with me and other construction workers on the blacklist happened in the 1990s. The three months was miles past.

When we first went to court, the president of the employment tribunal sent every single blacklisting case to Manchester, basically because they are unusual; they are not the kind of thing that happens every day; it is very unusual and involves a piece of law that is not very common. So all of the cases got sent to Manchester. I remember attending a case management discussion where there were about 50 claimants in the same room at the same time. I imagine that, of those, 45 of them—probably 95%, as more and more have come through—were declared out of time, because the incidents happened so long ago. It was a very big fight even to get to a full merits hearing. The vast majority of cases did not even get to a full merits hearing because the employment judge in Manchester ruled them out of time. That was the first hurdle that we all had to get over. I managed to get over it.

Q39 Mr Reid: How did you manage it when the others failed?

Dave Smith: I think that I have a fantastic legal team, who are acting for me pro bono. I think that they were just very good and efficient.

Q40 Mr Reid: What were the grounds on which they managed to persuade the judge to hear your case?

Dave Smith: I put in my tribunal paperwork virtually three months after I physically got my file because, incorrectly, I assumed that the three months would start from when I got my file. The law does not actually say that; it says that it starts from when the incident happened, which was back in the '90s. If you get some information that comes through later, you have to put it in as quickly as is reasonably practicable. I spent the three months running around trying to get some advice. I am no longer a member of any of the construction unions because I do not work in the industry any more, so I went to some of the construction unions. Because I was making an effort to find things out and preparing stuff myself, which I then put in late, the judge allowed my case to go through, but the vast majority of the other cases did not even get to a full merits hearing. This is a bit of a technicality, to be honest.

Q41 Chair: Can I be clear about that? The others were put in more than three months after they had had their files.

Dave Smith: No, less than three months after they had got their files. All of the cases were put in less than three months after they had got their files—some only a few weeks after they had got them—but the judge still ruled them out of time. I think that it is a disgrace.

Q42 Chair: Because that related to the incident.

Dave Smith: Yes. Bearing in mind that most of the people who were filling these in were ex-construction workers, very often filling them in on their own, personally I think it is a travesty because, even if they

were not going to win in court, the opportunity to raise it in court has been denied them.

Chair: Okay, we understand that issue.

Q43 Jim McGovern: What was the justification for refusing these applications?

Dave Smith: Because the strict interpretation of the legislation—about which I knew nothing at the time, but in which I have now, unfortunately, become an expert—says that the three months starts from when the incident happened. If the incident you are complaining about is a time when you were dismissed because you were a trade union rep and that is recorded in your blacklist file, but the incident happened in the 1990s or in 2002, the three months starts from that point. The clock does not start three months from when you get your blacklist file; it starts 10 years ago. We are miles past it. In exceptional circumstances, they are allowed to grant you an extension of time.

Q44 Mr Reid: Did your lawyer persuade the tribunal that your circumstances were exceptional?

Dave Smith: I put on record that my lawyers, David Renton and Declan Owens, who are acting for me pro bono through the Free Representation Unit, managed to persuade the judge, and we were allowed to go to the full merits hearing.

Q45 Jim McGovern: Surely if you are taking a company to a tribunal on the basis of unfair dismissal, you have three months from the date of your dismissal—when your contract expired. You are saying that that was refused.

Dave Smith: Because all of the incidents happened back in the '90s. Some of them were unfair dismissal, some were failure to appoint, and some were detriment because of trade union activities. To be honest, until you got your blacklist file, you would never have known about them. It was only once you got the file sometimes that you knew the reason why you were dismissed or what the companies were doing to you. At the time, you would just have thought, "Oh, I have lost my job", and off you would have gone. Only 10 years later would you get your file, which gives the reason why you were sacked. Because they never thought that the documents would ever be seen, they were quite blatant about what they wrote about people in them.

Jim McGovern: Right, I see.

Q46 Mr Reid: Having overcome that hurdle, what happened after that?

Dave Smith: When we went to the full merits hearing, the claim that I put in was for detriment. I was claiming victimisation for trade union activities under the Employment Relations Act 1999—no, the Employment Relations Act deals with health and safety; it was under TULRCA, which is the Trade Union and Labour Relations (Consolidation) Act 1992. I cannot remember the section, but it deals with victimisation for trade union activities. We were arguing that merely putting information about me into my blacklist file, and the fact that this information was then shared among all of the biggest construction

12 June 2012 Dave Smith

companies in the country, was a detriment to me, and the only reason they had put the information into my blacklist file was because of my trade union activities. On the very first day that we went to court, Carillion handed in a document that it had prepared jointly with us in which it conceded that it had blacklisted me, that its managers had supplied the information to the blacklist file, and they had done so because of my trade union activities and because I had raised health and safety concerns. Its entire defence in the court, and the only thing that, effectively, the court ended up talking about, was that, because I was not employed directly by these companies—Schal International, Carillion JM and Carillion—but was employed via a subcontractor or via an employment agency, I was not protected by law. It had accepted that it had done all of the stuff against me and that it had been the company that had put the information on my file, but the entire issue of whether I won my case turned on the question of whether I was an employee of these companies. Under the legislation, you have to be an employee of the company. Because I worked for a subcontractor and for an employment agency, I lost the case.

Q47 Mr Reid: Could you have taken the employment agency to court?

Dave Smith: To be honest, I think that that misses the point. The employment agency that I was working for was a small agency. It consisted just of an engineer who put me through his books and whom I have never met. He was not the person who was blacklisting me. The people who were blacklisting me and putting the information into my file were multinational companies. It is not the people at the bottom end of the food chain, if you like, who are doing the blacklisting; it is those at the top end—the multinational companies—who are doing it. Basically, the individual employment agency was just doing as it was told. I would not have wanted to take it to court, because I do not think that it is the guilty party. The guilty party is big business—the major contractors, who have been the people driving this through.

Q48 Jim McGovern: Surely if the multinationals or big business managed to walk away from the tribunal saying, “Okay, we accept that we did that, that and that, but we are not to blame because we are not Mr Smith’s employer”, and you continued to seek some sort of redress or justice, you could have taken the agency to a tribunal and, possibly, won.

Dave Smith: Even then I am not convinced, because what we were arguing for was detriment. It was the placing of the information in my blacklist file that was causing me detriment. The people who put the information in my blacklist file were the multinational companies, not the agency. The agency has never even heard of the Consulting Association. Most of these small subcontractors have never heard of it. The people who were organising this blacklisting conspiracy were the big multinational companies, not the little outfits. If I am arguing that the information in my file is a detriment—

Q49 Jim McGovern: I realise that entirely, Dave, but were you left entirely without any sort of redress? Could you have said that you would take the wee small agency to court over this?

Dave Smith: For what we were doing there, even then, no.

Jim McGovern: No?

Dave Smith: No, because it was to do with detriment. My employment tribunal case is actually under appeal at the moment; we have gone to the Employment Appeal Tribunal, so we are appealing it. We are doing so primarily in order to—

Q50 Mr Reid: Was there any legal reason why you could not take the agency to court, or was it just that you felt that it was not to blame?

Dave Smith: I don’t think that it is to blame; that is the main issue.

Q51 Mr Reid: But they are the people who fired you.

Dave Smith: Even in my blacklist file, if you read about that particular case involving the agency, prior to dismissing me, the Consulting Association file has entries in it about the company—not the agency, but Schal International, which is part of Carillion—talking about how it is going to dismiss me and how it is going to get the agency to get rid of me.

Q52 Mr Reid: When the agency dismissed you, did it give you any reason?

Dave Smith: It was quite a big dispute at the time, in 1999. I had worked on that job for eight months. Then a young lad fell three floors from the scaffolding. The union full-time official came into the place and said, “Look, we need someone to be a safety rep, because there have been a number of health and safety issues here.” I volunteered to become the safety rep and was elected. Literally, within one or two days of that, my pay and hours were cut; a couple of days after that, I was dismissed.

Q53 Mr Reid: Did they give you a reason for dismissing you?

Dave Smith: Yes, they said that there was no work around.

Q54 Chair: Was that true?

Dave Smith: Of course not, because my blacklist file quite blatantly—

Q55 Chair: We want to be clear. Could they plausibly argue that the two things had happened at the same time?

Dave Smith: There was another 12 months’ work on that job. They brought in other people to do the work I was doing.

Chair: Fine.

Dave Smith: That happened time and time again, repeatedly. As soon as I became the safety rep or as soon as people found out who I was, I would be dismissed. That is not something that has happened only to me—it has happened to safety reps in the construction industry time and time again. We could bring in coach loads of trade union safety reps who would say, “I raised concerns about health and safety.

12 June 2012 Dave Smith

As soon as I did so, suddenly the company's attitude to me changed and I was dismissed."

Q56 Chair: If there are Scottish examples of that or examples involving Scots who were working on sites elsewhere, it might be helpful if you could provide those to us.

Dave Smith: There are definitely examples of Scottish companies—Balfour Beatty is a Scottish company—doing that. I have some information that I am going to refer to when we come to that stage.

Chair: Fine.

Q57 Jim McGovern: You may feel that you are being dismissed because of your health and safety or trade union duties, but the company may try to bury that among 20 redundancies on the Friday, of which you are one—or were you the only one?

Dave Smith: I was the only one.

Jim McGovern: Right.

Q58 Mr Reid: Do you know whether the information that was held by the Consulting Association was passed to the agency?

Dave Smith: Almost certainly not. It was all done very secretly. The information that has come out from various employment tribunals and witness statements from senior managers, and during cross-examination of some of the managers who were involved, is that it was all kept very secret. A small number of people at the company's head office would know about it. Only the most senior people in the HR department or directors of the organisation would know what this was all about. In my case, we had a manager from the site as a witness, who openly admitted that he had written the information in my file but said that he had not passed it to the Consulting Association. He had been asked to compile the information and had sent it up to the company's head office. He had never heard of the Consulting Association until it came out in the press. The people in the head office had passed on the information. Carillion named the individual who had passed on the information.

Q59 Mr Reid: When Carillion spoke to the agency before the agency dismissed you, do you know what Carillion told them?

Dave Smith: I can only surmise. *[Interruption.]*

Chair: No, we are just taking contributions from the witness, I am afraid. I have Pamela and then Iain.

Q60 Pamela Nash: Before we move too far from discussing your employment agency, you said that you did not think it was aware of the Consulting Association's services. How, then, was it getting access to your file or getting a code 99?

Dave Smith: Oh, the code 99 stuff. As I said, prior to about 1999, I could not get a job working directly for big companies. Although I applied—I applied lots of times—I just never ever got a job, even though there was a building boom going on. After about 1999, particularly after the dispute that I have mentioned, which related to a brand new building for British Telecom in Brentwood for which I was the engineer—it was quite a large dispute that made a bit of press at

the time—there is information in my blacklist file that says, "We have to check Dave Smith coming on to"—

Q61 Pamela Nash: But how did employment agencies check?

Dave Smith: I imagine that at that point the big companies were ringing up, because I had never heard of this code 99.

Q62 Pamela Nash: I suppose I was just a bit surprised when you said that you did not think that they were culprits at all. Obviously, you are not saying that they are the main culprits. I am trying to find where their role is in this.

Dave Smith: Clearly, some of the bigger employment agencies rely on the big contractors for all of their work. That is where they get their work, so keeping the big contractors sweet is the future for them. There is a list of the companies that subscribe to the Consulting Association. The Information Commissioner's Office has published that list and we have the invoices for those companies. I think that is already in your bundle; you have seen the list of companies, which include some Scottish companies. None of them are employment agencies; they are all major contractors.

Q63 Pamela Nash: Thinking about the flow of information the other way round, in your tribunal, or in other tribunals that you are aware of, was there any evidence that smaller employment agencies were passing on information to the Consulting Association?

Dave Smith: No, not that I have seen.

Q64 Iain McKenzie: Was it always the case that you were the one who was dismissed, or were there ever incidents where someone would raise a health and safety issue with yourself or with the company and be dismissed along with you?

Dave Smith: The case where I was quite obviously dismissed and that is reported in my blacklist file was a job for Costain in a Tesco's, where the demolition people found some asbestos or what they thought was asbestos. I was the union safety rep and raised the issue with Costain. I said that we thought that this was asbestos and that we should slow down the job, or at least get someone to come in to inspect it, and stop working until we had found out what it was. I gave in a written safety report. I was actually walking around the job on a Friday afternoon with the foreman, who was telling me what I was going to do on Monday morning, because it was the beginning of the job—there was another 18 months on it. When we went back into the site hut, the site manager told me that I was dismissed and I had to ring the agency. It was obvious.

Q65 Iain McKenzie: But was there ever an instance where you were not the only one dismissed from a site on health and safety grounds?

Dave Smith: For me, it always tended to be because I was the individual who raised the concerns about health and safety. I think that, once you raised concerns, they checked to see whether your name was on the file. If it was, they would add some more

12 June 2012 Dave Smith

information. There are some jobs in my blacklist file that I had forgotten about, because I was there for such a short period of time. It actually says in my file, "Raised health and safety concerns on this day. Dismissed the next day."

Q66 Iain McKenzie: Health and safety concerns were always raised through you to management.

Dave Smith: Because I was the union health and safety rep.

Q67 Iain McKenzie: There was never an alternative route for an individual employee to take it to their foreman and so on.

Dave Smith: If you want the truth, one of the consequences of the blacklist and by quite overtly being able to dismiss union health and safety reps in the industry is that people become scared. You wouldn't think that of the grown men who work in the construction industry, but they become quite fearful. Although companies say, "You can raise concerns and if there is a health and safety issue bring it to us", people don't, because they are concerned that, if even a union health and safety rep who raises concerns gets dismissed, it may also affect their job prospects if they start raising concerns about the toilets, the scaffolding or whatever. It is very well documented. It is always being reported in the construction press that this kind of thing happens time and time again. That has an impact on the other workers on the site, who keep their heads down and say nothing, and end up working with asbestos and in places where they should not be. That is one of the reasons why the construction industry has such a terrible fatality record. People are not prepared to raise issues; if you do, you end up getting blacklisted and dismissed. To be honest, I was a trade union activist, so I made a point of being prepared to say it.

Q68 Pamela Nash: Do you think it is as bad today as it was 10 or 15 years ago?

Dave Smith: When I was first involved in this, 150 building workers a year were being killed on construction sites, which is three building workers a week. That is why the Construction Safety Campaign was such a big issue, why all of the construction unions have health and safety as a major issue and why more of us get elected as health and safety reps than as shop stewards. The fatalities are not as bad as they were 15 years ago, but the graph is going up again, if you look at the trend. I think that has more to do with the light touch of the Health and Safety Executive, which allows big companies to do their own inspections, but that is a separate issue. However, I still think the blacklisting is going on today.

Chair: Let us come back, if we can, to Alan's points.

Q69 Mr Reid: Do you have any suggestions as to how the system of seeking redress through employment tribunals could be improved?

Dave Smith: First, I think the issue of blacklisting should not be taken 100% through the employment tribunals; I think it is a breach of our human rights. Every individual has the right to be a member of a trade union. Article 11 of the European convention on

human rights gives everyone the right to association, including the right to join a trade union. I think that what these companies have been doing is a breach of our human rights. It has deliberately been done in secret—covertly—because they know that it is a breach. The problem with going down the employment tribunal route is that we will always have to get over the hurdle of, "Have I got an employment relationship with the people who are actually doing the blacklisting?" Even the new blacklisting regs that were introduced in 2010 fall a long way short, because they still talk about either being blacklisted by your employer or not being taken on for a job through an employment agency. You still have to demonstrate some kind of employment relationship, but very often in the construction industry people work via a number of subcontractors.

I don't think that the construction industry is the only place where this is happening. Casualisation in the work force, with casual workers, part-time work and short-term contracts, is taking place across lots of industries. I think that it misses the point; blacklisting should be a criminal offence. If it were, the individuals doing it would potentially face jail sentences. Recently, the Select Committee that Alan Beith chairs suggested that major breaches of the Data Protection Act 1998 involving abuse of individuals' personal data should end up with prison sentences. I can't think of a situation where there has been a more organised, systematic abuse of data protection than this. In his report "Ruined Lives: Blacklisting in the Construction Industry", Professor Keith Ewing of King's College London, who is the leading academic on this subject, called for it to be a criminal offence.

Q70 Mr Reid: Is the Data Protection Act itself adequate, other than that you feel the penalties are not severe enough?

Dave Smith: One of the other reasons that I think the legislation is insufficient is that some of this stuff is not retrospective. There are 3,200 workers on this blacklist. Blacklists are done in secret; we never get evidence, so they have to be found by some fluke. Very often you find them many years after what has gone on. Therefore, as well as blacklisting being criminal, so that companies can be fined and people can be jailed, the existing blacklisting regulations should be retrospective.

Q71 Chair: Can I bring you back to the specific point that Alan raised, which is whether or not the fines and system through the Information Commissioner are sufficient?

Dave Smith: In the only case on this issue that has been brought through the Information Commissioner's Office, under the Data Protection Act, the Office took a case to court against Ian Kerr, who was the chief executive of the Consulting Association. The fine that Ian Kerr got for misuse as a data controller was £5,000.

Q72 Mr Reid: Do you feel that, other than the penalties, which you do not think are severe enough, the Data Protection Act is sufficient? That is the point that I am trying to get at.

12 June 2012 Dave Smith

Dave Smith: I think that the Data Protection Act should include more investigatory powers for the Information Commissioner's Office, because these blacklists are done in secret. Someone like me, or any of the other people who are on the blacklist, would have no earthly chance of ever discovering this thing. The only way it will ever be discovered is if someone with investigatory powers goes in and finds it when they have got some suggestions. They have very limited investigatory powers to go and do any investigations.

Q73 Mr Reid: So what do you feel is wrong? Can you tell us what investigatory powers they have and where you feel they need to be strengthened?

Dave Smith: To be honest, I am not an expert on that, and I won't try to claim to be. There are people I can suggest the Committee talks to.

Q74 Chair: It may be helpful if you let us know whom we ought to speak to in order to clarify that further. Can I seek a bit of clarification on another point? I was under the impression that the Information Commissioner had powers over information held electronically and that, if things were on, say, cardboard cards, his or her remit would not cover those. Is that correct?

Dave Smith: I think that was changed.

Q75 Chair: So the Information Commissioner would be able to access the information held in any manner whatsoever.

Dave Smith: But they would have to go and get a court order to allow them to do it, with the evidence beforehand. I am suggesting that someone like the Health and Safety Executive has investigatory powers to go and investigate breaches of health and safety. There is no equivalent for the Information Commissioner's Office when it thinks that this thing is going on.

Q76 Mr Reid: Do you have any evidence that these blacklists are still in existence following the passage of the 2010 regulations that you referred to earlier?

Dave Smith: As I understand it, the Employment Relations Act 1999 is an enabling Act that allows regulations to be published from it. The consultation on the blacklisting regulations first went out in 2003. The regulations were produced, were ready to be published but were not published, primarily because of lobbying from the business community and the trade associations. They said, "These blacklists don't exist. It is a complete myth and paranoia by the trade unions." Therefore, the regulations were not introduced. In 2009, suddenly the blacklist was exposed and we found that the very people who were lobbying Government saying that blacklists did not exist were the people who were doing the blacklisting. Do I think that blacklisting still goes on? Yes, I do—absolutely I think it still goes on. Have I got absolute proof of it? No, I have not, because that is very difficult and it is all done in secret.

Q77 Mr Reid: But there were obviously people like you who were being dismissed for no apparent reason.

We have subsequently discovered that that was because of the blacklist. Do you have any evidence of people still being dismissed for no apparent reason in similar circumstances?

Dave Smith: Yes, lots. If you get in the trade unions—Unite, UCATT, the RMT, the Offshore Industry Liaison Committee—they will be able to bring you real examples that are going on now. On the Olympics site, there was a dispute about two workers who were dismissed because of blacklisting. There were demonstrations at the site, and cases were taken to employment tribunals.

Q78 Mr Reid: But, under the Data Protection Act, people can put in requests to companies for all the data that they hold about them. Do you know whether people who were dismissed in these circumstances made such a request to the company?

Dave Smith: Once again, this is the point of this. Because the big businesses know that what they are doing is wrong, they have set up an arm's length organisation called the Consulting Association so that, even if I did ask Carillion or one of the other major companies that dismissed me or were behind dismissing and blacklisting me whether they hold any information on me, they could quite easily say, "No, we don't," in exactly the same way that Rupert Murdoch can say, "Oh no, no one in News International was phone hacking," because they gave it to a private investigator to do on their behalf.

Q79 Mr Reid: Do you have any evidence that an organisation similar to the Consulting Association still exists and is holding a blacklist?

Dave Smith: Have I got absolute evidence of it? No.

Q80 Mr Reid: Have you got circumstantial evidence of it?

Dave Smith: Have I got anecdotal evidence that safety reps and trade union activists continue to be dismissed and cannot find jobs? Yes, absolutely.

Q81 Mr Reid: Do you think that the 2010 regulations are inadequate?

Dave Smith: Yes.

Q82 Mr Reid: How would you like to see them strengthened?

Dave Smith: As I said, I would like them to make blacklisting a criminal offence. Even in the regulations, it should be an absolute right not to be blacklisted. Forget applying for a job and not getting one. My name may be on a blacklist that is being shared among big multinational companies to stop me getting work. If we ever discover it, the mere fact that my name is on that list should be enough.

Q83 Mr Reid: Under the 2010 regulations, would it be illegal to hold your name on a blacklist?

Dave Smith: Yes. However, because the claim has to go through the employment tribunals, it has to be all about the fact that I applied for a job and never got one, and whether the people who did it were my employer. It has to go through the whole employment

12 June 2012 Dave Smith

tribunal/worker, employee/employer argument, which very expensive lawyers are very good at exploiting.

Q84 Chair: Alan has raised a very important issue, which is how you would wish to see the system improved. Rather than our just having a dialogue about it, it would be helpful if you could take time to consider it and write to us so that we have a systematic set of proposals about how to deal with it. That is possibly the best way forward on that.

Dave Smith: Sure.

Chair: Are you happy with that, Alan?

Mr Reid: I am.

Q85 Jim McGovern: Thanks very much for coming along; you are very welcome. Earlier you mentioned that the Blacklist Support Group was formed following a meeting that was hosted by John McDonnell. Can you pad that out a wee bit and say who else was there and what the group's remit is? How does it help people who feel that they are being hard done by because of the blacklist?

Dave Smith: When the Consulting Association was first uncovered, there was a little bit in the press. Do you want me to talk about the group or how the Consulting Association works?

Q86 Chair: We will talk about the Consulting Association afterwards. We want to talk about your group first.

Dave Smith: Okay. You can apply to get a copy of your own file. The Information Commissioner's Office holds these 3,200 files, but, because it is a Government Department, you can apply to get a copy of your own file. The thing is that you have to think that you are on the blacklist to start with. Even though it has the 3,200 names, with the people's addresses and national insurance numbers, it does not contact you; you have to think that you have a file and contact the Information Commissioner's Office. Within a few months of the blacklist being exposed, some of the more leading people who had clearly suffered from blacklisting for a long time realised that they were on it, so you applied for your file and got copies of it. Basically, we were meeting each other. I think that another dispute was taking place in the industry at the time, and lots of us turned up—it might even have been in this room—to a meeting that took place during the daytime. Mick Clapham MP chaired one of the meetings, and there were a lot of us in the room. Between us, we did a bit of informal networking and said that we needed to meet and have a discussion about this. John McDonnell, who was one of the MPs there, said that he would book a room in the House of Commons if we got people along. I think we had 40 people turn up to the first meeting.

Basically, we agreed that we should set up a support group. It is mainly an information-sharing service so that we share what is going on among ourselves. In addition, as we have grown, we have got more and more people involved, as more and more files have come on board. We have held a couple of fairly well-attended AGMs. Our last AGM was in September; we had about 80 or 90 people at that. Because of the nature of what we are, we are getting lots of assistance

from academics, lawyers, QCs, investigative journalists and the trade unions, such as Unite, UCATT and the RMT. The GMB has come down to give us assistance. As I said, the support group has organised meetings with European Commissioners. We have fringe meetings; in fact, I am speaking on the group's behalf at a fringe meeting at the GMB conference tomorrow lunchtime.

In lots of the tribunal cases, like mine, the idea is to feed the information out to journalists, once we have got it, because we think that this will be changed only if the multinational companies who have been doing it in secret get exposed for what they have been up to. That is what we are trying to do. We try to work hand in hand with the trade unions. We are not opposed to what they are doing—we see ourselves as part of the same campaign—but lots of the individual workers are not in the particular construction unions any more and have moved out; some of them are just not in the industry any more. It is a way of bringing people together. Our mailing list is well over 1,000. As I said, we get lots of very good support from people like *Hazards* magazine, which is a well-respected health and safety body. Is that enough?

Q87 Jim McGovern: Yes, but is the Blacklist Support Group a sort of mutual support group to challenge the concept of blacklisting or do you actually support people who have been victimised by it?

Dave Smith: No. Primarily, we are a support group for the people who have been caught up in the Consulting Association scandal. Most of the people who make any decisions in the group are blacklisted workers, with their actual Consulting Association files. Some of them are in the public gallery today. We are there to make sure that our voice is heard and to try to keep pushing it so that this story does not just vanish. Thank you very much, the Scottish Affairs Select Committee, for doing this, because it has taken three years for us to get to this point.

Q88 Jim McGovern: So it is to highlight the plight of people who have been victimised rather than to provide active support for those victims.

Dave Smith: A bit of both, really. In addition, a High Court claim is being prepared, to which virtually all of the people involved in the support group are signed up. It is not physically at the High Court yet, but it is being prepared at the moment.

Q89 Jim McGovern: Earlier you said that, because you are no longer employed in the construction industry, you are no longer a member of UCATT. Are you still a member of a trade union?

Dave Smith: Yes. I am a member of UCU—the University and College Union.

Q90 Jim McGovern: Thanks; that was just for my curiosity. Do you have any idea how widespread the practice of blacklisting might be in Scotland? Obviously, this is the Scottish Affairs Select Committee and we have to retain some sort of Scottish link, whether it is to Scottish employers or to Scottish

12 June 2012 Dave Smith

employees who have been suffering because of blacklisting.

Dave Smith: I have quite a lot of information that has come out that relates specifically to Scotland. I can go through that, if you want me to.

Q91 Chair: We have to be somewhere by 9 o'clock tonight. We do not want to go through everything verbatim, but you could give us a review and make the information available to us so that we can look at it ourselves later.

Dave Smith: Sure. Do you want to ask me about any particular companies?

Q92 Chair: No; just give us an overview of your work in Scotland so that we will know what to dig into.

Dave Smith: When the Information Commissioner's Office published its first press release, it issued the names of all the companies that were subscribers to the Consulting Association. A number of those are Scottish companies. Balfour Beatty and McAlpine are the most obviously Scottish companies. In addition, most of the other companies, because they are such huge companies—they are not small firms—will inevitably have major projects and be the main contractors on major, significant publicly funded projects up in Scotland. I have a compromise agreement. There are only certain things I can say about Balfour Beatty, but I can talk about the general stuff that is in the public domain.

Q93 Chair: That's it. We have a sheet here about sub justice things, and every now and again the Clerk looks at it as if to remind me that it is there. He will tell me to interrupt you if he thinks you have gone too far.

Dave Smith: The Information Commissioner's Office issued enforcement notices against a number of companies. The organisation against which most enforcement notices were taken was Balfour Beatty; six enforcement notices were taken against it, including Balfour Beatty Scottish and Balfour Kilpatrick, whose head offices are based in Glasgow. In addition, because of the court order that allowed me to see all of the unredacted files—I have seen the blacklist files for many workers, completely unredacted—and because of my role as a secretary, people have shown me their files, and I know that there are many files relating to Balfour Beatty victimising and blacklisting people because they raised health and safety concerns. A safety rep named Jim Lafferty who worked for Balfour Kilpatrick at the Royal Opera House in Covent Garden—unfortunately, he is not with us any more, but he was a Unite health and safety rep on that job—was victimised and blacklisted because of the health and safety issues that he raised there. A number of electricians—Steve Acheson, Tony Jones, Graham Bowker and Colin Trousdale—have taken cases against Balfour Kilpatrick, which is now called Balfour Beatty Engineering Services. All of those were for raising health and safety issues with the company.

In addition, one of the documents that were issued to me from the Information Commissioner's Office

under the court order for disclosure was the sales book. Effectively, I was sent their invoices, showing who had been invoiced for attending certain meetings. The document consists of page after page of invoices that were sent to these big companies.

Q94 Chair: Does it specify the addresses to which the invoices were sent?

Dave Smith: Sometimes it does. I also have some invoices with the actual names of the individual managers involved. There were meetings that were held in Scotland from 1996; I have them through to about 2006. We have the dates of the meetings and can tell how many of these managers attended them. In some cases, 11 senior managers attended Consulting Association meetings.

Q95 Chair: Does it give the names of the senior managers? Is it almost like a minute, where you have the companies represented, the named individuals who are there, and the date, time and place?

Dave Smith: The sales book does not do that, but some of the individual invoices that have been sent do. Some of the tribunal witness statements that have been taken also name individual managers. For example, the director of human resources for Balfour Beatty Engineering Services is Mr Gerry Harvey. He is a blacklister who attended Consulting Association meetings. In the tribunal case of *Tattersfield v. Balfour Beatty*—I have the document here and will give it to Members—he turned up at the hearing and admitted in open court, and it is in the written judgment, that he was the person who attended Consulting Association meetings on behalf of Balfour Beatty Engineering Services, whose head office is based in Glasgow.

Q96 Chair: Do you have attendance lists for the meetings that took place in Scotland?

Dave Smith: My court order only allowed me certain information. Because my tribunal case was against Carillion and against Carillion JM, which is John Mowlem, all of the information in the sales book that was issued to me under the court order relates only to those companies. Although I have the whole thing, they have blanked out the other company names. Clearly, if the Select Committee went to the Information Commissioner's Office and asked for the full information about the Scottish meetings, I am sure that it would provide you with a list of all of the big companies.

Chair: I am sure Eliot will be able to arrange all that. Good man, Eliot.

Dave Smith: In addition, a senior HR manager called Elaine Gallagher, who works for Balfour Beatty Engineering Services, accepted in the same tribunal case that she was the main contact between Balfour Beatty Engineering Services and the Consulting Association.

Q97 Chair: Can I be clear? All of this information is publicly, legitimately available.

Dave Smith: Yes.

Q98 Chair: You can make it available to us, and we are free to put it on the Committee's website.

12 June 2012 Dave Smith

Dave Smith: Yes. That is pretty much it for Balfour Beatty; no, sorry, there is one more thing. In one sales book issue—even if I can't find it, I know what it says—specifically written in there it talks about people being invoiced for offshore stuff. Balfour Kilpatrick is specifically mentioned as being invoiced by the Consulting Association for some work that it was doing offshore for it.

Q99 Chair: Can I clarify if you are able to specify—or we can identify from these documents—whether the firms were involved in undertaking blacklisting on people working on public contracts in Scotland, or can you not make that jump from the information that you have?

Dave Smith: You can tell from individual blacklist files which job people were blacklisted from. Some of those are publicly funded projects.

Q100 Chair: But you will not have or be able to make available to us the individual files. Is that correct?

Dave Smith: I have some individual files that were disclosed to me under a court order and were presented in my particular tribunal, which have some information about Scottish firms written in them. That is out in the public domain now, so I am not doing anything wrong. I have 400 pages of information, but there are 3,200 individuals on the blacklist, and some of the files are up to 49 pages long. So there is much more in there.

Q101 Chair: I understand that. Let me be clear, though. Will it be known by anybody that we can ask how many people have asked for their files, and the names of those people? Will we then be able to access those files to clarify whether any of them have been dismissed, as a result of the operation of a blacklist, from public sector contracts in Scotland that have been run by, say, the Scottish Executive or the Scottish Government?

Dave Smith: I think that information would be available, if not from the individuals who have got their files, then, clearly, once again the Information Commissioner's Office has that information. As I said, my court order allowed me to go through—

Q102 Chair: As I understand it, part of the information that you have, you have got physically, as bits of paper. Some of it you have in your head, because you remembered seeing other things that you went through. First, referring to the things that you have got physically, I want to be clear about whether there are health board contracts, local authority contracts or Scottish Government contracts from which people have been dismissed in Scotland using the blacklist.

Dave Smith: I have already sent to the clerks 200 pages of unredacted files. Some of that information relates to Scottish workers and some relates to Scottish projects. I would be lying if I said that I had gone through and checked whether those are publicly funded.

Chair: I am sure that the staff will be working on that tonight and will have an answer for us by the morning.

Jim McGovern: Overnight.

Q103 Chair: Absolutely. I have no doubts about that, so committed are they. The other thing is the stuff that you are holding in your head.

Dave Smith: I have some more publicly available stuff.

Q104 Chair: I am just coming back to the stuff in your head that we can ask the Information Commissioner for. Is there information that you have seen but do not physically have that would help us with the issues that I have just raised?

Dave Smith: With those issues or with general issues?

Q105 Chair: Particularly with the issues of Scottish workers or firms in Scotland undertaking public sector contracts utilising the blacklist to sack them.

Dave Smith: Absolutely, yes.

Q106 Chair: Fine. It is particularly helpful to us to be able to demonstrate that these are issues of significance in Scotland, not just to the Committee but to health boards, local authorities and the Scottish Government. We will want to pick up some of these issues with them.

Dave Smith: It is very obvious that Carillion, which is primarily a construction firm, has now ventured into PFI projects in the national health service. One of the reasons that the GMB is involved is that it is in dispute with Carillion at the moment in a hospital in Swindon. Once again, I absolutely have the evidence that managers for Carillion are involved. In 2008, a manager for Carillion called John Edwards was invoiced for attending a meeting of the Consulting Association. Liz Keates, who is the head of human resources for Carillion Health, is the woman who is doing the stuff in the national health service at the moment; I am absolutely certain that Carillion will have national health service projects in Scotland as well as in the rest of Britain. She was identified in my employment tribunal case as LK, one of the managers who had supplied information to the blacklist from Carillion. During my tribunal case, Carillion also supplied another couple of names for managers. I don't know whether they still work for the company because Carillion offered them up, which gives me the impression that they probably don't. John Ball, who used to be the head of human resources for Carillion, was identified by Carillion as being the main contact between Carillion and the Consulting Association. An individual called Alf Lucas was the contact between John Mowlem, which is now Carillion JM, and the Consulting Association. There are a number of people, especially as Carillion is going into the health service. We have the names of the managers and the documents that back it up.

Q107 Jim McGovern: In what group is Carillion?

Dave Smith: Carillion used to be part of Tarmac.

Q108 Jim McGovern: Briggs Tarmac.

Dave Smith: Yes. Tarmac demerged; the Tarmac name is now used for all the Tarmac stuff that has more to

12 June 2012 Dave Smith

do with mining and aggregate extraction, whereas the construction part of it took on the name Carillion.

Q109 Jim McGovern: Is that Nynas as well? I think that in Scotland Briggs has become Nynas.

Dave Smith: No, it is pretty much Carillion. It is very big in PFI and in the national health service. It has taken over lots of hospitals.

Q110 Jim McGovern: Chair, with your permission, that leads me on to the next question. When you were here previously, I think that I mentioned to you that, when I was an apprentice—a glazier—in the construction industry, we worked on a big site in Perth. I am from Dundee, but this site in Perth was a McAlpine site, and McAlpine had said that it would never allow anyone from Dundee on to its sites. We had to go to that site each day and pretend that we were from Edinburgh.

Chair: To be fair, you have met people from Dundee—they are awful.

Jim McGovern: However, ultimately, regardless of whether it was originally Carillion, Tarmac or Briggs, do you think there is a major problem with companies who are involved in blacklisting suddenly changing their names overnight, being resurrected on the Monday with a different name and feeling that that excludes them from any legal pursuit?

Dave Smith: I think that is exactly one of the things that is going on. One of the other difficulties in the employment tribunal cases is identifying the actual company. We know who did it, as we have the invoices and information about which companies were doing it, but because the companies change names so often and demerge—very often you have a parent company with up to 20 or 30 wholly owned subsidiaries—it is almost like playing chase the lady, especially as the blacklisting is outsourced, effectively, to a third party to make it look as if the individual companies were not involved. The name changes are something that has definitely come up. Some of the companies have tried to excuse their involvement in blacklisting by saying that it was so long ago that they did not realise that it was happening. Carillion has tried to use that excuse, but, as I said, we have invoices from literally a couple of months before the Consulting Association was closed down. Clearly, Carillion was still doing it, even though it tried to present it as something that happened years ago. Some of the other companies—Nuttalls, for example—have claimed that the blacklisting was being done by companies that they took over and they did not realise that it was going on, but, if you are paying £28,000 a year and your senior managers from the HR department and directors are attending meetings, you would think someone would know about it.

Q111 Jim McGovern: I have one further question, if it is okay. Earlier you mentioned the News International carry-on. It seems to me that, because there is a police investigation, the police are gradually getting round the people who have allegedly had their phones or computers hacked and informing them that they have been subjected to this. Is it not possible for

your group to pursue some sort of legal case, so that the police are obliged to inform people who have been subject to a blacklist that they have been on one?

Dave Smith: One of the things about the Leveson inquiry is the fact that there was some kind of police collusion between some of the press and the police, which is why it has come to that. The head of investigations for the Information Commissioner's Office, whose name is David Clancy, is himself an ex-police officer of many years' standing. During my employment tribunal case, he made a statement under oath that some of the information in the some of the blacklist files could have been supplied only by either the police or the security services. That is why both Michael Meacher and John McDonnell have asked questions about a potential public inquiry to look into potential police collusion on the blacklist.

The direction in which we have been pointed by a response from Theresa May is that we should raise the issue with the Independent Police Complaints Commission. As a group, we are doing that with some of the files. As I said, most of the information in the files has clearly been supplied by a manager on a building site, who has sent the information up to the head office. The head office people, who actually know about the Consulting Association, have forwarded it on. Some of the information could not under any circumstances have come from a manager on a building site; it is just impossible. Some of it is very specific police records, in detail. Some of them actually relate to Scottish workers.

Q112 Chair: It would be helpful if you could draw to our attention anything in the bundle of paperwork that, in your view, has come from either police services or the security services and relates to workers living in Scotland, Scottish companies or Scottish workers who are working elsewhere in the UK. We will have a look at that and consider which appropriate agency in Scotland to approach.

Dave Smith: Sure, okay. Some of it is individual police records. On the other hand, I have here the file of one gentleman named Dan Gilman, who has already given me permission to mention it. He is a teacher now. He was never a construction worker and has a blacklist file on him because he attended an anti-racism demonstration in London on a Sunday afternoon. There is information about him and three other people who are also construction workers on the blacklist, not because they were arrested—they were not—but because they were spoken to by a police officer for being there. That information was never in the press. No manager on a building site would ever know this. These four individuals have never worked together, but they all attended an anti-racism demonstration in London on a Sunday afternoon. How has that ended up on a blacklist file about construction workers if it has not come from some source?

Q113 Chair: Earlier I asked you specifically whether matters of your political opinions were in your files. I think that you confirmed that they were. Presumably, the reason for the entry for these individuals related to their political activities rather than anything on a building site.

12 June 2012 Dave Smith

Dave Smith: Yes. All of the information that we have got from the Consulting Association so far and all of the information that has come out in witness statements indicates very much that information was fed up from managers on building sites to the Consulting Association and put on. The question is how a manager of a building site would know that four separate individuals who had never worked together were on this demonstration. Where would that information come from?

Q114 Chair: Okay, I understand that, but let us come back to you and your membership of or involvement in Militant. Presumably, nobody on a building site would have had that information either.

Dave Smith: No—well, to be honest, people within the union might have known it.

Q115 Chair: The point that I am making, in a sense, is that, if this sort of information went into your file about you, it is quite likely that the same sort of information about other people would get into their files, probably by the same route.

Dave Smith: Yes.

Chair: Jim, are you finished with that?

Dave Smith: Can I continue? The reason we think that the stuff about the anti-racism demonstration comes specifically from the police is that, a couple of years ago, *The Observer* did an exposé about undercover police officers who were sent into environmental campaigns and anti-racism campaigns, basically to spy on these people and pass on information. The timings and the anti-racism group involved tie in exactly with the undercover police officer who is now on record in *The Observer* and *The Guardian*. It just looks like the information from there has ended up on this private blacklist.

Q116 Chair: It would be helpful if, again, you could draw to the attention of either the staff or our specialist adviser any connection with Scots.¹

Dave Smith: Some of them are Scottish workers.

Q117 Chair: It would be particularly helpful to have that drawn to our attention. As I said before, we cannot cover the whole country. I turn now to the question of the Consulting Association, which has been mentioned on a number of occasions. We have already had as a witness Maria Fyfe, who outlined the issues that she had in relation to the Economic League. It would be helpful if you could outline to us what the Consulting Association is, how it works, what happened to it and whether it is still active—those sorts of issues. We will follow that up with questions.

Dave Smith: I listened to Maria's evidence; it was a pleasure to meet her afterwards. The Economic League was closed down in the early 1990s because it was exposed by undercover journalists from "World in Action". Maria Fyfe then did some work on it in the Houses of Parliament. Within the Economic League there was a particular section called the services group, which was made up exclusively of construction companies. The construction companies

within the Economic League paid additional subscriptions and annual fees to them in order to employ additional people to spy on what was going on in the construction industry.

The person who was the head of the services group when the Economic League closed down was an individual called Ian Kerr. When the Economic League closed down, Ian Kerr became the chief executive of the Consulting Association within a short period of time. The Consulting Association was really in existence only from the mid to early '90s, but some of the blacklist files go back much longer than that. In fact, I spoke outside to one of the gentlemen sitting in the room—his name is Mick Abbott—and he showed me a copy of his file, which goes back to 1964 and has the letter K on the top of it. In a number of tribunals, David Clancy has said that, basically, those old files are just the Economic League files. The same individual who was running the blacklist for the Economic League set up the Consulting Association with the same documents.

When Ian Kerr was taken to court, in his court case he said that he did not go to the companies and suggest that he set it up but that the big companies came to him and suggested that he set up the organisation. One of the documents that were disclosed in my court case is the constitution of the Consulting Association, which had chairmen, vice-chairmen, a chief executive and an elected finance committee. If you go through it—it is three pages long—it makes very clear that representation at the Consulting Association's meetings needs to take place at director level. It would not be some small, fly-by-night builder somewhere. This organisation was set up by multinational companies, at director level, even with a written constitution, to carry on the work that the services group was doing but within the construction industry.

Q118 Chair: Let us be clear, though. The constitution does not give the names of the officers.

Dave Smith: No.

Q119 Chair: That is unfortunate.

Dave Smith: Yes, very. When you look at the list of companies that were in the services group within the Economic League and the companies that are the subscribers to the Consulting Association, you see that they are virtually the same people, with the occasional different name here and there but virtually the same organisation. Effectively, they are just carrying on with the same process as in the Economic League, but under a new, separate guise.

The companies paid an annual subscription fee to be members of the Consulting Association. When you look at the sales book, it is clear that the subscription fees have gone up over the years. When the Consulting Association was disbanded in 2009, the annual subscription was £3,000. In addition to information going up from the companies to the Consulting Association from building sites, whenever workers like me or some of the individuals sitting in the room applied for a job, the HR department would ring up the Consulting Association, with a list of names to check whether they were on the blacklist.

¹ Ev

12 June 2012 Dave Smith

Sometimes they would do it over the phone, so there was no paper trail, but sometimes they would use faxes; we actually have copies of the faxes that they sent. If the response from the Consulting Association was, “Yes, this person is on the blacklist”, you never got the job. It is written down in a number of people’s files that phone checks were done and the person never got the job.

There was a price for each time that a company checked a name. In 2009, it was £2.20 every time they checked a name. The invoices that were discovered when they raided the Consulting Association said that, at £2.20 a name check, Skanska’s invoice for that year was £28,000. Sir Robert McAlpine, a Scottish company, was second highest on the list. I think that its invoice was about £28,000 as well—certainly in that area. So, £28,000 at £2.20 a time gives you an indication of—

Q120 Chair: Do you have only the aggregate figures? You do not have lists of the people for whom the checks were made for the £28,000.

Dave Smith: For some of them, we do. For some of them, we still have the actual faxes that were sent through saying, “Please check these names.” In people’s individual blacklist files, sometimes it says, “I applied for this job building the Scottish Parliament”—as you said—“but was name checked and refused work because of it.” Sometimes it is very specific; sometimes it is a bit looser. When you see the sales book, the only thing for which they appear to be invoiced is for attending the Consulting Association’s meetings, for doing name checks or, occasionally, for videos. It looks clear that sometimes individual workers were videoed and the videos were sent up. I remember that I was videoed on a picket line once, by one of the managers who attended my employment tribunal.

Q121 Chair: What was the point of videoing?

Dave Smith: I have no idea, but the information is clearly in the sales book. It gives the charge for supplying the video and tells you which companies they supplied the video to.

Q122 Chair: You have made a number of assertions about how the Consulting Association worked. Do I take it that all of those can be substantiated from the paperwork that you have?

Dave Smith: There is nothing that I have talked about that is not in the public domain, that we do not have documentation for, or that has not already been very widely publicised and not disputed when people have come to tribunals. That is the reason why I deliberately brought all this paperwork with me.

Q123 Chair: Can I be clear that, while you may have evidence for some bits of some things, as it were—you have mentioned a number of Scottish firms and Scottish workers—not all of the firms from Scotland will have all of the material that you indicated. For example, they will not all have copies of faxes, records of having been at meetings or entries in the cashbook. Is that correct? You have enough from different firms to be able to piece together the whole

thing, but it will be a bit like a jigsaw, with certain bits left out.

Dave Smith: It certainly is at the moment. Once again, the people who have the information are clearly the Information Commissioner’s Office.

Q124 Chair: Can I be clear? The Information Commissioner’s Office seized a section of the files. Has it retained them or given them back?

Dave Smith: It has retained the originals. I believe that it has actually given the copies back to the Consulting Association because, although it has seized them, under its powers it has no right to hold them. The originals are still in the Information Commissioner’s Office up in Manchester, along with invoices, the sales book, the constitution and other things like that.

Q125 Chair: We can clarify that with the Information Commissioner. Can I again clarify something? Earlier I thought—maybe I misunderstood—that the information that has been seized by the Information Commissioner related to your case and construction. It was not everything, was it? I have the impression that they went in with a warrant, or whatever the equivalent legal document is, that enabled them to seize some things, but they were not able to seize everything, and you were able to see only what they had seized. Almost by definition, you were not able to see things that they had not seized.

Dave Smith: It is even more limited than that. The Blacklist Support Group held a meeting in Parliament, which was open to lots of people, at the end of 2009, I believe. David Clancy, the head of investigations—the man who actually did the raid, got the warrant and seized the documents—was one of the speakers there and explained how it all happened. He said they had a warrant to gain specific stuff to do with the construction industry and, because they are the Information Commissioner’s Office, to do with documents that related to individuals. He has been quite open about the fact that, when they got there, there were other documents there that they did not seize because they did not have a warrant for it. When you read people’s blacklist files, sometimes on the file it says, “Refer to another file.” It says, “Refer to the Construction Safety Campaign file,” “Refer to the UCATT file,” “Refer to the RMT file,” “Refer to the Offshore Industry Liaison Committee file”, or “Refer to the London Joint Sites Committee file.” Quite clearly, there were separate files on those particular organisations that, personally, I have not seen. I think that the warrant that the Information Commissioner’s Office had when it went in meant that it did not actually seize them. It may have; it may just not have shown me, because my court order would not allow me to see those things.

Q126 Chair: So there are different categories of things. We will ask the staff to clarify right away with the Information Commissioner what they have. Your understanding is that all of that has been retained by them.

Dave Smith: If they seized it, they have still got it. I believe that David Clancy said that, when they went

12 June 2012 Dave Smith

in, there were some documents that they did not seize because they did not have—

Q127 Chair: Everything they seized, they have still got.

Dave Smith: Yes.

Q128 Chair: We are not clear, are we, about where the rest of the stuff that they did not seize now is? Presumably, it is in the garage or the offices of the Consulting Association or wherever, or it could have been destroyed. Is that true? You do not know.

Dave Smith: I have no idea.

Q129 Chair: I just wanted to be clear. We have no information at all, other than the points that you mentioned about where there are cross-references of files, about whether there is another complete section dealing with, say, engineering, because, unless it is actually covered by a cross-connection, you would not have known that.

Dave Smith: No. As I said, I have seen every blacklisting file that they let me see—all 3,200. I would say that the vast, vast majority of them are to do with the construction industry.

Q130 Chair: Yes, but that refers only to those that they seized.

Dave Smith: Yes.

Q131 Chair: We therefore have no idea what they did not seize.

Dave Smith: Precisely.

Chair: Okay.

Q132 Mr Reid: Earlier you referred to the fact that Mr Kerr was with the Economic League and then, when it was exposed, the Consulting Association. Have you any evidence that, since the raid on the Consulting Association's offices, Mr Kerr is carrying on similar activities.

Dave Smith: No, I don't think he is.

Q133 Chair: I think that has clarified matters. We have already asked you about the Consulting Association having meetings in Scotland. You will not have a complete, methodically drawn-up list of the meetings in Scotland; you will have a record just of those meetings for which you have paperwork.

Dave Smith: Yes, but they are almost on a quarterly basis, so you have the list. If you get the fuller—

Q134 Chair: You have them.

Dave Smith: If you get an unredacted copy—

Q135 Chair: You have a redacted one.

Dave Smith: I have a redacted copy that relates only to Carillion. I can tell you that Carillion and John Mowlem attended those meetings, because it is written down that they were attending them. I can also tell you that Balfour Kilpatrick was invoiced for some work that it was doing offshore, because that is written down there. If you get the unredacted copy, I am sure it will have a big list of all the companies that attended Scottish meetings.

Q136 Chair: We have complete faith in the ability of our staff to get us the unredacted copies. As soon as they have gone through all the other files, they will go and get them. We will pursue that. That is helpful. Again, I want to be clear. You have seen stuff only on construction workers.

Dave Smith: No.

Q137 Chair: Tell me what else you have seen.

Dave Smith: I have seen the entire database. The vast majority of it relates to construction workers, but there are other people on it, as well, who had some kind of link to construction.

Q138 Chair: I am sorry. Before you go on, let me be clear about this. You have seen the entire database, but that is the entire database that they seized. You have already accepted—

Dave Smith: Okay. Even the stuff that I have seen does not relate only to construction.

Q139 Chair: That is right, but there may very well be other databases. When Ian Kerr left, he could have taken the entire files of the Economic League.

Dave Smith: I will come on to that separately later, if you want. We can have a separate conversation about that.

Chair: Okay.

Dave Smith: From what I have seen, it is not only construction workers. There are files on academics. One file I have here—the gentleman concerned has said that it is okay for me to talk about it—is on Professor Charles Wolfson, who was a senior lecturer at the university of Glasgow. He was blacklisted because he was doing research into health and safety in the North sea after the Piper Alpha disaster. It is actually written there that some of the big companies were thinking of withdrawing funding from Glasgow university because of his continued research. Charles Wolfson has this file only because I saw the unredacted blacklists and thought, “Oh, look.” It rang some bells, I went on the internet, found out who he was and got him to apply, because the Information Commissioner's Office does not tell you; you have to realise you are on the blacklist. Charles Wolfson has got his file—I have a copy of it, and so can you—and it is linked to the offshore industry. Other academics are also there but mainly because they have done research into health and safety. Some lawyers, who have clearly supported construction workers in the past, are on there. A number of journalists are on there—one is a member of the national executive committee of the National Union of Journalists—for writing articles about construction disputes. There are elected politicians on the blacklist. Some of them are councillors. At least one of them is an ex-Member of the Scottish Parliament—an MSP. I have contacted some of these people; some I have not been able to contact. Without any shadow of a doubt, because an MSP turned up at some kind of construction dispute, they have ended up having a blacklist file opened up on them, with lots of other stuff about them. They were not just looking at construction workers but at lawyers, academics, investigative journalists and elected politicians as well.

12 June 2012 Dave Smith

Q140 Chair: You are able to recall these simply from memory. They are not things that you were given as part of your case.

Dave Smith: They have not been disclosed to me, but they are not simply from memory. I have quite a good memory, to be honest. Immediately after I left the Information Commissioner's Office, I wrote down about four pages of names. I have now contacted quite a lot of them, who have then got their files. Charles Wolfson and the other fellow I talked about, with the police file, got their files only because I managed to track them down. I can't give you their names, because they are not in the public domain, but I can say with cast-iron certainty that there are journalists and elected politicians, including MSPs, on the list.

Q141 Chair: But they themselves will have their files.

Dave Smith: Some of them—some of them not.

Q142 Chair: Yes, because they will have chosen not to approach the Consulting Association. Sorry—I am referring to the ones you have approached.

Dave Smith: Most of the ones I have approached have got their files. I have not yet been able to get hold of some of them, so they have not yet got their files.

Q143 Chair: You are taking the view that the names of those whom you have not been able to approach are confidential and should not be disclosed to us.

Dave Smith: I think that is reasonable.

Q144 Chair: I just want to be clear. Some of the files that we saw refer to companies in codes, as it were. Is there a cross-reference system that will allow us to identify all the companies, or are they the companies that are simply listed in Annex A of our report?

Dave Smith: They are those companies, but the Information Commissioner's Office disclosed the reference list as well. Once again, this is a document that I have. If you look at the blacklist file, it never says Balfour Beatty or Carillion; it has a number next to it. One of the documents that was disclosed—

Q145 Chair: So, by cross-referencing any Scottish company that is on that with the files that are available to us, we would be able to see what action they took in particular circumstances.

Dave Smith: Yes.

Q146 Chair: Lest they simply say, "We were listed there, but we never used it." If there is evidence that they have used it, it will be in those files that have been disclosed.

Dave Smith: Yes, bearing in mind that what I have is a very tiny fraction of the entire thing.

Chair: I understand. In a sense, we can't prove what we don't know.

Jim McGovern: Surely if someone has their file and it says that they applied on such and such a date to, for example, 3233—I refer to information I have—and the application was unsuccessful, they will know that 3233 means Laing O'Rourke.

Chair: They might not remember. From our point of view, to take the example of Laing O'Rourke, if we

speak to a company and it says, "No, we never used it", but we have an evidence trail in a Consulting Association file that shows that an individual notified such and such, that ties it in. That is the point. It is just a question of approaching it by different routes.

Q147 Pamela Nash: You said towards the beginning of the evidence session that construction workers were frightened to become safety reps or even to report any health and safety breach. You also mentioned the continuing bad safety record of the construction industry throughout the UK, which we all know about. This is really the crux of the matter. Do you believe that, over the last two decades, people have been unnecessarily injured and killed in the construction industry as a direct effect of blacklisting and the fear that it has instilled in construction workers?

Dave Smith: I think that is absolutely certain. Construction has often suggested that the reason is that it is a dangerous industry. There are lots of dangerous industries, but the construction industry death rate per thousand is just so much higher than everybody else's. I genuinely believe that it is to do with the fact that, in some industries, the companies and major employers decide that, on health and safety, they are going to work together with the trade unions. By working together, you get an employee voice on health and safety issues, and therefore people are more likely to take it seriously. I have many years of experience in the construction industry. There are also countless examples from other workers, some of whom are sitting behind me. A safety rep who is sitting behind me was suspended a couple of weeks ago for being a trade union activist. It is clearly going on. There are people who stand up on behalf of the trade unions and say, "This thing is unsafe. We believe that we should have decent changing facilities. We believe that, when it is pouring with rain, we need to have somewhere to be able to dry our overalls. We believe that we should have an input into the fact that the toilets are an absolute disgrace and overflowing with human excrement every day." Those are pretty basic things. If you are a safety rep, you will raise those concerns. Hundreds of people on this blacklist have been blacklisted for little more than that.

Q148 Pamela Nash: You have given a very recent example, from the last couple of weeks. In that case, there are people working on construction sites this afternoon in Scotland and throughout the UK whose lives are at risk.

Dave Smith: I would say that the cumulative effect of safety reps being blacklisted by the big multinational companies, victimised and dismissed, and of people then knowing that they find it difficult to get other jobs in the future, is that other workers keep their heads down. When there are big safety issues, very rarely do people want to be the person who stands up and says, "Look, we need to raise this issue", because they know and have seen what has happened to other workers. Because of that fear process, it is very rare for people to be very well organised and to come together collectively and in strength.

When we say that someone was a safety rep, raised concerns about health and safety, and lost their job

12 June 2012 Dave Smith

and was blacklisted in the future, it sounds like paranoia. When you talk to people from other industries, sometimes they just do not believe that that sort of thing would happen, until we actually get the documents and bring in lots of different people who have sometimes been out of work for years on end. A fellow up in Manchester called Steve Acheson was dismissed for being a safety rep and has been out of work for about eight years out of the last 12. When you first hear that, you think, "Surely you could have got a job." When you see his file, you find that, when he gets a job, within a few weeks they find out who he is and he is dismissed.

He was originally blacklisted because he raised health and safety concerns about electrical safety. That was actually with Balfour Beatty or Balfour Kilpatrick, a Scottish firm. I genuinely believe that that has had an impact on the way health and safety is run and operated in the construction industry in the UK, because other countries do not necessarily have such a bad health and safety record. It is partly to do with the victimisation and partly to do with false self-employment in the industry, where the employers try to absolve themselves of all responsibilities. I think people have died, have had severe injuries and have picked up asbestosis over the years precisely because the unions have been pushed out of this and union activists have suffered for it.

Pamela Nash: Thank you.

Chair: I think that covers virtually all the points that we have, but Jim wants to ask another question.

Q149 Jim McGovern: It is possibly more an observation than a question. I am sure Dave is aware of this, but, back in the mid-'90s, there was a big dispute in Dundee—the Timex dispute. I was quite close friends with quite a number of the shop stewards who were on the shop stewards' committee at that time. Once they closed Timex and the dispute was finished, those shop stewards had great difficulty getting employment elsewhere, even though they were fully qualified engineers. They were able successfully through the courts to sue potential employers for refusing to employ them because of their trade union backgrounds. Is your support group pursuing that sort of case?

Dave Smith: To be honest, that is exactly the sort of thing that we have tried to do. However, as I said, most of the tribunal cases have not actually ended up in tribunal, because they have been classed as so out of time. One of the main reasons that people did not put in claims 10 years ago saying that they had been blacklisted was that they would not be believed if they went to a tribunal and said, "I was a trade union safety rep on a job 50 miles away. Now I have applied for a job here and cannot get one." It just sounds implausible. All of the companies would have said, "There's no such thing as a blacklist," and we would have had no evidence to be able to present our case. I cannot remember a single case that was ever taken against blacklisting by the Economic League. If one does exist, I don't know of it.

I think it is very likely that the Timex workers were blacklisted, because the Consulting Association's was not the only blacklist. There were other blacklists in

operation. With some of them, it is even easier to get the people who were involved. When the Economic League was closed down, one of the organisations that were set up in its aftermath was the Consulting Association, but another organisation was set up as well. Basically, the chief executive and one of the directors of the Economic League set up a new company called Caprim Ltd. Because it was a limited company, you can actually get its records from Companies House. I am trying to remember the gentleman's name off the top of my head.

Q150 Chair: How do you know that that was a blacklisting organisation?

Dave Smith: The two people who organised it were the chief executive of the Economic League and one of its directors. The other director of the company was one of the key funders of the Economic League prior to that. This information is quite widely available. Even in their own publicity material, they talk about how they can do individual checks for prospective clients or existing employees, if you want to check up on them. That is what their own publicity material says. They carried on doing that for a long period of time. They were set up in the early '90s and carried on doing it until the raid on the Consulting Association, which happened in February 2009. Caprim Ltd went into liquidation the following month. It has been reported quite widely what Caprim was doing over a long period of time. If you ask where the other Economic League files went, I think a lot of them went to Caprim Ltd. There has actually been quite a lot of publicity about Caprim.

Q151 Chair: I must confess that I have not seen any of that. I was not at all aware of that.

Dave Smith: There was another organisation called the National Staff Dismissals Register. Ironically, it was partially funded by the DTI when it first came out. It was criticised by everyone, including, I believe, *People Management*, the human resources magazine. I think that even the Chartered Institute of Personnel and Development criticised it for being a blacklist. The National Staff Dismissals Register was for when a company dismissed someone because they were costing them money. It was dressed up as being primarily about theft. If a worker had stolen from their employer, when they went for another job, they would not say that they had lost their previous job for stealing from their company. All these companies would pool their resources and therefore they would not employ someone who had committed theft from a company in the past. But it was not just about theft. The information that was added to it could be anything that the company had lost money over. It could be that people had taken cases to employment tribunals against the company, even if the cases were successful. Once again, it could be that you were a health and safety rep or a trade union rep who had been involved in an official dispute. The trade unions criticised it quite widely at the time, but, as I said, even human resources officialdom criticised it as being a blacklist. I think that that one was wound up, but they actually got funding from the DTI to set it up.

12 June 2012 Dave Smith

Q152 Chair: Can I pull us back, because I think that we are just about at the end of the meeting. As I outlined at the beginning, the main remit for us is obviously matters Scottish. We have asked you to come back to us about the question of legal changes. As we say to everybody, if there are things that occur to you after you have left and you wish that you had thought of saying such and such, it would be helpful if you could let us have that. We would like our staff and our specialist adviser, Alan Ritchie, to discuss some of these items with you, if other things come up. In particular, we want to be clearer than we are at the moment about whether there is any evidence that this is still going on. One of the observations that have been made is that all this is historical, bad practice went on and there is new legislation in place. All the files I have seen relate to a number of years ago. Are we simply pursuing something that is dead and gone? The question of clarifying whether bad practices are still occurring and, in particular, whether there is any proof of that is therefore a major issue for us because, if we were minded to suggest legislative change, we would obviously be asked whether this change is necessary. If there is no evidence of any misbehaviour going on, obviously the request for legislative change will be dismissed, which is a not unreasonable position. If anything like that that would be helpful to us occurs to you later, it would be useful if you could draw it to our attention.

Finally, are there any answers that you had prepared for questions that we have not asked you? Is there anything that you feel we ought to be told?

Dave Smith: There are a couple of things, if it is okay. You raise the issue of whether it is still going on. I think it is almost certain that it is still going on. Throughout my working life, the employers in the construction industry denied that there was such a thing as a blacklist. Whenever the trade unions raised it with them, they said it was complete paranoia and there was never a blacklist. Of course the evidence now shows that there was a blacklist and that it was not just something informal. It had a constitution, they were paying tens of thousands of pounds every year to be part of the operation and they were attending meetings, but it was all done in secret because they knew they were up to no good.

Do I think it is still going on? I absolutely think that. If I were doing it nowadays, it would all be done on the internet, with encrypted codes, so that it would not be so easy to find and documents would not be seized. In the offshore industry, there has been continued anecdotal evidence about activists being dismissed because of that. They have a system in the offshore industry called “not required back”—NRB. Any Scottish MP is probably fully aware of that. Lots of people have said that, effectively, it is a way of getting rid of trade union activists there. As I said, there was recently a dispute on the Olympics site. There are other workers—especially among the electricians, who have been involved in a very big dispute

recently—who have been told to their face that they will never work on a major project in this country again, because it is still going on. Of course, when you ask whether we have evidence, it is very difficult. Inevitably, it is all hidden and secret.

In terms of Scottish companies, I wanted to point out a number of managers who were involved. We have talked about most of them. I have only one other from a Scottish company—Sir Robert McAlpine. In correspondence between Sir Robert McAlpine and myself, I asked which managers attended the meetings for Sir Robert McAlpine and dealt with the Consulting Association. The head of human resources, whose name is David Cochrane—he was certainly the head of HR between 1998 and 2009—has admitted in correspondence that he was the person who was doing it. I have identified today a number of senior managers, some at director level, who have openly admitted that or have had documents invoiced to them individually. I think they would be very good witnesses to bring in.

Finally, thank you very much for inviting me. There are 3,200 workers on this list, and a lot of them are Scottish. There are major construction firms on it, and a lot of the construction firms involved are Scottish. The other construction firms are such big players that they are clearly doing construction projects, including publicly funded construction projects, in Scotland. Carillion is now part of the PFI in the national health service and other issues and is almost certainly getting public funding in Scotland.

This is an absolute human rights scandal that has gone on. Professor Keith Ewing has called it the worst organised human rights scandal in Britain for over 50 years. If we were celebrities, this would be all over the newspapers. The Leveson inquiry is looking at celebrities having their telephones listened to. We are ordinary building workers, some of whom have been out of work time and time again—not celebrities who have a lot of money anyway, with a little bit of tittle-tattle on their phone, but people who have lost their jobs and sometimes their houses because they can't afford to pay their mortgage, and have had family breakdowns because of that.

I thank the Committee for allowing us to do this. We are not victims; we are trade unionists. As trade unionists, we believe we can change things. That is why we are campaigning and will continue to campaign. When Rupert Murdoch went to the Leveson inquiry, he at least had the decency to apologise for what the company had done. To this day, not a single one of these multinational firms has apologised publicly for anything that they have done to any of us. I think that is an absolute disgrace. We are going to carry on the campaign. It will be me, but it will also be other people. There are people who have suffered much worse than I have. I hope you will get them into this investigation to talk to them, because you just have to carry on until we get some justice. Thank you very much.

Chair: Thank you for that.

Tuesday 19 June 2012

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Pamela Nash

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Francis Graham** and **Steuart Merchant** gave evidence.

Q153 Chair: Gentlemen, may I welcome you to this meeting of the Scottish Affairs Select Committee? We are looking at issues relating to blacklisting, with particular relation to what has been happening in Scotland. As I have mentioned to you before, and I know that Jim McGovern has mentioned it to you, because we are the Scottish Affairs Committee we do not want to cover the whole of the United Kingdom. Our remit particularly relates to Scotland, and that is why we are glad to have a couple of you from Scotland here. I am conscious that you have a train to catch back to Dundee. I know that we will all want to be out supporting England against the Ukraine maybe later on this evening, so we will not take too long on this. Could you start off, for the record, by saying to us who you are and what your industrial work experience is? Then we will get on to the question of blacklisting.

Steuart Merchant: I am Steuart Merchant. I am an electrician and I will always be an electrician. I served my time with Lowdon Brothers in Dundee. It was an old-established electrical firm. I worked most of my life not with the main companies you associate with Britain because I could never get a job with them. I spent most of my life working not with small companies but smaller companies, but I never had a problem with any of them.

Q154 Chair: Mr Graham?

Francis Graham: I am Francis Graham, an electrician. I was an electrician from 16 until I retired. I have worked the length and breadth of Britain on some very good jobs. I went a long time without a job due to being blacklisted.

Q155 Jim McGovern: First of all, thanks very much, Francis and Steuart, for coming down. From the fact that I know you as Francie and you as Steuart, most people will recognise that we know each other. Could you, first of all, tell us how you discovered that you were on a blacklist?

Francis Graham: When Alan Wainwright exposed the covert system that hung around companies. When companies were approached, they turned round and said that there wasn't such a thing as a blacklist. "We do not hold blacklists on anybody." Then Alan Wainwright exposed what was going on, and the phone number started going round the country like wildfire. When I got the phone number and phoned up, it was a solicitors company called Guney Clark & Ryan of 60 Green Lanes, London. It is in their hands

at the moment. I am led to believe that it will soon be going to the High Court.

Q156 Jim McGovern: Does the same apply to you, Steuart?

Steuart Merchant: When Francie told me that he was on a blacklist, I wrote to them, not thinking for one minute that I would be on it, by the way. I just wrote to them to see, and it came back that I was actually on it. I must say I was totally shocked when I got mine back. I didn't expect to be on any type of blacklist.

Q157 Jim McGovern: Could you tell the Committee what sort of information was being held?

Steuart Merchant: It was very strange. What it says is: "Details held on spreadsheet for Steuart William Merchant. No card." It has my name, date of birth, national insurance number and "Dundee: Electrician." That's it. That is exactly what it says. The reason why I was shocked is because I have never, in my whole working life, been disciplined for poor workmanship or poor timekeeping. In fact I have never been disciplined in my working life. To get something back saying that I was on a blacklist, I can't even point at a company and say, "They must have put me on it for some reason." But there's nothing. I'm on a blacklist.

Q158 Jim McGovern: My next question was going to be "Was the information on the blacklist accurate?" But, in your case, obviously it was because it was only your name and national insurance number. What about you, Francie? I know there is other information on the blacklist about you.

Francis Graham: I do have my blacklist file here. It goes from 1975 to 2007. The only problem we have with this is that I can't challenge it individually because of the redaction that is on it. I believe that the redaction that is on it is protected by the Data Protection Act. As an individual, if this was removed, then I could challenge the name that is below it. I have a right to challenge that. Until that is removed, then I have to leave it in the hands of Guney Clark & Ryan.

Q159 Jim McGovern: Francie, as to the information that you are referring to, you gave me that information and every member of the Committee has that information in front of them. Do you believe it is accurate?

Francis Graham: I actually think it is far from accurate—far from being accurate. This is where there is a big problem in life. They can write anything about

19 June 2012 Francis Graham and Stuart Merchant

you as an individual but you don't have the right to contest it. If you don't have the right to contest it, that is removing your democracy.

Q160 Jim McGovern: When did you become aware that you were on this blacklist—that this information was being sent to various employers about you?

Francis Graham: It was when I phoned up—it was 2009, I believe—Guney Clark & Ryan. They said, “By the way, we have someone with a similar name to you.” They sent a form. “Can you fill in the details? This is the gear we need to clarify who you are.” That was then done. They returned it saying, “We know now that it is you and here’s a blacklist.”

Q161 Jim McGovern: The information would seem to suggest that this was happening at least from the late '70s.

Francis Graham: '75, yes.

Q162 Jim McGovern: The mid-70s.

Francis Graham: The mid-70s.

Q163 Jim McGovern: Until you retired, but you were unaware of it until 2009.

Francis Graham: I was never aware of it until 2009. I am actually quite a good electrician, by the way, and that has been proved on site. I have been a shop steward on several occasions. I don't think companies appreciate the healthy relations that shop stewards and companies can have if they are working in harmony. One side seems to take a dull view of individuals who are elected as shop stewards.

Q164 Jim McGovern: This is a question for you, Francie, and for Stuart. It is probably quite difficult given that you were unaware that you were on a blacklist, but what effect do you think being on a blacklist has had on your own working life and the impact upon your family over those years?

Francis Graham: I think it has had a massive impact on my family. As a matter of fact, I lost my wife seven years ago. I found it hard to get work in Dundee. Therefore, I had to move out of town, and I was out of town for a lot of years. We had no family; so my wife was left on her own in Dundee. That had a massive impact on her—a massive impact. She was in the house on her own. I couldn't get local work. I had to work away. I have worked in England and Wales for years and years. I am near enough talking about the whole of my working life, maybe getting home every four weeks or six weeks for what they call a long weekend, but it is not a long weekend. You are just home and you are back on the train again. That had a massive impact on my life and on my wife's life.

Q165 Jim McGovern: What about you, Stuart?

Stuart Merchant: There were two years during the '80s when I couldn't get a job at any place, which was not very easy, but I did have a wife who was working. The personal thing is that it begins to get you down and you begin to wonder, “Why's he getting a job? Why can't I get a job? I'm as good as him.” Then you begin to get personal doubts, and you think, “Am I any good, or is it because I'm useless that I

cannot get a job?” It does get you feeling—I am not suicidal but—

Q166 Jim McGovern: Presumably you were unaware that you were on a blacklist.

Stuart Merchant: I was unaware that I was on a blacklist but I was aware that something was wrong because other people were getting jobs and I couldn't get a job. During my working life, for most of the time I have been a foreman, a general foreman or something, so it wasn't that I couldn't do the job. It was just that I wasn't getting a job for some reason, but I didn't know the reason. Now we have found out that that might have been the reason. I couldn't swear that that is the reason why I wasn't getting a job, but I do know that I couldn't get a job for two years for some reason or other. I still can't get a job with any of the big companies like Balfour Kilpatrick, Baileys or any of these big companies. I still can't get a job with them for some reason or other.

Q167 Chair: Can I just pick up the point, Francis, about the question of you not getting work? From your card, we can see 15 November 2000 and that you applied. “Main Contract...given details.” “Co has Not employed.” Then we have the same in 2002: “Main Contract...given details.” “Co has Not employed.” Then on 18 January 2007, we have got: “Main contract...given details.” “Co. has not furthered.” All of that, presumably, means that it was the records being given to these firms that resulted in you not being employed. We haven't got here the names of the firms, but we have code numbers.

Francis Graham: Yes.

Q168 Chair: I understand that we have had information from others that would allow us to identify the companies involved. We would intend to be taking some of these things up with some of those, but you were not aware of any of this at the time.

Francis Graham: I was never aware of that at any of the time. I was never aware. It is like what Stuart said. I knew that something was going on which wasn't proper, because I know my capabilities in the industry, and my capabilities are well known in the industry as a good worker. When something hits you like this, it knocks you off your pedestal when this happens to you. But to know that they have covertly hidden this for years, they, surely, are in the wrong. I would say, other than me being punished and not getting work, those firms should be punished for the actions that they have done.

Q169 Chair: In fact I have just realised that some of these firms are being named. Emcor Rail and Laing O'Rourke are mentioned as some of the firms that did not further your employment. At some stage we will want to speak to some of the firms involved. Stuart, I want to be absolutely clear. You had no knowledge of any blacklist operating. You had no information or feedback. People didn't come back to you and say, “We are not employing you because you are on a blacklist.”

Stuart Merchant: No. What happened was that I just never got any answer. I would send in an application

19 June 2012 Francis Graham and Steuart Merchant

form and I wouldn't get an answer—just nothing came back. As I said, it really gets you down. You do begin to feel that there has to be something wrong with you. In actual fact, it was the system that was wrong, not me.

Q170 Chair: Were you ever in a position where you started on a job and then you were, unexpectedly, sacked?

Steuart Merchant: Not me personally, no.

Q171 Chair: What about you, Francis?

Francis Graham: I was on a job at the new Wembley Park station. I will give you a good example. As I say, I am a reasonably good worker. This contracts manager just kept walking round the site all the time. He didn't speak to anybody. He did this for months upon months. Then he pulled me one day, and he said, "I've been walking about with my eyes open. I've been watching you. When this job finishes—it's not imminent—you come up to my office and I'll give you a reference that will get you a job any place." Two weeks later, this lad comes up on the site and says, "You can get on to T5." So I got a job on T5. I was on it for eight to 10 weeks. The company was called Sepam. It was an Irish company. I read the papers prior to T5, and T5 wasn't meant to have any agencies on it. It was meant to be all PAYE. It was all meant to be an above-board site.

When I went on the site, the lad I worked with at Chelsea Bridge was there, and he was with an agency. I said, "I can't believe this." Do you know what I mean? The big bugbear was that that firm was on site but they weren't a joint industry board firm. They did not adhere to the T5 agreement. When I complained about that, that didn't go down very well. There were loads of lads in the cabin on that day, and this engineer says to me, "Jesus, Francis, are you looking to continue going up the road every two weeks?" I said, "What I am doing is, although they are not applying the T5 agreement, I am going to observe the T5 agreement and I am going to work within the T5 agreement." It wasn't long after that that I had a tap on the shoulder and I was off—dismissed.

Q172 Pamela Nash: I was going to ask you about your experience. You said that you had worked in England and Wales. Prior to that experience, was there any other time when you felt that the blacklist came into play or had been checked? I am not sure from this if these occasions were in Scotland or if they were all in England and Wales.

Francis Graham: I know where you are coming from. There were indications when you couldn't get jobs. There were indications that something was wrong.

Q173 Pamela Nash: In England as well.

Francis Graham: In England and Scotland, where there was something wrong. Companies denied blacklists; they totally denied blacklists, but at the end of the day they were operating, as I say, this covert organisation, being financed by companies. It was the reason that led to me not getting jobs. As you can see, the blacklist is in front of you. Hence the reason why it was very, very hard to get jobs—very hard.

Q174 Pamela Nash: Steuart, did you ever apply for work outside Scotland?

Steuart Merchant: Yes.

Q175 Pamela Nash: But every time you came up against the same problem.

Steuart Merchant: I have worked outside Scotland. For the 13 years before I retired I worked for a firm from Durham. I worked in England most of the time. Maybe I could go back just a wee bit. When I said that I had no idea I was on a blacklist, I didn't. Back in 1980 Balfour Kilpatrick had an office in Dundee. They worked out of Dundee with about 20 or 30 electricians as a separate unit inside Balfour Kilpatrick. I ended up as a shop steward.

One of the lads had a problem with the company and we had to go to an SJIB tribunal in Edinburgh. When we were there, halfway through the tribunal there was a wee break and I had gone away to the toilet. They had brought up an industrial relations man from London. He said to me in the toilet, "Carry on like this and you'll never work for us again." I said, "What do you mean? I am only here as a shop steward. The tribunal is not about me." He said, "You heard what I said." I said, "Would you say it outside?" He said, "No, but you know what I mean." Now, I left it at that. When I left Balfour Kilpatrick, the engineer I was working for wanted to give me more money and a company vehicle if I agreed to stay. So it didn't actually enter my head at the time that I had done anything wrong with Balfour Kilpatrick because I left on good terms with the engineer who I was working for. Looking back, it may well have been because of that.

Q176 Pamela Nash: Can you remember who that was?

Steuart Merchant: I don't know the lad's name. The tribunal must have been about 1980. It was an SJIB tribunal. I suppose somebody could find it some place. I don't know how you would go about finding out, to be honest.

Q177 Jim McGovern: Do you remember the name of the member who you were representing?

Steuart Merchant: Yes; Willie McFarland.

Q178 Jim McGovern: It probably is traceable then.

Steuart Merchant: And Brodie Angles was the union official for the EETPU at the time.

Q179 Lindsay Roy: Are you aware of other colleagues, either in your own trade or other trades, in Dundee who have had a similar experience—that they have been on a blacklist?

Francis Graham: A similar experience would be them saying, "Why can't I get a job? Is there a problem?" I have said it twice already and I will say it again. If you are going covertly to hold somebody to ransom and they don't know it, then the boy is out on a limb. He just doesn't know what is going on. It is like Steuart said earlier on. He then feels, "Aren't I any good at this? What's happened to my trade?"

19 June 2012 Francis Graham and Steuart Merchant

Q180 Lindsay Roy: Have you had conversations with other people who feel they were in a similar position?

Francis Graham: Yes; even in Dundee people are in similar positions.

Q181 Lindsay Roy: Are we talking about a handful of people that you know personally, or are we talking about quite a considerable number of people?

Francis Graham: As I say, I have travelled the length and breadth of Britain and I have worked on big sites. People have said that I was lucky to have got on the job. I know other people who cannot get work. I know that for a fact. What was it they picked up from Ian Kerr—3,323 or something like that was the number? That is a pinhead of who has been blacked by these 40 companies. That is just a pinhead.

Q182 Jim McGovern: Following on from what Mr Roy asked you, would you have even a ballpark estimate of how many Scottish workers you think have been hit by this?

Francis Graham: There is no way that you can come up with a number, but it is numerous. Do you know what I mean? I don't know if it goes into the hundreds; I don't know if it goes into the thousands. Throughout Scotland a numerous amount of people have been blacked. There are people going about that are blacked who will not pick up the phone and phone the number of Guney Clark & Ryan, who are holding the blacklist. There are people who don't believe they are blacked. They may just think that there is something wrong with their qualities in the industry.

Q183 Jim McGovern: Guney Clark & Ryan have got this blacklist and they are representing the people who are on it.

Francis Graham: Yes; they are representing people who are on it.

Q184 Jim McGovern: Are they representing you? Are you taking a case?

Francis Graham: Yes, they are representing me.

Q185 Jim McGovern: Is it the same for you, Steuart? Are you taking a case?

Steuart Merchant: Yes. I got in touch with them in the first place and it was them who sent me the blacklist. Up to now, I haven't had any forms to fill up or anything to go to court. Apparently, there are some people going to court with this case, but I have not had any information. That is the only thing I have ever had from them, to be honest. I did phone them a couple of weeks ago and said, "Look, everybody else is getting letters from you and things. You've never ever sent me any." They said they would look into it and will send me something, but up to now they have not.

Q186 Jim McGovern: Did Guney Clark & Ryan tell you who they are suing? Are they suing the company that compiled the blacklist or are they suing every company that refused to employ you?

Steuart Merchant: No, they haven't told me anything like that. Maybe they have told Francie.

Francis Graham: I don't know if they are going to be suing individual companies or en bloc. I would imagine it may be en bloc. That would be between them and the courts.

Steuart Merchant: In my case, for example, who could you possibly sue? All we have got is a blacklist with my name and insurance number on it.

Q187 Jim McGovern: And nothing else.

Steuart Merchant: No reasons, no companies, no nothing. It is just, "You're on a blacklist." Whichever companies used that blacklist, they didn't look to see if there were any reasons or anything. They just said, "Steuart Merchant. That's his insurance number. We don't really want him." I cannot see who I could sue.

Chair: Somebody just used, "We will proceed." It's interesting to hear that the lawyers have got that. We were under the impression until now that the Information Commissioner had all of that, but we will be pursuing these issues as well.

Q188 Jim McGovern: Have you ever been offered any sort of apology or compensation?

Francis Graham: No.

Steuart Merchant: No.

Francis Graham: As I said earlier on, they have had the right to do this within themselves. They took it on board to say that this was their right. We did not get the democratic right to contest it and we still don't have that right to contest it. We are just hoping that the courts can contest it—that Guney Clark & Ryan can contest it.

Steuart Merchant: Or that this Committee could maybe find out more about it and do something about it.

Jim McGovern: That is obviously what we hope to do. This is quite topical, given that companies might change their name and become a newco—

Chair: That is very funny, Jim. That's very, very funny.

Mr Reid: What was that you were saying, Jim? It's not within range.

Q189 Jim McGovern: Alan, I was thinking of Greece actually. Greece is going to come back as "New Greece", once it has gone into liquidation.

Obviously we are not lawyers here in this room, but do you have an opinion if such blacklisting still exists—and we have heard evidence from other witnesses that it does—on how it can be prevented?

Francis Graham: At the end of the day, if a company moves in, trading in another arena with a new name, they are not going to throw away the blacklist that they hold on people. That will still be there. So it is still ongoing. If these people are on that blacklist, although the legislation has changed, it doesn't mean to say that that gives those lads a job. It doesn't give them a job, which means that they are still implementing a blacklist. They are carrying the blacklist on, irrespective that it is a newco or not. That blacklist is still there.

Q190 Pamela Nash: Have you seen evidence that it is still going on—that people are still being added to it?

19 June 2012 Francis Graham and Stuart Merchant

Francis Graham: The only evidence I can give is that those people who are on the blacklist still can't get a job.

Q191 Pamela Nash: Do you think that people are still being added to the blacklist?

Francis Graham: Could I say something here? Alan Wainwright was one of them. I have got Alan Wainwright's history here. They, basically, stabbed Alan Wainwright in the back. That is what they did. He whistleblaw on them. That is what he did. When he whistleblaw on them, they must have felt sore because that covert institution was then blown wide open. That is when Ian Kerr went to court and was fined a paltry £5,000, which is nothing, and something like £1,800 costs, which is nothing. Somebody had 40 companies and was giving them £3,000 a time to set them up and £2.20 every time he passed a name on to another company. That is horrendous. It is horrendous for anybody to get away with that.

Stuart Merchant: Can I say something as well? I cannot mention his name because the lad is still obviously looking for employment. He is a lot younger than me. He was working offshore doing a safety rep's job. He must have been doing a good job because they reassessed him and they told him that he was not required back. But it is not just that one company. Once you are not required back, it is very difficult to get a job offshore again because all these companies pass information between them, which is a blacklist of sorts. So it is definitely still going on.

Q192 Chair: How do you know that?

Stuart Merchant: How do I know he couldn't get another job?

Q193 Chair: How do you know that companies working offshore pass information between each other?

Stuart Merchant: I don't know, but, because he was not required back when in actual fact he was more senior on the rig than other people, they got rid of him. They are not going to say it but it was because he was a safety rep. Then he finds it very difficult to get a job with any other company. You have to assume that they are passing the blacklist between each other.

Q194 Chair: I am quite satisfied that you feel you know it, but it is a question of proving it. A number of people for a long period thought that they knew that the Economic League or somebody similar was operating a blacklist, but they were not able to prove it until somebody came forward and accessed all the figures. In a lot of this, as Alan has said, we want to make sure that, as well as following the question of what happened in the past, we are trying to clarify whether or not these things are still happening and whether or not the law that has been tightened up is now tight enough to stop it. You are telling us that you think it is still happening because there is some circumstantial evidence, but you cannot prove it.

Stuart Merchant: Yes. I cannot name the lad for obvious reasons because he will never work again in the trade that he is in.

Jim McGovern: There is every chance that he will get a job if you name him actually.

Q195 Mr Reid: Would you be able to name the company?

Stuart Merchant: No, I cannot remember the company he worked for. You asked earlier on about the legislation and we were discussing this earlier. In the legislation, if the directors of these companies are found operating a blacklist of any sort, they should be held responsible and should be jailed. You have to have some kind of proper legislation that is going to make them think, "We are not going to go into this blacklisting." Right now, they just couldn't care less.

Q196 Jim McGovern: That brings us on to a further question. Do you think the laws are adequate to protect working people in terms of blacklisting?

Stuart Merchant: No. That is just what I have been trying to say there.

Francis Graham: I have got a copy of the Employment Relations Act 1999 (Blacklists) Regulations 2010. There is not any meat on the bone in here. It talks about blacklisting trade unionists. What about if you don't belong to a trade union? Has the company still got the right to black you and put you on a blacklist just because you may fall out with your foreman in a pub? You may not get on with somebody. Somebody may not like your face. Has that person got the right to be downgraded, undermined and then blacklisted? No. Plus the fact that, here, there is no punishment for employers operating blacklists. They operate blacklists en masse. They are not passing information to one. They are passing information to an independent individual who was set up to do the work for them. You could have somebody raiding their workplace and you would probably never have found a blacklist, because the blacklist was in another place, in another city. They were paying £2.20 a name, which in this day, in 2012, is beyond belief. As Stuart was saying, I don't think there is enough meat on the bone here. There isn't even any punishment in here for anybody, whether it is directors, the chairmen, HR or whoever it is. If somebody sets up this blacklisting system, surely if they are doing it to me, to him and the 3,200-odd people, then I would say that custodial sentences must follow.

Q197 Jim McGovern: The Committee's inquiry has obviously got to look at what has happened before and try to determine whether blacklisting is still going on, and, if it is going on, how we prevent it happening in the future. In your opinion, the evidence we have proves that both of you were on a blacklist and that affected your ability to find work. What we are trying to determine is whether it still goes on today. Although there might not be documentary evidence to tell us that it is going on today, we would ask for your opinion. Do you think it is still going on today?

Francis Graham: I believe it is still going on. I do believe it is still going on. As you know, a leopard doesn't change its spots, does it? It just goes deeper underground. I believe that they went deeper underground. I believe that this battle still exists. The

reason why I think it still exists is this. Do we need another Alan Wainwright to come out in 15 or 20 years and expose another 40 companies that are running a blacklist? Do we need that? Employers have told us in the past—you may say “in the past”—“We don’t hold blacklists.” Of course they did not. Ian Kerr did on their behalf. Have we got to wait another 15 years? Have other people got to be living on the scrapheap because somebody is doing it but deeper underground? I believe that that is what is happening now. These people are blacklisted. These 3,200-odd people still cannot get a job because all these companies still hold the lists. The companies have got to be here and they have to be removed from them. They have got to understand this legislation with a bit of meat on it. They have got to understand that. Punishment? Yes. They have to be punished for this. It is not a matter of saying “Compensation.” Compensation doesn’t work. Custodial sentences work. I think that is what it should be.

Q198 Chair: Stuart, do you want to add anything to that?

Stuart Merchant: No, no; I am fine with that.

Q199 Jim McGovern: My own background is the same as yours. I am from the construction industry and I know that the health and safety record in the construction industry is absolutely woeful. Would you be of a similar opinion as myself that it is not only trade union activities that lead to people being blacklisted, but it is people who become safety reps and try and highlight the hazards of working on a construction site?

Francis Graham: Yes, I do. A safety rep is not far from the power of a shop steward. As I said at the very start, companies should appreciate a good shop steward and a good safety rep because they are doing their job for them. Do you know what I mean? They are the people who are keeping the job safe. In construction agencies and on construction sites many people are still being killed to this day through bad safety practices, which employers turn a blind eye to. If you have elected good safety reps and elected a good steward, you are doing that employer’s job, but when you are doing his job for him he doesn’t like that, because he is the man who thinks, “I am the boss. I run this site.” If you are both good at your job, then you will find yourself being on the list. There are no two ways about that.

Stuart Merchant: I was once threatened to be thrown off a job in Fife for refusing to go into the service ducts because asbestos was falling off the pipes in great huge lumps. The site manager’s words to me were, “I’ve worked with that all my life and it hasn’t done me any harm up to now. You won’t work for me again.” I am afraid that some of these site managers still have the same attitudes to this day. Health and safety is low down on their list of priorities when they are doing a job. If you bring up health and safety, I am afraid your days are numbered with that firm.

Q200 Jim McGovern: Yes, that is my experience, too.

Stuart Merchant: I have just talked about the lad I knew offshore. He was a safety rep, not a shop steward, who got “not required back”. So, yes, health and safety comes into it.

Q201 Pamela Nash: In that case, do you think that some of the many deaths that have occurred in the construction industry over the last couple of decades could have been avoided if people were not put off from reporting health and safety problems on sites?

Francis Graham: There is a massive problem on sites with health and safety. If a foreman says to you, “I want you to go up that scaffold”, and tells you what has to be done, “That’s got to be rectified”, and you won’t until it is made safe, “You’re away, my son.” You’ll get a tap on the shoulder and you won’t be there come Friday because you are undermining your foreman. People actually do things that are unsafe. There are unsafe practices operating.

Q202 Pamela Nash: Because they are frightened that they will lose their jobs.

Francis Graham: Because they are wary about their employment. It is either feeding their family or taking the risk.

Stuart Merchant: You are talking health and safety. Firms nowadays—I suppose it is for insurance purposes or whatever—say that you must wear glasses, gloves, a hard hat, a high-viz vest, boots and a boiler suit. You have to wear all this when you are trying to work with wee ducts and bolts, but that is a different argument. But they don’t provide proper canteen facilities, proper prayer rooms or a locker for you to put all this gear that you have to wear during the day. You see lads getting on buses with a great bag full of boiler suits, hard hats and other bits. When you are talking about health and safety, it is not just safety. The health aspect comes in as well on building sites. We have gone back. We have actually gone back 20 or 30 years now. You have got lads sitting on old cable drums in a corner or in a metal container with a wee flask and their sandwiches, and their hands are absolutely manky because they have just finished working. That is the way that sites have gone now. Yes, health and safety does come into it, but if you complain about your canteen facilities or anything like that it is bye-bye.

Q203 Pamela Nash: That is a really good point and it has not been raised with us before.

Stuart Merchant: I am sorry.

Pamela Nash: That point has not been raised with us yet, so what you have said about facilities and the health implications is really useful.

Stuart Merchant: The facilities are just as important as the hard hat.

Q204 Pamela Nash: And that is current, is it?

Stuart Merchant: That is current. That is happening all over.

Q205 Pamela Nash: So we have health issues, but, back on safety, there are people whose lives could be at risk at the moment. They could be at risk of injury

19 June 2012 Francis Graham and Stuart Merchant

or illness because people are frightened to report the lack of facilities or safety implications on site.

Stuart Merchant: There is a hospital-building job going on in Glasgow right now. What do you call that hospital?

Chair: Southern General.

Stuart Merchant: Southern General. Apparently, it is right next to a waste water treatment plant. There have been lads complaining about being sick and what have you when they are working on this site. We actually worked on a waste water treatment plant in Dundee. It was right at the end of the job; actually everybody was paid off and there was only me and one other lad there. I saw a fax that came through, which was not for us but for some other place in Glasgow. On these sites you are supposed to be immunised against all sorts of things like Weil's disease. There was a great list. Peter Steuart actually went and got us injections. Do you remember?

Francis Graham: Yes.

Stuart Merchant: I didn't have them because I'm afraid of injections. But, seriously, when you are on a site like that you should have them. They didn't tell us about that, the same as Governments never told us about asbestosis for a hundred years. They don't tell you about things like that until it is finished. These lads working on this hospital site in Glasgow may well be getting affected by the waste water treatment plant that is next door, but they don't seem to think that is anything to do with safety. Firms don't look at that as safety. If you bring that up, they say, "Oh, that's nothing." There are things like that going on, yes.

Q206 Jim McGovern: If you are a safety rep, there is every chance that you are going to lose your job, if you are doing your job as a safety rep effectively.

Francis Graham: If you are doing your job, yes.

Stuart Merchant: What seems to happen, if you are a good safety rep, is that you will end up on a blacklist because companies will say, "Don't start him. He's unbelievable. He'll stop the site because they'll all want injections for Weil's disease. They are afraid they are going to die."

Q207 Mr Reid: I want to explore how you think the blacklisting system is now working. There was the raid obviously on Ian Kerr's offices. Is there some other secret organisation that has taken over that data and is still operating the blacklist in a similar way?

Francis Graham: I explained that earlier on. It went deeper in. It has more than sunk into my mind that they are still operating. That is why people to this day are still not getting jobs. None of these 3,000-odd people that he has done in basically will get a job. I could give you my blacklist, and you say to me, "Right, Francie, phone them up", but I'll not get a job. It is not because of my age, by the way. I'll not get a job.

It's like when you go to the dole. "What are you doing for work? Are you phoning up and getting application forms and filling in application forms? Can you show us a copy of your application form?" Companies don't work application form systems now. You get your job over the phone. It is not just companies; it is agencies

as well. You get your job over the phone. They used to ask for your national insurance number. When you gave them your national insurance number, you heard them on the phone tapping into their computer, and then they come back and say, "We are not looking for anybody at the moment."

Q208 Mr Reid: Are people who are applying for jobs today telling you that similar things are happening to them?

Francis Graham: There are people just not getting jobs, and it is not just because of austerity.

Q209 Mr Reid: They think that is because they are on a blacklist.

Francis Graham: The thing is this. They don't know because they have never picked up a phone and phoned Guney Clark & Ryan, or they may find themselves on a blacklist. Then, if they are not on a blacklist, they have got another mode of thought.

Q210 Mr Reid: Are you able to name any companies that you think are still excluding people from getting jobs because they are on a blacklist?

Francis Graham: As I say, there is no way that I could get a job with any of them. As Stuart was saying, I'll give you an example and I don't know if you want to follow this example up. As I told you, when I worked on Wembley Park station, I worked for an agency called Oracle. There was this lad that gave me a start and went, "Blah, blah, blah, blah, blah." He was actually a good lad, and he knew about this reference that I would have got from this contracts manager. He phoned me up one day and said, "Francie, would you like a job on King's Cross?" I will tell you what his name is because he said to me, "Francie, if you say this to anybody, I'll deny it." His name was Mark. I said, "Mark, okay." He said, "But you'll need a reference." I said, "Just go to that contracts manager and you'll get a reference." He did that. He went and got the reference. He phoned me up a couple of days later, and he said, "Francie, no start on King's Cross." I said, "How's that?" This is exactly what he said. He said, "Carillion's blacked you." "Carillion has blacked you." I had never worked with Carillion. I can't spell their name. I don't know them. I will give you another instance. Again, we were working on Wembley Bridge. There was myself and this lad, Andrew Allison. Now, he's got a blacklist as well. We were working for an agency called Sky Blue. I don't know if you have heard of it. They were looking for lads for Terminal 2. Andy and I phoned them up. No problem. We got the start. They phoned us back two days later. They were quite open. They said, "You can't get a start on T2." I said, "Why not?" They said, "Crown House have blacked you." This was a girl telling us on the phone. She said, "Crown House have blacked you." They are brazen about it. They are not hiding it any longer. They are brazen about it, I'll tell you.

Q211 Chair: Both of those were some time ago, though, weren't they? That is not recent.

Francis Graham: It is not recent, but at the end of the day it is adding to the blacklist. That is telling you

19 June 2012 Francis Graham and Steuart Merchant

something about the blacklist. It is opening up a field of investigation.

Q212 Jim McGovern: Francie, you reckon that is still happening.

Francis Graham: Oh, definitely. It is definitely happening. I wouldn't deny that.

Q213 Pamela Nash: When were those instances roughly when you were told that you had been blacklisted?

Francis Graham: Do you know where Chelsea Bridge Wharf is? It is just opposite Battersea Park. There are all these flats up there. Can anybody tell me when those flats were finished because that is when it was?

Pamela Nash: We can find out when it was.

Q214 Jim McGovern: Are we talking about the '80s or '90s?

Francis Graham: No. It was, maybe, six to eight years ago.

Chair: We can check that out. I think that just about covers everything.

Q215 Pamela Nash: I have one last question, which goes on from that. You were told by admin staff that you were blacklisted. Is that what provoked you to inquire if you were on the blacklist?

Francis Graham: Yes, when I was told. A lad actually told me. He says, "This lad has exposed the blacklist. He blew the whistle on them."

Q216 Pamela Nash: Sorry, who told you that?

Francis Graham: This lad in Dundee. He told me this. He said, "Here's the phone number." So I phoned it up. As I said earlier on, blah, blah, blah, blah, blah, I got my blacklist, and you have actually got a copy of the blacklist file now.

Q217 Pamela Nash: Is that the same for you, Steuart?

Steuart Merchant: It was Francie that told me. He was telling me the story. He said, "I phoned them up and apparently I am on the blacklist." Just on the off chance I phoned them. As I said, I didn't think for a minute that I would actually be on a blacklist. I have worked my whole life being a foreman. I have never, ever, been disciplined in my whole working life for anything. I have still no idea why I happen to be on this blacklist or who put me on this blacklist.

Q218 Pamela Nash: Just to be clear, you have colleagues and friends, I take it, who might be on it but would not call up or contact Guney Clark & Ryan.

Steuart Merchant: I have colleagues who have not yet phoned up to find if they are on it. I have colleagues who are definitely on it because they have phoned up. Other lads haven't, for whatever reason. Maybe they don't want to find out what they have done.

Q219 Pamela Nash: But you are a good example. You did not suspect that you were on it. You wouldn't

have contacted them, apart from the fact that your friend suggested it.

Steuart Merchant: Exactly. To be honest, I think that there should have been more coverage of this—for somebody to have a blacklist and to have you on a blacklist for no reasons, no anything, and it doesn't say who put you on the blacklist. I have always been active in trade unionism. I have never been particularly aggressive, but I have always been active and I always thought I have done the right thing for people during my lifetime. It may well be that it is political; I don't know. For some reason or other, my name has been put on this blacklist, and I would, honestly, like to find out why, who put it on, what it was put on for and if it is still going on because there was no reason whatsoever for my name to be on this list in the first place.

Q220 Pamela Nash: I understand that. Just to finish this point off, do you think it would be better if the Information Commissioner's Office or whatever solicitors' firm has the blacklist should be contacting those who are on the list to let them know that there is information held on them?

Steuart Merchant: Yes. Whoever has information should be sending out a letter to everybody on the list and saying, "By the way, do you know that your name has appeared on this blacklist?" That should have been done from day one.

Q221 Pamela Nash: Do you, Francis, agree with that?

Francis Graham: I kind of agree and disagree with Steuart. I think they should be sending out information to the names and addresses that they have got and saying, "You may have been blacklisted. Could you send us these relevant details for us to clarify that you are on a blacklist?" Then they could send the blacklist out to them. I believe it was *The Guardian* that exposed this. *The Guardian* got hold of it.

Q222 Chair: *The Guardian* had chunks of it.

Francis Graham: That is right, yes, but other papers have kept away from it. They have kept their distance. I am led to believe that there was a wee bit in the *Daily Record* just the other week and a wee bit in the *Daily Mirror*. But, as I say, the press have kept their distance from the blacklist for their reasons.

Jim McGovern: Our inquiry is particularly relevant, Chair, given the current Leveson inquiry into computer hacking, phone hacking and so on, as to how organisations can keep people's names on a secret list. Possibly there will be a knock-on effect from the Leveson inquiry, which would force organisations, if they are still keeping secret backlists, to make people aware that their names are on a blacklist, hopefully.

Q223 Mr Reid: Steuart, was it the blacklist of Ian Kerr and the Consulting Association that your name was on?

Steuart Merchant: Yes. Did you get a copy of my blacklist?

Chair: Yes, we have got a copy.

19 June 2012 Francis Graham and Stuart Merchant

Q224 Mr Reid: Yes. How did you find out that you were on it?

Stuart Merchant: Francie told me and he gave me the phone number. He said he had been in touch with the solicitors and they told him that he may be on a blacklist. He said, “You should give them a phone.” I said, “I will not be on a blacklist.” Then I thought, “I will give them a phone.” This is what came back. I had to fill up some forms because they had spelt my first name wrong. They spelt my name S-T-E-U-A-R-T, which is very unusual. Everybody spells it wrong. Because they had spelt my name wrong, I had to fill up forms and this and that. Eventually, they sent me back a letter saying, “Yes, it is you.”

Q225 Mr Reid: That is from the Information Commissioner’s Office.

Stuart Merchant: Yes.

Chair: I am sorry. In fact we do not have that. Could you let us have a copy of that?¹ Unless you object, we will include that with the papers that go on line so that people can see what is happening. It is only Francie’s stuff that we have got.

Q226 Jim McGovern: That will be over and above that, Stuart.

Stuart Merchant: I have given you a copy of that.

Jim McGovern: I don’t think the Committee has it.

Q227 Chair: We certainly have not put it with the Committee’s papers. We will add that, given that you have been a witness. That just about draws everything to a close. I know that you are keen to get back to Dundee. It is not quite as bad as Bill McLaren used to say, “A day out of Hawick is a day wasted.” I am sure that it is possible to have days out of Dundee that are not wasted. Is there anything else that you want to say to us—any answers that you had prepared to questions that we have not asked—or do you think that we have covered things adequately?

Francis Graham: Honestly, it is my opinion that this goes deeper than Ian Kerr. I think it goes to the hub of the industry itself, to the people that run the industry. I think they should be at your inquiry. You should drag them here. It is a joint industry board for the electrical contracting industry. It is the Scottish Joint Industry Board for the electrical contracting industry. You may find this very strange, but the board and the unions amalgamated here. Because they couldn’t get their organisation in, they went over to America, because there are four joint industry boards in New York City. They went over and met with Frank Chappell, Eric Hammond, King of the employers and a couple of other employers. They brought this back but they couldn’t get it into operation. I believe it may be a bit of legislation. If an independent trade union and an employer merges, then who represents the worker? There was the problem. The joint industry board came into being on 1 January 1968, but they did not come in as a joint industry board themselves. They came in as a trade union and that has to be deeply looked into. You have, obviously, heard of John McAllion. John McAllion and I have looked into that for well over a

10 to 12-year period. John McAllion has a thing in *Hansard*. I don’t know if you have seen this, but the blacklist can stem from there as well.

Q228 Chair: Yes. I do understand your anxiety over the joint industry boards and I am aware of some of the background as to what happened there. But, again, it comes back to Alan’s point about whether or not we are able to deal with anything untoward that is happening now. That is, in a sense, looking backwards. The joint industry board is not operating as a trade union any more. That has been dealt with. We are now moving on. We have got a lot of information about the blacklist that the Consultancy Association was operating, and we are now going to look at some more detail about that and also whether anything is going on now. We could spend a lot of time looking backwards. I am not sure that that is going to be particularly productive for us. We have tended to turn our face away from doing that. I think we understand the point you are making.

Francis Graham: To be honest with you, it has to be a point that is taken. It is not just kept at the back of your mind but in the forefront of your mind. That is where it has got to be kept. As this inquiry goes on, you may find, “Hold on a minute. That name has been mentioned a couple of times.” I know for a fact that all this information here is something that the press are dying to get their hands on.

Q229 Chair: But most of that is publicly accessible, is it not?

Francis Graham: Not to my knowledge.

Q230 Chair: It is now. Our material is publicly accessible. We have added it. I know that Dave Smith is giving us a fair chunk of material that is going to be on the Committee’s website and therefore will be publicly available. As we go through a lot of this, we will at one time in the future fairly shortly be appealing for evidence, and most of that will go on the website and be publicly available except in circumstances where people, exceptionally, want either their entire evidence to us or their contact details kept private because of the fear that, if they were seen to be speaking to us, that would cause them to be blacklisted. We will have to treat that delicately. Otherwise, it is our intention that a lot of material we have about this will become publicly available. The problem, of course, is that, if you make so much stuff available, people lose the will to live ploughing their way through it. Quite often there are gems buried amongst a whole pile of papers that people do not pick up, but that will depend upon the attention that is drawn to it.

That covers all the points that we had to raise with you. It has been very helpful. We particularly wanted to hear from you as people in Scotland who would give us some information about how it affected you directly rather than us just dealing with it in the abstract. We are very grateful to you for coming along. I hope you appreciate the fact that we are taking this matter seriously and we intend to continue to pursue it. I draw the meeting to a close.

¹ Ev

Tuesday 10 July 2012

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Iain McKenzie

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Nancy Kelley**, Joseph Rowntree Foundation, **Dr Alistair Geddes**, University of Dundee, and **Professor Gary Craig**, Durham University, gave evidence.

Q231 Chair: I welcome you to this meeting of the Scottish Affairs Committee to discuss your report on “Experiences of Forced Labour in the UK Food Industry”. First, because we are the Scottish Affairs Committee, we do not have the same amount of interest in what is happening in the rest of the world; we are interested, but we do not have responsibility for exploring it. We are, therefore, particularly interested in the Scottish dimension. Secondly, we are tying this up in our own minds with the two inquiries that we have running; one is about blacklisting in employment, and the other relates to health and safety. We will want to tease out those particular issues from the report and give them a greater degree of salience than might otherwise have been the case, had we simply been reviewing the work that you have undertaken. Can you start by introducing yourselves and telling us a little bit about your background, for the record, before we go on to the body of the report? Who starts in these situations?

Professor Craig: We will go from right to left.

Dr Geddes: I am Alistair Geddes. I work in the geography department of the university of Dundee and have been there for about six years. My broad area of interest is human geography, around issues of population change and population inequality. I have done a variety of projects broadly covering that topic in the last few years.

Professor Craig: I am Gary Craig. I am currently professor of community development and social justice at the university of Durham, but I am also an emeritus professor in Hull, where I still have some tenure in the Wilberforce Institute for the Study of Slavery and Emancipation, which does what it says on the tin. Five or six years ago, I wrote a scoping report for Rowntree that looked at issues of contemporary slavery in the United Kingdom. From that, a number of initiatives have emerged, which Rowntree has been funding. There are other projects in which I have been involved outwith the Rowntree research and to which we may make reference later. Generally, they are in the area either of forced labour or of trafficking for sexual purposes.

Nancy Kelley: I am Nancy Kelley. I am deputy director of policy and research for the Joseph Rowntree Foundation. I lead our programmes of work that are focused around poverty and place, which include a large body of work on labour markets. Our forced labour programme sits within that, looking at deregulation of the labour market, experiences in the labour market, and poverty and inequality.

Q232 Chair: You have written a report. Tell us about it. The easiest way to set it in context is for you to outline to us, for the record, what your report was, how it was set up and what you discovered. We will then pursue some issues with you.

Professor Craig: I have a longstanding connection with Scotland. I think I am one one-hundred-and-twenty-fourth part Scots, which is why I thought it appropriate for me to wear my Gordon tie today. However, I will defer to my Scots colleague to kick off, since you have a focus on Scotland.

Dr Geddes: This project report was written in response to a call from Rowntree’s forced labour programme. Part of the overall programme was to try to gather testimony evidence from people who were in forced labour situations. Gary, myself and our other collaborator, Sam Scott, who is currently at Exeter university, put in a bid. Our plan was to try to gain a range of testimony evidence from across the food industry as a whole—what we called a field-to-fork case study—recognising the diversity of, and the different industries within, the sector, from agriculture and farming, and the labour attached to that, through to minority ethnic catering and fast-food restaurants, and a variety of processing sorts of jobs in between. In the end, it took us the good part of two years to do the research. We employed a range of researchers in five case study areas, the three main ones being the south-west of England, south Lincolnshire and east-central Scotland, which I guess is why we are here today. We employed what we called community interviewers. These people were foreign nationals, because we recognised that a lot of the issues that we were addressing were around migrant workers falling into particular sorts of labour situations. We used these researchers because we lacked the positionality and language to be able to do this research ourselves. They went on to do 62 interviews overall, with a variety of different people in the study areas. Some additional work was done in London by a Chinese researcher who came into the project a little bit later. Based on the interviews, which were translated and transcribed, we tried to draw out some of the common threads relating to the practices that people were experiencing that led them to be in conditions of exploitation that, in extreme cases, could lead to forced labour situations. In the research, we highlighted a number of what we called forced labour practices that we found were commonly used across a range of employers and parts of the food sector. There are 14 of those, which are detailed in the report. I will leave them for now; perhaps we can go into them in

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

a little bit more detail later. We then tried to identify a number of different forms of outcomes for the workers. We concentrated on five or six particular themes.

We were taking quite a general view on the subject of forced labour. Although forced labour legislation is now in place in the UK, we were interested more generally in the structural conditions that led workers, particularly migrant workers, into problematic positions, and the nature of the practices that they then experienced.

Professor Craig: It is perhaps worth saying that our starting point was the six indicators that the International Labour Organization has identified as constituting forced labour. The general view in this country is that the presence of a couple of those in an individual case is almost prima facie evidence that forced labour exists. Obviously, what we found was evidence not only of those six indicators but others of a wider range, to which Alistair has referred. We are talking about things like the withholding of documents, the threat of violence and so on. These were the kinds of issues that we were looking at.

Nancy Kelley: It may be helpful to put that in the context of some other studies and some of the structural factors that may be as relevant in Scotland as elsewhere. We have published a number of studies, including one by the National Institute of Economic and Social Research that looks at the business drivers of forced labour, and studies looking at the regulatory environment, the Chinese community and forced labour in Northern Ireland. At a very basic level, it is probably helpful for us to outline what we think the drivers may be in terms of the structure of the industries. That may help to connect to your inquiry into blacklisting.

We have a greatly more flexible labour market. A lot of regulation of the labour market is done primarily from an employer perspective. Within that, we see great pressure on costs in certain kinds of industries, leading to an intensification of work. When you take that with variability in labour demand, as you get in agriculture or, indeed, construction, it creates a two-tier labour force. You may have one set of workers who have relatively normal pay and conditions, and another set of workers who are subject to exploitation and forced labour. Layered on top of that is the increased use of agency and contracting labour, or bogus self-employment, which is really common in the construction industry. There is a set of structures in the types of sector where we see forced labour occurring, which would be true of agriculture but would be equally true of, say, care provision or construction. That is something that runs through all of our studies.

Q233 Chair: Can I make one point at the beginning? It is very easy to discuss this subject in an academic, dry-as-dust way, but some of these things are absolutely outrageous. It makes me wonder why you are not jumping up and down, and why, in many ways, the report has not been written with a greater degree of passion. Is that simply because you have to have academic credibility, and academic credibility means being boring? Can you explain to me the juxtaposition

of the outrage that I felt when I read some of this and heard it being described, with the academic language, some of which I do not understand completely, when it is on the page? Is that the only way that this can be dealt with?

Professor Craig: No. It is horses for courses. When you write a research report on something that is highly emotive and controversial, the danger is that the media will get hold of it and produce some rather trivialised account, but you are absolutely right to be outraged. We are talking about kinds of situations that might, in extremis, lead to death, at worst, or, conceivably, to rape, serious injury or very serious hardship. I managed the case study in south Lincolnshire, where people have gone into the labour market, been blown out the other side as a result of exploitation by employers, and are now alcoholic or drug dependent and living rough on the banks of the river outside Boston. They cannot or do not want to get home, or they are barely able to make decisions. They are people who have been through this kind of situation; they have not exactly lost the will to live, but they have lost the capacity to make sensible decisions. They certainly have no ability to engage with the labour market any more, because of the way they have been treated there. If you are outraged, we are, too. If we were speaking to camera in various other kinds of situations, we might dare, rather like Andy Murray, to let a little of our emotion slip.

Q234 Jim McGovern: Thanks to Alistair, Gary and Nancy for coming along. Alistair, I think you said that you took evidence from 62 witnesses.

Dr Geddes: That is right.

Jim McGovern: The Committee—and myself in particular—is currently trying to identify witnesses who would be prepared to tell us of their experiences. Rather than reinvent the wheel, do you think that some of the witnesses from whom you took evidence would be prepared to give us evidence? I realise that the work force can be very transient; people may be there for the summer season and then go back to Poland, Lithuania or wherever.

Dr Geddes: That is a good question. You are right to say that one of people's responses when they have problems is sometimes to try to escape them in whichever way they can. Sometimes, for people who are migrant workers, that means going back. Going back is not necessarily the solution, as some people who went back were very ashamed to carry with them stories of what they had gone through or, if you like, gone without, in the sense that they had not made money, had not made their fortune in the UK and had not seen the best part of the UK, which were the very reasons why they had come. They were going to an equally problematic situation back home; it is not as if they were just escaping.

You asked whether the people we spoke to could come forward for this inquiry. In theory, that is possible, but there are some riders on that. When we speak to these people as researchers, we say that we are doing so in relation to a specific piece of research. We give them a guarantee, if you like, that what we will ask them about is tied to a piece of research of which they have an understanding and for which they give their

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

informed consent. This is the due ethical process that we are required and obliged to go through. It is for both our benefit and the benefit of those whom we speak to. The first thing to do would be to find out who might still be in the UK and we could still make contact with. We would then have to tell them that there was a new inquiry. If they felt minded to give their consent for this inquiry, it would be up to them to do so, provided that they had information about it. That is the nature of the process that we would have to go through.

Q235 Jim McGovern: Obviously, this is an inquiry, whereas you call your project research. Did the witnesses who gave evidence for your research insist on anonymity, or were they quite prepared to be named?

Dr Geddes: They did not insist on it, but we structure our research in such a way that we have to think about that issue and confidentiality. Those are standard ethical principles to which we are required to adhere as researchers. While there are lots of quotations in the report to give the real power of what was happening to individuals, everything was through the use of pseudonyms. One of the things that we would have to think about is what reprisals a worker might face, if they were still in a work situation. We would have to be very mindful of that fact.

Professor Craig: We are talking about a situation that is criminal and violent. We are talking about people who, while they are the victims of what has been happening, still feel, as Alistair said, a profound sense of guilt, almost as if it is their fault that they find themselves in the situation, when actually it is often a combination of a lack of good English, accident and design on the part of employers. If you think of the parallel with victims of rape, it is fairly recent in policy and practice that victims of rape have been treated in a sensitive and careful manner that does not start from the assumption that “they asked for it.” I think that people have a very strong sense of guilt and, also, fear; they are very fearful.

We did offer people the opportunity to choose a pseudonym for themselves. Finding them was incredibly difficult, which is why it took so long. We engaged with community researchers. For example, to talk to Polish migrant workers, we engaged Polish interviewers. We trained them, gave them a very clear code of conduct, a code of safety and all the rest of it. I remember one of these interviewers ringing me up in a bit of a panic halfway through and saying, “I have sent you a transcript, and unfortunately I have used this woman’s real name. Please ignore the real name; this is the name under which she wanted to be known.” It is very difficult to find people who are prepared to speak about their experience, partly because half of them, on average, will have gone back to their country of origin or left the labour market. The remainder are anxious to continue their employment. It is a situation very much at the bottom of the labour market, where fear is one of the prevailing emotions that people feel.

Q236 Jim McGovern: I am the MP for Dundee West, so Dundee university is within my constituency.

There is certainly a perception that there is exploitation in the agricultural sector in Perth and Kinross and in Angus. Did your research concentrate on those areas?

Dr Geddes: That was the initial reason for choosing that area. It was to do with the concentration of large numbers of accession-country workers who were arriving in what we called east-central Scotland, including Dundee, Angus, Perth and Kinross, and Fife. As you know, that is the soft fruit area of Scotland, where a lot of labour is required. Given what we knew from other studies that had been done just before ours, on the conditions in agriculture, that was a reason to think about focusing one element of the study there. There were similar reasons for focusing on, say, south Lincolnshire, where Gary managed the project. We were looking at those industries.

It is important to say that we did not look just at farms. Some of the most powerful testimony came from workers who were working not on farms but in other elements of food processing. If you think about what elements of the food industry are found within that broad study area, there is actually quite a lot, as you move away from farms into processing, retail supply chains, and restaurants and catering. There are quite a lot of businesses there. It is not immediately apparent, but if you try to develop some sort of sampling frame, you start to realise that it is quite a big landscape.

Nancy Kelley: To be very direct, the same kinds of problems accessing respondents that the gentlemen to my right are reporting occurred across all of our studies. The likelihood of somebody who is currently experiencing forced labour feeling safe enough to give evidence to a public Committee is very slim. Perhaps people who have escaped situations of forced labour would. We focused on the agricultural sector because it is one of the sectors where we know that forced labour occurs. We could equally have commissioned research into forced labour in the construction industry or the care industry. If the Committee were minded to think about forced labour and the situation in Scotland, it might wish to consider the range of industries in which you have factors such as large numbers of vulnerable migrant workers and high levels of agency working.

Q237 Iain McKenzie: I presume that the witnesses you interviewed came from different areas of Europe. Was there a common theme running through their aspirations and expectations when coming to the UK for work? Were those the same, or did they vary from “I expected it to be the same as, or a bit better than, my own country,” to “The streets are paved with gold”? Was there that sort of variation?

Professor Craig: As you will recall, in 2004, when 10 new countries—eight of them in east and central Europe—acceded to the European Union, Britain, along with Ireland and Sweden, imposed the least strict conditions on entry. I have seen various estimates, but I remember the figure of about 60,000 being bandied around at the time as the sort of number that the Government were expecting. We now know that, since 2004, there have been something like a

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

million. Far and away the largest number came from Poland and, to some degree, the other Baltic states, but there is a very wide sweep. There have perhaps not been as many as people expected from Romania and Bulgaria, in the second round of accessions in 2007.

In their testimony to us, people talked about some of their motives for coming. It is certainly not a homogeneous picture, and people obviously change their minds. A lot of people came for what they thought would be a short time. They thought that, because there was such a differential in wage rates, they could come, make money and go back. In another study, for example, we interviewed a general practitioner from Poland who was picking strawberries near Selby. I am sure he could have been better employed as a general practitioner in Poland, but he was making more money picking strawberries in Selby for a couple of months than he was being a general practitioner in Poland. So there is that kind of motivation.

There is a bacon factory near where I live in York that used to cater for the barbecue season. It is July or August—ha, ha—so people are outside cooking their spare ribs and chops. A load of people came over on cheap flights from Cracow and places like that to Leeds-Bradford to work in the factory for a couple of months. The conditions there were appalling, but they put up with it, because they could make a lot of money quickly. However, over the time—we are talking now about an eight-year period—people began to change their views. Obviously, some people find their experience appalling and go. Some find their experience appalling and can't go. Some think, "Maybe it's worth staying"; perhaps they better themselves, bring their family over or partner with somebody in this country, and stay.

It was quite interesting to talk to the citizens advice bureaux in south Lincolnshire. They said that, in 2004–05, they were dealing with a lot of inquiries from migrant workers about labour market and employment issues. A couple of years ago, they were beginning to talk about housing and family benefits—where people could send their children to school, and what choice they had. There was clearly a shifting position. Within any migrant worker population—in south Lincolnshire, which has one of the two highest concentrations in the whole of the UK, we are talking about tens of thousands—there will be a range of motives. Those motives may change over time. Certainly, people came to better themselves—why wouldn't you? If somebody offered you the opportunity to go and work in America for six months and make a lot of money, you would do it.

Q238 Iain McKenzie: Did you interview anyone who had experiences elsewhere? I am thinking about the time—probably two years ago—when a number of migrants moved not towards us but towards the holiday markets of the Mediterranean, to work in hotels etc. I noticed an awful number of Romanians had moved in that direction. I am not sure whether or not it was easier for them to travel that way, but they had moved into positions that were below their skill levels. Was there any comparison between the

experience there and the experience of those moving in our direction?

Dr Geddes: The community interviewers collected information on prior jobs and the locations of those. The most common tendency was to have worked elsewhere in the UK, so we did not really explore that too much; it was not a major thing. Clearly, there was an element of movement that was important for the workers we have been speaking to. I imagine that some workers had been in other countries, too, with the opportunities that were available.

I will offer a few other observations from the Scottish element of the study. The first relates to what we heard from citizens advice bureaux in Scotland. I spoke to the one in Perth and, for the scoping report, we spoke to the national office in Edinburgh. They reported the same sort of shift in inquiries that Gary has spoken about. The second issue is where workers are coming from.

Q239 Chair: I have had waves of migrants into my constituency, and I can understand that pattern, but surely you still have a large group of people who are at the bottom and are experiencing the same set of problems as the first group who came. Unless I am mistaken, it is not as if the first lot have all been solved, and now they have moved on to other things, it is just that more people are coming in and those who have been successful have moved on to other problems, to do with housing, children and stuff. The other problems are still there.

Dr Geddes: Yes. That sort of clarification is very important. The other thing to say about these services is that, generally, they are not short of inquiries. There is a high volume. They would all admit that, generally, they are struggling at a local level, to deal with the level of inquiries that they have. That is certainly true. It is important not to homogenise where these people are coming from. Okay, there is a diverse set of countries, but even within the countries, we are finding that those who came first were probably some of the more go-ahead people, perhaps from the cities, and that those from rural areas followed later. Each group looks at the others rather differently. I guess it is the same as in this country, where those who are considered to live in rural areas are perhaps less willing to take a risk than those who are in larger metropolitan areas. That is important, too.

My next point concerns the profile of the workers we spoke to. If you think of the profile of migrant workers in general, you may think that they tend to be young, more male than female, and aged 18 to 25. A lot of the people we spoke to who were having problems did not always fit that profile. They were perhaps older than that and had some dependants either here or back home, which was one of the reasons that they ended up sticking it in some situations and not being as mobile as others. There was a sense that they had to cope on behalf of someone else. That was an important dimension.

The mix of workers in different places is different. It is very hard to get a picture of that, because the best data that we have had until the 2011 census has been the worker registration scheme, which tells you only about registrations. That is the best proxy we have had

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

for where in the country migrant workers have been at particular points in time. You can get that down to local authority level.

Nancy Kelley: I wonder whether I can add something about the differentiation between EU migrants and people who are illegally resident in the UK. I know that that second group formed a minority of the people who contributed to this research, but there is a real distinction in terms of levels of vulnerability, particularly in both this research and a piece of work that we did that was focused on Chinese migrants who were illegally resident in the UK. First, they are much more vulnerable and much less likely to come forward. Secondly, in answer to the question about people's hopes and aspirations, the difference for that group, in particular, is that they have often paid facilitators extraordinarily large amounts of money to come to the UK. That debt is being paid off by their family, so they have, if you like, an honour debt to their family in China of maybe £20,000—an impossible amount of money that is going to keep them here no matter what, earning and sending home. It is another example of the distinction Alistair is drawing between rural, more vulnerable, and urban, perhaps more sophisticated, migrants, as the Chinese migrants who are coming in to the UK now are generally from Fujian province and other rural provinces. They are from places where they have very low standards of living—desperately low even by the standards of low-income people in China, so conditions here look so much better. They are often being exploited within Cantonese-owned businesses, which is one of the more problematic hidden ends of the field.

Q240 Chair: I appreciate that that is an issue, but it is not an issue in Scotland to the same extent. In my focus, I have been looking at the Scottish dimensions of this. As I understand it, the study did not cover restaurants in Scotland. Is that correct?

Dr Geddes: Yes. We had a go at the minority ethnic catering sector, which is primarily Asian restaurants—Indian and Chinese—but it proved impossible to access interviews there within the time frame that we had. We therefore stuck with the three community interviewers we had, who were two Poles and a Bulgarian. We really focused on their knowledge of those two groups and also wider EU Accession countries.

Q241 Lindsay Roy: Thank you very much for that scene setting and contextual background; it has been very helpful. Obviously, this is a very challenging and sensitive area. Have you any idea of the scale of the problem? One incident is one too many, but you have done case studies on 62 people. Can you extrapolate from those in any way the extent of the discrimination and victimisation that is occurring?

Professor Craig: I can give you a couple of answers, neither of which will be entirely satisfactory. First, the 62 we ended up interviewing were those we considered were in or near forced labour. It sounds rather disrespectful to say this, but we discarded people: in a number of cases we got halfway through

an interview before deciding that they were not in quite that situation. There was a wider pool.

If I may, I will take you back to the debate about trafficking for sexual purposes. When Harriet Harman was Minister for Women and Equality, she relied very heavily on an early piece of research by the university of North London. When someone asked the question about numbers, she stood up in the House and said, “We think there are somewhere between 1,470 and 147 women trafficked for prostitution into this country.” It is obviously a slightly silly kind of estimate to come up with, but they were just saying that that was the range. Now, 10 to 12 years later, we know—I could explain how we know—that the scale of the problem is that probably 10,000 to 20,000 women in this country have been trafficked for sexual purposes and are operating in small brothels in every street. I think the debate about forced labour is probably about where the debate about trafficking for sexual purposes was eight years ago.

Q242 Lindsay Roy: So we are just touching the tip of an iceberg?

Professor Craig: First, we are saying that forced labour is clearly a very serious problem. Secondly, we think it is very much larger than we are able to defend as a number at the present time, but in a few years' time—hopefully, less than eight years' time—I think we will get an idea of the scale. The three of us could each give you a kind of estimate, but it would be an estimate that suggests that it is a serious enough problem. Clearly, there are mechanisms that are taking it seriously. The Ministry of Justice in this country has estimated how many prosecutions it might pursue every year, and so on, and there is legislation in place making it a criminal act.

Q243 Lindsay Roy: But it would be an informed estimate.

Professor Craig: We have not quite got there yet, but in our report in the autumn we will do the best we can with the data that we have available. I am sorry to be slightly tantalising, but I am anxious not to make a statement about numbers that then becomes a kind of gospel or holy grail. I spoke about trafficking because there was a very unpromising early start. I will tell you one of the reasons why the estimate for trafficking came about. The police instigated a couple of broad sweep exercises called Pentameter. One chief constable went into a large market town in a small rural authority and told the chief constable covering that area, “We are here to look for indications of trafficking for sexual purposes.” The host chief constable said, “You won't have a problem. We know that there is only one brothel in this area.” The Pentameter sweep found 58 brothels in that area. If you assume that they are all small brothels with, let us say, three women, the vast majority of whom have been trafficked for sexual purposes—the data are available from the Met in London and so forth—and factor that up, you get into numbers that are around 10,000 or more. In Scotland, that would turn into an estimate of 1,500 to 2,000 women trafficked for sexual purposes. In her recent study of trafficking in

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Scotland, Baroness Kennedy took the numbers very seriously.

Q244 Lindsay Roy: What percentage of those whom you initially contacted were not followed up? How many out of that sample of 62 did you interview in the Dundee-Fife-Perth area?

Dr Geddes: It was roughly a third of the 62; we tried to divide it up evenly. On top of that, there was probably about another 10% of people we spoke to initially. You have to remember that, when you are trying to advertise or recruit people for a study, you cannot just say, "Have you been in a forced labour situation?" It is a legalistic, academic concept that needs a bit more colour, so you need to do a little bit of exploratory work first. You will find some people who think they have a grievance with their employer for some reasons but, later on, once you sift through things, you realise that actually their situation is less extreme or less poor, if you like, than what other people are experiencing, and that there might be a different way of trying to sort out a problem like that. This is why we trained our interviewers, so that they could try to do a bit of sifting. We were in close contact with one another and them all the time about how they selected people.

Q245 Lindsay Roy: Can you detail the methodology that was used to interview the migrants?

Professor Craig: To take an example of the recruiting, in places like Boston, where there is now a long history of migrant workers, and in Selby, where there are actually shops that are run by co-nationals—a Polish delicatessen, a Polish grocery, a Polish café and so on, run by Polish people—you can put a notice in the window saying, "Has your employer taken your passport and refused to give it back?", and one or two other questions like that. It would be in Polish or in Latvian; we had it translated into six or seven languages. Often people would come through local brokers—they might be a local outreach housing group or a citizens advice bureau—and be passed on to the community researcher. You can see that there is a bit of atrophy, anyway, because there is a bit of a chain before they finally reach you.

Q246 Lindsay Roy: Thereafter, were they interviewed in a social context, within a community centre?

Professor Craig: They were interviewed in a context in which they felt comfortable. Sometimes we had only a mobile phone number for people. Often, these people were living in the most isolated situations. They might be living in shacks or caravans attached to farms, which might have a bus only three times a day. It was up to the community interviewer to determine with the respondent when and where they would interview them. That is why we took the issue of safety quite seriously. The last thing we wanted to do was to send a young woman—and they were nearly all young women—into a situation, in the dark, in a place she might not be familiar with, to meet someone she had never met before, particularly where we knew violence and criminality were part of the going business.

Q247 Lindsay Roy: In your sample of 62, what were the most common themes that came through in terms of exploitation?

Dr Geddes: In the end, we identified 14 practices of exploitation. We tried crudely to quantify which were found most frequently and which were found less frequently. A lot of people had problems with issues around the way in which wages were paid. It could be withholding of, or deductions from, wages. A lot of people came forward and said, "We have had stuff taken off," or "Our wage rate has been varied, and we don't know why."

Q248 Lindsay Roy: You are paying for accommodation.

Dr Geddes: Paying for accommodation, paying for transport—things like that—at levels that had not been agreed beforehand. That often left people with next to nothing—very little.

Q249 Lindsay Roy: Was there berry picking at below the national minimum wage, paid by results?

Professor Craig: Very much so.

Dr Geddes: Yes. One of the most complex areas is probably the relationship between the national minimum wage and the piece rates that are applied in particular standardised forms of manual labour. The notion is that they should always meet the national minimum wage, but clearly people did not feel that that was always happening.

Q250 Chair: Can you run that past me again? You said that people did not always feel that that was happening. They were either getting the national minimum wage or they were not.

Dr Geddes: If, let us say, you are picking, it is contingent on your managing to pick a number of punnets or crates—whatever it is—within a day. The assumption was that you met that target, so another thing was targets.

Q251 Chair: Are you saying that a number of these people were not being paid the national minimum wage?

Dr Geddes: That seems to be what is happening. You are set a target. If you achieve that target by the end of the day, you will have met the equivalent of national minimum wage per hour.

Q252 Chair: I am not all that familiar with the national minimum wage legislation, but surely there must be something in there that deals with this. There must something in the national minimum wage structure that says that, if somebody is on piece work, it is expected that it will set at a level that would normally allow them to get the national minimum wage.

Professor Craig: Chair, if I dropped you in the middle of Lithuania and put you to work picking strawberries, and if somebody came up with a wage slip at the end of the day or, indeed, gave you a contract of employment at the beginning that you did not understand, could not read and felt—

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Q253 Chair: I understand all that, but next week we are going to meet the National Farmers Union Scotland and the Scottish Food and Drink Federation. We will raise some of these issues with them. That is why I want to be clear about what you are saying to us about the national minimum wage. Are you saying that some of these people are not being paid the national minimum wage?

Nancy Kelley: Yes.

Professor Craig: Yes.

Dr Geddes: Yes.

Q254 Chair: That has the merit of clarity. We want to be able to say to them that that is the evidence that we had from you.

Dr Geddes: But for us to work that out, we had to take account of the piece rates they were working at.

Q255 Chair: I understand that. It seems to me that the question of deductions is a different issue. What they are getting in terms of payment and the national minimum wage is the issue that we will want to pursue; the other things are separate.

You said that you had 62 interviews; if you divide them up roughly, that is 21 in each area. You said that you had an extra 10% that you did not use, which is another three or so—25, say. Suppose that the NFU says that all you have is 25 malcontents, that they are not typical and that you managed to find the worst possible cases. If you went to my constituency and searched around, you might manage to find somebody who had a harsh word to say about me. I know that is difficult to believe, but if you searched long enough, you might find a malcontent. How do we know that the people you have identified are typical as distinct from atypical? How do we know that the circumstances they were in were being experienced by another 50 or 100, and that, therefore, they were genuinely the tip of the iceberg? To what extent are these people the iceberg—or icebergette?

Dr Geddes: It is a good question. The first thing to say is that getting 62 translated and transcribed interviews from people in the situations we are interested in takes a long time. I think we asked a lot of the people we employed as interviewers. One hour of verbatim transcript of conversation takes a long time not only to put down on paper but also to translate from your own language to English, which is what the interviewers did.

Q256 Chair: I do not care about that—that is your problem.

Dr Geddes: What I am saying is that this is quite a big piece of work. The point is that, when we interview 62 people in different situations, what emerges is common types of practices across those different people. We are recognising from the individual circumstances a number of commonalities. I think that is the powerful thing about this report.

Q257 Chair: All right. There is a commonality between these 62—or 25, say, in Scotland—but how do we know that that applies to another 2,500?

Nancy Kelley: I wonder whether I might help you.

Chair: You can tell me. We are going to have to raise this with people we see next week.

Nancy Kelley: There are two things to say. First, this is not a very well-researched area, but the findings from this study are consistent with a number of other studies in the agricultural sector, anecdotal evidence and wider evidence around the prevalence of forced labour and the nature of the practices in this sector. It is not just this report—there are a number of research reports that speak to this issue. Secondly, this is not about bad apples, if you like—it is about the way that the food and agriculture industry is structured now. It is not simply one or two extremely nasty farmers, as it were; it is about the fact that increasingly farmers are using agency labour—gangmastered labour—and do not necessarily have full view of the conditions those people have been recruited under. They may not necessarily know that they have paid a facilitation fee or what deductions are being made for accommodation. If you look at the agriculture business, you have big purchasers putting downward pressure on to the farmers, and the farmers contracting out for their labour via gangmasters. People all along the chain are in ignorance of various pieces of the picture at different points of the chain. These practices came up across a number of industries in Scotland. The same sorts of practices have come up across a number of industries not only in the UK but across the EU. They are related to the shape of those industries and to the prevalence of insecure, seasonal, migrant labour.

Q258 Lindsay Roy: The key question we will be faced with is: how robust is this, and can you name names? Who is putting pressure on whom, including companies?

Professor Craig: It is certainly robust. I am sure the NFU will not want a lecture on social research methodology, but in a researcher's mind there would be two ways of approaching this problem. One would be to get the whole population of people experiencing forced labour into a room, to do, let us say, a 10% sample and to see what came up. With even the most generous resources that Rowntree has available to it, that is clearly not open to us, because these people are not going to be herded into a room. The other way of doing it is the qualitative approach: if you are satisfied after a certain period of time and have built up a sufficiently robust sample, 60 is regarded as perfectly adequate. The first research report that the Department for Work and Pensions ever produced was called "Thirty Families", so if it is good enough for them, it is good enough for us. If we had found 30 saying, "This is happening all the time," and 30 saying, "No, it's not," there might some questions about whether we should do another 30. However, if, as Alistair said, you get to the point with 60 where the messages you get have a very common core—it is called saturation sampling—and the broad picture is consistent, that is regarded as perfectly robust.

Q259 Lindsay Roy: I accept that. From the evidence you have given us, what we are looking at is structured and systematic. Pressures are being put on various suppliers—can we name names?

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Nancy Kelley: It is an interesting question. The big supermarkets are all actively engaged in trying to get rid of forced labour in their own supply chains and have worked closely with JRF around issues such as strengthening the remit of the Gangmasters Licensing Authority. In that part of the food industry—from the big players, if you like—there is no argument about the fact that forced labour practices exist and that it is important for them to eliminate those practices from their supply chains. We have worked quite closely with all of the major supermarkets on that. How you best do that is the challenge, but food and agriculture is one of the sectors where there is an acceptance among the people working in the industry—we have also worked with the NFU—that forced labour exists in the supply chain. In other sectors, like care and hospitality, industry people might say to you, “No, this isn’t a problem.”

Q260 Lindsay Roy: Right now it is soft, soft fruit, because of the not sun-drenched, but drenched, strawberry plants, raspberry bushes and so on.

Professor Craig: I can add to what Nancy has said. While the major supermarkets certainly talk a good talk, it is not always clear at the moment that they are walking the best walk. We now have this proposal for a grocery adjudicator, which did not come out of a situation where everyone was satisfied with the performance of the groceries. The point is that, because of the way the food industry is structured, the supermarkets are part of a broad industrial framework that creates the conditions for forced labour to happen. It is not simply a question of Morrisons, Sainsbury’s or whoever it is saying, “We are doing our best”; it is actually a systemic problem of which they are part. For example, if they say, “We want 300 dozen lettuces by 9 o’clock tomorrow,” that puts downward pressure all the way through.

Chair: I know that a couple of my colleagues have to go off for a question about Remploy, because they have Remploy in their constituencies, so we will jump and take some of that just now, if we can.

Q261 Jim McGovern: Gary, earlier you said that you did not think that the Bulgarian and Romanian communities were so heavily involved. My understanding is that the report took four years. I know things move on and evolve. In trying to identify potential witnesses for this inquiry in my community in Dundee, I have approached members of the Polish community. The people I have spoken to have said that, by and large, the Polish community has moved up a level, and the people who are being exploited, particularly on farms, are Bulgarians and Romanians. You say you think that they are a minority, but that seems to be at odds with what I am being told locally.

Professor Craig: I would say a couple of things. First, by 2007, when Bulgaria and Romania acceded to the EU, it was already clear that the playing field was going to become much more level across the EU as a whole and that the restrictions that Britain, Ireland and Sweden did not put in place, compared with other countries, were going to evaporate. A Romanian deciding where to go has a much freer choice across the EU, whereas the Poles were much more directed

towards a limited number of countries. Historical connections are often quite important, too. Romanians have a much stronger cultural connection with France and Italy. If I were a Romanian, I would almost certainly go to France or Italy. Romania is essentially a Latin country, and the culture is very similar.

Q262 Jim McGovern: I am trying to avoid talking about race or nationality.

Professor Craig: These are important choices that people make. If I were Romanian, I might find myself more comfortable in a country with a culture that is more familiar to me.

Q263 Jim McGovern: Do you disagree with the Polish person who said to me that the people who were being exploited most in Tayside, Fife and Angus were Bulgarian?

Professor Craig: No, I think there are local conditions—

Q264 Jim McGovern: Let me finish, please. A number of Polish people have said to me, “The Polish community is no longer the most exploited. The most exploited now are Bulgarians and Romanians.” Are you saying that that is not accurate or true?

Professor Craig: No, I am saying that there may be very specific local situations. If I talk about Boston in south Lincolnshire—

Q265 Jim McGovern: Maybe Alistair could answer. He is at Dundee university.

Dr Geddes: In Perth there is a project called MEAD—the Minority Ethnic Access Development project—which is a local initiative that was set up by Perth and Kinross council, with the citizens advice bureau and a few other local players, to try to provide some sort of information service for migrant workers. When I spoke to people there, they seemed to suggest that, in more recent years, more of the people coming off farms to them with issues have been Bulgarians. That does indicate that there is some level of dynamism. I have one caution, though. When you speak to the Polish community, you may be speaking to people who are quite settled in the Dundee area, and they may not have very much to do with other Poles—say, those coming from other parts of Poland more recently. From our perspective, it is hard to know what that community’s shape looks like.

Q266 Jim McGovern: That is what I am trying to determine.

Nancy Kelley: I wonder whether I can add something that might make sense of the pattern that you are describing. Migration literature generally says that people come, they settle and their conditions improve. One of the things that is consistent across this and all of the other studies that we have done on forced labour is the importance of not having English language skills in isolating these people and making them vulnerable. Based on that, it seems to me entirely sensible to say that, as people have been here longer and, perhaps, have acquired language skills, they have become better able to move out of exploitative labour situations and follow a similar

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

pattern to new migrants generally. They come here, are more vulnerable and have fewer language skills, but are able to progress as they stay. That would not be inconsistent with the way that migration generally works.

Q267 Jim McGovern: Obviously, I know that language must be a factor. My surname is possibly a bit of a giveaway, but my origins are in Ireland. Three generations ago, my family fled famine, poverty and so on in Ireland and came to Scotland. They were treated abysmally at that time. Language is obviously a factor, but it is not the only factor. It seems that the Irish community in Scotland has been pretty much integrated and that the Polish community is possibly becoming integrated, but it now looks like Bulgarians and Romanians are being exploited, certainly in the agricultural sector.

Professor Craig: We had a Bulgarian community interviewer. Partly because there was not enough business, as it were, for that person, he dropped out of the project. There was an interesting little insight when we did the local launch of this report in Lincolnshire. We were talking almost entirely about the experience of Polish migrant workers who came later and were still being very badly exploited. Two of the people in the room were a trade union official for the regional TUC in the east midlands and a representative of the Health and Safety Executive. Who were they? They were Polish migrants who had come in 2005 and had done very well for themselves. It is a very variable picture indeed.

Jim McGovern: If I may, I will offer a quick anecdote on that point. It concerns a constituent who came to my surgery—a Scottish guy in the construction industry who had applied for a job as a general foreman on a building site. He could tick every box in terms of health and safety and past experience—everything—until he came to the last box, which said, “Must be able to speak Polish.” That was for a building site in Dundee.

Q268 Lindsay Roy: Is there any monitoring in the Fife-Dundee-Angus area at the moment of the supply chain for the fruit supply that is going to shops and supermarkets?

Dr Geddes: I think all the big players that take soft fruit would say that they have schemes of traceability in place. You know the sort of thing that you see on a box of strawberries or something like that—it is down to producers. They would say that that covers what they are doing. In addition—and probably more importantly here—we would be thinking of the work of the Gangmasters Licensing Authority, which is able to look at those who are providing labour for picking the fruit.

Q269 Lindsay Roy: If you go back to the evidence that you had from individuals whom you interviewed, can you make the connection?

Dr Geddes: Make the connection between what?

Lindsay Roy: Between victimisation, exploitation and still being involved in the supply chain for a supermarket or whatever.

Dr Geddes: One case springs to mind. It was an extreme case of one producer from Perth and Kinross who was, I think, a rogue employer and quite quickly identified himself as such. He lost an employment tribunal case to two Polish workers. They were young guys who fitted the bill of not having any dependants to worry about, being quite confident and savvy, and having the persistence to look for assistance and to build a case. With the regional equality council, they took forward an employment tribunal case against this particular farmer.

Q270 Lindsay Roy: So there have been some breakthroughs?

Dr Geddes: There was one case where this guy lost at a tribunal. I do not know whether he paid the fine involved, but he was certainly ruled against. The supermarket that he had been supplying dropped him. His daughter then took over the business, because they would not deal with him, but she had problems trying to running it; I do not know whether it was because of lack of experience or whatever. I think that the business has now been taken over by someone else. At the end, in that case the retailer was aware of some problem and tried to do something about it, in the sense that the person lost the contract. You could argue about whether that is the right response. In some ways, it is, but does it address the problems?

Q271 Lindsay Roy: So there is some indication of effective sanction?

Dr Geddes: Yes, there was one particular case.

Q272 Chair: I am sorry about this, but a couple of people have had to go off to the report that is being made on Remploy. We have read the report, and you have given us the background. I do not want to go through that in enormous detail, exploring all of it, but it is worth while exploring some issues relating to remedies. When they are aware of the fact that they are being treated badly, do the workers raise this with their employer? If so, what happens? There is an issue of blacklisting and so on. We are interested in clarifying whether, if someone raises an objection to their treatment, they simply get slapped down, whether they are sacked, and whether that is then an example to the others not to raise anything. Earlier we raised with you the scale of the problem. You have said that, academically, a sample of 60 is sufficient. I must confess that I am not entirely convinced—it sounds slightly counter-intuitive—but if the NFU comes back to us on that, we may come back to you in due course. I would like to clarify what happens if people raise objections to the way in which they are being treated.

Dr Geddes: I think you just hit the nail on the head. The way in which objections are dealt with is often by slapping people down, as you said. People might say that they had a problem with whatever part of work they were doing, but often the response was, “If you don’t like it, there’s someone else who will take your place.” That sort of fear of reprisal or dismissal was very prevalent across our sample—it is not a quantitative sample, but we heard it so many times

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

that we were led to believe that it was something systemic, as Lindsay said.

Q273 Chair: Is there any evidence that, if someone raises issues and gets dismissed, they are then blacklisted with other employers, or can people go along somewhere else and just slot into another job?

Dr Geddes: I have read some of the depositions that you have received about the way in which blacklisting has been working in the construction sector. In the interviews in Scotland and, I think, the rest of the country, we did not hear anything about that sort of blacklisting going on. Of course, that is not to say that it does not happen in the industry, but it is not something that is routinely felt.

Q274 Chair: Maybe you cannot prove it from the employers' point of view, but you would have thought that, if someone has left one job, turns up somewhere else and finds that, as soon as he tells them his name, he does not get another one, that would be some sort of evidence. You are saying to us that there are no stories of that sort of behaviour going on?

Nancy Kelley: I think it is to do with the nature of the two different industries. In the construction industry, there is a lot more skilled or, at least, semi-skilled labour, so the incentives to organise and recognise individual workers when they present to you are much stronger. We are talking about no-skill labour. The people doing it may have many skills, but it is an extremely casualised work force. It does not surprise me that that sort of blacklisting did not seem to come out in interviews of this sort.

In order to complain, people need to know that something that is being done to them is illegal. With a lot of the practices that were happening, people might feel that they were being treated very badly, but they might come from a place where being treated very badly and unfairly was normal or they might not know what their rights were. That is the first hurdle to get over with this group. Then there is this business of people having it made very clear to them that they are completely expendable and being told, "If you don't want this job, I've got 20 more that want it and you're out."

Q275 Chair: I understand that. You can understand the point that we are trying to pursue, to relate it to other issues.

Nancy Kelley: The construction industry is one of the industries where there is a very high risk of forced labour, but very little study of the prevalence of forced labour has been done. It is worth noting—that, according to a TUC study, with about 58% of the three quarters of a million people who are registered as self-employed in the construction industry, it is a case of bogus self-employment, which is strongly associated with exploitative labour practices. In a sense, I am just reiterating. We happen to know a bit more about the agriculture industry and a bit less about some of the other industries where there are very strong indications that forced and exploitative labour is likely to be a problem.

Q276 Chair: Surely construction would divide into two different categories in terms of the bogus self-employed. One would be ethnic UK workers who are being forced into self-employment because the employer does not want people on the books. The second is labour gangs who are being brought in by gangmasters, where it is the same sort of issue. Is that fair?

Nancy Kelley: That is absolutely right.

Q277 Chair: What I would say to you about that is: prove it. If you have any evidence of something like that, give it to us, and we will be quite happy to pick it up, particularly if it relates to Scotland. We do not have a UK-wide remit, but we have been speaking to construction people and will meet various unions in due course. If you have any evidence of any of that, we will be happy to pick it up.

Nancy Kelley: The TUC has done most work on construction industry labour exploitation. If the Committee has not heard from it, I would strongly encourage you to speak to it.

Q278 Chair: We have had some stuff from the TUC, but we have not particularly picked it up. I find the term "exploitative labour" slightly confusing. It muddies the water a wee bit. I can see the bit about near-slavery, but a lot of employment is exploitative. You use it as a technical term in a way that normal people—if I can describe non-academics in those terms—do not. It is just a question of definition and misunderstandings.

Professor Craig: Can I go back briefly to your point about blacklisting? The labour market in south Lincolnshire has a very high concentration of gangmasters—about 56. The local authority is a bit bigger than Clackmannanshire, but it has a population of only 60,000. If a worker there is fearful of losing their job, to me that says something about the opportunities that they might think they would have of getting a job with one of the other 55 gangmasters in the area. I remember that, as a 22-year-old, I really hated the first job I got and walked out, because I knew I could get another job the next week somewhere else. If, in that kind of condensed, very concentrated situation, you are really fearful of losing your job, that does not say to me that you have a very good prospect of getting a job with somebody else. Intuitively, it suggests to me that there are informal networks among the gangmasters. When a guy is sacked, they may be asked where they worked before. When the person says, "I worked for so and so," you would get on the phone to them.

Q279 Chair: That is right, but the fact that someone may informally ring up somebody else is not a structured blacklist.

Professor Craig: No, it is not like the Consulting Association one that you have talked about before. In a sense, it mirrors the nature of the industry that you would operate in that sort of way. Nobody is holding a database, but you know who to talk to. If the population is only 60,000, a few phone calls are enough.

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Q280 Chair: Can I turn to the points that Ms Kelley was raising? She said that many of the people interviewed thought that they had no right to complain and so on. What support is available and what support ought to be available? I think we may now want to move on to the question of recommendations. As I said, we will have the Gangmasters Licensing Authority and other people in front of us in due course. I presume that, having produced a piece of academic research, you would like something to happen as a result, rather than its being an end in itself.

Dr Geddes: Absolutely.

Chair: I think we would like some guidance from you on who ought to be doing what, and how we could assist in pursuing this. We have seen your recommendations, but could you give us an outline of what is available to these people at the moment—I suspect there is virtually nothing—and of what ought to be available to them, and from whom? What should we be recommending to the Scottish Government, local authorities, the unions in Scotland and the Government here, for example?

Nancy Kelley: I will try to do it in some reasonable order. One of the issues is that the structures that already exist do not work very well for this group of people. We would say that the Gangmasters Licensing Authority has been very effective and should be strengthened. I know that it is interested in extending to being able to issue civil penalties, because criminal prosecutions in this area are so incredibly complex and expensive. We would certainly be supportive of that. We would also be supportive of the extension of the GLA's remit into unregulated sectors, partly in recognition of the fact that it has been effective and partly because there is some evidence that gangmasters have gone out of the agricultural sector and into other sectors, like construction, because the GLA has been doing its work well. I think the role of the GLA, which has proven to be quite effective, should be strengthened and, potentially, extended.

Chair: We had a question on the GLA. Since you have raised it, let us pursue that for a moment, rather than jumping about all over the place.

Q281 Mr Reid: We were going to ask just how effective the GLA is. Obviously, Nancy feels that it is effective. Do the other two witnesses agree?

Professor Craig: Yes. You should bear in mind that we did not have just the 60 interviews. We also had 10 or more interviews with what we call key policy actors in each of the areas: MPs, the Health and Safety Executive, the trade unions and so on. The common view—it was very widely held—was that the GLA was doing a reasonable job in an almost impossible situation. That has been made even worse by the recent round of public expenditure cuts. For example, in Boston, the local GLA inspector, who was very good, because she was on the ground and had community networks with CABx and so on, was sacked, so the intelligence on the ground has been lost entirely.

Q282 Chair: By “sacked”, do you mean “made redundant”?

Professor Craig: Yes, on the basis of there being no money to pay her, because the GLA had to downsize by about a third.

Q283 Mr Reid: Has a third of its staff been lost?

Professor Craig: A third of its inspectors have gone.

Q284 Mr Reid: Do you know what that is in terms of numbers?

Professor Craig: I could not tell you, but I know that the task that it already had, in terms of the number of potential sites that it had to supervise, was almost impossible. This person made very good use of local intelligence and knowledge. She is gone. If you have the GLA before you, Ian Livesey, the new chief executive, will say—probably in a roundabout way—that it is doing the best that it can with very limited resources, but it could do with many more. It is generally recognised as doing a good job. As Nancy said, most people feel that its remit should be extended into other industries to stop rogue employers or agents moving from one sector to another. Its powers should also be strengthened. Interestingly—I am sure you will know this better than I do—there has been an early-day motion opposing the cuts. Two weeks ago, there was an Adjournment debate in Westminster Hall from a Conservative MP for Cambridgeshire arguing that the GLA is in some difficulties because of the resource cuts and that resources should be increased. In our area of Boston, Mark Simmonds, who was one of the MPs involved in the original establishment of the GLA, is also arguing for an increase in its powers and resources. The Minister, Jim Paice, says it should concentrate just on the worst cases. I do not quite see the political or policy point of doing that. We know there are very bad cases; what we want to do is nail the rogues, as it were, and clean them out of the industry.

Q285 Mr Reid: What extra powers would you like to see it have?

Professor Craig: Nancy has already talked about the need for civil penalties. The problem is that there are very few cases. An interesting point is why the majority of successful prosecutions so far have taken place in Scotland, rather than in the rest of the UK. I do not know whether that is because the police or the criminal justice system is more assiduous in Scotland or because of better intelligence. The best-resourced prosecution case, which took place in Northamptonshire, where the police acted absolutely impeccably, as far as one can tell, collapsed because the jury found the defendants not guilty. I think the only conclusion we can draw from that is that there is a very poor understanding among the judiciary and the public at large of what forced labour actually means. That has now sent out a really appalling message that you can invest all the time and energy you like but you may still have a poor chance, even with a fair wind from the CPS.

Q286 Chair: Why are prosecutions so difficult?

Professor Craig: I think that is part of the reason. Obviously, the CPS has this test of a reasonable chance of success. When prosecutions are brought,

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

people may have only the poorest idea of what forced labour means. For most people, still, modern slavery does not exist in the UK—it is in a faraway place.

Q287 Chair: Are you saying to us that people can be prosecuted only for things like forced labour? I am struggling to see whether the issue is that the offences for which they can be prosecuted are so much at the harsh end of the spectrum that all sorts of undesirable things are not prosecutable. Is that what you are saying?

Nancy Kelley: There are two things. One is that the offence of forced labour in the Coroners and Justice Act 2009 is at the extreme end. As you know, the burden of proof for criminal prosecutions is very high, and the complexity of the process of gathering evidence across multiple agencies for that kind of case is very difficult. That is why the idea of civil penalties, which are easier to operate and can be applied to a wider range of circumstances, is useful. Of course, there are lots of other illegal acts that are happening here. The question is, why do things like employment tribunals serve this group of people so badly? Why is HMRC not more involved when, as you rightly noted earlier, potentially very large numbers of people are not getting the national minimum wage and so on? There is a range of agencies that are not using the powers they have to intervene in these situations of criminality, using existing civil and criminal offences outwith the forced labour offences.

There are really two major points that come up, partly from this study and partly from the other studies. One is that there is a real lack of awareness across those agencies that this sort of extreme exploitation happens. If you are the Health and Safety Executive or HMRC, you are not necessarily looking for that; when you see the criminal behaviour, you do not look further to see whether there is anything else associated with that. There is a huge need for more awareness raising and training in all of the regulatory bodies that are coming into contact with these sorts of industries, and for police and other agencies, like unions or advice agencies, that are likely to come into contact with these sorts of situation. That is part of the picture. The other issue goes to the heart of what makes the GLA relatively more effective: the fact that it has an intelligence-led rather than a complaints-led system. Fundamentally, with workers this vulnerable and isolated—often physically, but definitely socially—relying on a system that involves their making a complaint, whether it is an employment tribunal or anything else, is always going to be quite weak. The GLA uses intelligence as a way of identifying employers where forced labour is a practice and proactively investigates. That is the preferential approach. You heard and we spoke quite a lot at the beginning of the session about how incredibly difficult it is to talk directly to people who are being exploited. That is absolutely no different for a regulatory body. The two factors are really critical. There is the awareness raising, training and collaboration across the agencies that are in contact with these people, but there is also the associated issue that this is the sort of hidden practice for which an intelligence-led approach is always going to be more effective.

Q288 Mr Reid: Can you tell us in what circumstances you think civil penalties would be appropriate?

Nancy Kelley: We would not comment on the detail of the civil penalties that would be available to the GLA.

Q289 Mr Reid: You felt that criminal prosecutions were only for the extreme end and that there were other circumstances where civil penalties were appropriate. I am just trying to find out about that.

Nancy Kelley: Some of the practices that would be immediately apparent around, say, underpayment, inappropriate docking of wages, inappropriate use of tied accommodation, charging of facilitation fees that are extortionate and so on—

Q290 Mr Reid: Are they already offences?

Nancy Kelley: Yes, but any given one of those things, on its own, does not constitute forced labour.

Q291 Mr Reid: Can civil penalties already be imposed?

Nancy Kelley: For some of them, but not by the GLA. When the GLA goes into an organisation and finds those sorts of thing happening, it would be helpful if it were better able to say, “There is labour exploitation happening here that meets these sorts of level and displays these sorts of characteristic. It doesn’t merit a criminal prosecution for forced labour, but none the less we are in a position to impose a penalty in relation to those practices.”

Q292 Chair: Why should it be able to impose penalties for particular things if they are not specifically GLA responsibilities? If there is somebody else—another organisation or structure—that has the responsibility to apply civil penalties for these sorts of thing, should there not be a referral system?

Dr Geddes: That is right, in the sense that one thing that has worked to some extent has been the ability of the GLA—reflected in the degree of prosecution in Scotland—to draw on information from other sources. Generally, we would look to encourage that level of information sharing. When you have a law that is designed to make extreme things a criminal offence, that is fine, but it takes a long time to build that evidence. Meanwhile, things are still going on. We are saying that we need a more flexible system.

Q293 Chair: I understand that and am not unsympathetic to it. However, if you are saying that there should be civil penalties for certain things, I think you have to tell us—if you cannot think of it today, perhaps you will write to us about it—what the certain things that should attract civil penalties should be, rather than just leaving it to us to work that out ourselves. We will then have to go off with a set of recommendations to somebody else and say, “Based on its experience, the Joseph Rowntree Foundation said such and such.” We will also have to look at whether the things that you are suggesting they should have responsibility for are already somebody else’s responsibility, in which case it will be a question of why these other people are not carrying out their

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

duties. If you are talking about creating new offences, we would like to have that spelled out. Again, it comes back to the question of language. The terms that you use, such as “exploitative labour relationships”, encompass a whole number of issues; that is academic-speak, as it were. Normal people-speak does not quite cover the same sorts of issue. We would want to have down in normal language what sort of things action should be taken on. I find it difficult to believe that the withholding of wages for various things is not an offence somewhere.

Nancy Kelley: It is.

Q294 Chair: Right. If it is an offence somewhere, presumably somebody has responsibility for implementing—taking action on these sorts of thing. It is difficult to see how we could get away with arguing that the GLA should have the powers to do something about that when it is already somebody else’s remit, if you understand the point.

Professor Craig: I have a couple of observations. One is that the crime of forced labour involves a combination of practices: you have to establish that more than one thing is happening. If you say that each of those should be the responsibility of a different agency, you get into a potentially very muddled, complex, bureaucratic situation. Let us say that it is simply one of the practices. Take the fact many workers appear from their wage slips to have had tax and national insurance deducted, but these are not then forwarded to HMRC. That is obviously illegal and should be dealt with by HMRC. If it is a free-standing offence, HMRC should be able to deal with it. If that is associated with, let us say, assault, where criminal proceedings could take place, or something else—the condition of the accommodation, illegal deductions for accommodation and so on—it becomes very complicated. The other point, obviously, is that the good thing about the GLA is that it focuses on gangmasters. That means that it can bring a very clear focus to bear on a sector of the industry where we know super-exploitation, or whatever it is, takes place. The issue is the fact that there is a combination of practices, on the one hand, that can be brought together under one criminal offence, and a number of separate ones. There may well be many situations where it is appropriate for HMRC to get hold of a gangmaster and say, “Right, we’re doing you.” It often does that. That would still leave situations where HMRC, on its own, would not have the powers to deal with a range of other practices.

Q295 Chair: Absolutely; I am obviously getting excited now. However, there is something that I am genuinely unclear about. Taking your example of tax and national insurance not being passed on—a scenario in Glasgow with which I am quite familiar, given Rangers football club—I do not see why that should not be passed to HMRC to deal with, because it is an offence. If you are saying to us that HMRC is not taking this seriously, we will pick that up in our recommendations. It seems to me that there is already a road for dealing with that offence. I am not sure about the value added by making it part of a bigger

umbrella offence that is more complicated and more difficult to resolve.

Nancy Kelley: I guess there are two responses to that. The first is to reiterate some of what I was saying before. The range of agencies, including HMRC, that might see some of these offences is not particularly aware of forced labour or extreme exploitation as an issue, so those agencies do not see the surrounding offences, if you like, or refer them anywhere else. You have a very real risk—we have precedents for this around immigration offences—that the employer gets caught and slapped on the wrist, if you are lucky, for not passing on NI, but none of the wider exploitation is picked up and dealt with. The analogous situation—

Q296 Chair: I see. Maybe I am expressing myself badly. If the Gangmasters Licensing Authority goes after somebody, gets them for several different things and farms those out, it should follow all the things through. HMRC would have to deal with one thing, but it would not have responsibility for following through on the others. Maybe we will say that there are existing powers but they are not being adequately focused and directed, and that there is a lack of co-operation and so on. In terms of what is achievable, if we start calling for legislative change, we are unlikely to be successful in the short term. If we say that organisations that already exist are operating too much in silos and should be co-operating, we have a much greater chance of having something happen more quickly. That is really what I am looking for from you.

Nancy Kelley: Your second proposition—that the organisations that are already involved and should be taking action are not aware enough, not informed enough and not acting in as co-ordinated a way as they could—is certainly true. There is definitely a lot of improvement that can be made to the existing system. Whether it is possible to be that co-ordinated is a bit of a moot point. That is perhaps where we would start to say, “The GLA understands and can deal with this issue in the round, and is more likely to pick things up and deal with them effectively.” I also think that there is something to be said for considering the relative importance of how it feels. We started with you—quite rightly—challenging us for having a dry and research-driven way of talking about this. That is entirely fair. If you use only the individual offences, you are not engaging with the deep and profound psychological harm that is being done to those people. That is what the forced labour offence does, but it is too high a boundary to meet.

Q297 Chair: Write to us and tell us what you have in mind, because I am not entirely clear at the moment.¹

Nancy Kelley: I am happy to do that.

Q298 Mr Reid: I want to follow up on something. You said that the situation regarding criminal prosecutions was different in England and Scotland. Can you expand on that?

¹ Ev—further evidence promised

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Professor Craig: No, I said that, pro rata, there seems to be a much higher rate of successful prosecutions in Scotland than there is in England.

Dr Geddes: That is right. There have been 33 prosecutions so far under the GLA's powers, and 20 of those have been in Scotland.

Q299 Mr Reid: Is that because there are more offences in Scotland?

Dr Geddes: No, I do not think so.

Q300 Mr Reid: Do the procurators fiscal in Scotland take it more seriously than the Crown Prosecution Service?

Dr Geddes: I put the same question to the GLA regional officer in charge of Scotland, northern England and Northern Ireland—who works with a handful of staff over that large area, by the way. He could not give us a clear answer as to why there should be that difference, but I do not think you attribute it to Scotland being different in terms of the extent of the problem. It is probably due more to another difference. For one thing, he as an individual has tried to make sure that the powers available to him are used fully, using the linkages that he has, which are different in Scotland. He alluded to the fact that he felt that he was able, possibly, to develop an approach working with other agencies in an easier way than might exist in parts of England. I think he was alluding to the fact that there is a simpler structure, compared with a more complex structure in England.

Q301 Mr Reid: By different agencies, do you mean the Crown Office rather than the CPS, or are there other agencies that are different?

Dr Geddes: I think he was referring to the Procurator Fiscal Service. Obviously, he had somehow managed to convince it to take seriously the situations that he was often bringing to it.

Professor Craig: This is a bit speculative, but there is an insight here from the area of trafficking for sexual purposes. It may be that police forces in Scotland are better trained. There was a time five or six years ago when police forces—certainly in England—had very little training in how to identify the victims of trafficking for sexual purposes. That issue was forced on them by the UK Human Trafficking Centre, which makes a difference. That is why they did the two Pentameter exercises and, within their limits, were reasonably successful.

If I may backtrack slightly, another insight from the trafficking area is that, if you have an organisation like the GLA that has all the understanding of forced labour at its fingertips, it can be very creative in the way it works with other agencies, as long as the other agencies know what they are looking out for and can work creatively with it. A range of tactics might be available. The GLA does not need to go down the forced labour route if there are others available to it. In the trafficking area, the UKHTC nobbled a number of people. Basically, it went to the HMRC and said, "We know these people are trafficking women into the country, but the burden of proof is too great. Do the Al Capone number on them—take them for tax

avoidance." That is how a number of human traffickers ended up in jail for considerable periods of time. They were able to get them for tax avoidance, using the HMRC's powers.

Q302 Chair: I think this confirms a number of our prejudices, which is always helpful. Departments are working in silos, but Scotland is a small enough area for people to know one another and to be able to break down some of these barriers. Maybe if England had regionalisation, you would have the same sort of measures, because currently they are dealing with one another only at the top, as it were. When we finish this, I will say that you should write to us if, on reflection, you think of anything that you wish you had thought of at the time. If you have any reflections on this area, it would be very helpful for you to let us have those. We are seeing the GLA next week, so normal academic timelines would not apply; we would have to have something fairly soon, if we wanted to pick it up with the GLA. I come back to the question of people we ought to raise things with and what you wanted to recommend. I think the GLA was your first one. We have to be somewhere by 9 o'clock, which gives you an idea that we are not pressing you to get through them all quickly. We would rather have it thorough than quick.

Nancy Kelley: The Employment Agency Standards Inspectorate is one of the agencies that has a kind of reporting mechanism and, therefore, does not do a good job in this area. It is really important to look at how that could work better to protect these people.

Q303 Chair: Is it not doing that now, in Scotland in particular? If not, why not? Is there a structural reason why it is not doing it?

Nancy Kelley: I could not speak to Scotland but, across the UK, the big issue is that it is not intelligence led, so it is not reaching into a workplace in the way that the GLA does at the minute. I think there is scope for much closer collaboration and sharing of working between the two.

Q304 Chair: Why don't they?

Nancy Kelley: I could not possibly answer that; I have no idea.

Dr Geddes: I do not have a clear view on that difference, other than my impression that, as I said, what the GLA has done in Scotland has been largely the result of having an individual in a particularly important place who, for a start, has come from a background connected to police forces there—his ability to use some of his existing relations may be another factor—and who has had a greater level of enthusiasm to drive forward his team to do things in a way that is not reflective of the situation in other agencies.

Q305 Chair: The particular organisation that was referred to by Ms Kelley—

Dr Geddes: EASI.

Chair: Has he been dealing with that, too? The efficiencies that were identified just now do not apply in Scotland—or do they?

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Dr Geddes: I think there are similar sorts of gaps there. They may not be identical to the ones in England; possibly, he has made a little bit more headway there. I think it would be interesting to find out how he has managed to do that.

Q306 Chair: We will ask about that.

Dr Geddes: I think that would be very useful.

Q307 Chair: And the next.

Nancy Kelley: I think that the way in which trade unions at national level have worked has been really effective, but getting more understanding of how they can link in at a local level, particularly via community organisations, would be really important, because that would help these workers to be able to access information about their rights and entitlements. However, it will need trade union reps with languages to work mostly with and through community organisations. It is really important to have a conversation with the unions about how they are working locally.

There is a really important conversation to have with purchasers in different supply chains, including agriculture, about how they can do better. A lot of good work has been done around ethical audit, but more can be done. In particular, there is some interesting potential around auditing terms and conditions—auditing agencies before you agree to have them in your supply chain, effectively, to make sure that any given agency, supplier or gangmaster is operating to an appropriate standard and is offering appropriate terms and conditions.

Q308 Chair: Are you finished on that?

Nancy Kelley: Yes.

Q309 Chair: Right. Let me be clear about this. We are going to have the NFU and the Scottish Food and Drink Federation come along, both of which I met when Dr Geddes was speaking at Holyrood in Edinburgh, and both of which assured me that it wasn't them—a bad boy did it and ran away. It was as if there are farms in Scotland that are operating furth of Scotland, so to speak, and have nothing to do with the National Farmers Union Scotland. It is not their members—they are rigorous, and all the rest of it. How should the National Farmers Union be dealing with what could be rogue farmers? How can it reasonably be expected to know what is going on? I have some sympathy with it; presumably, it will not know what is going on at every individual farm. If the supermarkets are not following these things down, how exactly do people know which farms are the bad employers? I was disappointed when, at the meeting in Holyrood, I asked you to name names and you declined—I was going to say refused—to do so. You have obviously had time to think about this. You can see how it would be immensely helpful to us if you were able to say, "Well, one of our interviewees said that such and such a farm was operating such and such a system of holding back wages." My colleague Lindsay Roy also raised the point about naming names. It is very difficult to pursue these things unless

we have particular examples. Can you give us them now?

Dr Geddes: No, I will probably continue to decline on that one, because of the nature of the way that we did our research. We were not trying to focus on that.

Q310 Chair: Would you be willing to go back to some of the people you interviewed to ask them whether they are willing to tell us which farms or businesses were treating them so badly?

Professor Craig: To get Alistair off the hook, let me say that I think you should put that question to Ian Livesey. Nancy made the point that the GLA is intelligence led. The intelligence it gets is from its inspectors, and the inspectors get it from local community representatives. In several interviews that I did in Boston in south Lincolnshire and the area around that, often with groups of people, somebody would say, "We know such and such a farm," and there would be knowing looks around the table. Everybody knew where the worst places were. People had reported them and, in some cases, the GLA had actually taken action against them. I think the GLA does rely on that kind of intelligence to pursue cases.

Q311 Chair: That is right. However, because it is working to pursue cases, it may feel that it does not necessarily want to tell us. Since you do not do anything about the information that you gather, we are asking you to pass it on to us. I understand why you decline to do that, but we are quite clearly asking you whether you are willing to pursue this for us. Otherwise, what else can we do?

Dr Geddes: One thing that I think would be very useful to focus on in your discussion with the farmers unions, both in Scotland and in other parts of the UK, is their relationship with the GLA. It is probably the critical thing to focus on, so that you get a sense from the farmers' perspective of how they think the GLA has been working, in the interests both of those who have nothing to hide and of policing those who should have action taken against them. That would probably be the most useful sort of thing to do.

Q312 Chair: We will do that anyway, and we will do the same thing with the Scottish Food and Drink Federation, but you are the ones in front of us just now. As far as we know, you have had dealings with people who have evidence of malpractice, and we would like to identify the people involved. If you are not willing to tell us directly, for the reasons that you have given us, we would like you to go back to them, if you can, to ask them whether they are willing to tell us which farms and enterprises were involved, in order that we can publicise that and pursue them. I cannot see why you would want to cover up for these people.

Nancy Kelley: Maybe I can answer that and then answer your question about what you would talk to the NFU about at the same time. The basic provisions of ethics in social research meant that, when Alistair spoke to people, he guaranteed them confidentiality. I think that, in all likelihood, we would have had no respondents to this research if we had said, "By the way, when we say 'confidential', we don't mean that

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

we are not going to pass on information about somebody from this farm having spoken.” It is not that Alistair or any of us is attempting to be unhelpful—we just can’t.

Q313 Chair: I understand that. I was asking whether you would be willing to go back to them and say, “We haven’t broken the promise we gave you or told anybody anything. We are now asking you whether you would agree that the farms or factories you named should be identified, so that the Scottish Affairs Committee can pursue this.” That seems to me not to compromise the promise you gave.

Nancy Kelley: Assuming that people were around and still in the country, which is very unlikely, it would be possible to go back, via the community intermediaries and organisations. I am just trying to be honest about the likelihood of people being prepared to take that kind of step.

Q314 Chair: If you are willing to try and can’t do it, I understand that. It is a question of not being willing to try.

Dr Geddes: I am trying to think about it from a procedural point of view—what we can and cannot do within the ethical approval system that we have to go through as researchers, through each of our institutions. There are quite specified conditions that we have to work under.

Q315 Chair: We have accepted that you will not spill the beans just now.

Dr Geddes: No.

Q316 Chair: We understand that. We are now asking whether you will go back and ask them whether they are willing to tell you, so that you can tell us.

Dr Geddes: First, there is the possibility of recontacting. As Nancy said, the number of people would be limited. Then we would have to make sure that what we were not trying to broker a piece of research. It would be brokering, but this is not a piece of research that we are doing.

Chair: That is right.

Dr Geddes: We cannot give the usual sort of guarantee, because this is not a piece of research that is being led by us. This is an inquiry that is being led by you, which is subject to a different set of conditions. We could possibly look at putting you in touch, but we would have to make sure that that satisfied the institutional agreements that we have to abide by.

Q317 Chair: We want to do something about bad people. I think you do as well, but you are in danger of appearing a bit too precious about it. If you are indicating to us that you are willing to try and help us do something about it, fine. I appreciate completely that it might not be possible. Ideally, you would have come along today with a list that we could take to *The Scotsman* saying, “These are the bad people.” I appreciate that you are not able to do that. I come back to what we should be asking the National Farmers Union.

Nancy Kelley: For me, there is a distinction between what the NFU can do and what individual people, or big organisations in the supply chain, can do. The NFU is a kind of industry body rather than—

Q318 Chair: We will come on to the supply chain in a minute. Let us take the NFU first.

Nancy Kelley: I think the NFU has a significant role to play in raising awareness among its members that this is an issue, about the kinds of thing that they should be looking out for in terms of the gangmasters they are working with, and about the risk factors for forced labour that they should be aware of. Although it sounds peculiar to say it, I am sure there are farmers who are not aware that the people picking their crops are experiencing this kind of forced labour, because some of what is happening is about the intermediaries. Some of what is happening is about the farmers, but there is a sort of basic starting point that says, “Don’t assume that, because it is happening on a farm, the farmer is aware, knows about it and is doing it on purpose.” I think the NFU has a huge role to play in terms of promoting that awareness and information, working with members to ensure that they are alert to those risks and that they are part of a whole network of people who are concerned to push forced labour out of the agricultural supply chains—the “working with good farmers” piece. Then the question is, how is the NFU working with the GLA to deal with the farmers who are knowingly, as it were, involved in forced labour? It is about getting it to focus on the way in which they are collaborating at that level. I think the two are equally important. As I said, it is important not to assume that farmers are deliberately and knowingly participating in this, just as it is wrong to assume that people buying from farmers are deliberately and knowingly participating in these practices.

Q319 Chair: In terms of your experience of Scotland, what is your impression of the position of the National Farmers Union? At Holyrood, I got the impression that the representative of the National Farmers Union was saying, “Nothing at all to do with us. None of the farmers is aware of any of this. We are operating in a condition of complete ignorance.”

Dr Geddes: I guess they might say that their role is to pay the gangmaster, and the gangmaster’s role is to pay the workers. In some sense, they are distanced from this, so if there are any problems, it is something to do with the gangmaster. As long as the gangmaster is licensed, there is no problem, so it is a problem for the GLA. In a sense, they can say, “It is not our problem. It is a problem for the people we are using to provide the labour.” It goes back to the issue of making sure that they understand the need for the GLA, so they can see that it is not just a sort of regulatory burden but that there has been some success from having a GLA that has used its powers in Scotland and that the potential to do more might be a good thing. I think that is something to discuss with them.

Q320 Chair: Okay. The next group was those further up the chain. Presumably, it is the Scottish Food and

 10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Drink Federation, as well as the supermarkets that are buying raw materials direct and selling them.

Nancy Kelley: I think there is much more that can be done around ethical supply chain auditing, basically. There is also much more that can be done about contracts. If the terms and conditions of labour for your labour provider are part of the contract the farmer has with the person he is selling up to, it creates a kind of contractual set of incentives for the farmer to be more interested in whether their labour provider is operating legally and properly. Indeed, it creates more of an incentive where farmers are employing directly. There is capacity to look at the contracting process and the service level agreements. It is clearly the case that downward pressure on costs contributes to this situation. I think that a conversation with larger-scale providers about the added value of not having a focus purely on cost when they are contracting—looking at wider productivity and quality issues and at the corporate social responsibility angle of wanting to eliminate forced labour from the supply chain—is also a really important part of this picture. Increasingly, the big supermarkets see this as a reputational problem for them, so there is leverage to have a sensible conversation in which you say, “If you have the type of business in which a huge proportion of the costs is represented by labour and you are contracting primarily on the basis of cost, you are upping the risk of forced labour happening in your supply chain.” There is definitely a lot more that can happen there, although the supermarkets—in contrast with most other sectors where forced labour happens—have, of course, done much more work on this already.

Q321 Chair: If the supermarkets have done a lot of work on this, why, in a sense, is it still continuing? I would have thought that, between them, the supermarkets and the Food and Drink Federation member companies in Scotland would be buying virtually all of the product. Everybody tells me they are aware of this and are trying to do something about it, yet it is still going on. Perhaps somebody is not being fully open. Unfortunately, *Hansard* reporters do not record a shrug there. Can you clarify for me whether you believe that the mechanisms that are in place are sufficient, or whether it is just a case of lip service being paid to some of these fine-sounding acclamations?

Nancy Kelley: We would say that some of what has been done has been good and well intentioned and has not been lip service. However, in a sense, it comes back to where we started. You have industries that work in a particular way, prioritise costs and have very high labour costs at the point of picking, in the case of food and agriculture. If the contracting process emphasises cost and cuts margins to such a degree, that does elevate the risk of forced labour in the supply chain. I think that purchasing practices are the area where more could be done.

Q322 Chair: I understand the argument about downward pressure. Presumably, however, if they calculated the appropriate fair price, given rates and so on, that would not in itself be sufficient to ensure

that either farmers or gangmasters did not exploit that higher price in order simply to make higher profit. Looking at it from the supermarkets’ end, as it were, it is not sufficient simply to alter price to reflect what would be fair.

Nancy Kelley: That is quite right. It is a very complicated, long supply chain in food and agriculture. There is a range of points of pressure. I think that it would be wrong to say that it is the responsibility purely of the big purchasers. Clearly, it is not; there are lots of people who should be accountable at each point in the chain. However, if the question is, “Can the big purchasers do more?”, I think the answer is yes. One of the ways in which they could do more is to look at the basic cost structures for their contracting. If the question is, “Can the farmer do more?”, I think the answer is yes. One of the ways in which the farmer can do more, where he is using gangmasters, is to take responsibility for checking the terms and conditions under which his pickers or packers are being employed—checking that the person they use is registered with the Association of Labour Providers, which is the trade association for good gangmasters. At each point in the chain, there is more that can be done. Similarly, we were talking about regulatory agencies, the police or people who come into contact with people who may be in conditions of forced labour. Unfortunately, this is not one of those silver-bullet issues. It will take all of those individual sets of people getting a little bit better, in terms of their own practices, to start to drive down the number of people experiencing forced labour in the industry.

Q323 Chair: Presumably, farmers would say that this was far too onerous for them. An individual farmer, running a farm, who may have people come in to pick potatoes or something else for a relatively short period, cannot have a structure that supervises all of these things when they do not use it all the rest of the year. Is there a model that they could adopt, or is this a role for the NFU as a whole? I am just anticipating defences that they would put forward.

Professor Craig: I would certainly want to ask the NFU how it polices its members in this regard, what the level of understanding is among its members and whether there are gaps in its membership that are more prone to being exploited. Clearly, we have situations where the Co-operative Wholesale Society may own thousands of acres of land and put managers in place. There will also be individual farmers and other conglomerates. Again, the picture is not a homogeneous one. To go back to Nancy’s point about the major supermarkets, there are clearly paradoxes and contradictions here, because the major four supermarkets in England, certainly, are engaged in a very fierce struggle for market share. The downward pressure on prices and costs is largely what is driving them. We would hope that there would also be some downward pressure in relation to terms and conditions, so those were equalised. However, I had evidence in Lincolnshire—I could point you to a trade union official who could give you chapter and verse—of how one of the major supermarkets manipulated the local situation to its own advantage and drove

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

people out of business because they would not meet its cost requirements. Hundreds of jobs were lost in the Lincolnshire area. So there is this contradiction going on. I do not know whether you intend to hear evidence from the Ethical Trading Initiative, but the problem is that most of its work at the moment tends to focus on commodities that come from outside the UK. Increasingly, it is becoming concerned about how it applies the ethical trading codes to organisations that are producing within the UK; you might actually give it a useful kick up the backside in that direction. I know Tesco will say that it signs up to the Ethical Trading Initiative, but I do not know what that means when you get down to the field.

Q324 Chair: You say that there are examples of bad practice in Scotland. Prove it.

Dr Geddes: I was just reflecting on what I was told when speaking to one gangmaster. This may be going back two or two and a half years. They was a licensed gangmaster who had supplied workers to a variety of farms and, indeed, other businesses. One of their frustrations with the GLA was that sometimes, when not clear about what was or was not right, they would speak to the GLA and get a rather in-your-face sort of answer. At the same time, the same gangmaster knew of situations where some farmers—presumably, not members of the National Farmers Union Scotland—had initially taken some labour from them or other gangmasters, but had then decided to cut out the gangmaster and source directly from abroad themselves. That is an example of a practice that should not have gone on.

Q325 Chair: That is not necessarily bad in itself, but only if they were treating people badly.

Dr Geddes: They are not licensed labour providers. Sourcing workers without using a licensed labour provider is an example of an operation that is illegal, right?

Nancy Kelley: Just to clarify, some farmers are also licensed labour providers, but not all.

Dr Geddes: But they need to be licensed for that purpose. They were doing that because, at the end of the day, they were getting workers more cheaply?

Q326 Chair: As distinct from simply cutting out the middleman's profit—they were actually getting them cheaper, and that was the intention.

Dr Geddes: Yes.

Q327 Chair: It is a serious point. If someone thinks that the gangmaster is raking off, say, 50%—a ridiculous limit—and decides that they can do it much more cheaply and pay people better by cutting out the middleman, that is not unreasonable.

Dr Geddes: Yes. This labour provider also said that farmers were getting offers from labour providers in other countries—who were not licensed in the UK—to supply workers to them for this cost. When they compared that with the cost that a licensed gangmaster in the UK could provide, they said, "I can reduce what I have to pay to get labour on to my farm by this much if I go with the first option." That is something that was reported. Reflecting the complexity of things,

this gangmaster acknowledged that, at times, they had subcontracted to another gangmaster to provide some additional labour. They knew that that gangmaster was using a labour provider in one of the accession countries who was not licensed there, too. They should not have been doing that, but they knew—or hoped—that the penalty would fall on the subcontractor, rather than on themselves. That is another example of a chain. They was spreading his risk; they knew he should not be engaging in that, but they were doing it. The overall sense that I got from speaking to that sort of gangmaster was that they knew that these sorts of practice were going on. They said that it was a very cut-throat business—those were their own words—that it was very competitive and that they were not surprised that these sorts of thing existed, as people tried to cut their costs all the time.

Q328 Chair: Can I ask you for your view of the National Farmers Union Scotland? Is it serious about trying to combat bad practice, or is it just going through the motions?

Dr Geddes: It goes back to the issue of the difference between an intelligence-led operation like the GLA and what the National Farmers Union Scotland is. It is a members' body and is not designed to police itself in any sort of extensive way. It is a lobbying body—an interest group—so it is designed for a different sort of purpose.

Q329 Chair: But it would also claim certain responsibilities to try to maintain standards and so on, wouldn't it?

Dr Geddes: Okay, but presumably a lot of those things are voluntary codes, or whatever they are. They are not designed in the same way as having an inspectorate. I would imagine that, among those who are members of the NFUS, there would be some grumbling about the GLA and the red tape burden but that there would be recognition of the need for it, having seen the reasons why the GLA came into existence in the first place and having heard of other, subsequent cases of problems in addition to that. I think there is some level of support—whether it is as proactive as it might be is a different matter. However, what can it actually do, apart from encouraging its members to support the GLA and designing some sorts of code and voluntary agreements?

Q330 Chair: There is collective pressure. If it was serious about pursuing the issue, it would be on its members' backs more than if it was just going through the motions. At the moment, I am not clear about whether it is in denial or whether it is serious about dealing with these things. When we spoke to it on health and safety, it was pretty clear that it is very keen to encourage its members to adopt best practice and recognises that there are major difficulties and so on. I think it is acting in good faith there. I am not nearly as convinced that it regards this as a serious issue. I got the impression that it is perhaps just a bit too much bother, that it will come into conflict with some of its members if it starts pursuing this vigorously and that it will, therefore, just shy away from it.

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Dr Geddes: I am sure one of the strong views that it would express is that it wants a system that works for farmers but does not involve a lot of their time to get the labour that they want. That is what it would want to say. It goes back to the nature of what it can do, beyond general encouragement. Of course, there is also the issue of how it knows about the level of a situation. It is not designed to know about that, other than to hope that people who know of problematic situations bring those forward to it. It is not designed to collect that information itself.

Q331 Chair: I am conscious that Professor Craig has to go off in five minutes or so.

Professor Craig: I am so sorry.

Chair: Life goes on beyond here; it may be regrettable, but apparently it is true.

Professor Craig: I am going to the Ministry of Justice next.

Chair: How can I compete? Is there anything that you want to add before you go? We will continue speaking to your colleagues, if that is acceptable.

Professor Craig: To summarise some of the debate of the last hour, our view would be that the GLA is limited in its resources and powers but is a fairly effective centre of a network of organisations. Each of them has its individual responsibilities. Most of them do not seem to know enough about the issue of forced labour, so the question of training and education is important. That would apply to the National Farmers Union. I think that when the National Farmers Union says, "It is nothing to do with us," probably what it ought honestly to be saying is, "We're not aware that it is anything to do with us," which is a slightly different answer. I think ignorance is no excuse in the face of the law. There should be training and education among these agencies, and better networking and tactical choices about how to respond to these practices. We are calling not for huge new legislation but for much more effective use of the existing range.

I will just add—either Nancy or Alistair may elaborate on this—that there are other routes into identifying forced labour. Again, those are areas where people perhaps do not know as much as they should. I am thinking particularly of the housing end. You often find people living in the most appalling situations, as you will have read in our report, in accommodation that is owned or controlled by labour providers. Here we have, possibly, the Health and Safety Executive, although its remit is mainly employment related; the fire and rescue service, certainly, which often ends up dealing at the sharp end with house fires in situations that are illegally in multiple occupation; and, of course, the public health inspectorates within local authority housing departments. They can all come at this from another end and bring their resources to bear, if the links with the GLA and other agencies are good. We see the GLA as a specialist organisation at the centre of these networks that could do an effective job if those around it were better informed and collaborated better, and, probably, if it were better resourced.

The last point is that one of the reports that we have not talked about that the JRF produced was a think-piece on the regulatory framework. There are the beginnings of an argument in there for some rationalisation, which would still have the GLA at the centre. We are not arguing for more organisations and more bureaucracy but, possibly, for fewer, with stronger and more effective powers and resources. Thank you very much. I am terribly sorry to have to go.

Q332 Chair: Thank you very much for your time. Nancy, you are working through your list.

Nancy Kelley: I know; I can't believe we are going through it systematically. I wonder whether I can say something about housing and the NFU, because I think there is something quite positive to be said there. I shall preface this by saying that I have not had a conversation about this with the NFUS, but I did have a conversation quite recently with the NFU here. One thing that the NFU has done, which is an example of how it can help, is promote with its members a much better understanding of what adequate housing standards look like and what adequate housing standards for seasonal agricultural labourers are. As Gary said, that is a really critical route into identifying situations that might be problematic. It is also important for a very wide range of other reasons, not least community cohesion in rural towns. The way in which these seasonal workers are housed is a really important issue, but it also gives you a sense of where there might be a risk of forced labour. I think there has been some very positive work there to build out of. It also opens up an interesting conversation about what that issue—housing—looks like from a farming perspective. The NFU has said to me, and I believe this to be true, that repeat labour is really important to farmers, in terms of their productivity. They would prefer the same people to come back every year to pick their strawberries or whatever, so treating workers reasonably well, particularly as regards the quality of housing, is very important. There is a business case, if you like, for doing a better job of that part of the pay and conditions of your work force, but they face a number of challenges around, for instance, planning that make it very difficult for them to do anything other than provide relatively poor-quality caravans that are in multiple occupation and so on. We have committed to exploring the potential to work with the NFU to do some analysis of the barriers to farmers doing a better job of providing housing for their seasonal workers. That is an example of the way in which the NFU can work in a very positive way to start to break the link with gangmasters who are operating illegally and are using housing as a really big part of that picture. The NFU can do a lot that is positive. From my perspective, those positive routes can sometimes be identifying what farmers' business needs are, as per housing and repeat labour, and saying, "You are interested in it for this reason. We are interested in it because it increases the quality of conditions for these workers and reduces the possibility of forced labour. What needs to happen to make it possible for your members to do a better job?"

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

It goes to the general point that, in any given industry, one is always trying to make it easier for the vast majority of employers, who want to do a good job, to do that good job and, therefore, to isolate, for agencies like the police and the GLA, those organisations that are being deliberately criminal. There is a lot that the NFU could do in terms of encouraging awareness, training, developing standards and supporting its members, as it does around issues like housing, that would raise the issue in a positive way and make sure that those farmers who want to do a good job know the kind of questions they need to make sure they are asking their labour providers. Where anybody else is still indulging in that kind of practice, that is a matter for enforcement and regulation.

Q333 Chair: Surely that is something that would be relatively easily evaded. Presumably, most farms would not have accommodation in situ for the entirety of the work force. Therefore, it has to be off-site. By definition, unless the farmer actually goes and supervises, it becomes a sort of tick-box mechanism. They say, “Assure me that you provide x, y, z and all the rest of it.” The person says yes, but the farmer would need to see and inspect all of it. Again, they would say, “This is not something in which we are trained. Why should we have to deal with that responsibility?”

Dr Geddes: We have not discussed this, but you make a very good point. I am not sure that a lot of accommodation is always off-site; I can think of a number of cases where the accommodation is entirely on-site, somewhere on a farm. You can think of fleets of caravans on a variety of farms in the study.

Q334 Chair: I see. Do you mean that their caravans are parked there temporarily and then move on—that they are themselves transient?

Dr Geddes: No, these are things that have been purchased by the producer to house the workers, because the location of production—the farm—is so far away from the nearest town that there is really no option other than to have workers there, particularly for the length of days they sometimes work.

Q335 Chair: So we should look for caravan parks.

Dr Geddes: Not caravan parks.

Chair: Near farms.

Dr Geddes: This is likely to be the nature of labour that certain producers will have to have looking forward from here. Often they are not going to source it from local towns and will have to source it from this form of migrant labour. Until now, there have been challenges dealing with, and having accommodation for, the numbers that they have needed to be in place, which has led to some pretty poor conditions, as we highlighted in the report. However, I agree with Nancy that there is a possibility that, if we recognise that this is going to be a long-term trend in the way in which labour is acquired for these producers, we can work with the NFU to realise that there is a level of permanency and standards that you can put in place. That would be a very good thing to pursue.

Q336 Chair: Is it not the job of local authorities to police this? Are local authorities in Scotland asleep on the job here?

Dr Geddes: No. Yes, it is the job of local authorities to do something about it, and no, they are not asleep. As a result of what happened, unfortunately, in Angus back in 2005–06, when a caravan on a farm caught fire and there were fatalities from that, there has been a good awareness that accommodation is one of the issues that you can use to get at forced labour situations, working with local authorities. That may explain the difference in the level of prosecutions in Scotland. I think the GLA in Scotland has developed very good relationships, at least with Angus housing team. I presume that, having done it there, it is looking to do it in other local authorities, too.

Q337 Chair: When we were at the meeting in Edinburgh, Angus was mentioned as an example of good practice. Is it therefore the case that the housing issues do not apply in Scotland?

Dr Geddes: Yes, they apply. I was just thinking of the area that we covered, in terms of the number of workers who are required in certain areas and where they get housed. The issues apply and are a challenge for producers.

Chair: That is right.

Dr Geddes: If you have 200 or 300 staff on your farm at a particular point in time, where do they go at night-time, if they are miles away from anywhere?

Q338 Chair: You can split the housing issues into two different categories. One is to do with the standard and quality of accommodation, overcrowding and all the rest of it. The other is the question of overcharging and stuff like that. The overcharging is not the responsibility of the local authority, but the quality of the accommodation is. If local authorities are on top of this, that bunch of issues should not be a problem in Scotland.

Dr Geddes: Yes, recognising that this is a process. They need to be able, first, to know about these accommodations. How do they know about them? I guess there must be some system by which—

Q339 Chair: They can drive about.

Dr Geddes: They are not going to do that, are they?

Q340 Chair: If there are 100 caravans, it is unlikely that they will be able to hide them.

Nancy Kelley: I wonder whether I can clarify the issue. It is really important to remember that the problems around housing are not linked solely to on-site housing. Quite often, the problems around housing are linked into the very poor-quality end of the private rented sector—just the mainstream private rented sector in the nearest market town, where people are hot-bedding and so on. In some cases, the whole of the labour force is on-site, and that accommodation can be of good or bad quality. There is a set of accommodation that is on-site, but everybody else is being bussed in and out from the nearest town. They are in the low end of the private rented sector and are likely to be in very overcrowded situations, with hot-bedding and so on. It is important not to assume that

 10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

the way to identify bad accommodation is to drive past the farm.

On the wider point of local authorities, housing is their responsibility and they do good work in this area. I am really heartened to hear Alistair say that they do particularly good work in Scotland. However, fundamentally, it is very difficult to regulate perfectly something that changes as quickly as this. In the conversation that I had just a couple of weeks ago with an NFU representative about housing, I asked, "If it were easier to provide more housing on your farm, do you think members would want to do it?" It was interesting that he said, "Yes. If we could provide more permanent structures and the planning were easier, it would be in our interest to do that and some members would do it." The advantages of exploring those sorts of option are that you are not pushing very large numbers of seasonal workers into the private rented sector of your nearest market town and, therefore, creating a crushed condition there, because, of course, there are already people living in the private rented sector of your nearest market town.

Q341 Chair: Has this dialogue with the National Farmers Union and gangmasters about the question of accommodation taken place in Scotland in the way that it seems to have done in England?

Dr Geddes: I know that it has taken place between the gangmasters and at least some local authorities. I presume that the NFUS has been involved; given that we had fatalities, I imagine that it will have been.

Q342 Chair: We will raise that with it directly.

Dr Geddes: I will make a few other quick comments. The idea of off-site accommodation does come up in Scotland when you have workers who are working in processing plants, which may be meat plants or fish-processing plants up in the north of Scotland. I think those situations are important. Thinking of what producers do, sometimes issues of accommodation stretch to things like cooking, cleaning, showering and bathing—those sorts of facilities. I think there have been very different ideas of what is acceptable, given a volume of people. There may be an idea that you need to have more kitchens, more shower blocks or whatever it is to cope with the volume of traffic. That is one thing. It involves making a recommendation that requires a change in infrastructure, so space has to be found. That is a process that takes time. Working out how that process is policed is the important thing that we are trying to think about.

Q343 Iain McKenzie: On off-site accommodation in the private rented sector, I imagine that they still have to apply for licences for housing in multiple occupancy. In that respect, they can be controlled and regulated.

Nancy Kelley: Yes. If they have a licence, the local authority is responsible for regulating them. You then have questions about how easy it is to regulate. It depends on the size of the sector and the size of the local authority; it might be much easier in a smaller place than in a very large one. However, a lot of the HMOs are illegal. Again, it is the responsibility of the local authority to monitor that, but it is difficult to

have perfect knowledge—or even imperfect knowledge—of where to look.

Q344 Iain McKenzie: Is it again down to intelligence from others saying, "We suspect this house is being used like that."?

Nancy Kelley: Absolutely. It is to do with everybody, from the local CAB to the local policeman, to people who actually see the conditions in a particular street, having at least a bit of awareness. One would hope that they would report anyway a situation in which they felt a house was overcrowded, but they need to have enough awareness that that may be important and may mean more than just that somebody's family is staying with them for a bit—that it may be a risk. I think that the only way you are going to get the kind of coverage you would want is for there to be a much higher level of awareness across a range of agencies, so that people are picking up the phone to the local authority and saying, "I think there is a cluster of houses in this street where there appear to be very large numbers of migrant workers living." The local authority can then pick up and use that intelligence.

Alistair's point is really important. If we have and are likely to have a range of industries that are highly seasonal—that scale up and scale down—that are likely not to find their workers locally and that will, therefore, bring in very large numbers of people relative to the size of the nearest town or village, the question is, how do you accommodate those people well? Obviously, they cannot just squash into the existing supply, as they are doing already. It is really important that we explore this business of whether it is possible to support farmers to provide better-quality accommodation—what we can do to accommodate that kind of seasonal change.

Q345 Chair: Presumably, to some extent, the issue is whether the public purse should be supporting that, in order to have the private sector benefit, so to speak—whether the private sector has to pay for it as part of the costs of production.

Nancy Kelley: Sure. That is part of it, but things like planning regulations are also quite a big part of it. You can have really great caravan parks that are providing great-quality accommodation, but what kind of process do you go through to become a registered caravan park? What kind of volumes can you put on? What, if any, planning restrictions exist around putting roads and, in particular, permanent structures on to farming land? It seems to me that it is worth considering the way in which the surrounding planning regime makes it either easy or hard for a farmer who wants to provide good-quality accommodation to do that task. If they do not, those people are being bussed in and out of the nearest market town, and we know where they are. Whether or not they are in forced labour, we know that they are in houses in multiple occupation, typically in very poor-quality accommodation in the private rented sector. There is also that part of the picture.

Q346 Chair: What is the next one on your list?

Nancy Kelley: Wow. Where am I at? I recognise this is outwith the Committee's remit, but I think it is

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

important to flag up that, in this study and across all of the studies, contingent immigration status is part of the picture.

Q347 Chair: What does contingent mean in that sense?

Nancy Kelley: Restrictions on people's immigration status.

Q348 Chair: People who are here illegally.

Nancy Kelley: People who are here legally but are tied to particular jobs and employers. We can park people who are here illegally, which is obviously a huge issue in terms of their feeling able to come forward when they are in forced labour. However, there are people who are here perfectly legally but may be tied to certain jobs or conditions of entry. That has been part of the picture around—

Q349 Chair: Presumably, these are non-EU migrants. No EU migrants have that restriction, apart from some of the Romanians and Bulgarians, but that will end fairly soon.

Nancy Kelley: Exactly. I think that, essentially, it is relevant to any further accessions. When and if further countries enter the EU, it is important to be aware that the restrictions that did apply to previous accession countries—

Q350 Chair: When I read that, it struck me that these sorts of problem arise only because of the original problems, as it were. When people are being exploited, their status is another factor that makes them even more marginal, but if the first set of issues were overcome, the question of their status would not be a difficulty. Is that correct?

Nancy Kelley: I think that is right to a certain degree. A range of things make people vulnerable to forced labour. We have talked about a lot of those—things such as conditions in the host country and not having English as a first language. One of the factors is that your right to remain is limited. Whether that is the best route by which to undo the knot is a different question; it is simply important to know that, as it stands, we know that that did affect the vulnerability of former accession country nationals. That is something to bear in mind for the future process.

Q351 Chair: Next.

Nancy Kelley: I have talked about the trade unions, haven't I?

Chair: Yes.

Nancy Kelley: I think that is the end of my big list of areas, you will be glad to know.

Dr Geddes: The only other thing that we have highlighted in the report and has not come out directly here is the importance, from the perspective of any worker who is having issues, of knowing where to go for support. The current picture is that, at a local level, the places to go where there might be clear signposting of information and advisers who can help with their language difficulties are the sorts of place where funding is not exactly abundant at this point in time. We have made some suggestions in the report about how important that has been in enabling those

who have issues to come forward, know their rights, understand their situations and know what way forward they can take. In the area with which I have been working—east-central Scotland—I know that the places where people can go for that are really quite limited and that the resources are under a lot of pressure just now.

Q352 Chair: One of the things that you have not mentioned at all is health and safety. That has surprised me. I would have thought that this is a group of employees who are under an enormous amount of pressure and that health and safety is bound to be a factor. Have you just been taking that for granted, or are they in the sort of environment where health and safety is not a hazard? If you are picking berries, you may get your fingers pricked and stuff like that, but you are not likely to be killed or anything, whereas, on the factory side of things, I would have thought that there is the potential for substantial injuries. I am not clear from the report—maybe I missed this—about the balance in Scotland between field and factory, in terms of the numbers involved. We have tended to concentrate on field. Am I getting that wrong? Are a substantial number of them actually in factories or industrial situations?

Dr Geddes: I am trying to think of the exact proportion. In the group that was interviewed in Scotland, there were a fair few people who had been working in meat-processing and chicken factories—those sorts of plant. Yes, they are working in different conditions, although I would not trivialise what happens on farms. The work there can be quite hard. One of the issues that we found was that the rate at which people are being asked to work on a daily basis, for a large number of hours per day, can take its toll on them; there is no question about that. However, that is different from standing in front of a line where nothing stops. Health and safety, of course, has a role in relation to the working time directive—the length of time that people are working—and should come in there. It has a role to think about policing.

Q353 Chair: I am not aware of this dimension. Unless I am mistaken, the dimension of health and safety and the Health and Safety Executive did not come up much in your report. You certainly mentioned length of working time and so on, but I expected you to say much more about health and safety matters. I am trying to probe why that did not come up.

Dr Geddes: It did not come up in the sense that here we were focusing on gathering testimony. It is certainly worth saying that the majority of workers probably would not know that the Health and Safety Executive existed, just as their awareness of other agencies would not necessarily be that strong. The interviewing indicated that they were not expected to know the complete regulatory or advice landscape—whatever it was. That is one of the major findings.

Q354 Jim McGovern: Does that also apply to the working time directive? Would they not know that that existed, either?

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

Dr Geddes: Yes. As I was speaking, I was thinking that the GLA should also be policing the length of time that people are working. One thing that the Health and Safety Executive is doing would be being looked at by the GLA, too, in the sense that people should have some sort of contract that states how long they will work, on average. If they work beyond 48 hours a week, I think, it should be done with their permission. Often we found that it was not—people were just expected to work as long as there was work every day.

Q355 Jim McGovern: They are meant to sign an opt-out, aren't they?

Dr Geddes: Yes, but people were unaware of that sort of thing. If they were to be working, they were to be working. If overtime was required and they were asked to do it, the answer was yes, otherwise they were on their way. That sort of situation was again quite common. But there are health dimensions. There were reports of people feeling psychological and physical damage—everything from extreme fatigue to feeling sore from what they were doing. Whether that indicated that they were not getting the right level of protective kit, in some cases, or were being expected to provide it themselves—whatever it was—some issues were highlighted.

Q356 Chair: These are much more questions of health, if you can categorise them, as distinct from safety. I was genuinely surprised; I thought that much more would have been said about safety, because business people who are treating people badly in all these other dimensions are likely to be very lackadaisical about safety as well, whether it is factory or field. Unless I am mistaken, it didn't come up at all. There was no mention of fingers being lost, machinery, falling or any sorts of accident.

Dr Geddes: I think I can recall one case where someone had an accident on a line and was dispatched to the hospital. Having taken time off, they were fearful of what would happen in terms of their job being kept for them at the end. I cannot honestly recall what happened in that particular situation, but it was the one instance that I can remember where there had been an accident. I do not know whether it led to any sort of safety reporting or safety change.

Q357 Chair: That is unlikely, I would have thought. One of the things that we have been discussing in relationship to construction, in particular, is the question of substantial under-reporting. You do not even mention that there were accidents that were not reported; you do not mention that there were accidents at all. I just want to make sure that, as far as you are aware, there were no such accidents, or accidents that were not reported—leaving aside the question of health, people being exhausted and all the rest of it—and that that is not an issue that we need to pursue.

Nancy Kelley: If I may interject a bit, I think that that would not be a safe conclusion to draw. Partly it comes back to this business of what people think normal working practices are—what you think is normal in terms of agricultural work, meat processing or whatever. You and I might expect safeguards

around, say, handling of chemicals or working with machinery—that somebody would teach you how to use it, what a safe shut-off was and so on. If you come from a country with a different set of labour practices, you might not remark on them enough to say, when you are talking to a researcher, “This factory, or so and so, works in a particular way.” In the Northern Ireland study that we did, we came across a few more cases of classic health and safety violations and of people who were sacked for getting sick, as it were, in those sorts of context. I think it would not be safe to assume that health and safety looks great in these working environments. It is probably safer to assume that there is systematic under-reporting, partly because of people's concerns and partly because people may just think it is a normal way of working.

Dr Geddes: I think that is right. Maybe we did not focus our questions on this as much as we did on other areas. I would reach the same conclusion as Nancy—that it is not safe to think that there are no issues. One thing that just occurred to me that did come up was around lack of breaks, which is a safety issue. Two people felt that they were not getting those sorts of break. That did not necessarily lead to an accident, but the risk associated with that was there, if you like. That was commonly reported.

Chair: I would like to try to draw it to a conclusion, because I think you have had a fair whack of the ball in terms of being able to articulate your position.

Q358 Jim McGovern: There are a couple of points that I was going to raise. I apologise for the fact that I had to leave to go to the Chamber; I met Gary as I was coming back and apologised to him. If the points have already been raised and answered, just point that out. When I was at school, I used to go to the berries every summer; that was how you got your school uniform and stuff like that. Whole families were there—adults, children, everybody. It was sort of the black economy—nobody paid tax, national insurance or anything like that. As far as I am aware, no schoolchildren now go to the berries, the potato picking or whatever; it is all migrant workers who do it. Are you aware of whether they pay national insurance and tax contributions?

Dr Geddes: They should.

Jim McGovern: They should, yes.

Dr Geddes: The GLA was set up so that a licensed labour provider should provide a written contract or agreement between the labour provider and the worker setting out what they should be getting paid and what deductions should be made, as well as their rights regarding sick pay, holiday time and those sorts of thing. Obviously, things such as holiday time do not apply if you are there for a very short period of time, but there is an idea that some sort of standard agreement should be set out that makes clear that, if deductions are listed on your pay slip—there should be a pay slip, too—they are for reasons such as national insurance. Something should be in place there. We found that people were feeling that deductions were appearing on their wage slips and they did not know what they were for; they were not for national insurance or any taxation purposes. There were also cases where we felt that it was fairly clear

10 July 2012 Nancy Kelley, Dr Alistair Geddes and Professor Gary Craig

that any money taken off for that was not making its way through to HMRC.

Q359 Jim McGovern: Some of the people I have spoken to would probably regard it as a benefit to get a pay slip.

Dr Geddes: That is right. That is what they should be getting, and not everyone was getting those sorts of thing. It was often reported that, in their last couple of weeks of employment in a job, people were not paid on time or paid at all. Sometimes, there was no recompense in those situations. There are examples of that. People should be getting a pay slip, but it is certainly the case that not everyone was getting one.

Q360 Jim McGovern: My other point may have been covered, but it is something that the Chair and I have discussed. Do the regulations regarding HMOs—houses in multiple occupancy—apply on farms, where they are telling two people to share a bed and there are six people to a hut?

Dr Geddes: Yes. We had a discussion earlier.

Chair: We have pretty well thrashed that one to death, actually. There are not many subjects unthrashed, let me tell you.

Q361 Jim McGovern: It has been covered then; I will read about it in the report. I was trying to find out this morning, as regards the Dundee area, whether those regulations applied. You can confirm that they do.

Dr Geddes: Yes. There has been some work—we talked about this earlier—between the GLA and local authorities. You may recall from Angus that there was a situation where a caravan was on fire and there were fatalities at the end of that. As a result of that, there has been a particular keenness around the way in which accommodation standards are met and regulated in Scotland, which has perhaps been different and ahead of the curve, as it were, compared with other parts of the UK.

Jim McGovern: I apologise if I repeated something that has already been covered.

Q362 Chair: It is okay; I appreciate that you have a constituency thing coming up. Finally, can I turn to the question of the impact that your report has had in Scotland? Do you feel that any momentum has been generated by it, or has it just dropped into a pool and sunk to the bottom? I did not have the impression that all the agencies that came along to the meeting in the Scottish Parliament were going to rush out and do anything. I got the impression from some of them that they were there just to make sure that, as I said, it sank to the bottom—that they were not going to be damaged at all, that there were going to be no reputational difficulties and that they were just going to move on. Am I misreading that?

Dr Geddes: No. You are asking a question about how anybody should respond to any one piece of academic research. Increasingly, we have a question of impact

to face in our research, from a variety of funders. Rowntree would be no exception to that. We have to recognise that this is a process. What we have done is contribute new evidence to an area that is still quite complex, difficult to understand and dynamic, but it is consistent with existing evidence and we hope that it will continue to grow. If you are asking me whether our report is the silver bullet for solving everything, the answer is, of course it is not. Are we saying that it is adding a stock of knowledge? As it has been done independently, we do have some confidence as to that.

Q363 Chair: I got the impression that a number of people are concerned about reputational damage. It is only fair that we make clear that we intend to damage as much as we possibly can the reputation of those whose reputation should be damaged. If we can find examples of malpractice, we intend to highlight it. That is why we are so keen to have examples from yourselves of farms, factories or, indeed, housing providers that have not been up to standard. With that caveat, we would want to draw things to a close by asking you whether there are any questions for which you had answers prepared that we have not asked. If not, if there is anything you reflect on as you meander back to Dundee or anywhere else, could you be in touch with us, because we have other witnesses in next week? Anything that you have to contribute to that would be very helpful. I think we have already asked you to give us evidence about offences—that whole structure—which would be immensely helpful. The final point I want to make—maybe it is for the academics to reflect on this—is that there does not seem to be a mechanism by which this work that you have done in Dundee ever comes to people who are in the position to make comments or observations or to intervene politically on it. If we had not seen it through the Joseph Rowntree Foundation, we would not have known that it existed. It ties in quite neatly with some other work that we are doing. I do not know whether it is possible to see what other work even Dundee University—never mind the rest of the Scottish universities—is undertaking that would be of relevance either to us or to other parliamentarians. It seems a waste that you are working away in your ivory towers and nobody else is aware of it.

Dr Geddes: That is a big question. As I said, all universities—Universities UK, if you like—are very well aware of the need to engage, as appropriate and where possible, when research is applied or has some sort of dimension like this. It is something that is rising rapidly up the agenda. Of course, not all research is like that, but the idea of impact is the mantra for applied research just now. I cannot emphasise that enough. It is something that we are being told from on high, from different directions, all the time. There is a sense that answering the sort of question that you are asking is very important, has not always been done in the past and should be done better in the future.

Chair: Thank you very much for coming along.

Tuesday 17 July 2012

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Iain McKenzie

Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Ian Livsey**, Chief Executive Officer, and **David Nix**, Head of Licensing, Gangmasters Licensing Authority, gave evidence.

Q364 Chair: Gentlemen, I welcome you to this meeting of the Scottish Affairs Committee. I remind you at the very beginning that this is the Scottish Affairs Committee and therefore, while matters furth of Scotland are of course of interest to us, we are mainly focused on what is happening in Scotland since that is where our remit runs. It would be helpful if you started off by introducing yourselves and telling us your positions in the organisation.

Ian Livsey: My name is Ian Livsey. I am the Chief Executive of the Gangmasters Licensing Authority and have been since 2007.

David Nix: I am David Nix. I am Head of Licensing at the GLA.

Q365 Chair: I presume you are aware of the general work that we have been doing and that if you have not read the minutes of the previous meetings then at least somebody has briefed you on them; that is what staff are for. It would be helpful if you could outline to us what the GLA is doing to tackle the sorts of issues that we have identified.

Ian Livsey: Thank you, Chairman. I will start and David can jump in as he sees fit. Thank you for sending us the minutes of particularly the fourth evidence session, with Gary Craig, Alistair Geddes and Nancy Kelley, which we have read. We have read the JRF report, which you refer to quite a lot. The first thing to say about the Joseph Rowntree report is that there is nothing in there that surprised us. That is what we would have expected to have found from what they did and where they went.

In terms of blacklisting and forced labour, I will start with a general description of the licensing scheme, the role of the GLA and what we do. Please do interrupt, and obviously ask questions. Clearly you know the history of the Gangmasters Licensing Authority, but I guess the best way to think of its evolution at the moment is as a set of three phases or stages. When the Act was passed and the organisation was set up, the first few years were for capacity building, establishing the system and promoting the licensing scheme. Licensing is at the heart of what we do.

The second phase, which we came out of about three or four years ago, was licensing the legitimate—bringing the sector into order. That meant excluding some of the rogues who were operating at the time, who variously were underpaying workers and putting them in shoddy accommodation. We have all seen pictures of that. In many ways we cleaned out the pond.

We have moved into what is now the third phase of the role of the Gangmasters Licensing Authority—perhaps later on we will touch on the Red Tape Challenge and the outcome of that—which is almost a policy formulation of where we have been taking the organisation. That is to take a much more enforcement-based approach, particularly targeting the criminals who operate in the UK food supply chain and, as you have pointed out in your evidence previously in discussions, in Scotland in particular. You will have noted some prosecutions that we have had in Scotland.

The Gangmasters Licensing Authority is, I would say, an enforcement body. As a description of how we operate—it is a general description of how enforcement bodies or regulators can be effective—there are three things that we do, and should do, in common with all regulators. The first thing is that we are intelligence-led. We work on the basis of intelligence that we receive about, say, forced labour or debt bondage—modern-day slavery is the way you look at it. We have an intelligence function that drives the analysis of the data we receive. We have 24,000 pieces of intelligence on our database. We get about 100 bits of information a day supplied to us about what is going on.

The second part about being successful is that we are enforcement-focused. That means, if you have identified that there is a problem, deal with it. We have quite extensive powers in the Act. We have powers of entry and powers of arrest. We can arrest people for obstruction and confiscate assets. It is intelligence-led, leading to enforcement-focused operations, which are increasingly multi-agency.

The third thing that we do is to tackle the right problems. The Government's Red Tape Challenge—Jim Paice had a written ministerial statement on 24 May about us—says to us, “Yes, we know that there is serious organised crime going on; yes, we know that there is human trafficking, money laundering, forced labour, debt bondage, threats and intimidation and actual violence, and we want you to address those issues, whilst of course keeping the licensing scheme credible and operable.” Tackling the right problems means that you avoid becoming bureaucratic and shooting fish in a barrel.

In spirit, that is what the Gangmasters Licensing Authority does. Do you want to ask any questions on that?

17 July 2012 Ian Livsey and David Nix

Q366 Chair: David, do you want to add anything to that at all?

David Nix: Perhaps I could expand on how licensing works and what we expect in compliance. It is basically existing law; so we don't impose anything that any other legitimate business elsewhere across the UK economy wouldn't be expected to comply with. That is contained in a document called our licensing standards. They cover a range of things, from basic employment law, national minimum wage and that kind of thing, and making sure people pay the right kind of tax and national insurance contributions, through to health and safety, and if you are providing accommodation and transport that they are of an adequate standard. That is a very clear framework and it is very easy for us to measure compliance against that. It is very clear what we expect people to do if they want to come forward and apply for a licence.

Q367 Chair: How many licences have you issued at the moment?

David Nix: We have more or less 1,200 licence holders at the moment. It has hovered around that figure pretty much since day one over the last six years.

Q368 Chair: There is a fairly comprehensive list of legislation that you are responsible for monitoring. How often would one of these 1,200 gangmasters expect to see you?

David Nix: Everybody who comes forward at the moment to apply for a licence has an inspection. After that, whether we have a reason to come out and visit somebody is purely determined by risk. We have a very good intelligence function within the Authority itself. We also have very good links and information-sharing provisions with other departments, which allow us to co-ordinate our work. That might be through joint work with other Government Departments and agencies, including the police and local authorities, or it might be that they provide us with information that leads to us conducting our own inspection or investigation.

Q369 Chair: I have had a look at your annual report, just to reassure you that somebody looks at it. You have put down a number of results—2,800 workers identified as subject to exploitation and so on. Do you have these figures broken down so that you could give me the equivalent figure for Scotland? I don't expect you to have it off the top of your head, but is that doable?

David Nix: We could look and see what is possible. Those figures in the report are purely from inspections and investigations we have been involved in. The unquantifiable figure is how many workers we have protected because people have changed the way they behave because of our very existence.

Q370 Chair: I appreciate that, but I am always a bit worried when people claim the unquantifiable as their defence. What I want to look at is how well you are doing in Scotland compared with elsewhere in the country. I would have thought, therefore, that using

the performance standards that you yourselves have identified would be an indicator.

David Nix: If it helps the Committee, we can certainly write to you with drilled-down details for Scotland.

Chair: That would be helpful.

Q371 Jim McGovern: Thank you very much for coming along. Do I take it from what you have said, David, that inspections are reactive rather than proactive? There is no such thing as a random inspection. It is just if somebody makes a complaint.

David Nix: Not so much complaint-led but intelligence-led. The system we use is the same as the police. It is the National Intelligence Model, where we grade intelligence and then task our work accordingly. Unfortunately, due to our nature, being a small organisation, we have to prioritise our resources in such a way that we don't have the luxury of being able to do random inspections.

Ian Livsey: Can I rephrase the question, Jim? We don't do routine inspections; we do intelligence-driven inspections.

Q372 Jim McGovern: By their very nature, routine inspections would be like when the Queen visits somewhere everything smells of fresh paint.

Ian Livsey: Yes; we don't go every year to every one.

Q373 Jim McGovern: People would prepare for your routine inspection, but there is no such thing as a random inspection.

Ian Livsey: We do intelligence-led inspections, and they are often unannounced. If we have evidence that something is happening contrary to a certain number of our critical standards, we would go and do an inspection on them. What we don't do is say, "We're coming out in 12 months' time at a scheduled date." As you say, they can prepare for that and get ready to be checked.

Q374 Chair: The point Jim was making was about random unannounced inspections.

Ian Livsey: I just don't like the word "random". They are intelligence-driven, unannounced inspections.

Q375 Chair: Which, by definition, is not random.

Ian Livsey: That is right. It is driven by knowing about something.

Q376 Chair: Jim's point was whether you do random investigations and the answer to that is no.

David Nix: "Random" in the sense that we don't know anything about a business so we will just go along—we don't do that.

Chair: If that's the case, when we ask you a question like that, just tell us straight, "No, we don't", rather than going round the houses.

Q377 Iain McKenzie: Picking up on the intelligence-led inspections, when you receive intelligence and you go on what we will term a "random inspection" based upon intelligence, do you specifically look at an individual point or do you go through a regular spectrum?

17 July 2012 Ian Livsey and David Nix

David Nix: It can be both. Sometimes we will go in and look at the very specific issue that we have identified. Alternatively, we will look at the whole range. Perhaps I could refer back to our licensing standards. The benefit of our approach in looking at a range of issues means that we might pick up one or two different things that tick different areas of legislation. It might be the national minimum wage, accommodation or transport. If there is something wrong in each of those areas, you might think there is something wrong completely across the board, so you are looking much more forensically. We have the ability to target a particular thing. It very much depends on—

Q378 Iain McKenzie: If you find a problem with a specific piece of information that you have been given and you go in and investigate, you would then widen—

David Nix: We can. The beauty of our approach is that we interview workers. In doing those interviews, we will tailor the rest of the investigation according to what they may say. If you interview six workers and there are absolutely no problems—

Q379 Iain McKenzie: Basically you are doing a sample investigation. If it fails on that, then you would open it up to a wider investigation.

David Nix: Yes, we have the capacity to do that.

Q380 Jim McGovern: If you get a complaint, you investigate it and the employer or the gangmaster says, “Yes, okay, I’ve been doing the wrong thing and it won’t happen again”, do you then monitor that situation and go back and say, “Let’s make sure that they have corrected it”?

David Nix: There are a couple of ways we can react to that. First, we can attach conditions on the licence to say, “Okay, we have found one or two things wrong. They are not particularly serious but we expect you to correct them”, and that should be corrected within a particular period of time. They would either have to send us evidence of compliance, if it is a documentary matter, or we could then come out and inspect them again.

Alternatively, if, for example, they owed an isolated number of workers some money and then paid them, and we decided proportionately that the problem has been corrected and we didn’t need to take any immediate action there, I imagine that would be something where we would look to have a follow-up visit at some point in the future. We would raise their risk rating, if you like, for follow-up action in the future.

Q381 Jim McGovern: That is not quite precise enough, “I imagine we would”. Would you or wouldn’t you?

David Nix: We wouldn’t have a routine, “Yes, we will definitely go and inspect them in three months or six months.” It depends on the circumstances.

Q382 Jim McGovern: If they just tell you, “Okay, we’ve done wrong but we’ve sorted it”, do you just depend on that being the truth?

David Nix: No. We would satisfy ourselves by the nature of the circumstances of what has gone wrong and what has been corrected. For example, if they said, “We haven’t paid holiday pay but we promise we will pay it”, we would expect to see evidence of those payments made to the worker. We would also look to corroborate that by getting in touch with the workers themselves.

Q383 Jim McGovern: Obviously there are a lot of different circumstances. Holiday pay is not the only one.

David Nix: Yes. I was using that as an example.

Q384 Jim McGovern: If employees are being abused or exploited, whatever word you want to use, and you go and investigate and find it substantiated that they are being abused or exploited, and the employer or gangmaster says, “It won’t happen again”, do you just take their word for it or do you wait for another complaint?

David Nix: If there are more serious issues, we would revoke the licence.

Q385 Jim McGovern: Sorry, would you say that again?

David Nix: The licensing standards have a scoring category. We come in and assess the problems we have identified. Depending on the score that is totalled up, if it is above 30 points, we would revoke the licence. That is the action we take.

Q386 Jim McGovern: It would be helpful if we got some sort of example of how you score things: what is and what is not allowable, and what is serious. If you are going to treat a gangmaster leniently, on what basis do you do that?

David Nix: We have critical standards. They would be things like national minimum wage and tax—the most extremes of the forced labour indicators. They score 30 points and that is the pass mark. We also have non-critical standards. That might be pay slips, for example. If somebody is not being provided with pay slips, although they might still be being paid, and if that was the only thing wrong—

Q387 Jim McGovern: It is against the law, isn’t it?

David Nix: It is against the law, but we would attach a condition on the licence to say, “You must now start providing pay slips and you need to provide us with the evidence.”

Q388 Iain McKenzie: Would you also attach a timescale for the improvement?

David Nix: Yes.

Q389 Iain McKenzie: The critical things would have to be addressed immediately, and on the non-critical you would agree a timescale to resolve them.

Ian Livsey: With the non-critical ones—the ones that we deem don’t merit revocation of the licence in their own right, in isolation—we would attach a licence condition, saying, “Within three months send us evidence that you have now started producing pay slips.” If it is a critical licensing standard—for

17 July 2012 Ian Livsey and David Nix

example, the workers have not been paid the national minimum wage, or there have been illegal deductions for transport and travel and subsistence, or there has been forced labour, debt bondage or intimidation—we would revoke the licence. We wouldn't attach a condition to say, "Tell us that you've stopped being an abusive gangmaster within three months and you will be okay." When it passes through one critical issue, or more than 30 points, we revoke the licence. We have the power to revoke the licence with immediate effect if we think there is an imminent threat of danger to the workers. The ability to allow the gangmaster to prove that they have put things right is only for certain non-critical issues. Where it is serious and what we call critical, then we revoke the licence.

Q390 Iain McKenzie: As Jim said, if you have that standard document of evaluation, it would be useful if the Committee had that.

David Nix: Yes; we can write and explain that.

Q391 Chair: How many revocations have you had during the last year or for the last year for which you have figures? I just mention that Mr McGovern has to leave due to a prior appointment. He has been one of the drivers of this, but another commitment in his constituency means he has to go. There is no discourtesy intended.

Ian Livsey: If he wanted to have a conversation with us at some other time, that would be fine.

Jim McGovern: That would be great. Thank you.

Chair: Let it be recorded that they shook hands.

Q392 Chair: How many revocations?

David Nix: In total, since we started issuing licences in 2006, we have had 180 revocations. I don't have the exact figure for the last year, but I would say it is of the magnitude of around 30 or so.

Q393 Chair: How many of those have been in Scotland?

David Nix: Overall in Scotland we have had 12 revocations.

Q394 Chair: That is a disproportionately high number of revocations in Scotland.

David Nix: Not in the last year. In total, over the last six years it is 12.

Q395 Chair: How does that compare? Six out of 180 is a disproportionately small proportion in Scotland.

David Nix: Yes, I suppose so—12 out of 180.

Q396 Chair: Is there a geographical pattern? Presumably gangmasters are more active in certain parts of the country and in certain industries. Is there anything we ought to take from that?

David Nix: If it helps the Committee, I can give a breakdown of the 180. We have 12 in Scotland. Two have been in Northern Ireland. We haven't had any in Wales. We have had five from businesses outside the United Kingdom and 161 in England. Whether that says more about the English or not, I am not sure.

Q397 Chair: Presumably there are divisions between different parts of England as well, which comes back to the question of where these people are.

David Nix: Yes.

Q398 Chair: In terms of the numbers of employees that are covered by each gangmaster, obviously a gangmaster employing 5,000 is different from one employing five or six. Are you predominantly knocking off small ones or big ones, or is there a spread?

David Nix: The vast majority of our licence holders are what you would call small to medium-sized businesses. They will have a turnover of less than £1 million a year. In terms of the numbers of workers, obviously it will vary. When we write to you, we can give you more on the geographical breakdown and the numbers of workers.

Q399 Chair: Are the numbers that are struck off in proportion to the numbers and sizes of those that you have, or are they disproportionately large or small? Is there anything else coming out of it? Could we say that large gangmasters are disproportionately likely to be struck off because they are worse, that the converse is true or that there is no conclusion?

Ian Livsey: It probably depends upon what issues we are looking at. We will confirm this, but I suspect the majority that give us the most problems are the smaller ones. However, that will depend. If you are into things like tax evasion, then a lot of the larger ones are more organised for that kind of thing.

Q400 Chair: It would be helpful if you would let us have further information about who has been struck off, why and whether or not there is a correlation between size and the subject for which they are removed.

I want to come back to your general work. You mentioned first of all that there was the issue of licensing. What are the factors taken into consideration when someone is issued with a licence? Depending on how pejorative you want to be, what sort of hoops do they have to jump through and what sort of qualities or capacities do they have to demonstrate before they get a licence?

David Nix: When somebody applies for a licence they have to complete our application form and pay the licence fee. That is very basic information that you would expect to be filling in. It is the key details about the business and then the individuals involved in the business. Based on that information, we run checks, not just internally within ourselves and our own body of information that we hold within the GLA, but also with other Government Departments to see if they have any information as to compliance with their requirements. For example, it might be with HMRC; they could have a level of tax debt. Once those checks have come back in, we will then go out and conduct an inspection where we will go and interview the person running the business. For our purposes they are called the principal authority. In terms of what you can inspect at that point in time, it is a little bit more limited because, by their very definition, they are not up and running. They are not supplying workers

17 July 2012 Ian Livsey and David Nix

because that would be a criminal offence. If they are an already existing recruitment business that might be operating in other areas of the economy and perhaps want to move into food and agriculture because there is an opportunity, we could look at what is already up and running and see things in practice. If there is nothing in existence, then obviously we are looking at the principal authority's knowledge and understanding. It is basically their competence to run that business measured against our licensing standards.

Ian Livsey: It is in effect a fit and proper test for the individual running the business.

Q401 Chair: It is the equivalent of due diligence.

Ian Livsey: Absolutely, yes.

Q402 Chair: Once you have that, that's it.

David Nix: There is a condition on every single licence we issue that they must notify us when they have started trading, within 20 working days. At that point we might decide to go and conduct a further inspection because a couple of issues might have been flagged up on the first inspection and it might be worth seeing them in practice once they have started trading. We may come and do an inspection, though it is not guaranteed, because it is obviously all about the best use of our resources. If we have no reason to go and visit we won't, but that option is open to us.

Q403 Chair: I am just thinking of a parallel, say, with a motorcycle licence. There is not a period when you can only employ a certain number or go at a certain speed. As soon as you've got it, you've got it and you can employ as many as you like. There are no constraints, a building-up period or anything like that.

Ian Livsey: That is correct.

David Nix: I don't have the exact figures to hand, but when we write, it might help to explain to the Committee the length that one of our revoked businesses had their licence before it was revoked. Just because somebody is newly licensed I don't think they are more likely suddenly to be non-compliant and have problems. What we find is that people who have a licence have had one for a period of time but then, for whatever reason, drop below the standard. That is when the problems start to arise.

Q404 Chair: Would you be checking criminal records as part of the fit and proper person test?

Ian Livsey: Yes.

Q405 Chair: Are you able to obtain criminal records from abroad?

David Nix: We don't have formal agreements but we do have systems in place where we can make checks with overseas authorities. Unfortunately, it is not a routine thing that we would routinely run checks against criminal records with authorities overseas, but we do have that facility.

Q406 Chair: Let me just be clear. Anybody from the UK would have their criminal record checked but anybody who is foreign would not.

Ian Livsey: They would have their UK criminal record checked.

David Nix: Just to clarify, we have access to the PNC, which is the Police National Computer, but in terms of our ability to check, we can't use it for vetting purposes. We can only use it to confirm certain details if we are aware of them; we can't use it for vetting.

Q407 Chair: If you are told that somebody has a criminal record you can check if that's true, but if you don't know if they have a criminal record you can't check whether or not they have one.

David Nix: We can make approaches to the local police in a particular area and get the information from them.

Q408 Chair: But presumably they would use the Police National Computer.

David Nix: Yes.

Q409 Chair: You could systematically and regularly approach the local police for every case and check whether or not any British citizen had a criminal record in this country.

Ian Livsey: Or any EU citizen who had committed an offence in this country.

Q410 Chair: Or indeed any non-EU citizen.

Ian Livsey: Or indeed any non-EU citizen.

Q411 Chair: You could, but you don't, check the criminal record of everybody that applies for a licence. Is that correct?

David Nix: That is correct; yes. There is an element of self-declaration in terms of our application form. We do ask people to declare whether they have any criminal convictions.

Q412 Chair: Whether or not it is checked for somebody coming from abroad depends upon the relationship you have or the British police have, or the access you have to records abroad.

Ian Livsey: Correct.

David Nix: Yes; that is correct.

Q413 Chair: We have already touched on the question of monitoring. What percentage of your licensees are farmers?

David Nix: We have a small number of farmers who are licensed because as well as being users of labour they also supply outwards. Some of them are participants in the Seasonal Agricultural Workers Scheme. Others are just large farms. There are exclusions for farmers from needing a licence. For example, if they have occasional loans of workers from perhaps their neighbouring farm and it is just for a very short period of time, they would not need a licence, but technically that would be—

Q414 Chair: Because they would be covered by somebody else's licence.

David Nix: No. The Gangmasters Licensing (Exclusion) Regulations 2010 set out very specific circumstances when a licence isn't required. That could be a farm-to-farm loan of workers or if a farmer

17 July 2012 Ian Livsey and David Nix

uses a worker to provide a service to another farmer. Technically, that is licensable activity, but because of its nature, and the incidental and small-scale nature, they were taken outside the scope of licensing.

Q415 Chair: Is the picture any different in Scotland from the rest of the UK?

David Nix: No. The same regulations apply.

Q416 Chair: I meant in terms of the percentages of farmers that have registered or anything like that.

David Nix: It is a very small number of farmers who would be registered anyway. I could not tell you how many.

Chair: Maybe you could just check that. If it is significant you can let us know.

Q417 Pamela Nash: I want to go back to licences being revoked. What are the consequences for someone who has a licence revoked?

David Nix: It very much depends on the reasons why we revoke. If the business corrected the problems—perhaps they had not been paying the national minimum wage but they have corrected that and, going forward, they are therefore a complying business—we would be happy to entertain a new application from that business. We do have a lot of licence holders who have been previously revoked, who have sorted themselves out and learned their lesson, and they have come back into the system.

Q418 Pamela Nash: Is there a minimum period of time between the licence being revoked and them coming back?

David Nix: If they have got themselves compliant, they can come forward and apply for a new licence. A number have done that. Where it is a little bit more serious and we have found them basically not to be fit and proper, we have a policy that for a two-year period we would automatically refuse any subsequent applications from that business.

Q419 Pamela Nash: What is your procedure if there is found to be criminal activity? Is any evidence that you have handed over to the police or would you be the complainant?

Ian Livsey: Let's take, for example, section 71, which is on forced labour. We would work with the police on that but they would take the case to the CPS; we can't prosecute against section 71. If it is unlicensed activity, then section 12 of our Act applies and we would prosecute that.

Q420 Chair: Would that apply in Scotland as well?

Ian Livsey: Yes. The difference between England and Wales and Scotland in terms of our powers is that there is no power of arrest in Scotland. We have power of arrest everywhere else. If there are associated offences, not specifically our legislative offences, then we would work with other authorities to prosecute those offences; for example, UKBA, if there is illegality. If it is section 12 or section 13—the farmers—then we would prosecute that ourselves.

On the revocation point there is also the point about the workers. Particularly if we revoke a licence with

immediate effect—i.e. we issue a stop notice and we stop that business trading—we have to take into account what happens to the workers, who then suddenly don't get paid, maybe don't have accommodation and could find themselves on the street. We have to do an impact assessment and find somewhere for them to be looked after. The ultimate sanction is when we stop them trading straight away.

Q421 Pamela Nash: Is it part of your responsibilities to look after the workers?

Ian Livsey: Part of our responsibility is to identify the impact. The handling of those kinds of people would be typically for the Salvation Army, who have that kind of contract from the Government.

David Nix: We don't have a statutory duty to do that; it is just what we do because it is the right thing to do.

Ian Livsey: In planning an operation where we think, from the intelligence we have, that the consequence could be immediate revocation, stopping the business and putting, say, 147 Poles, which is a typical number, on to the streets of Derby in England, then we would do that assessment and inform the local authorities, the Salvation Army and people like that. They would then be aware that it was going to happen.

Q422 Pamela Nash: You have anticipated my next line of questioning on unlicensed gangmasters. What powers do you have to investigate reports of unlicensed gangmasters?

David Nix: It is a criminal offence to act as a gangmaster without a licence under section 12 of the Gangmasters (Licensing) Act. It is also a criminal offence under section 13 of the Gangmasters (Licensing) Act to use somebody unlicensed. That is the labour provider and the labour user, if you like.

Ian Livsey: The gangmaster and the farmer.

Q423 Chair: The farmer or a factory that uses an unlicensed gangmaster would end up liable under section 13.

Ian Livsey: He is committing a section 13 offence.

Q424 Pamela Nash: Is this part of intelligence gathering or are you dependent on someone reporting it?

David Nix: It is a combination of both. It is through our own intelligence sources. Within our intelligence function in the Authority itself, not only do we have our own inspectors out there in the fields gathering information and submitting their own reports to the system, but we have two dedicated intelligence officers whose job is basically to be out there doing covert and overt surveillance. They will gather information that can be part of criminal investigations.

Ian Livsey: The two key sources of our intelligence, I suspect, are workers themselves ringing in and telling us or passing information to us and the work of our inspectors. As they go round their work inspecting, they pick up intelligence about other things. Those would be the two sources.

Q425 Pamela Nash: Are those inspectors specifically inspecting gangmasters who are already

17 July 2012 Ian Livsey and David Nix

licensed, or is it part of their job to investigate those who are not licensed?

Ian Livsey: They have both responsibilities. About three or four years ago we had two separate types of inspector. We had what we called compliance inspectors, who did the licensing function and who just went out and checked licences. That is a bit like Jim's point about the routine stuff. Then we had those who were enforcement-trained and who could arrest and interview under caution—at the stronger end. What we tended to find as we evolved and started to get into the darker corners of the flexible labour market was that what looked like a simple licensing inspection turned out to be quite criminal in nature when we went out there. We equipped all our staff to one standard, which was the criminal standard. All our inspectors will at any particular time be doing either a compliance-type visit or an enforcement-type visit on illegal trading.

Q426 Pamela Nash: So they would be investigating both unlicensed and licensed.

Ian Livsey: That is correct; yes.

Q427 Chair: I want to follow up on one point. Did I hear you correctly? You said that you had two inspectors whose responsibility it was to try and seek out illegal gangmasters.

David Nix: Just to clarify that, there are two people who are dedicated purely to intelligence work.

Q428 Chair: Is that two across the whole of the UK?

David Nix: Yes.

Q429 Chair: At first glance that does not seem adequate if this is such a large-scale problem. Presumably there could be things happening all over the country that your two inspectors sitting somewhere would not be aware of.

Ian Livsey: Resources is something we could always do with more of. At the moment we have 63 staff to cover the UK. Just to clarify, the two field intelligence officers would typically be tasked on covert surveillance operations, for example. We have not split the country into two and said, "You do this and you do that." If, for example, on Solway Firth we were interested in cockles, we might do some surveillance there prior to the beds opening. It would be those two individuals, who happen to be trained and skilled in covert surveillance and that kind of thing, who we would deploy on that before we did an operation. In some ways they are the specialists who do the intelligence gathering for particular operations as much as anything.

Q430 Chair: But two across the whole country does seem, on the face of it, to be grossly inadequate.

Ian Livsey: Chairman, I think any Chief Executive sitting here would say that he would love more resources and I am no exception to that.

Q431 Chair: Yes. I used to be on the Public Accounts Committee and I have never yet met an official who said that he required fewer resources,

unless he was looking for a knighthood at the time, and you are not quite at that stage of your career.

In terms of the intelligence operations that have been conducted in Scotland, how often would they be touring round? How would that be driven? The other point I wanted to raise was this. You mentioned calls coming in from migrant workers. What tests have you done to clarify how aware migrant workers are of your existence? You mentioned 147 Poles losing their jobs. How many of those, for example, would ever have heard of the Gangmasters Licensing Authority and would know that you are the people to contact?

Ian Livsey: It is very difficult for us to make that assessment. We try to distribute leaflets about what we do, in all the different languages for all the nationalities that are working in the sector, through as many channels as we can, and make them aware of the existence of the GLA. You are probably aware of something called the Pay and Work Rights Helpline, which was an initiative launched by BIS. It was heavily promoted about two years ago to make workers aware that they could get advice from that helpline. We are part of that.

One of the most successful ways that we did that—sadly, we have lost the staff involved—was during a period of about two years when the Communities and Local Government Department funded what they called community enforcement officers. The concept was a very good idea. You mentioned where workers are. We know where the hotspots are in the country because of the seasonality of the produce. An enforcement officer was put in a specific area and told, "Don't move out of that area. Find out everything that is going on. Make yourself aware." It acts in a preventative way and it is a high visibility way. That was an extremely effective way of doing locally based enforcement.

We have had the 25% cut over the lifetime of the Parliament that everybody else has had. Those posts have had to go, but that was a very effective way of getting workers to understand what we are doing.

Q432 Chair: In terms of the links that you have with the Polish Embassy or other representative bodies covering these sorts of groups, are those strong?

Ian Livsey: We were at the European Commission talking about this with other member states not long ago. The Bulgarian Labour Inspectorate will be a very good partner of ours. All the embassies would engage with us if we wished, but I have to say that European-wide enforcement of this kind of problem is different; it's patchy and not as joined up as one would like. If we have particular issues, we can approach the Bulgarian Embassy, the Romanian Embassy or the Polish Embassy.

Q433 Chair: I understand that, but they would not see themselves as having a role in disseminating information.

Ian Livsey: No.

David Nix: We have in the past run events with embassies in this country to raise awareness with those communities. It is something we have done in the past and they have been effective in raising

17 July 2012 Ian Livsey and David Nix

awareness, not just of the GLA's existence but also of employment rights more generally in the UK.

Q434 Chair: If we were to tell you that contacts that we had had with migrant workers indicated to us that virtually nobody had heard of the GLA, would that surprise you?

Ian Livsey: In our sector?

Chair: Yes.

Ian Livsey: It might do. I would be surprised if that were the case in fresh produce. I might be less surprised if it were the case in things like fish processing. Because fresh produce is by far the largest sub-sector of agriculture, there is more awareness in fresh produce. If you were telling me it was bakeries and chicken catching, I might be less surprised about that.

David Nix: The other unfortunate thing is that we have had to cut back on our promotional activity. We used to run adverts in the foreign language press to talk to communities within the UK. Those are the things we have had to cut back on over the last couple of years. Because of the itinerant nature of people who returned home and new people coming in, perhaps we have not had the same visibility that we might have done four or five years ago.

Ian Livsey: Or even two years ago.

Q435 Chair: Do you have co-operation from farmers' organisations, manufacturers of food products and employers of migrant workers in distributing material to their employees so that those who are presently employed by them would be aware and, also, when they move on somewhere else, that they would be able to carry that knowledge with them?

Ian Livsey: In terms of the actual on-the-ground passing out of information—you touched on this in your last session—I am sure that could be improved. I know you have the FDF and NFUS afterwards, both of whom are on our Board, and they both engage with us in the way the GLA runs and its activities. On the specific question about whether Farmer A hands out leaflets, I would doubt that. That may be because we don't provide that many. You talked in your last session about how that could be improved.

Chair: Pamela, I am sorry I have cut across some of the questions. Have you covered those points?

Q436 Pamela Nash: I probably should have asked this question at the start. It would be useful for us if you gave a brief overview of the current situation for migrant labourers, particularly in Scotland.

Ian Livsey: In what respect?

Q437 Pamela Nash: Exploitation of migrant labourers. We often hear about what happened in Morecambe and other areas. Obviously that was why you were set up. Is there anything you can tell us about the situation in Scotland?

Ian Livsey: Unless David corrects me, I don't think there are any particular things that jump out specifically in Scotland. This is a slight digression, but there is a lot of forestry in Scotland. That is an area for us but it is not an area of major concern.

We do see Romanians and Bulgarians from time to time in Scotland, but we see them everywhere else. I don't think there are any particular types of reasons, although as we have said we will check this, for licence revocations being different in Scotland as opposed to the UK. There is a very big soft fruit activity in Scotland. That requires the same kind of picking and pays the same kind of piece rates and wage rates as, say, leeks and asparagus would.

We have recently talked about focusing on three areas of food production and manufacture that we have not looked at before. One is meat processing, which is on the back of the EHRC report about meat problems. I mentioned that one of the areas we are interested in is fish processing. That is very much up the east side of the country into Scotland. Incidentally, we feel that bakeries are an area where there is potential for a lot of exploitation as well.

Scotland has the same needs for casual labour as across the UK. It seems to suffer or be treated well in the same way as across the UK. Obviously the legal system is different and we work closely with the PF to bring prosecutions. We bring them separately in Scotland and Northern Ireland. There is nothing that immediately leaps out to me and says, "This makes Scotland look different from the rest of the UK."

Q438 Pamela Nash: What you have just said is very helpful. Is the origin of the workers different throughout the UK?

David Nix: We don't routinely collect statistics on the demographic of the work force, but just from my own reading of inspection reports I don't think the make-up of the work force is that different from the rest of the UK in terms of nationalities.

Ian Livsey: In many ways it might still be the same work force. What tends to happen is that the migrant labour work force will start in Cornwall in February picking daffodils because you have St David's Day, Mother's Day and Valentine's Day all coincident and there is a need for daffodils. The gangmasters will move those same workers through Worcestershire to Lincolnshire for picking asparagus, leeks and the green stuff. They will then probably move into Scotland for picking berries in the late summer or summertime. It can be the same work force that is moving around.

Jim McGovern: Can I say, Chair, that I regard this inquiry as so important that I went and made a phone call, cancelled my business in Dundee tonight, went to the travel office and changed my flight? You have the return of the prodigal.

Chair: If that doesn't bring a tear to your eye, then I don't know what will.

Q439 Jim McGovern: My mum would be proud of me. You mentioned Bulgarian and Romanian workers. I am from Dundee and we are surrounded by berry fields, be they strawberries or raspberries. Further on it is potato picking. When I was at school it was schoolchildren and their parents—families—that did that. It is now almost entirely a migrant work force.

When I tried to get in touch with representatives of the Polish community, because I perceived it was the Polish community that did that work, I was told that

17 July 2012 Ian Livsey and David Nix

the Poles have now by and large moved on into businesses—hotels and catering and so on—and it is Bulgarians and Romanians who are now working on the farms and who, in my opinion, are probably being exploited. I do not know if that applies right across the UK or if that is a Scottish dimension.

Ian Livsey: I think it applies right across the UK. The A2 nationals, with some exceptions, don't have the right to work here legally, as you rightly say, except if they are self-employed. One of our big challenges in working in that kind of activity is determining whether self-employment is genuine or bogus. When we do raids or enforcement inspections, we have tests to see whether people are genuinely self-employed. If you are self-employed as a Bulgarian woman you can work here; if you are not, you can't.

We read the transcript of the JRF where they talked about the Poles moving up in that respect. I suspect you are talking about bogus self-employment there. I think that is what is probably happening.

Q440 Jim McGovern: The Polish people I have spoken to say that they are no longer the most exploited and that the new exploited communities are Bulgarians and Romanians.

Ian Livsey: We are seeing not just Bulgarians and Romanians but Latvians, Lithuanians and other A8 member state nationals coming to work in the country. The model that people had in mind previously that it was a Polish work force is changing in that there are now different nationalities coming in.

David Nix: We still encounter a lot of Polish workers in sheer numbers, but in terms of where problems are identified it is fair to say that now it is not so much with Polish workers as it was five years ago. That is possibly because they have a better understanding of what their rights might be within the UK. It is an interesting discussion around Romanian and Bulgarian workers because of their employment status and whether that means that if they are being engaged in a dubious self-employment category, they are being denied their other rights.

Ian Livsey: The extreme of that would typically be an illegal worker who is illegally working here, who is the more vulnerable because of their status.

Q441 Jim McGovern: Yes, and being exploited.

Ian Livsey: Yes.

Q442 Iain McKenzie: The GLA has established a protocol with retailers and suppliers to improve standards and protect workers. How do you monitor it?

Ian Livsey: We have regular meetings. As background, this started as a supermarket protocol alone. Supermarkets control the vast majority of the food supply chain in the UK. They have great influence. I notice you touched on the adjudicator concept in earlier sessions.

We took the view for lots of reasons that to engage with the major retailers was one of the best ways we could work down their supply chain. One reason was the message it sends out, but there were also tactical reasons. When we turn up we can get entry to premises. If a major supermarket turns up to a

supplier, then they start to listen to what is going on. The supermarkets have lots of influence.

We got together all the major supermarkets. It took some doing because there are a lot of sensitivities. We produced a protocol that, in intent, was a partnership between ourselves and the supermarkets to work together to clean out the supply chain. We then brought in the suppliers to have a whole supply chain approach. We all signed up to it. We meet probably once every six months to review what has gone on. At the minute, the effect of the protocol is largely profile and information exchange between retailers and the GLA.

Q443 Iain McKenzie: Is this protocol reflected in a contract between the large supermarket chains and suppliers?

Ian Livsey: No. It is non-contractual.

Q444 Iain McKenzie: So they don't have terms and conditions at all.

Ian Livsey: It doesn't involve itself in what I think will be the adjudicator's role, which is the relationship between the retailer and the supplier. It is a question of how both the retailer and the supplier engage with the GLA in exchanging information about what is going on in the food supply chain.

Q445 Iain McKenzie: It is more a protocol between yourselves—that sort of triangle—than a direct link between supplier and retailer.

Ian Livsey: Very much so. It is not us having any influence on the terms and conditions or behaviour among the supply chain in terms of retailers and the suppliers.

Q446 Chair: Why not?

Ian Livsey: I don't think we have the locus to do that. Our responsibility is with regard to workers. That kind of commercial thing is outwith what we are supposed to do.

Q447 Chair: Certainly in Public Accounts, we came across lots of odd structures where people at the top meet and have a conversation in a room somewhere. They exchange information—I agree that things are fine and you agree that things are fine, and we agree that things are fine generally. Further down the line that is not what is reflected on the ground. We have just had that with G4S and the debacle at the Olympics. No doubt everybody was sitting around the top table saying that things were fine.

Surely it would be appropriate for the big supermarkets to say, "We want certain minimum conditions applied throughout the supply chain." Have you not suggested that to them?

Ian Livsey: They do that and they do ethical audits of their own supply chain. The supermarkets have their own auditors and they audit the ethical behaviour of their supply chain. In fact, the precursor to the GLA was the voluntary supermarket scheme called the Temporary Labour Working Group, which did not work. It did not have the sanctions that the GLA has or the powers that we have. Supermarkets don't have access to the kinds of other Government information

17 July 2012 Ian Livsey and David Nix

we talked about—whether they have criminal records and all that kind of thing. It was voluntary. Crooks don't volunteer to come forward.

The supermarkets are in fact big supporters of the role of the GLA because they see it as doing something that they could not achieve by themselves. In theory, they check the ethical nature of the trading that goes on with their main—it tends to be their first and second tier—suppliers. The problems largely tend to happen further down the field-to-fork scenario in the field. That is where we tend to come in rather than the major retailers.

Q448 Chair: That is right, but it seems reasonable to us that there is the issue of reputational damage. If we discovered that the big supermarkets were not being sufficiently vigorous in assessing their suppliers all the way back to the field or the factory, then that would be a cause for some concern. As far as you are aware, they are only following this to the top tier big suppliers and are not vigorously pursuing it further down.

Ian Livsey: That is probably too broad a generalisation. If I gave that impression, it was too broad. It will vary from supplier to supplier, food chain to food chain and retailer to retailer, but I think the supermarkets do recognise GLA's role in the enforcement.

Q449 Chair: I can see how you complement each other. Ideally they should be forcing change from the top, while you are scurrying about at the bottom trying to catch people who are breaking those sorts of rules. I see nothing incompatible in those two approaches.

Ian Livsey: In the previous session and in the conclusions of the JRF report, they do point out the link between us and a nascent adjudicator. I have written to Norman Lamb about this recently. If there are price pressures on a labour-intense food supply chain, it will impact on the highest cost in the supply chain, which is labour costs. We will have a useful partnership with the adjudicator because there will be very similar issues as we go forward together.

Q450 Chair: We recognise that there are structural issues at play here. Joseph Rowntree were making that quite explicit in their evidence and we recognise that. But there are also people who will try and exploit whatever they can as much as they can, irrespective of the structures they are in.

Ian Livsey: Of course.

Chair: That is what we want to pursue.

Q451 Iain McKenzie: What do you think the consequences would be for a retailer or supplier who knowingly contracted and exploited a gangmaster?

Ian Livsey: As David said earlier, if it is a supplier who knowingly uses an unlicensed gangmaster, that is a criminal offence: six months in prison. There is a criminal offence of using an unlicensed gangmaster that would fall on the supplier. The Chairman is right in that one of the things that the supermarkets fear most about this issue is reputational damage. The idea that a supermarket is linked to abuse in any particular newspaper or media outlet is not something that they

look forward to very much. That is also one of the motivations for engaging with us. If we go to the press and identify where abuses have happened and it links to a particular supermarket, it's bad news. The implications for the retailer are bad press in many ways.

Q452 Iain McKenzie: Would the criminal aspect of it follow up the supply chain as well—to the supermarket?

Ian Livsey: No.

Q453 Iain McKenzie: The supermarket could simply say, "We were unaware."

Ian Livsey: No. The offence is between those who have contracted with the unlicensed gangmaster, in the criminality case. If a farmer has contracted with an unlicensed gangmaster, that is the criminal offence.

Q454 Iain McKenzie: It would be just reputational damage to the supermarkets associated with that chain.

Ian Livsey: And possibly disruption to supply. If we took the licence away from the gangmaster with immediate effect, and it disrupted the supply of leeks, then there is a supply issue as well, but I suspect what the supermarkets would regret most is the reputational damage that it would cause. A supermarket does not want to have it publicised that there is forced labour going on in its food supply chain.

Q455 Iain McKenzie: Do you think that supermarkets would do a bit of checking on a regular basis of their supply chain?

David Nix: The supermarkets will undertake their own technical audits, if you like, in terms of the quality of the produce and all that kind of stuff. They do their own ethical audits as part of the Ethical Trading Initiative—ETI. They are signed up to the ETI's base code, which is similar territory to our licensing standards.

Ian Livsey: We work with them; we attend their events and we talk to their ethical auditors. At the end of the day we have powers they don't have. We have intelligence they don't have. They recognise that we are a more effective model for them and that is one of the reasons they are a big supporter of what we do. The BRC sits on the board.

Q456 Lindsay Roy: I am sorry I am late. How do you know these audits are rigorous and robust?

David Nix: The supermarkets' audits?

Lindsay Roy: Yes.

David Nix: I don't think they are as forensic as a GLA inspection, partly because of the skill set of our inspectors and the powers that we have to access information. Yes, they are very useful in that they are testing against key things, but obviously in terms of their rigorousness I would say that a GLA inspection does—

Q457 Jim McGovern: Forgive me, but you say "testing against key things". What are those key things?

David Nix: The issues within our licensing standards.

17 July 2012 Ian Livsey and David Nix

Ian Livsey: The ILO forced labour indicators and things like that that we look at.

David Nix: The benefit of the GLA model is that we are a statutory regulator. It gives us certain powers and allows us to probe a little more forensically.

Q458 Lindsay Roy: But the supermarkets are self-regulating; is that the case?

Ian Livsey: They do their best to check their supply chain.

Q459 Lindsay Roy: How good is “their best”?

Ian Livsey: It can't be as good as what we do because of the powers and intelligence we have. They recognise that, which is why they would hate to see us watered down in any way. They have made that very clear. They do what they think is right for what they do, but they know that they can't do it the way we do it.

Q460 Lindsay Roy: Their biggest risk is reputational risk.

Ian Livsey: They will have a particular ethical view about it and they won't want it for that particular reason. Brand image is a very strong thing in retailing. Clearly if it is all over a media outlet that supermarket A has abuse of vulnerable workers in its supply chain, that is a very powerful message.

Q461 Lindsay Roy: It would be very damaging.

Ian Livsey: Yes, of course it would be very damaging.

Q462 Jim McGovern: I have attended local supermarkets in my constituency in Dundee to help them launch what they called Fairtrade Fortnight. As far as I am aware, Fairtrade Fortnight means that they pay a fair price to the people that supply, for example, tea, coffee and chocolate from abroad. It sounds contradictory if I find out that just three miles away workers are being exploited to provide them with strawberries and raspberries. Do you think that is a possibility?

Ian Livsey: We often think about this, Jim. It is a bit like Fair Trade Scotland. If this is what you are talking about, would a parallel Fairtrade concept or mark work in England, Scotland, Wales and the UK? It boils down to the question of whether the consumer would value it. Would they see it as something that they would differentiate products or supermarkets on? The build-up of Fairtrade took a long time. It took a lot of work and support. Whether it would work in a Scottish concept or an English concept, I don't know.

Q463 Jim McGovern: If I stood there with a sign saying, “These berries are unfair trade”—

Ian Livsey: Absolutely. The Home Office is running pilots in the Boston area in Lincolnshire where they are doing exactly that. In supermarket outlets, they are promoting no to human trafficking type issues to see how the consumer views this kind of problem. One of the issues we have with trafficking and forced labour—modern day slavery—is that it is quite a hidden crime. People don't necessarily or easily recognise it. It is not like you've had your car nicked

from the drive and it's gone. You don't quite see it in the same way.

David Nix: The GLA publishes on our website guidance on the minimum charge rates that we say should be in place between the labour provider and the labour user; the gangmaster and the farmer, for example. By “minimum charge rates”, I mean the rate the farmer will pay the gangmaster per worker per hour. That would cover all their statutory obligations such as the national minimum wage and then national insurance on top of that, plus any other kind of overheads. That is similar territory to Fairtrade.

It is not a statutory minimum rate but anything below it that sets off an alarm bell that corners are being cut somewhere. Within the industry it is taken quite seriously that that is the bare minimum. We get a lot of intelligence from people who are aware of rival competitors who are quoting charge rates well below what our indicative minimum guidance is, and that would prompt us to go and look more closely to see how that could be possible. Sometimes there is an element that if a deal is too good to be true, it is too good to be true.

Q464 Chair: I want to seek clarification on one point. In terms of minimum charge rates, does the gangmaster contract with the farmer or the workplace for a certain amount of work to be done, or does he contract for 25 people? “I will charge you x amount to clear that entire field of raspberries and this will be such and such an amount”, rather than having a charge that is made up on a per hourly rate. Clearly if it is a bulk rate, then all sorts of things can be disguised within that.

David Nix: Yes. It obviously varies between different businesses. What you will find as a common industry norm is that it is quoted on an individual charge rate of an example unit cost of one worker per hour. That is the industry norm for measuring how competitive a contract might be if somebody is coming in—

Q465 Chair: Yes, because that is clearly directly comparable. If it was on a scale of a bulk amount, presumably it would depend how effective the individual employees are as to how long it would take them.

David Nix: What we find with the industries we regulate is that it is not really possible to go in with a loss-leading offer on a contract. It might be possible to get your foot in the door for the promise of future business over time, but by and large it is not possible to go in loss leading. Where eye-opening charge rates are quoted, it is very suggestive that something is going wrong behind the scenes and we would look to penetrate how they could quote that.

Q466 Chair: In that case there is no excuse for any farmer or anybody who buys products from a farmer to say that they didn't know whether or not the appropriate rates were being paid.

Ian Livsey: That is the other benefit of the charge rates. It is a guide for the farmer to know what they should be paying. It is a flag that, if they are not paying that, then that ought to indicate there is

17 July 2012 Ian Livsey and David Nix

something going wrong with the way the money is going down to the workers.

Q467 Chair: Similarly, if the product, whether it is potatoes or anything else, is sold to a factory, then they should be able to trace that back and identify what was paid for that and therefore whether or not they are buying—

Ian Livsey: If they do that, yes, you could follow that chain.

Q468 Chair: There is no reason why they shouldn't, is there?

Ian Livsey: Not particularly, no.

Q469 Chair: Is that something that would be considered good practice by the people you meet in these posh boardrooms?

Ian Livsey: I don't go to posh boardrooms.

David Nix: Linked to the protocol that we drew up with the retailers and the supply chains was a best practice guide for labour users, for farmers. It is not mandatory in the sense that it is something the GLA is regulating against the farmers; it just says, "Follow these practices and you have more chance of avoiding the problem." One of the things within that best practice guide is hourly charge rates.

I don't know if it will help the Committee but I could take the charge rate for Scotland, taking account of the Scottish agricultural wage. The way that is broken down is that you will have the agricultural wage of £6.11, which I think is correct, but then there will be the employer's national insurance contributions on top of that of 33p. It is also factoring in an amount for holiday pay, which is about 78p. Then there is another amount for holiday pay associated with the quirk of the agricultural wage. That will give you total wage costs of £7.28 for one worker for one hour.

On top of that you would have an amount of 10p for statutory sick pay. Then there will be a small amount to cover overheads associated with running the business. We calculated that as 55p. That would give you a charge rate of £7.93 an hour. That does not take into account any profit. It is just the bare minimum that we say should be paid per worker per hour to cover all your statutory overheads plus a small amount.

Q470 Chair: That figure would be known to those who were employing gangmasters, or should be known.

David Nix: Yes. That is widely publicised. If somebody comes in and quotes an amount that is below that, 1p or 2p is fair enough, but if it comes in 50p or 60p below it, that would set off an alarm bell for us.

Q471 Chair: So no employer of gangmasters should be paying multiple rates that are based on anything lower than that figure except at the margins.

David Nix: It would suggest that corners are being cut somewhere.

Chair: That is very helpful.

Q472 Iain McKenzie: In a recent debate another Member commented on the impossibility of effective policing when there is only one inspector covering a large area. How do you allocate resources in that respect?

Ian Livsey: This is the Westminster Hall debate with Stephen Barclay and our Minister responding. We have had a 25% reduction in resources. I have taken 50% out of back office and about 15% off the front line. I have protected the front line as much as we can, but we are still a small regulatory organisation. The way we deploy our resources is through what we call a tasking process based on intelligence. I can quickly run through that.

We use the National Intelligence Model, as David said, which allows us to take information or intelligence that we have received from workers, inspections or wherever and prioritise it. We look at the reliability, the timeliness and seriousness of the intelligence we have. We end up with a schedule or list of possible enforcement or inspections that we have to do. Bi-weekly, we sit down and allocate those to the various officers we have.

David Nix: We have a fortnightly meeting and if something urgent comes up it gets tasked immediately and we respond immediately, but there is a formal meeting every two weeks.

Ian Livsey: We allocate those. If it is in Lincolnshire, we have a team covering the east of England who will have seven to eight inspectors. That would go out to the head of that team, who would then allocate that work to a particular inspector. It is true to say that at every meeting we have more jobs than we have resources. We just have to keep working our way through those jobs. That is how we allocate the work with the resources we have.

Q473 Iain McKenzie: Do any other agencies assist you in gathering intelligence?

Ian Livsey: Very much so. For example, with the other Government Department checks we would typically talk to the police, HMRC, SOCA and other Government Departments like BIS or people like that. We have very good information gateways in our legislation that allow us to pass information across. We do those checks to build up part of the picture for a job or an enforcement operation.

Q474 Jim McGovern: David, you say you meet fortnightly. I think I know what your answer is going to be but, just for the record, if something urgent comes up, if it is an emergency, you don't wait for the fortnightly meeting, do you?

David Nix: No, no, no.

Ian Livsey: We respond instantly and it will get tasked out. That would be if there was a particular and immediate danger to workers.

Q475 Pamela Nash: On the same subject, you have very few enforcement weapons, the ultimate penalty being to withdraw the licence. Do you see this as an effective deterrent?

Ian Livsey: If it is a criminal offence and they don't have a licence, then I think people would say that the section 12 offence, which is up to 10 years'

17 July 2012 Ian Livsey and David Nix

imprisonment, is quite an effective deterrent. In the civil offence, where they breach licence conditions—

Q476 Iain McKenzie: But the removal of the licence—

Ian Livsey:—which can stop them trading.

Iain McKenzie: Is that an effective deterrent in itself?

David Nix: Yes.

Ian Livsey: Yes, because it stops them trading in our sector. They lose their business. You have to have a licence to supply labour in agriculture. If we take it away, subject to an appeal, then, as David said, you cannot trade for another two years. So you lose that business; your business ends. I think it is a deterrent.

Q477 Chair: If the threat of prison for somebody operating as an unlicensed gangmaster was an effective deterrent, there would be no unlicensed gangmasters. Is that the position we are in?

Ian Livsey: No. Criminals will always try to—

Q478 Chair: Clearly it is not an effective deterrent then, otherwise they would be deterred.

Ian Livsey: There are some issues here. In the same Westminster Hall debate there was a commitment from the Government to look at sentencing guidelines. What we find is that when we do take criminal prosecutions forward the outcomes tend to be—I was going to say not as draconian—less forceful or not what we would expect. There was a recent case in Leeds where the judge himself said it would be helpful if we had better sentencing guidelines on these offences. I do think that there is a need for more sentencing guidelines. It is an effective deterrent but it is probably not being deployed effectively.

Q479 Chair: If it is an effective deterrent, then presumably the scale of the sentence must be appropriate. How do you think it is not being applied? Do you mean that judges are not using it?

Ian Livsey: The outcomes of the criminal cases we have brought have disappointed us in that respect.

Q480 Chair: In the sense that you are losing them or the maximum sentence is not being given.

Ian Livsey: The maximum sentences are not given.

David Nix: The size of them.

Ian Livsey: The tariff.

Q481 Chair: There is a sentencing guideline that is not sufficiently—

Ian Livsey: There aren't sentencing guidelines.

Q482 Chair: There aren't any sentencing guidelines.

Ian Livsey: No.

Q483 Chair: Sorry; I misunderstood that point.

David Nix: Not for GLA offences.

Ian Livsey: And that is what we need. We need clear sentencing guidelines on this.

Q484 Iain McKenzie: On the same sort of theme, how often do you prosecute offenders and how many of them are given a custodial sentence?

Ian Livsey: We have never had a custodial sentence.

David Nix: We have not had a custodial sentence. Would it help the Committee to give up-to-date figures on our prosecutions?

Iain McKenzie: Yes.

David Nix: So far in terms of prosecutions to date, we have had 40. That is broken down by 22 in Scotland, three in Northern Ireland and 15 in England and Wales. That is where there have been convictions. They are by and large for the section 12 offence of operating without a licence but also include some under section 13 and another offence of obstruction, which is section 18 of the Gangmasters (Licensing) Act. We have had one conviction for that.

In terms of pending prosecutions, which are things that are either at court or where summons have been issued, we have 21 in England and Wales, two in Northern Ireland and two in Scotland. Then we have a further four being considered currently, as of yesterday, by prosecuting authorities, whether it is the CPS, the Procurator Fiscal or the PPS in Northern Ireland.

Q485 Chair: If there have been 40 prosecutions and 22 have been in Scotland, it either means that in Scotland people are much worse or that the catching is much better. Which is it?

Ian Livsey: We had some early successes in Scotland with prosecutions. We had some effective enforcement work through our officers, who did a particularly good job there. We are catching up in England and Wales. It is not that it is worse in Scotland, but we were very effective in terms of enforcement in Scotland.

Q486 Chair: One of the arguments about the reason for that was that, Scotland being a smaller community, there was more collaboration among the various agencies. Is that your view or was it just the efficacy of the approach that the individual officers were utilising?

David Nix: I think it is more the latter. It is still important to bear in mind that we are quite a young regulatory body. I don't think you should draw too many conclusions about the numbers of 22 in Scotland so far and only 15 in England and Wales. I don't think there is any great reason why there is that particular difference. It is just the way it has panned out.

Q487 Iain McKenzie: Of the 22 in Scotland you are saying that none has escalated to a custodial sentence.

Ian Livsey: No.

David Nix: No.

Q488 Iain McKenzie: Of the 15 in England and Wales, have any?

Ian Livsey: No.

David Nix: No; we have not had any custodial sentences. In the vast majority of prosecutions people have pleaded guilty, which obviously has a bearing on the sentencing. We have not had a custodial sentence yet.

Ian Livsey: They tend to be small fines.

17 July 2012 Ian Livsey and David Nix

Q489 Jim McGovern: How many people have you prosecuted? It is not the GLA who prosecutes people, is it? You report it.

Ian Livsey: That is right.

David Nix: In Scotland it is the Procurator Fiscal.

Q490 Jim McGovern: And thereafter it is out of your hands.

Ian Livsey: Yes.

Q491 Chair: On that point, how many have you reported? You say 22 were guilty, but how many were taken to court and how many were passed to the Procurator Fiscal but not proceeded with?

David Nix: I don't have those figures.

Q492 Chair: Can you let us have them and how Scotland compares with the rest of the country?

Ian Livsey: Yes.

Q493 Lindsay Roy: You said there were small fines. Are they a deterrent? Has there been any recurrence from people who have been fined?

Ian Livsey: I think when people are prosecuted they tend not to do it again. It has deterred them.

Q494 Lindsay Roy: How many recurrences have you had?

David Nix: Nobody has been prosecuted twice.

Ian Livsey: No, we have not prosecuted anyone twice.

Q495 Lindsay Roy: Have they been checked?

David Nix: Yes. We do follow-ups and there are one or two investigations to see what people are doing at the moment who have previously been prosecuted.

Q496 Lindsay Roy: So you have no examples of regressive behaviour.

Ian Livsey: No. That would occur more in the unlicensed part of our work.

Q497 Chair: I have a situation in my constituency where there are phoenix companies. It is not the man but it is then his wife. Do you have any of that?

David Nix: Yes.

Ian Livsey: Yes, all the time.

Q498 Chair: So people are being prosecuted and presumably they would not then subsequently get a licence, or would they get one if they had cleaned up their act?

Ian Livsey: Probably the latter.

David Nix: Just because somebody has been prosecuted for one of our offences, it would not be an automatic bar to having a licence. It depends if there are any aggravating factors associated with the unlicensed trading. First, they had been unlicensed, but how well have they been treating the workers? If there has been any mistreatment, then that would be the factor we take into account as to whether they should have a licence—not the fact that they just didn't have a licence.

Ian Livsey: A specific example would be—it often happens—that there may be a short period of unlicensed trading when a licence had elapsed and for

some reason they have not renewed their licence for three, four, five or six weeks. That is a criminal offence but that would not debar somebody from getting a licence again. If, however, there had been abuse and violence, then that would.

The phoenix issue is a huge one for us, for exactly the reasons you have given. They put up a stooge and probably operate in the background pulling the strings of the business.

Q499 Chair: Absolutely, and you have no powers to deal with them in those circumstances on the basis of the fit and proper test.

Ian Livsey: That is how we deal with it.

David Nix: We have had cases where we have revoked licences previously with immediate effect because of very serious problems and then those individuals have sought to get back into the licensing system by putting other people forward or perhaps controlling an already existing licensed business. We have refused applications and revoked the licences because of connections with people that we deem not to be fit and proper.

Q500 Chair: It would be helpful in terms of the information that you could give us. I presume you have a list of those who have been prosecuted and the sentences that they were given. Names and addresses and the penalties that were applied would be helpful. I also asked about the number that you had passed, particularly in Scotland, to the prosecutors that had not been prosecuted or pursued and also how many had gone to court and not been found guilty. What is your success rate on both of those?

David Nix: If it has reached the courts, they have all been found guilty.

Q501 Chair: You have 100% when it gets to court.

David Nix: Yes.

Ian Livsey: Or they plead guilty. They tend to plead guilty.

Q502 Chair: So you only take people to court if they are pleading guilty.

David Nix: No.

Ian Livsey: No; when they get there they plead guilty.

David Nix: In the majority of cases that have gone forward to court they have pleaded guilty. There has been a small number where they have pleaded not guilty but they have been found guilty.

Q503 Chair: They have been found guilty.

David Nix: Yes.

Q504 Chair: Is that 100% of the cases you passed to the Procurator Fiscal in Scotland?

Ian Livsey: That is the bit we don't know. The question you are asking that I think we will have to look at is how many we have passed to the PF that have not been taken forward.

Chair: That would be helpful, and how that compares. In other contexts we have discussed health and safety with the PFs as well.

17 July 2012 Ian Livsey and David Nix

Q505 Jim McGovern: When you provide the figures for the people you have reported, regardless of whether or not they have been prosecuted, convicted or whatever, could you also give us a breakdown of the occupations of the people that were working and whether they were berry pickers, rural or in the construction industry, whatever they may have been? Could we get that sort of data?

Ian Livsey: It would not have been the construction industry.

Q506 Jim McGovern: It wouldn't be.

Ian Livsey: No.

Q507 Jim McGovern: Whether it is berries or potatoes or whatever.

Ian Livsey: It will be agricultural.

David Nix: We will give you whatever information we can break down. We will give you as much as we can.

Q508 Jim McGovern: To be honest, when the Chair said name names and so on, I was not sure whether you would be allowed to do that. It would be perfect if you could.

David Nix: On the GLA's website we list all the licences we have revoked. We think it is very important to operate in an open and transparent way. Wherever we can, we issue press releases to name and shame effectively.

Q509 Jim McGovern: But if you have reported people and they have not been taken to court, can you still give us details?

David Nix: We will have a look at what is possible.

Ian Livsey: We name and shame because prosecution by publicity is very effective. People won't use you if you have been named and shamed. When a licence has been revoked and it has gone through the subsequent appeal process, we will name the person involved who has lost their licence and do a press release. Certainly when it has been in open court and there has been a decision, then we name that decision as well.

Q510 Chair: Following on from that, if somebody is done for being an unlicensed gangmaster and they are working on a farm, you would presumably go for a prosecution of the farmer as well in those circumstances for employing an unlicensed gangmaster. Are they named and have they been 100% successful as well?

David Nix: It depends on the particular cases and whether the labour users had a reasonable defence, for example.

Q511 Chair: "I didn't know."

David Nix: Yes. We don't always take forward a section 12 and section 13 offence at the same time. It would probably be quite helpful if we break down the stats as to where there have been some concurrent investigations and if there is a reason why there was a section 12 prosecution but not a section 13 one.

Q512 Jim McGovern: Maybe this was discussed when I had to leave for a wee while, but what are sections 12 and 13?

David Nix: Section 12 is where it is an offence to operate without a licence; section 13 is where it is an offence to use somebody unlicensed.

Q513 Jim McGovern: In line with what the Chair says, could we get the names and addresses of not only the gangmasters but the farmers who were possibly guilty of breaching section 13?

Ian Livsey: Where we have prosecuted them, yes.

Q514 Jim McGovern: But not where you have reported them.

Ian Livsey: I don't know. We will have to find out about that and see what we can do.

David Nix: We will see what we can make available to you.

Q515 Chair: We would want it all made available to us. If you can't make it available to us, then give us an explanation why. That would be helpful.

Ian Livsey: Yes.

Q516 Lindsay Roy: Have you considered any other methods of punishing non-compliant labour providers?

Ian Livsey: One of our key objectives going forward is the introduction of civil penalties such as fines. The outcome of the Red Tape Challenge, which was in the written ministerial statement, is to seek administrative or civil penalties for the GLA.

Q517 Lindsay Roy: What do you think of that suggestion?

Ian Livsey: I think it is a great idea. It is immediate justice in the right circumstances. It avoids lengthy and costly court trials with outcomes that at the moment are not as well codified as we would like. They would only be used in support of the criminal sanction and not as a total replacement for it. As a first offence or as a minor offence it may be that there is a fine in the first instance, but with repeat or serious offences the criminal sanctions would still apply.

Q518 Lindsay Roy: Do you have any examples of this in operation and its effectiveness?

Ian Livsey: We don't have those powers now.

Q519 Lindsay Roy: No, but from other countries.

Ian Livsey: I can't tell you off the top of my head.

Q520 Chair: I don't know whether or not you just made this idea up on your own. Is there anything that happens anywhere else that makes you think, "It works there and we would like to transpose that here"?

David Nix: There has been quite a concerted drive across Government and different regulators to pursue alternative sanctions as opposed to criminal sanctions, and we can recognise that.

Q521 Chair: Could you point to any example that works?

17 July 2012 Ian Livsey and David Nix

David Nix: I am not aware of any.

Ian Livsey: It all started with Richard Macrory's report. The Macrory powers were suggested four or five years ago as alternative civil sanctions to criminal penalties. That was recognition that we needed to try to introduce them. The obvious examples, not in our sector, would be road traffic offences.

David Nix: It would be something that we would like to bring in, not just on the criminal side but also on the civil side with our licensing regime, as maybe an alternative to a loss of revocation. You might want to issue financial penalties. We are also looking at getting powers for restitution orders, such as repayment orders for underpayment of the national minimum wage. It would fit with a wider suite of powers at our disposal.

Q522 Chair: I thought that the national minimum wage was enforced by someone else who would have those powers.

David Nix: Yes.

Q523 Chair: Presumably it is a question of you passing it to them and they would process that.

David Nix: Yes, but it would make it more efficient if we were there and have the information to hand rather than passing it to another regulatory body for them to do it. It would speed things up effectively and give an immediate benefit to the worker.

Q524 Lindsay Roy: We are aware that many labourers come to the UK to work and are not aware of their rights or the support that is available to them. What is your organisation doing about that?

Ian Livsey: In terms of making workers aware of their rights, as perhaps I alluded to a little earlier, we do have a suite or a whole collection of leaflets in the foreign languages of the workers and we try to distribute those. I am sure it could be better.

Q525 Lindsay Roy: Do they have contact numbers?

Ian Livsey: Yes. We have a direct helpline to the GLA for workers to ring us. There is then the Government's Pay and Work Rights Helpline, which is the general one for workers.

Q526 Lindsay Roy: How many contacts does that generate and are you able to follow them up?

Ian Livsey: I will put that in the written answer to you about the number of calls we get per week on the helpline.

David Nix: Within our intelligence team there used to be two members of staff who can speak Polish and Russian, but one person has left unfortunately and we are looking to replace them at the moment. There is a facility for people to be able to speak in their native language, which we think is important.

Q527 Chair: I want to tie up a couple of points that have been raised. You mentioned that you had no power of arrest in Scotland. Has that caused you any particular difficulties?

Ian Livsey: We use the police where we need to arrest people, but I think it is a discontinuity. If it were a power we had, it would be welcome.

Q528 Chair: In terms of whistleblowing, have you had any experience of that resulting in somebody being blacklisted or anything similar? How do you follow up anything that happens to your whistleblowers, or do you just simply not know?

David Nix: We are not aware of individual workers being blacklisted. In terms of people whistleblowing to us, ringing up and complaining, we always keep that information in confidence. There may be a point in time when their identity is revealed because it might come to court or it might lead to a hearing if it is to do with a licence revocation. We put great emphasis on people being able to report information to us in confidence. They can do that anonymously. We have the facility through our website where people can supply information to us anonymously, but we always try and protect the source because obviously there are repercussions associated with that. We are not actually aware of anybody being blacklisted as such.

Ian Livsey: That does not mean that the informal blacklisting that you talked about in your previous session won't be going on. I don't think there is a formal list of names à la construction, but I would not be surprised if within the tight labour provider community or gangmaster community, there is word of mouth stuff.

Q529 Chair: The final point I wanted to pick up that concerns me a bit is that I can understand why you are intelligence-led and focusing on serious crime and related matters. That potentially allows a whole lot of ordinary run-of-the-mill exploitation of workers to go unpursued if you are focusing on the gangs involved in this as only a part of their enterprise. How do you balance that, accepting that if you are doing this big focus, a whole number of other things must be going by the board?

Ian Livsey: That is exactly the question we are talking about right now within the GLA. How do we balance the—I was going to say—"routine", but you know what I mean, with the very multi-agency labour-intensive long-term operations? We have not solved that question at this moment in time.

Q530 Chair: I think that covers all the points. We usually ask people finally whether there are any answers they had prepared to questions that we have not asked or anything that they are bursting to get off their chest that we have not touched on so far.

David Nix: We will write to you with as much information as we can give you.

Chair: Depending on how other things progress we may see you again, but otherwise thank you very much for coming along.

Examination of Witnesses

Witnesses: **John Picken**, Vice-President, National Farmers Union of Scotland, and **Melanie Leech**, Director General, Food and Drink Federation, gave evidence.

Q531 Chair: I welcome you to the Scottish Affairs Select Committee. As you know, we are conducting an investigation into a number of labour practices, including health and safety. We have already met some of NFU Scotland's representatives. We are also looking at blacklisting and migrant workers, and it is in that context that we are seeing you this afternoon. Originally, Ms Leech, I think it is fair to say that your enthusiasm for coming to see us was less than total. As we have demonstrated from the previous session, we see that not only farmers but also people involved in manufacturing the raw materials coming from farms have an involvement and a responsibility in this area. Generally we take the view that both of your organisations are either going to be part of the solution or part of the problem. Depending on how the discussion goes this afternoon, it will be clearer to us how you see yourselves.

I start off by asking you to say who you are for the record, the organisation you are representing and what it is.

John Picken: I am John Picken, the Vice-President of the National Farmers Union of Scotland. I have been in the post for a little over a year. I have another few months to go until February. Fundamentally I am a farmer; I employ one man. We have a cereal farm two miles from St Andrews and we have cattle and sheep as well. My man has been with me for something like 45 years and does what I do.

Melanie Leech: I am Melanie Leech, Director General of the Food and Drink Federation, which is the trade association for food and drink manufacturing. We have a separate Scottish Food and Drink Federation that is part of us but devolved in Scotland. We currently do not have a director in Scotland. In any case, I thought it was appropriate that I come here today to represent the industry as a whole. May I just briefly respond, Chair, to your kind introduction?

Q532 Chair: Let me make it clear that it was a kind introduction, considering what I was originally thinking of saying.

Melanie Leech: I will respond in equal kind, if I may. The Food and Drink Federation is a membership organisation. We invite membership from across the whole of food and drink manufacturing, which, as this Committee will know very well, is a jewel in the crown of the economy both in Scotland and across the UK as a whole. Taken in that broader perspective, it is a high value-added sector. In Scotland it employs 46,000 people, of whom 97% are permanent and 80% are full-time. They are operating in very high-tech environments. They are operating in world-class facilities, investing over £1 billion a year across the UK in R and D. In the majority, my members come from that picture. They come from high value-added facilities in which they are investing significantly. They are investing significantly in their employees. We don't in the main represent farmers or primary processors who package farm produce for retailers nor, other than a small number of high end companies

producing premium products, do we have any members who pack meat for retail.

My concern in responding to the invitation from the Committee was that I cannot in the main respond specifically to the issues that the Committee is looking at and those represented by the Joseph Rowntree Foundation report, because that report doesn't cover the activities of my members and they are the ones I can speak directly for. But I am more than happy to assist the Committee with a general view on the issues in the report and to do what I can to help. That was my concern in the correspondence that we had. I hope that is clear and helpful.

Q533 Chair: I wonder if you could clarify your role in the food chain. It is much easier for the farmers because you are the beginning. You understand the nature of our concerns about these issues. We were working initially on the report from the Joseph Rowntree Foundation, but since then quite a number of other people have spoken to us with similar sorts of evidence. It is obviously an issue that causes us great concern. Therefore, in the whole spectrum, whether it is field to fork or whatever analogy is used, we see you as having a role to play.

It would be helpful if you could initially tell us what steps you as an organisation, or representing your organisations, take to try and make sure that there are no bad practices in your part of the food chain and in the parts of the food chain before you, as it were. Unless you could draw all your raw materials from abroad, then clearly you are drawing them from farmers in the UK. It would therefore be helpful to clarify what steps you took to make sure that none of your suppliers was involved in the sorts of practices that have caused us and others concern. Which of you wants to go first?

Melanie Leech: I will take that at two levels, if I may. There is what FDF can do as a membership organisation and as an organisation trying to work across the sector as a whole. I think we have quite an important role to play. Ian, your previous witness, kindly spoke about our role on the board of the GLA. When the GLA was being created, we strongly supported that as a way of raising standards in the sector and being appropriate regulation. The food sector is quite unusual in that quite often we strongly support regulation where other sectors might perhaps do nothing but complain about red tape. We are actually quite strong supporters of proportionate risk-based regulation, because unless consumers have confidence in the food that they buy none of my member companies will be able to prosper. We do support regulation, and we did support the creation of the GLA and lobbied quite hard in favour of that.

We raised awareness of that among our members. We tried to identify for them what the implications were and what their responsibilities were. We have quite an important role in raising awareness and making people aware of the obligations and regulatory structure that they operate within. Beyond that, we have a role in identifying good practice and trying to raise awareness

17 July 2012 John Picken and Melanie Leech

of that, disseminate it and challenge the members who may be lagging behind to move forward with that good practice. We have done quite a lot in a number of different areas to try and do that, and we still do around employment issues.

We can work with other organisations and agencies to try to facilitate information flows, dialogue and so on. As FDF we have a role that we can play. We are primarily reaching out to our members naturally and we would love to have more members and the ability to reach further into the sector, but primarily what we can do in raising awareness with companies will be focused on our members. The role we can play in relation to working with other partners might be a broader role where we will try to bring as much intelligence as we can across the sector as a whole.

In terms of some of our companies, in preparation for today I had a look and talked to some of our member companies who are operating in Scotland about whether or not they use agency workers and what steps they take to satisfy themselves. I am very pleased to say that there is a lot of good practice out there. A number of them talked about ethical trading policies that mean that they go and do audits. You talked about that in your last session. A number of them benchmark themselves by making sure, for example, that they pay exactly the same whether or not they are employing permanent staff or seasonal workers. They pay above the minimum wage because they want good people and they want people who will be committed to them.

I did find a number of examples of good practice among the Scottish members and I can give you more details of those and specific companies if that is helpful. That is an important assurance for me that our members are taking their responsibilities seriously.

Q534 Chair: There are two things arising from that before I come to you, Mr Picken. One is that you have outlined a number of activities that you are doing. How effective are they? It comes back to the discussion that we had earlier about people sitting in a nice posh office and agreeing that the world should be a better place. How do you know that what you are doing is actually working?

The second major point is that you mentioned the labour standards that your member companies apply to their own employees, but you did not mention the point I raised about further down the food chain and whether or not they are taking an interest in the practices that are occurring at the suppliers. You could maybe respond to that as well.

Melanie Leech: In respect of the first one—how do we know that what we are doing is working?—I think it is because we can see good practice being applied when we look at what our members are doing. Inevitably, with a membership organisation, your members will tend to be those who want to do the right thing, are trying to do the right thing and striving to do the right thing. We are not going to be reaching companies who are just outside that conversation completely, which is why we would support the need for regulation and enforcement that is proportionate to tackle those people, because we are not going to reach those people. We will work up to a point, but we will

tend to be most effective with the willing participants and the people who want to do the right thing in the first place; I would accept that.

Q535 Jim McGovern: Are the major retailers all members?

Melanie Leech: They are not members of the FDF. We stop before retail. We are not consumer-based. We are by and large the people who supply the major retailers.

Q536 Jim McGovern: So we are not going to be able to ask questions about supermarkets.

Melanie Leech: I am afraid not, no.

Q537 Chair: They will be next week.

John Picken: You can ask me, if you like. I will give you an answer.

Melanie Leech: I have not answered the second part of the question, which was about looking back down the chain. In general, issues that bear across the chain tend to operate on a one-up, one-down basis, and the same would be true of food safety. You tend to most directly focus on your supplier and then be accountable to your customer. In general, processes don't depend on driving all the way back down.

Clearly where I have members who are closer to the primary end of the chain, you would expect to see more. They are satisfying themselves directly and clearly that it is incumbent on anybody who is buying a product, as I think you were hinting at, Chair, to satisfy themselves that they are buying legally and from a supplier who is complying with their legal obligations. But, in general, the processes would not be in place to go all the way back down the chain where my members might be operating at several removes from a primary processor or a farmer. It would not be a general thing that they would do.

Q538 Chair: Given the point that we made earlier on about reputational damage as that would apply to supermarkets, as I understand it—having been at one of the dinners held by your association to sing their own praises obviously and trying to impress upon us how high quality they were in both food and soft drinks, that is an area where reputational damage could be considerable—I am quite surprised that you don't seem to take much more of an interest in what is happening all the way through. Anything untoward at any stage before it reaches you could obviously impact upon the image of not only the individual company but your association generally.

Melanie Leech: I didn't at all mean to suggest that companies don't take those issues seriously. The issues are different for retailers. In the types of activities that the Joseph Rowntree Foundation report was looking at, for example, you are talking about retailers buying directly from the companies who are supplying in the circumstances that the report looked at. If you are buying as a supermarket direct from a fresh produce provider and packer, it is a very short chain.

In terms of long chains, I accept absolutely that there is a responsibility on my member companies at six or seven paces removed from that to satisfy themselves

17 July 2012 John Picken and Melanie Leech

as to the provenance of the supplier they are buying from. It is reasonable for them to expect that the legal and regulatory framework that is wrapped around the chain as a whole should operate in terms of due diligence at several steps removed. If they had to check at every stage that the regulatory authorities had done their job effectively or that the predecessor suppliers had done their due diligence effectively, that would add huge costs to the system that I don't think the evidence would suggest would be justified.

Q539 Chair: Mr Picken?

John Picken: We take a lead position in anything to do with reputation and brand within our industry. We regard ourselves as encouraging best practice. Through experience and farm assurance we have formed partnerships higher up the supply chain. We would not go as far as to say that we provide all the answers, but with our partnerships with retailers, for instance, they put on us a higher than regulatory requirement for a legal product. There are legal requirements in place to be a farmer and produce fruit. A retailer will add to that and a lot of that is to do with best practice. They come and inspect, sometimes without notification. They will descend on a fruit farm and have a look at books. It is an open-book policy. If you were a direct supplier to Tesco, you would have to comply with all the assurance requirements to be a member of that supply group. That would mean that they would come and open up your books at any time without notice, if they wanted to. They would then inspect your premises, inspect your cold store and inspect all the other aspects right down the line to the chemicals that you apply, making sure that you are legally entitled to use those chemicals and are able to apply them. They would want to know who applies them, whether the operator is licensed and if the machine is licensed. It is all there in farm assurance. They would check that and they would check the machine. They are squeaky clean as far as the pressure of getting it done is concerned.

The reason that we do all this is because if we aren't on their list—we are delisted—you can't sell your produce. There are lots of supermarkets—at least four big ones—but nonetheless they all play the same game. Everyone knows everyone, and if you are delisted from one you will be delisted from them all. That threat is enough to make sure that farmers stay within the law. Farm assurance is one of the best ways of getting to a base level of acceptance to sell your product.

Scotland's quality allows it to export all over the world. Whisky has been one of the best business cards anywhere throughout the world, and with that has gone Scotland's food and drink, with other products. Whisky has been a great product for such a long time. It is that same model that we try and generate for beef, sheep, fruit and anything else.

A lot of our big markets are south, in England, so we tend to look there for the first call and it is only when the markets are beginning to be saturated. Earlier on one of your questions was about daffodils and the pickers. We could not get these pickers to go north. The whole crop of daffodils in the whole country, because of the weather pattern, was ready at the same

time. We could not entice them north, no matter what we tried to pay them. They would not come, so the daffodil crop in Scotland was ruined.

The three fields around Arbroath that were growing daffodils were really laid to waste this year. It was a disaster. However, the pickers would normally have progressed north and that is how the system works. We can't afford to employ people for three weeks just to pick daffodils. It is seasonal demand and the pickers move around.

Q540 Jim McGovern: John, we get a very brief biography; it is one sentence. It says that you own three farms at Priorletham, St Andrews and Fife. It all sounds like Fife to me.

John Picken: Yes; that is the thing. When I started farming, farms were 150 acres. Now you have the same building blocks but you have one farm that is looking after 1,000 acres. I currently farm 550 acres and I rent 150 acres. My business is roughly 700 acres.

Q541 Jim McGovern: Over three farms.

John Picken: They are small farms, but, yes, effectively.

Q542 Jim McGovern: But all in Fife.

John Picken: They are all in a block. My father had two farms and I bought another one next door.

Q543 Jim McGovern: They are all in Fife.

John Picken: They are right next door to one another. It is just a wee block. It is a square mile, roughly.

Q544 Jim McGovern: Is it soft fruit?

John Picken: No, that is my neighbour; he does soft fruit. I will harvest anything that is above ground. It is grain: wheat, cereals and grass.

Q545 Jim McGovern: So you don't have to employ groups of people to bring that in.

John Picken: No. Maybe this year I might have employed a shearer, but I managed to do them all myself so I didn't need a shearer. My neighbour employs about 350 pickers. He has 120 acres of soft fruit that he sells to all the supermarkets. If it is of any use to you, if you wanted a visit out on these farms, we could easily organise a trip around some of the farms, if that was of interest.

Jim McGovern: I used to pick berries for the whole summer. I have been to many a berry field.

Q546 Chair: It is always part of the difficulty that the places we would be taken by people like you would be good farms. It is a bit like seeing good boys at the Boys Brigade, isn't it?

John Picken: I know it is your job to pick holes, trying to find where the problems have come from, but I have to say that nowadays, with the self-policing that goes on within the industry, it is very difficult to have all these problems every week. You may get one or two problems initially or maybe just because of personality clashes. Who knows? But it happens, and it happens on a small scale, I think, in Scotland. I must admit that with the Rowntree Foundation report

17 July 2012 John Picken and Melanie Leech

nobody wants to read of those problems that we had, but in context is it such a big problem? The retailers put such an onus on us that we have to be squeaky clean. They don't want bad publicity.

Look what happened to Asda today. They have increased their price by 2p per litre of milk. They took 4p off about a month ago and then again last week, but they have reinstated 2p. Why did they do that? It was because of bad publicity. It was just that fact. The pressure of being a bad retailer was enough for them just to go ahead and offer that.

Q547 Chair: If everything was fine, we wouldn't be having this hearing. It is because it has been drawn to our attention by the Joseph Rowntree report and by other sources that we are pursuing it. You are not suggesting that bad practice does not exist. We believe it does and we want to discuss with you how we reach the standards for everyone of the sort of people you are referring to.

Just coming back to the point that I raised initially, what do you as an organisation do to try and raise standards among your members? I understand the point about market demand. In many ways that has been one of the beneficial effects of the supermarkets. We can debate the effects of the supermarkets on another occasion, and I can see how that has had a positive impact, but clearly not everybody lives up to that standard. I am not clear whether or not the NFUS would see itself as having a responsibility to disseminate good practice. We had a similar discussion with one of your colleagues about the question of health and safety. I understand some of the problems about the sole trader, people working on their own and so on, but here it is not quite the same. Can you clarify for us what role you see yourselves as having in dealing with the abuses we have identified?

John Picken: From the membership point of view—I would be similar to Melanie on this one—you have to show the way. We lead in all of these things. If health and safety is the issue—maiming and damage and bad practice—we would encourage farmers to get more involved with the local health and safety groups. It is not so much that they come down on you with a ton of bricks if there is a problem; the point is to get to them and inform them, and prevent accidents. Nobody wants to be responsible for hurting or maiming or bad practice. It is trying to get things in place.

We are talking to various groups just now who are actively out there with models of what we should be buying into as an industry. We are just trying to assess our next move. The company that is responsible is SFQC. It trains assessors for various assurance schemes. This one will hopefully train people to come round and include health and safety in all of this. We are hoping to get better buy-in from them as to what we need to do as an industry because our record is not brilliant for accidents and health and safety.

Q548 Pamela Nash: Do you specifically see it as part of the role of your organisation to promote the work of the Gangmasters Licensing Authority?

John Picken: Yes, we do. I was at a meeting with Ian previously at Holyrood. From that discussion, the

Gangmasters Licensing Authority had shown that their responsibility had increased and the problems had reduced over the six years they had been in power. His problem was a lack of resource. He was asking for more resource and maybe not more legislation. Time would help. I don't know what timescale your Committee is working on, but he was certainly pleading for more resource.

Q549 Pamela Nash: What is the Farmers Union doing to promote the work of the GLA?

John Picken: They go round as an independent and we will accompany them if we are asked, but other than that there is no hand holding. They work on a separate level.

Q550 Pamela Nash: Sorry, not with the GLA but among your members, what are you doing to promote the work of the GLA?

John Picken: We don't really. Everyone is well aware. You are not talking about a big country. There is only somewhere in the region of 8,000 acres of soft fruit. It is increasing, but none the less we know them all and they are all highly specialised. All of them will be employing 100-plus seasonal workers. They would be better to get their house in order and we will help them with that. The retailers are the ones that really police it more than the GLA. The GLA come in if they hear of a problem. It is the retailers—

Q551 Pamela Nash: I suppose I am talking about prevention rather than cure. It is their job to police it. I am trying to find out how they are informed about it. Melanie, could I ask you the same question? How do you promote the work of the GLA among your members?

Q552 Melanie Leech: We run a number of groupings of companies—representatives—to come together around specific issues. We have a very active employment and skills forum where we bring together the HR directors. That would be the place where we would talk about a whole range of employment issues, including the employment of agency workers, the working time directive, the minimum wage and all those kinds of things. We would draw information from that group, on the one hand, so that we understand what is happening in this sector and where the issues are in responding to proposals for new legislation and so on, but we would also disseminate information back outwards. That would be the channel and the grouping that we would use if, as sometimes happens, an organisation like the GLA comes to us and says, "Can we talk to your members or can we promote a particular issue?" We use our channels to do that.

Q553 Pamela Nash: What are those channels? Are they local meetings or newsletters?

Melanie Leech: Yes. As I have said, we have committee meetings. The HR directors will meet. In Scotland we have a forum of just Scottish companies that meets regularly. There is a range of other things. We have newsletters. We do a lot on our website. We are quite web-based in the way we handle

17 July 2012 John Picken and Melanie Leech

information. We will put links to other organisations on our website. We will promote activities that they are doing. It is all of those kinds of things.

Q554 Pamela Nash: John, you quite clearly don't see it as part of the role of your organisation to police your members to make sure they are complying with the legislation. Would you share that view for your members? Does your organisation have any responsibility for ensuring that your members are complying with the gangmasters legislation as well as any other relevant legislation?

Melanie Leech: Is that to me?

Pamela Nash: Yes.

Melanie Leech: We can't directly take on the responsibility to police our members. What we can do is make our members absolutely aware of what their obligations are and challenge them to look for good practice beyond that. Coming back to the reputational issue, we want to promote an industry that has a fantastic reputation on all fronts, especially as a good employer. Across the UK as a whole we employ about 400,000 people. We have to replace a third of those in the next five years, so it is absolutely in our interests to be seen as a good employing sector. For that reason and for many others we will do what we can to promote good practice that goes way beyond the minimum legislative requirements because it is in our interests as an industry, and it is in our members' interests, that we do that.

Q555 Chair: That covers the question of your own employees, doesn't it? On the issue about further back down the supply chain, you are still in the position where you are saying, "No, that's not our responsibility."

Melanie Leech: There is a proportionality test here. I would be really interested to hear where the Committee ends up on this. On the one hand, as I've said, we have a sector that is employing 400,000 people. Grant Thornton did an independent report for us looking at economic indicators around our industry because we wanted to make the case for what a great industry we were. If I look at the labour market intelligence that the Sector Skills Council produces, we are employing a high number of permanent employees. Across the UK and the sector as a whole we are giving them above average wages. We are quite a highly educated sector. A fifth of the work force has A-levels or higher degrees. They are operating in increasingly skilled and automated environments in world-class facilities.

Across the sector as a whole we think that is a great picture, but there is a lot more we can do to build on that. It is not a picture with the kinds of serious issues that the Joseph Rowntree Foundation have identified. If you look at sector level, those don't come across as significant problems. The issue is, in truth, how significant are they and what are the proportionate measures that the sector and the responsible companies might need to take that they are not currently taking in order to tackle those issues. It is about the balance of risk and proportionality.

Q556 Chair: I think you are right. We have this very high-tech, high-value industry. You are good employers and all the rest of it. I understand all that. There is the question of how much that would be damaged if it was found to be based on exploitation of the worst sort, along the lines of the evidence from the Joseph Rowntree Foundation. I must admit it seems to me that perhaps your industry is, if not entirely in denial, not quite as aware of the scale of reputational damage that could occur if it was identified that some of your member companies were benefiting from the low prices of raw materials that have then worked their way through the chain.

As we investigate this, we are obviously going to get further materials from the Gangmasters Licensing Association. We are going to get some material from people on the ground. Some of this is going to start coming out fairly soon. We would intend, certainly, to try and follow it through the chain. It is going to be very interesting for us to see whether or not we can identify where it ends up. It is in that context that reputational damage is potentially quite substantial.

I do not know whether or not you might get cut off from the supermarkets on the basis of the product that you are selling them. If I want to pursue the supermarkets for taking fruit or potatoes directly from the farm, we would equally want to pursue it if we thought it was coming in directly via a company like you. The sorts of answers you were giving there were not quite as supportive and helpful as we might have looked for, quite frankly. You can maybe reflect on that. This is an ongoing discussion that we will have.

Q557 Pamela Nash: I want to ask one short practical question. If it did come to your attention or your organisation's attention that a member was acting illegally or was using improper and illegal labour practices, what is the policy of the Federation to deal with that?

Melanie Leech: I don't think we have a formal policy as such. If we became aware of that, we would immediately draw that to the company's attention. We would clearly be in a very difficult position. If we became aware that a company was acting illegally, the first thing we would do would be to make them aware that we were aware of that and to hear what they had to say about it. Ultimately, as a citizen, whether I represent FDF or whatever, and you become aware that something illegal is going on, you have a duty to do something about it.

Q558 Pamela Nash: But in that case your first port of call would be the company and not the relevant authorities.

Melanie Leech: It would be only reasonable to allow the company to respond because I could have got it wrong. It could be a malicious allegation or all sorts of things. As a matter of natural justice, the first thing you would do would be to make someone aware of information you had been given or an allegation that had been made against them. You would then act in response to whatever response you got from that.

Q559 Pamela Nash: John, can I ask you the same question?

17 July 2012 John Picken and Melanie Leech

John Picken: I have to agree. If they are being investigated anyway and there are criminal charges being put to them and it was found out—it is already dealt with—we would not necessarily be there to—

Q560 Pamela Nash: I am definitely thinking of pre—

John Picken: Pre that stage? But how would we hear? My role as a Vice-President, and the union's role, would be there to inform. We would be there to try and prevent it ever getting to the stage where they are at the point of breaking the law, because we would encourage and lead on best practice. That is part and parcel of what we do. We would be there to encourage them to form partnerships with trade associations that enhance their business, which is endorsing all the best practice with labour, inputs and customer relations. We get involved in the whole thing. Higher up the chain, they take a credible product from our farms, which they then market. I presume the next level in the chain is to accept what we have done with our farm assurance and our retailer partnerships and then build on that to where they have to go to satisfy their customers. I see that as the way the supply chain operates at the moment.

Q561 Pamela Nash: Do you know how many of your members are licensed labour providers at the moment?

John Picken: I don't think there are many. Most of the fruit farms—you could correct me if I am wrong or I could certainly find out more for you—come through a Government agency. A lot of the adverts going out seasonally for fruit farms are open to anyone. You could apply whoever you are or wherever you are from. They would then be looked at to see if they were able to work in the UK or the EU. There are restrictions for various countries. It is a seasonal job so people want to come here to work. It is only there for the hours of fruiting. It is not going to be there for anything else. There is a demand every year for it and every year it is met.

Q562 Jim McGovern: John, if I understood Melanie correctly, she said that if she was aware that one of her member companies was breaking the law, she would feel obliged to report it. There are 500,000 people employed in the FDF. John, I don't know what the depth of membership is, but I think there are 9,000 members in the NFU.

John Picken: You are right.

Q563 Jim McGovern: I don't know how many farmers there are but there are 9,000 members anyway. Would you feel equally obliged to report it to the law if you knew that one of your member farmers was breaking the law?

John Picken: I would imagine so; it is all part of best practice. In reply to Pamela, it is doubtful if we would be the first port of call to report them. It would have happened before we hear of it generally. I know we are well connected regionally.

Q564 Jim McGovern: But what would you do if I, Lindsay Roy as a Fife MP, Menzies Campbell or

somebody phoned you and said, "Do you know that one of the local farmers is exploiting people and breaking health and safety rules? I want you to do something about it"?

John Picken: I would do something about it.

Q565 Jim McGovern: What?

John Picken: I would have to inform the authorities. I would take the farmer, I would take the authorities and I would have to go to that farm. If you or Menzies Campbell had phoned me, I cannot see that there would be any other route of action because otherwise you then get embroiled.

Q566 Jim McGovern: Maybe that is a bad example. If it is an MP that phones you, it is obviously going to go further if you don't do something about it.

John Picken: It is the same thing if we talk about whistleblowers.

Q567 Jim McGovern: If a farm employee phoned you and said, "I am being exploited", what would you do?

John Picken: I take your point. These are real issues and we have to deal with them.

Q568 Jim McGovern: By reporting it to the authorities.

John Picken: We would have to deal with it with the authorities, yes.

Q569 Jim McGovern: If it was a farm employee.

John Picken: There is a route there and you have to deal with it. You cannot let it slide. You are right about the membership. We have 75% of full-time farmers as members.

Q570 Jim McGovern: Do they pay subs to the NFU?

John Picken: They do indeed, willingly.

Chair: You are stretching credibility there.

Jim McGovern: I have never heard of a farmer parting with money willingly.

Q571 Iain McKenzie: In a previous evidence session we heard from the Joseph Rowntree Foundation. They suggested to us that the terms and conditions for labour are made pre-contractually and it is encouraging suppliers and farmers to ensure their labour provider is operating legally. Can you tell us how that is achieved?

John Picken: The monitoring of the system?

Iain McKenzie: Yes.

John Picken: We heard from the last session that it relies on everyone doing their bit. If they are not, then you hear about it, or how else would you be challenged? There has to be a problem before it is challenged.

Q572 Chair: Earlier on we had the GLA telling us about guidelines for cost rates, for example. Does the NFU have any way of clarifying with its members that they are meeting those cost rates? Suppose a farmer beside you—not the one beside you because you have mentioned him, but suppose somebody near you—had

17 July 2012 John Picken and Melanie Leech

the chance to get labour at not half the price but 20% off the price and signed up for it. You would not necessarily know about that, but does the NFU have any role in making sure that its members are aware that they are expected to abide by these sorts of minimum standards?

John Picken: As you will know, I am sure, we have two systems of labour law in Scotland. We have the Scottish Agricultural Wages Board, which is still in operation in Scotland. Every year the NFU and the Unite union negotiate a rate, and it is reviewed every year for the next October. That rate is then published and given to all our members. There is a schedule of conditions and then there are rates of overtime for seasonal and full-time. Everybody that is a member of NFUS and more, because it is published in all the farmers' papers and local newspapers, should be aware—who can read—of what they are supposed to be paying.

Q573 Chair: That covers direct employees, but there are set rates when you are contracting with a labour provider, with a gangmaster. I am not sure if you were in the session earlier on when we were discussing the rate and what the multiplier would be so that your people would know whether or not they were being offered a deal that was undercutting that. Do you have any role in policing that or encouraging your members to make sure that they are paying a decent rate?

John Picken: As policing, it has not been apparent that we do up until now. I would think we, as an industry, have never been able to pay the minimum. I am not joking. You may know of instances but I don't. Generally, supply and demand of labour is such that we have to pay higher than the minimum. A case in point is where the seasonal worker tends to come from outwith the shores rather than from within. Everyone's expectation of work is different, but none the less we cannot fill our jobs with local labour no matter how much we try. We always have to pitch at a level that will attract people to the job.

I hear your point exactly. Where you are contractually giving that role to someone else, we tend to pay at a level that would be very much higher than the minimum wage. Off the top of my head, I could open up a machinery ring. We work a collective supply and demand co-op of members, if you like. In that, someone supplies and someone contracts or demands. I would demand the labour of someone else. The labour would be pitched at a headline rate of £10 an hour and that is what we pay. I would probably not know what that contractor then pays his employees to supply to me unless I asked him, but I would ask him.

Q574 Chair: I do understand that. The point we were being told earlier by the GLA is that there would be an expectation rate that had been built up in a variety of ways. It would not be reasonable to expect you to police everything; for example, that tax and national insurance was being paid. If Rangers do not pay it, why should you necessarily be expected to police whether everybody you are involved with is doing it? But you wouldn't be expected to be paying less than that guideline rate. That is the point I was trying to clarify with you. Is that equally well publicised by

you with your members? If it came to your attention that somebody was paying less than that, would that then be something that, while not illegal necessarily, you felt obliged as a union to be involving yourself in?

John Picken: I haven't been asked the question before, Ian, but I would be inclined to say that it would be self-defeating because it wouldn't happen for long enough. The person who was getting paid that small amount would move. There are more jobs out there than people to fill them. That would be my take on it.

Q575 Chair: I find myself in some difficulty here, as we did when we were meeting in Edinburgh. I paraphrase slightly, but you seem to be saying, "There's no problem here", because of the sort of reasons you have indicated. Yet clearly there is. We wouldn't be having these hearings and the Joseph Rowntree Foundation would not have been reporting these abuses if they weren't happening. Clearly they are happening and something is going wrong. It is almost as if you are just in complete denial that it is some of your members. The people that are reporting to the Joseph Rowntree Foundation are presumably not making it up. If we concede that they are not making it up, they are working on farms. If they are working on farms and being paid less than all these rates, then unless the farm ends up denuded of labour, which clearly is not happening either, then somebody is doing it.

This comes back to the question of whether or not you are part of the solution or part of the problem. We would much rather work with you and see what we could do to pursue this than just assume you are one of the obstacles in the road and we have to find ways round you, try and identify bad practice on our own, and name and shame and all the rest of it. There is always more than one way to skin a cat—not that I am advocating skinning cats; I had to say on a previous occasion that is not a policy of mine or my party.

How do we deal with this? You have batted back almost everything we have said on the basis that the weather is fine and there are sunlit uplands. It is the only time we have ever heard farmers say that the weather is fine. But there is still a problem here. What do we do about it?

John Picken: I don't see us as the problem. I see us as the solution, you will be surprised to hear me say. We are the solution without a doubt. We know what is happening. You are asking me for my impression of my industry. I have to say that I am ashamed of our industry if it is as bad as the Joseph Rowntree Foundation found it. To me, it is entirely self-defeating. As I say, these guys who are being badly treated won't last a season. They will be gone in a week. They wouldn't put up with that. Nobody would put up with that.

I don't know which one of you asked the experts earlier about conditions of employment. They have improved in the last six years. We are such a small, improving industry in Scotland. We are getting better connected with sister organisations. The products are important to us. I can't stress enough the reputation that comes with the responsibility of employing people. If you could prevent it, you would prevent it

17 July 2012 John Picken and Melanie Leech

rather than having the hardship of losing your brands, your reputation and your business. That is the stick that beats in Scotland. It is not the legislation that may come our way. We are there already, set in place, to make sure that people behave responsibly.

Supermarkets are animals. They will move away from you if there is something wrong. They will not touch you. That is the biggest incentive that any business has. When Joseph Rowntree showed the 62 examples to us, it was almost to the point where we didn't hear an alternative from them. You heard them yourselves. They were giving their side of the story but there was no alternative. I would like to believe that it is not as bad. That is why I counter you on many of the points where you are trying to say it is our fault because I have to say that there are two sides to a story and it didn't come out at that meeting.

Q576 Jim McGovern: You made the point about supermarkets distancing themselves from any supplier who has a bad reputation. I cannot help but put the other side of that coin. It must be a very difficult and fine line to walk to keep your reputation intact but also to cut prices to the absolute minimum, which I dare say the big supermarkets demand.

John Picken: You have hit the nail on the head, Jim. Technology is what cuts our costs. It is not shaving labour. It is not getting them to work another 10 hours. They want to work as many hours as you can give them, but legislation prevents us from letting them do that because they are restricted in the hours that they can work. They have to work 48 hours a week.

Q577 Jim McGovern: They are allowed to say, "I am only going to work 40 hours a week." They can sign an opt-out.

John Picken: They can, but why should the farmer pay overtime? This is the other point. The legislation has geared it to such a point where it puts people off working. That shouldn't be so.

Q578 Jim McGovern: You may have heard me speaking earlier on in the evidence, and even to yourself. When I was at school we went to the berries for the whole of the school holidays. I slept in tents and huts at Blairgowrie and stuff like that, picking berries.

Chair: Slept in tents? You were lucky.

Jim McGovern: I was absolutely spoilt; you are right. I was ruined. It wasn't a tent; it was a blanket.

Chair: You were lucky.

Q579 Jim McGovern: As far as I am aware now, school kids don't go to the berries in the summer. It's all migrant labour. When we went, whole families went. You weren't subject to national insurance or tax or anything like that. You got paid for every bucket that you weighed in and stuff like that. What happens now? Is there a minimum wage and decent accommodation?

John Picken: Yes, there is. There are caravan parks and they are all housed. If they are not housed in the caravan park, they are housed close by. They weigh the berries. They either have a number or they have an electronic card that they use. Their daily weight

comes up and they are paid per kilo. If they don't come up to the minimum wage on that, they get the minimum wage. That is the way I've been led to believe that they get paid. You are smiling, Ian.

Chair: No, that is my understanding.

Q580 Jim McGovern: I feel slightly sceptical as well when you say that is what you have been led to believe.

John Picken: At the end of the day there are so many workers and so many hours that they work. They don't work 24 hours a day. There are only so many hours of daylight. The berry people have to get it fresh to market. I know that there are chillers and all the rest and they do carry over stock to the next day, but none the less there is processing that has to go on too. You have to get rid of the leaves and the husks and clean up the berries. It is not all picking in the hours of daylight; they only have certain hours.

Q581 Jim McGovern: I hear horror stories about people getting the national minimum wage but having something like two thirds of it taken back for sleeping in a hut. Do you think there is any credence in that?

John Picken: The rates in the wages schedule are set by the Wages Board. It is a negotiation between the Unite union and the farmers with three independents. That is agreed every year. Everyone has an opportunity to negotiate. It is good that you should be able to negotiate one way or another, up or down. It rarely goes down; it only generally goes up.

Q582 Jim McGovern: I must just finally say that the Polish community or the eastern European community I know from Dundee pick the berries in Perthshire and Angus and so on. I am not aware that too many of them are members of Unite.

John Picken: The opportunity is there to join Unite.

Jim McGovern: Of course it is.

John Picken: If they want to join, they can join. The whole point is that their job is annual. They come back every year, so that speaks for itself. How many berry pickers do we have in Scotland? It is a big industry now for Scotland. There must be in the region of 30,000 berry pickers. My neighbour is one of 120 fruit growers in Scotland. He employs 350. If you expand that, it is a lot.

Q583 Jim McGovern: If there are 350 non-union members, will he still comply with the union rates?

John Picken: I don't know. They don't have to be a member of a union.

Q584 Jim McGovern: But will he still comply with the rates?

John Picken: Yes, he has to, because if he doesn't, if somehow the calculation doesn't work out, the retailer would pick him up on it without a doubt.

Q585 Mr Reid: I have a question for John. In their evidence the Joseph Rowntree Foundation said that they had surveyed six areas of the UK, one of which was east central Scotland, which I presume includes Fife. They say there are sharp practices going on. One that they have given is the under-work scam where

 17 July 2012 John Picken and Melanie Leech

the employer recruits too many workers and is therefore able to force wages down. Yet the evidence that you are giving is that there are not enough workers and that is forcing wages up.

John Picken: That is right.

Q586 Mr Reid: Are you absolutely confident in what you are saying?

John Picken: Yes. They are not slaves. There is no reason why that worker would stay there. They have mobile phones. They contact all the people they know in the other farms. If you see a fruit farm, you see five fruit farms. It is all in the same area and they talk.

Q587 Mr Reid: So there are no farms that aren't your members.

John Picken: There is no barbed wire.

Q588 Mr Reid: I can't understand in any way why the Joseph Rowntree Foundation are saying one thing and you are saying another. Do you have any understanding of why that is?

John Picken: All I can think of is what I said almost at the beginning. These are just a few practices at the start, the end or the middle because of some problem that has arisen. I don't think it would be a continuation right through a season. It wouldn't be a continuation right through one farm. It is presumably because the wrong person is in charge and before the end of the season he has gone, I think.

Q589 Chair: I must confess that I find this quite astonishing. It is almost a complete denial by you of what the Joseph Rowntree Foundation were telling us they found. Have you or the organisation met with the Joseph Rowntree Foundation and gone over some of these detailed issues?

John Picken: Only after that meeting; I met with Alistair and he said he was coming here.

Chair: That might be worthwhile at some stage because, if you seriously believe that this is marginal and—you didn't quite say they were making it up—grossly exaggerated and all the rest of it, I think it would be helpful for you to engage with them directly. Certainly I do accept that there will be examples of excellent practice in high-class farms across Scotland. I am also clear that there are some practices that are not quite as good. It is a question, again, of whether or not you are part of the solution or part of the problem. If you don't recognise that there is a problem, then that indicates to us that there is a problem and you are part of it, to put it not too delicately. Iain wants to make a couple more points and then we will draw this to a close.

Q590 Iain McKenzie: Continuing with the point on direct engagement, have the NFUS had any conversations with the gangmasters over the accommodation that they do provide for the labourers?

John Picken: Certainly in Angus, where they had a problem with the accommodation at the start, that farm has since altered its practices. Due to the talking and all that, I think the standard of accommodation has greatly improved. It is an ongoing education. I

would imagine the units that are in now know what the regulations are. At the start, as in any industry, we were trying to resurrect from the acreages that used to be grown; it was in decline until the polytunnels came out. With the polytunnels came a totally new and vibrant industry. There were maybe a few over-enthusiastic people at the start, but they have gone now, as far as we are aware.

Q591 Iain McKenzie: Do you think your members would be more inclined to provide more on-site accommodation if that was made easier?

John Picken: On-site you have control of their time. If they are on your farm, you know where they are and they will want to work. That is why they are there. If they are off your farm, you don't really know where they are. So from that point of view—

Q592 Iain McKenzie: Do you find permission from the local authorities easy to obtain?

John Picken: It is such an important industry for Scotland that I would suggest the planners really need to get their heads around that. I would like to see less regulatory requirement up front. Fair enough, you have to get the standard right, but the whole idea that you are a holiday park is just outrageous. It is provision of jobs and it is of a high enough standard that people want to come back; and they do want to come back every year.

Q593 Chair: I want to pick up a final point that Joseph Rowntree sent us; it came up to some extent with the GLA. That is the question of whether or not purchasers should be enforcing contract compliance conditions right the way down the chain. You would be at the bottom of this. The FDF would be somewhere in the middle of it. Does that seem an idea that in principle would be acceptable to you? That is to either or both of you.

John Picken: Yes, it is there. It depends if you want to add in new legislation that is going to force the retailer to put that condition on, but the market is the market. So if these conditions are in force, we end up doing them because we are at the kicking end of the supply chain.

Melanie Leech: I will have another go at what I said earlier on, which you said had disappointed you, Chair. I will try and do better, and if it still disappoints you at least it won't be, I hope, because I can't express myself.

There are varying lengths of supply chains. In some cases, and in the majority of the cases that the Joseph Rowntree Foundation looked at, you are talking about quite short supply chains. In those cases it absolutely should be the case that if you are buying from a producer, whether a farmer or a processor or if you are the processor, you should satisfy yourselves that the person you are buying from is complying with the legislation. Ideally you would want people to go further than that. Some of the things that the Joseph Rowntree Foundation report starts to impact go beyond legislation and introduce more qualitative elements to that. The more guidance there is, whether it is from the GLA or informed by the kind of debate that JRF are good at provoking, which allows you to

17 July 2012 John Picken and Melanie Leech

identify good practice that goes beyond the bare minimum, the better. Absolutely people should be using that to satisfy themselves.

If you think about spiralling out supply chains, they might have eight or nine links in them before you get to retail. I come back to this point. If at each point due diligence is working appropriately and if the system is being policed, whether by the GLA or the adjudicator in the grocery supply code of practice, which tries to make sure that fair pricing is operating at each point in the chain so that there is the ability for everybody to make a margin and make a living fairly—if all of that is working effectively—it seems to me that, if you are seven or eight points removed from the point of primary production, you should be able to rely on a combination of due diligence at each point in the chain and the chain being policed and operating effectively and not yourself have to go and check each of those points. As I said before, that would add huge cost burdens to a chain that is, in the main, operating responsibly.

Q594 Chair: I understand that. That is a bit clearer in terms of what you are suggesting. However, I was not aware until now—in fact I am still not entirely aware that you are saying this—that your entire supply chain would be self-approved or checking backwards at each stage. I am not sure you are saying to me that you know that the people who are buying from the farmer at that first stage are actually making those sorts of checks.

Melanie Leech: Specifically if you are seven steps removed from it, you will not be checking around employment status—at that primary stage.

Q595 Chair: Is there a certificate saying it is already ticked off, as it were?

Melanie Leech: As far as I know, that would not be happening because you would be relying on the fact that the people down the chain had taken care of those issues.

Q596 Chair: And if they haven't?

Melanie Leech: As I understand it, if they haven't, you wouldn't know that because you would not be specifically checking.

Chair: That clarifies things for us.

Q597 Iain McKenzie: I would be surprised at what you are saying about the supply chain if large retailers did not put in place a fully integrated supply chain rather than what you are describing as a sliced-up supply chain.

Melanie Leech: I can't speak for the retailers, but some of my manufacturing members do have integrated supply chains. You are right; I should probably make that distinction.

Q598 Iain McKenzie: In that respect they would know all the way down what was happening in the supply chain.

Melanie Leech: Some big multi-national processors will have an integrated supply chain. McCain is an example, but they are quite close and it is quite a short supply chain. A company like McCain, which is buying potatoes and making potato products which then go into retail, is an example of quite a short supply chain, where you would expect that kind of integrated approach to operate in that chain.

Q599 Iain McKenzie: Would that be applicable over a larger supply chain?

Melanie Leech: Over a larger supply chain I think it becomes much more difficult. At the moment, to the best of my knowledge, these kinds of issues would not be specifically checked at several steps removed where it is not an integrated chain.

Q600 Iain McKenzie: But wouldn't it be more necessary the longer the chain? At any point it could impact so you would need to know.

Melanie Leech: It is for a combination of reasons. It is partly because only relatively recently has it been suggested that there is a major problem here. There has not been the perception of a high risk around this area. It is partly because in any case you would expect that at the point at which this is most relevant on the evidence we have from JRF, whatever view you take of it—I am not in a position to take a view on that, but assuming that were an entirely accurate picture—it applies primarily at particular points in the chain. They have only looked at quite a narrow part of the total supply chain.

Q601 Iain McKenzie: But you can imagine the large retailers would be interested down to the point that John has described where there are more jobs than workers, because that would have an impact along the chain.

Melanie Leech: I can't speak for the retailers. John knows better than I do the way the retailers operate. He has already described that they have quite sophisticated systems for auditing along their supply chains. The big manufacturers will have the same. Until the JRF report and so on, I don't think this has been specifically identified as a high risk area to which they need to pay particular attention. That may change.

Chair: “Aweel, ye ken noo”, as they say in other contexts. As we have said to everybody else, are there any answers you had prepared to questions that we have not asked? Is there anything else that you feel you want to get off your chest? Not now, but if there is anything that occurs to you on your way home and you think, “Oh goodness, I wish I'd said such and such”, providing it is not libellous or obscene, we would be happy to have that as well.

Thank you very much for coming along and subjecting yourselves to our questioning. I will close the meeting.

Tuesday 4 September 2012

Members present:

Mr Ian Davidson (Chair)

Fiona Bruce
Jim McGovern
Iain McKenzie

Pamela Nash
Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Gail Cartmail**, Assistant General Secretary, Unite, **Justin Bowden**, National Officer, GMB, and **Harry Donaldson**, Regional Secretary, GMB Scotland, gave evidence.

Q602 Chair: May I welcome you to the Scottish Affairs Select Committee? I apologise for the delay. As you know, we were discussing the coastguard stations. That delayed us slightly, and we overran. First, I ask you to introduce yourselves and say which organisations you represent. We can then get straight into our questions.

Gail Cartmail: My name is Gail Cartmail. I am the Assistant General Secretary of Unite. The union is responsible for a number of sectors, including construction.

Harry Donaldson: I am Harry Donaldson, GMB regional secretary for Scotland. I am obviously responsible for managing Scotland.

Justin Bowden: I am Justin Bowden, GMB national officer.

Q603 Jim McGovern: Obviously, I have met Justin and Harry before. I am pleased to meet you, Gail. I thank everyone for coming along.

May I ask our three witnesses generally whether they believe that blacklisting is still widespread in the UK? It was supposed to be outlawed since March 2010, but the impression that I get speaking to people in my constituency in Dundee is that it still goes on.

Q604 Chair: Before you answer, having checked with the Clerk, it is the case that the answers that you provide us with today are covered by parliamentary privilege. Should anybody outside object to what you say, they will not be able to take the legal action that they might wish should you repeat something like that outside. There will be a number of occasions when we press you for examples of particular companies that you believe are undertaking various activities, and we want to reassure you that you are covered by privilege. Also covered by privilege will be any submissions that you make to us in writing that we subsequently publish. You can be completely open with us, knowing that you will be protected.

Gail Cartmail: In the period during which I have been responsible for construction, I have met many highly qualified mechanical and electrical engineers. They are highly qualified bearing in mind that, even in the current state of the sector, there is a skills crisis. I have met people who are suitably qualified for work who are not engaged for work. Equally, I have met qualified electrical and mechanical engineers who have been spuriously selected for redundancy. They are health and safety representatives and workplace representatives.

One firm in particular is Balfour Beatty Engineering Services. One of our members, Stewart Hume, was interviewed by a manager called Gerry Harvey who, if I can put it in the vernacular, has form on blacklisting. The Committee may say that we could pursue the victimisation of trade union activities, but I am absolutely convinced that Stewart Hume will never be engaged by Balfour Beatty Engineering Services following his redundancy.

Q605 Jim McGovern: On the basis of his trade union activities.

Gail Cartmail: I am absolutely convinced of that.

Q606 Jim McGovern: Gail, is your remit the construction industry?

Gail Cartmail: It is one of the sectors that I cover, but I was asked to investigate blacklisting as a result of an organisation called BMS—Beaver Management Services—which is an agency that was prepared to reveal to us unredacted files that had been disclosed as a result of its having faced an allegation of blacklisting.

It was a journey of discovery on my part because it was the first time I had ever read files kept by the Consulting Association. What was shocking was the detail in the files, but in one case it was said at the conclusion of the file that somebody had retired but that they should “watch out for Fred Blogs, son of the aforementioned”. It seems to be almost inherited that there would be this practice. Many of the files that I saw were of people who are still members of our union but who are unable to work in the industry—unable to work in construction.

Q607 Jim McGovern: Is it the view of you all that this is particularly prevalent in the construction industry?

Harry Donaldson: I confirm that that would be our view, on that basis. We clearly understand the issues, just as Gail has indicated. However, I think it goes wider than even trade union membership. It goes beyond that. We believe that people who have registered complaints with employers still find themselves being caught up in this whole unscrupulous process, finding themselves outwith the labour market and unable to pursue their careers. They are highly skilled and motivated individuals who just cannot get jobs within that sector of the economy. Basically, they have obviously lost out a lot—they and their families. We have found the same or similar

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

experiences, but we believe that it not only impacts on trade unionists but goes even wider.

Gail Cartmail: May I add something? It is a particular element of the Joint Industry Board. We are a party, as Unite the Union, to the Scottish Joint Industry Board, with the Electrical Contractors Association and SELECT. One of the board's working rules covers recruitment.

One practice on recruitment is by word of mouth, through recommendations. One role of the trade union official, very often themselves electrically or mechanically qualified, is personally to recommend operatives for work. Despite the intervention of our national officer, at the Glasgow Infirmary site, we have been unable via this mechanism to get people into work. That officer is currently working on behalf of a person who has been blacklisted historically, trying to get this highly skilled member of ours into work. I am afraid that a number of companies within the SJIB are unwilling to activate that element of our joint working rule.

Q608 Jim McGovern: A couple of electricians from Dundee gave evidence before us fairly recently, just before the recess. One of them was saying that the Scottish Joint Industry Board was almost in cahoots with employers to exclude certain people. Is that your view?

Gail Cartmail: I have no evidence of that. However, I have instructed our national officer to adjust the balance on all the joint industry boards to ensure that we have more of our people, again to use the vernacular, who are "on the tools" populating those boards. I have no evidence of that, but one characteristic of the Joint Industry Board is that working rule 17, which seeks to avoid excessive use of agency workers, is largely ignored by member companies.

Some of our members get work via an agency, but, if the agency says that the operative is not required, they then cannot use the legislation to protect them against blacklisting. It is quite a complicated scenario. There are a number of working rules that appear to be ignored.

Q609 Jim McGovern: Of course. Justin, would you like to add to that?

Justin Bowden: Is blacklisting still taking place? Yes, almost certainly. There are two things that I want to say about that. One is a real example, and the other is a quick look at the history of blacklisting.

The Consulting Association, as you heard in previous evidence, was created as a result of the closure of the Economic League, as was Caprim. Those two organisations were specifically set up with the intention of blacklisting workers who were considered to be potentially damaging to the interests of large companies. It is known that the Consulting Association was set up at the request of a number of multi-national companies that had previously used the services of the Economic League; it involved the same people and, as far as is known, it also involved much of the same information. Out of the closure of one, like a phoenix from the ashes, rose at least two other

organisations with the express purpose of blacklisting ordinary working people.

To make the point, a key issue about this, and again you have already heard evidence about this, Chair, is that the most common reason that people are blacklisted is for raising health and safety issues. That was the most common reason. It was not for handing out copies of Chairman Mao's "Little Red Book" at the gate of the site or any other supposedly politically or ideologically driven reason but because they were raising genuine concerns to ensure that they went home safely that night. The Consulting Association was set up at the request of the construction companies, at the highest possible level. It continued, like the Economic League, until it was effectively shut down because its activities had been exposed. Its history is of an organisation blacklisting workers, getting caught with its hands in the till, closing down, going under cover for a little while and then reinventing itself in a further format.

The ICO never carried out a proper follow-through investigation, having seized the files originally in relation to the Consulting Association. Given the fact that no company affected received any kind of sanction at all—they did not even get a slapped wrist—and only one individual got a derisory fine of £5,000, what possible disincentive is there to companies not to ensure that blacklisting continues? We would say that, yes, it does.

Let me give a concrete example. Towards the end of July I visited the GMB ladders branch down in Dagenham. This is a construction-related branch, which has regular attendees aged from their early 20s through to their 70s, so there is a huge experience of working in the construction industry in and around east London and the south-east. All of those individuals told me that they had difficulties getting work, yet with the exception of one they had all contacted the ICO to see whether they were on the blacklist seized from the Consulting Association. None of them were, with the exception of one individual, yet all of them could give detailed examples of how they had been unable to secure work without any obvious reason being given, even during periods of economic building boom.

As a brief aside, they also showed me a blacklist that dated from the 1970s and 1980s containing information not dissimilar to that seized from the Consulting Association. All the information from our members out there shows that people continue to be blacklisted today. Common sense and history tells us that there is no reason for those who had benefited from blacklisting not to have carried on with the practice going forward into the future.

Q610 Jim McGovern: Just to finish, it is almost a given that it happens in the construction industry, but is there any evidence to suggest that it happens in other industries?

Gail Cartmail: As an example of our concern in Unite, I am responsible as AGS for a number of sectors, and I recently instructed all my national officers to alert me to all instances of suspected victimisation. Not surprisingly, they arise from trade union activities by health and safety representatives

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

and workplace representatives. The reason why I did that was because of the increasing number of reports of disciplinary action being taken against trade union representatives. It is about punitive measures arising, I believe, from trade union activities. Whether that is flowing through into blacklisting I could not say, but we have seen an increase in punitive measures and spurious disciplinaries against trade union representatives.

Harry Donaldson: Also, Jim, there is a common belief or an assumption, particularly for offshore workers and also in shipbuilding, that experience indicates that people lose their jobs because of their background. We are firmly of the belief that these practices still carry on.

Chair: At some stage, we shall have to ask you to be a bit more specific if there are firms that you believe are consistently refusing to take people on because of the existence of a blacklist, because it will be our intention at some stage to bring some of these people in and ask them directly what their practices are. We are conscious of what has happened in the past with the Economic League, and we have also heard evidence about the Consulting Association. So, because in a sense we have you here for only a limited time, we do not necessarily want to go back over that too much. Iain, you have a point to raise.

Q611 Iain McKenzie: I want to speak about the penalties that can be imposed upon firms or companies for blacklisting. What would you say would be a better deterrent? Would it be increased fines? Would it be criminal proceedings against the directors?

Justin Bowden: Blacklisting should be a criminal offence, punishable with imprisonment and subject to unlimited fines.

Q612 Chair: Imprisonment for whom?

Justin Bowden: For company directors.

Q613 Chair: So this is something that would be a director responsibility, even though the directors themselves were not the people operating the blacklist, which might be done at a much lower level.

Justin Bowden: There are two or three things to say about that. First, with the Consulting Association—the organisation that most is known about, that existed with director-level involvement from the companies concerned. Part of the deal of being involved in the association was that you had director-level involvement in it.

Secondly, it has to be from the top of an organisation. I draw a parallel with changes in the law in relation to health and safety. These things have to be driven from the top, otherwise companies will just use individuals as buffers or sacrificial lambs on occasions, and wash their hands of them.

There is a third point on this, which is that, unless it is seen widely within the entire company that it is the responsibility of the most senior individuals within a firm, responsibility will stop there. I do not see how else to get the change in culture that is needed to ensure it.

Gail Cartmail: I would agree that it should be dealt with very seriously indeed. It is secretive spying on ordinary men and women by big corporate organisations. It is a conspiracy. This is paid for. I appreciate totally your point about wanting to prove blacklisting in the present. However, Chair, that is quite hard because of the secretive nature of the spying activities and the recording of that spying. It has always been denied.

I mentioned Gerry Harvey, who is a senior HR personality within Balfour Beatty Engineering Services. One of our members, Phil Willis, had an employment tribunal case which he lost. Gerry Harvey was relied upon for evidence to that tribunal, and he admitted being primarily responsible for his company's engagement with the Consulting Association. In the judgment, in legal terminology, the employment judge pretty well called Gerry Harvey's evidence lies in part. Gerry Harvey, as I mentioned earlier, is the man who interviewed one of our leading representatives at Grangemouth for Balfour Beatty Engineering Services. I remember that Stewart Hume had a personal interview with him, and the result was Stewart's unexpected redundancy. Of course we are dealing with that and looking into the case, but that will be no comfort at all if Stewart Hume is "inexplicably" unable to find future employment commensurate with his skills and qualifications.

Last night, I met one of our leading blacklisted members, who was alluded to anonymously in our evidence. He is working as an electrician but not at a level commensurate with his skills and qualifications. His income loss is massive; it is significant. Going back to what would be an appropriate fine, the fact that previous actions against employers resulted in a maximum fine of £5,000 beggars belief when you look at the lifetime's loss of earnings. There was a report on blacklisting by Professor Ewing entitled "Ruined Lives", and quite honestly that is what I have seen; I have looked straight in the face of people who have had their lives ruined and whose lives continue to be ruined.

Q614 Chair: I come back to the point that Justin made about the penalties of imprisonment and so on. Would you say that they should fall only on the directors and not on the personnel people implementing these policies? I want to be clear what you are recommending to us.

Justin Bowden: The point that I was trying to make is the need for corporate accountability. It is perfectly reasonable, if it was clear that an individual was implicated in wrongdoing or was implicated in blacklisting, perhaps as the head of HR, for example, then there is no reason why they should not be subject to prosecution as well. However, to ensure a change in culture, to ensure that companies are not sophisticated enough, as they have been up to this point, to introduce a buffer to ensure an arm's length protection for those who are effectively driving this through and benefiting from it, there has to be the highest level of corporate responsibility and accountability—and, ultimately, the penalty for directors or those at director level of imprisonment and unlimited fine.

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

Q615 Chair: That would apply similarly to those within the chain who were directly implementing those decisions.

Justin Bowden: Yes, that is right.

Chair: Fine. I just wanted to be clear and get that on the record.

Q616 Iain McKenzie: I have a question about the person who has already been identified in Balfour Beatty. You said that he has previous experience of these actions. How do you know and how many previous experiences have you had of this?

Gail Cartmail: I refer to an employment tribunal that has been documented—I believe that it was a reserved decision—which involved Phil Willis, one of our members. In this hearing, Gerry Harvey admitted being the lead person within Balfour Beatty Engineering Services that was representing his company at meetings with the Consulting Association, as you might with any respectable organisation that was not a spying and secretive outfit. He admitted at the employment tribunal that he was representing his company, but he had a failure of memory in relation to other people implicated in this conspiracy.

That is why the employment tribunal judge questioned whether the witness was being entirely open and truthful during the proceedings; and, as you know, the employment tribunals take evidence under oath. I find it quite incredible that an electrical operative should be interviewed by such a senior personality in the here and now in relation to selection for redundancy. I feel that there is a link.

Q617 Chair: Were other people who were possibly to be made redundant also being interviewed?

Gail Cartmail: Yes. I can provide you with further and better particulars, but the only person who has been selected for redundancy who was personally interviewed by Gerry Harvey is our member, Stewart Hume. I shall gladly provide the Committee with further and better particulars on the treatment of others. It is important that I do so. My belief is that Gerry Harvey continues to sift and filter on behalf of his company. That is my belief, and it is the belief of our members.

Q618 Chair: Would it be your belief that he is acting on behalf of the company rather than on his own behalf?

Gail Cartmail: Yes. It is unconscionable that somebody of that seniority would be freelancing in this respect.

Q619 Jim McGovern: On the same subject that you brought up, Chair, the question you put to Justin was, “Who should be responsible?” In all of our experience, a trade union member or any employee feels hard done by when they go to an employment tribunal, whether as an applicant, a respondent or employer. Gail, from what you are saying about this Gerry Harvey, unless he owns the company, he will not be held responsible, will he?

Gail Cartmail: No, but companies are held to account through corporate responsibility, in many different ways, are they not?

Q620 Jim McGovern: A company would get fined, but, if, as Justin says, it should incur a prison sentence, would it be Gerry Harvey or the chief executive?

Gail Cartmail: I am not legally qualified to set out what might be effective regulation, but it is important in my mind that, if someone in the line of management is authorised to undertake spying, conspiracy and secretively denying people work, then the act of authority places some onus of responsibility at the most senior level.

Jim McGovern: Sure.

Gail Cartmail: The fact that the heaviest penalty was £5,000, given all the evidence and proof of contributions to the Consulting Association, is contemptuous.

Jim McGovern: That was very helpful.

Q621 Iain McKenzie: What constitutes spying? Is that spying in the workplace or spying outwith the workplace? What sorts of actions take place?

Gail Cartmail: You have heard evidence of concern that there was some involvement in the past, possibly of the police and special branch and so on, because some of the sources have been exposed in recent newspaper articles. It is incredible to imagine where else the information could have come from. The unredacted files that I have had sight of were coded. I think that the Committee must be aware of the coding, which is quite complicated. There are various sources, such as employers and employment agencies and including—it is important to be open about this—trade union sources. It is a complex web. Attached to files are newspaper reports and reports of employment tribunal proceedings. That is not passive. Somebody has to go out, collect and annotate that information. I regard that as spying.

Q622 Lindsay Roy: Will you clarify for us the different ways in which you use evidence of blacklisting and tell us what challenges you face in pursuing these issues on behalf of your members?

Justin Bowden: What was the first part of your question?

Q623 Lindsay Roy: First, will you clarify the different ways in which you have been able to pursue the evidence? Secondly, what challenges do you face in trying to pursue and support the claims that your members have been making?

Justin Bowden: The most difficult problem that we face at the moment is in relation to information obtained from the Consulting Association’s list of 3,213 people—information blogged by the Information Commissioner’s Office. As of last week, only 194 people know that they are on that list. You have a situation where more than 3,000 people still do not know that they are on that list. That is despite us and, separately, Liberty having written very recently to the ICO suggesting a number of things.

In particular, we suggest that they should write to each of the individuals on the list, making them aware that they are on it and aware of their rights. That has not happened, so we have the ridiculous and embarrassing situation that, three years or so after the state and the state regulator became aware of the existence of this

criminality and this information being held on workers, the overwhelming majority of those people do not know that they are on that list. From our point of view, that is the biggest frustration. To put it in analogous terms, at the moment the ICO is the cork in the blacklisting bottle, and it needs to be popped.

Q624 Lindsay Roy: If it has been reported to the regulator, what action has been taken?

Justin Bowden: The historical actions of the regulator are well documented, but it effectively amounts to a few slapped wrists in the form of enforcement orders—in football terms, not even a yellow card.

Q625 Lindsay Roy: So a token gesture. Would that be the way to describe it?

Justin Bowden: If that, yes. There was also a £5,000 fine for the person who was effectively administering the blacklist on behalf of the company. The villains of the piece, without doubt, are the companies.

Q626 Lindsay Roy: So it is not being taken seriously, and pursuit is not robust or rigorous.

Justin Bowden: Absolutely not. In our view, the opportunity still exists for them to push forward and carry out a proper and thorough investigation. They claim that they have done that already, and they wrote to us in the last few weeks to suggest that their investigations were thorough and complex. I respectfully beg to differ. It is nothing like that. They have gone absolutely no way towards properly investigating the matter, as they should have done, and find out what information each of the 44 companies involved in the blacklisting still hold and whether they are still doing the blacklisting. We believe that a number of them clearly are doing so.

If it is okay, Chair, I shall tie this in with your question about naming names. The company that GMB has investigated and knows most about is Carillion. There is absolutely no doubt in our minds that Carillion continues to hold information on people. The individual responsible for administering the blacklist relationship with the Consulting Association is Liz Keates, the head of HR, who continues to work for the company. We had direct contact with her in a separate dispute in Swindon.

We know that 224 individuals on the Consulting Association's list were blacklisted directly by Carillion and that eight of those were from Scotland. Two of those individuals reside in the constituencies of members of the Committee here now—one Scottish constituency and one English. In Scotland alone, the company has in excess of £2 billion worth of public money contracts that they are already operating or are tendering for. If you take that out to England and Wales, the amount increases dramatically. Along with the other 43 companies, it should be held directly to account and properly investigated by the ICO, and the information held by them should be released. In our view—we are already on record about this—they should be prosecuted by the ICO and subject to the ability of those who have suffered detriment by their activities to bring claims against the company through the High Court.

Harry Donaldson: The reason why it is of particular interest to the Scottish Affairs Committee is to do with the tenders or current projects tendered for by Carillion. Given the evidence and the information that Justin has indicated, these are calculated to be in excess of £2 billion of contracts and public contracts within and throughout Scotland. On that basis, it covers the constituencies of six members of the Scottish Affairs Committee and also one English MP and one SNP Member. There is quite significant information on Carillion in particular, who are involved across Scotland. That is only one of the companies.

Q627 Lindsay Roy: Has this matter been raised directly with representatives of the Scottish Government and the UK Government? If so, what was the response?

Harry Donaldson: This information only recently came into our possession. This matter will be raised subsequent to this meeting.

Q628 Lindsay Roy: Have the general points about victimisation and blacklisting been raised with both the Scottish and the UK Governments? If so, what was the response?

Justin Bowden: We have not done it across every single one. Just to pick Carillion as one of the 44, we have not yet been able to bring to the attention of every public body all the contracts that Carillion either currently runs or is in the process of tendering for, but we are working our way through that. We will continue to bring it to the attention of various public bodies.

Q629 Chair: May I clarify a couple of things for the Committee? You spoke of a number of people being put on the blacklisting register by Carillion. How do you substantiate that?

Justin Bowden: Partly based on the information that we have seen, information that is in the public domain arising out of court cases, and not least from speaking to Dave Smith, who I know has given evidence to the Committee. The Carillion connection relates first to the coding mechanism that Gail touched on earlier. I know that the Committee has been given an explanation of that. Then there is the reference to LK, who is Liz Keates, who admitted in the course of the employment tribunal to being the person administering that information, either entering the information on behalf of Carillion for its own databases or giving information to the Consulting Association based on information that Carillion had from the contracts and other services that they were running.

Q630 Chair: Some of the information that you have collated follows on from a discussion that we had privately before we agreed that you should give evidence. It would therefore be helpful if you were to let us have formal copies of that. As I indicated before, with your agreement we will publish that on our website. It then becomes covered by privilege.

Gail Cartmail: Efforts to secure disclosure have been alluded to. At the very onset, one of the construction

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

unions, UCATT, sought disclosure from the ICO of all the files because, given the nature of what we are discussing, they were going to be members of a trade union. The request for disclosure went through an ICO procedure and was refused. What is not perhaps understood—I am sure that this Committee understands it—is that, if you seek disclosure, as does one of our members, Steve Acheson, who seeks disclosure of his file from the ICO, unless you get disclosure for legal proceedings it is a redacted file. The unredacted files that I have seen were on behalf of a whole bunch of Unite members, and I personally had to authorise cross-checking. They were unredacted because they came via an employment agency, which had them as part of a defence. I had to authorise the cross-checking of each individual—that was not only the file that pertained to the individual but all the other individuals mentioned in that file, such as friend of, associated with—and then cross-reference them to the litigation that we were undertaking on behalf of members whom we were pursuing for blacklisting purposes.

We then had to write to those that were involved in legal proceedings, advising them that they may wish to seek the support of our union to litigate. I cannot tell you how awful it must be to receive a letter from your trade union to say, “We have discovered that you have been spied on.” Otherwise they would have no idea, so this element of disclosure is absolutely and massively important.

What is worse in the context of what I have just said are the hoops that you have to jump through. There is no retrospective compensation. The burden of proof is on the applicant to prove loss of income, and complaints are time-barred and can be pursued only if the applicant has direct employment. In the example that I gave of Balfour Beatty Engineering, if the company says, “I don’t want X operative to come back from agency X”, it has the same effect, but the individual cannot litigate. This issue of the lack of disclosure of the ICO files means that hundreds of operatives out there are unable to pursue their cases. Now, of course, they are time-barred. It really is a mess.

Q631 Chair: What is the answer? If you do not have it now, perhaps you would let us have it subsequently. What recommendations do you believe that this Select Committee should be making for the present Government or the next Government?

Gail Cartmail: There has to be a root and branch review of the legislation around blacklisting. It is no good relying on direct employment status. That has to change. There has to be retrospection in relation to loss of earnings, and the burden of proof on loss of earnings should be reversed. My view, given the secretive nature of the activities against individual operatives, is that there needs to be consideration of more flexible time limits to seek justice through the employment tribunals.

Reference has already been made to penalties against employers, but I think that the Government might also consider—either the devolved Governments or the Westminster Government—measures on procurement. If companies that are shown and found to be

blacklisting can continue to tender for public work, that makes a mockery of the values and standards of our country, and I believe that it would wish to outlaw this practice.

Q632 Chair: In terms of the general line of issues that have been raised, is that something with which the GMB would agree, or are there additional points?

Harry Donaldson: I think that they would be the same. We would obviously be calling for a public inquiry because we think that it is significant, but it should be on the basis of what we know. Liberty is actually seeking a judicial review on this point, but it is going through the ICO.

As Gail and Justin said, most of that comes down to accountability, responsibility and corporate governance. It has got to be root and branch from whoever is involved and all the way to the top. We have seen that by analogy with what has happened with the banks. People lower down, like people at the top, have had to pay the ultimate penalty—not by imprisonment but by losing their employment. I think the issue, like Leveson, should go to a public inquiry, not just judicial review. As Justin has already said, they all say that.

In terms of the role of this Committee, people like Liz Keates or the ICO themselves coming before the Committee would be a step in the right direction, to move things along that continuum, bearing in mind that those individuals in the first instance have to have some suspicion that they may well be or have been on a list. As we know, they are already time-barred through the normal processes that would be available to them, which would be through the employment tribunals. Should it be at the time when the individual has knowledge of the act, or should it be at the time when the act was committed? That is the difficulty that people have. But there is no retribution. “If not me, then who?” is the question; and it is going to be asked with Committees and even Parliament getting involved.

Q633 Chair: We will be gathering a number of issues from your evidence, but, if subsequent to this meeting there are points that you wish you had added, we would encourage you to write to us. That is particularly so in terms of the programme that ought to be undertaken, both for our investigation and the recommendations that we should make to this or a future Government.

Q634 Jim McGovern: I go back a couple of steps to when Justin was speaking about Carillion and the difficulty that Gail alluded to about who exactly you pursue if you have a grievance. Would I be right in saying that Carillion is a parent company for a number of other companies—for example, Tarmac and Nynas?

Justin Bowden: Yes. Carillion is a multinational company, and consistent with many such companies it is a complex arrangement of companies and subsidiaries that make up the company as a whole. Its blacklisting activities are not restricted to a particular part of the company. Indeed, it also has a wholly owned subsidiary agency, which has also been involved in blacklisting. In terms of the arrangements,

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

Jim, yes, they are very complicated; they are made up of historic acquisitions as well as other companies that they create and then close down in due course to suit whatever business model they are operating.

Q635 Chair: You mention Carillion, its subsidiaries and the agency, and suggest that they have been blacklisting. Can you stand that up? While we are very keen to make sure that people are protected by privilege, we also want to have a certain standard of evidence rather than just throwing out allegations willy-nilly. We want to be clear whether you have anything relating to the agency and its subsidiaries. Is that the case?

Justin Bowden: Chair, there is reference in the files of those blacklisted to the agency itself, to SkyBlue and to other parts of the Carillion empire, for want of a better way of explaining it. You can very clearly see from the redacted and certainly the unredacted files of individuals that the complexities of Carillion, just the one company, are clearly reflected in their blacklisting operations.

Q636 Chair: Although the Clerk is a resourceful chap, he is not necessarily going to be able to gather up as much information as you have. Prior to our calling Carillion and Balfour Beatty in to appear before the Committee, it would be helpful if you would make sure that we have the detailed information that you have already gathered—unless the Clerk would rather do it himself? No; that is what I thought.

Would you let us have this information, because it is important that we are able to put as much as possible in front of them, either when they come here or beforehand?

Gail Cartmail: I was just reflecting, Chair, on something that you said earlier. If I were able in this forum to ask a question of a representative of Balfour Beatty Engineering Services—say Gerry Harvey, who is responsible for that enterprise's HR—and bearing in mind the number of people that we know colluded in spying in the organisation, as a standard operating procedure and that these records were maintained at various levels of the organisation, I would want to ask what measures he has put in place to ensure that every manager throughout the establishment is aware that there can be no involvement, informal or formal, in blacklisting. That would tell us to what extent the company is seriously trying to eliminate a practice that has endured for years in construction and we believe still endures.

Q637 Chair: Are there any examples of good practice to which you could point us? We are aware of the list of companies involved with the Consulting Association. We heard in evidence today the list of the 40 or so companies on its books, but are there any either that were not on that list or were on the list but have subsequently repented and now have the sort of practices in place that you are recommending?

Gail Cartmail: In all honesty, I would have to refer back to our operational and national officers. I am very happy to do so, because I agree that it would be good to be able to show there was an operator in the

industry that did not rely on this to outlaw trade unionism.

Q638 Chair: In terms of the groups that you mentioned at the beginning, the name of which escapes me—

Gail Cartmail: It was SELECT and ECA.

Chair: Indeed. Those are umbrella organisations. As well as pursuing individual companies, I was wondering whether we should seek to have dialogue with those organisations to clarify whether they are in the business of promoting best practice, or whether you believe that they would be divorced from any of the day-to-day operational matters and therefore that it would not be appropriate for them.

Gail Cartmail: Of the trade associations that are the sole bodies with whom my union relates, SELECT of course operates in Scotland, and the Electrical Contractors Association operates in England, Wales and Northern Ireland. The problem is that it is a bit like asking, "Do you beat your wife?" It is a good point, and it is an interesting question that could be asked about what measures they are undertaking to rid the industry of this culture.

I take you back to the working rules agreed between ourselves and the trade association. A number of the working rules would assist us—for example, on the balance of directly employed operatives as opposed to the propensity of agency workers—but some of the rules are being ignored. The other rule that is germane to this Committee is the manner by which people are recruited. It relies on word of mouth, so there has to be a trust there for obvious reasons. We have temporarily stopped, and subjected it to review, our practice of officials sending CVs. It was the practice that, if a job started anywhere—say at T4 at Heathrow—an official of our union would send the CVs of appropriately qualified electrical and mechanical operatives, which would be the normal means by which an employer would recruit. We are no longer comfortable that that is an innocent practice, because we are the source of recommending people for work.

It is very complex, and we have to instil an understanding that this culture has stopped. I am not confident about that. By the way, trade associations are membership organisations. To what extent a trade association relying on contributions from its members is going to instigate rigour in this issue, I am not sure.

Q639 Chair: Does anyone want to comment on that general area?

Harry Donaldson: No, but I am ready to provide any information you want in terms of best practice. I think that we are very much concentrating on the other end of the spectrum, to be perfectly frank, but there must be exemplars of good practice out there. I think we may know one or two, but we would like to double check.

Chair: That would be helpful. If we could meet people who were able to spell out to us what the procedures are, we could compare them with the practices adopted by others or urge best practice on companies that we believe to be in error, to put it generously.

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

Lindsay, do you want to pick up on point 3 or do you feel that it has been dealt with already?

Lindsay Roy: No, that point has been dealt with more than adequately.

Chair: Jim, on point 4.

Q640 Jim McGovern: Harry, when I asked whether the problem was mainly prevalent in the construction industry, and I think everybody is aware of that, you mentioned the offshore industry. We have been told that there is a culture of a three-letter acronym: NRB or “Not required back”. Can anyone explain how this operates? Gail said that the agency might be the buffer when the employer says to the agency, “We don’t want him back.” Is that how it works in practice?

Harry Donaldson: The issue is that it has to be by mouth to get that information coming back to you, from people who have been working offshore who have come back and they are not required. Again, in terms of the basis of that, it becomes an issue as to why the people do not get back. It is insidious because they do not actually know why, but then again they cannot work back in these areas. So people, in the absence of any critical analysis, just take a view. Is it because they are seen to have made a complaint? Is it because of one thing or another? People start to come to the assumption—I do not think that it is an assumption at this stage—that the activity is because something internal was requested or asked, as Gail was saying and Justin touched on.

On a lot of these occasions it may be no more than a complaint about health and safety or some other problem, which would be a genuine issue. Because of that, people just find themselves out of employment and unable to pursue their livelihoods. That kind of practice cannot be condoned; it cannot be supported and has to be outlawed, as far as we see it, as trade unions.

Q641 Jim McGovern: You have led me to my next question. Is it outlawed or is it legal?

Harry Donaldson: We know the issue at this moment in time. There is no way back for most people. How do they challenge it? That becomes the issue. There are in excess of 3,000 people on these lists, without having to widen the context on the whole aspect of those who remain on these lists. There is no way back. There is no redress for these people because they are all time-barred because the current system allows it. As I said earlier, it is at the point of knowledge. Over 3,000 people still have no knowledge whatsoever that they were on a list. They have no knowledge of it. They may have been out of employment for a long period.

You can imagine a household faced with demands and outgoings, and you are unemployed for a long time, your wife will be saying, if you are married or if you have a partner, or thinking that it has something to do with you. It is a very insidious practice and it is an unscrupulous way of dealing with people. The difficulty is being able to identify why they are not required. The challenge is going unanswered in terms of these issues.

Q642 Jim McGovern: If we accept, as I think everybody would, that this practice exists, how do we eradicate it? How do we make sure that it is outlawed?

Harry Donaldson: That has been touched on by Justin and Gail in terms of what has to happen in order to make corporate accountability and responsibility from the top all the way down, through these levels, to ensure that this is being complied with. But there is no list, so there is no blacklisting. What is it that local managers have done? What is it that HR has done? What is it at the top of the tree, with the company and corporate governance? They must see where costs have gone. They must look at the finances. Just to play down these facts and say, “I am sorry” is no excuse. Ignorance is no defence.

Gail Cartmail: I completely agree. As I proposed to the Chair earlier, asking companies that have admitted blacklisting, such as Balfour Beatty Engineering Services, what rigour they have introduced into their organisation to ensure that they are clean and not complicit in this practice currently would be quite an interesting question. I would be interested in the response, but I fear that there is no rigour. I fear that, in the vast majority of cases, standard operating practice is still to collar people.

A point was made by Harry about health and safety. I am sure that the Committee has read unredacted files. It is nothing short of horrific to see that the vast majority are not about pay campaigns or bonuses, solidarity walkouts or walking out when an operative dies. It is the practice in the industry. Health and safety leaps out of the pages in relation to so many of the annotations.

It is not a Scottish case, but we recently had an example of a health and safety rep at Ratcliffe power station who was singled out for spurious disciplinary action after raising health and safety. It was like Alice in Wonderland, with the whole world turned upside down. The rep was sucked into a vortex of ludicrous allegations, yet he had always been a scrupulous health and safety rep. The operative that made the allegation against him was later dismissed for gross misconduct. Of course we intervened, pulled it back and all the rest, but this is a very transient work force. As the Committee knows, a job may only last for a certain period. If you are suspended from work because of protracted proceedings and the job ends, you have to go to another job with that hanging over your head.

Q643 Jim McGovern: This is a question that I was going to ask later. I am talking about the construction industry in particular. I was employed in the construction industry for 25 years, so I know how hazardous it can be and how lax health and safety can be on building sites and so on. Do you believe that people who might want to be safety reps are discouraged from taking on that position because they might be blacklisted or singled out for unfair treatment?

Gail Cartmail: In the example that I gave of the Ratcliffe power station, the actual incident on which our health and safety rep intervened was an operative who dropped a hammer from a height. I do not need to explain to people what dropping a hammer from a

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

height could result in, even with hard hats. It was said to be a “joke”, but the incident had to be reported and the person who did it needed to be spoken to. The company initially chose not to investigate the incident but took action against our member who reported it. Of course people might look at that and think, “Do you know what? I care for the health and wellbeing of my colleagues; I wouldn’t mind doing the training; I wouldn’t mind undertaking that role.” They would have seen that the weeks and weeks of delay and prevarication in prosecuting a disciplinary process is very off-putting. One of the problems that we have in Unite among electrical and mechanical operatives is getting people to step forward and take on the responsibilities of a steward. It is a problem for us.

Q644 Jim McGovern: Do you believe that that is because of a fear of being discriminated against?

Gail Cartmail: Absolutely. I had a meeting last night with a number of very experienced members who have not taken up the steward role, who are reporting breaches of working rules to us anonymously. To be frank, they are glad to have a job. That strips the role of the trade union representative and the health and safety representative of the dignity that it deserves in a hazardous, dangerous and precarious industry.

Harry Donaldson: I too subscribe to that view. Again, the issue is taking on a responsible role. If the employer looked at it for what it is, it could be a definite bonus, an assistance and support for the employer, particularly on the construction side. To use the terminology, it would be almost frowned upon on the issues that we would be putting to them, making us afraid to put our heads above the parapets. You are more likely to be shot down. People have a definite fear of that.

In other sectors of the economy, I pick up on Lindsay’s constituency, where there were 40-odd health and safety reps on one major manufacturing site. It was a completely different approach to health and safety, whereas in construction—you have seen that side of it—how long has it taken to try and instil health and safety as a culture within the construction industry? It has not been through the willingness of the employers.

Again, based on that, the background information that we have seen indicates that it is not something that is particularly aimed to be pursued by individuals in that line of work, for obvious reasons. As Gail said, there are occasions when people are glad to have a job in the current climate, and on the basis of that people do not want to push themselves, because they are still firmly of the belief that they will be targeted as individuals. Because of the transient nature of a lot of the work, that will then follow them. Again, I firmly believe that that is still the case.

Justin Bowden: There is a direct link, Jim, between blacklisting and a more dangerous work place. The intimidatory effect of blacklisting is pretty obvious. You do not have to see too many people go out of the door for raising health and safety issues before the censor starts to exist inside your own head. They are brave people who are still prepared to come forward at that point and risk losing their jobs, particularly in recessionary times like these, by raising health and

safety issues. There is no doubt that there is a clear link between the two. Construction is a dangerous occupation, but it is no more dangerous than a number of others that have better health and safety records. There is a serious question to be answered, again by the companies, about how they explain the increased number of deaths and injuries in construction in the context of their role and involvement in blacklisting. I return again to Carillion. That company is in court in Swansea on Friday, being prosecuted by the Health and Safety Executive over a worker who was killed on one of its sites. GMB will be sending along the grim reaper by way of a protest, and we will be having our say in relation to that. That is one example of 44 companies involved in this practice.

Q645 Chair: Jim started on the question of the NRB. There is a difference, is there not, if a single employer says that a single worker is not wanted back? That is not necessarily blacklisting across the whole industry, is it, unless that worker then goes for a job with another firm and finds that he cannot get a job, in which case there might be a blacklist? The NRB process in itself, as I understand it, would be one individual and one company. In a sense, that is a different process. I am not sure that I want to go down the road of going into unfair or unreasonable dismissals or refusing to take somebody back, because that just widens things out so broadly, or am I missing a point?

Gail Cartmail: If I may say so, Chair—I feel like a lawyer—you have to look at the facts and the frequency of NRBs. There are examples, and I know that I will have to bring them forward to satisfy your standard of evidence, where an operative is being engaged but the NRB is quickly instigated. For some reason, that operative is not required any longer, when it seems evident that there is a need for that trade. To know to what extent this is allied to blacklisting, we would have to look at the facts.

Q646 Chair: That is the issue, is it not? I am not disputing that an employer might be unreasonable in dismissing somebody for raising health and safety issues. The question is whether they are then barred from going somewhere else. That is when the question of blacklisting comes up.

Gail Cartmail: It is the lay-off issue, is it not? If the NRB is coupled with, say, laying off an electrical operative while the contractor is still engaging other electrical operatives via agencies and whatever means, but attaching the NRB, then effectively they are saying, “You are blacklisted by us.” This is where the facts are quite important.

Q647 Chair: To be fair, we have tended to think of blacklisting as being something that would apply across an industry rather than just being, as it were, a fallout between an employer and an employee in a particular firm.

Gail Cartmail: I understand that.

Chair: What is particularly pernicious about blacklisting is the idea that it applies right across the industry. Coming back to the question of the individual, that takes us to grounds that I am not quite

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

sure we ought to go into because it widens things too much. I want to focus particularly on the blacklisting issue.

Jim McGovern: Just for your information, Chair and Gail, you may remember that, back in the mid-1990s in Dundee, the Timex dispute was a very high profile dispute. Timex sacked the whole work force. It was no longer a dispute but a sacked work force. The shop stewards committee could not find work anywhere else, and they were highly skilled toolmakers. They eventually took various employers to an employment tribunal, successfully, because they were being refused work on the basis that they had been involved in the Timex dispute. There are courses of action to be taken but not always successfully. The AEEU, as it was then, supported those shop stewards.

Chair: Fine.

Q648 Iain McKenzie: Is there any evidence of this sort of information being transferred between companies? Is there a central pool that firms could call once they won a contract about whom they should employ and who should not be employed?

Gail Cartmail: That is the big question in relation to whether there are contemporaneous records. As we touched on earlier, we believe that there is a continuing conspiracy, drawing from records of spying. However, it is very secretive. The Economic League was very secretive—they met very secretly—and, as we know, the Consulting Association was secretive. It was only via ICO's raid that that was discovered.

The evidence that we give—this is where I started—is the living evidence of highly skilled electrical and mechanical operatives in an area where there is a real skills shortage, which is shortly to worsen, with people being unable to find work commensurate with their skills. That suggests to me that the collusion continues. They are not only going to one employer but to numerous employers to seek engagement, and even on the recommendation of our highly respected national officer they are not being engaged.

That suggests that there is a continuation of the problem, and the only way that we can begin to get to the bottom of, I guess, is to ask employers that we know were complicit, because they admitted it in proceedings and were found to be contributing to the scenery, what measures they have in place to ensure that it is rooted out. What training have supervisors been given? What measures do they deploy to ensure fair employment? It is my guess that we would not find anything particularly robust, which suggests some other explanation for the non-employment of highly sought-after and skilled operatives.

Q649 Chair: Harry, I am conscious that you have to get away in a little while. Is there anything you want to add to that?

Harry Donaldson: No, I do not think so.

Q650 Chair: Justin?

Justin Bowden: We are back to the ICO and the cork in the bottle. The fact is that it was able to seize information and uncover the activities of one individual through this particular company, but, more

importantly, those of 44 different companies, yet it did not do anything meaningful that could be seen and has not done anything of any substance since. That is a sadness and a lost opportunity but one that has not gone completely.

In the same way as information was seized from the Consulting Association, there must have been and there was information held by all of those other companies. It was a two-way process, remember. The Consulting Association relied on information from different employers in order to amass its database. It is perfectly reasonable to assume that every one of those companies had maintained a database of its own. By definition, it would need to do that in order to exchange information.

Q651 Chair: Could they not simply have passed it on as and when? When somebody came across the horizon, they could just pass it on rather than keeping their own records. There is no point in having somebody central keeping a blacklist if you are keeping one as well, is there?

Justin Bowden: No. I understand from those who have given evidence in previous court cases who worked for companies in this position, and from other people that I have spoken to, that in most cases companies maintain records of their own as well.

Chair: That is helpful.

Justin Bowden: Again, we are back to whether there is a suspicion or concern that they do not, if it can ultimately be shown to be the case one way or the other if a proper investigation has been carried out or is still being carried out at this point in time. That is a no-lose situation, in that you can show either that it does not exist and never has done or that companies are still holding information.

I raise the parallel issue that in some respects connects with one of Jim's questions of a few minutes ago. The way things stand at the moment, the information seized by the Information Commissioner from Ian Kerr has to be returned to him, so, although it is able to keep the originals, copies of that information go back to him. We have the ludicrous situation in which illegal information held on people that has denied them a living, in some cases for decades, continues to exist and can still be held by the individual who amassed it in the first place. That is crackers.

Q652 Mr Reid: It must be illegal now, surely, because of the 2010 regulations that made blacklists illegal. Surely, it is illegal for Ian Kerr to have the information.

Justin Bowden: My understanding is that the information has to be returned to him. What he then does with it is—

Q653 Mr Reid: We could get into a silly legal situation here where, on the one hand, the law is saying that the Information Commissioner has to hand it back, but the minute he receives it he is acting illegally because the law has changed since he last possessed it.

Justin Bowden: That specific point is one of the things that has been raised by Liberty. Where is that information and what is being done with it now?

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

Q654 Mr Reid: The Information Commissioner, obviously, has a copy.

Do you know if other copies exist anywhere else?

Justin Bowden: We do not know for certain who else holds what other information. Again, we are back to my hobby horse or what is becoming an important hobby horse now. It is about what information was held by other people as part of this process, as part of maintaining the Consulting Association. A proper and thorough investigation of all 44 companies should have taken place at the time, but it did not, so it should now take place.

Q655 Mr Reid: Have any of your members submitted data protection requests—I think they are called “subject access requests”—on two of these 44 companies?

Justin Bowden: No, not at this stage.

Gail Cartmail: We are engaged with the Blacklist Supporters’ Group. Our legal team is working on the whole disclosure.

We are challenging under disclosure of information. We are also challenging via the human rights angle in the European Court. We are trying to challenge in each and every way, as I mentioned earlier. In fact, my union is supporting cases in an employment tribunal. We are pretty sure that we will lose and possibly incur costs, but the reason for doing it is that it is the only way that we can get the unredacted files on behalf of our members. In fact the implications of that are quite serious, but it is the only way that we can get the unredacted files pertaining to their case.

Q656 Mr Reid: Under the Data Protection Act, any individual is allowed to request any company to supply them with details of the information that the company holds about them.

Gail Cartmail: That is why we are litigating under the Data Protection Act.

Q657 Mr Reid: Have these requests been submitted?

Gail Cartmail: We are litigating under the Data Protection Act.

Q658 Mr Reid: It does not need litigation. It only needs an individual to write to the company.

Justin Bowden: From our point of view and on advice, the more effective way of doing this is by organising group claims for people, most likely through the High Court, and seeking to obtain information by that route. We are advised by lawyers that that is the best way to proceed rather than writing off to a particular company and saying, “Tell us what you hold about us.” Given that the vast majority of the companies have not, up to this point, even admitted that they were involved in this, never mind issuing an apology, we think that it is pretty unlikely that someone sending off 10 quid and saying, “Send us the information you’ve got” is going to get us what we need. So we are going to do it with a little more teeth.

Q659 Mr Reid: Do the companies only hold information about their own ex-employees or do they hold other information?

Justin Bowden: I suspect that it will be a mixture of both. We are back again, aren’t we, to this being a fantastic thing for the ICO to have done, and it could still seek to investigate and establish it one way or the other? Who holds what about whom?

Q660 Mr Reid: It is illegal to hold a blacklist, but would it be illegal for a company to maintain details of its own ex-employees so long as it did not pass those details to anyone else?

Justin Bowden: You are correct that it would be entitled to maintain so-called personnel records. It is what it does with those and what information they contain, and there is an issue about the reliability and the accuracy of that information.

Q661 Chair: Alan’s point was that if someone had worked for Carillion, would they be able to write to Carillion and ask for copies of their personnel records?

Justin Bowden: They can, yes.

Chair: Has that been done?

Q662 Mr Reid: The legal advice they got was not to do that.

Justin Bowden: Our advice is that there is a better way of doing it, both tactically and legally.

Q663 Chair: May I clarify one point? You said that the companies deny having been involved with the Consulting Association. Presumably, the Consulting Association records are there, with records of sums that have been paid in. Have those companies been disputing that those sums were paid in by them?

Justin Bowden: There has been nothing done about that, Chair. As I understand it, the ICO wrote to the companies at the time, saying that it believed that they had been undertaking those activities. A number of those companies responded and said, “Yes, we have.” They got an enforcement order and a slapped wrist, but those that effectively did not respond or denied it were just left.

Harry Donaldson: It was about 14 out of 44, was it not?

Justin Bowden: I think that Harry is right.

Q664 Chair: Do you know how many replied and who they were?

Justin Bowden: We can give you precise figures.

Harry Donaldson: I know that 14 of the 44 did reply, so presumably it would be 30 who had nothing done, but I can get that information.

Chair: Again, that would be helpful. Pamela, you wanted to come in?

Q665 Pamela Nash: I am sorry that I could not be here at the beginning of your evidence session, but from what I have heard it has been really helpful.

I wanted to go back to Justin and the correlation between blacklisting and the level of safety for workers. Are you saying that you have seen a correlation between blacklisting and the number of people who have sustained serious injury working for a company or even being killed?

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

Justin Bowden: Yes. If you look at the information that is on the blacklisting files—

Q666 Chair: I am sorry, Justin, but may I interrupt you for a second? Harry is looking worried and I am conscious that he has to go. Is there a final point that you would want to raise with us?

Harry Donaldson: The points have been well covered by Justin and Gail, and I am sure that Justin will be able to pick up any other relevant points. I will provide you with information in due course. Again, I apologise for having to leave early but I have to catch a flight back to Scotland.

Chair: Okay. I apologised for being late in starting and therefore cutting short your evidence.

Harry Donaldson: Thanks for the opportunity.

Chair: Thanks very much, Harry. Justin, as you were saying.

Justin Bowden: Looking at the information on the files that I have seen, albeit it is a small number of the total that are held, and taking account of the information presented to you and the evidence given by Dave Smith, the vast majority of the entries relate in some way to health and safety—not always, but there is a very high incidence of individuals having an entry on the blacklist because they have raised concerns of some sort or another about safety in the workplace.

Given that raising health and safety concerns had a high likelihood of leading to blacklisting, that has meant that there would have been a reduced number of individuals in the workplace in any event who would have been health and safety reps or would have been prepared to raise health and safety issues. That is inevitably going to have a knock-on effect because those people are not going to be there to raise those issues. Coupled with that is the likelihood that people who have been blacklisted and do not get work as a result will be less inclined to come forward and step into their shoes, on the basis that they will have seen what happens if you raise health and safety issues, because you do not get work.

It is not anything other than a commonsensical conclusion to arrive at. There has to be a link between blacklisting people because of health and safety and the workplace becoming more dangerous. The knock-on effect of that, again, is likely to be an increase in accidents of all sorts, dangerous or serious injuries and, ultimately, fatalities.

Q667 Pamela Nash: I agree with you, Justin, but unfortunately common sense does not always prevail in the Houses of Parliament. It would be good if we had some evidence of that. Do you have any specific examples of someone who has sustained serious injury as a result?

Justin Bowden: The parallel that we would make, and there would be an element of empirical evidence around it, would be the point that I made before, which is that construction is a dangerous occupation but that other occupations are as dangerous or more dangerous yet with a lower incidence of either serious injury, accidents in general or fatalities. I guess the question then is what the reason is for that.

Generally, the better organised an industry or sector is, the higher the degree of unionisation and, the better the working relationship between employer and trade unions or the work force, the safer that workplace will be. The express purpose of construction companies blacklisting in the first place was to keep activists out of the work force. That was anybody who was going to organise the work force, including organising them around health and safety issues. In short, there is some evidence, but do not suppose that anybody has done any research at this stage to tie up a direct link with blacklisting, because the exposure of blacklisting is relatively recent. I guess it is how you set it up, but I am not a statistician or an academic.

Q668 Pamela Nash: My concern would be how to determine that another industry is as dangerous as construction if you are not comparing injuries.

Justin Bowden: You have other industries undertaking construction or similar occupations that contain construction as part of the process. Parts of manufacturing would include electricians as part of the process. The level of accidents among electricians in a well-organised factory—well organised from a trade union sense—will be lower than in an unorganised construction site.

Gail Cartmail: There is comparative data, and I am happy to bring it forward to this Committee retrospective to us giving evidence.

The other thing is anecdotal and it will not necessarily help you, but I have come to understand that the activists that I meet in the sector will report, provided they are protected by anonymity, particularly so if they have been refused work. That is why our campaign, which is called “Play By The Rules”, is inviting people to report breaches anonymously. That has had an extraordinary impact over a short period of time. Prominent among the things that people report is health and safety breaches. I agree that we need to see what comparative data we can provide for you so that we can look at like for like, but anecdotally I sense that it is a very live issue and problem.

May I touch on something that is not a Scotland-based example? Sometimes, employers change tactics. We have a prominent site in London, with Crossrail, and there is evidence of a contractor company suddenly having a conversion on the road to Damascus and paying the trade union contributions for its work force. I raise this because it is another way of sidelining genuine trade union involvement and sending the message that, “We will pay your contributions but we don’t expect you to play a role.” The landscape of construction and what we encounter in the industry changes.

Employers will have learned, I would imagine, from the Consulting Association experience not to have evidence of contributions to an organisation that they employ to maintain records of blacklisting. Proving this therefore becomes more complex and difficult. What would you say to that, Justin? It is unlikely that they will keep the same process, so we have to be alert to other means by which employers might collude, spy and collect the data.

4 September 2012 Gail Cartmail, Justin Bowden and Harry Donaldson

Q669 Chair: I think that we have covered virtually all the ground that we wanted to cover with you. There are obviously a number of things that we shall be discussing about who we should next bring in, but we want the sort of indications from you that we asked for about how best to pursue the matter.

It is also fair to recognise that two sites have been mentioned, Nynas and Southern General, and two companies, Carillion and Balfour Beatty, in particular. We have taken note of that, and it may very well be that the staff of the Committee or our advisers will want to pursue some of these matters with you in more detail, and we will consider how best to pursue things. In the meantime, the standard thing that we always ask at the end is whether you have prepared answers to questions that we have not yet asked—things that you want to make sure are on the record before you leave. Is there anything?

Gail Cartmail: No. I just want to thank the Committee for patiently hearing our evidence. I appreciate that much of it is anecdotal, based on face-to-face conversations with operatives. What you are doing is fantastically valuable. I know, looking at the people that I have contact with in the industry, that they have high hopes of this evidence-gathering process. They are decent men.

Justin Bowden: If I could, Chair, I have a few bits and bobs and one or two general points.

One concern that I have, and I would ask the Committee to consider it, is the fact that the database relating to the Consulting Association held by the ICO is effectively time-limited as far as the ICO is concerned, which has said that it will hold it for only a limited time. Our worry is that, once it has gone, it is gone. We are a little unclear what the deadline is, but information on its website still talks of a date in 2011, up to which time people will be able to obtain information about their inclusion on the list. That date has passed, but from our point of view we would be worried that 2015 is the latest date. That is some time off, but, given that it has taken more than three years for 194 people's names to have come to light and be revealed, at that pace it will probably take another 30 or 40 years before everybody knows.

It is another smallish point, but I flag up from our perspective the concern that there must be a political dimension to all this in a number of respects, particularly relating to the ICO. While it took some action back in 2009, it helpfully sought to assist the GMB, at least in part, in us trying to find out the information for our members. That is not perfect, but it is better than the position previously. However, we have a concern that there may be other reasons why more was not done at the time, and has not been done since, particularly when you look at the companies involved, who are on the record as supporting it, both

financially and otherwise. I would like to chuck that quickly into the mix, if I may.

In terms of Jim's question, which I never got around to answering, which was about how to stop the blacklisting, in some ways that is almost the same question as asking what we would like to see. Some of this has been covered before, so I put it in a nutshell. GMB would like to see all those on the blacklist written to and made aware of their inclusion on the list and of their rights around that—not just GMB members or other union members but everybody on that list, which obviously includes some non-union members. We would like to see a public inquiry on a par with Leveson, and we see obvious parallels with that.

We want stronger legal protections, making blacklisting a criminal offence with imprisonment and unlimited fines. We certainly believe that an apology and compensation is very overdue for the 3,200 people on the blacklist. To put a number on it, I understand through the Blacklisting Support Group's legal action that it has put a figure of around £600 million of lost income for those on the blacklist as a minimum figure. That does not take into account lost revenue in taxation and national insurance and the state benefits that must have been paid out to people and their families who were not able to work.

Additional to that is a point that has already been partially covered, namely, for public bodies to review whether public contracts and taxpayers' money should be awarded to companies involved in the blacklisting, whether it is Carillion, Balfour Beatty or any of the others on that list. It seems ludicrous to us that public money should be going to companies that are clearly guilty of this type of behaviour.

Finally, I would like to pick up on a point that Harry wanted to make and touched on before he left, which is about the state now being aware of the illegal activities and their effect on individuals over decades. This is about the little people, really—just ordinary working people. The state has information in its possession about these activities and who carried them out. The state has the power and means at its disposal to investigate, pursue and ultimately put right these injustices. The state has the power to put in place measures to stop this happening again. The question therefore is on whose side the state is going to act, given that this information is out there. Is it going to be for the little people or for the multinationals—those companies that broke the law with their covert and illegal activities?

On that point, Chair, I thank you very much for inviting us and hearing what we have to say.

Chair: Okay. I hope you feel that you have had a generally good hearing. We will obviously be considering how best to pursue matters.

Tuesday 16 October 2012

Members present:

Mr Ian Davidson (Chair)

Iain McKenzie
Pamela Nash

Mr Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **David Smith**, Deputy Information Commissioner, and **David Clancy**, Investigations Manager, Information Commissioner's Office, gave evidence.

Q670 Chair: Good morning, gentlemen. I welcome you to this meeting of the Scottish Affairs Select Committee. Could I start by asking you to introduce yourselves and tell us what place you have in the organisation?

David Smith: Good morning. I am David Smith. I am Deputy Information Commissioner. In our office we have responsibility for looking after data protection legislation and freedom of information legislation. Under the Commissioner, we have two deputies and I have particular responsibility for data protection legislation. Indeed, I was in post at the time of the exposure of the construction industry database.

David Clancy: I am David Clancy. I am the Investigations Manager within the enforcement department within the Commissioner's Office. At the time of the investigation into the Consulting Association I led the investigation.

Q671 Chair: I want to clarify each of your backgrounds before you came into this position.

David Smith: Yes, certainly. I have been in this position for over 20 years now with the Office of the Data Protection Commissioner and previously the Data Protection Registrar. Before that I was a full-time trade union officer with NALGO, as it was then, and now Unison.

Q672 Chair: Goodness me, not many people remember NALGO.

David Smith: I do and with some fond memories as well, I have to say.

David Clancy: As to my background, in the 1980s I served as a police officer with the Greater Manchester Police for eight years. After that I was a qualified social worker before I was employed by the Commissioner's Office.

Q673 Chair: I want to start off by asking you how the activities of the Consulting Association came to your organisation's attention.

David Smith: I will start and my colleague David can obviously add in more. The activities of the Economic League were something that was known to us, certainly ever since I have been in the Office, and were an area of concern, but at that time, when we were under the 1984 Data Protection Act, essentially the law did not apply to paper records. It only extended to computerised and electronic records. All the information we had was that the Economic League operated on paper records and deliberately so to keep themselves outside the reach of data protection law.

Although we had concerns about the activities and the keeping of essentially secret records, at that time there was no action we could take.

What cast a light on it all and started to give us a proper basis for investigation was an article in *The Guardian* in 2008, which exposed the Consulting Association and the work that was going on there. That provided us with some investigative leads that we could follow up. We did that through the use of phone records using powers under the Regulation of Investigatory Powers Act, which led us to Ian Kerr, who essentially ran the Consulting Association database from premises in Droitwich. We obtained a search warrant for that and David led the execution of that warrant.

Q674 Chair: I will come on to that in a minute. First of all I want to pursue the question of how this came to your attention. This came to your attention because of a press article. You were aware generally, but I want to clarify whether or not you were proactive. Are there other organisations out there that you are undertaking any steps to try and identify, or do you wait on things being drawn to your attention?

David Smith: It's a mix. We react to matters that come to our attention. We have thousands of complaints of breaches of the data protection law to our Office each year. Those are a primary source of information and intelligence that we act on. We also scan the media. We react to what goes on here in Parliament and pursue lines of inquiry on that basis, but we don't have any powers to go out and do what I would call proactive checks on organisations. We don't turn up and audit their activities without their consent to that process. Indeed, at the time we are talking about here we didn't have an audit function as such within the Office, but we have now developed one and we do have some powers to go and do proactive audits. So the position has changed. We don't have an ability to just go out and check up on people to make sure that they are complying with the law.

Q675 Lindsay Roy: How many proactive audits have you done?

David Smith: I can come back to you with the exact figure but it would be around 60 or 70 now; it is that sort of number. We are geared up to do that sort of number each year. We started with one team of auditors and we now have three teams of auditors. It is still an expanding area.

16 October 2012 David Smith and David Clancy

Q676 Lindsay Roy: In how many have you found evidence of blacklisting?

David Smith: None of those.

Q677 Chair: What is an audit team? It sounds like hundreds of people or is it a man and a boy?

David Smith: David may correct me if I have got this wrong. There is the head of the team, there are a couple of lead auditors and then something like four auditors. It is about six people, who will split up. When we go out to a business, it is normally two or three people going to a business to do the checks.

Q678 Mr Reid: How many complaints have you had about blacklisting?

David Smith: I believe we have had one.

David Clancy: It is very difficult because we get lots of complaints from individuals who say they believe that they have been blacklisted. We make it quite clear that we would need some form of evidence to support their assertions. Quite often a worker may believe that he has been blacklisted within the workplace because he cannot find a job. What we say is that that isn't sufficient for us to initiate an investigation. Where there is sufficient suspicion to indicate that blacklisting may be the case, we will carry out an investigation.

Q679 Mr Reid: What would you regard as a reasonable suspicion?

David Clancy: It is whereby somebody can produce some form of evidence, either supported by a third party or other documentary evidence, to suggest that they may be excluded from the workplace. I had to conduct an investigation a while back in relation to one such allegation. It was quite an extensive investigation but it turned out that it was not a blacklisting per se; it was just that a company refused to employ one particular individual because of an incident that occurred on site. Whenever he applied subsequently he was refused access to that site. He believed he was blacklisted and it is fair to say that that company would not employ him because of a dispute in the past. That is not blacklisting.

Q680 Mr Reid: Do you have records of the number of complaints that you have had? I know you have said that only one was backed up by documentary evidence.

David Clancy: We would not record individual allegations of blacklisting separately from all the other types of complaints that we get. We would say that there may be a case of unfair processing. That would be something that would be recorded within the Office.

Q681 Mr Reid: So blacklisting would not be recorded specifically.

David Clancy: We don't have a specific recording statistic for blacklisting.

Q682 Mr Reid: Do you not think you should have?

David Clancy: It is very difficult to do that. If we do that across the board, we would have lots of different allegations that are made to us that would have to be

recorded separately. We could end up with hundreds, if not thousands, of categories of allegations that are made to us.

Q683 Mr Reid: Could you make an educated guess at the number of blacklisting complaints you have had?

David Clancy: Complaints that are supported by any form of evidence would be very few.

Q684 Chair: We can maybe come back to that because there is obviously a difficulty about evidence. Had the press cuttings about the Consulting Association not arrived with you, there would, by definition, have been no evidence. I am therefore not quite clear how you determine the question of when you are proactive or not.

David Clancy: In relation to the article by Mr Chamberlain that initiated the Consulting Association investigation, the article indicated that he had access to some form of evidence or some information and that individual would be willing to speak to our Office in relation to their experience. One of the individuals actually worked in the construction industry and was a participant in the blacklisting process. That indicated that there was strong evidence available to support the assertion that blacklisting was taking place.

Q685 Chair: You were starting to get to the exciting bit about what action you took against the Consulting Association. Maybe we could return to that and you could tell us, once this information was drawn to your attention, what you then did.

David Smith: I will explain a little bit about how the Data Protection Act applies. It does not outlaw blacklisting per se. It outlaws the unlawful processing of personal data. It is perfectly possible to operate a database of this type within the law. These sorts of databases do exist, particularly in the retail industry—for example, to keep track of people who have been dismissed through theft. What is necessary for them to operate within the law is that they are open. The problem with the Consulting Association was the covert and secret nature of it.

Essentially, if an employer when it takes someone on says to the employee, "Look, in the event of your being dismissed for theft, we will report that to our industry database. You have a right of access, a right to challenge, and a right to complain to the Commissioner's Office", that sort of system can operate. It was the secret nature here that was the problem. The Act also essentially only applies to information that is recorded on an electronic database or in organised, structured paper records. There is no doubt that it applied to Ian Kerr, who operated the database, because, albeit most of his records were paper records, they were certainly structured in a Rolodex form. He had an electronic index as well. But the construction companies who were supplying information didn't necessarily record the information that they were supplying in a recordable form. If a construction company simply phoned up Ian Kerr and said, "Look, we have dismissed Fred Bloggs from this site today and you ought to put him on the database", I won't comment on whether the company was acting

16 October 2012 David Smith and David Clancy

properly or morally, but that is not a data protection breach by the company.

If someone applies to the company for a job and the company does a check on that person, phones up Ian Kerr and says, “Is this person on your database? Should I employ him?”, and they simply come back with a yes/no answer, the breach by the company is potentially the failure to tell someone that they are making that sort of check. That is really how the law applies to this.

None of this is criminal. These are breaches of the data protection principles that personal data should be processed fairly and lawfully, which is about being open with people about how their information is used and that personal data shall be accurate. At that time we had no powers to punish breaches of the data protection principles. Our powers were to bring about compliance through issuing enforcement notices, which we issued to 14 of the construction companies. They basically said, “You must stop supplying information and you must stop using this database.”

A breach of those notices is then a criminal offence. This is not a punishment as such. Suggestions that all we did was rap people over the knuckles or whatever are a little wide of the mark because the powers were not even about rapping over the knuckles; they were about delivering compliance. We issued one of those notices to Ian Kerr. We have an urgency procedure and it was the first time we had used it where we can issue a notice as a matter of urgency to stop him using the information with immediate effect.

Q686 Lindsay Roy: Is that not a rap over the knuckles?

David Smith: No. I don’t see it as a rap over the knuckles. It is translating the general requirement in the Data Protection Act to process information fairly and properly into a specific legal obligation where there has been evidence of the breach. There is no punishment element in there. It is just placing you under a stronger obligation to comply with the law. The rap over the knuckles comes if you fail to follow that notice.

Q687 Lindsay Roy: It’s saying, “Don’t do it again.”

David Smith: It is saying, “Don’t do it again”, yes. “Don’t do it again or that will be a criminal offence”; that’s right.

Q688 Mr Reid: There is one point I wanted to raise. Mr Smith said that for it to come under the terms of the Act the data would have to be in a structured form. Does that mean that, if I was to hold information on people’s trade union activities but it was all handwritten on scraps of paper and wasn’t filed in alphabetical order, if I don’t file it in some structured way, then I am not breaking the law?

David Smith: That is correct; yes.

Q689 Mr Reid: Do you not think that’s a big loophole?

David Smith: It is a loophole but how big a loophole in this day and age when most records are held electronically anyway is open to question. The original intention of data protection law was

essentially to protect people from the growth of electronic computerised records and the power that that brought in terms of processing information. That was the extent of our original 1984 Data Protection Act.

When the new 1998 Act came in—because it was based on a European Directive, and some other laws, particularly the law in Germany, already extended it to these structured paper records, the IDB paper records, which operated like a computer system, if you like—that was brought into UK law.

Q690 Mr Reid: Suppose I effectively made up a blacklist of a few hundred people, each of them recorded on a separate piece of paper. Simply by not recording it alphabetically but filing it in some formula that I hold in my head and I can put my hand on straight away, when you do a raid, I would just tell you that that is not a structured database and you wouldn’t be able to do anything.

David Smith: Possibly. If it was a serious breach like the holding of blacklisting information, we would do our best to argue that what you were holding was a structured record. Even if it is a little bit disorganised, if it is not too big a record and you know what is there, essentially you hold the index in your—

Q691 Mr Reid: But I am going to tell lies when you come and ask me. I am going to say, “No, it is not structured”, even though I have the structure in my head.

David Smith: That’s right and at the end of the day we would use our enforcement powers.

Q692 Mr Reid: But how could you if I argued that this was unstructured?

David Smith: Because we could say, “We don’t believe you.” We would issue a notice and you could appeal to a tribunal and argue it there. You make a very sound point. We would have to weigh this up as to how convincing we could make our arguments that we don’t believe you. I can only agree with you that the law would be stronger if it applied to all sorts of records, but it is not a law about individuals processing information about each other. Your personal household records that you might keep of your friends and so on would not come within the scope of the law, but if you were operating a business, even if it was not structured paper records, there is an argument that those should be covered where they have information about individuals.

Q693 Mr Reid: But the law as it stands at the moment would seem to suggest that that is not covered.

David Smith: Yes. It applies to electronic records and information in what is called, in the law, a relevant filing system. It talks about structure, accessibility and so on in defining a relevant filing system.

Q694 Chair: Can I just be clear then? Those construction companies who were supplying information to the Consulting Association were not committing any offence by supplying that information even if it was false.

16 October 2012 David Smith and David Clancy

David Smith: They were not committing a criminal offence, no. They could have been in breach of the data protection principles if they held that information themselves on a database.

Q695 Chair: That's right, but, if they were simply submitting information on a case-by-case basis to allow somebody else to compile the electronic list, the supplier was not committing an offence.

David Smith: That's right.

Q696 Chair: Then, if the construction company accesses the list, they themselves are not committing an offence.

David Smith: That's right. I hesitate on "offence" because they are not criminal offences; they are breaches of the Data Protection Act. They have to be a data controller for the information, but they are not a data controller unless they have it recorded in paper form.

Q697 Chair: We will obviously make recommendations. Surely someone who condones, supplies or accesses lists or information for lists is just as guilty as those who hold the material.

David Smith: I can really only comment on what is guilty under the law we have, but there is clearly an argument that there was wrongdoing.

Chair: "Under the law" is a wonderful euphemism. This is wrongdoing that should be punished in some way or another.

Q698 Mr Reid: I want to explore this a bit further. I take your point that there is no criminal offence, but there are the data protection principles. I understood that, if I hold data, I am only allowed to process that data for the purposes for which I acquired it. Is that correct?

David Smith: That is essentially correct.

Q699 Mr Reid: If I hold data about employees, I am presumably entitled to use that data to pay them, to allocate holidays, to manage sick leave and all sorts of things like that. Surely handing that data over to a third party is a breach of the data protection principles.

David Smith: That would be right. You could correct that by telling the person that that was your intention.

Q700 Mr Reid: If I don't actually tell the person that my intention is to hand it over to a third party, then I am breaking the data protection principles.

David Smith: Yes, if the data that you pass to the third party is data that you hold. If it is just, "We sacked Fred Bloggs from the building site", and you haven't recorded that in a record, then that is not data you hold; it is just information that you have.

Q701 Mr Reid: If I fire Fred Bloggs but don't write down that I have fired Fred Bloggs and I then tell a third party that I've fired Fred Bloggs, then I am within the law.

David Smith: Yes.

Q702 Mr Reid: But, if I write down that I have fired Fred Bloggs and tell a third party, then I have broken the law.

David Smith: We are in danger of getting into angels on a pinhead here.

Q703 Mr Reid: But it is important.

David Smith: If you are disclosing information from your recorded database, then that is a breach of the Act. If you go to your record and you say, "I am disclosing to Ian Kerr that Fred Bloggs was dismissed", and that is a disclosure from my record, you are disclosing your computerised or manual record.

Q704 Mr Reid: But surely a company that fires somebody records that they have fired them.

David Smith: You would expect so, but they might not record all the reasons that they pass over.

Q705 Chair: If they say that they have sacked Fred Bloggs, "And here is his national insurance number", then that is clearly a breach, is it not, because the national insurance number is held by them in some form of their records?

David Smith: Yes.

Q706 Chair: So anybody who has supplied a national insurance number has committed an offence.

David Smith: It is likely, yes, that anybody who supplies a national insurance number—

Q707 Chair: What are the circumstances in which somebody could supply a national insurance number and not commit an offence?

David Smith: If someone came to a building site for a job, presented their record or gave a national insurance number to whoever was employing them on the site and simply the person on the site phoned up Ian Kerr and said, "I've got so-and-so here with this national insurance number", and the information was never recorded in the construction company's records. I can only agree that that is unlikely. If a national insurance number is disclosed, that is likely to have come from a record, and, if the person wasn't made aware, and again it is almost certainly the case that they weren't made aware, then that is almost certainly a breach of data protection.

David Clancy: Can I just jump in at this point? From my knowledge of the way that this system operated, what you would get is a situation whereby you might get a construction worker who goes to an agency. They understand that vacancies are available on certain sites. The agency may phone up representatives of the construction company to say, "We have Dave Clancy here who is looking for work. He's a qualified electrician. This is his national insurance number." That information may be recorded on a note within the construction company. They will make a check with Kerr, come back and say, "Do not start Dave Clancy; he is a troublemaker." That information then goes back to the agency. There may never be any record within the construction company of that check having taken place other than the fact that Kerr would bill the construction company for a

16 October 2012 David Smith and David Clancy

fee. The construction company may never hold in any official records the name of Dave Clancy and my national insurance number.

Q708 Chair: That is clearly a loophole then, isn't it?

David Clancy: It is something that the legislation doesn't cover at this moment in time.

Q709 Chair: That is almost a definition of "loophole", isn't it?

David Clancy: Yes, but all we can do is act within the legislation.

Chair: Absolutely. We are going to make recommendations from this. We are just seeking clarification. You are confirming to us that that is a loophole and we will respond accordingly. It was just in case there was another interpretation of it that I had not picked up.

Q710 Mr Reid: Say information is given over the phone. Say I am an employer and somebody comes to me looking for a job. If they hand me a piece of paper with their national insurance number on it and I hold that piece of paper, and I then phone up the Consulting Association, am I committing an offence if I hold that piece of paper in my hand and read out the national insurance number?

David Smith: Probably not, no.

Q711 Mr Reid: But I hold the data.

David Smith: But it is not held in a structured filing system. It is just a scrap of paper, as we have talked about.

Q712 Chair: I understand that. I want to come back to the other point you mentioned about enforcement notices. As I understand it, you wrote to construction companies asking them if they were doing these things. If they replied and said, "Yes, we were", you sent them an enforcement notice saying, "Don't do it again." If they did do it again, that was then a criminal offence. Is that right?

David Smith: That's correct.

Q713 Chair: What happened if somebody did not reply or they replied saying, "It wasn't me"?

David Smith: Everybody did reply. We looked at the responses that we received from those businesses. If you will just bear with me a moment, I can tell you that some of the responses came back that the company was no longer in existence or it was mistaken for a different legal entity. With some of them we had no evidence that they had made any use of services within the previous five years; they had been a past customer. Some of them expressly denied ever processing information by means of electronic media or recordings. This is the discussion we have had. They said all they did was yes/no exchanges over the telephone. Some of them denied ever using the services at all. They said they may have attended networking meetings organised by the Association but didn't use the checking services. Those ones that came back with a variety of those reasons we didn't pursue to formal notices.

Q714 Chair: Some of them might have been lying.

David Smith: They might have been, certainly.

Q715 Chair: In those circumstances was that where you then conducted audits?

David Smith: No. Our intention here was to stop the construction industry database and the blacklisting system of which that was the basis from operating—to close it all down. Essentially, we were satisfied that the system had been closed down. Ian Kerr had ceased operating to all intents and purposes. It is a fair point, Chair. Not using our audit power, we would have had to go to court and get a warrant to search the other construction companies, but there probably would have been sufficient grounds. It is grounds for suspicion that there is a breach and there is no doubt that we had that. But we concluded that going to court to get a warrant to investigate these companies to find out, as we may have done, that some of them weren't telling the truth, so that we could then issue them with a notice that required them to stop doing what we were satisfied they had stopped doing anyway, would not have been a good use of resources and effort.

Q716 Chair: How were you satisfied that they had stopped doing this? They had told you that they had stopped doing it, but how did you know that they weren't doing exactly the same thing but with somebody else?

David Smith: There was no reason to suppose that anybody else had set up the equivalent of the Consulting Association database. There is no evidence to this day to suggest that that has happened. We have closed down the perpetrator of the database—Ian Kerr.

Q717 Chair: We have been approached about a firm called Caprim. It has been suggested that they are operating in the same way and that they operated in the same way at that time. Was that ever drawn to your attention?

David Clancy: I don't recall Caprim being drawn to our attention. It has subsequently been drawn to my attention, yes. The GMB raised that as an issue only recently. My view is that, if there is evidence that Caprim are operating a similar system and if GMB have any evidence that they can provide to us, then we will no doubt follow that up.

Q718 Chair: But you didn't have that at the time.

David Clancy: As far as I am aware, it was not within my knowledge.

Q719 Chair: Maybe that is something you can check for us. As I mentioned privately to you outside, if upon reflection or when you have left here you discover that the answer you have given wasn't accurate because there was information of which you were not aware, then you can let us know. I am taking it that you were not aware of Caprim at the time, though it has been drawn to your attention since. Was there any other organisation that was undertaking this sort of work of whom you were aware at the time or to whom your attention has been drawn since?

16 October 2012 David Smith and David Clancy

David Clancy: To my knowledge there has been no indication of any other organisation, other than the Economic League, which I believe was a precursor to the Consulting Association.

Q720 Chair: I want to go back to the stages that were taken. You were telling us that you raided the offices of the Consulting Association. Can you clarify what happened from then or what happened when you visited them?

David Clancy: Yes. We visited the premises of the Consulting Association after we obtained the search warrant at Manchester Crown court. When we attended the premises, Ian Kerr was on the premises along with one female. Straight away, as soon as we almost entered the premises, we identified the Consulting Association database—the card index system that operated the blacklist. With this was an index system that clearly indicated A-Z who the workers were within the database. We quickly identified the construction companies that were using the database.

That was the extent of the cover of our warrant. Our warrant said we could search for evidence that indicated there was a blacklist within the construction industry. We removed that information, took it back to our office and then formulated a plan of action to deal with Kerr, the construction companies and how we would deal with construction workers to try and let them have access to their records.

Q721 Chair: There was more stuff there, was there, that wasn't covered by your warrant?

David Clancy: There was a lot more stuff within the office that wasn't covered by our warrant, yes.

Q722 Chair: When you say "a lot more", did you seize 10% of the stuff, 5% or 90%? Give me an idea.

David Clancy: It is very difficult. I would say between 5% and 10% of the stuff. We didn't actually search every item within the office because our warrant specifically said "the existence of a blacklist". Once we had found that, our search, in theory, should stop because we had found the evidence that we were looking for.

Q723 Chair: In a sense what you were looking for was evidence that it existed—not the entire blacklist and everything related to it.

David Clancy: That blacklist was the blacklist of the construction industry.

Q724 Chair: Was what you seized and what you saw relating to the construction industry 5% of the material that was there?

David Clancy: We saw the blacklist. I can't say exactly what it was in relation to the entire construction industry blacklist because we looked and found the blacklist. That was the blacklist that was operating.

Q725 Chair: You took a pile of stuff away with you.

David Clancy: Yes.

Q726 Chair: What percentage of the stuff that was there did you leave?

David Clancy: As I said, we are talking of between 5% and 10% of what was in the office. What the other 90% or 95% was I can't comment on because we didn't go through lots of it. We just took the information that was relevant to our inquiry.

Q727 Lindsay Roy: How do you know that there wasn't another blacklist?

David Clancy: We were satisfied that that was the blacklist because it was quite clear—

Q728 Lindsay Roy: But how do you know that the 85% that was left didn't contain a blacklist?

David Clancy: I was satisfied at the time. I had looked at it and thought, "This is the blacklist." It was quite clearly an A-Z of the workers with the monodex system.

Q729 Lindsay Roy: Did you look at the 85% or sample 85%?

Chair: Sorry, 95% because it was 5%.

David Clancy: We didn't go through all the other information. We looked and said, "We are satisfied that that is the information. That is the blacklist that operates within the construction industry."

Q730 Lindsay Roy: Why didn't you look at the other stuff?

David Clancy: As I said, we were satisfied that that was the information that was covered by the scope of the warrant.

Q731 Chair: How did you know that the other stuff was not relevant if you did not look at it?

David Clancy: We started looking at stuff but we just dismissed that and then said, "Right, this is what we have come in for." When we started the search there was a number of officers that attended. We started searching for information and suddenly one of the officers said, "I've found what appears to be what we are looking for." We then looked at it, spoke to Kerr and we satisfied ourselves. In fact Kerr provided us then with a list of the participant companies.

Q732 Chair: What was the other material that was there?

David Clancy: I can't say what the other material was.

Q733 Chair: What do you mean you can't tell us? Is it that you won't tell us or that you don't know?

David Clancy: I can't tell you. I didn't go through every piece of paper and identify what it was.

Q734 Chair: Did you go through anything? Can you tell us any information about anything else that you saw?

David Clancy: We were just looking through information and said, "This is the blacklist", and that was it. We were satisfied that that was the information we were looking for.

16 October 2012 David Smith and David Clancy

Q735 Chair: Was it shopping lists, car repair receipts, mortgage documents or blacklists for other industries?

David Clancy: I can't say. I don't recall seeing any other blacklist for any other industries. As I said, we focused on what we came in for, which was the blacklist for the construction industry.

Q736 Chair: You can see why we are struggling slightly here. You go into an office and take 5% of the material. We are trying to clarify what the other 95% might have been. Did it look as if it was the same thing? Did it have a big label on the top saying "Building Industry This Way", "Retail This Way" or "Engineering That Way"?

David Clancy: No; there was nothing like that.

Q737 Chair: Help us.

David Clancy: We just went in there and there were filing cabinets full of stuff. We identified that we had the blacklist for the construction industry. We looked at it and thought, "This is the evidence we came for."

Q738 Chair: So, for all you know, there could therefore be blacklists for a whole number of other industries: the shipping industry, the railways, local government or anything else.

David Clancy: There could have been, but I don't know; I didn't see that list.

Q739 Chair: Did any of your colleagues see anything?

David Clancy: As far as I am aware, we did not see any other blacklist of the nature you are talking about.

Q740 Chair: If you were able to identify that you had not seen a blacklist, by omission you must have been able to identify what it was you were seeing. So what was it you were seeing?

David Clancy: When we went in there the blacklist was contained in a box. That was the box with the blacklist in, with the index on the top and the card index system. We removed that. There were lots of other files within the office. I can't comment on what was in those files. It is not that I don't want to comment on them but I can't comment on them.

Q741 Lindsay Roy: What was the nature of the rest of the business?

David Clancy: Kerr's business?

Lindsay Roy: Yes.

David Clancy: I think he did provide some intelligence to the construction industry. It would appear that he provided some form of press cutting service.

Q742 Chair: So we are left in complete ignorance about what the remaining 95% was in Kerr's office.

David Clancy: Yes.

Q743 Chair: And you didn't see it as being relevant at all to clarify what it was.

David Clancy: It didn't appear within the scope of our warrant.

David Smith: Chair, we have to be very careful, particularly given who we are. We had a warrant, the scope of which was to seize—

Chair: I understand that.

David Smith: Going outside the scope of the warrant would have been—

Q744 Chair: I agree totally, but what I am struggling with is that I am not clear from what you are saying to me whether or not this was car receipts, motoring expenses, electricity bills, or whether or not it was a completely different blacklist that was identified as not being relevant to the warrant and therefore you could not take it and you quite properly left that alone. It is obviously relevant to us to know whether or not there were other blacklists there that you felt you were not able to lift at that time because they weren't covered by your warrant. These seem to me to be not unreasonable points to make to you.

David Clancy: I can understand why you are asking the questions but I can only answer with what's within my knowledge. I can honestly say that that was the information that we were looking for. We removed that, but there was lots of other stuff that we didn't look at because we were satisfied that that proved the breach of the Act that we were there to investigate.

Q745 Chair: You wouldn't be able to collect all of the material relating to the construction industry blacklist; you were there to obtain proof that a construction industry blacklist was operating.

David Clancy: That's correct.

Q746 Chair: There could have been twice as many names for the construction industry blacklist or 10 times as many names actually there, because you weren't interested in collecting everything relating to that; you were only interested in obtaining enough information to establish that this did exist.

David Clancy: When we looked at the information that we had it was quite clear that it was extensive. It went back over 30 years and covered the construction industry. We were satisfied that that was the database we were looking for.

Q747 Chair: Was that the entire database?

David Clancy: I can only say that I was satisfied at the time that that was what we were looking for.

Q748 Chair: No; with respect, that was not what I asked you. You were looking for proof that there was a database and you got it. I understand that. What I am asking you now is whether or not you were satisfied that you got the entire database.

David Clancy: I was satisfied at the time that we got the entire Consulting Association database, yes.

Q749 Chair: Dealing with everything or dealing only with construction.

David Clancy: Dealing with the construction industry. That is all we were looking for.

Q750 Chair: How were you satisfied that in some of the other files and filing cabinets there wasn't also

16 October 2012 David Smith and David Clancy

material relating to the construction industry if you had not gone through them all?

David Clancy: I was just satisfied at the time. We went in there and looked for the information. We had spoken to Kerr and were satisfied that that was what we had gone in for. That was what was covered by the warrant.

Chair: We have gone round in circles enough there, I think.

Q751 Iain McKenzie: I have a quick question on that. Were you satisfied you had the blacklist because of the help and assistance from the Consulting Association on the 5% that you had discovered? It is almost like, "It's a fair cop. I will tell you everything I know on that 5% to get you off my back. Go away and leave me with the 95%." How readily did they respond with the additional information on the 5%? You are saying they gave up to you the businesses they were dealing with and so on. How readily did they do that? When you discovered that blacklist, was it, "Oh, it's a fair cop; there you go. There's additional information and don't look at the rest"?

David Clancy: We were in there and recovered the actual database. We started looking for information in relation to the companies that were accessing the database. At one point I remember asking Kerr, "How do you identify the companies?", because I realised that there were numbers on the cards which identified people who were providing information to and from. Kerr provided us with a list of those companies.

Q752 Iain McKenzie: Forgive me, gentlemen, but it seems a strange raid. I am trying to put it in the context of what the police would do. If the police did a drugs raid, they wouldn't go in, find a pill and say, "Right, that's enough; let's go", and leave it at that. They would assume that that room had additional things to look at and so on. But you didn't because you decided that 5% was enough.

David Clancy: Yes. The police would no doubt operate the same system. They would look and say, "Have we secured the evidence that we are looking for?" You can't do speculative searches elsewhere. We went in there. The warrant covered the existence of a blacklist of construction workers. That's what we found.

Q753 Chair: You might have picked up that we are not entirely happy with that. It does seem to us, to use the police analogy, that, if they had found drugs, they might very well have gone on to find a couple of shotguns as well. I don't think it would be acceptable if we were discussing this with the police for them simply to say they got what they came for and so they stopped. I am genuinely surprised that you stopped at that point. I can entirely understand why you did not feel empowered to collect everything that was there. Originally we were going to ask you why you didn't just take everything, but you have told us that you felt constrained by the narrowness of the warrant that you had. I still don't understand why you didn't go through everything else just to make sure that it wasn't entirely relevant.

David Smith: I am not sure that that was our purpose. Our purpose was investigating Ian Kerr as to the setting up of the database. We obtained a warrant to get evidence that he was operating in breach of the Act. Once we had obtained that evidence, which we did, we had the evidence to take enforcement action, which we did take.

Chair: As you can tell, our enthusiasm is less than total.

Q754 Lindsay Roy: How many individuals were held on file?

David Smith: It is 3,400.

David Clancy: It is 3,200.

Q755 Lindsay Roy: Were these individuals contacted and told they were on this database?

David Smith: No, they weren't.

Q756 Lindsay Roy: Why not?

David Smith: We took it upon ourselves to set up a service where individuals could contact us to check whether they were on the database. The starting point is that the person who would be responsible for giving access under data protection legislation is the data controller—the owner of the database. That would be Ian Kerr. There was clearly a difficulty there because, if he had gone out of business and wasn't co-operating, then nobody would get access to their data. Having seized the database, we set up the arrangement whereby individuals could contact us to check whether they were on the database. We publicised that arrangement. It was part of all the press material when we announced the successful warrant against Ian Kerr and the action we were taking.

Q757 Lindsay Roy: How did you publicise it? How did you make it available publicly?

David Smith: We put it in our press information. It was picked up by the press. It was there on our website, and we have had more than 2,000 responses to that.

Q758 Chair: There will still be large numbers of people who have not contacted you about this. Why were you not more proactive? Where you had addresses, why did you not write to the person named on the address with a "Return to" so that if they had moved away it comes back to you? Why did you not place adverts in the paper rather than rely on the press printing your press releases?

David Smith: Because essentially we thought we were doing the right and proportionate thing at the time by enabling people to have access. To write out to everybody at what were in many cases very old addresses—they came back from the old Economic League records—would have raised issues both about the resources that we would have had to put into that and the risks of writing out to old addresses from where someone has probably moved. You at least have to give a hint that someone was on the database.

Since then, and only in the last few months, we have received representations from Liberty and the GMB that we should have done more and we should have written out. We are now taking steps to put that into

16 October 2012 David Smith and David Clancy

place, but I have to say to you, Chair, that nobody raised any question for three years that we were not doing enough to notify people. 2,000 or so people were sufficiently aware to contact our office to ask those questions.

I do accept that we could have done more, and, maybe, on reflection, even we should have done more, but please don't think we were cavalier or not living up to our responsibilities. We thought we were doing what was the right thing to do at the time.

Q759 Iain McKenzie: How many of the 2,000 who contacted you and who assumed they were on some blacklist turned out to be on the blacklist?

David Smith: We have had 2,400 who have contacted our telephone inquiry service. If you contact our telephone inquiry service, essentially you give your name and we either say to you, "There's nobody who looks like you on the list", or, "There's someone who looks as though it may be you, so write in." We have had about 620 people write in. As I say, some of those may have just written in and never phoned us. Of those that wrote in, we have scored 198 matches; so 198 people have had their information back.

Q760 Iain McKenzie: Isn't it worrying that 2,500 people assumed they were on a blacklist and, when they wrote in, they had to go through two filters and discover that almost 200 were actually on that blacklist? Did those numbers not indicate that there was a lot more to be found in that office than you thought with these numbers?

David Smith: That is not what it would suggest to us. It was just that there were that number of people who had been turned down for jobs and may have suspected that they were on a blacklist, and actually they weren't on the blacklist. I don't think it suggests that there were other blacklists in operation of this type. It may suggest there were informal networks within the construction industry where information was still passed around from one person to another.

Q761 Chair: It seems to me that the exercise you undertook did not work in a sense. Like my colleague, I am a bit surprised at these two levels of filter. I can understand the point about people having to make contact with you in some way or another, but, if you phone in, you then have to write in. My knowledge of construction workers is less than total, but their enthusiasm for writing in letters to bureaucratic organisations is not up there with lawyers and accountants. I would have thought that quite a number of them would have seen this as just simply a way of fobbing them off. "Ah well, very good, write us a letter and we'll think about it." That doesn't sound particularly co-operative and helpful. I would have thought that if you now only have less than 200 matches—I think you said 198 matches out of 3,500 over the three or four years since this came out—you are not progressing all that well in terms of contacting people.

David Clancy: In relation to the two-tier system of checking on individuals, you have to understand that we wanted to satisfy ourselves that the person asking for the information was the person that information

belonged to. I am aware of a situation whereby somebody phoned the Commissioner's Office in an attempt to try and obtain information to satisfy themselves whether a senior official within a union was on a blacklist. Unfortunately for them, they provided the wrong spelling of the forename, but, had they got confirmation, then they could have used that information to say, yes or no, whether this person was blacklisted or not. I am aware, anecdotally, that this information was used in some campaign for leadership within the union to say that this person didn't appear on the blacklist when in fact the person did. That is why we had to be careful. We had to make sure that, if somebody phoned in, there was a confirmation. "It would appear that you may be on the blacklist, but send us some form of identification in order for us to provide you with a redacted copy of what this organisation held about you."

Q762 Chair: So you had to send identification as well.

David Clancy: Just to confirm that that person was who they said they were.

Q763 Chair: What sort of identification did people have to send?

David Clancy: It would be the JIB cards or maybe a passport or driving licence. It would be something that allowed us to confirm that we believed that that was the person.

Q764 Chair: I understand some of the reasons behind this, but you can understand why that operates at quite a high level of filter. It is almost as if that was designed to stop people getting this information.

David Clancy: We are the Information Commissioner's Office. We have to apply that degree of security in those circumstances.

David Smith: Any suggestion that it was designed to stop people—I know that is not quite what you are saying, Chair—is misplaced. We were keen to make this information available. We set up the service but we had to properly protect that information.

Q765 Chair: If you were on a bonus system and had been given targets and so far you had 198 out of 3,500 on the list contacting you, you wouldn't have got much of a bonus, would you? The system clearly is not working. If the objective is to get in touch with people and tell them they are on the blacklist, then it's not working.

David Smith: The objective is for people who think that they may have been on the blacklist, and may have a compensation claim because they have suffered damage because of that, to be able to pursue that. It wasn't simply to notify victims for the sake of notifying them. They are not victims of criminal activity here. We keep coming back to that. This is not crime here.

As I have said, many of the records were very old Economic League records. Many of the people may well be dead now or their lives have moved on considerably. I certainly do not have any reason to suppose that there are 3,400 people who, if only they knew, would all be queuing up at the courts to take

16 October 2012 David Smith and David Clancy

action, but I do accept there may be some people who are not aware and for whom more could be done. We are doing more now.

Q766 Chair: It would be helpful if you could let us know, on reflection, what you intend to do to try and contact these 3,500. I appreciate that you may not have it at your fingertips, but what steps have been taken is something we would want to include in our report in due course.

David Smith: I can tell you roughly what we are doing. We have had an approach from the GMB about identifying their members and enabling them to notify or get in touch with people who may have been on the blacklist. We are in the process of setting up a system with their lawyers to enable them to check their membership list against our records and then contact those where there appears to be a match. All that is progressing and we are in the process of setting up a confidentiality agreement with their lawyers.

We have had a similar approach from UCATT. We have a meeting with them tomorrow so we are progressing that. We are also looking at the feasibility of contacting others who do not match against the GMB or UCATT records. We are essentially looking at tracing organisations to check, if we can, whether there is a match with the name and a current address. We are exploring at the moment about using those services. We are in discussion with some businesses about commercial products that they offer. We are likely to do a trial run of, say, 100 or 200 and write out to them to see what response we get. That will provide evidence, Chair, for the points you are making as to whether there really is a pent-up demand or people are not interested.

Q767 Iain McKenzie: I want a wee bit of further information on the initial phone call—the contact. Is it the case that you just call up and leave your name and number? “I am John Smith and here is my number. Am I on the blacklist?” You would then call back and say, “Yes, lo and behold there is a John Smith on here but you need to send in additional identification so that we can further check it.” Is that a basic message that can be left?

David Clancy: It is that type of information. I respond quite often because within the construction industry quite a lot of the workers have my number. They will ring me up personally and I will check the information from them. You have to understand that there is a lot of inaccuracy on the database. It is historic information and you cannot trust these construction companies to provide accurate information to Kerr.

On occasions we also have to accept that some of these construction workers gave aliases in order to access the workplace. On one particular occasion I had a situation whereby one worker who had a court order for access to the information has had a look at the database and he told someone that they appeared on the database. That person phoned me to check whether he had a card within the system. On the information he provided I couldn't identify him. I had to ask that person, “Did you operate under an alias within the construction industry?” He said, “Yes; this was my alias.” Once I knew that, I was able to access

his record, but it was quite clear that the other construction worker knew his alias and identified the card there. On face value there was no record there.

We will do that and people will ring up and ask, “Am I on the database?” There may be one or two entries that are very similar. We will ask them probing questions, if we get access to the cards, such as, “Were you involved in any particular dispute in this period of time?” “Oh yes, I was involved in a particular dispute and that resulted in me being dismissed from such-and-such a site.”

We will get confirmation. We just don't do it on very basic information. At times we will go further into that to look at the information that is contained within their records in order to try and facilitate disclosure of that information to the individuals. The system is not there to block their access; it is there to try and give them access where we can. As Mr Smith said, we could have done better.

Q768 Chair: You can understand why we didn't quite come to that impression in the sense of what would be best practice elsewhere. I want to return to the question of enforcement notices and the issue of the firms to whom you wrote and who sent you replies. Can we have copies of those responses?

David Smith: I am sorry, Chair, but you can't have copies of the individual company-by-company responses because we are under a duty not to disclose information about identifiable businesses that come into our possession as a result of our activities. We can certainly provide you with the information that we provided to Liberty and will provide more widely, which is the underlying report on which our analysis is based. That sets out the reasons why we would not necessarily—

Q769 Chair: Could you give us a list of the firms to whom enforcement notices were issued?

David Smith: Yes; we can certainly give that.

Q770 Chair: And the firms to whom letters were sent.

David Smith: Yes, I think we can give that. I will check and we will give you what information we can.

Q771 Chair: By a process of elimination we can then work out, and if necessary write to the firms ourselves, those who are on one list but not on the other.

David Smith: Yes.

Q772 Chair: Can you clarify for us the sort of information that was held on these employees? I have seen some of the files. Some are names; some are national insurance numbers; some have personal comments that are somewhat derogatory; some relate to various incidents; and some relate to political activities. Were there any other categories of things that were there that were not directly relevant to people's industrial experience?

David Clancy: It is fair to say that there was information in relation to third parties that was not relevant to particular individuals. There was information in relation to their spouses and vehicles that they may have used, and other information in

16 October 2012 David Smith and David Clancy

relation to third-party occupations, the individual's occupation and education and so on. You would say it was beyond the scope of work records.

Q773 Chair: Quite a lot of that was actually beyond what would have been relevant to a construction company deciding whether or not simply to employ somebody.

David Clancy: It could be information in relation to a person's political leanings.

Q774 Chair: In one of the hearings, Mr Clancy, you indicated that you thought some of this material had been received from either the police or security services or something similar. Can you clarify why you thought that?

David Clancy: It is the language that is contained within some of the reports. It is a small number of reports of the 3,000 odd files that are in there, but some of them indicated to me, being an ex-police officer, that the information contained within those could have come from sources such as the police and the security organisations.

Q775 Chair: Was that simply just because of the language that was used? As an ex-police officer, if somebody was telling you things, you might then have written them down in a police officer manner, such as, "I was proceeding in a westerly direction" or something similar, rather than it having been a police officer that put the information in.

David Clancy: I believe some of the information would have come from those types of sources. There were entries such as a person being removed from the country and coming back into the United Kingdom. This was at a particular time when perhaps people from the Republic of Ireland were being monitored. This was what would appear to have been an Irish national and individuals being given security clearance working on MOD construction sites. There was information in relation to the registered keeper details of vehicles. Where would that come from?

In one particular case there was what was referred to as "a special" within the database attached to one individual's records. That seems to be an in-depth analysis of an individual's home circumstances and what his neighbours thought about him. In my opinion, that would have been part of, in effect, an intelligence record in relation to an individual. That could have been police or other sources. It is the very nature of the information and the way it is worded. Most entries within the database are referenced to individuals. It would be individuals of construction companies. Where there is reference to "specials", the only reference is to "J", which I believe may have referred to Jack Winder, who was a previous member of the Economic League. These were old records.

Q776 Chair: The ones that are dealing with things that might have come from the police and security services you would relate to this "J", who had previously been working for the Economic League.

David Clancy: In relation to where it makes reference to "specials", yes.

Q777 Chair: That would suggest that that was simply material that had been carried over by Ian Kerr rather than currently contributed, as it were, or at that time.

David Clancy: Yes.

Q778 Chair: That is helpful. As I understand what the Consulting Association was doing with the information it held, it got it in and it sat there passively waiting until somebody contacted it to ask if Mr X was on the records. It then gave out the information and billed the company involved. Is that the business model?

David Smith: That is my understanding. The evidence we have suggests that it didn't necessarily give out the information it held. It was often, "Don't employ this person", or, "This person's not on the database", rather than disclosing all the contents of the file.

Q779 Chair: How do you know that?

David Clancy: If you are looking at the records, you get a feel for how the system operated. You would quite often just see a record in relation to a check. A construction company would make a check. It would be checked by reference to the construction company and "Did not start" or an indication that their employment was never taken up.

Q780 Chair: As I understand it, there were two sets of charges. There was a membership fee and a usage fee for firms with a construction association. Do I take it that evidence of a usage fee is evidence of having access to a blacklist? Is there anything else that that could have been for?

David Clancy: You had a quarterly fee for membership of the Consulting Association. Within that quarterly fee it would appear that you got so many checks included. Once you extended beyond those checks, then you were billed separately. I think it was £2.20 per check. If you didn't exceed your amount, then you just paid the quarterly fee. Some organisations may have just paid the quarterly fee but not carried out any checks. We were able to cross-reference the records that we had that indicated that some organisations did not carry out any checks within a quarter, whereas other organisations did because of other information that they held.

Q781 Chair: Surely there are three categories. There are those that paid the quarterly fee and did not access. There are those that paid the quarterly fee and did access but not beyond the limit. Then there are those that did access above the limit. How could you distinguish between those that paid the quarterly fee and did not access and those that paid the quarterly fee and did access below the limit?

David Clancy: Kerr kept quite extensive records in relation to the usage.

Q782 Chair: That is helpful. It has been suggested to me, "This was just a membership fee and we went along to meet people." It was a networking organisation like the Rotary or the Masons, with apologies to anybody who is in any of these organisations. It was not, as it were, an organised

16 October 2012 David Smith and David Clancy

conspiracy in any way. So you have information from his records that would confirm who actually used them to access particular people's employment records. Can we have that?

David Smith: Sorry, Chair, the information—

Q783 Chair: What we want to know is whether you can give us a list of the firms who did access Kerr's database to check individual workers.

David Smith: I am not sure that we know, at the end of the day, which ones. We have a list of 40—

David Clancy: We would be able to work out the quarterly usage figures of organisations.

David Smith: Let us take that away and consider it. We will give you what we can that doesn't expose us to criminal breaches of the information.

Q784 Chair: It would be helpful if you could give us what you can. If there is stuff there that you can't give us, we want you to tell us that you can't give us it.

Lindsay Roy: And what it is you can't give us.

Chair: We want to know the known unknowns as well as the unknown unknowns.

Iain McKenzie: I thought this list was voluntarily given up by this gentleman, saying, "Here is the list of businesses that have been using it."

Chair: But they are bound by confidentiality.

David Clancy: It is quite clear that the list has been published of the companies that were subscribers to the Consulting Association. What the Chairman is asking for is the quarterly usage figures. Kerr generated them to bill each individual company.

Chair: I am worried about firms saying, "It is nothing to do with us. We never used these lists. We just used this to meet people at various things for a drink and all the rest of it, to talk about health and safety, the weather and the state of the industry", as distinct from using it to access individual records. I want to clarify whether or not your information would sort that out for us.

Q785 Iain McKenzie: You would think they would be getting more for their money than just a yes or a no over the phone with a check. They must have been receiving more information than that, surely.

David Clancy: Ultimately all that most of them would have needed to have known was whether we actually employ this person or not.

Q786 Iain McKenzie: As an employer you would then be saying, "But how accurate is this? I need something more than just you saying on the phone no or yes." I could be sitting there with a list and just making up every tenth phone call saying, "No, don't have him", or, "Yes". You need to get your money's worth.

David Smith: Ultimately what you have to look at is that the system wasn't operated at a very basic level within HR departments. It was operated at a much higher level. You would get the situation where people would say, "All I need to know is whether to employ this person because my time is of value; it is not to assess what has been said. I just need a basic decision, 'Shall we take this person on board or not?'"

Q787 Chair: How do you know it was operated at a higher level?

David Clancy: From speaking to some of the construction workers. They have had their cards; they know who the individuals are who have made the decisions. When we spoke to the person who was involved in the process that led us, in effect, to identifying Kerr and the Consulting Association, he made it quite clear that when he was approached to meet Kerr within the Consulting Association it was very much on a need-to-know basis and he was quite high up within the HR department of one construction company. It was made quite clear to him that this was how the system operated.

Q788 Chair: Who was that and what was the company?

David Clancy: I can't remember the name of the company, but I think it's fair to say it was well reported. It was Alan Wainwright.

Q789 Chair: Maybe you could let us have the name of the company in due course if you cannot remember it now but you have it somewhere.

David Clancy: The information is in the public domain anyway.

Q790 Chair: We are never quite sure when we are speaking to you what is in the public domain. You are obviously closer to this than we are and therefore it is worthwhile just clarifying if you can let us have things.

David Smith: We will certainly do what we can. I am not sure that we are closer to all of it than you are. A lot of people have had their records. Some of this has been disclosed in response to court orders. Various people have given things out and given information before this Committee, which puts stuff in the public domain, and then we are free from our ties. We don't know ourselves all that has been given out. We know what we have released ourselves.

David Clancy: Mr Chamberlain behind me might be able to assist you with that one. He actually wrote the article.

Chair: We never like to rely on the hyenas of capitalist press because you never know whether or not they are going to be telling you the truth. I know by now not to rely on stories that get into the papers. None the less, there are a variety of things that we will pursue.

Q791 Lindsay Roy: Is it right that Ian Kerr was prosecuted?

David Smith: Yes; that is right.

Q792 Lindsay Roy: What was the penalty?

David Smith: He was fined £5,000. Essentially, he was prosecuted for not being registered or notified as a data controller. Effectively he hadn't got a licence.

Q793 Lindsay Roy: Do you think that was an adequate deterrent for the future?

David Smith: It was an adequate deterrent for the offence for which he was prosecuted. It was almost incidental to what was going on. He could have been

16 October 2012 David Smith and David Clancy

notified to us and put down his business as an employment agency and carried on. If you will forgive me, Chair, we did him for the only thing we could do him for. The position now—and it wasn't at the time—is that those who breach the data protection principles in a way that is serious and could lead to substantial damage or distress to individuals, which is clearly the case here, can be liable for a monetary penalty—a fine of up to £500,000. Had we had that power at the time, I have little doubt that we would have used it against Mr Kerr and sought to impose a much higher fine than that amount.

We would also have sought to use it against the construction companies. Indeed, had we been in this position now, we would have approached the point you make about us not investigating those who said they weren't using it very differently. They would potentially have been liable for a fine of up to £500,000. We would have investigated them in more detail to establish whether there were grounds for imposing a fine, but at the time we didn't have that power. Our concern was to shut the database down. In our view, we did not think that it would assist that aim by investigating those companies further because that aim had essentially been achieved.

David Clancy: At the time of the prosecution of Kerr the maximum fine was £5,000 in the magistrates court and it was unlimited in the higher courts. The magistrates declined jurisdiction in the Kerr case because they believed that they could not apply a punishment that was sufficient. The magistrates believed that £5,000 was not enough. When it was referred to the Crown court, of course, the court had to look into the means of Kerr, who, to all intents and purposes, was then unemployed, hence the £5,000 fine.

Q794 Chair: And there was no scope in those circumstances for fines on the companies involved because the law did not allow that at that stage.

David Clancy: That is correct.

Q795 Mr Reid: Can you tell us what legislation has changed that does now allow you to fine the companies?

David Smith: Yes. The Data Protection Act was amended a couple of years ago. Forgive me, I don't remember the Act that introduced the amendments. It was from April 2010 that we had the power to impose these penalties. We have imposed about 20 or 25 since that date. We are using that power. One of the supporting arguments for giving us that power is the sorts of activities that were going on here.

Q796 Chair: But you have not used it for anything like this. There has not been anything similar to blacklisting.

David Smith: No; we have not had evidence of any activity like this on which to base it.

Q797 Chair: In terms of the suite of powers that you now have being much more extensive than you had before, I understand that, had you had then what you have now, you would have done things differently.

Are there still any powers that you wish you had had then that you don't have now?

David Smith: Yes. The main one is essentially the audit power and the ability to go to a business, knock on the door and say, "We don't have firm evidence that you are doing things wrong, but we just want to come and check up that you are complying." That power was added to the Data Protection Act but its introduction is subject to secondary legislation. The power applies to Government Departments. We can come to a Government Department and say, "We want to check up." It's not applicable to anybody else so far.

Q798 Chair: So that depends upon secondary legislation to introduce it.

David Smith: Yes.

Q799 Chair: We have allegations of various companies undertaking blacklisting and so on. At the moment you are not able to access them without suspicion?

David Smith: No.

Q800 Chair: If you have a suspicion, you are able to access them.

David Smith: We can of course ask and they can open the doors to us if they are willing to do so. If we have grounds for suspicion that we could put before a judge to give us a warrant, we can go for that.

Q801 Mr Reid: You said that there was legislation in the Act that still had not been brought into effect because it needed secondary legislation. Have the Government given you any indication whether they intend to bring that into effect?

David Smith: No. At the moment we have the power for central Government. There are provisions whereby it can be brought in for the rest of the public sector under one set of conditions. We have recently made a case to Government that we should have the power for local government and for the health service because of the serious data losses that there have been. There is another set of conditions that apply to the rest of the economy—essentially the private sector—which would have to be met.

Q802 Mr Reid: Have the Government given any indication whether or not they intend to introduce that legislation?

David Smith: No, they have not given any indication. We can make a case for that to be introduced.

Q803 Mr Reid: Have you made a case to Government?

David Smith: The way the legislation works is that we would have to make a case for particular sectors. At the time the legislation was being introduced we made the point about the Consulting Association and these sorts of activities. We were not given the general power. We don't have a specific case. We have looked at the insurance industry because of activities there and that is an area where we may put forward a case.

16 October 2012 David Smith and David Clancy

Q804 Mr Reid: But at the moment you have not put forward any case for any sector in the private sector.

David Smith: No.

Q805 Mr Reid: Are the Government therefore waiting for you to make a case?

David Smith: I am sure that is what they would say, and to some extent it is true. The difficulty we have is that we feel we made the case to the Government as to why we need the power some years ago. Their response was to introduce the legislation that still holds that in abeyance for specific cases to be made.

Q806 Mr Reid: You say you made the case years ago, but am I right in saying that, since the legislation was passed, you have not made a case to Government for any particular private sector?

David Smith: No, we haven't.

Q807 Mr Reid: Are you intending to?

David Smith: We have made no secret of the fact that the insurance industry is one area where, yes, we are looking.

Q808 Mr Reid: Do you feel there is a case that you might be able to make for the construction industry?

David Smith: It is very difficult to make a case, given that we have no evidence that blacklisting in breach of the data protection law is a continuing activity. The events here are too distant in the past for us to make the case now. If we had this sort of evidence before us now, then we would be making that sort of case.

Q809 Mr Reid: What sort of evidence would you need?

David Smith: Evidence of serious failures to meet the obligations under data protection law that cannot be addressed properly without that ability to make those checks. I have to say that we have made the case in the local government sector and the health sector because of the number of serious data losses that there have been in those sectors and the lack of proper attention to security. That case is still under consideration. There is no assurance that we will be given that.

Q810 Mr Reid: But, as well as data protection considerations, there are also the blacklisting regulations that were passed after the Consulting Association case. If you felt you had evidence that these blacklisting regulations were being breached, would that be sufficient to allow you to make a case or would it have to be data protection?

David Smith: It would have to be the case that the data protection law was being breached, but of course it is possible that it would be both.

Q811 Mr Reid: If you felt other laws were being breached and you could identify that through a proactive audit, would that be sufficient for you to make a case?

David Smith: No. Our powers only relate to the Data Protection Act. The case would have to be about data protection breaches.

Q812 Chair: But the operation of a blacklist is in itself a data protection breach.

David Smith: What do you mean by "a blacklist", Chair?

Q813 Mr Reid: It is defined by law in the 2010 regulations.

David Smith: The 2010 regulations, as I understand it—please forgive me if I am wrong because you probably know them better than I do—relate to trade union membership and trade union involvement as the reasons. There may be lots of people on the blacklist that we are talking about here who were not on that list for anything to do with trade union activity. There are different things here. You could call some of the databases that may operate within the law in other sectors blacklists. It is possible, if the construction companies had been entirely open with workers, the information had been accurate and there had been rights to access it and check it, that that would not have breached the data protection provisions.

Q814 Chair: I want to clarify what is going to happen now to the Consulting Association files. Have they all been returned to Mr Kerr?

David Clancy: We retained the original copies. We had no powers to remove that information totally from Kerr. He received a copy back.

Q815 Chair: He received a copy back.

David Clancy: Yes.

Q816 Chair: Who has the originals?

David Clancy: We have the originals.

Q817 Chair: What do you intend to do with them?

David Clancy: My understanding is that they will form part of the National Archive in due course because this information is information that informed the change in legislation.

Q818 Chair: It is not the intention to burn them in the near future before the remainder of the 198 and so on have had the opportunity to access them. There is nothing likely to be done in the near future that would prejudice any of that.

David Smith: No, there isn't. The original intention was that we would open up this ability for people to make checks and, then once that had dried up and time had passed, we would destroy the information because there are risks to keeping it. But things have moved on considerably since then and so we have no immediate intention of doing that.

Q819 Chair: You might feel that this is not something for you, but in terms of redress for individuals whose lives have been damaged by the operation of the Consulting Association, blacklists and so on, do you feel that the opportunities for them to seek redress are adequate?

David Smith: They have an opportunity to make a claim under the Data Protection Act through the courts for damage that they have suffered as a result of being on the database. If you can claim damage you can also claim distress, but you can't just go on

16 October 2012 David Smith and David Clancy

the basis of distress. We don't necessarily get to know about cases that are brought before the courts, but where people have brought cases—I have to say not necessarily in relation to blacklisting—the awards by the courts appear to have been fairly low, but that is not something over which we have control.

Our belief is very strongly that, given that this is data protection law, you should be able to claim compensation for distress without necessarily having damage because of the nature of personal information. I am not sure that that is particularly relevant here because some people will at least have suffered damage because they will not have got employment which they might otherwise have got. We would like the grounds upon which you can claim compensation to be wider than simply damage.

Q820 Mr Reid: As has been said correctly, the blacklisting regulations refer to trade union membership or trade union activities. Clearly we are getting evidence from individuals who believe that they are on a blacklist of some sort, although you have said in previous evidence that nobody has been able to produce any evidence to you.

I want to explore what is legal within the Data Protection Act and what is not. If I am an employer and I record that somebody is a very bad worker, would I be committing an offence if I passed that information to a third party?

David Smith: In simple terms, no. There are certain things you should do under the Data Protection Act. That is the sort of thing that happens with references, essentially.

Q821 Mr Reid: Yes, but surely for a reference the individual concerned has given their consent to a potential employer to contact a previous employer. What about if I pass it on without the individual's consent? That would be an offence.

David Smith: That is right, if it is without the individual's knowledge and without good cause. It is a combination of who you are passing information on to.

Q822 Mr Reid: Say I was passing it to somebody who was holding a database of workers' competency.

David Smith: If you passed it on to someone to whom the individual wasn't expecting it to be passed on and there weren't pressing reasons, like a suspicion of criminal activity and it was the police you were passing it on to, then it would be a breach of the Data Protection Act. Please forgive me again, but I don't like the word "offence" because it's not criminal. It's a breach.

Q823 Mr Reid: The employer there would be breaching the Act. If the person who was holding the database had registered with you that they were holding a database of people's competencies to do construction work, would they be committing an offence?

David Smith: Not necessarily, no. If they are holding the database, it is their obligation to make sure people know that information is being held about them.

Q824 Mr Reid: Other than registering with you that they are carrying on this activity, how are they supposed to make people aware?

David Smith: There are two ways. The most likely is that they will have done it through whoever supplies them with the information. The employer would say, "I am going to pass your information on to a database run by XYZ." That discharges XYZ's responsibility.

Q825 Mr Reid: Clearly if the employer passes the information on without telling the employee, we have already established that the employer is breaching the Act. Does the person holding the data breach the Act if the employer had not told the employee?

David Smith: Yes, and if they have not told the employees themselves. They could make their own contact and say, "We are telling you that you are now on our database."

Q826 Mr Reid: So there is an obligation on the data holder to notify.

David Smith: Yes. People should be told where and who is holding their information as a general proposition.

Q827 Lindsay Roy: We have heard allegations, particularly in the offshore industry, of a system "Not Required Back". Is that a kind of blacklist?

Chair: Somebody's card would be marked "NRB", meaning "Not Required Back", which is effectively a blacklist.

Lindsay Roy: Have you had any inclination of this happening?

David Smith: If it is within one business and this is not passing information from one business to another, so, when someone leaves, the business records, "Don't re-employ this person" or something, no, that is not a breach of data protection. If that individual makes an access request to the organisation, that is part of the record and they should be told. Indeed, the individual may want to challenge it. If an employer decides not to re-employ someone and records that on the record, that is not a data protection breach. There may be other employment issues.

Q828 Chair: But presumably it is if that is passed to another firm.

David Smith: Yes. As a general rule, I would say that, if that is passed to another firm without the individual's knowledge, then that will be a data protection breach. The only area where I would hesitate is where there might be serious safety matters or criminal matters involved. Even then, I think it is hard to say that the individual shouldn't have been told that this was going to happen.

Q829 Lindsay Roy: Some of the allegations of "Not Required Back" are because they had taken a particular interest in health and safety. That is the allegation. Therefore, that is the kind of information that may be passed on to other firms.

David Smith: It is the passing it on that is the problem. If an employer says, "I don't want someone back" for whatever reasons, that is nothing to do with data protection.

16 October 2012 David Smith and David Clancy

Q830 Chair: I understand that.

David Smith: But passing that on to someone else without the individual's knowledge and particularly without the opportunity to challenge it is.

Q831 Mr Reid: Do you need the individual's consent or do you just have to inform them?

David Smith: I don't think you have to get their consent. It rather depends on the stage at which this happens. The proper way of doing it would be to say, when you employ or hire someone, "We are part of this industry system and this is what will happen to you in these circumstances." Then you know what the proposition is when you enter into it.

Q832 Mr Reid: But if the employer doesn't do that and writes to the employee saying, "I've fired you for being a bad worker and, by the way, I'm going to tell everybody else in the industry that you're a bad worker", are they entitled to do that?

David Smith: If they have not told them originally, they should only pass it on with consent unless there are what I would call overriding reasons. "This person was a risk to health and safety on an oil rig, and to protect life and limb we need to pass this on even if the person doesn't agree."

Q833 Chair: You seemed to suggest earlier on, which slightly surprised me, that, if somebody was "Not Required Back" for criminal behaviour and that was passed on to other firms, then that would be acceptable. That justifies it but surely it does not make it legal. Surely the crime from your perspective is the question of the information being passed on.

David Smith: It is, but there are exemptions in the Act from the requirement to tell people that information is being passed on where doing so would be likely to prejudice, among other things, criminal investigations and the like. I agree, Chair, that it is unlikely to happen, but, if someone was actively under investigation and you told them that was the case, they might do something that destroys the evidence or whatever.

Q834 Chair: I understand that. In general terms, as my colleague indicated, if someone was being marked "NRB" because they had been pursuing health and safety issues—not because they themselves were a threat to health and safety but because they had been pursuing it—and that was passed on to other firms, that is likely to be an offence. The difficulty is proving it, as you indicate. Without evidence, you are unwilling or unable to investigate by making anything that could be seen as fishing expeditions.

David Smith: That is essentially correct, Chair.

Q835 Chair: We come back to the circle where, unless somebody can prove that there is an offence, you won't take action to identify if there is an offence.

David Clancy: If there was a whistleblower who came forward to say, "Look, I'm involved in this process. I work in the HR department of a particular oil company. This was the system we operated and these were the reasons why", we would then clearly investigate that."

Q836 Chair: But they would never work again, would they?

David Clancy: That is the difficulty you have and which surrounds this entire situation.

Q837 Chair: That is the difficulty I have with your points about the level of proof that you require.

David Clancy: Alternatively, if there was, in effect, the smoking gun or the e-mail that was sent that somebody had a copy of which clearly indicated this, we would act. Where you purely and simply have a person who says, "I believe I've been blacklisted"—

Q838 Chair: But what if you had a whole group of people? For example, we have been approached about particular locations where it has been suggested that whole categories of people are not being employed. That is evidence of a pattern. Each of them on its own does not necessarily prove anything, but, taken together, there would appear to be some evidence of a pattern. Surely that would then be sufficient for you to consider taking action.

David Clancy: That is the type of evidence we would be looking for as opposed to individuals. If a group of people said, "These are the circumstances", it would give us something on which to start an investigation.

David Smith: What we need is reasonable grounds for suspicion. It is not concrete evidence; you are absolutely right.

Q839 Chair: That is much more helpful. Obviously it might be a fit-up and so on and so forth, but a number of people making the same sort of suggestion about their refusal of employment would tend to be an indication that you could then progress with.

We had some of these suggestions in relation to the Olympics and one or two other industrial disputes concerning electricians and so on. You have never actually investigated any of those, though, even though there were a number of suggestions of blacklisting made dealing with particular locations.

David Clancy: I received one phone call once. I quite clearly said, "Send the information through to us along with the contact details of any individuals." They were never followed up. People make these allegations, but, again, if they are not supported we can't do anything.

Q840 Chair: That has been very helpful. That is a very good note on which to end our questioning. When I said earlier on that I had to be somewhere at 9 o'clock I was joking. The fact that another member has come in doesn't mean to say there is a second shift coming on. She has been at another Committee, which is why she was not able to get here before.

As I indicated earlier on, I would ask you whether or not there are any answers you had prepared to questions that we have not asked? Are there any points that you want to raise with us that you feel we have not covered in our discussions?

David Smith: There are no specific points, Chair, but I would emphasise, as I am sure you appreciate, that these were serious breaches of the Data Protection Act. The execution of the search warrant and the

16 October 2012 David Smith and David Clancy

action we took is something we were proud of, and still are proud of, because we closed down the Consulting Association database. It was our work that stopped that. Although there are rumours and suggestions, we have no reason to suppose that anything like that sort of system has re-emerged.

Yes, had we had the powers that we have now, we could have done more and would have done more. We would certainly have been looking at imposing fines. The question of notifying individuals is a valid point. With the benefit of hindsight, we could have done more, but I do have to say to you, Chair, that nobody raised any concern with us at all that we were not doing everything necessary until a few months ago. This could have been raised with us if people had serious concerns at the time and we would have looked at it again then.

In terms of how this is addressed, is it changes in data protection law or the law relating to blacklisting that needs changing? If it is the data protection law, it is a very wide remit. Where you want to address particular problems in particular areas, you perhaps need more specific law that addresses those areas.

We will provide the information that we promised you. Chair, we are keen to help and assist. Any suggestion—which I know has been made by one or two witnesses—that we were asleep on the job or we were improperly influenced is entirely misplaced. We think we have done the job of a responsible regulator here within the powers that we had available to us.

Chair: We appreciate that you are not the villains in all of this. None the less you were here and so it is entirely legitimate for us to raise these points with you. Thank you very much for coming along.

Tuesday 30 October 2012

Members present:

Mr Ian Davidson (Chair)

Iain McKenzie
Pamela Nash

Alan Reid
Lindsay Roy

Examination of Witnesses

Witnesses: **Steve Murphy**, General Secretary, Union of Construction, Allied Trades and Technicians, and **Jim Kennedy**, National Political Officer, Union of Construction, Allied Trades and Technicians, gave evidence.

Q841 Chair: Welcome to this meeting of the Scottish Affairs Select Committee. As you are aware, we are looking at the question of blacklisting, which came out of a series of hearings that we were having on health and safety, but we decided to divert into dealing with blacklisting.

Could I ask you just to start off by saying who you are and a little about your organisation, for the record?

Steve Murphy: I am Steve Murphy, General Secretary of UCATT, which is the union for construction workers, representing in the region of 84,000 members throughout the UK and Ireland.

Jim Kennedy: I am Jim Kennedy, UCATT's National Political Officer.

Q842 Mr Reid: How widespread do you believe blacklisting is in the construction industry?

Steve Murphy: We think it is huge in the construction industry.

Q843 Mr Reid: Would that be in Scotland as well as in the rest of the UK?

Steve Murphy: The indications are that it is in Scotland as well as in the UK, yes. It is widespread throughout the UK.

Q844 Mr Reid: How did this first come to your attention?

Steve Murphy: I think that Jim can answer that better. I was not general secretary in 2009. Jim was involved.

Jim Kennedy: What happened was that in early 2009 we were contacted by the media in terms of the work that Alan Wainwright had been carrying out in what was very much almost a lone campaign, and much credit should go to Alan Wainwright for his efforts in exposing the activities of Ian Kerr. We were contacted by the media when the raid took place. Subsequently, of course, we made a number of comments to the media, but our executive sat down and decided what we could do in terms of a reaction to what was something that we knew had taken place. Everyone knew that a blacklist was operating in the construction industry, but physical proof wasn't there until the ICO raided the Consulting Association.

In terms of UCATT's reaction, we wrote to every single member on our database informing them about the existence of the blacklist, the companies involved and the measures that our members needed to take if, indeed, they wanted to access their blacklist, and also, if they were blacklisted and they had gained their files, what the union could offer them in terms of legal advice. We also produced many thousands of posters

with the same information on them, which were put all round construction sites throughout the UK, informing any construction worker how to access those files. So that is how we became aware of it, really, through the efforts of Alan Wainwright, and, of course, the journalist on *The Guardian* who supported his campaign.

Q845 Mr Reid: Since the raid on the Consulting Association, is the prevalence of blacklisting still the same, less or has it got worse? Can you give us what your experiences have been since then?

Jim Kennedy: If you are asking is blacklisting still going on—

Mr Reid: Yes.

Steve Murphy: We believe that blacklisting is still going on. Just adding to what Jim said, we published "Ruined Lives", which has been brought to the attention of this Committee before, which is an important document. We thought blacklisting was bad then; we think it is even worse now. Coming out of this Committee as well, when only between 5% and 10% of the files were taken, we estimate that, potentially, there are 65,000 construction workers affected by this.

Q846 Mr Reid: So you believe that a blacklist or blacklists are still in existence and companies, when thinking of taking on employees, are still phoning people who manage the blacklists. Is that process still going on?

Steve Murphy: I am sure there is still a blacklist being used. However companies use it, I am sure there is still a blacklist being used in some form.

Q847 Mr Reid: Do you have any awareness of how the companies are using it?

Steve Murphy: In relation to blacklisting, let me go back a few years and I will bring into this discussion how companies used to use the blacklist. I will refer to one major company, which is Robert McAlpine. Robert McAlpine was a big blacklister. I want to explain some of the receipts that we found about Robert McAlpine and it will lead me on nicely to where I want to take this issue in exploring it a little bit further.

In the first quarter of 2007–8, that is January to March, Robert McAlpine was invoiced for £5,218.40 for blacklisting checks. In the first quarter of 2008–9, that is April to June, Robert McAlpine was invoiced for £5,951 for blacklisting checks.

30 October 2012 Steve Murphy and Jim Kennedy

In the second quarter of 2008–9, that is July to September, Robert McAlpine was invoiced for £12,839.20 for blacklisting checks. This figure was a lot higher than other quarter invoices for any blacklisting firm. This is a total of 5,836 individual blacklisting checks during this quarter. That is 65 checks being done per day, seven days a week.

Let me go on to say that in March 2008 the ODA announced that work on the Olympic stadium would begin three months ahead of schedule, with work starting in late May 2008. Therefore, Robert McAlpine's surge in blacklisting checks corresponded with the large-scale recruitment on the building of the Olympic stadium. I would therefore suggest, and my union would therefore suggest, that taxpayers' money meant to be spent on the building of the Olympic stadium—the centrepiece of the Olympic games in 2012—was instead spent on blacklisting construction workers.

I would like to make a further point, if I may. This is a press release from the ODA of 7 October 2008, which says: “More than 2,700 workers are currently on site building the venues and infrastructure for the London 2012 Games.” That is very important in our view to show that there was a blacklisting campaign through Robert McAlpine on the Olympic games site. I would like to add something further, which is a quote from the ODA chief executive, David Higgins, who said: “We are working closely with our contractors and partner organisations to help ensure that alongside a physical legacy of world class sporting venues, new infrastructure and a new park, the Games can also help local people build new career paths long into the future.” Our view on that is that, sadly, a lot of people would have been blacklisted so that they couldn't build a career path.

Q848 Chair: On this specific point, what proof is there that this money paid to the Consulting Association was actually for checks on workers as distinct from a contribution to the annual night out, annual subscription fees or anything similar?

Steve Murphy: Because we have an invoice here that tells us that McAlpine spent £12,839.20—it is in this as well—on checks.

Q849 Chair: On individuals?

Steve Murphy: On individuals.

Jim Kennedy: At the very best, Chair, that sum may have included their annual subscription—perhaps—but that is at its very best.

Steve Murphy: This is the Scottish Affairs Committee. If I may say, Robert McAlpine, at the very same time, was involved in the M74 project. So it may not just have been the Olympic games; it may have been the project in Glasgow as well.

Q850 Chair: Apart from this question of the amount being invoiced, there is no proof, is there, that this was actually used for checking workers?

Steve Murphy: It would be foolish for us to say that it wouldn't be. How coincidental is this?

Chair: I understand that.

Steve Murphy: We have major projects. We are having a huge recruitment drive into construction, and

we have more than doubled the invoice at that very particular time.

Q851 Chair: I understand. We are going to be inviting people in at various times and we are going to be putting various things to them. It is quite likely that people will say, “Well, no, we didn't.” In the absence of any proof whatsoever—I appreciate that until the Consulting Association's files were discovered there was no proof and until somebody blew the whistle there was no proof—one of the issues facing this Committee is that a number of members have suggested that this is something terrible that happened in the past but it is no longer going on. In those circumstances, we have to be clear, if we want to make recommendations about legislative change, that this is still an ongoing problem. That is why, on a number of occasions, we are likely to ask you whether there is any evidence that it is still taking place.

Jim Kennedy: If you look through the invoices—it is what the companies were invoiced for around that period—there are two distinct spikes around that time. One is Robert McAlpine. There is a spike also for Cleveland Bridge on one of the other quarters as well. If it was, for instance, some sort of function—I can't imagine this secretive organisation having such a thing, but maybe they did—the fact that there is this spike right in the middle of the financial year that coincides with the mass recruitment on the Olympics is really a cause for concern. It is our proposition that this was blacklisting on an industrial scale.

Q852 Chair: Following on again from the point, before I come back to Alan, you have mentioned various bodies involved with the Olympics. Presumably, you have raised this with them. Have they responded in any way to this? Do they concede the points you are making?

Jim Kennedy: No. Many people throughout the construction of the Olympics, predominantly the blacklist support group and Dave Smith, raised concerns about blacklisting on the Olympics. They were generally ignored in terms of their representations. No one wants to admit that, probably, the biggest project in Europe was subject to industrial blacklisting.

Chair: I understand that. Iain wanted to come in and then we will come back to Alan.

Q853 Iain McKenzie: When you discovered that an invoice had been made for these checks, just an invoice for checks could really be anything, but you are making the assumption that it was checks on their backgrounds and so on. Was there any trace back to people not being hired who were checked?

Jim Kennedy: The problem is, of course, that only about 198 files have been requested that have been given to blacklisted workers. Until the files are out, open and unredacted, it would be very difficult to say that worker A was blacklisted on that particular project. The correlation that we are making is, we believe, absolutely evident as to why McAlpine had this sudden spike in checks to the Consulting Association at the same time as there was mass

30 October 2012 Steve Murphy and Jim Kennedy

recruitment on the Olympics. It would be very hard to argue any other rationale than that.

Steve Murphy: It is just too coincidental that there is such a huge spike at that time.

Q854 Iain McKenzie: Could any of your members who had applied for employment at the Olympics and who were refused employment be traced to these checks by you?

Steve Murphy: We couldn't, could we?

Jim Kennedy: There are individuals. I know that Dave Smith will have names of those people because demonstrations were held outside the Olympics.

Steve Murphy: We couldn't give you that, but there will be individuals who will have that.

Q855 Mr Reid: Moving to the period after the raid on the Consulting Association, what evidence do you have that blacklisting has continued since then?

Jim Kennedy: There is anecdotal evidence that people are still having great difficulty in getting on sites—trade union activists and so on. Just like before the Consulting Association was raided, we didn't have any hard evidence; all we had was anecdotal. If you speak to active trade unionists in the construction industry when they try and get on site, even today, they have great difficulty. The problem is that Kerr operated and oversaw the blacklist files in collusion with 40-odd major contractors. Do we think, following the raid and following Kerr's £5,000 fine, that all the files disappeared, that they retired to the south of France or something like that? Absolutely not. It's not the nature of the beast. They want the control. They want to control everything on site. They want to control the health and safety regime and organised labour there. So the nature of the beast wouldn't allow it to just stop.

Q856 Mr Reid: Would you tell us what type of anecdotal evidence you have?

Jim Kennedy: We've got some from Scotland.

Steve Murphy: We've got some from Scotland. I can name one person. Another person doesn't want to be named, which shows the fear that individual still has. Paul Mooney has been active in both construction and shipbuilding. Following an involvement in an industrial dispute to improve safety conditions of those working on site, he was told in no uncertain terms by a local shipbuilder that he would never work on their ships again. When the same local shipyard won a new order and was advertising for local joiners, Paul Mooney applied but he could not access work there. He was told that he had no chance of getting any work in that yard ever again.

Q857 Mr Reid: Was that the yard where he had previously worked?

Steve Murphy: Yes.

Q858 Mr Reid: Has he applied for jobs with other employers and found the same problem?

Steve Murphy: He has. The member knows that he has been blacklisted but cannot yet prove his case. The evidence that we have heard from this Committee, as I said earlier, is that only between 5%

to 10% of the files were actually obtained. So, when people have written in to see if they've been blacklisted, there is no recorded evidence and there isn't going to be for a huge number of people. These people have written in but have not been able to see if they are on the blacklisting list because so few numbers were obtained.

Q859 Chair: I want to follow up on this question about what a blacklist is. I ought to declare an interest as I know Paul Mooney and he is now working on a site in my constituency.

Steve Murphy: That is right. He is a UCATT convenor.

Q860 Chair: He is a convenor, yes. If somebody is told by a particular employer that they will not be employed again by that employer, that is not quite the same thing as the existence of a blacklist that any other employer can access to refuse them employment. We have always tended to take the view that blacklisting was a comprehensive list that other third parties could access rather than a single employer saying, "I'm not taking you back", and then they didn't take them back, if you recognise that distinction. The issue, perhaps, about Paul Mooney and the shipyards falls into the former category of a single employer rather than it being evidence of a blacklist operating across the industry.

Jim Kennedy: Chair, the point is that, although Paul was refused employment at that shipyard, he was also struggling to get employment anywhere else at the time. I fully understand your point, but the implication is that information was being exchanged or traded.

Steve Murphy: Chair, we also have to remember, haven't we, that when somebody has been blacklisted already and they are known to companies throughout the country, perhaps, because of what happened previously, people are still going to find it difficult to get work and they are finding it difficult to get work with those companies? Whether there is a tangible blacklist, people know of individuals who are shop stewards and safety reps, so, because they were blacklisted in the past, the chances are that they will be blacklisted in the future as well.

Q861 Mr Reid: How many of your members have reported to you that they are in Paul Mooney's position and aren't able to get work because they think that they are on a blacklist?

Steve Murphy: We have had huge numbers, as I said earlier, of members coming to us thinking that they have been blacklisted, but it's difficult to get the information that they have been blacklisted. We have members throughout all the regions who find it difficult to get work but can't actually say, "I'm on a blacklist list."

Q862 Mr Reid: Are you able to estimate how many?

Jim Kennedy: What—how many cases we've taken?

Mr Reid: Yes.

Jim Kennedy: No, but we can get that information for you.

30 October 2012 Steve Murphy and Jim Kennedy

Q863 Mr Reid: If you could send that information to us, we would be grateful. You said earlier that some of your members had written to the Information Commissioner to ask if they were on the Consulting Association's blacklist and were told that they did not have any information on them. Are you able to put a rough figure on how many of your members were in that position?

Steve Murphy: No; I am sorry.

Jim Kennedy: No.

Q864 Mr Reid: If you had the records, would you be able to?

Steve Murphy: No, because it was down to individuals to actually do it.

Q865 Pamela Nash: Would you tell us more about UCATT's initial response in 2009 when the Consulting Association's files were published?

Jim Kennedy: Okay. I followed it up to a certain point where we had the poster campaign. As political officer, we engage with the Government of the day in terms of the draft regulations. The regulations, as presented to us, were clearly inadequate and offered no protection. We lobbied quite hard and we told them that. We pointed that out through the consultation process. "Ruined Lives" was our submission to the consultation process and still today is the authoritative document in terms of the way forward.

We even took the unprecedented step at one point, when the regulations went to the Joint Committee on Statutory Instruments, to write directly to all the members of that Committee telling them that there were real concerns in terms of human rights. There were representations made by organisations like the Heating and Ventilating Contractors' Association, who said that they wanted to oppose any strengthening of the regulations because they still required the need to weed out troublemakers through their vetting process. We believed at that stage that they had the ear of the relevant Government Department. The Joint Committee on Statutory Instruments sent the regulations back to the Department—I think it was unprecedented, to be perfectly honest, that that happened—seeking clarification of the human rights issues. Subsequently, about a week to 10 days later, they went back and they nodded them through.

That is what we did. We made strong representations to the Government about the regulations, we produced the document and we advertised it as far and wide as possible to notify any building worker on any site of the existence of the blacklist. Of course, in my role as the political officer, we made a strong political lobby on it, yes.

Q866 Pamela Nash: Is there anything you would like to add?

Steve Murphy: No.

Q867 Chair: You do seem to have been singularly unsuccessful in getting your members to write in. You will have seen the evidence from the Information Commissioner about the relatively low number of people who are on the list who have been in touch

with them. I wonder whether there is anything else that you believe could be done. We know from the meeting that we had with the GMB that lawyers are seeing things and so on.

Jim Kennedy: I attended a meeting with the ICO about two weeks ago with our solicitors, and the information that the GMB is able to access we are able to access now. We signed confidentiality agreements where we will be getting an encrypted disc, but all that is on the encrypted disc is the name, location and trade. We will cross-reference that with our database. If there are any names of a similar nature, we will be writing to those members to try and get them to apply for their blacklist files, if indeed they have one. That is a new initiative, but you are right. The amount of construction workers who have applied for their files was relatively low—absolutely. We did a lot; we might have been able to do more.

Chair: I am not disputing you. It is just that I am not clear.

Jim Kennedy: At the time it was a measured approach.

Steve Murphy: It is not in dispute, is it, that relatively few numbers wrote in to get the information?

Chair: No; that is right.

Steve Murphy: That is absolutely correct. It is also not in dispute that there are a large number of construction workers who are actually blacklisted.

Q868 Chair: There is an issue of proof. Clearly, a number of people have died, dropped out of the industry and all that. We had a couple of people in here from Dundee who have now moved out of the industry. They had actually checked, but quite a lot of people wouldn't.

Q869 Pamela Nash: Just to correct my last question, I should not have said "when the list was published"—obviously it hasn't been—but "when it was uncovered". Do you think there is anything more that the Information Commissioner's Office should be doing to ensure that all those on the list are contacted?

Steve Murphy: Yes.

Jim Kennedy: Yes. They should write to every single member on the database.

Q870 Pamela Nash: Have you made any estimate of how many of your members are on the list? You had an estimate earlier of the percentage of those who are blacklisted who have actually been uncovered. Could you tell us where that estimate comes from?

Jim Kennedy: That is an impossible figure. It is very difficult. I would say that everyone who has ever been a trade union activist in the construction industry would be on that file.

Q871 Pamela Nash: Is that where you get that figure from? You said earlier that you thought it was only about 5% of those who had been on the list.

Steve Murphy: No.

Jim Kennedy: The point is that, when the ICO gave evidence to this Committee, they said that they only seized between 5% to 10% of the files because that was all their warrant allowed.

30 October 2012 Steve Murphy and Jim Kennedy

Q872 Chair: What we are still not clear about—upon reflection, we have gone back and looked at that evidence—is whether the other 95% were in other industries or whether or not they were also construction workers and they only needed a certain amount. Upon reflection, we are not entirely clear what they were saying to us about what their warrant specified. I didn't quite understand why they couldn't have seized it all. We will be pursuing that with them. I want to follow up one point relating to that period and ask you for your views on enforcement orders and the way in which that side of things worked. Do you believe that that was adequately done by the Information Commissioners?

Jim Kennedy: No, absolutely not. Let me give you an example of a company that escaped without an enforcement order, even though the enforcement orders in themselves were fairly—there is no penalty or punishment from an enforcement order. It wasn't even a slap on the wrist.

In April 2009 I was a party to a meeting with Skanska senior executives. It was with a fellow called Mats Williamson, who was the executive vice president of Skanska, and a chap called Harvey Francis, who was the executive vice president of Skanska UK. In those discussions we talked about the activities of their HR director, a man called Stephen Quant, who was, following an internal investigation by Skanska, identified as a named individual who dealt directly with the Consulting Association. They also mentioned an unnamed second person, who, apparently, held the position of a security manager in London. Those were the two points of contact at the time.

I have to say that at that meeting they were deeply embarrassed by the whole scandal and were asking us, "What can we do to make things right?", you know, in terms of future processes. What had come out of their internal investigation—and they were adamant about this—was that Stephen Quant had assured him that he had only ever requested information concerning health and safety issues. There was no record of any communication between Skanska, Kerr and the Consulting Association. Apparently, all the communications had been done via fax or telephone. That is an important point when you realise what I will be coming to in a moment.

Following that investigation, they produced a factual summary in which they made a number of quotes. They said: "There is no record of who, if anyone, was declined engagement or the reason for it." "However", the report later states, "the Skanska staff concerned are adamant that a CA check never resulted in a direct employee being refused employment." This is their inquiry in early April 2009.

The final section of the report states: "All current employees who were interviewed stated that they never passed information to the CA in respect of people who worked on Skanska sites." So they only took information out. It was strictly around health and safety issues, but they used some terminology that I will come to.

Following their representations to the ICO, they state in a European works council report from 4 November 2009: "The Information Commissioner informed us that he had decided not to take" any "enforcement

action against Skanska in the light of our representations." So Skanska, the biggest blacklister, with an identified serial blacklister in Stephen Quant, were not even issued an enforcement notice. Also, from their initial investigation, they still stuck by the line that they only requested information to ensure safe sites and never fed information in.

In the presentation that went to the European works council, it states: "No data was supplied to the Consulting Association by Skanska." However, in a much smaller font size, immediately underneath, it says: "This was later found to be incorrect and the matter was dealt with internally." So now we have an admission that they did feed information in to the Consulting Association. They had escaped an enforcement order, for what good an enforcement order would do, but later admitted to a European works council that they fed information in. Thus, we would say, they blacklisted people. We believe that that admission, in documentation from a European works council presentation, confirms Skanska and Stephen Quant as serial blacklisters. That was 4 November.

On 20 November, some two weeks after Harvey Francis gave that presentation, he gave an interview to *People Management* magazine, where he said: "Skanska used blacklisting database for health and safety reasons." He went on to say that they needed "to ensure the safety of people working on our sites—not to blacklist people on the grounds of trade union membership as reported in the press." So, even two weeks later, after the admission in the works council that they fed information in for blacklisting people, the public side of Skanska was still saying, "No, we're not."

There are a number of important points here in terms of Skanska. One is that, if you look throughout 2008, they made on average 35 checks a day for 365 days that year. That would have been Stephen Quant doing that, by admission from the two senior executives. How, as they told us, was Stephen Quant allowed to destroy any of the records of his dealings with the Consulting Association? We don't believe that is true because some months later they found out from evidence, some documentation, conversation or something that that wasn't actually true because Quant was feeding information in. So something came to light in that period between April and November. Maybe all the documentation wasn't disposed of by Stephen Quant.

The questions for Skanska were: who authorised the payments to the Consulting Association? Did Mr Quant have sole authority to do that? What representations did Skanska make to the ICO that allowed them to escape without an enforcement order, when, clearly, they were the biggest proven blacklisters, because the records show that they had the most dealings with them? Between April and November, when it was discovered that Skanska had been feeding information in, why didn't they inform the ICO? Why didn't they tell them that their previous representations, if it was purely about health and safety, were wrong? Clearly, someone was feeding information in. Finally, how was the matter dealt with internally by Skanska? Were the guilty parties allowed

30 October 2012 Steve Murphy and Jim Kennedy

to leave? Were they allowed to leave with a pay-off? The point is that shortly after, around that period, Stephen Quant left the employ of Skanska.

There is an example of how the biggest blacklister in the industry escaped an enforcement order. If we take Harvey Francis and Mats Williamson at face value and say that they didn't know at that point that someone was feeding information in, why didn't they hold their hands up at that time and tell the ICO, "Actually, we had an individual or individuals feeding information into the Consulting Association"?

In terms of enforcement orders, the ICO wrote to them, and on a voluntary basis companies were allowed to reply or not reply. A number didn't and subsequently didn't get enforcement orders, but the criteria of the enforcement order left a lot to be desired. That is just an example of how the biggest blacklister in the industry escaped any form of punishment.

Q873 Chair: It is fair to say, then, that you are not a fan of enforcement orders.

Jim Kennedy: Not these ones, Chair.

Q874 Chair: We will have to come back to the point about making recommendations at some stage. You have outlined to us a number of points. Let me ask some follow-up points because some things about this confuse me. I am not clear whether or not Skanska is applying the "rotten apple" defence in saying, "There was one rotten apple in the organisation, and nobody else knew about it. It was only him", and how that ties in with, as you said, what you said about it being 35 a day, every day, all year. I am not clear how any one individual could have had enough information to ask about 35 a day, every day, because there must have been some sort of mechanism whereby these things were fed to him.

Jim Kennedy: You would have to ask Skanska. In their internal report, it says: "Skanska (as Trafalgar House) first started using the referencing service where the supply chain was unknown. The service was only used by certain operating units and over time its use has diminished with most operating units having stopped using the service some time ago. Construction Public has used it up until March 2009. It was used by SRW", which is another operating unit, "(stopped using in May 2008), by Cementation (stopped in 2006), by Richard Lees (stopped in 2002) and by Clark & Fen (stopped 1993). It has never been used by Construction Private, Skanska Technology, Utilities North, Utilities South, Infrastructure Services or by Skanska Corporate."

If you look at that, at one point it was pretty widespread across all operating units in Skanska. There was, obviously, one point of contact, but a lot of people would have been feeding into that one point of contact—i.e. Mr Quant.

Q875 Chair: Presumably, you put this to the company, did you?

Jim Kennedy: We spoke to them.

Q876 Chair: What did they say to the idea that it was more than just simply a rotten apple?

Jim Kennedy: When we met them, we didn't have that report. We also didn't have the European works council one. When they came to see us, they told us, "Yes, we did subscribe to the Consulting Association. Yes, it was Stephen Quant. However, we have assurances that he only took information out to ensure safe sites." Even at that meeting it was clear that they were embarrassed with that line, I believe anyway; that was my assessment of the meeting. Subsequently, they made a public statement soon after that meeting that they condemned blacklisting and it would never darken their doorstep again.

Chair, if we want to have a look at Skanska in specific terms, they were still using the blacklist up to early 2009. So just before the raid they were still using it. The second contact on the blacklist files for Skanska—and we know this from files that members and blacklisted workers have accessed—had the initials "JD". Of course, the initials "SQ" for Stephen Quant were prevalent throughout the files. From accessed files already, we have reasonable suspicions that they operated a blacklist on these following sites. This is important because, like the Olympics, it was public money. I am talking about the MOD Whitehall between 2001 and 2002; MOD Woodbridge in 2005; Derby Hospital PFI in 2006 and, from accessed files, at least three workers who took out employment tribunals were subsequently put on a blacklist by Skanska.

The point I am trying to make, Chair, is that you talked about enforcement orders. My goodness, the biggest blacklister in the industry escaped without even—

Q877 Chair: This must have been authorised by the company at a fairly high level. It is difficult to imagine that Stephen Quant was simply doing this on his own in isolation, without the knowledge of people above, below and around him. Is that fair?

Jim Kennedy: I would suggest that you would have to speak to Skanska—Harvey Francis and Mats Williamson—about those because we couldn't possibly say. We've no information to say how far up the hierarchy the authorisation was known. Clearly, if Stephen Quant was allowed to sign off checks, in every organisation someone is accountable for that, and Skanska would be no different.

Q878 Chair: You have an ongoing relationship with Skanska, do you not?

Jim Kennedy: Yes; absolutely.

Q879 Chair: They are still there, as it were.

Jim Kennedy: Yes.

Q880 Chair: You mentioned that some points have come to light subsequently. Have you subsequently raised those points with them, or when you had the initial dialogue was that the end of that matter and then it was not quite business as usual but business on a new basis going forward?

Jim Kennedy: That was the meeting that took place. There were no subsequent meetings. Obviously, the European works council revelation late in 2009 didn't immediately come to us. That came some months later

30 October 2012 Steve Murphy and Jim Kennedy

in the presentation. As I said, that single sentence was in a lower font text—

Q881 Chair: I understand the significance of that. But you, as a union, have never raised that directly with Skanska, saying, “The information we have now contradicts the information you gave us then.”

Jim Kennedy: No.

Q882 Chair: We will want to pursue some of this. In terms of the background of the people involved, it has been suggested to us that some of the information must have come from official sources, whether or not it was police, military or something similar. I am not aware of the background of some of these individuals. Is there anything that you can cast light on?

Jim Kennedy: Stephen Quant had a senior military background before he came into the industry. I don’t know at what level, but it was a senior military background. I believe it was the Guards or something.

Q883 Chair: Okay; we can check that later now that that information is helpfully on the record. There were a number of points that I wanted to raise with you, and we have covered most of those. Pamela, you had finished your points. Iain was going to ask you something, but he has had to leave the room for a moment.

You have described the legislation that was introduced in 2010 as “disappointing”. Could you clarify why you thought it was disappointing and what you would want to see in it?

Steve Murphy: It is disappointing. I have to say that UCATT believes that the regulations should provide that it is a criminal offence for a person to compile, store, sell, maintain, distribute or use information derived from prohibited blacklists with a view to discriminating against an individual on the basis of their trade union membership or activities, or perceived trade union membership, or activities. Also, any individual whose name has been included on a prohibited list should be entitled to compensation, including a minimum award. It should not be necessary for a worker to demonstrate that a detriment has taken place before they have redress under the regulations. As we have said, Chair, this is ruining people’s lives and we need the legislation to be tight and solid. People who have been discriminated against should have an award, and that is what we want to see. I am not stopping there. I have to say this from UCATT’s perspective. UCATT is campaigning for a public inquiry into the blacklisting scandal and we will continue to campaign for a public inquiry. Whatever comes out of that public inquiry, we want those as a minimum standard in legislation.

Q884 Chair: Our view, having discussed it informally before, is that we would not be opposed to a public inquiry, but we do recognise that a public inquiry is not necessarily going to be accepted by the Government and would take a long time. In the circumstances, we are more likely to come forward with firm recommendations about what should be done now, irrespective of a public inquiry. Therefore, we are interested in drawing forward

recommendations that we can make now on the evidence that is available without, necessarily, waiting for a public inquiry.

Can I clarify whether or not the sort of points you were just making about how you would want to see the legislation changed are points that are shared with the other major unions involved, by which I mean Unite and the GMB? It is much more difficult for us if we have three competing choices about which route to follow to block this off. It would be far better if those who are on the receiving end have an agreement about the best way to progress this matter. Is there a joint agreement about how these matters should be dealt with?

Jim Kennedy: Within “Ruined Lives”, Keith Ewing set out the way forward for legislation. I know that, when Unite gave evidence here, they referred to the document and fully supported what was in it. I know that the GMB at the highest level also supports the document. We’ve not sat around a table and ticked them off, but everyone supports the recommendations.

Q885 Chair: This is an iterative process. As we discover things, it may very well be that we will write to some of the organisations that have given us evidence and clarify whether or not each agrees with the recommendations of the other in order that we can identify whether or not there are disagreements, and, if so, if necessary, come to a choice between them, or if, ideally, we have everybody agree, that makes our job, in a sense, much easier. As you will appreciate, you and the other unions have much more experience in dealing with these sorts of things than we have. Perhaps you could bear that in mind.

Steve Murphy: If I might reiterate what Jim has just said, “Ruined Lives” outlines what I have just said in there. The other trade unions that have been affected by blacklisting have cited this document, as you know.

Q886 Chair: Fine. I remember that document coming out some considerable time ago, but things move on. I wasn’t sure whether or not people wanted to expand on it.

Jim Kennedy: Chair, I understand that in your position you want to move on in terms of making recommendations, but, just like prior to Leveson, everyone had their ideas of what should come out in terms of legislation, but no one will know until that inquiry has finished. That will inform what legislation is required. What we are saying is that a public inquiry into the blacklisting scandal will also inform what legislation is required.

I genuinely think that we haven’t seen anything yet. If we have a public inquiry, stuff will be coming out that we couldn’t even comprehend. As recently as your last evidence session, no one knew that the ICO had only seized 5% to 10% of the files. From the files we know about already, it is not just construction workers. There are academics and journalists. This situation really does need a public inquiry to help inform that legislation, notwithstanding and understanding your concerns for the Committee.

Q887 Chair: One particular point is that on your website you mention that under the 2010 regulations

30 October 2012 Steve Murphy and Jim Kennedy

blacklisting is described as “unlawful” but “they did not make blacklisting a criminal offence.” Can you explain the distinction between these two points, because, when we looked at it, that seemed to us to be the same thing? It is just in case there was a subtlety there that we had missed.

Steve Murphy: No.

Jim Kennedy: No.

Q888 Chair: If there is something, then, maybe, upon reflection, you can let us know. It is just that we ourselves were not clear.

Jim Kennedy: If you read “Ruined Lives” in terms of where it talks about making it a criminal offence, I think that Keith Ewing is quite clear, if I can find the relevant section for that.

Q889 Chair: We will find all that evidence. That is what the clerks are for. They will find all that evidence and bring it forward. That is just one particular distinction that we were not quite clear about.

The next point that Iain was going to make was how you would like to see the legislation on blacklisting strengthened, but I think we have pretty well covered that.

Jim Kennedy: We need a free-standing right not to be blacklisted. You will be aware that we have got a case going on appeal to the European Court of Human Rights. As a free-standing right in terms of human rights, that should be enshrined in law.

Q890 Pamela Nash: I was going to ask a similar question. It is for your members watching this and listening to this evidence later on. For me, it is clear from the current legislation that it is unlawful for an employer or an employment agency to access a blacklist and use that when making a decision as to whether to employ someone or not. In making the actions criminal offences that you mentioned earlier, what exactly would be the benefit of that?

Jim Kennedy: It is not illegal to collate and keep a blacklist. By definition, why would you do that unless you were going to use it? It makes no sense. That is why it should be made a criminal offence right across the board, as Steve mentioned. Why on earth would you have a blacklist unless you are going to use it? I think that covers your point.

Steve Murphy: It absolutely does. Jim is right on that. Why?

Q891 Pamela Nash: Thank you. Just to move on, we have heard other evidence in this inquiry that companies have either changed their names or completely re-registered as a new company when it has been made public that they have been involved in blacklisting. In your experience, has this affected any prosecutions or investigations into these companies? Also, are there any ideas you have for us as to how we could combat that?

Steve Murphy: I am not so sure about the prosecutions. I don't think there have been any prosecutions.

Q892 Pamela Nash: But do you think this could be a stumbling block?

Steve Murphy: We have seen phoenix companies. Chair, you talked about health and safety earlier where companies have broken health and safety legislation and somebody has died, the company has received a small fine and set up a new company. It is a stumbling block in that sense where people have set up new companies. I guess it is a stumbling block in that people can set up a company in a new name and try and avoid any legislation.

Jim Kennedy: One of the points that Skanska raised is that they inherited the blacklist through acquisition and the companies they acquired subsequently disappeared into the overall Skanska organisation. In terms of that, it would present problems, I am sure; absolutely.

Q893 Chair: These are important issues that we will have to have a look at, but this can't be the only situation in which the question of phoenix companies, absorption and so on applies.

Iain was also going to pick up the point that I can maybe do about clarifying whether or not you provide any support for your members who have been blacklisted. I am aware that you have been taking some legal cases, but could you outline, in general, for us what you do for them and with them?

Steve Murphy: We have given legal support and, as you have rightly said, we are going to the European Court. As we have said earlier, it is very difficult to identify individuals who have been blacklisted or individuals whom we have found to have been blacklisted. We will always give legal support where we can. The difficulty is, is it not, in the blacklisting cases that people don't find out that they have been blacklisted until years down the line? It is very difficult to take, as you know, a case to an employment tribunal because of time limits. You have three months from the time of knowing. These people were blacklisted 10, 20 or 30 years ago. That is a difficulty we have in supporting our members legally, but, wherever we can give them support, we will give them support legally, obviously.

Jim Kennedy: Are you asking, Chair, if we try and access work or anything like that for them? If that is what you are asking, no, we don't, because that is not something we can do.

Q894 Chair: We are just giving you the opportunity to tell us whether or not there is anything. Maybe I could just come back to your point. We understand your difficulties, but, presumably, if people have got to notify or start the tribunal process within three months of knowing, irrespective if it is 20 or 30 years down the road, they would still be able to pursue that, wouldn't they?

Jim Kennedy: Absolutely; yes. There is a difficulty, and we have had it in a number of cases, where they have got hold of their files and, unfortunately, sat on them for a number of weeks, and because of the three-month period they have been out of time. Maybe that is something we have to look at in terms of our own systems in rectifying for the future. The profile of the blacklisting scandal is growing on a daily basis and more construction workers will be attempting to access their files. So maybe we as an organisation

30 October 2012 Steve Murphy and Jim Kennedy

have to get our systems absolutely tight in terms of meeting that three-month period.

Q895 Chair: What would your argument be—that that three-month period ought to be much longer in situations where the cases are quite a distance away?

Jim Kennedy: Absolutely. Hopefully, it would come out of some sort of legislation where there should be—

Steve Murphy: An extension.

Q896 Chair: We want to be clear about these things. In the absence of a public inquiry, as I have said before, we will have to make recommendations, and we would want to clarify whether or not that was one of the issues. One of the issues that have been drawn to our attention is the number of people who have been blacklisted who cannot take action against the main contractor because they are working for sub-contractors, and the main contractor has sometimes been the one, allegedly, that has blacklisted. What is the way round that?

Jim Kennedy: It is in terms of the changes to legislation, as Steve laid out, in the terminology in compiling, keeping, using and so on a blacklist file. That is the only way you can get round it. I know that Dave Smith was blacklisted by a third party. Therefore, there was no employment relationship so that presented a difficulty, although Dave, through his efforts, is pursuing that. It is a real problem, Chair.

Steve Murphy: Chair, it is a problem in the industry generally because of false self-employment in the industry. It is a difficulty that we have.

Q897 Chair: We will have to make recommendations about this. In these circumstances, where you have false self-employment or sub-contractors, against whom should the case be taken?

Steve Murphy: I think, overall, the main contractor. The main contractor has control of the sites and they should insist that there is no blacklisting against individuals, even through a sub-contractor. I believe that the main contractor should be responsible for that site.

Q898 Chair: So would the individual involved be able to take action against the main contractor on the grounds that they had direct responsibility for everything that happened on their site? They, presumably, would argue that they could not possibly police every sub-contractor.

Steve Murphy: They should be able to police every sub-contractor, Chair, to be quite honest with you. It is their site. How do they police health and safety on their site?

Q899 Chair: Some of these questions are rhetorical. I just want to get the answer from you.

Jim Kennedy: They have to police health and safety on their site. They have to insist—

Chair: We have just been told there is a vote, so we will have to go and vote. Can you just talk amongst yourselves until we come back because otherwise we will be late? We will be as quick as we can.

Sitting suspended for a Division in the House.

On resuming—

Q900 Chair: Jim, you were in the middle of answering a question when I stopped you.

Jim Kennedy: Steve is going to go into detail about the answer to your question.

Steve Murphy: Your question was, if I remember, Chair, about who would be responsible to an employment tribunal. Was that your question? Did I get that right?

Jim Kennedy: It was: who would the blacklisted worker have recourse to take action against?

Chair: My staff tell me that that is the case.

Steve Murphy: Referring to what we said earlier, if we are going to change the law, it should be a criminal offence for a person to compile, store, maintain and distribute or use information derived from a prohibited blacklist. I refer you back to what we said earlier. So it is anybody who compiles that list.

Q901 Chair: In these circumstances the main contractor would be liable if it is they who have contacted the blacklist and passed it on.

Jim Kennedy: Yes, if they were the ones that had. Of course a major contractor has responsibility for upholding the legislation on their sites, whether it health and safety or whatever it is. They have an overarching responsibility, but, of course, they may be the blacklister or they may not be the blacklister. Steve's comprehensive list covers the points that you were talking about. Of course, they are the same points that Professor Keith Ewing, Dave Smith and others have made.

Steve Murphy: Chair, if we go back a little way, if you have got a sub-contractor coming on site, it may not necessarily be known by the main contractor, but while they are on site the principal contractor has a responsibility for that site and for the people working on that site.

Q902 Chair: I want to come back to a couple of points about the support that you have given to members. You mentioned to us about tribunals being out of time and so on. You have lost some tribunals because of not going for the right person, in a sense, because it was not the main contractor. Are there other tribunals that you have lost for reasons that you think have been unreasonable or unfair and that the legislation under which you were caught should be changed?

Jim Kennedy: The majority of the ones that we have lost, Chair, have been those that were out of time. Of course our processes in terms of these cases are under constant review.

Q903 Chair: I understand that. I asked just in case there were any other reasons that have not come up in the conversation up to now about why they were lost. I want to be clear on one other point, which we touched on earlier. We heard about the GMB arrangements with their lawyers to compare lists. You are getting that as well, are you?

Steve Murphy: Yes.

Jim Kennedy: Yes.

30 October 2012 Steve Murphy and Jim Kennedy

Q904 Chair: Is it just yourselves and the GMB, or is there anybody else? I see that correspondence has gone to the ICO from the RMT now about the same thing. Is this going to be a universal agreement or do you not know that?

Jim Kennedy: No. David Smith, the ICO's Deputy Commissioner, last week put a new statement on the ICO website that mentioned the GMB and ourselves. Other than that, we have no other information about that or anyone who has requested that information. I am assuming that, if they make representations like us and the GMB, then they would be afforded that same access.

Chair: That's helpful.

Q905 Pamela Nash: One of the main reasons why we decided to undertake this inquiry was when it became clear to us that the health and safety figures in Scotland are even worse than the rest of the UK, although we do know that two people are killed on average every week throughout the UK and many more are injured. What evidence do you have that your members and other construction workers are put off from being health and safety reps and trade union reps within their workplace because of the fear of losing their jobs or being blacklisted?

Steve Murphy: Let me answer that. There is always a fear of people taking on trade union responsibilities and roles. Taking on the role of a shop steward, I was always worried that you would be blacklisted or kicked out. It is exactly the same with health and safety reps. I report to this Committee that, sadly, somebody was killed yesterday not too far away from here by falling off a scaffolding and someone else was critically injured as well. So two people a week are dying in construction throughout the UK. Sadly, it is difficult to get safety representatives because of the fears that they have.

Q906 Pamela Nash: Do you think that the fear is the same now as it has been in previous years, post-2009?

Steve Murphy: Absolutely, yes. It has always been there.

Jim Kennedy: It is probably more difficult now because of the recession and people are more reluctant to raise their head above the parapet in terms of making those representations.

Steve Murphy: That is absolutely right. People are clinging on to their jobs. Whereas you would have got someone to be a health and safety rep, now they won't.

Q907 Chair: Just on this point, other than anecdotal, do you have any evidence of that? Have you done a survey of your members that says that? Again, if we are producing recommendations, we can't just say, "Oh, we met a man who told us." If you had done a survey of your members and you had had some sort of proof coming back saying that a disproportionately large number now were unwilling to do that, that would stack up as strong evidence. Do you have anything like that at all?

Jim Kennedy: No.

Steve Murphy: I spoke to an individual yesterday in Stamford, which is a fairly small town, in

Lincolnshire. He was a very good safety rep and a shop steward as well with a small company that went under. I spoke to him yesterday and he has been out of work for a number of months now. What he said to me, anecdotal or not, was this. He is finding it extremely difficult, because he is known as the union man and safety rep in Stamford, to get starts anywhere. This is a tradesman who is now working nights in a supermarket. So he is not working in construction.

Q908 Iain McKenzie: On the health and safety rep training, I believe that trade unions will provide health and safety training. Are you seeing a drop-off in your members coming forward for that training?

Steve Murphy: We would have to do the figures on that, to be fair. Obviously, it is not as great as it was because, as Jim said, we have had the recession and not as many people are coming forward. During the boom times, we were getting quite a number of safety reps and shop stewards. We would have to get the figures on that and, to be honest with you, we'd have to do a comparison, which we haven't done.

Q909 Iain McKenzie: Could you provide that to us?

Steve Murphy: Yes.

Q910 Chair: One of the difficulties for us in pursuing this is that logic would seem to say that when there is a blacklist, at a time of recession, people are less willing to undertake these tasks, but the response we often get from a number of folk is, "Prove it. You are just asserting this. You have no evidence for this and, therefore, we don't need to do anything about it." That is a difficulty for us if we want to put forward recommendations that would stick. If there is any way in which you can firm these sorts of things up, that would undoubtedly be helpful.

Steve Murphy: If we can get that information, Chair, we will, but we were not expecting certain questions today so it is difficult to bring that information with us.

Q911 Pamela Nash: Is that something you do as a union? Do you survey?

Jim Kennedy: We have a list of health and safety reps on our database that we can supply you with, and perhaps we can do a correlation with how many we had a few years ago and see if there has been a decline. That shouldn't be too much of a problem.

Chair, I am sure you and other members of the Committee know of the adversarial nature of the industry in terms of health and safety where the employers and construction companies see health and safety regulations as a burden. When you consider that the average fine, where a worker has been killed, is around £6,000, if indeed it ever gets to that level, and where the costs of over-running on a job can be hundreds and hundreds of thousands of pounds, you can see the problems that trade union health and safety reps in the industry have in terms of how they are viewed by the employers. It is a tough job.

Steve Murphy: Could I add to that, Chair, which is an important point? There has been a move towards further false self-employment. We are seeing an

30 October 2012 Steve Murphy and Jim Kennedy

increase in that and, indeed, a move towards payroll companies and agencies. So, again, there we have difficulties in getting safety reps in.

Chair: As I indicated at the very beginning, we came into the whole question of blacklisting having been engaged in a discussion about health and safety, when it became clear that this was a substantial issue that we felt we ought to address.

Q912 Pamela Nash: In consequence of that, do you think people have died or been injured in the UK as a direct consequence of blacklisting?

Steve Murphy: Of blacklisting or the lack of safety reps. If I can answer it in this way, it is statistically proven that, where you have a safety representative on site, that is a safer site. That is statistically proven. If there is a reduction, then, of course, you can say that that is because there aren't as many safety reps.

Q913 Chair: I think we are just about drawing to a close. Finally, we always ask people whether or not there are any answers you had prepared to questions that we haven't asked you and whether or not there are any issues that you want to raise that we haven't already touched on.

Steve Murphy: I don't think so, other than that, when we look at the industry and the state of the industry at the moment, notwithstanding that we have construction workers who are false self-employed, who are working through agencies, who are working through payroll companies, who have been denied employment rights, where we don't have safety representatives, where we have no representatives on site whatsoever, and indeed where people have been blacklisted as well, you have to say that that is an indictment on an industry that creates 9% of GDP. As serious as blacklisting is, we have a dire industry in which people are treated terribly. That is what I wanted to add. Blacklisting is a serious concern on top of all the other concerns that we face generally as an industry.

Q914 Chair: Even today, when we were out for the vote, somebody was raising with us, "But you can't

prove that. There is no evidence that blacklisting still goes on. Yes, you might have this information that it was going on in the past, but why should we bother about it now because", and so on and so forth. In those circumstances, it would be helpful if you were able to give us anything that would enable us to stand this up, because the argument has to be that, if legislation is there, we have to demonstrate that that legislation is insufficient before we can justify asking for new legislation.

Jim Kennedy: You will remember, Chair, that the reason why the regulations were never enacted when they were first laid was because people didn't believe that there was enough evidence that blacklisting existed. Well, they were wrong and we were right, and I think we are right now. Blacklisting goes on in this industry. It hasn't disappeared. Those files haven't evaporated into thin air. We believe that they are still being acted on, just like we said before, when it was exposed in early 2009. They are still there. The blacklisting scandal will get bigger and bigger and it will be on a scale similar to that of the Leveson inquiry now. It will probably encompass other industries and it may even include some Members of the Houses of Parliament. I believe that there are probably MPs on that blacklist somewhere.

Steve Murphy: It's not new. If you look back, where people were blacklisted, it included MPs and trade unionists.

Q915 Chair: I can think of a number of my parliamentary colleagues who will be very disappointed if they are not on a blacklist. They would regard it as a badge of honour.

Jim Kennedy: Finally, Chair, we would ask you—there may be a conflict with yourself—and other Committee members, and their colleagues, in signing EDM609.

Chair: Okay. On that basis, I close the meeting.

Tuesday 6 November 2012

Members present:

Mr Ian Davidson (Chair)

Mike Crockart
Jim McGovern

Mr Alan Reid
Lindsay Roy

Examination of Witness

Witness: Alan Wainwright gave evidence.

Q916 Chair: Welcome to this meeting of the Scottish Affairs Select Committee. As you are aware, we are looking at the question of blacklisting in general. At the beginning of the meeting I want the Clerk to put on the record the issues relating to parliamentary privilege just so that you, we and anybody else observing this are clear about your position and our position.

The Clerk (Eliot Wilson): Just to be clear, the evidence that you give today is protected by parliamentary privilege.

Alan Wainwright: Okay; thank you.

Q917 Chair: Would you like to start by telling us who you are? As we discussed before you came in, you can possibly make a little opening statement, and then we will go through a raft of questions.

Alan Wainwright: I am somebody who has worked in the industry in senior positions and has made an attempt over the past few years to try to expose blacklisting in the construction industry. It is important to say that somebody has made a few comments to the Committee that this has been like a one-man crusade for me. That is certainly not the case. I don't think I have had too much to do with this. I have obviously made a contribution but there are so many other people who have made a significant contribution.

Another thing is that in the last 10 years I have only worked for one year in this industry. All of this evidence I have given you happened so far back. That is just giving you an idea. I have only worked one year in the last 10 years in the construction industry. I have also made you aware that I have this website blog. I have tried to put a lot of evidence on there. That has partly been for me. This really doesn't form part of my life; it's in my past. I am not somebody who lives with this every day. I put everything on the website so that it enables me to move on and deal with this.

I am obviously going to try and help you as best I can, but this isn't something that I live and breathe every day. Some of the people who are involved with this do, because they are involved in it on a daily basis. I have put all of this in a little box, which is my website, the blog, and that then enables me to get on with my life. I will try and be as helpful as I can.

The final thing is that I submitted some evidence to you yesterday. Has everybody had that?

Chair: Yesterday, yes.

Alan Wainwright: I sent a statement through and I have evidenced it up. I have backed it all up with evidence, but that evidence only came into my

possession last Friday. So there were two late nights on the weekend matching all that evidence up to the statement that I presented to you.

Chair: Yes; that is helpful.

Alan Wainwright: I will do my best, but, as I say, I don't live and breathe this.

Q918 Chair: We understand that, but you are probably one of the best sources in terms of helping us clarify what did happen and who was involved. We will obviously be approaching some of those named by you and others to obtain further clarification.

I will start by asking you what firms you have worked for in the construction industry where you have either been involved in or aware of blacklisting operating.

Alan Wainwright: I have worked at Carillion plc, but they were formerly Tarmac when I joined them. The perception has been given to the Committee that I actually worked for Crown House. I worked for Tarmac. My payslips are Tarmac; my terms and conditions were with Tarmac and then Carillion, obviously. Along with lots of other Crown House people, we were just Carillion employees.

I then worked very briefly for Emcor Drake & Scull. Then, in 2005, I again worked very briefly for Haden Young Ltd, who were a subsidiary of Balfour Beatty. They have since rebranded to become Balfour Beatty Engineering along with another Balfour Beatty subsidiary, Balfour Kilpatrick Ltd. About three months after this came out in March 2009 both of these companies rebranded, in July 2009, to Balfour Beatty Engineering.

Q919 Chair: Those are the three firms that you were personally involved with.

Alan Wainwright: Yes.

Q920 Chair: What was your job role with each of these?

Alan Wainwright: At Carillion I was brought in to set up their in-house agency for mechanical and electrical trades. Prior to that I had my own business and I had supplied labour to Crown House Engineering. They already had their own internal agency called NCS, which was supplying about 1,000 construction workers to all the Tarmac—shall I call them Tarmac or Carillion?

Q921 Chair: Call them Tarmac if that is what they were at the time.

Alan Wainwright: I am conscious, Chair, that Tarmac still exists in a different entity, in building aggregates,

6 November 2012 Alan Wainwright

and I don't want their name and their brand to be tainted in the press by that.

Q922 Chair: I am sorry, I had not appreciated that.

Alan Wainwright: Shall we go with Carillion?

Q923 Chair: Yes. The Tarmac for whom you worked is now part of Carillion, but there is another Tarmac that still exists.

Alan Wainwright: It was all Tarmac, and then they sold off the aggregates business to somebody and retained that Tarmac brand. Then they rebranded the existing business to Carillion with a new image and everything else. The business just carried on but they sold off the aggregates. I am conscious that, if we mention the word "Tarmac", the existing business could potentially be aligned with this and I don't think they are. I will use the word "Carillion". Sorry, what was your question again, Chair?

Q924 Chair: What was your job role with each of the firms that you mentioned?

Alan Wainwright: I was brought in to set up an internal recruitment agency. They had their own agency called NCS and it supplied all these construction trades. I originally worked in that business because it was just me, a desk and a computer that didn't work. I started off and built that business up to have, I would say, somewhere round about 300 mechanical and electrical operatives.

I was working and reported directly to the managing director of the business at the time—a chap called Roger Robinson. We became aware that there were lots of losses. They had about a £30 million or £40 million labour bill and there were lots of inefficiencies in it. I had lots of ideas about how I could improve that. He promoted me to national labour manager of the M&E business, which was Crown House. I centralised all the recruitment of agency labour because it was being recruited all over the country. I brought in things like electronic time and attendance systems. Computerised systems were quite a big thing back in 1997. I set up a central labour department.

I left them in approximately 2000 to join Emcor Drake & Scull. They basically wanted me to do the same for them. People from NG Bailey and Drake & Scull came to look at it. Even the manager I eventually went to work for at Haden Young five years later came and had a look at what I had set up through contacts in the business. We had it running pretty much efficiently. I joined Emcor Drake & Scull, but I was only with them for about three or four months. I basically needed six members of staff to do what I needed to do. I was going to get 1.8 or 1.5, so we couldn't agree on that.

I then left the industry. I went on to develop some software. I was approached by a recruitment consultant in 2004 who had seen my CV.

Q925 Chair: That was the end of your involvement with the construction industry and anything relating to the blacklist.

Alan Wainwright: No. A recruitment consultant then contacted me and said that somebody at Haden Young wanted to speak to me and would I be interested in

joining them. The manager at the time, who became my manager, had been in and visited my offices and looked at what we were doing with time and attendance, productivity and recruitment. I had a good reputation, even though I had been out of the industry. I joined them in a reasonably senior role. I was there for about six months. We hadn't done any recruitment; that is why I never came across the blacklisting. Then in January 2005 a site started to need labour. They work in cycles. It is called ramping-up and ramping-down, because they have large work forces. There is another point here that I should mention with Tarmac and Carillion. They have now rebranded to become Balfour Beatty Engineering. Again, it all depends what you want me to call them, because Haden Young is no longer out there trading, but they are still trading as Balfour Beatty Engineering.

Q926 Chair: It is probably best to say Haden Young because that is who you were working for at the time. The only reason to avoid the confusion with Tarmac is because of them being another company.

I want to clarify where and when you were first aware of the blacklist operating in construction.

Alan Wainwright: When I met Ian Kerr in 1997. As I have mentioned in my written evidence to you, he came to see me. Do you want me to go into the whole story of what I have put in my evidence, or just the fact that we met?

Q927 Chair: Clarify for us when you met, where you met and why you met, together with the nature of the discussion.

Alan Wainwright: I met him in Carillion's Manchester office, which is where I was based, in 1997. The reason I met him was because I was instructed to. Crown House had an HR manager called Kevin Gorman. He told me that an instruction had come from the group personnel director in Carillion, Frank Duggan, that I was to meet this guy and that we were to introduce his system of checking procedure into the business. That was in 1997.

Q928 Jim McGovern: I am intrigued by the different names of the companies. My father has been a trade union member all his working life. He worked for Briggs, which eventually was taken over by Tarmac. My wife has been a trade union member all her life as well. She was secretary to the managing director of Tarmac. I am unaware of any anti-trade union issues with the company at that time. When did you first find out that there seemed to be an anti-trade union issue either at Tarmac or whatever it is called now?

Alan Wainwright: Carillion. As I have just mentioned, the first time I came across anything like this was in 1997. Hold on; let me just think back. You are asking me a question that I have already answered so I am wondering if I have. I don't think there was anything before that, no. It just came out of the blue.

Q929 Jim McGovern: So it has not been a 30, 40 or 50 years' campaign against the trade unions. It is just something that happened in the 1990s.

Alan Wainwright: It was nothing that I was aware of, but I joined them in 1993. As I said, it was one man

6 November 2012 Alan Wainwright

and a desk, starting off this internal recruitment business. I was promoted, given more responsibilities and I set up a central labour department. I centralised the recruitment of agency labour. It was being recruited on all the sites by every manager and everybody else, and they had no control of this massive cost. I centralised it so that every order for agency labour came in, and it went out to preferred suppliers. That is how we got control of the flow of who we were recruiting into the business on a temporary basis. There was nothing that I can recall before then.

Q930 Chair: You met Ian Kerr at the instigation of Frank Duggan, who was higher up in Carillion.

Alan Wainwright: Yes; he was the group personnel director.

Q931 Chair: What was the conversation that you had with Ian Kerr? What did he explain to you?

Alan Wainwright: He turned up, and obviously I had been told that this person was coming to see me. The instruction was that I was to introduce this checking procedure. He already had computerised records then because I am pretty sure he showed me a Microsoft Excel spreadsheet with names, national insurance numbers and descriptions. It is very hard, Chair, because it was 1997, but my best recollection would be something along the lines of, "I've got this all functioning in the construction industry. It is fully functioning already in Carillion. There is a group of people out there who are hellbent on causing disruption to the projects and we are starting to introduce this service on behalf of the current members into their mechanical and electrical subsidiaries." A lot of the construction companies had bought their own M&E—mechanical and electrical—subsidiary, or some of them.

Q932 Chair: He was explaining to you that there was already a system there that companies were using, which was now being extended into M&E, and that you should therefore be availing yourselves of it.

Alan Wainwright: It was a bit more than that. I had already had the instruction that I was to introduce it. That had come through right down from Frank Duggan. It was just a matter of me understanding how he wanted it to work. He had explained that it was very covert and very secret and all that, and I was not to tell anybody about it. All of the agency labour recruitment was coming through my department. It is very hard because it was 1997, Chair, but I am pretty sure it wasn't a lengthy meeting.

Q933 Chair: Business is business.

Alan Wainwright: Yes.

Q934 Mr Reid: You have referred to a computerised database. My recollection of the evidence we had from the Information Commissioner when they did the raid was that they found only a paper and card index database. Do you have any idea as to why the Information Commissioner didn't find the computerised database?

Alan Wainwright: He probably didn't look hard enough. I watched his evidence to you. This guy was computerised back then in 1997. What has happened from about 2006 is that the construction industry or the member companies of this Consulting Association had a whiff that I was trying to expose them. Do you want my views on why you only found a card index system?

Mr Reid: Yes.

Alan Wainwright: I am pretty sure that that was quite possibly planned, so that if somebody did turn up they could say, "Here it is", possibly to protect how far it had developed. That is just my personal view; that is how I would see it.

Q935 Mr Reid: As far as you are aware then, presumably the computerised database is still in existence.

Alan Wainwright: I know nothing about it. He showed me print-offs from a Microsoft Excel spreadsheet.

Q936 Chair: So there was a computerised database at that time.

Alan Wainwright: Yes.

Q937 Chair: What was your reaction on finding this or being introduced to this?

Alan Wainwright: In 1997?

Chair: Yes.

Alan Wainwright: It is hard to say because I had a million things on. I met this guy and I added a line or two of code into one of our databases in Carillion to allow the names to come in, be entered, printed off and faxed to him, so that we had some sort of database control within Carillion. At this point I had a thousand different tasks all running live. I allocated this task to somebody in the department. It was a lady called Laurie Gill. That just became part of her job. In the early stages they were faxed off.

Q938 Chair: You did not query it at all at that stage.

Alan Wainwright: I would almost certainly have discussed it with my boss, who was the managing director, because at the time I reported directly to the managing director. I would have almost certainly reported that in a meeting with him. I don't have any records.

Q939 Chair: Who was the managing director?

Alan Wainwright: At the time I think it was a guy called Brian Tock. It was originally Roger Robinson, who is now at Laing O'Rourke, but Roger moved on in the business and Brian Tock took over. My recollection is that my boss at the time was possibly Brian Tock, or it could even have been Roger Porter. I had four bosses in six years.

Q940 Chair: Why would you have discussed this with them? You had been told to implement it by Frank Duggan, and surely you just did it.

Alan Wainwright: I report everything I am doing through to my boss. I meet my boss at least two or three times a month. When I was based in Carillion in head office and I reported to Roger Robinson, I

6 November 2012 Alan Wainwright

would meet him once, twice or three times a week because I was in the same set of offices, but we were in different offices. I would certainly have discussed something like that with him—that we had this instruction and I had introduced this. That was along with lots of other things, Chair, that I was introducing and changing.

Q941 Chair: I understand that. We do not want to go into the thousands of other things. I just wanted to clarify that the people above you in the hierarchy were also aware of this.

Alan Wainwright: Yes.

Q942 Mike Crockart: I wanted to pin down exactly what was said in the discussions that you had with Ian Kerr. You glossed over the fact that it was details of individuals who were causing difficulties in projects or something along those lines. Was that the extent of the information that you were given about why he held information about those individuals?

Alan Wainwright: I can't remember exact specifics, but I am pretty sure that he showed me these database records to print off, and then he showed me that he had a description on that. It was 1997, and I can't recollect exactly what was said on that or the context of what was written in there, but there was clearly a description in there. As I described earlier, that is my recollection of that meeting 15 years later.

Q943 Mike Crockart: I am just trying to pin down what the purpose of the database was. It was quite obviously to make sure that those people weren't employed on projects because they were going to cause difficulties to those projects.

Alan Wainwright: Yes.

Q944 Mike Crockart: Was there specific mention made of trade union membership at that time, or was it more general?

Alan Wainwright: I can't remember; I am sorry.

Q945 Jim McGovern: When you first became aware of this, Mr Wainwright, were you immediately uncomfortable, or did you just think it was part of your job?

Alan Wainwright: Looking back, everybody had a little black diary before the days of iPhones and things, and I remember I had this guy Ian Kerr's number in this diary. At the end of the year, you would throw your diary away and you'd start again. I remember that I kept this. Every time I went to throw this diary away I remembered I had this Ian Kerr's number in that, and I probably didn't throw it away for three or four years because deep down inside me I knew that this could be important at some time in the future. It was very much the same when I moved to Drake & Scull. I am jumping ahead, but I am happy to jump back.

I had this memo and this list of 500 electricians, which were exchanged. I kept that for years and years, even though I moved out of the industry. I have it in my possession. Deep down something was telling me that something was not right with these pieces of information that I was holding on to.

Q946 Jim McGovern: Did you keep that diary because he was a good person to keep in touch with, or a nasty person?

Alan Wainwright: No; it was because I knew that something wasn't right. I knew that his telephone number could at some point in the future become very important. I remember that I didn't chuck this away, and then, when I really needed it and went looking for it, I realised that I had chucked it away.

Q947 Lindsay Roy: Let's be clear. As part of your job you were instrumental in creating a blacklist for Carillion. Is that the case?

Alan Wainwright: I don't think that I was instrumental in creating it. Basically, I did what I was asked to do as a manager, from an instruction from a director. My involvement was in setting this process up. Initially the lists were faxed off to Ian Kerr, but then, after about two or three weeks, he called me and said, "These are now going to go back straight down to Frank Duggan's office via Anne Johnson." I don't personally think that I have been, as you say, involved in creating blacklists. I have never contributed any information towards it or provided any information about anybody. I was just following an instruction, as an employee, to introduce the system.

Q948 Lindsay Roy: The system was presumably to create a blacklist.

Alan Wainwright: No; my instruction was to fax the names of anybody who applied for work via this process.

Q949 Lindsay Roy: Via Ian Kerr.

Alan Wainwright: Yes, via Ian Kerr. That was then changed to fax through Carillion's head office, via Frank Duggan's office, via his PA. After two or three weeks of getting this up and running, I then got the instruction, which I am pretty sure came from Ian Kerr, and I would have tied it up with Frank Duggan's office.

Q950 Lindsay Roy: What was the nature of your relationship with Ian Kerr and how frequently were you in contact with him?

Alan Wainwright: I met him once in 1997. I am pretty sure I met him again probably one or two weeks later for another small meeting. We then probably introduced the system; so I may have spoken to him once on the telephone. After that, I never spoke to him or heard from him again because we just faxed the names down to Carillion's head office as instructed. It went through Frank Duggan's PA. I am pretty sure her name was Anne Johnson. I have gone on record as saying Anne Johnson, but I know it was Frank Duggan because he was the personnel director. I would just get a call personally to me if somebody on any of those lists was not to go. As I have said in written evidence to you, I am pretty sure that was no more than five. If you go back to what Ian Kerr said to me in that meeting, we were the first company in the M&E sector to introduce that. He was looking to roll that out to all the other member companies who had associations with M&E companies.

6 November 2012 Alan Wainwright

As the noes are coming back in 1998–2000—and there aren't that many—I imagine as more and more M&E companies come in throughout the following years, when I have obviously left the industry, his database grows. I see it as a curve of the information Ian Kerr holds, because more and more checks come through, and more and more companies are giving him information as per the evidence I have supplied to you.

Q951 Lindsay Roy: Were there other people from the CA that you were in contact with?

Alan Wainwright: No.

Q952 Lindsay Roy: So it was just Ian Kerr.

Alan Wainwright: It was just him, and again it was very brief.

Q953 Chair: For what purpose exactly were the names being submitted to the Consulting Association? Was it because if they were in the CA's records they could be refused employment?

Alan Wainwright: They were only refused employment if I got a call back from Frank Duggan's office to say, "This person shouldn't go on site." All I am doing is introducing a process into the recruitment process, which is centralised, so all labour recruitment is coming through me. A list would go off once a week for anybody who had been submitted via the recruitment agencies. Agency labour is high turnover, because they go for the hours and they move and everything. We have 30 leaving a week and we have to get 30 more for the sites. My job was to just make sure those sheets went down to Carillion's head office, and then if I didn't hear anything back we would start up who we needed from the recruitment agencies.

Q954 Lindsay Roy: What prompted you to reveal this information about blacklisting?

Alan Wainwright: I am wondering how great an amount of detail you want me to go into.

Q955 Chair: Maybe we could come back to that. Maybe we could go through it more methodically. You weren't checking the names yourself, nor were you supplying information to the blacklist. *[Interruption.]* Some of my colleagues have other Committees and will go and come back. That is the difficulty for us, I am afraid.

Alan Wainwright: Chair, I usually make that impression on people.

Chair: No; we have to apologise for that. You didn't check the names yourself. You didn't supply information about people. You simply put in the list. The process of communication was that you sent things in and then stuff came back. There would be no paper trail in that.

Alan Wainwright: There is a paper trail down, because in our recruitment database I have actually written a couple of lines of code to put their names in and then to print off a reasonable spreadsheet-type report that we could fax down to Carillion's head office.

One other important point, which may be important in relation to data protection, is that I remember writing

a piece of code into the Carillion database that we had. If a name came back as a "no", then a marker would be put in the database to save us redoubling a check. I think that then makes Carillion a data controller legally. If you look at when I left, as I say, there were at most probably only five noes, and then I find out through the evidence—especially the evidence on Friday—that there were so many. Carillion are holding the data in that database, if they continued using it after I left, and I can't see any reason why they would stop.

Q956 Lindsay Roy: At that time, did you know why the decision was "no" when people were rejected?

Alan Wainwright: No, I was never told. I am pretty sure I was told that there would be no discussion. It would just be, "It's a no."

Q957 Chair: If you submitted a name and it came back as a no, you would then have an entry in your database so that, if the person reappeared, you wouldn't bother sending it on again.

Alan Wainwright: Yes.

Q958 Chair: That effectively means that Carillion themselves were also operating a blacklist.

Alan Wainwright: Yes, it certainly does. As I say, we only possibly at most had five noes when I left.

Q959 Chair: But the principle is right.

Alan Wainwright: Yes, absolutely, Chair.

Q960 Chair: I had not quite realised that point. Presumably, then, the assumption would be that other firms who were accessing the Consulting Association database were also themselves making notes in their own data equipment about individuals in order to stop asking the same question and being charged twice.

Alan Wainwright: It was common sense. I am a very practical person, which is why I got that job. You just look at things and say, "Let's not duplicate this." It is a very small task, Chair, in the many jobs I had. It was not as if I was just doing this and this was my job.

Chair: I understand that.

Q961 Lindsay Roy: How many companies are you aware of that were involved in this blacklisting operation?

Alan Wainwright: At what point in time?

Lindsay Roy: Initially and then thereafter.

Alan Wainwright: In 1997?

Lindsay Roy: Yes.

Alan Wainwright: I wouldn't know. All I was told by Ian Kerr was that he had this function with a number of major construction companies.

Q962 Lindsay Roy: He didn't mention these names to you.

Alan Wainwright: My recollection was that he mentioned Bovis, but when I have looked back at all of the evidence since, I have never seen Bovis anywhere. I don't know where, but I think I have just spotted a Bovis. I always think maybe I was wrong about Bovis and it might have just been me making a mistake, because, again, it was 15 years ago.

6 November 2012 Alan Wainwright

Lindsay Roy: I understand that.

Alan Wainwright: I just had this thing in my mind that he mentioned Bovis.

Q963 Lindsay Roy: Subsequent to 1997, what other information did you find out about companies that operated blacklists?

Alan Wainwright: Do you want me to move right ahead now?

Q964 Lindsay Roy: I just want you to give me an indication of other companies.

Alan Wainwright: I moved to Emcor Drake & Scull briefly, as I say, and then it is in the evidence I have submitted. I think it was August 2000 that the group personnel director of Emcor Drake & Scull, Sheila Knight, distributes a memo to the labour managers and me with a list of 500 mechanical and electrical operatives from three projects. One was the Pfizer contract and one was the Royal Opera House. Both of those were Balfour Kilpatrick, which was a Balfour Beatty subsidiary. The other one was the Jubilee Line extension, which was an Emcor Drake & Scull/Sir Robert McAlpine joint venture. She sent out this list, and that is the list I kept. That is when I find out that within Emcor something is certainly happening, but I leave soon after—it must be about a month after—and I really don't have much more to do with that then.

Q965 Lindsay Roy: That is evidence you have given us here, which is very helpful.

Alan Wainwright: It is certainly evidence I have given you. I have it all here. Do you want me to find out exactly where it is?

Q966 Lindsay Roy: No; we are just confirming that this is the information you are talking about.

Alan Wainwright: Yes. It is Appendix 4. I didn't want to fill this with the list of 500 names.

Q967 Lindsay Roy: How tightly controlled was the information about blacklisting?

Alan Wainwright: How technically controlled?

Lindsay Roy: How tightly controlled was it? How closely controlled was it?

Chair: How many people knew?

Alan Wainwright: Going back to within Carillion, I never discussed it with any of my department and I was never told to. It would only have been my boss that I discussed it with, and Kevin Gorman, who was the HR manager, who gave me the instruction that I was to meet Ian Kerr. That had come down from Frank Duggan.

Q968 Lindsay Roy: So it went to the very top.

Alan Wainwright: Frank Duggan was the group personnel director of Carillion plc.

Q969 Chair: Was it the same sort of structure in the other firms you were working for, whereby you knew and those above you knew?

Alan Wainwright: Let's move to Emcor Drake & Scull briefly. I don't think that they were operating the Consulting Association database then. Based on the evidence that I've picked up in the last weekend, it

looks like they moved on to do so. We are not dealing with the Consulting Association; we just have this exchange of names and the labour managers have an instruction to contact Michael Aird up at Balfour Kilpatrick—the Balfour Beatty subsidiary—because it is a list of 500, so if they are going to recruit anybody they have to check with him from that list.

I subsequently find out, and I will give you the evidence, that Michael Aird is all over the Consulting Association records as supplying those names into the Consulting Association database. Up until last week, I didn't know that.

Q970 Chair: Drake & Scull themselves were not consulting the—

Alan Wainwright: At that point.

Chair: That is right. They were not consulting the Consulting Association; they were contacting Balfour Beatty, who you believe were consulting with the Consulting Association.

Alan Wainwright: Yes, with Michael Aird. I then find out, and I have submitted it in written evidence to you, that those names from the Drake & Scull project eventually end up on the Consulting Association's database. If you go to 2(a), the list of company codes and companies, it is faded so I can't identify Emcor Drake & Scull. Michael Aird may have submitted the Drake & Scull names; I am not sure. We would have to look at the evidence.

Moving on, ask me your question again so we can recap on it.

Q971 Chair: Before Jim comes in, was the third firm, Haden Young, operating there directly?

Alan Wainwright: Yes.

Q972 Chair: They were consulting the Consulting Association directly.

Alan Wainwright: Yes.

Q973 Chair: Who knew in Haden Young?

Alan Wainwright: The personnel director, Prue Jackson.

Q974 Chair: Only he and you.

Alan Wainwright: She knew.

Chair: Sorry, "she".

Alan Wainwright: The person who told me that they had to run these checks was the labour manager, Neil Capell. These checks had to go via the personnel director's office through her assistant, Frieda. They were faxed down to her, so Prue Jackson was the contact with the Consulting Association. I can't say whether Neil Capell knew about the Consulting Association. All he said is, "We have to do these checks." I then phoned Prue Jackson and said, "Look, I've found out that we do these checks and they're coming down to you." We had a brief conversation and I said, "Is this the Ian Kerr Consulting Association?", and she confirms at that point that it is.

Q975 Lindsay Roy: Who was it that contributed the names for the blacklisting? Was it employment agencies, supervisors or who?

6 November 2012 Alan Wainwright

Alan Wainwright: Let us put that into context, based on the limited evidence that I have submitted to you. I have probably submitted 20 pages to you. From the 3,200 workers, there are probably 20,000 pages. We can agree it is somewhere between 10,000, 15,000 or 20,000, of which I have seen 20. That represents 5% to 10% of what Ian Kerr had. In those 20 pages I am able to identify everybody I had. Do you want me to name them? Frank Duggan is on there from Carillion. Liz Keates is on there accessing and supplying information. Kevin Gorman is on there. There are Sandy Palmer and Dave Aspinall from Carillion's own agency, NCS, in there. Michael Aird is in there from Balfour Kilpatrick, from the Balfour Beatty group. There is Prue Jackson, the personnel director. There are only initials on there, but I have done my very best to identify who those actual people are. Prue has acknowledged to me and confirms to me that she is dealing with him, so I know that PJ is Prue Jackson at Haden Young, the Balfour Beatty subsidiary.

Q976 Lindsay Roy: How was this service paid for?

Alan Wainwright: I never had anything to do with the payment.

Q977 Lindsay Roy: Did you see any invoices?

Alan Wainwright: No.

Q978 Chair: Were you aware of any transactions that occurred?

Alan Wainwright: No. What happened was that within Carillion I was based in head office, but I live in north Wales. We set up a central department in the Manchester office. I am pretty detached from head office.

Q979 Chair: But you didn't have anything to do with the payment aspect of it.

Alan Wainwright: I never had anything to do with that.

Q980 Chair: You didn't know the charging mechanism.

Alan Wainwright: I think it was 50p a name at the time.

Q981 Chair: Have you learned that since, or did you know at the time?

Alan Wainwright: I am pretty sure my recollection was that it was 50p a name.

Q982 Chair: So when this scheme was being operated, you knew that it was a charge per entry.

Alan Wainwright: Yes.

Q983 Chair: That justifies why firms would want to have their own mini-blacklist, as it were, to avoid having to pay the 50p over and over again. I can see that.

Alan Wainwright: Yes. I would just add to that, Chair, if you don't mind. I mentioned before that I saw this curve. I am out of the business, but Carillion have gone on record trying to say, "We didn't use this after a certain point." There comes a point where you can only check every person in the construction industry.

You have all these construction companies doing it and all these mechanical and electrical companies doing it. Eventually there will come a point where they most probably don't need to do the check because they have exhausted every person who is working in that semi-recruitment. If you look at companies like Crown House, we had 1,800 directly employed. Haden Young had a large directly employed work force. They would work for you for ever, so it is only the temporary agency workers that are working in the flexible market.

I am pretty sure, looking at what I have learned and the amount of information that has come through Carillion and Balfour and how this has escalated after I left the industry in 2000, that there comes a point where you most probably don't need to do too many checks from then on, five years later.

Q984 Lindsay Roy: You are saying there is about 80% or 90% saturation.

Alan Wainwright: That is my personal opinion. There are very few new people coming through. I was an apprentice electrician, but then apprenticeships stopped, didn't they, or reduced? I was an apprentice electrician in 1979, but then you find there are less and less apprenticeships. Even though Carillion will say, "We have this apprentice business", which I worked in, they get paid for those.

Q985 Jim McGovern: As you have said, you served your apprenticeship as an electrician. We had a couple of retired electricians from Dundee, my own home city, giving evidence here about how they ended up on the blacklist. When did you first become uncomfortable with it? You have said you would get correspondence coming back saying, "This person is a no."

Alan Wainwright: Yes.

Q986 Jim McGovern: Did you ever wonder why they were a no? Did you question it or did you just accept it? When did you first become uncomfortable with it?

Alan Wainwright: As I say, in my early days in my involvement with it, I probably had at most five noes. I say "at most"; it may be two or three. That was spread over a couple of years because it was in its infancy. It is not something that was a big part of my job. It was just a check. I would just get this phone call to say, "Do not let this person go on site."

Q987 Jim McGovern: Did you never wonder about it?

Alan Wainwright: Obviously, as I say, deep down; that's why I'm keeping this information about Ian Kerr. Deep down I am thinking that something is not right, but I leave the industry. I am out in 2000, after two years plus, so I am not working in the industry. It is really not relevant to me. Then I return and go to work for Haden Young. We have not started recruiting. We don't recruit when I start in mid-2004. We don't start recruiting until the following January. That is when I find out, as I have mentioned to you, within Haden Young, the Balfour Beatty subsidiary, that they operate this procedure.

6 November 2012 Alan Wainwright

It was almost at the same time, because I am making lots of changes to this department. I conduct an investigation into the operative bonus scheme and produce a report on a 30-year operative who is basically involved in fiddling the bonus scheme, for want of a way to put it better.

Q988 Jim McGovern: Obviously you were off the tools by this time.

Alan Wainwright: Yes; I am the manager. I was off the tools aged 25, when I set up my own recruitment agency. I had a discussion with Prue Jackson, and I then find out that Haden Young are operating this procedure and the name checks are starting to go through there. At the same time, I make this disclosure about being asked to cover up fraud by the regional director. I make this disclosure to Prue Jackson, the personnel director. It wasn't a good thing to do, because they basically just turned on me and froze me out. It was a pretty difficult time, and I ended up being off work sick with work-related stress.

Then we go through the process of me going through the grievance procedure to raise a grievance about the way I had been treated. It was in the first part of that grievance procedure that I raised the issue of the company operating this blacklist procedure. I said, "I am really concerned that because of what's happened you are going to put me on it and prevent me from gaining employment." It all depends how much detail you want to go into on that.

I then go through two grievance procedure meetings. I am off sick. I lose £15,000 in income. I am not losing that money for a reason. I am raising this constantly in correspondence and they are just ignoring it. Prue Jackson is just ignoring it and denying it. I even write to David Beck, the managing director, and he is ignoring it. I just end up resigning the following January.

Q989 Jim McGovern: Were you raising it because you felt it was wrong, or because you thought you might be on it?

Alan Wainwright: Both. As I say, from when I find out that this is going on to when I actually make this disclosure about the bonus scheme it is only a matter of weeks. It is not as if I stayed with this system for six or 12 months. These two incidents coincided.

Q990 Lindsay Roy: Have you ever attended any Consulting Association meetings?

Alan Wainwright: No.

Q991 Lindsay Roy: So you have no idea what was discussed at the meetings at all.

Alan Wainwright: No, not at all.

Q992 Lindsay Roy: No feedback from Ian Kerr as to how the thing was organised.

Alan Wainwright: Nothing at all.

Q993 Chair: Did you know that any meetings took place?

Alan Wainwright: No. Do you know what? I didn't think that people were meeting him. I just thought we set up this checklist.

Q994 Chair: That resolves a whole area of questioning, if you weren't aware that there were any meetings. That has covered a number of points very helpfully. Did you ever discuss blacklisting at all with any other managers in other companies? Presumably you speak to people in the industry on a whole number of different occasions, such as networking, Christmas dos and stuff like this. Did this come up in conversation at all? Was this discussed?

Alan Wainwright: I can't recall. There may have been a passing conversation back with a guy at NG Bailey, but I am talking as early as 1997. That was with the labour manager, John McDonald, I think. There may have been a passing conversation. If I can remember, the conversation was that he had a list in NG Bailey, or they had their own system. That is the best I can remember.

Q995 Chair: Were you personally aware of how any of the names went in and how people were put on the blacklist as such? I want to be clear about this. Did you have any knowledge as to why people got themselves on the blacklist or particular examples, apart from just the general idea that they were troublemakers or stuff like that?

Alan Wainwright: The only example I can give is the one I have given in my written submission to you. There was a conversation with the HR manager, Kevin Gorman, at Carillion. We had had some issues on a project. I have actually said it was a project in Hull, but in my written submission I have put that I think it was Grimsby. I am from north Wales and, with no disrespect to Grimsby or Hull, they are both similar and it was a long time ago. There were two guys on there who were the union representatives representing the workers. I went to an ACAS meeting in Leeds. I think we got to the bottom of it all and sorted it all out, but, as best as I can recall it, I remember Kevin Gorman in a passing comment to me saying that they had been "well taken care of". He was aware that I had introduced this checking system. That is as best as I can recall it.

Q996 Chair: The assumption "well taken care of" would mean they would then be put on the blacklist.

Alan Wainwright: Yes. In the evidence that has come into my possession last Friday, those two guys are in there. I have produced evidence to you and I have detailed it.

Q997 Chair: That is right, but there is a difference between evidence that has come into your possession and evidence that you can personally attest to. Unless I am mistaken, the only cases of people being put on to the blacklist of which you are personally aware are these two with Kevin Gorman. Is that right?

Alan Wainwright: Yes. The good thing about it for me is that I have been saying all these things for years and now the proof is coming forward that absolutely everything I have said is the truth. The Kevin Gorman thing is there. It is like the Jubilee Line extension and Pfizer and all of that. That is all coming through. Only last Friday I have seen that that is in the Consulting Association database. This is the first time I have ever seen files that have not been redacted.

6 November 2012 Alan Wainwright

Q998 Chair: You weren't personally colluding at any stage with other managers, with union officials or anybody else to put people on blacklists.

Alan Wainwright: No.

Q999 Chair: Given that personally you know how only two people got on the blacklist—and that was because they were union representatives doing “uniony” things, as it were—

Alan Wainwright: Yes; there was an issue over pay on site.

Q1000 Chair: You don't know how the others got on. You would assume that it was for roughly similar things, but you have no direct knowledge about it.

Alan Wainwright: I have no idea.

Q1001 Lindsay Roy: You have no evidence, for example, that it was around health and safety issues.

Alan Wainwright: I don't have any evidence of that.

Q1002 Chair: I want to clarify this. In terms of Ian Kerr's activity, were you aware of him pushing his wares anywhere else around the industry? We have heard how he got to you. Were you aware of any sign of him anywhere else in the industry?

Alan Wainwright: No, because I leave the industry. I am out in 2000 and I don't come back until four years later. Then we are not recruiting until the following year. I find out and then, as soon as I find out, based on the way they treat me, I am then off sick. So it is probably only two months or a month perhaps.

Q1003 Chair: If it had been something very high profile, it might none the less have come up in conversation when you were meeting people.

Alan Wainwright: It didn't.

Q1004 Chair: We just want to clarify some of these things. There have been rumours of blacklisting flying about in the building industry for a long time. In many ways it could be described as an open secret. Why do you think it took so long for firm evidence to emerge?

Alan Wainwright: One, it was obviously very covert and very secret. Secondly, look at what happened to me. Look at what happens when you stand up. People were probably very scared to come forward and mention things. The first answer is probably the more logical one. It was just so very covert and kept between a tight—

Q1005 Chair: Why was it covert?

Alan Wainwright: Like you said, they don't want it to come out, I suppose.

Q1006 Chair: On the basis that it was indefensible.

Alan Wainwright: Yes. Preventing people from getting work is not a very nice thing to do, is it?

Q1007 Chair: Obviously we are trying to clarify what evidence there is about the scale of it. We are trying to separate the general assumption from a lot of people in the industry that it was widespread from the actual evidence we have, which is a bit like a light in a dark room. There is a narrow beam and we have

just happened to identify where the beam shines. We are not entirely clear what else there is in the room. The difficulty for us is in trying to clarify with you whether or not there was any other information floating about at that time that would have helped to illuminate the situation.

Alan Wainwright: There certainly wasn't. If you look at what I am saying—that the 20 pages I have submitted are part of 20,000 and that then represents 5% to 10%—I only get that last Friday. I then work all weekend because I am matching all this up to my written submission to you. I am not going to say too much, because you might want to keep some of that private, but I go into great detail.

Q1008 Chair: If you have sent us anything in writing, then that goes on the website and is then public, unless it was specifically marked “Confidential” or “Secret”, in which case we then consider whether or not it should be retained. All the evidence we get goes out into the public domain.

Alan Wainwright: What I am saying is that I only got evidence last Friday and I have been involved in this for six years. As you say, you got a bit of light and last Friday I got a bit more light. It then enabled me to give you some more light. We need more of this.

Q1009 Chair: Are you aware of anybody involved in operating the blacklist being punished, suffering any sanctions, being sent for retraining or anything like that?

Alan Wainwright: Am I aware of anybody?

Q1010 Chair: Anybody who was actually involved in the blacklisting process as personnel directors.

Alan Wainwright: The ones I have named. I have named them all. Do you want me to name them again?

Q1011 Chair: No. I asked whether or not you are aware of any of these people being punished in any way for operating the blacklist.

Alan Wainwright: No.

Q1012 Chair: Neither were we. We genuinely don't know the answer to some of these questions and we are asking you to try and cast light on them.

Alan Wainwright: Yes; I understand that.

Q1013 Chair: Have you ever been aware of any of the professional associations of personnel directors or human resource professionals and so on saying things about blacklisting, which were then circulated to their members to indicate that they were disapproved of?

Alan Wainwright: No, Chair.

Q1014 Jim McGovern: My own background is in the construction industry. I was a tradesman as a glazier. Sometimes I had a struggle trying to get employment. Do you believe that blacklisting is still going on in the construction industry?

Alan Wainwright: I didn't. As I say, I have been out of it again now since 2005 so I don't have any direct knowledge. I am only going on my personal opinion. I think to myself, “I don't think it is”, but then I find out that the Consulting Association only recovered 5%

6 November 2012 Alan Wainwright

to 10% of the files. I think, “What happened to the rest of the information? What has been done with that?” If he had this fully functional in the construction industry, and then in 1997 he is rolling it out into the M&E sector—and I have said to you that this is his business then—if you look at what I was talking about with the curve, it becomes saturated, and so he is probably running out of revenue income from construction and is now moving into M&E. What other sectors has he moved into? I don’t know, but, if you look at the logical process of his business, has he carried it forward and sold the process into lots of other sectors? It would make sense that he did.

Q1015 Jim McGovern: My background is in the construction industry, and people in my constituency know that. They also know that we are carrying out this inquiry. Over the past three, four or five months, numerous people have approached me and said, “It’s still going on; I can’t get a job because I am a shop steward or a trade union rep.”

Alan Wainwright: Let me come in there. I have put in my written submission to you about Kevin Gorman, who was at Crown House. When David Clancy from the ICO contacted me in 2008, I wrote in a previous submission to you that I said, “Go and speak to this guy Kevin Gorman; he is at Bristow Helicopters in Aberdeen. Go and speak to Frank Duggan.” Kevin Gorman then moves from the construction industry to Aberdeen as an HR manager. Bristow crews the rigs. That is what I have suggested to the Committee. If there is anything in the offshore industry, then maybe Kevin is the person to speak to.

The other thing on my mind, while we are focusing on Scotland, is this. In Carillion’s submission, they try and belittle it, saying, “We don’t do much work in Scotland.” Every construction site I have worked on, either on the tools or being responsible as a manager, has had Scottish workers on it. They are all over the UK. I am sure you have considered that. Carillion and Richard Howson tried to say, “We don’t do too much work in Scotland.” Scottish construction workers are everywhere I have ever worked and all over the UK. That is the relevance of this being a national thing.

Q1016 Jim McGovern: As regards the trade union involvement, my wife worked for a trade union for most of her working life. It was the AEU and now it is the AEEU—

Alan Wainwright: I was a member of the EETPU and then AEU when I was an apprentice electrician. They keep merging into other unions.

Q1017 Jim McGovern: It became Amicus and then Unite.

Alan Wainwright: Yes; now it is Unite. It will be something else soon, I believe.

Q1018 Jim McGovern: You are saying that Amicus, as was then, were aware of blacklisting.

Alan Wainwright: Yes.

Q1019 Jim McGovern: Do you feel that they didn’t highlight it? Were they involved in it?

Alan Wainwright: Let me tell that story. I am going to a grievance meeting. Basically, I have been ganged up on by the directors about whom I have made the disclosure. These guys have all worked together, as I have put in my written submission to you, in Haden Young for 20 years. I raise this with Micky Tuff. He is the regional union representative. I am off sick at the time. He says, “Let’s meet in this pub the next day”, and we meet at this pub somewhere in Shropshire. He gives me the forms and says, “We will get you rejoined into the union straight away and I will come to your grievance meeting”, where he will come into possession of the blacklisting. I am going to go to a grievance meeting and say, “I am concerned that you operate this blacklisting procedure. I think you are going to place me on it.”

He comes to the meeting. He comes to the second meeting. Around Christmas, before I have resigned, he says that he will write to head office to ask them to support me in a tribunal should I ever need to go there. We were talking about December/January. After I resigned he basically just went cold on me. I am pretty sure I have even found more. I have put in my written submission to you that I write to him three times. In fact, I write to him more than three times. I phone him and he is not taking my calls. My clock is running out because I have three months from the point I resign to start any proceedings. He is running my clock down, but I don’t know that at the time. All I know is that he is being really evasive.

In the end I write to him and say, “Look, you have not come back to me. You are ignoring me. I am going to have to pursue this myself.” I go along and speak to a barrister and a solicitor. I track him down and get hold of him. I speak to him. Do you mind if I just look at my evidence to see what the exact conversation was?

Jim McGovern: No.

Alan Wainwright: I only find these contemporaneous notes in a book about three or four weeks ago when I was speaking to Guney, Clark & Ryan, who were the solicitors who were taking the High Court action. I had been helping them and they asked me lots of questions. Even though I have put on my website that Micky Tuff goes cold on me, I can give you a record that I took of the conversation at the time.

Basically I got in touch with him and said I was concerned that the union had had this blacklisting information for seven months and he was doing nothing about it. His excuse was, “We were waiting for your grievance procedure to end.” I don’t need to look at it. I said, “The grievance procedure ended on 6 December, as you know, and I resigned in January.” His response was, “No comment”, and then the phone went down. I then knew that there was a problem there and they’d gone cold on me.

I then write to the then General Secretary, Derek Simpson. Without going into too great detail, I have put my three letters to him on my website. They are there and I have linked you to my website in my written evidence. They are quite in depth, and I couldn’t recall them here. I am asking for his help. I am asking why he is not doing anything about it now that they have had this evidence. He doesn’t even appear to write to any of the construction companies.

6 November 2012 Alan Wainwright

I was a senior manager. As I mentioned earlier, I had held senior positions. I was not some madman on the loose making wild accusations, although that is what they were trying to make me out as. We now have proof that I wasn't. There is a bit more, but did I answer your question? Sorry, I go on a bit.

Q1020 Jim McGovern: Yes; I think you did.

Alan Wainwright: There is one other point. Derek Simpson did write back to me twice. For some reason, I have absolutely everything else but those letters. My barrister at the time might have them. I have since written to the union, and again all of that information is on record on my website. I am asking Gail Cartmail if she can look into this. This union has now had all this blacklisting information for years and years and they have not done anything about it. I ask her for copies of the letter and she just says, "I am not going to do anything about it." I think she put it as "a wasted opportunity", but you can see the correspondence and all the letters on the website. They have all been up there for a few months now. I am not very happy with her, obviously.

Q1021 Chair: You obviously indicated there that part of the reason you pursued this was because you were worried about being put on the blacklist. You claimed that after 2006 you yourself were blacklisted.
Alan Wainwright: Yes.

Q1022 Chair: What evidence do you have for that?
Alan Wainwright: Can I just go back because something has popped into my head, and then can you just ask me that question again, Chair, if you don't mind? When I was at Haden Young I interviewed a guy for a managerial job called Neil Shah. I met him in the Haden Young offices. He was a pretty nice guy and he had a good knowledge of the industry. I looked at his CV and he had lots of small periods of employment with big gaps. I remember speaking to my boss, David Brindley, just to report back and to say how I felt about him. I said, "I thought he was a pretty nice guy but he's just got these gaps in his employment." I distinctly remember David Brindley saying to me, "Don't worry about Neil Shah. I've had him checked out. He won't be working for us. He's a troublemaker."

That then is my first indication that staff members are being discriminated against because I am already aware that the company now operates the blacklist. I would love to have a look through all the records this evening. I have since contacted Neil Shah's wife because he has passed away. I didn't know that. I tried to get hold of Neil Shah and I found his address. I have written to his wife. Unfortunately he passed away last year. I received a letter back from his wife to say that he passed away.

Sorry, Chair, go back to your question. Do you see that that links to the concerns about staff members?

Q1023 Chair: After 2006 or so you have alleged that you yourself were blacklisted.

Alan Wainwright: Yes.

Q1024 Chair: What evidence do you have for that?

Alan Wainwright: I have my file from the Consulting Association, which is redacted. That means I don't know who put me on the blacklist. It is three pages. I can let you have a copy. Would you like a copy?

Q1025 Chair: It would probably be helpful to add that to the record, if you don't mind.

Alan Wainwright: It is basically three pages. I am on the Consulting Association's database because I have given information to tribunals. I would mention one thing. In 2006 I produced this website. I helped a few electricians with their cases against their employers. There was one case—Acheson and others v. Logic Controls—where the hearing was in January 2007. I give evidence. I produce a witness statement, the same as I have done for some other people, and they win that case. That is the first opening. I don't know what my judgment is because I don't find my judgment out until March. We win that one and I remember thinking, "God, I wish I'd have had this Chair", because he was just so understanding. I swear he was rolling his eyes on day one. It wasn't good.

My blacklist file is about giving information at tribunals. The point about this is that the tribunal was against a company called Logic. That was a two-man-band subcontractor of a subcontractor of Balfour Kilpatrick, who was the main contractor. You have this very small company. We turn up for the tribunal and they have Ronald Thwaites QC as their barrister and a solicitor. Straight away I am thinking, "This guy's famous. This guy represents the stars. What's he doing here representing this company Logic Controls?" You have to look back at the transcript for his line of questioning, but he basically comes after me along the lines of, "You have a vendetta against Balfour Beatty", and, "Why are you mentioning Balfour Beatty?"

My answer to that—and it was a very genuine answer—was that I understood that the case was a joint case, Logic Controls v. Balfour Kilpatrick. Because of some legal terms, the barrister has decided there wasn't enough to deal with the Balfour Kilpatrick issue. I just said that was my answer. We found out we won that tribunal. My blacklist file is for giving information at tribunals. There are press cuttings of the Logic one there. Linking to the staff position, there are names of other members who were staff members and who were on the file.

Q1026 Chair: I want to be clear. What are the bits of your file that have been sent to you that have been redacted? Are they the names of the people who put you on the blacklist?

Alan Wainwright: No. I don't know who put me on the blacklist. My best guess is that because it was a Balfour Kilpatrick project—I had just given evidence against another Balfour subsidiary, Haden Young, and I don't know my outcome—it would be someone in Balfour Beatty.

Q1027 Chair: Let me just be clear about this question of the redacted file. Certainly when files have been made available more widely they have been redacted, but I was under the impression that people were getting an unredacted version of their own file.

6 November 2012 Alan Wainwright

Are you saying that you didn't get an unredacted version of your own file?

Alan Wainwright: I didn't get an unredacted version of my own file. The only files I have seen recently that are unredacted are the ones I was sent last Friday. Those files that I was sent last Friday are in the public domain because they form part of a tribunal that has already taken place. I am pretty sure that they have been sent to you.

Q1028 Chair: You would get your file from whom?
Alan Wainwright: From the Consulting Association.

Q1029 Chair: From the ICO.
Alan Wainwright: Yes.

Q1030 Chair: I was under the impression, obviously erroneously, that, when the ICO were providing people with their own files, those were unredacted.

Alan Wainwright: No; they are redacted. One electrician, Dave Smith, has clearly gone through some legal process to get access to that information. I don't know what process he has gone through. I am pretty sure that in his evidence he has submitted all that to you.

Q1031 Chair: I want to clarify something in terms of the position of whistleblowers. Clearly, when you came out with all of this, there was no protection for you in these circumstances. Do you feel that the situation is still such as to provide no protection to whistleblowers, or are things better now?

Alan Wainwright: Absolutely not better now. One of the key things for me in this is the whistleblowing legislation. People are terrified. Look what happens if you come forward. You need only read through all the detail in the written submission of the way I was treated and how long it took to conduct two grievance meetings. They know I am not earning any money. The reason I know I am being frozen out is because I have already had a discussion with Prue Jackson about the blacklisting and we have acknowledged that it exists. Then she is denying it to me later on, so you know you are talking to somebody who is blatantly telling lies to you. You know you have a problem there. I asked for her to attend one of my grievance meetings because I wanted to speak to her face to face and say, "We have had this conversation and you are now denying everything in writing." Peter Barnes, who is the other director who conducts the grievance meetings, says, "I've decided that she shouldn't come." I wanted to have a face-to-face conversation with her, look her in the eye and say, "You know we have had this discussion about the electrician Michael Shakespeare." There was an electrician, Michael Shakespeare, in that period, and Prue Jackson had called me to say, "He shouldn't go to site; he's a no." Going back to the whistleblowing legislation, if you look at what happened with me, the person I had made the disclosure against and raised the issue about the fraud had been with the company 30 years. The regional director I had made the protective disclosure against about trying to cover up the fraud had been with the company 25 years. I then find out that the person tasked by Prue Jackson, the HR officer, who

had been with the company for 15 years, had also worked for the company for 25 years and had emanated from the Glasgow office with Alex Currie, so they were pals. I also learned later on from my tribunal that it was David Beck who decided that Lawson Elliott should investigate my concerns. David Beck had been with the company for 40 years. So all these people—you get it, don't you? You get where I'm going with it, don't you, Chair? They spent 68 hours a week with each other for 25 years.

The whistleblowing legislation just didn't cover that eventuality. I personally feel that in that situation, where you have directors who have worked there a long time, or in any situation when it goes so high, you need somebody independent. It is not somebody independent within the company, because you have this group of people who have worked together for so long. In fact, some of them have probably never worked anywhere else.

Q1032 Chair: Is there anything in particular that you think would make that situation much better for whistleblowers?

Alan Wainwright: Absolutely—an independent party investigating what is being put forward. I understand that you most probably can't have that in all cases, because we have to be reasonable about what can be applied in industry, don't we? If you had a helpline, you would basically have everyone ringing it and you would need departments of people. There are certain situations where people need to go.

I looked recently at this news about Jimmy Savile and all these people in these care homes who haven't come forward. I see the Hillsborough evidence, and we find out about these policemen who aren't coming forward. Nobody has come forward to say, "Look, we were asked to redact our statements." We are seeing more and more evidence across different industries of people who are just not coming forward. There is a reason why they are not coming forward. That is the key to it, Chair. That is what we have to get to the bottom of. What is stopping all these people from coming forward? The whistleblowing legislation just doesn't help them.

Q1033 Chair: We are picking that up. On another point, are you aware of any links between construction companies and either the police or security services that would have led to people being put on the blacklist?

Alan Wainwright: No.

Q1034 Chair: That was never gossiped about.

Alan Wainwright: No. Don't forget that I have not been in this industry, but the answer is no.

Q1035 Chair: Similarly, there is the question of company security officers attending Consulting Association events. You indicated to us earlier on that you had not been to any, and you weren't aware of any of them taking place.

Alan Wainwright: No, I wasn't.

Q1036 Chair: So you are not aware of anybody going to anything.

6 November 2012 Alan Wainwright

Alan Wainwright: No. I was aware since, because obviously I have evidence that has been given to me last Friday that meetings go on.

Q1037 Chair: There is obviously a difference between evidence that has come to you that you can pass on to us and evidence that you yourself might be able to give us.

Alan Wainwright: To the best of my knowledge, I have not.

Q1038 Chair: Let us now turn to the Carillion evidence that they have submitted to us in writing. You have expressed some comments, similarly, to us in writing. Do you want to expand on that at all, or just run through some of the main points with us for the record?

Alan Wainwright: Do you mind if I have a quick look at it? Would that be okay? As you can imagine, there is just so much here.

Chair: I appreciate that.

Alan Wainwright: What I generally picked up from the Carillion one was that they were trying to say that nobody at Carillion had anything to do with this; it was just a subsidiary and that ended in 2004. I then get back in touch with them and say, "Look, that certainly isn't the case." I think I then speak to Dave Smith. I said to Dave, "What initials do you have?" Apart from this weekend I have probably only spoken to Dave once or twice in the past. It is not like I am part of this whole blacklist support group or anything. He reels off some initials. He has got an FD, which is Frank Duggan. He's got Kevin Gorman; he's got a LK—Liz Keates. Then I find out he's got Sandy Palmer and Dave Aspinall from Carillion's in-house recruitment agency. You also have a file with John Ball, who was the Carillion group HR manager. You have senior people in Carillion who are nothing to do with Crown House projects.

I think I worded it to you that, if what Dave was telling me was true, then these are all these people. I am looking at Sandy Palmer's NCS project and Connah's Quay power station. Sandy Palmer was my first boss and I didn't know he had anything to do with it back then, but he was only my boss for about three months. Then Roger Robinson became my boss very briefly.

I then get this evidence at the weekend. If what Dave was telling me is true, these are these people within Carillion. That is when I produced my second submission. I am saying, "Here are the Consulting Association files", which are the ones I submitted as appendices. I have highlighted John Ball, Frank Duggan and Sandy Palmer. There are a couple from NCS. These are all Carillion people, not Crown House. We could go into greater detail on that, Chair, but I think that sums it up. If you are saying that everything is going to be published on the web, then I go into much greater detail, as you have seen.

Q1039 Chair: I think those are all the points that we wanted to raise with you. As I indicated to you earlier on, we normally ask whether there are any answers you have prepared to questions that we haven't asked.

Are there any points you want to make that you think we have not covered adequately so far?

Alan Wainwright: I know you are saying that you just have this small light and you are looking into it. What is starting to happen now is that certain MPs are saying, "We think the Information Commissioner should write to all of these people." I am thinking to myself, "What's that going to do?" They have obviously suffered some detriment. They are not going to have the money to take a legal case. What needs to be done is a lot further than just writing to these people. They are going to need help. They are going to need £50,000 if they are going to put any case together, with barristers' fees being £250 an hour. You will need a barrister and a solicitor. I just had a barrister. It was an unfair battle.

Q1040 Chair: I think we took the view that a lot of people out there didn't know that they had been blacklisted. We had witnesses in front of us who had themselves been blacklisted and who were basically saying that they wondered if it was their own personal failure. Even if they decide that they can't take legal cases forward, having an explanation as to why after all these years they have found difficulty finding jobs would provide them with a degree of explanation that was insufficient—

Alan Wainwright: You are absolutely right—it's insufficient.

Q1041 Chair: But it was better than nothing. That is why we took that view. We were very disappointed at the relatively small number that had been identified and informed that their names were on the admittedly small proportion of the blacklist that had been discovered. That was an explanation for that.

Alan Wainwright: I would just like to make a point about David Clancy. As much as he only recovered 5% to 10% of anything, he has done more than anybody else I have seen to bring this matter to this stage. This is my gripe with Derek Simpson: if David Clancy hadn't picked up on this and Derek Simpson did nothing about it at the union, this would still just be going on. There are key things that have just happened to bring us to this meeting today. One of them could have just not happened.

When we look at David Clancy and anybody who is thinking about being critical of him, I have managed departments, as I have said to you before, with all these things going on. Looking at the enormity of the task, he would probably have needed an army of people to drag the other 90% away and examine it all or whatever happens. He did more than anybody else. Without him, this would just all have still been going on, because I gave up hope. I tried hard and I tried hard, but I then have to start getting on with my life. I only get back involved when he phones me to say, "Look, we have uncovered this", and then it all came out in the news. So I put the blogs up just to put the information in the public domain and it helps me because I don't have to think about this stuff. I don't want to think about it. I have done enough and I have to get on with my life.

6 November 2012 Alan Wainwright

Q1042 Chair: No, no, I understand that. Are there any other factual points that you think we haven't touched on that might be helpful? We are obviously going to go forward and bring in a series of other witnesses at one time or another from firms and so on. If not today, then perhaps you would write to us. That is the other thing that we say to people. If there is anything that occurs to you after leaving here that you wish you had said to us, or you thought you maybe got slightly wrong or the balance was wrong, by all means put it in writing. We will make it publicly available through the website. Again, all material that we get in, as the Clerk said before, is covered by privilege in these circumstances.

Alan Wainwright: I have a few things I want to talk about. I have written to politicians and I have had responses back. I have written to my MP and the MP for Chester, Stephen Mosley, and my local MP David Hanson. I have written to people like Jack Straw. They have all been aware of this, and they just write back with things like, "We brought in regulations in 1999", and that's it. In 2007 I met with Bernard Carter at the DTI. He is some senior employment person. He was eventually tasked with drafting the regulations in 1999. I met him in January 2007 and again nothing was done. Last night I read through some of the letters of the politicians who evaluated this as I looked back through them and they said, "We have read Alan Wainwright's judgment", and they considered my judgment.

I want to read out the final paragraph from my judgment because it is very important. This is from Alan McGarry, who was the Chair. "As to the alleged blacklist, our finding is that none existed (at least in relation to the claimant's grade of employee) and Mr Wainwright's fear that he would be placed upon one had no sound basis other than his own, rather wild assumptions arising out of an increasing mistrust of his employer which he has been unable to show was in any way justified."

That is how the Chair saw it; so then that is how the politicians are seeing me. All along I am telling the absolute truth about everything in this. That is why I have written to you in this submission and backed it up, because everything I have said was the absolute truth. I am only now able to start backing this up with evidence and that is what I have done over the weekend.

There is one final thing, and I finish with this in my written submission to you. If you look at these thousands of workers, how do we establish what detriment they suffered? It probably varies from people who have gone away and have actually done very well for themselves, but there is obviously then a decline in scale.

I mention this in my report, but I had a conversation with an electrician called Steve Acheson. He was the lead electrician in the Acheson v. Logic case, at which I gave evidence. He mentioned to me that he had learned that three electricians who were on the Emcor Drake & Scull Jubilee Line extension project had committed suicide. I called him last Friday. I said, "Look, Steve, I am attending the Select Committee. I want to take you back to that conversation and that point you made to me. Where did you hear it?" He said he heard it off a guy called Steve Kelly. I said, "I want you to phone Steve Kelly and tell him I am attending the Select Committee", because people say things and exaggerate them and make things up. He phoned me back 10 minutes later and said, "I have spoken to him and he gave me two names of electricians on the Jubilee Line extension project who had committed suicide in their 30s."

I can't personally directly link that to them being blacklisted, but we don't yet know about the detriment. You are right about this little light. We are right at the very beginning of finding out exactly how people have suffered. Going back to your point, there may be an explanation, but maybe that won't be good enough in certain cases.

Chair: We do intend to keep digging into this and have a string of witnesses coming to us. We have not decided yet whether or not to produce an interim report and then a final report, but we do intend to keep this matter going forward. It only falls to me to thank you very much for coming along today and being so open with us in your evidence. I am conscious that one of my colleagues has just come back in order to allow somebody else to go. I don't know whether or not Mike had a question he was bursting to ask. Thanks very much for coming back.

All I can say is that we thank you very much for coming along to see us and being so open and frank with us in your evidence.

Tuesday 27 November 2012

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Iain McKenzie
Pamela Nash

Simon Reeve
Alan Reid
Lindsay Roy

Examination of Witness

Witness: Mr Ian Kerr, former Chief Officer of The Consulting Association, gave sworn evidence.

Q1043 Chair: Welcome, Mr and Mrs Kerr. The clerk will now put you under oath. (*Mr Ian Kerr was sworn*) Thank you.

Could I welcome you to the Scottish Affairs Select Committee? As you are aware, we have been conducting an investigation into blacklisting and various aspects thereof that flowed on from an inquiry that we had into health and safety. For the record, could you introduce yourself and also your wife beside you?

Ian Kerr: My name is Ian Kerr. My background, very briefly, is that I was a primary teacher and a secondary teacher in Lozelles, Birmingham, and in Warley, the west midlands, having trained as a teacher, up until 1969. I left in 1969, ostensibly to earn enough money to get married. I joined the Economic League as a training officer in 1969 up until 1993, the time of the demise of the Economic League. I was an employee of the League. In 1993 I was invited to become the chief officer of the Consulting Association, up to its demise in 2009, as a salaried employee.

This is the first time that I have spoken in public about the Consulting Association, except for a very brief phone call with a newspaper reporter, who sent me a copy of an article that he was proposing to publish, inviting my comments. This was in March 2009, soon after the Consulting Association was wound up. As I had a brief conversation with him and was misquoted, I have subsequently had no conversations with any reporter or website operator since. I am happy to answer any questions from my witness statement.

Q1044 Chair: That is helpful. Maybe I should explain for the record that your wife is sitting beside you as an assistant. She also worked for you and she is there as a memory prompt, but it is not appropriate that she answers questions since, to be fair, she wasn't called as a witness.

Ian Kerr: Good. She was actually employed as the bookkeeper.

Q1045 Chair: Could we start off by asking you to explain how it was that the Consulting Association was formed and whose idea it was to establish the Consulting Association?

Ian Kerr: Let me go back to the Economic League. Within the Economic League there was a group known as the Services Group, which was composed of the construction company members who were already, for the most part, members of the Economic League. Because of the problems that the industry perceived it had—I am going back to the early '70s,

before my involvement in these matters—the industry decided it wanted to take steps to cover itself because of the national strike it had had in the early '70s, so that it would not be caught in that way again. Subsequently, for a further subscription, those companies wished to form what was called the Services Group. That was operated within the Economic League on behalf of the construction companies. Economic League staff were given an additional role—or a role—which was to look after the construction companies' needs, which were very wide-ranging. I became party to that as the League's fortunes changed and the training activities wound down. I was one of the last people doing training with the League; if it was available and wanted, it carried on. That was my role.

I then moved across to being one of the co-ordinators. Each region of the League had a Services Group co-ordinator. I eventually became the midlands region co-ordinator up to the point when the League ceased operating and the Services Group companies chose to continue as an operation. It, effectively, held a series of meetings with various chairmen. I was invited to some of these, at which point I subsequently was asked if I wanted the role of chief officer. It was then organised and set up by the steering committee as an unincorporated trade association. I was its main employee, with a contract of employment, PAYE and salaried.

Q1046 Chair: Let me clarify. Companies have a corporate personality, but presumably it was individuals within the companies who organised the establishment of the Consulting Association. Who were the first officers of the Consulting Association? I have seen the constitution, so I see that there were officers. Who were they?

Ian Kerr: The constitution allowed for a chief officer—that was me—a chairman, a vice chairman and allowed for various other people who were supporting the chairman, effectively.

Q1047 Chair: Who were they?

Ian Kerr: Who were they? At its inception, the first chairman was the person who was there guiding it towards becoming the Consulting Association. There had been previous chairmen between the League and this point—that was Cullum McAlpine of Sir Robert McAlpine.

Q1048 Chair: Who were the other officers?

27 November 2012 Mr Ian Kerr

Ian Kerr: Eventually, there was a vice chairman, who was Tony Jennings.

Q1049 Jim McGovern: What do you mean by “eventually”?

Ian Kerr: It was feeling its way in the early days, so it was not a matter of bang-bang-bang putting this person in place or that person in place and so on. It had a chairman.

Q1050 Jim McGovern: Initially, it was you and Sir Robert McAlpine.

Ian Kerr: It was who? I am sorry.

Q1051 Jim McGovern: Initially, it was just you and Sir Robert McAlpine.

Ian Kerr: No, I am sorry.

Q1052 Jim McGovern: You said “eventually”.

Ian Kerr: The Consulting Association set itself up with those companies that had seen that it needed to have this organisation. So there was the gentleman who became the chairman and there were representatives on a committee that was then in place to set it going of the other companies who wished to be members.

Q1053 Jim McGovern: As the Chair said, who were these people?

Ian Kerr: Who were they? I can tell you the companies much more easily than—

Jim McGovern: No, no. It is the names of the people.

Q1054 Chair: Maybe you could tell us the companies first, and then you could name—

Ian Kerr: I am trying to remember this because I thought you would be asking. There was a representative from John Laing. His name was Dennis Madden, I think. This is going back a long time.

Chair: I appreciate that.

Ian Kerr: God rest them; some of them may not be alive. Tarmac had a representative, John somebody, whose surname I forget. Amey had a representative, who I think was named Ray Randall. Amec had a representative, who I think at the time was Dennis. Again, I am sorry, I can’t remember his surname. I know it looks as if I am not wanting to, but I literally can’t.

Chair: I understand.

Ian Kerr: At Ballast Wiltshier that was a gentleman called Keith Horner. Taylor Woodrow’s representative was Ian Leake. For Walter Llewellyn—I think they were there at the start—that was a Tim Llewellyn. John Mowlem had a gentleman who was the company secretary, whose name I can’t recall. Balfour Beatty Construction had a representative. Trafalgar House had a representative; that was Peter Coles, now retired, I know. Balfour Beatty Civil—I can’t recall who that was at the time. Higgs & Hill had a representative, Mike somebody. Kier had a representative, a gentleman called Ernie Boswell. Norwest Holst had a representative, who was a gentleman known as Frank Nolan, now deceased. Edmund Nuttall had a representative, who was a lady called Bridget May. Morrison Construction—

Q1055 Chair: I am sorry, but we are just checking about the microphones. Can we turn them up at all? Where is the microphone lady?

Ian Kerr: Shall I carry on?

Chair: Yes, please.

Ian Kerr: Morrison Construction’s gentleman was John Morrison. Willmott Dixon had a representative, Ben Goodman, and Sir Robert McAlpine—Cullum McAlpine.

I think, to the best of my ability and memory, those are the companies that were party to the inception. I have to say that this is taken from a list from 1996, and there is a reason for that. With regard to all the paperwork on company files that related to subscription charges, invoices for quarterly use and meeting charges, I think our accountant said that we had to keep those for nine years. When we came to devise a list for my court case of companies that were members, we could only go back as far as 1996. I have tried to extrapolate from that the membership that I think was correct in 1993. I may have got one or two mixed up.

Q1056 Chair: I see; I hadn’t realised that. So your accountants will hold all the paperwork relating to the financial affairs of the Consulting Association going back, what, nine years?

Ian Kerr: I kept the audited accounts. We had audited accounts each year, which were signed by the chairman and the vice chairman, and other members of the committee, if they wanted to, at an annual general meeting, which was held once a year. So, yes, I think there are two years where these accounts are missing, for whatever reason.

Q1057 Chair: But the others still exist and are available.

Ian Kerr: Yes, they do.

Q1058 Chair: I read in your report that things had been destroyed. Have they been destroyed?

Ian Kerr: I did destroy everything.

Mrs Kerr: Yes.

Chair: You are not allowed to speak.

Ian Kerr: It goes back to the ICO, really. The ICO came and raided our offices with a warrant for an immediate search. They took away our quick reference system. They took away the body of carded information that was in an open, tall, double-drawer cabinet, which was unlocked for dealing with the day-to-day business. I was the only one in the office, contrary to what the ICO gentleman, Mr Clancy, thought. He thought there was somebody else in, but there wasn’t. My wife was in hospital at the time. She wouldn’t have been in on that particular day. He took these cards away. He took all of the invoices that were in filed books, which were available too. They returned all of that in photocopy form to us and kept the originals.

Up to the court case, I kept these. Frankly, I didn’t know what was happening, where we were going and what use they would or would not make of them to whoever, plus there was an awful lot going on to do with the winding-up of the business, which I undertook to do on behalf of the membership from a

27 November 2012 Mr Ian Kerr

personal point of view because I didn't want to be seen to be on the wrong end of bad debts or anything of that sort.

After the court case, I stopped and considered what to do with all of this. The obvious thing to do was to get rid of it all. It was, in all honesty, so thoroughly burnt that there is no chance of any of it remaining. This was information that had been sent back to me by the ICO.

Q1059 Chair: I have seen all the original material from the ICO because I went up there on Monday. What I am seeking to clarify is the accounts of the organisation.

Ian Kerr: I am sorry.

Q1060 Chair: Your copies of those were burnt as well, but, presumably, your accountants would still have those, would they?

Ian Kerr: Only in terms of what an accountant needs to do legally, I would say.

Q1061 Chair: That is helpful. Other than that—

Ian Kerr: I've still got the audited accounts.

Q1062 Chair: Oh, you've still got the audited accounts.

Ian Kerr: The actual audited accounts I've still got.

Q1063 Chair: Fine. I think it would be helpful—

Ian Kerr: I am sorry. I thought you meant the paperwork that backed up the point, because each year I had to provide a long list of stuff to the accountants from which they devised each year's annual accounts. That, I think, would have gone.

Q1064 Chair: I think it would probably be helpful if we had a copy of those, if that is acceptable to you. The clerks will take a note, and we will write to you about all the things we are agreeing as we go, but we would certainly want to have a copy of the—

Ian Kerr: Certainly, because it is to our advantage.

Q1065 Chair: Indeed. I want to be clear that when the Consulting Association was established, all the companies that were involved in establishing it had already been involved with the Economic League, and for them it was a logical carry-on from the wreckage of the Economic League. Is that fair?

Ian Kerr: Yes. By and large that was the case. Certainly two dropped out. There were two previous chairmen at the transitional period. One dropped out; he was a gentleman from Bovis. The reason for that was that they, in their words, ceased to become a major construction company and moved into house building. That was my understanding, but I could be corrected on that. That is the way I saw it. So he stood down. They ceased to want to carry on and be a member of the embryonic Consulting Association. The other gentleman was from G. Percy Trentham, and they were taken over and lost the trading name. He lost his role in the company so he stood down. It was at least two. Then there were possibly others, which I would have to think carefully about.

Chair: Okay. That clarifies that point.

Q1066 Simon Reeve: Could you help me to understand, on a day-to-day basis, how the Association actually operated?

Ian Kerr: Assuming we are up and running as the Association.

Q1067 Simon Reeve: Yes; from the time when you were up and running.

Ian Kerr: The member companies paid an annual subscription and they also paid a fee per use they made when they accessed the body of information.

Q1068 Simon Reeve: What sort of sums are we talking about for subscription and fees?

Ian Kerr: At the very start, I think it was £3,500. It was realised by the committee that this had been pitched too high, so it came down to about £2,500. We had a fair surplus, so there was actually a year—I think it was in the third year—where they didn't pay a subscription. This was backed up by the quarterly charge uses for the use that the current members were making of the referencing service. Can I just explain why we had to have a year without fees?

Q1069 Simon Reeve: Let me just understand the figures.

Ian Kerr: The reason was that as an unincorporated trade association—

Q1070 Simon Reeve: Can I just understand the figures first? If I am a company and I subscribe, I pay an annual fee of initially about £3,500, but it dropped to £2,500.

Ian Kerr: And it then went up and down for the rest of the time.

Q1071 Simon Reeve: Do I then pay every time I phone for some information or do I have a quarterly fee that covers as many phone calls as I want?

Ian Kerr: It is the latter, but it wasn't per phone call. Actually, it was done by fax.

Q1072 Simon Reeve: We will come on to the method, but let me just deal with the cost. How much was—

Ian Kerr: It was a cost per name that was put through to the office from a member to access their own information.

Q1073 Simon Reeve: What was the quarterly rate?

Ian Kerr: It was a per item, per name, rate. Again, that varied. That went up and down. There were two ways of getting the information.

Q1074 Simon Reeve: At the moment I don't know at all how much it was, so you give me an idea.

Ian Kerr: To start with, I have a feeling that it was £1 or £1.50. Again, that went up to £1.75 to £2, but it came down.

Q1075 Simon Reeve: In terms of access per name, it was £1, £2 or a figure of that sort of magnitude, and in terms of annual subscription it was £2,500 or a figure of that sort of magnitude.

27 November 2012 Mr Ian Kerr

Ian Kerr: I think when we were put out of business, as it were, by the ICO, the subscription was £3,000.

Q1076 Simon Reeve: What was the individual fee at that time, in 2009?

Ian Kerr: That was about £1.75—£2.20, I think.

Q1077 Simon Reeve: As to the mechanics of making an inquiry, you said it was not by telephone. I interrupted you, so please would you give me an understanding of that?

Ian Kerr: We had a very clearly established routine. I can give the longer answer, which perhaps would be the most helpful, which is that each company had a main contact. Their details were kept in what was called a red binder—a red book—per company. It was by company reference number and by name. There was sometimes a second contact should that first contact not have been there for any reason. In addition to that, there was a blue book, which consisted of the personnel departments' users, who were the day-to-day clerical users, who would be in charge of amassing those names for whichever trades the company was putting together for a particular project. Say they wanted 100 names or, say, 20 people; they would probably put an advert in and accept an application from 50, out of which they would probably eventually take 20. Part of the process of deciding who to take was to put those names through the Consulting Association.

Q1078 Simon Reeve: Perhaps I could stop you because you are jumping ahead of what I am asking. What I really want to understand to begin with is, if I am sitting and working for a particular company and I want to contact the Consulting Association to spend £1.75 on a particular name, what are the mechanics of that? Do I phone you up and say, "Can you tell me about Fred Smith?" Do I send you a fax, or how do I do that?

Ian Kerr: The main contact was the head of HR at director level or HR manager level. He controlled, or was in charge of, the personnel—the HR recruitment department. He would have one or two people—two or three, maybe, at the most, probably—who were the people who had our telephone and fax number. They would devise lists of people they were considering employing and fax those through to us with their unique reference number on. We would check them against the lists we had, which we could reference with a single line number. In most cases they were all clear—

Q1079 Simon Reeve: Let's just stick with the mechanics. The mechanics are that I'm involved in a project, I've got a list of people I'm thinking of employing, and either myself, at a senior HR level, or one or two people I trust, have got your fax number and, if there are names on the list that we want to check, we send you a fax with the name, you receive the fax, you go to your book of information, you look up the name and you then send back a copy of the information that you hold. Is that the mechanics of it?

Ian Kerr: Not quite. They didn't send information through of people they were concerned about. They

would send a whole list through. They could put an advert in their local paper for electricians, bricklayers and what have you—a mixture of people. The whole list would come through. Most of the time we would go back, by telephone, identify the list and say to the HR department girl or man, "All clear." If there was a name that we had information on, we would say to them, "All clear, except a certain name", and that would be the end of the conversation. I would then speak to the main contact.

Q1080 Simon Reeve: So for the £1.75 or whatever per name, it's not that you were given a single name and asked to comment on it; you were given all the names and asked to go through the list and, as it were, put a mark next to anyone about whom information was held and to provide that information.

Ian Kerr: Yes. It didn't come back to the HR department. It was deliberately withheld from them because it went to the main contact on the basis that he was a well-experienced IR HR manager. He would know the site, or he would find out which site it was; he would know the potential for that site to have particular problems, which may be linked to whoever it was. So he would have three choices, which were to recommend—he recommended to the site, not me; I gave him the information as it was on a card, pure and simple, with no suggestion as to what he should do with it, no comment and no interpretation. I gave it to him as boldly as it was on the paper.

Q1081 Simon Reeve: You would have to accept, would you not, that, if you sent back a list of 30 names and in respect of three of those people there was a mark of whatever colour and comment, there is some—at least implied—criticism of those people?

Ian Kerr: That is true, yes. I would accept that, but I wouldn't be asked to comment.

Q1082 Simon Reeve: But you wouldn't need to, would you, because by attaching the information to a particular name that makes whatever point is being made?

Ian Kerr: At the same time, if you have looked at the cards that were held, there would be notes on them, because we recorded who the inquirer was, the company, and the person's initials would be held as the main contact. It could be shown that some companies took a harder line, to be fair, and didn't employ because—I think this is what you are saying—the name was there. Some would say, "Well, that was a long time ago", or "He's not to come along with any of the others,"—say there were half a dozen involved in a project. "We'll take a chance. We will note and monitor." In other cases, if the information was quite old or they thought it was minor, or if they knew the person it had come from and they thought that person was too hard, too harsh, they would say, "We'll take him on." This depended, to a degree, on the company's philosophy. Some were more hard and earnest than others.

Q1083 Simon Reeve: What was your salary as chief officer?

Ian Kerr: At the start it was £20,000.

27 November 2012 Mr Ian Kerr

Q1084 Simon Reeve: What was it in '09 when you finished?

Ian Kerr: When we ceased trading, it was £47,500. The only additional amount I had was a half-yearly bonus, which we all had, paid in December—sorry, a half-month's bonus, which was half the December salary as a bonus.

Q1085 Simon Reeve: At the end the total remuneration package was over £50,000.

Ian Kerr: Yes, given that I had life insurance, BUPA and a car.

Q1086 Simon Reeve: So you had a car, life insurance, BUPA, a salary of nearly £50,000, plus half of December's salary as a bonus.

Ian Kerr: Yes. There were no other payments made of any sort off any books. We had a very strict accountant, so I wouldn't want to have done that.

Q1087 Simon Reeve: That is quite a lot of money just to read some information off a card.

Ian Kerr: The actual services we provided were, I would say, threefold, which was the maintenance of this bank of information; anybody who was a member had the right, by virtue of being a member of the Association, to add information in. I didn't vet it or filter it. My role was to accept it from them and install it into the system. So there was that side of the business. The second part of it was that we held a series of meetings for members who attended. They were held in private of course. Some of them were held on company premises; the majority were held in hotels. Three were held in London for ease of convenience; one started being held in Scotland. We stopped that because it was too far for people to go. The industry was evolving. Instead of having regional IR people, you tended to get a chief IR person from the centre coming along.

Q1088 Simon Reeve: You are putting information on to the cards. I know that is a way of describing that part of the job. You are facilitating and perhaps chairing meetings. You said there were three areas. What was the other one?

Ian Kerr: I chaired some other meetings. I devised the agendas. The agendas came from the members.

Q1089 Simon Reeve: What was the third area?

Ian Kerr: The other area was that I read—I obtained—I made it my business either by subscription or trawling around a lot of the very interesting, I have to say, radical bookshops that existed in London. There used to be a very good one in Camden, which closed, the Compendium. There was another one in Charing Cross and in Caledonian Road called Housmans. They used to be helpful. There was one in Leamington.

Q1090 Simon Reeve: What were you going to them for?

Ian Kerr: To pick up the sort of publications that would not normally be found in W H Smith, shall we say, or a normal bookstand.

Q1091 Simon Reeve: Give me an idea.

Ian Kerr: As an indication, I had a subscription to the *Socialist Worker*, *The Socialist*, *Labour Research*, which was a very good radical and statistical magazine, and to a lot of anarchist magazines, which kept coming and going by the nature of anarchy and anarchists. There was a whole range of fringe publications around then.

Q1092 Simon Reeve: So, armed with the literature that you have just described as activists in fringe literature, the database of names and information, and being funded by the companies that you have described, what was the perceived problem that the Consulting Association was trying to solve? Why were you doing what you were doing? To what end?

Ian Kerr: Companies could find that a lot of their time was taken up as a result of groups or individuals who took action outside the normal machinery that was very well established in the construction industry for the various sectors. There were different books—the blue book, the red book and the green book, which were the industry's bible. If there was a problem, you took the book and you could look it up and see the committee or a platform by which matters could be discussed. By and large, that was to allow the companies to get on with what their role was, which was to construct—to fulfil an obligation, a contract, on time, get off the site on time, fulfil its shareholder obligations, and fulfil its obligations to 98.9% or whatever of its—

Q1093 Simon Reeve: To put it bluntly, there were people the companies regarded as troublemakers.

Ian Kerr: Yes.

Q1094 Simon Reeve: And your job was to help them not employ those people by providing information as to who they were and what their background was. I am not suggesting they were troublemakers. I am saying that was the perception, and you facilitated their being not employed.

Ian Kerr: It was to bring these names to their attention. It wasn't to facilitate them not employing. It was so that it was drawn to their attention and they would make a decision.

Q1095 Simon Reeve: What would be the purpose of drawing the information to the attention of a company unless it was to allow them to recognise an individual and not employ them? There could be no other purpose to doing it.

Ian Kerr: Yes. I understand that, except—

Q1096 Simon Reeve: But do you agree with it?

Ian Kerr: Not quite, because, as I said a little earlier on, there were varying shades of what they chose to do. For instance, in certain instances, people were quite well known to them. They knew that if they turned them down there would be trouble. So perversely, it was easier to take them on in some cases and put them in a position where they weren't perhaps—

27 November 2012 Mr Ian Kerr

Q1097 Simon Reeve: But you were not involved with that aspect, were you?

Ian Kerr: No.

Q1098 Simon Reeve: Companies came to you with a list of names.

Ian Kerr: Yes.

Q1099 Simon Reeve: Presumably, they had no information about any of the people on the list. They asked you to indicate if any of the people on the list were in the records, and they would then make a choice about whether to employ them or not.

Ian Kerr: That is correct.

Q1100 Simon Reeve: What you were doing was working with the companies to allow them to weed out certain people who would not then be employed.

Ian Kerr: Certain people, yes.

Q1101 Simon Reeve: Were there any other companies or organisations performing that function as well as the Consulting Association?

Ian Kerr: Not that I can say with certainty. There were always suggestions. The meeting platform ranged across a very wide range of topics. People could say openly whatever they wanted. It was an open forum. Occasionally, suggestions may have been made there. I can't think of an instance.

Q1102 Simon Reeve: Who do you think may have been involved in doing what we have just described the Consulting Association as doing?

Ian Kerr: There was an instance when a company called Rosser & Russell ran into some problems on site with some people who we knew about. Rosser & Russell were an M&E company that was taken over by Norwest Holst, which became Vinci in France. It transpired that they had used a service somewhere and these people had not been flagged up to them. So the contact I had in Vinci brought them on board as a user within that company and the service.

Q1103 Simon Reeve: Somebody came to you because another body who had been doing the same task had not in fact flagged up some people, and they lost confidence then in that supplier of this service and they brought their business to you.

Ian Kerr: Yes. There were various individuals who, over a period of years, had accrued a mass, because of their being in the industry, or bank of information.

Q1104 Simon Reeve: For a time there were at least two bodies—yours and whoever it was who failed the company that became your clients.

Ian Kerr: I wouldn't dignify it quite so far as to say that.

Q1105 Simon Reeve: How would you say it?

Ian Kerr: I don't know.

Q1106 Simon Reeve: Somebody came to you because the previous people they dealt with let them down.

Ian Kerr: I didn't hear from the other people that they were using this other company. That is one instance.

Q1107 Simon Reeve: That is one instance. So at that time there was AN Other company and yourselves.

Ian Kerr: At least, or AN Group of Companies or whatever.

Q1108 Simon Reeve: I think we are in danger of agreeing. I think we agree on that. Thank you, Chair.

Ian Kerr: Could I just very quickly tie up the threefold operation, Mr Reeve? This involved me reading all of these publications I received, cutting from them and doing, three or four times a month, a mail-out, in three or four categories, to the companies who were interested in specific aspects. So it was threefold. In a way, they all interlinked: referencing service, meetings where some site problems could get discussed, plus the transfer of undertakings, plus personal service companies. It was a whole range of things—wage negotiations, anything—and the cuttings, where my mind would be directed to what to look for, which came out of the meetings, by and large. So it was cut down to three things.

Q1109 Simon Reeve: The primary function of the organisation for which you were chief officer was to flag up people against whom information was recorded and whom your clients may not wish to employ. That was the primary function, wasn't it?

Ian Kerr: I think that is fair to say. I would be kidding myself, and I think I was kidding myself, into thinking that it was a threefold operation. I was perhaps the only one who thought that.

Q1110 Chair: Can I come back to the question of the press cuttings? As I said, I saw the material that is now held by the Information Commissioner. Quite a number of the cards had envelopes clipped to the back within which were cuttings that named specific individuals, and the cards to which they were attached were the cards of the individuals to whom the cuttings referred. The press cutting service, presumably, was also to identify people who were politically or industrially active. Is that correct?

Ian Kerr: It actually did do that, but that wasn't the prime purpose. It was to give a wider overview of what was being said about the construction industry. Some of the individuals whom we had on these lists were actually named as authors in some of these small pieces, I seem to remember. Again, their major article in, say, *Socialist Worker*, or what have you, about a particular site problem, may mention one or two of these people. It would be in an envelope attached, which would be easier than sticking it on to a card.

Q1111 Mr Reid: Was the information that was held on these cards about individuals always information that was critical of the individuals?

Ian Kerr: Was it always critical of the individuals?

Mr Reid: Yes.

Ian Kerr: Well, I suppose, yes; I suppose so. It was factual. The point is it was factual. As far as I could see, it was factual, because I was in the hands of the

27 November 2012 Mr Ian Kerr

providers. There was no question. They were the experts—it was how they put it to me.

Q1112 Mr Reid: Would it be fair to call it a blacklist then?

Ian Kerr: A blacklist, by my reading or as a dictionary definition, is a list of people that you wouldn't want or are there because they are to be excluded. Let's put it that way. Coming back to the answer I was giving earlier, it wasn't always the case. It wasn't a true and genuine blacklist in that if their name was flagged up they wouldn't be employed. Full stop.

Q1113 Mr Reid: Would you think it fair to suggest that if an individual was on your database, it would make a prospective employer less likely to employ them?

Ian Kerr: Was the employer likely to what?

Q1114 Mr Reid: Would the fact that an individual was held on your card index make a prospective employer less likely to employ that individual?

Ian Kerr: I have to say that if that was the case, yes. I have to say further, for what it's worth, that as time went on we realised that some companies were much harder in their response to us just having a name, or having a name which was only partially identified, and we asked them for more information. By asking them for more information, it meant sometimes that that was the end of the matter; they wouldn't employ.

Q1115 Mr Reid: Is your argument, then, that it is not a blacklist because being on the list didn't mean that the person wouldn't be employed? Therefore, is your argument that it would only be a blacklist if being on the list meant that they were never employed?

Ian Kerr: If it meant they were never employed just because they were on the list, I would say that it wasn't a blacklist in that understanding of the term. Some companies were more strict in their response. Others were much more lenient and prepared to give people a second chance, if you like. Also, as time went on, with certain companies, if people's names hadn't cropped up since they were originally put into the system, which could go back for up to 10 years or more, we didn't bother to tell them because we knew what their response would be. I say "we"; this is me and the office staff. Therefore, we did not reply with that information. We gave them the all clear because we felt that there would be a most definite wrong being done.

Q1116 Chair: I will come back to some of the information that is on some of the cards. I remember, in particular, one example, where somebody had been dismissed for having cigarettes underground, and there was an entry on the file from an employer—I think this was about 10 years later—saying that because this had been so long ago they were willing to employ him. It then recorded that they did so. So it was not automatic in all cases. Perhaps it is splitting hairs, but that was the only case I saw in the files I

looked at that said that somebody had been taken on despite having had a card against them.

Ian Kerr: Could I add to that very quickly? Should that name have cropped up again from a different company, we would have given them the last inquirer's decision as well as the original information. So that would have been an attempt to be fairer to balance it up. One would assume that that company would have decided, "If that was the attitude of the last person inquiring, we will take the same attitude." You have to remember that these main contacts all knew each other very well from all the different meeting platforms that they met on, plus the fact that the Association held quite a lot of meetings where they got to know each other well. They would know the style of their opposite number in the companies, their personality, their approach and their company's approach to these sorts of matters.

Q1117 Jim McGovern: I must confess that I am getting a sense here of, "It was a long time ago and I was only following orders." If I picked you up correctly, you would be able to influence a prospective employer for the cost of either £1.75 or £2.20 on whether that potential employee would be able to put a meal on the table that week. Your influence could direct that.

Ian Kerr: I influenced them inasmuch as I provided their own information back to them without comment as to what they may or may not want to do about it. Does that answer your question?

Q1118 Jim McGovern: I have a supplementary. You mentioned your annual salary. Was there any sort of performance-related pay, such as by how many columns you might increase on?

Ian Kerr: If you went through the audited accounts carefully, and if you asked our accountants, they would tell you no.

Q1119 Jim McGovern: No, I am asking you.

Ian Kerr: No. Absolutely not. I have taken an oath; categorically not.

Jim McGovern: Thank you.

Q1120 Iain McKenzie: Mr Kerr, you must have got more information from your subscribers than just a name to check. I would expect them to have given you addresses, dates of birth, and national insurance numbers perhaps. If they gave you all that information—and that is quite a bit of information on, say, 50 people at one time—you said you cross-referenced them and you would come up with one; you would back to the subscriber what that had rung up in your list. You would be left with 49 names with, as you said, national insurance numbers etc. What did you do with those? Were you ever encouraged to take them forward? Were you ever encouraged to spread them out and see what came back to add to your list? What did you do with that additional information that was sat there?

Ian Kerr: I didn't understand the last bit. What did I do with which bit of information?

27 November 2012 Mr Ian Kerr

Q1121 Iain McKenzie: The information that was left over. Once you were asked to check 50 names, and as you said, occasionally, you would come up with, you would feed that back to the subscriber and you would be left with 49 names and quite a bit of information as well. What happened to that confidential information? Were you encouraged to take that forward and do a further check? Did you use that yourself, or did you retain that for some future inquiry?

Ian Kerr: We would reply by telephone to the person from the HR department who had sent the 50 names in. They would be told, "One name we haven't cleared." I would speak to the main contact and he would get back to me so as to give a decision. The other names should be shredded. Once we had recorded the numbers so that we knew how to charge them quarterly for the use they had made, whether it was £1.25 or £2 per name, we would shred those at the end.

Q1122 Iain McKenzie: So you are saying that you never took that additional information in and put it into your sources to see what came back to add to your listing. They were just shredded.

Ian Kerr: No, because if we had no information on them they were of no use whatsoever for our purposes.

Q1123 Iain McKenzie: So you never used it to build up your list.

Ian Kerr: The only way that the lists were added to was when a main contact chose to put a name into the system. That was the only way names came up.

Q1124 Pamela Nash: Mr Kerr, earlier you were very clear that you were actively looking for information. Just to be clear on Mr McKenzie's question, were you ever asked to seek information on an individual that you did not already have information on?

Ian Kerr: Very occasionally in a meeting forum, possibly. The way the system worked, because it was a very close-knit effective network, people wouldn't have the need to do that. If the name had not come from themselves or one of the other members, they would have a—they would know, because of what I have explained to you, that I wouldn't know.

Q1125 Pamela Nash: But there were occasions, even if they were few, where you were specifically asked to find information on individuals that you didn't have on your records.

Ian Kerr: No. I was asked on one occasion, very early on in the days of the Association, which I remember was a meeting in Scotland. A name was raised. It was a name that was brought up. Bear in mind that this was a meeting in Scotland of more local people, and the way the service was working hadn't, possibly, been fully fleshed out, which was probably in the first year. The question was asked, "Has the Association the facilities to look into other people—to look into a particular individual?" I could see the way that was going, to be honest with you. We certainly hadn't got the resources to do that and we hadn't got a mandate from the Association to do it, so my answer to that was no.

Q1126 Pamela Nash: Do you remember who asked you to find that information?

Ian Kerr: Who asked? I can picture the meeting. It was a group of people in the Trusthouse Forte Hotel at Glasgow airport. I know Amec were a company there, and there would probably have been one or two of the Balfour Beatty representatives there. I say "probably", but I can't be certain. I don't want to say things which are guesses.

Q1127 Chair: Could I come back to the question of the names? As I mentioned before, I went to the Information Commissioners and I saw the ring binder with the four columns of names. The names in the ring binder were typed up in different colours. There was black, red, green and blue. Was there any particular significance to the colour of the name?

Ian Kerr: They were colour-coded, I think.

Q1128 Chair: What did the colours mean?

Ian Kerr: Black meant IR general—group, groupings, a grouping.

Q1129 Chair: What does "IR" mean? Does it mean "industrial relations"?

Ian Kerr: Sorry, yes; industrial relations.

Q1130 Chair: So those were people who were involved in trade union activities, were they?

Ian Kerr: No, not necessarily.

Q1131 Chair: What does "IR" mean then?

Ian Kerr: IR means the whole gamut. It is a term that is not used these days, really, isn't it? Construction is a transient industry. A company comes along and sets up a site out of the blue from nothing. It needs to get a lot of information together quickly. It needs to know the HR people, senior people, the site level people, and it needs to know who their opposite numbers are in the trade unions. That is the only way you are going to get the site moving. If you don't, you've got problems because it was literally down to—

Q1132 Chair: I am sorry for interrupting. Maybe it would be helpful if you told us what the other colours were, because there were lots of names.

Ian Kerr: Green certainly meant people who were into environmental problems. In the mid '90s the industry was, literally, taken unaware by the people who came along and built tree houses, cut the hydraulic lines on the equipment and put sand in the tanks, because at the time it was quite easy to win a contract and put a route through an area. There wasn't a lot of attention paid to what got knocked down and what site of special scientific interest was filled in along the way.

Q1133 Chair: So green related to environmental activists. They were not building workers or construction workers.

Ian Kerr: No, that is correct. At the time the industry didn't know so we had a separate meeting forum to discuss all these matters. The targets were the M11, Twyford Town, the Manchester second runway and the Bath eastern bypass. It was those sorts of

27 November 2012 Mr Ian Kerr

contracts, which were hit very badly. The M11 had a very large oak tree that stood in the way for ages, which became a postal address and had letters addressed to it. I had a lot of sympathy for these people because it brought the industry round to realising that you certainly had to be a darned sight more careful—

Q1134 Chair: If there was a name in green ink or green type, they were presumably not people about whom the companies were phoning you to consider employing, were they?

Ian Kerr: As it turned out, that was the case at the time. There were examples that cropped up at these meetings where some people gained employment in construction companies and worked within, as you would expect.

Chair: I see.

Ian Kerr: There are examples where they occupied the Tarmac offices in Wolverhampton and stopped the place from operating for a while. One person got on to the switchboard of a company.

Q1135 Chair: So these were people who were environmentally motivated, who might have been seeking employment with construction companies.

Ian Kerr: It turned out to be that way. At the same time we collected a whole body of information that, in turn, was of use to the industry, and the industry in fact put a paper to the Federation of Civil Engineering Contractors, which was to tell the companies that were going to consider applying for an environmentally sensitive contract what to bear in mind before they did that, which I thought was very positive.

Q1136 Chair: Let's take red, then. What did red mean—the ones that were typed up in red?

Ian Kerr: I think actually it was orange. It wasn't red.

Q1137 Chair: Maybe I was slightly colour-blind. It certainly wasn't any of the other colours. All right—red or orange then.

Ian Kerr: I think those were M&E workers—mechanical and electrical—which was a division.

Q1138 Chair: I see. So it was a category of trades.

Ian Kerr: Yes.

Q1139 Chair: It wasn't a political reference or anything like that.

Ian Kerr: No, no.

Q1140 Jim McGovern: I didn't quite hear. What was orange?

Chair: M&E—mechanical and engineering, I presume you mean.

Ian Kerr: Yes, which was a division.

Q1141 Chair: You see, in the west of Scotland we would never use orange or green to categorise anybody. Therefore, we have a slight reservation about that because it has a different connotation there.

Ian Kerr: What's that?

Q1142 Chair: It is a religious connotation. Now, blue, presumably, does not refer to conservatives, I take it.

Ian Kerr: No.

Q1143 Chair: Or Rangers, indeed. What did blue refer to?

Ian Kerr: I am just trying to think what blue meant. I think they were old, in the main. I don't mean old people.

Q1144 Chair: I didn't go through them myself. I couldn't quite remember. Black was what—the rest?

Ian Kerr: Black was everything else, yes.

Q1145 Chair: So we had the four columns. We had the name, the date of birth, the national insurance number and then the trade. In the top right-hand corner was an update date. I presume that, every now and again, you combed the files and took out people who had either left the industry, were dead or something like that?

Ian Kerr: Or were added in.

Q1146 Chair: When you were adding people in, did that mean that you had to retype the whole list or did you just add them in at the bottom?

Ian Kerr: You have hit the nail on the head there. To prevent us having to completely type out a whole list of single lines on A4 paper, which we held alphabetically, we kept that information on a stick that we used on a computer, so I would just put the stick in and delete a name or add a name and enter another page. If it was "Gone on to", you would have to do the next page. That was for speed.

Q1147 Chair: That element of the files was held electronically, on computer.

Ian Kerr: For that purpose only.

Q1148 Chair: Are they still held? I am asking are they still held.

Ian Kerr: Oh, are they still held? No. It was part of the destruction of everything.

Chair: That was destroyed; fine. Simon, you wanted to come in.

Q1149 Simon Reeve: Can I ask you very briefly about something you said to Mr McKenzie? Were the inquiries always made by fax?

Ian Kerr: By and large, yes, except if there were less than 10 names. If they put out a late request with two or three names or one name later on, then they were allowed to telephone us with under 10 names.

Q1150 Simon Reeve: The answers were always given by telephone, you said.

Ian Kerr: Always by telephone. We identified the list.

Q1151 Simon Reeve: If the request had been made by fax, the fax was shredded.

Ian Kerr: They were shredded at the end of each day.

Q1152 Simon Reeve: At the end of the process, the system that you had in your office meant that there

27 November 2012 Mr Ian Kerr

was no evidence whatsoever that the process had ever taken place.

Ian Kerr: Except that there were totals per company for invoicing purposes.

Q1153 Simon Reeve: Yes, but no detail.

Ian Kerr: No.

Q1154 Mr Reid: On the information that was being held about the workers, was it always about political activities?

Ian Kerr: No. It could have been about political activities. It goes back to the days of the problems in the industry in the early '70s. A lot of that was motivated by people who were anti-capitalism, therefore the Communist party at the time, the Socialist Workers' party and the Militant Tendency, which later became the Socialist party.

Q1155 Mr Reid: What other activities would be recorded as well as political activities?

Ian Kerr: It was as wide as the person who was the main contact chose to put information in.

Q1156 Mr Reid: If the worker was perceived to be lazy, is that the sort of thing that would be included?

Ian Kerr: I have got some notes here, if that helps. The information in general related to specific site incidents, which could be working conditions, hours worked, overtime rates and bonus payments, where these were seen by an individual or a group, and they wished to cause an outbreak of dissent on a site.

Q1157 Mr Reid: Was it information about people's activities that were seen to be disruptive rather than comments about how good a worker they were?

Ian Kerr: Oh, yes, very much so. Threatening behaviour would be another category; major thefts and persistent drug problems—this is where there was distribution, perhaps on site. Certain sites were so sensitive that if somebody came in on a sensitive job, unless they were fully 100%, there would be a major, major problem. The company had an obligation to ensure that that didn't happen.

Q1158 Mr Reid: So there would be lists of people's disruptive activities.

Ian Kerr: Yes; individuals or groups with grievances against the contractor.

Q1159 Mr Reid: Would it be fair to summarise it by saying that the database was information about disruptive activity? Would that be a fair comment?

Ian Kerr: It was activity that, one way or another, impeded the business of getting the job done to a particular logistical process in a time scale. Time meant money, I suppose. There were activist groups that we held information on, and their political affiliations, when these were seen to be against a company's interest. There was a body called the Joint Sites Committee, which sought to stand outside the normal negotiating machinery to try to influence relating to money, travel time and things like that. If there were strikes going on against a union's own directives, such as Pfizer Sandwich, which was an

unofficial strike, which was the Amicus union at the time or Unite, as it is now, who repudiated it, which is the term, and therefore they didn't back the strikers, that kind of information was recorded.

Q1160 Lindsay Roy: Mr Kerr, could you enlighten us by telling us how many people worked for the Consulting Association and how they were recruited?

Ian Kerr: I was the chief officer throughout the whole period. My wife worked as the bookkeeper and did clerical work on the referencing side. I, effectively, was the only full-time person. There were three other part-timers, my wife and two others, who worked different days of the week. That was it.

Q1161 Lindsay Roy: What were their main jobs? The bookkeeper sounds a bit like Al Capone. Can you tell us exactly what they did? What were the jobs exactly of the people who worked for you?

Ian Kerr: It was to type, generate meeting agenda files, put together reports that occasionally I wrote on particular issues—

Q1162 Lindsay Roy: Just type them up.

Ian Kerr: To type them up, yes; to send out invoices; to put together these mail-outs, which were pasted on to a free paper, bagged up, stamped and sent out. We did three, four or, sometimes, five a month of those—three to five a month. That's about it.

Q1163 Lindsay Roy: Did they have any role in putting information on what you call reference cards?

Ian Kerr: Yes. They would do the tidying-up of information that had been given to me. The chances are that it was mostly over the telephone, or maybe at one of the meetings we held.

Q1164 Lindsay Roy: Did you dictate this or was it handwritten and then it was typed up?

Ian Kerr: Yes. I used to use a slip system. I used to put the company name on a slip and then write it out. It would be done retrospectively.

Q1165 Lindsay Roy: How important in the job was it that you read out this information sought by companies to individuals or companies that had asked for it? Was that the key part of your job?

Ian Kerr: Yes. I regarded it as that because it had to go to a specific person. If that person wasn't there, I didn't give the information to anybody else, unless it was a large company and they would have a nominated second deputy, if you like. I, alone, gave that information. I never left it for their attention with a secretary. I never gave it back to the people who sent the faxes in. That was to ensure that you had a secure system operating.

Q1166 Lindsay Roy: A secure or a secret system.

Ian Kerr: Yes—no. I would rather just come back to that and say that yes, I suppose your term "secret" applies, but the information wasn't just swimming around in an HR department. It was in the hands—very tightly controlled—of one individual, who, because of his or her experience in the industry, would know how to deal with that information. Everybody

27 November 2012 Mr Ian Kerr

recognised that this was sensitive information—secret, sensitive information.

Q1167 Lindsay Roy: Did you ever have a conscience about things you read out to company representatives?

Ian Kerr: Like I said, over a period of time, I began to think that certain companies were particularly hard-nosed in their approach and we didn't give that information to them. I think I answered that earlier, if that's good enough.

Q1168 Lindsay Roy: Did you ever have reason to question the information you were given, or was that not perceived as your role?

Ian Kerr: That wasn't my role, no. To be fair to them, they made contacts. They didn't deal in what they saw as trivialities. I know that anybody could take issue with that.

Q1169 Lindsay Roy: Did you think that some of it was triviality; for example, who people associated with? Was that the kind of information that was there?

Ian Kerr: I may have done on occasion, but I can't think of anything that comes immediately to mind. I don't think that was a large road to go down and explore.

Q1170 Lindsay Roy: You said earlier on that you had a significant salary and each year you got a bonus. Is that correct?

Ian Kerr: No, I didn't say that. I said that each year every December, whatever the salary level was for each of us in the office, we received half of that as a taxable bonus. If you were paid £40,000 or whatever and that month it would be £1,000, I would have got £500 amount additional salary, taxable in the normal way, for December.

Q1171 Lindsay Roy: What did you and what did others have to do to achieve that bonus?

Ian Kerr: Continue doing the job to the satisfaction of the Consulting Association's membership.

Q1172 Lindsay Roy: Who monitored that and gave you feedback as to how effective you were in your job?

Ian Kerr: Anybody could phone me up and tell me a meeting had gone wrong, which they did, occasionally. I think I was accused of spending too much time on something at one meeting, as an example, by somebody—one person. Effectively the route was those companies that were particularly company-structure minded would do it through the then chairman at the time, but it rarely happened.

Q1173 Lindsay Roy: Who were you directly accountable to?

Ian Kerr: To the Association through the chairman and vice chair.

Q1174 Lindsay Roy: Therefore, was there an appraisal of your work?

Ian Kerr: No, there was not. It had the fortunate—sorry. One of the less stressful parts of the job was

that it didn't run on a very tight structural basis in that sense. Construction companies being what they are—by and large pretty single-minded in what they want out of life—I think I would very soon have been told “You're out if this goes on”, or, “You've one more chance”, or that sort of thing. That didn't happen.

Q1175 Lindsay Roy: You are telling us that no one really monitored what you were doing on behalf of the Consulting Association.

Ian Kerr: We had a finance committee. I produced a report. It met in October and then in February, and then we had an annual meeting in April.

Q1176 Lindsay Roy: Who was on that committee? Who chaired that?

Ian Kerr: Who was on the committee?

Q1177 Lindsay Roy: Yes. Who chaired the committee and who were the other representatives?

Ian Kerr: The chair of the committee was whoever the chairman was at the time of the Association.

Q1178 Lindsay Roy: And other members.?

Ian Kerr: There would be the vice chairman. There was always a vice chairman.

Q1179 Lindsay Roy: Who was that?

Ian Kerr: I can tell you a list of who the chairmen were.

Chair: Fine; that would be helpful.

Lindsay Roy: Could you give that to us in writing?

Chair: If you give us that in writing, it will save us time just now. We would like a list of the chairs in succession and a list of the members of the executive. That would be helpful.

Q1180 Lindsay Roy: Would it be fair to say that it was quite a loose organisation if there was no effective monitoring of what was happening, apart from the finance part of it?

Ian Kerr: I am awfully sorry. I was just getting my paperwork out.

Q1181 Lindsay Roy: Apart from the finance, nobody monitored the way in which the business was conducted; it was self-monitoring.

Ian Kerr: It was a system that was understood clearly by all. Part of my job was to ensure, for instance, to any new company came on board that I explained very thoroughly how it worked. Each of them was aware of the need, because it was, if you like, a secret organisation, to keep its information. People were very good and very thorough in keeping to the rules and regulations that it had in its constitution, for a start.

Q1182 Lindsay Roy: Can you just confirm who your major clients were? We understand, for example, that Carillion spent more than £32,000 on checks between 1999 and 2003. Is that accurate?

Ian Kerr: Would you say that again? I am sorry.

27 November 2012 Mr Ian Kerr

Q1183 Lindsay Roy: Between 1999 and 2003 Carillion spent more than £32,000 on vetting procedures.

Ian Kerr: If that has been taken from ICO figures, then I am sure that is correct.

Q1184 Chair: When I was up there, I saw the book that was seized by the Consulting Association. That, I take it, has everything in it, does it? There is nothing else apart from that.

Ian Kerr: Apart from the book.

Q1185 Chair: From that book. The Information Commissioner is going to send me a copy of that. There is nothing else relating to what companies were being charged other than what is in that book. If it is all in the book, we don't need to spend time questioning you about this now.

Ian Kerr: Everything that you have seen to do with the invoices, which they took and they still have the originals of, were charges for an annual subscription, a quarterly invoice charged for the usage made, and charges ranging from £50 to £60 up to £150 for attending meetings, wherever those meetings were held, per person who they sent per company.

Q1186 Lindsay Roy: The details of turnover and so on would all be included within that.

Ian Kerr: I am sorry. What?

Q1187 Lindsay Roy: The details of annual turnover would be included in that.

Ian Kerr: Details of what? I am sorry.

Q1188 Chair: Turnover; the turnover of the Consulting Association.

Ian Kerr: Oh absolutely, yes; that would be in the audited accounts.

Q1189 Chair: You said that you had invoices. Are they the lines in the book or do you have other invoices as well? I was under the impression that all of the other invoices had been destroyed.

Ian Kerr: Anything that came back to me was destroyed. The information that the ICO took away would have been up to nine years old only because, legally, we had to keep the information back for a certain period.

Q1190 Chair: The only thing that the Information Commissioner seemed to have was the book, but I can't remember what the book was called now. It had single-line entries and charges against companies.

Ian Kerr: It was the day book.

Q1191 Chair: The day book. Would it have been the day book?

Ian Kerr: It was orange or red-coloured.

Q1192 Chair: I can't remember. It was orange, red or whatever colour. There is nothing else still available, is there?

Ian Kerr: No. I have nothing; I've got nothing—I haven't. The only information I kept, which I didn't burn, was to do with employee files.

Q1193 Chair: Yes. That is the individual members of staff. That is reasonable. I understand that.

Ian Kerr: Yes, I didn't know.

Q1194 Lindsay Roy: In your written submissions you spoke about intellectual capital.

Ian Kerr: Intellectual property.

Q1195 Lindsay Roy: Intellectual property, right. Was that principally the names or were there other bits of intellectual property that it referred to?

Ian Kerr: That referred to the body of names that we started off the Association with. In general terms, "intellectual property" was the term used by the initial committee.

Q1196 Lindsay Roy: It would be the totality of names that you had acquired over a long period of time, not just the initial names. It would be the totality of names that you had acquired over a long period of time and that you were using.

Ian Kerr: That description of it being intellectual property would fit in, yes. It is as good a term as any.

Q1197 Lindsay Roy: Lastly from me, "reference" often implies a kind of formality about it—that somebody is giving a reference. Why did you call them "reference cards"?

Ian Kerr: Not for the reason that I think you are implying—that they were a reference. It was because they referred from the main quick reference list; it was the back-up information. It led from the one-line entry to the de facto information as to why we had a one-line entry.

Q1198 Lindsay Roy: From what I understand, they certainly weren't full references.

Ian Kerr: No, no.

Simon Reeve: Chair, I have a very quick point.

Chair: Jim has been waiting for a time. I will take Jim and then you, if you don't mind.

Ian Kerr: The cards were full references. I think Mr Roy understands that.

Chair: They were not full references. They were cards to which you referred—that was the meaning I took from it.

Q1199 Lindsay Roy: They were not full references at all. They were bits of information that you gleaned from different sources.

Ian Kerr: If I was applying to you for a job and I sought a reference in the normal meaning of the word, it didn't apply to that.

Q1200 Lindsay Roy: It was really a card to which you referred—a tit-bit or a piece of information that you had acquired. Would that be a fair summary?

Ian Kerr: Sorry?

Lindsay Roy: It would be a piece of information you had acquired from another source. It certainly wasn't a full reference.

Ian Kerr: Yes. That is correct, Mr Roy.

Q1201 Jim McGovern: If we could just go back to a question that Mr Roy put to you about your

27 November 2012 Mr Ian Kerr

remuneration package, you seemed to indicate—I asked you a question earlier on about bonuses—that you received a bonus on your salary each month.

Ian Kerr: No, no.

Q1202 Jim McGovern: Let me finish, please. I worked in the construction industry for 25 years, and apart from the time I spent serving my apprenticeship, for the remainder of that 25 years I was always on a bonus scheme, but to get that bonus you had to hit a target. You had to achieve something. What was it you had to do to get your bonus?

Ian Kerr: Remain in the job.

Q1203 Jim McGovern: Remain in the job.

Ian Kerr: It was a Christmas present.

Q1204 Jim McGovern: Just turn up.

Ian Kerr: Stay in it from year to year. It was a recognition. You could ask anybody that question and I think they would find it difficult to answer.

Q1205 Jim McGovern: I never got a bonus for turning up. I had to hit a target.

Ian Kerr: I'll let you have that. Yes, it was for turning up.

Jim McGovern: Okay; thanks.

Ian Kerr: Sorry, I don't mean to be facetious, but I can't think of how to develop that.

Q1206 Simon Reeve: I think you were saying as your evidence that you got a Christmas bonus that was a percentage of your December salary in the way that people used to get a Christmas bonus.

Ian Kerr: Half of my December salary.

Q1207 Simon Reeve: I thought you said earlier that you were concerned that some companies were taking too tough a line with the information you supplied so you stopped supplying them with information. Is that right?

Mrs Kerr: No.

Ian Kerr: We didn't stop supplying them with the information. If a name came up on a list from a particular company and we were able to identify the person or only partially identify them, we got to realise that just by going back to them and saying, "We need some more information to be sure"—

Q1208 Simon Reeve: You said that some companies took a tougher line than others in the use they made of the information that you supplied, so some companies might say, "That was a long time ago. It was very different." You said that some companies took a tougher line, and you said you were concerned and you stopped providing the information. Is that right? Did you mean to say that?

Ian Kerr: In certain cases and instances we would think, "We will not bother to give them that information. We will let them believe it was clear."

Simon Reeve: You would what? I am sorry.

Ian Kerr: If we did not have all the details and also if the information was—

Q1209 Simon Reeve: We are talking about two different things. I am talking about your answer where you said, "We supplied the information to some companies and some companies took a particularly tough line in the way that they used it, and so we stopped supplying the information to them."

Ian Kerr: Not period. We didn't strike them off the service, if that is what you meant.

Q1210 Simon Reeve: What did you mean by the answer that you stopped supplying information?

Ian Kerr: What I meant was that if they sent a list of, say, 20 names into us and we could quite clearly say, "No, we don't know 19", but there was one name where we had partial identifying features, like the name, the area they lived, and maybe a bit of the address and a bit of their date of birth but we couldn't be positive, some companies we perceived over a period of time would think, "That's good enough for us" and not employ them. We ceased to give that bit of information on that particular name back to the company, so we would say that we had 20 clearances.

Q1211 Simon Reeve: With some companies, because they were very tough in the way they applied it, if you only had a partial answer, you kept the answer back because you were worried that they would use the partial answer when it might not be accurate.

Ian Kerr: Totally unfairly.

Q1212 Simon Reeve: Which companies were they?

Ian Kerr: The Balfour Beatty companies were particularly hard-nosed, I found—we found.

Q1213 Simon Reeve: Was there anybody else?

Ian Kerr: Skanska tended to be, or could be.

Q1214 Simon Reeve: Again, when you write to us, will you give us a list of the companies that were—

Ian Kerr: I can't think of any others.

Q1215 Simon Reeve: They are the ones that you remember.

Ian Kerr: Yes. The other thing that I did want to say was that some of the companies would not be given information where it was old information, and for the original entry there had never been a further inquiry. We thought that we would make the decision that that was not enough.

Q1216 Pamela Nash: Mr Kerr, I appreciate that you are going to provide us with a list of the companies that were your clients, but in your written evidence you demonstrate knowledge about the contracts that these companies were going for when they asked you for the information, and you have listed a whole range of Government contracts that they were going for.

Ian Kerr: Some Government contracts.

Q1217 Pamela Nash: There is quite a list here that you have given us. Just to be clear, did you supply information for any company that had gone on to gain a contract with the ODA?

27 November 2012 Mr Ian Kerr

Ian Kerr: Yes. Bearing in mind that we went out of business in 2009, the earlier stages of preparation for the keynote buildings—the velodrome, the swimming pool and all the rest of it—hadn't got very far, but with the groundworks, the preparation of the sites, yes, we were involved.

Q1218 Pamela Nash: Are you able to specify the companies, then, that were given contracts by the Olympic Delivery Authority?

Ian Kerr: I can't be ultra, ultra 100% on this, but the companies that I think we did work for on this were Robert McAlpine, one of the Balfour Beatty companies, possibly Skanska, but I can't be certain. This was the early stages, so they may well have been building up bodies of people whom they were going to be asking to work for them further down the line. As I say, it was the early stages from our point of view.

Q1219 Pamela Nash: I understand. It would be useful, when you give us the list of the companies, if you could give us any indication of contracts that might be of interest to us that they went on to have. Another one that is not specified in your list is the Crossrail contract, and the subcontractors who asked you for information when they were bidding for the Crossrail contract.

Ian Kerr: There was an awful lot of discussion at our meetings about Crossrail because it was perceived as going to be a problematic contract, similar to the Jubilee line. We thought that similar sorts of problems would probably arise. In relation to Crossrail, Balfour Beatty had a lot to say on that.

Q1220 Pamela Nash: Would you be able to give us that information?

Ian Kerr: If I can remember it. It is old evidence, I am afraid, in my head. I haven't got it written down, so I will do my best.

Q1221 Pamela Nash: So that could be provided as written evidence after this meeting. Could you provide that in writing at a later stage?

Ian Kerr: Yes.

Q1222 Pamela Nash: You also mentioned hospitals and schools. Rather than being one high-profile project, there is the volume. The number of hospital and school contracts is of great concern to the Committee. Do you have information held on the subcontractors that were bidding for those contracts up and down the country from local authorities and regional governments as well?

Ian Kerr: I put that in because they were PFI contracts. Most of them were on hospitals; there were schools, but they didn't seem to cause an awful lot of problems. Certainly the major PFI hospitals that were built were built by members. You said "subcontractors". There is a distinction between the main contractor and the subcontractor. You could have one of the members as a main contractor employing some of the others as subcontractors. You had very large subcontractors. The term didn't mean that it was a small contract of course. They, internally, employed

their own subcontractors, and they would employ subcontractors down the line.

Q1223 Pamela Nash: It is fair to say that contracts for schools and hospitals were given to subcontractors who had received information from you before they bid for them.

Ian Kerr: Yes, or they were building those and chose to use us during the process to ensure that they built the hospital on time, which is a fairly decent ambition.

Q1224 Pamela Nash: Were you ever approached directly by any Government Department or anyone in the public sector for information?

Ian Kerr: No.

Q1225 Pamela Nash: Never.

Ian Kerr: No.

Q1226 Pamela Nash: Did they ever give you any information for your files?

Ian Kerr: Not to me directly, they didn't; that's for sure. I had no links with any police department whatsoever or any security department whatsoever, and I was never a private investigator, for the sake of this part of the discussion. Any information that came in came via the named contacts. The main part of the contacts' jobs was to keep a very good liaison with their opposite numbers in the unions, which was accepted procedure. There is nothing unusual whatsoever about that. In the process of running a site efficiently, they would have made all sorts of odd contacts.

Q1227 Pamela Nash: Including with the police.

Ian Kerr: Oh, yes, for sure, even if it was only to do with a theft off-site, an attempted break-in or a grievance matter to keep the site open where there was an unofficial protest.

Q1228 Pamela Nash: I understand that. Before I hand back to the Chair, in an earlier evidence session we had with the ICO, David Clancy specified that there was information that would appear to have been on an Irish national, and I quote: "An individual has been given security clearance to work on MOD construction sites." There was information about this that they seized from you. This was at a time when people from Ireland were being monitored.

Ian Kerr: People from?

Pamela Nash: People from the Republic of Ireland were being monitored on the contracts that they were being given in the UK. There was information on this in your files. Did you have a role at all in security clearance of Irish nationals working on MOD contracts?

Ian Kerr: Could that be answered in private?

Q1229 Chair: I am not sure, actually. I will ask the clerk. What is the procedure about questions like that being answered in private? *[The Chair took advice from the Clerk]* We can ask some questions in private if we wish. If you are saying to us that you would prefer to have that question asked in private, then we would be willing to do so in the circumstances.

27 November 2012 Mr Ian Kerr

Ian Kerr: I can't help you very much.

Jim McGovern: The question clearly should be answered.

Q1230 Chair: We will come back to that in a private context.

Ian Kerr: "I didn't have any direct links" is the quick answer to that.

Q1231 Pamela Nash: I am intrigued as to where that information came from if it wasn't from the MOD.

Chair: Was this in the days of the Economic League or in the days of the Consulting Association?

Ian Kerr: We are talking about the Consulting Association, as far as I understand.

Q1232 Iain McKenzie: Mr Kerr, you alluded earlier, briefly, to your engagement level with subscribers' management. You said that HR management was your point of contact. Would that just be managers or would that be HR directors?

Ian Kerr: It would vary from company to company. It would have been either/or.

Q1233 Iain McKenzie: Do you recall any of those managers or directors by name that you had business with?

Ian Kerr: Yes.

Q1234 Iain McKenzie: Can you give us a few?

Ian Kerr: I can't be sure that I could give you their right titles. In 1996 Tony Jennings was the main contact. He was the group HR manager for John Laing. At Tarmac the main contact there was John Ball. He was the group HR manager. My wife said to give you more recent ones. At Sir Robert McAlpine, David Cochrane was the general HR manager. I think he was at board level. At Vinci it was Alan Audley, who was an HR adviser, because he was of retirement age in recent times.

Q1235 Iain McKenzie: Did you ever meet any of these people face to face?

Ian Kerr: These were the people who would come to our general HR meetings. They would be the people who were invited, and by and large, they came. One way or another, you would see them at a meeting. Out of four every year, you would see them at one, two or three.

Q1236 Iain McKenzie: Can you continue with your list? Are there any more names like that?

Ian Kerr: I can't give you any more. From Balfour Kilpatrick we would see either Armar Johnston or—I've forgotten the other gentleman's name. Armar Johnston moved on to do some group stuff in London on Crossrail, the Olympic sites and things like that. The name of his successor escapes me. It will come to me.

Q1237 Iain McKenzie: When they moved on, did you still have dealings with them as they moved companies?

Ian Kerr: Yes.

Q1238 Iain McKenzie: They kept their association with you as they moved companies as well. They kept their association with you as they progressed on to another company.

Ian Kerr: It often happened that way, yes, because if they were still in the same company, then possibly it was the case.

Q1239 Iain McKenzie: Would you say that that was something they took to the company, or the company had asked them to continue?

Ian Kerr: It is a bit like the way the industry works—that it is a networking industry. That would be a reason why people would keep their contacts.

Q1240 Chair: It may be helpful, rather than drying to dredge up individual names just now unless you have some other ones there, if you gave us a complete list for the various subscriber companies of who the contacts were for each of them. Let us just be clear about this. My understanding is that it would be the same contact who would get in touch with you about names and would receive the answers back as would supply you with information to put on to the files.

Ian Kerr: That is right.

Q1241 Chair: These were not, as it were, a variety of points of contact. It was generally a single point of contact.

Ian Kerr: One single point.

Q1242 Chair: It might change over time as people moved on, or if it was a particularly large company with different divisions, there might be different people dealing with it from the different arms, but in principle, there was a named individual per unit.

Ian Kerr: That is correct.

Chair: Thank you. That is helpful.

Ian Kerr: Can I just clarify that you are going to let me have a list of these things that you would like?

Chair: Yes. Iain, has that covered the points?

Iain McKenzie: Yes.

Q1243 Jim McGovern: It is the Committee's understanding from information we have received that there were quarterly board meetings. Is that true?

Ian Kerr: There were three meetings. We started off with four and then trimmed them down to two, because once the Association got established we seemed to be wasting people's time in coming to more than two. This is the finance committee that we are talking about.

Q1244 Jim McGovern: I've no idea. Our information was board meetings.

Ian Kerr: This is the finance meeting as opposed to IR meetings.

Q1245 Jim McGovern: Board meetings.

Ian Kerr: Well, board meetings. That is your term.

Q1246 Jim McGovern: No, it's the information we have received. It is not my interpretation.

Ian Kerr: We had meetings of the finance committee; we didn't call it a board meeting. The finance

27 November 2012 Mr Ian Kerr

committee met in October and February each year. That would allow us to see how the income was coming in from the quarterly usage, because the budget for the year was on an assumption that certain companies would be doing a certain amount of work on certain contracts. The financial year was from April to March, so October was a half-yearly review, if you like, of how things were going. Were we on course, did we need to put the subscription charge up, as an emergency measure, or did we need to put the usage rate up? We would make a decision one way or the other, or the finance committee would make a decision. I attended the finance committee as the chief officer.

Come February, we would be in a fairly good position to know how that year had gone according to the prediction for it at the start of the year. Then it would be decided by the finance committee what the rates were going to be at the start of the next year. We then had an annual general meeting very early in April to which everybody was invited. It was for them to talk about anything that they were unhappy about, whether it was subscription rates or the proposed charges that were going to be levied for the year, and I would give a directors' report. It was called a report, but it was the chief officer's report. Anybody could have a say about anything. It tended to degenerate into one of our normal IR meetings, because construction people, being what they are, certainly can talk.

Q1247 Jim McGovern: On behalf of the Committee, I would concede that "board meeting" was not the right terminology. You are saying that it was a finance committee and it did not meet quarterly, but it met twice per year in October and February. Have I got that correct, for the record?

Ian Kerr: October and February; yes.

Q1248 Jim McGovern: Who attended?

Ian Kerr: Who attended? The current chairman, the current vice chairman—

Q1249 Jim McGovern: Yes, but their names.

Ian Kerr: In the last year we were in business, the chairman was David Cochrane of Sir Robert McAlpine. The vice chairman was Alan Audley of Vinci. We tended to get the previous chairmen along quite often because it would give quite a bit of continuity. In this instance, I can't recall who it would have been offhand. We would invite any member of the Association—the main contacts—to attend also, so they could be there as well if they wished.

Q1250 Chair: Jim, I wonder if I could come in on this point relating to the committee structure. One of the things that the Information Commissioner did have was a list of 22 names of people who were related to what seemed to be structures. There seemed to be an O, a W, an R and an FM committee, and there were various numbers who were on different committees. What were the committees O, W, R and FM?

Ian Kerr: That was to do with the mailings. It was an easy way. We sent mailings out for general IR matters. We sent mailings out for environmental matters. We sent a mailing out at one time for M&E issues and

then rolled it into the general stuff because it was all the same. We also sent one out for facilities management issues because that was a growth area for construction companies over the last 10 or 15 years. That was a list of who received information on each of the lists. For instance, rather than send somebody four envelopes—

Q1251 Chair: I am sorry. I had misunderstood that. I thought it was relating directly to Jim's point, which was about committee meetings.

Ian Kerr: No.

Q1252 Chair: I am sorry. It was a mailing list.

Ian Kerr: It wasn't comprehensive because I have seen a copy of that recently which we found in a file.

Chair: I am sorry, Jim. I thought I was covering your point.

Q1253 Jim McGovern: That's okay, Chair. Mr Kerr, you have tried, as best you can using your memory, to tell us who attended the meetings. Have we exhausted that?

Ian Kerr: I think so. We are talking about the finance and the annual meeting.

Q1254 Jim McGovern: There was no such thing as a board meeting.

Ian Kerr: No. The names would be on the files.

Q1255 Jim McGovern: One of my follow-up questions will come on to that, but where did the meetings take place?

Ian Kerr: The finance committee meetings and the annual meetings took place in the offices at Bernard Street of Sir Robert McAlpine Limited. They happened to let us have it there because it was central.

Q1256 Jim McGovern: Minutes were kept. If so, are they available for this Committee? Are minutes available of those meetings?

Ian Kerr: No, unfortunately not. I certainly kept minutes. I kept them for years, which was part of what was in the filing cabinets that we had. They were just got rid of. I kept all the other meeting files in case I needed to refer back into them for something for years as well. Again, that filled up the filing cabinets.

Q1257 Jim McGovern: Was it a part of your remit or a part of your post to take the minutes? Did you take the minutes of the meetings?

Ian Kerr: I did; yes.

Q1258 Jim McGovern: No one else did that.

Ian Kerr: No.

Q1259 Jim McGovern: So you took them, kept them and they are now gone.

Ian Kerr: I kept them. If there were any action notes that arose from them, I dealt with them and then stuck them in the file.

Q1260 Jim McGovern: You stuck them in the file.

Ian Kerr: I put them in the file.

27 November 2012 Mr Ian Kerr

Q1261 Jim McGovern: Did you say the fire or the file?

Ian Kerr: The file. What did you think I said?

Mrs Kerr: Fire.

Ian Kerr: Fire? Eventually. Eventually they went into the fire. We did send a minute out to all the main contacts. They did receive a summary of what the outcome of those meetings was, which is why I took notes.

Q1262 Jim McGovern: I think you will have to excuse our Scottish accents. I don't know if you have a bit of difficulty in understanding the Scottish accent, hence the reason why we seem to keep repeating ourselves. Did trade union officials ever attend any of these meetings?

Ian Kerr: No. Some officials had been trade union officers. They had jumped across the line, if you like, in the past.

Q1263 Jim McGovern: So trade union officials who had perhaps retired attended the meetings.

Ian Kerr: Yes, or who had been poached into an IR or HR position in a company. They were very few and far between, but it was a thing that happened in the industry. That is the only thing I can say that links to that.

Q1264 Jim McGovern: Did you or the organisation ever liaise with serving trade union officials rather than retired trade union officials?

Ian Kerr: Did I ever liaise with?

Jim McGovern: Did you or the organisation ever liaise or have contact with serving trade union officials?

Ian Kerr: I didn't personally. It was part and parcel of the main contact role to foster good relations and to know who the union official was or the officials were for a specific site. That was normal procedure, because the way to resolve any issue, dispute or problem that was raised by a union official from his members was to bring it to the attention of the HR manager from the employers' side and use the negotiating machinery that was in place to resolve it.

Q1265 Jim McGovern: If your organisation's subscribers were getting information from trade union officials, that was only via disputes and the usual channels. It was not behind closed-doors meetings or anything like that.

Ian Kerr: No. They would sometimes talk among themselves. I can sympathise with the union officials in that they represent their members, and at the same time their role is to ensure that everything goes right for all of the members, the majority of whom wanted to go to work, earn a wage and go home to feed their family and all the rest of it. One or two people chose to disrupt a site. The poor union official had to resolve the two sides. Sometimes he didn't want an unnecessary problem, nor did his union often, of an outbreak on a site of unofficially generated action. It was in the interests of the HR manager to know who he should speak to in a particular union to try and resolve such an issue without it costing the company

time and money in delays. They had quite good relations themselves between each other.

Q1266 Jim McGovern: Finally, did your organisation have any dealings with politicians?

Ian Kerr: No.

Q1267 Jim McGovern: Never.

Ian Kerr: Never.

Q1268 Jim McGovern: That is quite unequivocal.

Ian Kerr: Absolutely.

Q1269 Chair: Could I just come back to the question of trade unions? More than one of the cards I saw had, "EETPU says no." That would tend to indicate that the EETPU had said no to somebody, and if that was on the card and you then read that out to an employer, it would tend to indicate what the EETPU's view was on that particular employee.

Ian Kerr: It would have done, yes. You can probably tell me because you have seen these cards recently, Mr Davidson. I have a feeling that those cards hardly ever came back up through the system, but I may be wrong.

Q1270 Chair: I was sworn to secrecy as a condition of seeing them from the Information Commissioner, quite understandably. I was allowed to take notes of things that were on cards but not to relate it to any of the names. Therefore, I have no way of knowing whether or not these things came back regularly, because there was nothing in the files that I can recall that would lead me to believe that they either did or didn't. The "EETPU says no" would seem to suggest that there had been some input from a trade union.

Ian Kerr: Yes; I agree with you. That would have been the case. It would have been a particular relationship with an HR manager in a particular area and that regional officer of the union or the union. I don't know how you want to phrase it, but somewhere along the line that would have been discussed and somebody would have decided that that was information that we should have in our system. Could I just say that the EETPU is a union that has long been rolled into or joined with the AEU to form the AEEU, which later became Amicus and then Unite?

Q1271 Chair: But this was still on people's files though.

Ian Kerr: It is going back a long, long way.

Q1272 Chair: It was still on somebody's file, and it comes back to Alan's point that you simply read out what is on the file. As I understand it, you don't read out, as it were, the last entry, but you read out the file.

Ian Kerr: The entirety of it.

Q1273 Chair: So "EETPU says no" is not an encouragement to employ, is it? That is the union, essentially, putting the kibosh on somebody's chance of employment.

Ian Kerr: Yes. It depends what came after. I go back to my much earlier point that had there been several

27 November 2012 Mr Ian Kerr

inquiries afterwards, it may have shed much more light on the individual.

Q1274 Chair: On the question of the unions, there do seem to be a number of references to people's union membership. I am just looking for them now. There was certainly, "Known to associate with", and then it referred to somebody from a trade union. Then there was also, "Thought to be EPIU." I am looking for the other name, which is the breakaway from the EPTU, but the initials escape me. It was the EPIU rather than AUEW. Would that have come from a trade union official of a trade union?

Ian Kerr: Probable. I can't be certain, but I can give you a case that would make sense.

Q1275 Chair: I am trying to remember with whom it was that I had the conversation, but when items were entered they usually had a code beside them and initials to indicate who had put that in. So if you knew the code you would know who had put that in.

Ian Kerr: Yes, if you had the initials, yes. Do you want me to say anything about the EPIU?

Chair: Yes, please.

Ian Kerr: Very briefly, within the EPTU at the time, or what it became—it was at a time when it was fairly moderate—there were a grouping of people within it who felt that it was too moderate and they formed this Electrical Plumbing Industries Union, it called itself. Some of these people were in that and they were also in the main union. It sought to try and change the decisions that were made between the union and the employers' negotiating machinery, which decided the conditions for the next three years, which formed the agreement the industry stuck to. Its problem, as I see it, was that it was never a recognised union in the sense of how unions are seen. Anybody—a few people—can say they are a union, but in the terminology of the industry's unions, it was not a union that was recognised. Therefore, it had no official platform on which to raise its grievances; so it was a thorn in the side of the union. You can think of it as an equivalent to the Militant Tendency in the Labour party when Neil Kinnock threw them out. After the changing of the unions, it finally got itself taken into the Transport & General union as a wing, and then the T&G with Amicus became Unite. So it has, at long last, achieved the ambition of having a voice within the union structure.

Q1276 Chair: Presumably, reference to somebody as being in the EPIU was likely to act against them when they were seeking employment, because if they were name-checked then they would be marked, presumably, as a troublemaker. It is fair to say that on the sheets that I saw "troublemaker" appeared on a whole number of occasions that somebody had put in. That would probably be sufficient to make sure that they did not get employed. Is that reasonable?

Ian Kerr: You would have to ask the main contacts that I gave that information to for the true answer to that.

Q1277 Chair: If I recall correctly, you have said to us that you would read out the material to firms and

they would then make their decision. I thought there was feedback that they would tell you what they had actually done. Am I right in thinking that in the overwhelming number, if not the totality, of cases with the EPIU, the situation was that the firms would tell you, "If they are EPIU, we'll not take them on", or words to that effect? Is that fair?

Ian Kerr: Again, it depends on the companies' attitudes. I can remember it being said to me at one point, "Of course these people were hedging their bets." They were in both unions, which would suggest not that much commitment, in some cases.

Q1278 Chair: Listen, we are in politics. We understand about hedging your bets. In these circumstances, would employers take the view that somebody who was listed as EPIU was somebody who was hedging their bets, or are they not more likely to say, "That is a potential difficulty. We'll not take them on"?

Ian Kerr: The question of the EPIU didn't crop up in an awful lot of cases, I don't think. It would relate to what the problem was. For instance, the Pfizer Sandwich dispute, which involved quite a few people who were involved in an unofficial strike there, was to do with walking out on a Friday afternoon, or to do with wet time and not working in the wet, and the union at the time—I think it was Amicus—refused to back the strike. They repudiated the strike. The view of the main contact and the deputy contact at the time was that these people who were the ringleaders in that and some of the believed followers were motivated or fired up through the EPIU. As time went on, people thought, "Well, that's going back a bit. We are not so bothered about that." Others thought, "That's it. That's that. We still don't want them." But there wasn't a lot of EPIU stuff swilling about, from memory.

Q1279 Chair: I understand the gist of that. Can I just come back to Jim's point about the dealings with politicians, Members of Parliament and so on, where you were quite specific that you, personally, had not had any meetings with MPs or politicians? Does that apply to the organisation—the Consulting Association—when their officers were, for example, chairing meetings on behalf of the Consulting Association with Members of Parliament and politicians?

Jim McGovern: If I could interrupt, I think that was the question I put. Were you personally or your organisation ever involved in dealings with politicians? You said quite unequivocally, no. I think the record will show that.

Ian Kerr: To take Mr Davidson's point, it would clearly be in the interests of construction companies, at some level or another, to court politicians.

Q1280 Chair: I understand that. People lobby us all the time about wanting something to proceed; I understand that. I want to be clear about this, because we have had information to the contrary that would suggest that officers of the Consulting Association had actually had meetings with MPs. By "officers", I had assumed that it would be full-time staff, but I accept that it might have been appointed or elected people.

27 November 2012 Mr Ian Kerr

If you are saying to us that not to the best of your knowledge, then obviously we accept that.

Ian Kerr: I can say, categorically, from my point of view, which I think you are asking, that I have had no contact with any politicians at all, ever.

Q1281 Chair: Until now.

Ian Kerr: There was no purpose. I couldn't see what purpose would be served if we did, with due respect.

Q1282 Jim McGovern: You also said that your organisation had no contact.

Ian Kerr: The only way I can answer that is to say that no, the organisation didn't, but what members of the organisation did is another matter entirely, for all sorts of reasons.

Chair: We are all in groups where the group might meet people and so on; I understand that.

Q1283 Pamela Nash: Mr Kerr, the Committee has seen evidence that suggests that information was taken from you from Sheila Knight, so this is a very specific case—with information about the Jubilee line. At the time Sheila Knight was an employee of EMCOR, but she was also a former employee of ACAS. Was any of the information that she gave you from her time at ACAS and did you speak to anyone else at any point from ACAS?

Ian Kerr: No. I knew that she came from ACAS because I met her when she was at EMCOR, when there had been some changes in the company. I knew of her previous history because people make it their business to know where people in the industry came from. It was a normal procedure. She worked for ACAS. I had no information to do with ACAS from her at all.

Q1284 Pamela Nash: Did you ever receive information from anyone as a result of their employment at ACAS?

Ian Kerr: No.

Q1285 Chair: I want to come back to the membership of the Consulting Association. When you closed in 2009 you listed 44 construction companies that had used its services. Was that the total over the whole period of the Consulting Association, or was there a large number in and out—or in particular out—during your life?

Ian Kerr: It was the totality. Companies came, merged, and went out of business even.

Q1286 Chair: We have also had claims from Carillion that they had stopped using the Consulting Association's services in 2004. If so, why were they still receiving invoices in 2009? Can you cast any light on that?

Ian Kerr: I have tried to get my head round this because I listened carefully to Mr Wainwright's evidence and read the transcript. On the latter point, the invoice they received was for one of their security advisers who attended what we call the Woodstock group, which dealt with environmental/security matters, as they then became. That is why they would

have received an invoice. That is one reason for certain.

Q1287 Chair: It might be that on this matter we will come back to you. I can't recall what the pattern of invoices from Carillion was from memory.

Ian Kerr: To be honest, I can't either. My wife says she can. Would you like to hear from her?

Q1288 Chair: No. We had better have you speaking, I am afraid.

Ian Kerr: My wife tells me that the last entry was in 2003–2004 for Carillion's membership fees, and they ceased membership in April 2004. Liz Keates, who was the main contact there, continued to receive the mail-outs that we were putting out—the posters. I think that somewhere along the line Crown House, which was part of Carillion, continued. I am not sure whether a subscription wasn't paid through Crown House for their specific use of the service when they were part of Carillion. As you know, Crown House later became part of Laing O'Rourke. I've got to say that I have tried to think this through, having heard previous evidence on this, and I cannot, in all honesty, be certain.

Q1289 Chair: We will maybe come back to you on that. In relation to the number of individual names on the Consulting Association's database, we have the 3,200 and a bit figures, and it is all those who are on the cards and in the ring binders, wasn't it? There was nothing else.

Ian Kerr: The ring binders being?

Chair: The ring binder that had all the names typed inside and the cards.

Ian Kerr: Yes.

Q1290 Chair: There were some names that were in the ring binder for whom I couldn't find cards when I was there.

Ian Kerr: I see. Yes, I'm sorry.

Q1291 Chair: The two of these combined was the totality. Is that correct?

Ian Kerr: That was the totality; yes.

Q1292 Chair: I accept that there is a degree of duplication, but I just wanted to be clear that there was nothing else at all.

Ian Kerr: That is right. The only thing that was not there for the ICO's people to take was the stuff which was to do with environmental activists, which happened to be held in a different cabinet because of the space, and it rarely came into being. As we have said, they weren't construction workers.

Q1293 Chair: I see. I hadn't realised that. How many people were on the environmental activists' file?

Ian Kerr: A hundred or so.

Q1294 Chair: Hundreds?

Ian Kerr: A hundred; 50 perhaps. It might have been more. I am trying to visualise it; 200, perhaps.

Q1295 Chair: So 200 or so.

27 November 2012 Mr Ian Kerr

Ian Kerr: It wasn't a large, large number.

Q1296 Chair: I understand that. Were there any other sub-groups of files or lists of people that were not construction or environmental?

Ian Kerr: No. Environmental included animal activists.

Chair: That is what I meant.

Ian Kerr: It is that whole range.

Chair: I am sorry if I was loose with my language.

Ian Kerr: You are well aware of the animal activists' problems in allowing certain sites to be built on, I'm sure.

Q1297 Chair: Some of my colleagues have touched on this matter, but I want to be absolutely clear about how material got on to the cards that the Consulting Association had. As I understand it, you inherited material from the Economic League. Is that correct?

Ian Kerr: Yes, that's correct.

Q1298 Chair: When the Consulting Association was being set up, somebody went in and physically lifted the cards and took them over.

Ian Kerr: Yes.

Q1299 Chair: Then all the other cards were just left behind. Is that correct?

Ian Kerr: No, not quite. At the time that the Consulting Association was being thought about, set up and considered, I was charged with finding officers, putting phone lines in and all that at this point. At that point, the construction names and cards were moved into the Birmingham offices of the Economic League, which is where I was based when I was with the company. The rest of the stuff, to the best of my memory, was still kept in London, or whatever else the League dealt with, be it cards or references. It was my job to go and take those to bring them across once the new offices had been set up, which was the old construction stuff that the companies which were then called the Services Group were party to and helped to generate, I suppose, in principle.

Q1300 Chair: That provided, as it were, the core of the reference cards.

Ian Kerr: I think the blue related to that. That is what that blue covering was. It was original information.

Q1301 Chair: Blue is the original Economic League stuff. That is helpful. Then there was the additional information coming in, which you have said was solely from your member companies feeding things in, and for each entry there should be a reference number indicating which company it came from and the initials of the contributing official.

Ian Kerr: Yes, with a note saying "Information to or from MC (initials)", "MC" being main contact.

Chair: I think I understand that.

Ian Kerr: The stuff that we had from the League was outside my control as the chief officer of the Consulting Association, so how they generated it, sourced it and annotated it is entirely another matter.

Q1302 Chair: You had been a senior officer of the Economic League, so you must have had some idea where some of that had come from.

Ian Kerr: It came from the construction company members.

Q1303 Chair: I am sorry. I thought you were drawing a fine distinction there. It came pretty much from the same mechanism as the subsequent material came.

Ian Kerr: Yes. It was just how it was managed.

Q1304 Chair: Did you have any process of checking whether or not the information you had was accurate? In particular, some of it, again, in the files seemed to me to be a bit of tittle-tattle. How appropriate was it to have tittle-tattle in the files?

Ian Kerr: It was what came from the main contacts.

Q1305 Chair: I am trying to remember, and again excuse me if I don't remember it all; I had to take my own jottings, so let me see if I can find it. There was a point about somebody cohabiting with a councillor. That might very well be of interest down the pub on a Saturday, but I'm not sure necessarily it ought to be in somebody's file and presumably then read over to other potential employers.

Ian Kerr: It depends, really. I might have not bothered, because I tend to agree with you on that, but it was information that was given to me, and I had an undertaking to record what I was given.

Q1306 Chair: One of the things I read as well was "Possibly half brothers". The fact that somebody is possibly a half brother of somebody else doesn't seem to me to be particularly relevant as to whether or not they should be given employment.

Ian Kerr: Yes. Taken as you have said it, yes. Putting it into whatever the context was, it may have given a different story. I don't know; I am just saying that.

Q1307 Chair: There was also a reference that referred to "Somebody above not recommended by Amicus." Again, it would seem to be pretty clear that that had come from Amicus, wouldn't it?

Ian Kerr: Yes.

Q1308 Chair: "Somebody from Edinburgh. A political troublemaker". The fact that somebody is a political troublemaker doesn't necessarily make them an industrial troublemaker, does it?

Ian Kerr: Yes.

Q1309 Jim McGovern: It does?

Ian Kerr: Yes, it could.

Q1310 Chair: It could?

Ian Kerr: It is not an either/or, is it?

Q1311 Chair: No. That is a fair point. Is it legitimate for somebody who had stood for election to the Scottish Parliament to be in the files? He was described as "Stood as candidate for the Scottish Parliament."

27 November 2012 Mr Ian Kerr

Ian Kerr: I would say to you there that I am certain that that wasn't the reason he was in the system—that he or she stood for election to the Scottish Parliament. There would be something else, surely.

Q1312 Chair: One of them put down—I can think of applying this to a whole number of my colleagues—“Is an obnoxious hard case.”

Ian Kerr: I think I know who you are talking about.

Jim McGovern: Are you being critical?

Ian Kerr: I think I recognise him, and there was quite a lot more behind that.

Q1313 Lindsay Roy: Did you not say that you read out just what was on the cards?

Ian Kerr: I am sorry.

Q1314 Lindsay Roy: Did you not say that you read out just what was on the cards? You didn't elaborate.

Ian Kerr: Yes. I didn't embellish. I didn't put emphasis on certain things. I didn't interpret. You could have dialled the office like the speaking clock, in a sense.

Q1315 Chair: Also, “A bit of a sheep” was on somebody's card. One record card for somebody had, “1986. Letter to the *Crawley Observer*”. To have that down on somebody's record—I have never read the *Crawley Observer* and I don't know if that is code for something else—does not seem suitable to have somebody's employment possibly threatened for having written to the *Crawley Observer*, no matter what it was that they wrote about.

Ian Kerr: I am sure that that would have been in addition to certain other things. It wouldn't have been just that.

Chair: I think it was.

Q1316 Jim McGovern: Probably the most ridiculous example that I have heard was a man whose name was Syd Scroggie from Dundee—he passed away some years ago—who was an injured war veteran. He had one leg, he was completely blind and he had written a letter to the local press commending Dundee city council on the fact that they awarded the freedom of the city to Nelson Mandela, and he ended up on this list.

Ian Kerr: I can't comment because it doesn't mean a thing to me. I suspect that is inherited information from the EL.

Q1317 Chair: Somebody had “May Day Greetings” in the *Morning Star*, and that was on their file as well. Sending May Day greetings to the *Morning Star* might seem bizarre, but it is within the parameters, I would have thought, of acceptable behaviour.

Ian Kerr: I don't think we would have been wasting our time on the trivia of just putting that down. I am sure there would have been other stuff.

Chair: That's right; there were other things, absolutely. I just picked out the most egregious examples.

Ian Kerr: It added a bit to the picture, I suppose you would say.

Q1318 Chair: “Seen driving a white Ford Transit van”, giving the registration number, and then, which I think is particularly serious stuff, “Registered to”, and it gives the registered owner's name, “of the same address.” Somebody must have gone off and clarified to whom that vehicle was registered. That does seem to me to be requiring the assistance of the formal authorities to have had that information.

Ian Kerr: Yes. I don't know, but it's possible, isn't it? It is possible that somebody filmed him with a security camera round the site. There are several answers to that.

Q1319 Chair: I know, but all of them are worrying, really, aren't they? This comes back to the question of the blacklisting, doesn't it, and whether or not it is fair or reasonable? I was surprised, in a sense, to find in the file that there were some elements that I hadn't quite anticipated, because I thought that this was entirely industrial relations and politically related. There were some things about people being dismissed for theft off the site and people being dismissed for misbehaviour and so on. I can understand some of that, but some of these other things do seem to be quite over the top. The fact that somebody has got a reference saying, “They are thought to be cohabiting with a female councillor”, and, “They are thought to be in a relationship with a particular lawyer”, does not seem to me to be entirely reasonable stuff to have in somebody's employment references. How would you respond to these things? Do you think that that is justifiable?

Ian Kerr: No. On balance, I think you are right. It does, at the end of the day, depend on the context in which that is said. But as you have described or said all that, then I can't but agree with you—

Q1320 Chair: I could have understood this if you hadn't also combed the files to some extent. We discussed earlier on about how the files were renewed. I would have thought that some of that material ought to have been taken out at some stage. One of the comments related to a meeting in 1981, which says, “See the SWP file report (Manchester).” That would tend to imply that there was an SWP file about a particular meeting in Manchester in 1981. People can change their views quite considerably over along period.

Ian Kerr: Absolutely.

Q1321 Chair: I would have thought it would not have been unreasonable for things like that to have been combed out.

Ian Kerr: I think you are right. The cutting of the stuff, I have got to admit, wasn't a high priority. We did it on a rolling basis. In trying to answer Mr Reeve's question about whether we chose to give information to certain companies about certain events—no, I am sorry; it wasn't that. It was the question of the age of the information. The only way I would possibly try to influence somebody would be to say, “This was in 1981”, or they would be well aware of that and make their own conclusions from it. It would possibly influence—possibly influence—their employment decision.

27 November 2012 Mr Ian Kerr

Q1322 Chair: That question of the SWP meeting does lead me on to another point that Iain wanted to raise, but unfortunately, he has had to go off to another meeting, about whether or not the Consulting Association ever sent people along to what could be described as “infiltrate” or “listen in” on meetings that were taking place outside your building.

Ian Kerr: No.

Q1323 Chair: Did you ever do that when you were working for the Economic League?

Ian Kerr: Yes, I did. The League had a very much pro-free enterprise stance. Companies were members, and part of their membership, by and large, wished to be told. Remember that this is going back to the 1980s, when there was a reasonable body of organisations that were, in one shape or another, Trotskyist or Maoist who were anti-capitalism, and at a time when industrial relations legislation and law was much more relaxed than it is now. Companies were interested to know what was being planned and thought about as tactics to try and bring a company to its knees to demand more money or whatever their aims and objectives were.

A lot of these were held as public meetings in public places. I worked from the Birmingham office. They would hold them in Birmingham town hall, in the Digbeth Institute, which is a well-known meeting place in Birmingham, in upstairs rooms of pubs, and I would just go along and take notes. The briefing I would be given was to note who was speaking, who was he representing, how many were there, and what were the general points, ideas and themes that were being discussed. Then I would go back and make a brief summary. That sort of information would find its way into files, possibly, but equally into publications by the League that were put out publicly to newspapers in their attempt to get this particular view across to counter the anti-capitalist message, which was quite strong at the time.

Q1324 Chair: Do I take it, then, that what somebody was saying in what was a public political meeting could have ended up on a record card, which then resulted in them not being employed, irrespective of their skills or anything else, just because somebody had political views of an unfashionable sort?

Ian Kerr: Yes. If you take certain people—I am generalising, in general terms—if they got into a company, then all hell could break loose if they were good and skilled in putting across certain anti-capitalist views.

Q1325 Chair: I can see that, but did it never occur to you that some of these people who had, maybe, Trotskyist views might not have been particularly skilled agitators but needed a job as an electrician, a bricklayer or something similar?

Ian Kerr: There was always that, but at the end of the day I wasn't making a decision. I was not a very highly ranking officer or person in the Economic League and I did a job, which was in addition to running a lot of training courses, which was the positive side.

Q1326 Chair: I understand the propaganda wing, as it were, of your argument. I get that; I see that. It is just that, effectively, you were going along to meetings, taking notes on who was saying what, and your report could very well result in them becoming unemployable. Does that not seem an accurate representation?

Ian Kerr: Most of the people who spoke at these meetings were well-known people in sectors of these groupings. They were well known. What you were doing, really, was countering what was going to be put in the *Socialist Worker*, the *Morning Star*, the *Militant Tendency* newspaper and all the rest of it. It was putting out a balanced view.

Q1327 Chair: I understand that. I understand entirely the point about putting out a balanced view and wanting to combat that. I spent years opposing Trotskyists, particularly Militant, in the Labour party's youth movement and elsewhere. I understand the question of putting out political alternatives, but what I am saying to you is the point about putting their names on cards which then could result in them becoming, effectively, unemployable, which does seem to me to be a different kettle of fish altogether. It is entirely different from the question of propaganda and the battle of ideas.

Ian Kerr: About putting the report in, I didn't have a hand in how this information was processed.

Q1328 Chair: You went along, got the names and stuff, fed it in and somebody else would decide whether or not the names were put on a list that employers would then access.

Ian Kerr: Yes.

Q1329 Chair: That is clear enough. Can I come back to the question of the authorities? Accepting that some of these people or their meetings were, perhaps, seen at the time to be dangerous and so on and so forth, was there not a certain degree of overlap between yourselves, special branch and the police, because the police would have a responsibility to monitor what were then seen as extremist organisations? Rather than having two people doing the same thing, it would make sense to have a degree of information sharing. I find it difficult to believe that there wasn't some degree of transmission of information between you.

Ian Kerr: What period of time are we talking about?

Chair: Particularly going back to the Economic League times.

Ian Kerr: Yes. I think there were meetings between League people further up than me and various police departments—I think. By the nature of them, they were not publicised.

Q1330 Chair: At which presumably information was shared and individuals were identified and so on.

Ian Kerr: Yes. If you share the information up, that would have been part of it, yes, if it was known. It would also be as much to do with the tactics—who was doing what, what groups were planning what. I am sure you can recall that this was at a time when there was a much freer rein and ability of these

27 November 2012 Mr Ian Kerr

groupings to get around the place and do things. They were not so tightly controlled as any demonstration or protest is today.

Q1331 Chair: I understand why all of that was done. My anxiety is that the youthful errors of somebody who might have been a Maoist or a Trotskyist in their teens would then be on the file—potentially still—and if it had never been cleaned off, then they potentially would never have the chance to get into gainful employment, establish a home and get the stability that usually corrects juvenile delinquencies like Trotskyism.

Ian Kerr: I do recall that there was a feeling and a sympathy for people whose indiscretions of youth were taken into account.

Q1332 Jim McGovern: On that point, information sharing suggests to me certainly that it was a two-way street. If the Economic League was given police information on certain individuals because they went on demonstrations or attended certain meetings, what information were the police giving to the Economic League?

Ian Kerr: As good or as developed as the League was giving to them. The meetings would have been to review things around a particular topic. I don't know, truly, but common sense tells me that they would be for—

Q1333 Jim McGovern: Do you agree that it would be a two-way street?

Ian Kerr: Yes.

Q1334 Jim McGovern: The police would be giving the Economic League information and the Economic League would give the police information.

Ian Kerr: Yes.

Q1335 Jim McGovern: But you just don't know or you can't specify what sort of information the police were giving you and the Economic League.

Ian Kerr: No. One way to try and get a way to understand the matter is that the League was in business to monitor all forms of these extremisms—left wing and right wing, and all the various shades of them. The police probably didn't want to spend time on doing it, and if they knew there was an organisation set up specifically to do that, wouldn't want to duplicate the effort. I think that is the best way to look at it. That is my interpretation if you asked the question. It is not that I specifically know that.

Q1336 Jim McGovern: Thanks. It all sounds very, very sinister and evil to me, but thanks for your answer.

Ian Kerr: Very what, sorry?

Jim McGovern: Sinister, evil.

Ian Kerr: The left, as in French.

Q1337 Chair: I would like to come back to the equipment that you had. There was a suggestion that you were computerised and all the rest of it. You have mentioned that a computer that you had was only used

as a word processor. Surely, the computer, though, must have had lots of things saved on it, like, say, agendas, which were standard.

Ian Kerr: Yes.

Q1338 Chair: So you have still got all that.

Ian Kerr: No, no.

Q1339 Chair: So the computer was wrecked as well.

Ian Kerr: We took the hard drive out of the computer and smashed it up.

Q1340 Chair: That seems fairly final, doesn't it?

Ian Kerr: Some of it was saved to a stick and was screwed up and cut in half.

Q1341 Lindsay Roy: Why did you do that?

Ian Kerr: It goes back to the ICO's second meeting, where David Clancy came, my chairman, David Cochrane came, and they served a notice. They told me that I was going to be prosecuted for breaches of the Data Protection Act for operating a database without registering it, effectively, and also that the Consulting Association would be served with a notice either to register as a data controller, in which case we had to let everybody know who was on the list, or go out of business. The chairman made the decision that we would go out of business. He then gave me a form to sign, which was the form that I signed to say that I was the data controller. On reflection, that was wrong. I should not have signed it. I was an employee and it really was not my position to sign that. So all the press stuff that said I was the owner profiteering vast amounts of money is built on shifting sand. It's nonsense.

The reason why we got rid of everything was this. The ICO took the stuff away with them. On the second visit they brought it all back, bagged up, the computer, or in plastic—all the files that they had taken. These sat around while the court case took place and all the other business of winding the League up. Then it dawned on me that I had to do something about this because if I did not, somebody, sooner or later, was going to come round and say, "You're still doing this, aren't you?" So if I could, hand on heart, say that I had destroyed it totally, including the computerised hard drive, the computer, the sticks we had and everything—I can only sit here before you and tell you that that is what happened.

Q1342 Chair: Could I take this opportunity to remind you that you are under oath, because if it turns out at a later stage that any of this material survives or has survived and is under your control, it will be an extremely serious matter? Would you want to reconsider your answer at all?

Ian Kerr: I am sorry, but could you just say that again?

Q1343 Chair: You are under oath.

Ian Kerr: Yes.

Q1344 Chair: You are making quite clear statements to us that all the material has been destroyed. I am saying to you that if it subsequently turns out that that

27 November 2012 Mr Ian Kerr

is not the case, then it will be an extremely serious matter. I am wondering if you want the opportunity to reconsider your answer.

Ian Kerr: Because there were several tribunal cases that enjoined me against the companies, I kept out, probably, half a dozen of these cards that came back to me. The reason for that is because I needed, for one, myself, to remember things which were being fired at the companies, including me, in relation to a particular course of action which was their tribunal case. Other than those, the entirety was destroyed.

Q1345 Chair: Fine. You have had the opportunity to reconsider. I just wanted to be clear. So you have retained—

Ian Kerr: I've not got any—

Q1346 Chair:—six of the cards, is it? Sorry, I just want to be clear. You have retained what—half a dozen of the cards.

Ian Kerr: Thereabouts, yes.

Q1347 Chair: We will maybe discuss with you what they are and whether or not that information is available through the ICO, and if it is, then obviously we are not as concerned, but if it is something different, it may be that we will want to see those before they become more widely available and we will redact the appropriate information and do whatever needs to be done in these circumstances. Can I just come back to the question of minutes?

Ian Kerr: There is one thing I can add to the question of this business of lists, which is to say that a year last summer I received a letter from the ICO saying that it had come to their attention that the activities of the listing and referencing of people was still being undertaken. They reminded me of the piece of paper that I had signed and my obligations under it. They wanted an assurance, if I was able to give it, that whatever may or may not be taking place was to do with me, or words to that effect. I have got that letter actually somewhere. I phoned back to speak to David Clancy. He was on holiday. He then phoned me from being on holiday. I sent him a response to the letter, which was signed by him, I think. I can tell you, quite categorically, no. What I have said to you is that we burnt the whole damned lot, everything. His reply to me was, "That's what I thought you'd say. I thought that was the case. I thought you'd say that. I expected you to say that"—not cynically. He asked if I wanted a letter to that effect to confirm that that was his view. In the mists of time he didn't send the letter because he was on holiday. So he probably forgot. That's the only bit—

Q1348 Chair: Fine. It was entirely reasonable for them to have pursued the possibility, because they might have been negligent had they not done so.

Ian Kerr: Yes, and that brings me back to a couple of reasons why I got rid of it in totality. As sure as eggs are eggs, I am sure that somebody was going to be thinking, "Well, has he? Has he got rid of it?"

Q1349 Chair: Again, we will seek clarification of exactly what is there and so on through the clerk's

department. Can I just clarify one other related point? In your written evidence, you say, "I now believe I was the wrong person to prosecute." Who do you believe should have been prosecuted?

Ian Kerr: It should have been the members of the Consulting Association, of which I was their employee. The current chairman would have been the person at the head, who would be the obvious person to be pointed at, I think.

Q1350 Chair: Have you ever raised this view with the Information Commissioner subsequently?

Ian Kerr: No, I haven't.

Q1351 Chair: Is this the first time that view of yours has been made public?

Ian Kerr: Yes. I do say here somewhere that this is the first time that I have spoken in public. The reason is the bad experience with a journalist very early on where I was partially reported. The report had been written by him already, and what I said was to back up what he was going to say anyway. Therefore, I have kept my powder dry. I haven't said a word to anybody for the simple reason that once I opened my mouth and spoke to whoever it might be, it would have started a dialogue running. Therefore, in a lot of ways, I welcome the opportunity to be here to put things straight.

Q1352 Chair: We very much wanted to give you the opportunity to express your views on these matters. Since we are touching on the report, can I just clarify whether or not this was entirely drawn up by yourself alone or whether or not you have had professional advice or support from the Consulting Association, any of the representatives or anyone external? You can understand why we ask.

Ian Kerr: No, that is mine. It was drawn from a piece I had written to present to a tribunal case to show my point. My evidence partially came from that. It came from some other notes, which was a piece I had written. I have been approached by a journalist from a competent newspaper that I would trust, who said that they wished to put a balanced article together. It hasn't been done. It has certainly not been pursued. I did write a piece that, putting the two together, resulted in that. I tried to keep that as brief as possible.

Q1353 Chair: That is fine. Can I seek clarification about whether or not you have been approached by any of the officers or firms involved with the Consulting Association about the fact that you are giving evidence here today and had it suggested to you about any particular points you should be making?

Ian Kerr: No, I haven't. My contact with the Consulting Association is that they, effectively, turned their backs and cut me adrift, barring the chairman's company and the vice chairman's company in the early days. I've had no contact with any of the main contacts. A couple have phoned me up asking for the constitution, which they hadn't got, which they felt they needed in the early days, but we had some very nasty letters from their company solicitors asking us to desist from threatening to ask them for money to

27 November 2012 Mr Ian Kerr

help us with the winding up, and threatening to counter-sue for whatever the legalistic nonsense was or their argument was.

Chair: It did strike us that perhaps you had been hung out to dry somewhat, since you seem to be the only person either being prosecuted or who had any action or opprobrium descending upon your head as a result of all this. That doesn't necessarily seem to us to be entirely fair and reasonable in the circumstances. We can assure you that it will be our intention to speak to some of the companies involved and pursue these matters further.

I wonder if I could turn to the point that Pamela wanted to raise on question 18, if she could.

Q1354 Pamela Nash: In Alan Wainwright's evidence, he told us that some of the companies that were clients of yours also had their own internal databases. Is this something that you recognised?

Ian Kerr: Yes. After the Consulting Association had been set up, it was perceived by its committee that a lot of the problems in the industry were within the M&E—mechanical and electrical—sector. I was charged with the role of going round to those companies that were members, talking to their M&E divisions about any details that they held on people who were considered to be proper people and putting those into our database. I went to see him in their Manchester offices and explained what the proposals were. He in fact told me that he had his own information anyway, and I thought that we were not going to get very far.

Q1355 Pamela Nash: Who was that?

Ian Kerr: This is Alan Wainwright. He told me that he had his own information and effectively he wouldn't be needing any help. That was the impression I got. So I went away thinking, well, that's one company's M&E employees who won't be part of this.

Q1356 Pamela Nash: Was that database added to your own database at a later stage?

Ian Kerr: Yes. It was more or less in conversation. He said, "I can do it. I've got my own resources for that." That was when I was talking to him about what we were doing.

Q1357 Pamela Nash: Was that experience replicated with any other clients?

Ian Kerr: No, it wasn't, no. The idea was that we would pool any information that those companies had. If they hadn't got information, we would pool it. Because there were divisions of the major members, we would have a main contact for those who had come to these M&E meetings that we set up to start with, which ran for two or three years only. Mr Wainwright went to Emcor Drake & Scull for three months—later, after he left Tarmac. He telephoned me while he was there to say that he was going to talk to his MD—he had just been appointed HR manager—and recommend to them that they became members of the Consulting Association. He wanted to know the membership costs and what was involved in them being approved for membership. So I explained to him

what the costs were. He said he needed to talk to the other members, and if they approved it, then I would give him that information. He undertook to get back to me, having spoken to his MD, and tell me what the decision was from their direction. This was at a time when they had had problems on the Jubilee line or around the time when they were still going on. As he said in his evidence, he subsequently left after three months.

Q1358 Pamela Nash: I have a couple of quick questions on the evidence that you gave to the Chair. In relation to the list of names that was in the ring binders, the Chair mentioned that not all those names had a corresponding reference card. You said that some of those names were due to there being a separate file of environmental activists, which was not seized by the ICO. Would that be the reason for all the names in that file that didn't have reference cards at the ICO, or was there any other reason? Just to be clear, did every single name in that file have a corresponding reference card?

Ian Kerr: It should have done. I have to say that there were one or two, for reasons that we never got to the bottom of, where we had lost the reference somehow, somewhere. Heaven knows how that would have happened because we had a very secure office with an alarm system. It was an administrative and technical error or whatever. By and large, the answer is yes.

Q1359 Pamela Nash: Also, you have referred throughout this session to the main contact and the deputy contact, but I am still not clear on the membership and who these contacts were. Could you tell us how many main contacts were there? Was it someone in each company or was it someone on each site? Could you explain it? Could you make it a bit clearer what the network of main contacts was?

Ian Kerr: You would start from the view that it was one in each company. Some companies had divisions or different arms. Balfour Beatty, for instance, had Balfour Beatty Construction and Balfour Beatty Civil for major projects. There was Balfour Kilpatrick and Balfour Construction.

Q1360 Pamela Nash: Each of them would have one main contact.

Ian Kerr: Each of those would have a main contact. If it was a large company, it was subdivided. Some companies kept it tight and just had one administrator, to keep it easier. They just had one.

Q1361 Pamela Nash: At any particular time, how many main contacts would you have?

Ian Kerr: If you say we averaged 20 companies throughout the life of the Association, some companies might have had two, three or four; so you are talking, perhaps, double that as a list.

Q1362 Pamela Nash: Were those individuals ever paid for information they were passing to the Association?

Ian Kerr: No, no; never.

27 November 2012 Mr Ian Kerr

Q1363 Pamela Nash: Could they have been paid from the company they worked for? Was it part of their job?

Ian Kerr: It was part of their job. It was part of what was an agreed procedure. It was what all the companies who were members agreed to. We had a constitution. It was built around that.

Q1364 Pamela Nash: So they were not paid per piece of information.

Ian Kerr: No.

Q1365 Pamela Nash: Or from yourself, but it was expected of them as part of their job description that they had to give this information.

Ian Kerr: That is correct, yes. On the basis of, “This has been a problem for me”, it was fair and reasonable as a goodwill gesture, if you like, for others to be aware of the source.

Q1366 Pamela Nash: Finally, you said today that it was not your responsibility as to how the main contacts collected that information, for the collation or accuracy of that information, or indeed how that information was used eventually. Whose responsibility would you say it was?

Ian Kerr: For the accuracy, I was in the hands of the provider of the information—the main contact. I stress and come back to the point that these were senior people; they wouldn’t have got to these positions in the companies unless they were well versed and knew—as well as anybody can—precisely what they were doing. They were well-respected people who reported to boards.

Q1367 Chair: Can I just clarify that? I understand the point that people who were physically passing information on to you were high up in their companies, but they themselves would not actually be on site, so they were dependent upon the value of the information actually rising up to them.

Ian Kerr: Yes.

Q1368 Chair: They weren’t, therefore, necessarily vouching for its accuracy in every case because presumably they wouldn’t know.

Ian Kerr: Doubtless there were hundreds and hundreds of instances where information was passed from site to these people. They would resolve it in some other fashion. It was only in certain instances where it was considered serious enough that it would come through to me.

Chair: Fine; thank you. Pamela, have you finished?

Q1369 Pamela Nash: Mr Kerr, would you then say that it was their responsibility to determine the accuracy of the information and from where it was collected? That would be the contact’s responsibility.

Ian Kerr: Yes.

Q1370 Pamela Nash: Just to be clear, for the use of the information, you would put that on to the employer who took the information in order to make a decision on employing someone or not.

Ian Kerr: I would feed it back to the person who inquired after the person who put it in, as it had been given by the person who had put it in, precisely as it had been given. Then I would record their decision as to what they were going to do about it, be it “Employ”, “Not employ”, “Employ, note and monitor”, and then it would be the same, subsequently, down the line for the next inquiries.

Q1371 Pamela Nash: Just to be clear, Mr Kerr, in the files that we have seen that have been shown to us by those who have gained their own files from the ICO, a lot of it is information not just about trade union membership but specifically about being health and safety representatives, or from passing on health and safety information or complaining about something on sites. You used the phrase earlier “disruptive activities”. I don’t know if that would be included in those activities. Did you ever worry, when you were doing this job, that people were becoming aware that there was a blacklist taking place and it was putting people off ever reporting health and safety problems on sites or acting as a health and safety rep? Did you ever worry at the time that this was having an effect on health and safety in the companies that you were advising or passing information to?

Ian Kerr: That is a difficult one to answer, if I may say. I would uphold people’s right, totally, to do this, without question. But at the same time, I would equally champion the right of the companies to want to know about these people because it affected the companies possibly. Nobody in their right mind would query advances and improvements. People seek to improve health and safety on a site. I don’t think you could quarrel or argue against that.

Q1372 Pamela Nash: I would agree with you, but the evidence we have seen is contrary to that.

Ian Kerr: The point here is that some of these people were very, very persistent. They may have had other agendas as well and had been using health and safety to achieve these other aims and objectives. But let’s just stick to the fact that it might just be on health and safety. Each site, as I touched on earlier, had it very clearly defined. The construction company would have a safety officer—and a safety manager on a big site. The union would have a safety officer. There would be a string of these with different areas to cover, very often, and there would be a committee that sat and discussed health and safety matters. Logically, you would think that these matters would be brought before that committee for a resolution, so why would you want to set about causing disrepute and upset on sites to do with health and safety through other channels?

Q1373 Pamela Nash: Because of what you said earlier—

Ian Kerr: I know the argument would be that it was because they didn’t get the solution they wanted through the official channels. But to be fair, they were there. Very serious and strict action is taken where a site is outside its health and safety obligations.

27 November 2012 Mr Ian Kerr

Q1374 Pamela Nash: I am sorry if I am paraphrasing what you said earlier, but you did say that the aim of this was to ensure that jobs were done as quickly as possible with the staff after you had given references or information, but you didn't mention health and safety.

Ian Kerr: I know that health and safety should not be equated to speed and quickness, because that is often the way that problems arise, I think. But, as I say, the sites were very carefully thought out and had machinery in place for dispute resolution, which could be health and safety or anything, such as times started and times of finishing on a Friday. Heaven knows what it could be. Therefore, why would you seek to—I am sorry, but I have lost the thread of what you asked me.

Q1375 Pamela Nash: I am afraid I don't know what your train of thought was there. What I would say is that this inquiry was born out of the fact that the Scottish Affairs Committee noted that the health and safety record in the construction industry in Scotland was even worse than in the rest of the UK, which isn't that good either. People are killed every week on construction sites in the UK and people suffer severe injuries as a result of working in the construction industry. Do you accept that because of this blacklist there were people who saw their colleagues not getting work following reporting health and safety incidents, which then led them, themselves, not to report incidents which they should have done or in becoming trade union representatives or health and safety representatives on their own sites?

Ian Kerr: You are dealing with responsible HR and health managers here. They are not going to take the view that this person got in the way of this site racing towards its finishing date so it did not have to pay penalty clauses. They would be sensible enough and realise that their union opposite number would clearly point out to them if they thought they were acting too hastily to do the resolution of a problem in the best possible way for all concerned. It wasn't anything to do with health and safety issues that should be glossed over because it cost money to put them right. I don't think that a company in this day and age has such an irresponsible attitude. Therefore, if people brought health and safety issues of a minor matter to notice, I think the machinery dealt with those. It was where people chose to persist when they perhaps could have taken a different route—i.e. the machinery in place to resolve it—that people got concerned about it.

Q1376 Pamela Nash: I wish I agreed with you, but the reason why we are having this hearing today and this inquiry is because that is not the information that we have had. It has had a considerable effect on health and safety.

Ian Kerr: Construction sites are, by their nature, dangerous places. That is wholly, wholly, understood by all in it. You have got to be very careful about the health and safety legislation. The requirements today are extremely tight, it seems to me, compared to what they used to be. Nothing is perfect.

Chair: We are getting close to the end. We just want to tie up a few loose ends, if we can.

Q1377 Lindsay Roy: What do you think led to the ICO raid on your premises? Can you tell us briefly about what happened?

Ian Kerr: Yes. They appeared one Monday morning. I was the only person in the office. The person who should have been there was ill, so there was only me there. Four people knocked at the door. I opened it. Mr Clancy stuck his boot in the door so that I couldn't shut it. He produced a warrant from Manchester Crown court or magistrates' court for entry there and then to search the premises. I let them in. They came in. I got the filing cabinet open and took the lists out. They sat down. They explained what their business was. I then phoned the chairman while this was going on and told him what was happening. He then said that he would consult his websites to see whether they were legally entitled to. I knew that they were. He came back and said, "Yes, it appears that they are."

After they had settled down, David Clancy came into my office and we sat down and, to be fair, we had a fairly amicable conversation about matters. He said that he had spoken to one person in the industry, which was how this had all started. It set them on the trail. I knew who that was. I opened the cabinets and said, "I could show you a piece that we have just put together", which had just been mailed out, which was to do with a power station he was working on, which showed his comments at the bottom or comments that were attributed to him in an article. So Mr Clancy had some indication of what was in the other files, which were open. I said to him at one point, "You realise you have destroyed, or you appear to be about to destroy a very effective network in the industry." His comment to me back was, "I can't understand why this hasn't gone overseas long ago outside the ICO's jurisdiction."

Q1378 Lindsay Roy: "Why this hasn't been"—sorry, I missed the last part.

Ian Kerr: That this—the activities of the Consulting Association—hadn't gone overseas long ago, somewhere outside the ICO's jurisdiction.

Q1379 Lindsay Roy: Were you surprised by his comments?

Ian Kerr: Yes. I thought he was a very reasonable and open man, to be honest with you.

Q1380 Lindsay Roy: For how long were they there and what was the outcome?

Ian Kerr: Pardon?

Lindsay Roy: For how long was the ICO on your premises and what was the outcome?

Ian Kerr: They were there for somewhere between two to three hours. They took away, as I said, all the information that they wanted. They told me that they would return it and would phone up to agree a date to come back with it. I think they agreed that with the chairman.

Q1381 Lindsay Roy: Roughly, how much of the information did they take away that you had on the premises? Was it 5% or 50%?

Ian Kerr: Five per cent, 10%? I would have thought about 30%—25% perhaps. The point about it is the

27 November 2012 Mr Ian Kerr

other information that we held. I don't know whether this is pre-empting your question, but we had filing cabinets, which were there, which we had acquired second hand. Some of them were empty but some had a lot of information, which were company files, which had all the invoices going back years—nine years. The meeting files I kept—I had a tendency to hoard stuff on the basis that sooner or later somebody would ask me a question about it and I would have to work very hard to find the answer, and if I could go back into the file, I could perhaps get it quickly. There were files to do with certain sites, for all sorts of reasons, and files to do with particular publications. I kept the actual original clippings, which were put together and pasted up for mail-outs. I kept the copies of all the mail-outs. I actually thought you'd ask me this—somewhere I have a note of what I kept.

Q1382 Lindsay Roy: So you have got a note of what you kept—what you retained.

Ian Kerr: Saying what we had got in the files.

Q1383 Lindsay Roy: Rather than search just now, it would be helpful if you were able to give us the details of what you retained.

Ian Kerr: I am sorry.

Lindsay Roy: It would be helpful, rather than search just now, if you could give us details of what you had retained. Am I right that, apart from what the ICO took away, which was a small amount of information, you have destroyed the rest?

Ian Kerr: Yes. I have destroyed a lot of the stuff that was in the files as well. All that we kept is on page 5 of those notes. It is there.

Q1384 Lindsay Roy: Okay, but you burnt the rest; is that correct?

Ian Kerr: As I said earlier, I burnt absolutely everything.

Q1385 Lindsay Roy: For the same reason as you destroyed the computer hard drive.

Ian Kerr: Yes. There was no point in keeping any of this filing stuff which was of variable interest. It was for me—for admin. There was a lot of admin stuff. It says here what we kept. The ICO took the computer away. Four people came. There was Mr Clancy, his kind of assistant, a lady came and a fellow he described as his technical man, who fiddled around with the computer for all the time he was there, from what I saw of him—or sorry, he looked at it.

Q1386 Jim McGovern: Just following on from what my colleague Ms Nash was saying about health and safety, I mentioned earlier that I had worked in the construction industry for some 25 years. I just know, for a fact, that if you said to the gaffer or the boss, "That's not a job for a ladder. We need a scaffold for that", which means it would be 10 times the price, you were regarded as a pest, a nuisance, and you end up on your list. You are saying that you are not particularly interested in how somebody ends up on the list. You just pass on the information. So somebody like me, who is saying, "I'm a safety rep and I'm saying that that is unsafe", because of that I

end up on your list and, as the Chair used the word earlier on, I end up unemployable. Do you feel justified in that?

Ian Kerr: No. From the way you have put that, that is a no, I don't.

Q1387 Jim McGovern: That is the question really. Ethically and morally, do you believe in what you were doing? Do you believe that what you were doing was justifiable?

Ian Kerr: Well, I think we could talk about that for a long time.

Q1388 Jim McGovern: I am here all night. Go on. You can talk about this for as long as you want.

Ian Kerr: People were being refused a job, at worst, by one of the member companies. They could go to a company that wasn't a member and get a job. My feelings on it were that it wasn't wholly preventing them from working. There were lots and lots of other companies. This wasn't a list of all the major construction companies who were members. There were plenty of others. There were lots and lots of subcontractors that were very large companies. There were the subcontractors the next tier down, and so it went on.

Q1389 Jim McGovern: Let me interrupt you and give you an example. When the General Accident Insurance Company were building their world headquarters in Perth, I worked for a Dundee company. Because it was McAlpine that were building it, we had to go on that site every day and pretend that we were from Edinburgh because McAlpine refused to employ anybody from Dundee on their sites because we were regarded as some sort of loony lefties, commies or whatever. Do you think that that is justifiable?

Ian Kerr: No. It sounds ridiculous.

Q1390 Jim McGovern: Yes. That is one of the companies you were representing.

Ian Kerr: Yes.

Q1391 Jim McGovern: But you would never have contradicted them or questioned them on their ethics or morals.

Ian Kerr: I come back to something I said to Ms Nash. I, personally, upheld the right of these people to hold these views. At the same time, you had to balance that against a company that had gone in to do a job in a set period of time, to get out, not make a loss, to stay in business and to keep its reputation intact—

Q1392 Jim McGovern: So you would accept that corners would be cut there. If the object was to make as much profit as possible in as short a time as possible, corners will be cut, as my colleague said, in terms of health and safety.

Ian Kerr: That comes back to an argument that can go on for ever, frankly.

Jim McGovern: As I say, let's argue it. I am all ears.

27 November 2012 Mr Ian Kerr

Chair: I am not sure that we are going to get a meeting of minds on this, Jim. I appreciate your feelings.

Jim McGovern: Mr Kerr has twice said that we could talk on and on about this and I am saying, well, if you want to—

Chair: Right.

Ian Kerr: I shall go away and on my way back home construct my argument that I should have put to you, I am sure.

Q1393 Jim McGovern: Okay. Do you believe that the activities of the Consulting Association were entirely within the law?

Ian Kerr: Were what? I am sorry.

Jim McGovern: Do you believe that the activities of the Consulting Association were entirely within the law—that they were entirely legal?

Ian Kerr: It became illegal after or it was the reason why the ICO came into being, didn't it? We should have registered. Our error, legally, was not to register as a data controller.

Q1394 Jim McGovern: In relation to the activities of the Consulting Association, do you believe that there is still a need for those sorts of activities?

Ian Kerr: Probably, as a result of this inquiry and what has become public since, I can see a far better way if you want to go about knowing about people who are a problem on site, in that you do it within the scope of the Data Protection Act. If you are an HR manager and you have a problem with somebody, you say, "We think it is serious enough that we are going to refer you to such-and-such an agency", and at the same time this agency is registered. That person has the right to apply to it.

I think the bottom line of all that is, like it or not, that this is always going to be there, one way or another, in whatever industry. The fact that it is there in construction is that it is a transient industry and it would seem to have a stronger case for doing it. If you take any company in any part of the country, on an industrial estate that is static, which has been there for so many years, it will know the employment situation, the strengths and weaknesses of the people it could or couldn't employ in the area, and it will have an unofficial underground network with their opposite numbers in the companies in the area, as I understand it.

Q1395 Jim McGovern: Thanks, Mr Kerr. Finally, do you believe, whether it is underground or via recognised organisations, that blacklisting and vetting still goes on in the construction industry, or for that matter, any other industry?

Ian Kerr: Do I think it should or would?

Q1396 Jim McGovern: No. Do you think it does go on?

Ian Kerr: For the reasons I gave you earlier, yes, I think in some form or another, yes.

Jim McGovern: Thanks very much.

Q1397 Chair: We are obviously getting to the end now, so I want to try and tie up a couple of loose

ends. In the files and the cards that I saw there was reference to a number of other files. Things said, "See RMT reference", "See JSCSC file" and "See also UCATT file." I presume that those were all historical references to material that had been left behind with the Consulting Association. Is that right?

Ian Kerr: Yes. I said earlier that in the filing cabinets we would hold files. We did actually hold files on unions in general, so if there was a cutting and I thought it was of interest I would stick it into a file marked "RMT" or into a UCATT file. Also, we published a list each year, circulated to the members, of the construction unions by head office, telephone numbers, addresses, regions and, within those regions, the names of the officials. So those were kept in those files. The purpose of that was purely and simply that when a company was going off to set a site up somewhere the person would be able to look on that list and say, "Oh, this is the man I can expect to contact me." The union official's job would be, as I understand it, if he saw a board go up somewhere, to make himself known to that site, through these contacts.

Q1398 Chair: That is in your role as a sort of quasi-trade association. You were providing neutral information to your member companies.

Ian Kerr: Yes. A lot of those came from the handbooks that the companies and the unions themselves published.

Q1399 Chair: But the sort of stuff like "See SWP meeting report" file, presumably, was relating to previous material that had been held by the Economic League that was no longer carried over to you.

Ian Kerr: What were the initials?

Q1400 Chair: SWP—a Trotskyist organisation, to the best of my knowledge.

Ian Kerr: Yes; it may have been. I would have had a file on the SWP. I would have had a file on the National Front. I would have had a file on any organisation that seemed to be jumping up and down about construction. It was my role to keep tabs on that.

Q1401 Chair: But none of that would be accessed in the context of individuals applying for employment. That was all in the context of looking at an overview of the industry as an information and intelligence centre.

Ian Kerr: If somebody said to me, "What's the SWP? I've no idea what it is", I could look in the file and give them a very good idea.

Q1402 Chair: That clarifies that point. My second to last point is about Caprim, which is mentioned in your report and of which we have heard. Can you clarify for me what your understanding is of Caprim? You mention in your report the two people who set it up. What was Caprim doing?

Ian Kerr: When the League folded it was decided by the construction companies, as I have said, to set up the Consulting Association. The two people who were the director general at the time and the director of information and research of the League chose to

27 November 2012 Mr Ian Kerr

continue with a business that had some of the elements of what the Economic League did. I don't know the ins and outs of it at all because I had no contact with them afterwards. Basically, they were going to continue putting publications out to member companies. I think they were going to do CV checking—curriculum vitae checking. In other words, they would be checking whether somebody who says he's got a degree has got a degree, and all that sort of thing, when the job application was received. It was a different strand of things.

Q1403 Chair: If we want to clarify that, we will pull them in as well. What are the names of the two individuals? You have got their titles but you haven't given us their names.

Ian Kerr: The director general at the time was Stan Hardy, and the director of information and research—I think he still had that title—was a Jack Winder.

Q1404 Chair: A final point from us is that I did notice in the files that there did seem to be a disproportionately large number of Scots in your files by address and so on.

Ian Kerr: Are you sure?

Q1405 Chair: No, not entirely, but I thought so. I wasn't sure whether or not Scottish companies, perhaps, were disproportionately active in putting names in or whether or not there was some other reason, but there did seem to be quite a substantial number of Scots' addresses in the list. If you work on the basis of Scotland being 9% of the population, it did seem that there was a disproportionately large number there. I wondered if there was any explanation for that, because we are after all the Scottish Affairs Select Committee.

Ian Kerr: It is an interesting point you raise, but I have never addressed it or thought about it until now.

Q1406 Pamela Nash: Mr Kerr, you said, in response to Mr McGovern's question about the work of the Consulting Association being legal, that it was not illegal to begin with but it became illegal with data protection laws coming in. One of our favourite questions on the Committee now is about legal advice. Did you or your colleagues who set up the Consulting Association ever take legal advice at its inception about the legality of what you were doing?

Ian Kerr: I didn't, but whether the steering committee that formed the Consulting Association did—it is very probable that they did.

Q1407 Pamela Nash: Is there any way that we could find out if legal advice was sought?

Ian Kerr: No, I can't think of any.

Q1408 Pamela Nash: The reason why I am asking this question is that I am not a lawyer, but just from a quick look at the European convention on human rights, I would guess that this contravenes at least two articles on that, and that legislation has been in place since the '50s, not since the Data Protection Act. I would guess that while there wasn't data protection legislation at the beginning of the Consulting

Association, there were other laws that it could have broken.

Ian Kerr: I think the European convention on human rights is one of these things that have developed, developed and developed over a period of time to become a significant vehicle. I had hardly ever heard of it at that time, in 1993.

Q1409 Pamela Nash: That does not mean that it was not the law.

Ian Kerr: No; that is entirely my ignorance. I know that. I think that was a general feeling at large, perhaps.

Q1410 Pamela Nash: Now that years on the consequences of the work of the Consulting Association have become clear, are there any elements of your work that you regret or anything that you would change?

Ian Kerr: If I were to do it again?

Q1411 Pamela Nash: Would you do it again?

Ian Kerr: I wouldn't. Absolutely not. Is there anything that I regret, did you say? I would be truly sorry if we had ruined somebody's life permanently, but as I pointed out, they were all in a position to seek employment for their trades and skills elsewhere in the industry. If it caused genuine hardship, then no, that's not right. It was felt that these companies had a right to protect themselves, and by refusing employment they were not flagging them up openly to stop them getting work elsewhere. That is what I would come back to all the time. I would equally say that where it had ruined lives and it could be genuinely shown to have done that, then that would be a concern and a matter of regret for me.

Pamela Nash: Thank you.

Q1412 Chair: We normally end our meetings, and we will this one, by asking our guests whether or not there are any answers they had prepared to questions we haven't asked. In a sense, are there any particular points that they want to make that they feel we haven't already covered? I wondered if there was anything in particular that you feel we haven't touched on that you want to draw to our attention.

Ian Kerr: Yes. There is one thing that relates to Mr Wainwright's evidence. It is the last paragraph on page 6. He did suggest that over a period of time construction companies would be fed so many names through that they would keep those and cease to find a need for the continued use of the service. My experience was that they didn't do this. It was much cheaper, and more efficient and effective for them to put the names through to us all of the time and to not give me the opening and the need, as an entrepreneur, he seemed to be suggesting, for me to go out and seek a living by getting other industries in. That categorically was not the case; I was an employee all the time. That is something that needs to be said.

Q1413 Chair: Can I just clarify a point about the fine of £5,000 that you were levied? Did the Consulting Association pay that or did that fall on you personally?

27 November 2012 Mr Ian Kerr

Ian Kerr: The fine was paid by—it came through Sir Robert McAlpine, on the basis that I had put myself at the front and took the flak, if you like, for it all, so that they wouldn't be drawn into all of this. They would remain hidden, if you like.

Chair: Thanks very much for that.

Ian Kerr: For that to be the case, there would be no mention of my contract of employment, who signed it and any other documents that might come out. I had to send it to them eventually.

Q1414 Chair: The £5,000 fine being paid by Sir Robert McAlpine was part of a confidentiality agreement. Understandably, your circumstances are such now that you are under oath and therefore that does not apply, but that was part of a confidentiality agreement and you would not pursue them for anything else. Is that a fair way of putting it?

Ian Kerr: There was no written agreement of any shape or form. It was just an agreement.

Q1415 Chair: An informal—

Ian Kerr: Very, very informal, because they were—I think they had to be careful about what they were getting involved in. It was the £5,000 fine, which included a £1,000 administrative cost to the court as well, plus they paid certain of the winding-up fees that we were short of. We had a surplus of £58,000 from which we were not able to cover all the winding-up costs, including statutory redundancies to the staff and to me. They covered the shortfall on that and the contract we got out of with rent and rates on copiers and all that sort of thing—that we had to get out of and cancel. We covered as much of that as we could out of the £58,000 and there was still a shortfall. There was also a payment made to a solicitor for the costs of representing me at one of the IT cases as a further payment.

Q1416 Chair: That must have been, what, about £100,000 altogether?

Ian Kerr: No, nothing like that. It would have been about £20,000-odd.

Q1417 Chair: I see. I wasn't sure how much the leases would have cost and all the rest of it. I don't

know Droitwich, so I don't know how much leases are there. In total, those costs came to between £20,000 to £30,000; Robert McAlpine picked up all that, and they picked up the cost of your fine.

Ian Kerr: It was included in that, yes.

Q1418 Chair: It included that.

Ian Kerr: They paid it. Whether they themselves stood it or got it from the other members, I don't know.

Q1419 Chair: But they were the vehicle through which it was paid.

Ian Kerr: That's correct.

Q1420 Jim McGovern: Mr Kerr, was there some sort of severance payment for you, personally, at the wind-up?

Ian Kerr: No. As I said, we had somebody to pay parts of the statutory minimum redundancy. I received that, my wife did and the two other employees we had did as well. I think they were certainly short on one—to get that sorted—at least.

Chair: I am strongly tempted to say that if you had a better trade union representing you, you might very well have got a better deal in these circumstances. Could I draw things to a close, particularly since the man from the *Morning Star* has re-entered the room, and say that one of the things in the file that was down against somebody was that they also said the *Morning Star* was the only paper supporting the unions? To have that sort of trivia—it might or might not be true—in somebody's personnel file does seem to us to be a bit absurd.

Could I thank you for coming along this afternoon and being so open? We have had you here for three and a half hours and you have been very open with us. We did indicate earlier on that if necessary we would ask you back if further evidence is required, but we hope that we will be able to settle any clarifications that are necessary simply by correspondence. There are a number of issues arising from this that we want to make sure are clarified with the staff. Could I close the meeting?

Tuesday 22 January 2013

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Iain McKenzie
Pamela Nash

Mr Alan Reid
Lindsay Roy

Examination of Witness

Witness: **Cullum McAlpine**, Director, Sir Robert McAlpine Ltd, gave sworn evidence.

Q1421 Chair: I welcome you to the hearing and ask the clerk to swear you in. We are putting witnesses on oath for this hearing. (*Cullum McAlpine and Peter Brinley-Codd were sworn in*) Thank you.

May I clarify, for those who are here, the fact that only Mr McAlpine is a witness? He has with him his lawyer, who will not be expressing a view during the hearing, since he has not been called as a witness. He is there in the way that quite often Ministers or senior officers have with them somebody to give them advice during a hearing. A number of folk have asked me about additional information being put on the website. I just received today—although the staff had it a little earlier—a bundle of additional information that has been sent to us by Mr Ian Kerr's family and which casts additional light on a number of issues. We will put that on the website as soon as we can. However, because of the form of it, some of it may have to be typed up and the like. We will do that as quickly as possible.

As some people are aware, Mr McAlpine is involved in a case that is presently sub judice. There are therefore certain restrictions on what we can ask at this time. We discussed the rules of play, as it were, beforehand. However, it may well be that, if any members want to ask questions that our clerk feels are inappropriate, he will advise me and I will stop that line of questioning. As I have outlined to Mr McAlpine, it may well be the case that, if we feel we are unable to progress as much as we would want to at this stage, we will have him back to give further evidence once the court case has been cleared or, indeed, when any further evidence emerges from elsewhere. I hope that that clarifies things for those in the public gallery, for those watching and for members of the Committee.

I would like to start the meeting by asking you to introduce yourself and to tell us who you are for the record.

Cullum McAlpine: Thank you, Chairman. My name is Cullum McAlpine. I was the first chairman of the Consulting Association, from 1993 until 1996. My role and responsibilities were confined to ensuring that the association was set up on a secure commercial and financial basis. In addition, I am a non-executive director of Sir Robert McAlpine. I have been a director of that company since the 1970s. As Mr Wilson will have briefed the Committee, Sir Robert McAlpine Ltd is currently the subject of a legal claim in which I am personally named. We have shared particulars of the claim with your clerk. Following discussion with him and others, I am now joined by

McAlpine's head of legal services, who—with your permission—will guide me if I stray into areas that, in the light of the pending court case, are sub judice in relation to certain specific allegations. I will do my best to help the Committee with its business, but I hope you will understand that there are certain questions that I cannot answer, for the reasons I have just given.

Q1422 Chair: Fine; thank you. Can I start by asking you about the Economic League and the services group, and how the Consulting Association came out of that? I am not entirely clear, for example, about your own and McAlpine's involvement in the Economic League. I know that McAlpine was a member of it. Could you take us through that area first?

Cullum McAlpine: I was never personally involved with the Economic League. Sir Robert McAlpine was a member, although I believe that it resigned before the league's final days or years. At that time, the HR managers of some of the companies that had been members of the services group got together and formed a grouping. I think that lasted for a couple of years. In Mr Kerr's evidence to you, he said there were two chairmen of that grouping. One was from Bovis. He resigned because Bovis had become a house builder, so it was no longer appropriate for it to be a member of the group. The second chairman was a director of Percy Trentham, a civil engineering company.

I think the group was finding its way towards setting itself up as an association, and the director of Trentham would have taken it on into what became the Consulting Association. However, at Trentham there was a takeover—a change in the direction and ownership of the company—so he was not going to continue. He therefore came to see me to tell me about this group of people that they were about to set up—a new group of HR managers. He said that they would like a main board director from one of the bigger civil engineering and building companies to become its first chair. I listened to him and took that message back to the board of Sir Robert McAlpine.

Sir Robert McAlpine listened and had two particular comments, one of which—most importantly—was whether this was a legally constituted enterprise. If the answer was yes, it was prepared to nominate me for a three-year period to be the first chairman, in order to give a certain amount of financial guidance and stability, because there was a worry that a group of HR managers would not in themselves be able to

22 January 2013 Cullum McAlpine

run what was an independent enterprise. A legal opinion had been given to the group before Trentham approached me. It had come from one of the members, but I not sure which one; I think it was Taylor Woodrow or, possibly, John Laing—one of the two. That legal opinion was sufficient for my board to decide that it was a perfectly legal and above-board enterprise. I was therefore nominated to join it. That is my recollection of the background.

Q1423 Lindsay Roy: Were you aware of the nature and purpose of this enterprise?

Cullum McAlpine: I was aware that it was going to be primarily a reference service for members.

Q1424 Lindsay Roy: What kind of reference service?

Cullum McAlpine: A reference service for members that provided information into the base, as it were, of the organisation on activities on construction sites.

Q1425 Lindsay Roy: About activities on construction sites, not about people.

Cullum McAlpine: It was about people involved on construction sites.

Q1426 Chair: Can I come back to some of that later, and return to the question of the starting-up? All the reference material I have seen suggests that Sir Robert McAlpine was in the Economic League right up to the end.

Cullum McAlpine: I do not know that, I am afraid.

Q1427 Chair: But you indicated that you thought that it had resigned early on. Was it immediately before the closure, or was it many years beforehand?

Cullum McAlpine: I do not know when the Economic League finally collapsed.

Q1428 Chair: I am sorry, but I am being asked whether the witness can speak up, as we are not being picked up properly. The volume on the microphones is as high as it will go, so please speak up a bit.

Cullum McAlpine: I do not know when the Economic League finally went into non-existence, but I was informed that we had not been a member for the last year or so.

Chair: The last year or so. Okay, that helps to clarify that.

Q1429 Jim McGovern: I had a bit of difficulty hearing what was being said, but I think the witness said it was in the last days, or perhaps the last years, of the Economic League. Which is it?

Cullum McAlpine: “Days” was a euphemism; I was told the last couple of years. I was not involved with it, but that is what I was told.

Q1430 Chair: Okay, but you were involved in it pretty well up to the end and came out just before that. I know it fell apart in a bit of chaos at the end.

Cullum McAlpine: So I believe.

Q1431 Chair: What was your understanding of the role of the Economic League, of which your firm was a member?

Cullum McAlpine: I really do not know. I believe the company was a member of the services group, which was a construction-related part of the Economic League.

Q1432 Chair: Right, but you were a main board member of McAlpine at the time.

Cullum McAlpine: Correct.

Q1433 Chair: Did the board agree to participate in the Economic League?

Cullum McAlpine: Not that I remember.

Q1434 Chair: So it did not cross your desk at that stage.

Cullum McAlpine: It never crossed my desk.

Q1435 Chair: So the first time that you were aware of any of this, in a sense, was when you were asked to be the first chair of the Consulting Association.

Cullum McAlpine: Correct.

Q1436 Chair: Why you?

Cullum McAlpine: I don’t know. I had met the gentleman on business occasions beforehand, and I guess he decided that he wanted to talk to me. He really wanted McAlpine, not me.

Q1437 Chair: Why McAlpine, in particular, then?

Cullum McAlpine: As I said, he wanted a major building and civil engineering contractor to put in a main board director, to give this thing a bit of financial stability.

Q1438 Chair: Presumably there were a number of firms from which to choose in those circumstances. I am just trying to clarify why he chose you, and McAlpine.

Cullum McAlpine: I really do not know.

Q1439 Chair: Can I clarify the role of the services group? Is it the case that, essentially, it was doing under the Economic League what the Consulting Association then did?

Cullum McAlpine: I don’t know how it got its information or what it did with it.

Q1440 Chair: Okay. When you were asked to become the first chair of the Consulting Association, what did you think it was going to do?

Cullum McAlpine: What it was going to do was outlined to me. It was going to provide a reference service to and from the members.

Q1441 Chair: Can I clarify how this reference service worked?

Cullum McAlpine: I think Mr Kerr has told you that, but I was led to believe that the member companies would provide information to the Consulting Association on individuals who had acted in a disruptive way on building sites, had broken some of the working rule agreements, had sabotaged such

22 January 2013 Cullum McAlpine

things, or had committed criminal acts such as theft, vandalism or threatening behaviour—that sort of stuff.

Q1442 Chair: We have had Mr Kerr's version of events and have no reason to believe that that is incorrect. However, it would be helpful if you would clarify for us what you were told at the time when you become chair. This register was established with people on it, as you have described. How exactly did information get on to the register?

Cullum McAlpine: I am told that this is difficult to answer, but via the members.

Q1443 Chair: So the members submitted the information.

Cullum McAlpine: Yes.

Q1444 Chair: Can I ask about the records of the Economic League—its intellectual property? My understanding from the information we have had is that you paid £10,000 for the intellectual property in the records. Am I right in thinking that that formed the basis of the information bank going forward, which was then added to by others?

Cullum McAlpine: Yes. That was a bit of a surprise, to be honest. Just as I became chairman, Ian Kerr told us that the construction databank from the services group had to be paid for and was going to cost £10,000. A number of the members were not happy about that, because they believed that some of the information in that databank was not the kind of information that they would have put on to their own references to various people. They were very mindful—concerned—that there were political and other references that were not part of what the Consulting Association wished to be involved with, so there was quite a discussion about whether this list should be purchased from the rump of the Economic League. At the end of the day, Mr Kerr persuaded us that it was the only potential database that was available at that time and that it would be under his guidance; he would edit it so that it would become reflective of what the members of the Consulting Association would expect to have contributed into the association themselves.

Q1445 Chair: I have seen the database—the individual cards. To be fair, I did not have time to go through all of them, but quite a lot of them seemed to be very old and still there from the days of the Economic League. I have the impression from what you are saying that you thought that all of those would have been combed out over time.

Cullum McAlpine: That is exactly what we thought. In my three years, the members urged Mr Kerr to take out references with which we were not comfortable. We believed he had done that.

Q1446 Chair: Leaving aside for a moment the inherited material from the Economic League, are you saying that the information on individuals that came in and formed the basis for the database was submitted by the individual companies?

Cullum McAlpine: Yes, by named individuals from those companies.

Q1447 Chair: How did you understand that it was coming out again?

Cullum McAlpine: It came out to the members when the members made inquiries about individuals they were either employing or considering employing.

Q1448 Chair: Presumably, you and your advisers have looked at the evidence from Mr Kerr. Does your understanding of the methodology differ in any way from the evidence he gave us?

Cullum McAlpine: No, it looks pretty much what I would have expected to see.

Q1449 Chair: Fine. So Sir Robert McAlpine both put evidence in and took evidence out.

Cullum McAlpine: All the member companies put evidence in and took evidence out.

Q1450 Chair: To be fair, we have not got all the member companies here at the moment. I am asking you whether or not your company did.

Cullum McAlpine: All the member companies did, including ours.

Q1451 Chair: Fine. Once that information came out, what was it used for?

Cullum McAlpine: I am sorry, but I am being advised that I cannot answer that question as put to me.

Q1452 Chair: Is there any way in which you would be able to answer the question if it were reworded, or is it a blanket negative on that whole area?

Cullum McAlpine: I think it is pretty blanket.

Chair: Unfortunately—or fortunately, as the case may be—the record does not show when your lawyer nods his head, so I have just put that on the record, so that it will be recognised outside.

Q1453 Lindsay Roy: Whose role was it to monitor what Mr Kerr was doing on behalf of the Consulting Association—in particular, to remove some of the material that you felt was inappropriate?

Cullum McAlpine: I am told that I cannot answer that question.

Q1454 Chair: If we reworded it, would you be able to add anything in that general area?

Cullum McAlpine: In relation to Mr Kerr and his activity?

Chair: In relation to the question that was asked.

Q1455 Lindsay Roy: Who monitored his working? You would have thought that, in an organisation with a directorate, someone would have the role of monitoring that your wishes were being carried out.

Cullum McAlpine: There was no directorate as such. Mr Kerr was the chief executive officer.

Q1456 Lindsay Roy: Did you have a monitoring role?

Cullum McAlpine: No, not on the operational side. I was chairman of the finance committee.

Q1457 Chair: But we understood that the finance committee was effectively the board.

22 January 2013 Cullum McAlpine

Cullum McAlpine: There was not a board.

Q1458 Chair: No, but, inasmuch as there was a board, it was the finance committee. The finance committee's role was not just to see that the money came in and went out again; it was to make sure that the thing was being run properly. I think that was in Mr Kerr's evidence.

Cullum McAlpine: It concentrated pretty much only on budgets and financial arrangements—income, expenditure and that sort of thing. It did not concern itself with the day-to-day or month-to-month management of the Consulting Association.

Q1459 Lindsay Roy: Who drew up Mr Kerr's contract and monitored what was happening in relation to that?

Cullum McAlpine: It was drawn up in draft before I became involved. The members approved it and, as chairman of the finance committee, I expect that I signed it.

Q1460 Lindsay Roy: So you approved it as well.

Cullum McAlpine: Yes.

Q1461 Jim McGovern: Were you aware of what he was obliged contractually to do?

Cullum McAlpine: It was not an employment contract in that sense.

Q1462 Jim McGovern: In what sense was it a contract?

Cullum McAlpine: There was no performance-related basis to it.

Q1463 Jim McGovern: It was just a free rein.

Cullum McAlpine: Yes. He was getting his salary for carrying out his role, which—from memory—was not specified in that contract. It was just agreed that he would be paid a salary in that role. The members were happy with that, so I signed it.

Q1464 Lindsay Roy: Is that not unusual for a business venture?

Cullum McAlpine: It was not really a business venture, was it? It was more—

Q1465 Lindsay Roy: It was commercial activity.

Cullum McAlpine: My role was to try to make sure that it did not lose money and that it survived the first three years. To that extent, it was a commercial role.

Q1466 Pamela Nash: Earlier you touched on the reasons why the list existed, and the expectations about why someone would be on it. Could you expand on that? For instance, was there a list of criteria for putting a person on the list? Who decided this?

Cullum McAlpine: I never saw one.

Q1467 Pamela Nash: Were there discussions at board level about why someone would be on the list?

Cullum McAlpine: Absolutely not.

Q1468 Pamela Nash: So who decided?

Cullum McAlpine: The individual members themselves.

Pamela Nash: Okay.

Q1469 Chair: Who decided for McAlpine? McAlpine is a firm—a body corporate, a collective personality and so on—but somebody within it had to put the information in.

Cullum McAlpine: Correct.

Q1470 Chair: What is being asked is, did it make up its own criteria, was some guidance given, or was there collective guidance among all the people on the board about what sort of thing would be put in?

Cullum McAlpine: No guidance was given. The individual members were all experienced HR managers of these large construction companies. Their discretion was used. It was entirely up to them who they put on the list.

Q1471 Chair: Following up on the point about criteria, there could have been different criteria used by different firms.

Cullum McAlpine: There could have been, but that is not the way the Consulting Association was supposed to run. The criteria were pretty strict. They were to do with sabotaging construction activities and unlawful activities.

Q1472 Pamela Nash: Just to be clear, in response to my question you said that there were no clear criteria, but you seem certain enough about what the criteria were to know that every company was using the same set.

Cullum McAlpine: They should have done.

Q1473 Pamela Nash: Okay. Could you be clear on what McAlpine's criteria were for someone to end up on the list?

Cullum McAlpine: The McAlpine criteria were no different from what I have just said. Everybody should have been using the same general criteria.

Q1474 Pamela Nash: I will explore that a little further. Earlier you said that someone would end up on the list if they were found to be disruptive on a building site. Can you explain to those of us who are not familiar with work on a building site what you would consider to be disruptive?

Cullum McAlpine: Apart from the illegal activities, I presume. The building and civil engineering industry is run by a joint agreement prepared between the employers and the trade unions. That agreement covers almost every condition within the industry—pay, conditions, health, safety, welfare and so on. There are grievance procedures agreed between the trade unions and the employers that have to be used. Sometimes—we are talking about what happened back in the '90s now—there was a fairly strong movement to disrupt the normal working day activities of construction companies. One method of doing that was to abuse and ignore the tried and tested agreement. That would be an example.

22 January 2013 Cullum McAlpine

Q1475 Pamela Nash: The information that we have seen from the list does not indicate that that was the simple reason why most of the people on the list got there. For instance, would reporting health and safety problems on site be seen as disruptive in itself?

Cullum McAlpine: Reporting health and safety would never be disruptive.

Q1476 Pamela Nash: Could you explain why the list indicates that that is why many people on it ended up there?

Cullum McAlpine: To my mind, they should not have been on that list. I doubt that they would have been put on it by my company. To run an efficient construction business, you need to be extremely careful about the proper management of health and safety on sites. My experience and that of many others in the industry will tell you that a site that does not pay attention to health and safety is a messy site, a disorganised site and probably one that will lose money as well. It is entirely right and proper that health and safety opinions—constructive ones—should be heard in the right way. The industry’s working rule agreements absolutely provide for that, and provide for health and safety stewards—representatives of the work force—to have meetings with the employers. There is a procedure for that. It is built into what is known as a working rule agreement that health and safety procedures should be aired and queried.

Q1477 Pamela Nash: I just want to be clear. I am sure I speak for the whole Committee when I say that we completely agree with what you have just said. However, the health and safety record on Scottish building sites is the reason why this inquiry has come before the Scottish Affairs Committee. It became clear to us that the list may have contributed to causing the high level of health and safety problems that we have on our sites.

Cullum McAlpine: I understand what you are saying, but that is not the experience at Sir Robert McAlpine. We have just finished our 2012 safety audit and put the figures together. It shows that the accident frequency rate for our Scottish site activities is half that for the rest of the UK.

Q1478 Pamela Nash: If you could provide the Committee with information on that, I am sure we would find it very helpful.

Cullum McAlpine: We can certainly do that.

Q1479 Pamela Nash: Before I hand back to the Chair, I would like to explore more about why people end up on the list. Most of the information you referred to relates to people’s behaviour on site, yet we have seen evidence of people ending up on the list just because they are members of a trade union or—shock, horror—a member of the Labour party or associated organisations. Would you like to comment on why they might have been on the list?

Cullum McAlpine: I have no comment to make, other than that they should not have been on that list for those reasons.

Q1480 Chair: Can I clarify what you meant when you referred to sabotage? Sabotage conjures up images of people throwing wrenches into machinery—actual physical machinery, as distinct from administrative machinery—and all the rest of it.

Cullum McAlpine: When I used the word “sabotage”, I meant in relation to the industry’s working rule agreements.

Q1481 Chair: Right. The word “sabotage” can be misinterpreted, as I am sure you are aware. So it really relates to whether somebody was working in line with the norms of the administrative structures that were there—the various coloured books and all the rest of it. Similarly, “unlawful activity” conjures up pictures of assaults, thefts and all the rest of it. I have seen among the files some reference to metal theft, and I accept that that is undoubtedly a problem on sites. Was that what you meant by unlawful, or is this again an issue of going beyond administrative procedures?

Cullum McAlpine: No, by “unlawful” I meant theft, violence and alcohol or drugs-related activity—that sort of thing.

Chair: That is helpful. Iain, you wanted to raise a point.

Q1482 Iain McKenzie: Most of the points have already been raised by Ms Nash—but what did you do with the information that you received back when you asked for a check to be carried out on potential employees? How did you administer it? From what you have told us, you invariably received back more background information than you asked for. You have already told us that you got back a lot of information that referred to off-site issues—if I can call them that—as well as on-site issues, about the prospective employee. What did you do with that information?

Cullum McAlpine: Let us be clear—I did not receive anything back. The Consulting Association and Mr Kerr received things back.

Q1483 Iain McKenzie: But when, as you say, McAlpine asked for a background check to be done on a potential employee, you received information back, did you not?

Cullum McAlpine: Most of the time there would have been no response. Occasionally, a reference would have been made by another member of the Consulting Association in connection with a particular individual.

Q1484 Iain McKenzie: When you did get that information back, what did you do with it? Did you keep it on file? Did you store it? Did you discard it after use?

Cullum McAlpine: I don’t know. The nominated member for each company would have been the only recipient of that information. What each company did with it I do not know.

Q1485 Iain McKenzie: What did McAlpine do with it?

Cullum McAlpine: I do not know what our HR manager did with it. I would imagine that he kept it, but I don’t know.

22 January 2013 Cullum McAlpine

Q1486 Chair: There are two different issues here, aren't there? One is the question of what happens to the person's name. Is it filed, retained and so on?

Cullum McAlpine: I understand that question.

Chair: I understand that, but there is also the question of what action is taken as a result of receiving that information. I am not sure that we were not confusing the two. You have outlined to us that you are not sure what happened in McAlpine with the actual information, but I think Iain originally intended to ask what action was taken as a result of that information.

Q1487 Iain McKenzie: What action did you take as well?

Cullum McAlpine: I do not think I am able to answer that question.

Chair: That has the merit of clarity and consistency.

Q1488 Jim McGovern: When you say you are not able to answer it, is that for legal reasons or because you do not know?

Cullum McAlpine: It is for legal reasons.

Q1489 Jim McGovern: So you do know; you just refuse to answer.

Cullum McAlpine: For legal reasons, I cannot answer the question.

Q1490 Chair: Can I come back to the initial establishment of the Consulting Association? You seem to have been the main man behind all this, as far as I can see. As I understand it, McAlpine put up the money for all of this singlehandedly—£20,000, £10,000 to buy the intellectual property and £10,000 for the management costs. Is that correct, or was any of that paid by other companies?

Cullum McAlpine: No, the initial £10,000 was to fund the set-up costs. As I said, the cost of the Economic League database was a surprise, but the members thought that, on balance, it was best to have it. There was no other funding available, so we lent the money to the association to buy that.

Q1491 Chair: I just wanted to be clear that it was McAlpine, and McAlpine alone, that provided that loan.

Cullum McAlpine: Yes, because we knew we would get it back.

Q1492 Chair: I just wanted to be clear about that. Similarly, you mentioned that a draft contract had been drawn up before you became chair. By whom had that been drawn up?

Cullum McAlpine: I imagine that it was done by my predecessor, or both predecessors—I do not know—and the membership. It was pretty much a fait accompli when I got to be invited.

Q1493 Chair: Okay; I just wanted to be clear about that. Similarly, is it fair to say that the provisions relating to membership of BUPA and any other benefits were agreed by you but had actually been drafted by somebody else before you arrived?

Cullum McAlpine: The BUPA benefits were part of Mr Kerr's package.

Q1494 Chair: So they would be incorporated in the contract.

Cullum McAlpine: I would have signed that off, on behalf of the members.

Q1495 Chair: Again, was that something that you inherited?

Cullum McAlpine: To be honest, I do not remember the BUPA bit.

Q1496 Chair: That is fair enough. As I understand it, the car that Mr Kerr had was operated through the Sir Robert McAlpine fleet. Was that your decision or somebody else's?

Cullum McAlpine: Mr Kerr required a car from the outset. In those days, like all big companies, we ran a fleet of cars. We had a number of cars that were surplus to requirements. For a couple of months Mr Kerr was loaned a car from our fleet, which was then purchased by the Consulting Association. We were paid for it. The cost was £8,000.

Q1497 Chair: I see; I had not quite realised that. As I understand it, the initial meetings of the Consulting Association were held in Sir Robert McAlpine's offices; I forget the name of the street. Is that correct?

Cullum McAlpine: Certainly.

Q1498 Chair: You can see why we think that this is basically a Sir Robert McAlpine operation, can't you?

Cullum McAlpine: As chairman of the finance committee, I had some influence as to where its meetings were held.

Q1499 Chair: I can understand that.

Cullum McAlpine: That is why they were held there to start with.

Q1500 Chair: Who else attended the finance committee meetings?

Cullum McAlpine: There was the vice-chairman, and members could attend as and when they wished. They were invited and, I guess, sent agendas. There were quite a lot of people.

Q1501 Chair: What do you mean when you say that you guess they were sent agendas?

Cullum McAlpine: They were sent agendas for the meetings, because these were held every six months—from memory, in autumn and spring. The members would appear if they wanted to.

Q1502 Chair: But the members are the members of the finance committee.

Cullum McAlpine: No, the members of the Consulting Association.

Q1503 Chair: Was the membership of the finance committee restricted in any way? Could anybody who fancied turning up, was in London and had nothing else to do come along on that day? Were invitations sent to everybody, or were there a number of people—as would be normal—who had been elected by their peers to be members of the finance committee?

22 January 2013 Cullum McAlpine

Cullum McAlpine: I don't remember very well, but I think that most of the members were able to turn up to that committee.

Q1504 Chair: When you say most of the members, is that most of the members of the Consulting Association or most of the members of the finance committee?

Cullum McAlpine: The members of the Consulting Association.

Q1505 Chair: So there was no membership as such of the finance committee. It was just that meetings were held twice a year and anybody who wanted to turn up could do so.

Cullum McAlpine: My memory is pretty rusty, because it was a long time ago and I did not stay very long. I may be completely wrong, but I do not remember there being separate committees. I may be wrong; I don't remember.

Q1506 Chair: We can follow that up, if necessary. Can I come back to the question of who attended meetings of the Consulting Association on behalf of McAlpine? Was that you and you alone, or were you the chair, with McAlpine having somebody from HR there as well?

Cullum McAlpine: I was the chair of the finance committee and McAlpine had a nominated representative.

Q1507 Chair: Who was that?

Cullum McAlpine: He was called Ken Singleton. He was the head of HR for McAlpine.

Q1508 Chair: At that time?

Cullum McAlpine: At that time.

Q1509 Chair: Who else would regularly attend meetings? As with Mr Kerr, if you do not have a record just now, perhaps you can give us that in writing. I see that your lawyer is looking at a book, so I presume that all things are in there and you will be able to tell us that in due course. Is that correct?

Cullum McAlpine: I do not know how he would know who attended meetings 20 years ago. I can remember one or two names, but not many.

Q1510 Chair: It would be helpful if you gave us an indication of who else was there.

Cullum McAlpine: Having looked at Mr Kerr's evidence, the people I remember were Tony Jennings, Ian Leake and Keith Horner. I can put faces to those three; the others really do not mean much to me.

Chair: We have covered a number of areas relating to what McAlpine put in, what you got out, what you can't tell us and so on. I am not sure whether my colleagues think there is anything else to be pursued there.

Q1511 Jim McGovern: The witness said that the £10,000 start-up was a loan. Presumably that is recorded somewhere and was repaid.

Cullum McAlpine: Yes, it was repaid.

Q1512 Jim McGovern: Is that recorded? Could we get that paperwork? Could you show us that it was a loan that was repaid?

Cullum McAlpine: I hope we could. It certainly was repaid. I know it was, because I was on that committee only for financial reasons.

Q1513 Jim McGovern: I am coming on to that point. You say that the six-monthly meetings in spring and autumn were meetings not of the finance committee but of the Consulting Association.

Cullum McAlpine: No, they were called finance committee meetings.

Q1514 Jim McGovern: But it was not a finance committee as such—it was the Consulting Association.

Cullum McAlpine: As I said earlier, I do not recall whether there was a distinction between members of the Consulting Association who were also members of the finance committee and others, or whether everybody was entitled to be on the finance committee. I do not remember that.

Q1515 Jim McGovern: Presumably, if it was set up as an enterprise, as you said, there must be some sort of record of who was on which committee and of who were simply members of the—

Cullum McAlpine: I do not know how the records were kept. Mr Kerr took the minutes; I do not know where the records would be.

Q1516 Jim McGovern: But you chaired these six-monthly meetings during your tenure.

Cullum McAlpine: Yes.

Q1517 Jim McGovern: Just for the purposes of the record, Mr Kerr's evidence seemed to suggest that it was 1993 to 1997. You are saying that it was 1993 to 1996.

Cullum McAlpine: Yes, that is my memory.

Q1518 Jim McGovern: So Mr Kerr was wrong on that point.

Cullum McAlpine: I think we have different memories. I know that my board gave me only three years for this role. That is why I am saying 1996. It is clear in my mind. It may have strayed a month into 1997, but it was a three-year appointment.

Q1519 Jim McGovern: Were the meetings minuted?

Cullum McAlpine: Yes, I believe so.

Q1520 Jim McGovern: So we could get a copy of these records.

Cullum McAlpine: I do not have any records. I think you will get the copies elsewhere.

Q1521 Chair: You were the chair of these meetings, so presumably you got copies of the minutes.

Cullum McAlpine: Yes, I would think so.

Q1522 Chair: Most companies keep things for ever, do they not? You yourself are not necessarily a

22 January 2013 Cullum McAlpine

hoarder, but presumably you have an official hoarder in the office somewhere who keeps all these things in filing cabinets and stuff.

Cullum McAlpine: I don't know. It is possible.

Chair: It is possible. Okay. Reminding you that you are on oath, we would ask you to take appropriate steps to recover any of those that are still within McAlpine's empire, because I think Mr Kerr destroyed the material that he had. While they may be in existence somewhere, we have not yet been able to locate them. I have seen official agendas, which is why I knew that they were structured and ordered, but I have not yet seen any minutes. If you have those, that would be helpful.

Q1523 Jim McGovern: I have one more question to ask on that point. You say that you chaired the six-monthly meetings but your role was solely to do with finance and commercial issues. Are you saying that nothing else was discussed at these meetings and that the minutes that you are going to provide will prove that?

Cullum McAlpine: Certainly, if we can find them.

Q1524 Jim McGovern: You spoke only about finance, not about who is providing information on which individual.

Cullum McAlpine: No, absolutely not. We never did that.

Q1525 Mr Reid: Did the Consulting Association undertake any activities other than receiving information about employees and sending information about employees back to members that asked for it?

Cullum McAlpine: It provided a regular meeting ground for the HR members to meet and discuss employment affairs, forthcoming legislation and that sort of stuff. I guess you would call it a talking shop for the HR members.

Q1526 Mr Reid: Can you give some examples of issues that you discussed?

Cullum McAlpine: I was never part of those meetings.

Q1527 Mr Reid: So there was a different set of meetings, other than the finance committee, that discussed these other issues.

Cullum McAlpine: Yes. The HR managers used to have meetings among themselves. That was nothing to do with the finance committee, which was a six-monthly activity.

Q1528 Chair: Can I clarify the scale of usage of the Consulting Association by McAlpine? Would it surprise you to learn that in the last year of the Consulting Association you were its largest single user, according to the finances that we have seen?

Cullum McAlpine: It would surprise me that we were the largest single user, but I know we used it a lot in 2008.

Q1529 Chair: You were the largest single user in 2008.

Cullum McAlpine: Yes.

Q1530 Chair: Why was that?

Cullum McAlpine: Because we were extremely busy at that time. It was the highest turnover we have ever had as a construction business. We had a lot of big projects on, so we were recruiting a lot of work force. We also had an experience in 2006–07 with the border agency. One of our sites was raided and a number of people were removed; that was a bit of a problem at the start of this century. That worried us a lot, because we did not want ourselves or our subcontractors to be employing people who should not have been in the UK, so we asked our subcontractors to provide lists of their employees or those they were going to employ. That is probably why that number went up so much when we were really busy.

Q1531 Chair: That is interesting. Of all the files I have seen or heard of, not a single one refers to anybody's asylum or immigration status. Presumably, almost by definition, if somebody were an illegal, they could have had a national insurance number, but they would not have been on a list of registered building workers held by the Consulting Association.

Cullum McAlpine: They would not, but they would have been if they had been discovered by the UK Border Agency and others. The names would then have had a false national insurance number or something like that. I would have expected the members to have contributed those to the Consulting Association.

Q1532 Chair: That is interesting. I will go back through the list again, but, as far as I can recollect from all the cards that I have seen, there is absolutely no evidence that any building firm ever supplied names or details of anyone who might be an illegal worker. Did Sir Robert McAlpine do that?

Cullum McAlpine: I do not know, but I am surprised that that did not happen.

Q1533 Pamela Nash: I have a small point. Is that information not something that a company as large as yours would get from the UK Border Agency or through another official channel, rather than the Consulting Association?

Cullum McAlpine: To my knowledge, it happened on only one project. Obviously, there was no prior knowledge of these individuals. The site was raided, and I think two or three of them went home. I do not know what happened to the others. To be honest, I do not know how you would get that information from the UK Border Agency.

Pamela Nash: I have to confess that I do not know either. I imagine that it would not be dependent on you as a company knowing that and that the information would be available through official channels.

Q1534 Chair: We have certainly never heard anywhere before the idea that the Consulting Association was operating a register of illegal migrants and that is why searches took place. You mentioned that you were particularly busy in 2008. Can you tell us what contracts you were particularly busy on?

22 January 2013 Cullum McAlpine

Cullum McAlpine: We were busy with the Colchester garrison project in Essex, and we were building a huge shopping centre in Bristol and a new shopping centre in Leicester. We had a major project via the MOD—Project Inspire on Salisbury plain. We were still doing the Colchester garrison project and we would have started doing the ground works for the Olympic stadium.

Q1535 Chair: Were you consulting the Consulting Association about all these projects?

Cullum McAlpine: Yes, because they were all particularly sensitive.

Q1536 Chair: I understand that they were sensitive, but it was not a case of saying, “We’ll consult the Consulting Association about these projects, but we won’t contact them about these others.” As a company, you were consulting about all the projects on which you were working.

Cullum McAlpine: I think not. I think we chose just the ones that were thought to be sensitive in terms of either financial liability or their profile.

Q1537 Chair: Why would you do that? If you were paying for a service from the Consulting Association and you were worried about illegal migrants, surely illegal migrants are as likely to pop up on one site as on another.

Cullum McAlpine: To answer your question, on the smaller projects there would be less of an effect.

Q1538 Chair: I recognise that that response was given after advice from your legal assistant. I am sorry, that is not his full title—your legal adviser. So you were consulting the association about the Olympic project that you had.

Cullum McAlpine: Yes.

Q1539 Chair: I just want to make sure that that is on the record. Similarly, you have also consulted the Consulting Association about projects such as the Jubilee line and Crossrail.

Cullum McAlpine: Not Crossrail; we were never involved with Crossrail.

Q1540 Chair: Okay, but you also consulted it about the Jubilee line.

Cullum McAlpine: I would believe so.

Q1541 Chair: So it is fair to say that, unless I am mistaken, you used the Consulting Association for everything you were involved in, except very small sites.

Cullum McAlpine: I would put it the other way round. We used the Consulting Association for projects that we thought were sensitive, for various reasons. We did not do so for the ones we were not worried about.

Q1542 Chair: I do not know what was in your mind for the ones you were worried about, so that does not necessarily help me.

Cullum McAlpine: In 2008 we probably had 70 to 90 projects in the UK. We would not have put all of them

through the Consulting Association; we would have put through the ones we were most worried about.

Q1543 Chair: I presume that you have these records somewhere. It would be helpful if you could let us know which projects you consulted about and which you did not.

Cullum McAlpine: We certainly have some records of those.

Q1544 Chair: We will be able to ascertain what projects you were working on at that stage, but what we will not know is which ones you sought information from the Consulting Association about. Why do you think you were consistently either the highest or the second highest user of the Consulting Association’s services?

Cullum McAlpine: I cannot answer that, because I do not know what criteria the other companies used.

Q1545 Chair: That is why I tried to clarify earlier whether you were all using the same criteria for putting in information. If you said to me that you were by far either the biggest or the second biggest contractor in the country, that would explain it, because you were operating the same sort of rules. Do you operate in different sorts of sites from other people? It seems to me that an explanation is needed for why you were either the biggest or the second biggest user.

Cullum McAlpine: We tend to have an unusually high proportion of large projects for the size of the business. We do not do very small projects. That is what we target as a market. At the time when I said we were doing 70 or 80 projects, other contractors of similar turnover might have been doing a couple of hundred. We tend to go for the bigger projects. They, in turn, have bigger risks.

Q1546 Chair: Can you clarify for me whether any of these big projects that you had and for which you were consulting the association were in Scotland?

Cullum McAlpine: Yes, I am sure they were.

Q1547 Chair: We are the Scottish Affairs Committee, so we do take an interest in these things.

Cullum McAlpine: At that time, I think there would have been the M74, which was a joint venture. I think we were doing one of the projects for Quartermile in Edinburgh, which has been going for quite a long time. We had the Marie Curie building in Glasgow. I do not remember all of them.

Q1548 Chair: I understand that. It is reasonable for me to assume that, since all of these were pretty high-profile projects, you were using the Consulting Association for all of them.

Cullum McAlpine: Yes.

Q1549 Chair: It would be quite helpful if, when you go back to the office, one of your staff could let us have a list of the projects in Scotland on which you were working at that time and for which you believe the Consulting Association was used.

Cullum McAlpine: Fine.

22 January 2013 Cullum McAlpine

Q1550 Chair: I turn now to the closing down of the Consulting Association. There are a number of other points that we want to raise. Can you talk us through the closure of the Consulting Association—how it occurred, your role in it and what happened? First, why did you decide to shut it down?

Cullum McAlpine: I cannot really talk you through that, because I was not involved in those decisions. I think Mr Kerr’s evidence was probably quite accurate.

Q1551 Chair: But you were a main board member throughout this time, weren’t you?

Cullum McAlpine: Yes, but the Consulting Association was never discussed at board level, as a lot of things are not.

Q1552 Chair: It was never discussed at board level. However, as I understand it, McAlpine paid the closure money. Surely that was a main board decision, was it not?

Cullum McAlpine: No, it was not.

Q1553 Chair: So the HR man did that on his own.

Cullum McAlpine: The Consulting Association was an unincorporated association, so all its members were jointly and severally liable for its liabilities. In a situation where that happens—as with a partnership, perhaps—any one individual or all individual members are liable for the association’s costs and so on. We took the view that, as our head of HR was the chairman of the association at the time, we were to some extent more involved than the other members, and that, if none of us had paid the costs of closing the association, Mr Kerr would have been totally correct in suing one or all of the members. We took the view that he was probably going to sue us, because we were the ongoing final chairman. With him and Mr Clancy of the ICO having agreed to shut it down, we thought that was going to happen anyway, so we would recognise the closing costs and hope to recoup them from our fellow members. The pragmatic situation was that, as it was an association where each member was liable severally and jointly, any one of us could have been sued. We thought it would be us, so it would be pretty pointless to ignore the situation. That is the decision the IR manager made.

Q1554 Chair: So the HR management made all those decisions on their own, without your knowledge or consent.

Cullum McAlpine: I was consulted later on. I was informed.

Q1555 Chair: What do you mean by later on?

Cullum McAlpine: The HR manager was responsible to the director of operations of our company and discussed it with him. I was told what had happened and that the decision was to close it down, and was asked whether that was right. I said that I did not think there was any alternative.

Q1556 Chair: Was this after all this money had been spent?

Cullum McAlpine: No, it was at the time of closing it down.

Q1557 Chair: So you were aware of what was happening while it was happening. Was the rest of the board aware of these costs being incurred?

Cullum McAlpine: There are two things. One is the decision to close it down; then there are financial consequences of that. The financial consequences were discussed with the director of operations and the HR manager. Again, I was informed of what was going on. I said that I did not think we had any choice.

Q1558 Chair: I am slightly confused. When you say these things were discussed with these people, who was the other party to discussions? Was it the entire board?

Cullum McAlpine: No, it was the director of operations.

Q1559 Chair: But you said “discussed with”. To whom does the “with” relate? There were the director of operations and the HR manager, and you were involved in that loop.

Cullum McAlpine: Yes.

Q1560 Chair: And nobody else in the company was.

Cullum McAlpine: Nobody else was. For a £1.1 billion organisation, the amount of money was not massive.

Q1561 Chair: I understand that. I just refer back to the fact that the board was involved in the establishment of the association, when the sums, if anything, were smaller. However, I understand that things had moved on. Were you aware of why the two invoices for the fine and legal costs to cover Mr Kerr’s Crown court case—I understand that one of them was for £15,194.68—and the legal fees for two industrial tribunal cases, which were approximately £8,000, were paid to Mr Kerr’s daughters?

Cullum McAlpine: I did not know that at the time. I have since been informed that that was at Mr Kerr’s request.

Q1562 Chair: You understand that it was at Mr Kerr’s request. *[Interruption]* I do not want interruptions from the public gallery; if necessary, we will have other witnesses. As I understand it, the instruction from David Cochrane was to send an invoice from the daughters for services provided. Were you aware of that and that that was why the money was paid out?

Cullum McAlpine: No.

Q1563 Chair: Were you aware that David Cochrane then asked them to transfer the money into Mrs Kerr’s bank account in several small amounts, so that it would be difficult to trace?

Cullum McAlpine: No, I certainly was not.

Q1564 Chair: Are you aware that the original invoices and the daughters’ bank statements showing when the cheques were paid into their accounts and subsequently paid out are all available?

Cullum McAlpine: I have no knowledge of what you have just been talking about, so I cannot really comment either way.

22 January 2013 Cullum McAlpine

Q1565 Chair: Are you aware that, before the second payment was received by Mr Kerr's daughter, Mr Kerr had to return his original contract that was signed by you, plus everything else that was signed by you?

Cullum McAlpine: No.

Q1566 Chair: He had to give that to David Cochrane. So David Cochrane never discussed any of this with you.

Cullum McAlpine: No, he certainly did not.

Q1567 Chair: Why might it be that the Kerr family feel that you are possibly hiding behind David Cochrane?

Cullum McAlpine: David Cochrane did not report to me. I was not involved with the Consulting Association at that time. I was kept in the loop as to what was happening by the director of operations. However, I was not given any detail, other than the principle of whether we should be paying Mr Kerr's legal costs and the winding-up costs of the Consulting Association. That is what I was asked about, or told about—and I said, “Yep, we've got to do that, because there's no other way.”

Q1568 Chair: Why do you think David Cochrane might have asked Mr Kerr to hand back everything that was signed by you, if not to cover up your role in this?

Cullum McAlpine: It seems ridiculous to me. At that stage, the Information Commissioner had taken whatever he took away, so in my view there was no point in trying to do anything about something that was already going to become public knowledge. I just do not understand what he was playing at.

Q1569 Chair: As I understand it, these are cheques from McAlpine that were passed to Mr Kerr's daughters. Why would an invoice for services rendered be asked for but for concealment, in an attempt to deceive, presumably, your own auditors about the true purpose?

Cullum McAlpine: I really do not know. Until you said what you have just said, I had no idea that was the case. I really do not know.

Q1570 Chair: Can you understand why we are a bit sceptical about why this was done, and a bit cynical about this manoeuvre?

Cullum McAlpine: Yes, I can. On the other hand, as I said, the commissioner's office had already got the information on the Consulting Association that was going to bring out all the members' names and so on.

Q1571 Chair: No—or rather, yes, it would certainly have had some information. In a sense, that makes it even more bizarre, but let me go back. In fact, it did not seize all the information. I have seen what it seized. It seized only what I understand to be the day book of payments, all the cards and the ring binders, plus one or two odds and ends. The Information Commissioner seized nothing that had your name or details on it, so it would not have come out.

Cullum McAlpine: We would not have known that. We would have assumed that everything had been taken by the ICO.

Q1572 Chair: I see. So he did it in the expectation that this information was known by the ICO. However, just in case it was not, he tried to collect it all in.

Cullum McAlpine: No. My assumption was that, once the ICO had raided the offices of the Consulting Association, pretty much all the information there would have gone to his office and would therefore come into the public domain. I am sure that was the assumption of our director of operations, so there seems to be no point in trying to be clandestine about something that was going to be in the public realm. It seems to be a pointless exercise. I do not know what Mr Cochrane was doing. It certainly would not have been effective.

Q1573 Jim McGovern: Can I ask about the statement that we have received today? Are these your words, or did someone draft this for you?

Cullum McAlpine: They are not entirely my words.

Q1574 Jim McGovern: Whose are they?

Cullum McAlpine: They were drafted.

Q1575 Jim McGovern: You just put your name to them and signed at the bottom to say, “This statement is true and accurate to the best of my knowledge.”

Cullum McAlpine: Yes. I thought it was.

Q1576 Jim McGovern: In the last paragraph, which is numbered paragraph 14, you say that the payments made to Mr Kerr and his supporting staff were based on humanitarian rather than commercial factors. Would you stand by that?

Cullum McAlpine: Yes, both those things apply.

Q1577 Jim McGovern: So you did not have to do it.

Cullum McAlpine: We did not have to do it, but it was sensible to do it. Mr Kerr was an officer of the organisation and had incurred costs because of his role in the organisation.

Jim McGovern: I would like to put on record my scepticism about that point.

Q1578 Mr Reid: Did the money that McAlpine paid to Mr Kerr cover his fine?

Cullum McAlpine: It included his fine.

Q1579 Mr Reid: You said earlier that you were frightened that Mr Kerr would take legal action. Surely he could not take legal action against you to cover a fine that was imposed on him for breaching the Data Protection Act?

Cullum McAlpine: I do not know. You may be right. The fine was incurred as a result of his position in the Consulting Association, and the members were jointly and severally responsible for the costs incurred there.

Q1580 Mr Reid: Did the members of the Consulting Association feel that they had exerted pressure on Mr Kerr to break the law?

22 January 2013 Cullum McAlpine

Cullum McAlpine: I do not know. I do not think they were asked about that.

Q1581 Mr Reid: Why then did you feel it necessary to pay his fine? It was Mr Kerr who broke the law, not McAlpine, so why did McAlpine's money go towards paying his fine?

Cullum McAlpine: We thought he had incurred the fine because of his role in the Consulting Association, and that therefore it was humanitarian, fair and reasonable to pay it on his behalf.

Q1582 Mr Reid: Is it McAlpine's policy to pay fines that your employees incur?

Cullum McAlpine: This was not a McAlpine policy; it was looking at the pragmatic result of the—

Q1583 Mr Reid: Could you answer the question I asked, please?

Cullum McAlpine: We do not have a policy of that type.

Q1584 Mr Reid: Have you ever paid fines that have been personally imposed on your employees?

Cullum McAlpine: I do not know.

Q1585 Mr Reid: Is it something that you could find out and write to the Committee about at a later stage?

Cullum McAlpine: We could do so.

Q1586 Chair: You will have read Mr Kerr's evidence, where he gives the impression, which we picked up, that basically—let me just quote from it. He says, "The fine was paid by—it came through Sir Robert McAlpine, on the basis that I had put myself at the front and took the flak, if you like, for it all, so that they wouldn't be drawn into all of this. They would remain hidden, if you like." That seems a not unreasonable supposition, given the clandestine way in which the money was passed through and that part of the condition for receiving it seems to have been that everything that you had signed was returned.

Cullum McAlpine: As I said before, we paid the fine, because we thought it was a humanitarian and reasonable course of action to take. We paid the other costs because of the nature of the association and, therefore, the liabilities. I have also said that we believed—and probably still do believe—that the commissioner had plenty of information about the Consulting Association, so there was no possible point in trying to hide things.

Q1587 Chair: Can I clarify whether this money was paid entirely and solely by McAlpine or whether you recovered any of it from anywhere else?

Cullum McAlpine: Do you mean anybody else in the association?

Chair: Yes.

Cullum McAlpine: No. We did approach a couple of the members, one of which was sympathetic. Then I think everybody ran for the hills.

Q1588 Chair: Who were the couple of members that you approached?

Cullum McAlpine: I think it was Bam and Vinci, from memory—or so I am being told.

Q1589 Chair: And they declined to contribute.

Cullum McAlpine: Yes. Then we thought, "Well, we paid this money in reasonable faith." In the context of Sir Robert McAlpine's turnover at the time, it was not a huge amount of money. It would probably have cost as much to get it back as it did to pay it.

Q1590 Chair: I think we have pretty well covered most of that area. I wonder whether I can tie up one or two potential loose ends. I think you covered many of these points in your statement. However, according to the records that we had, Sir Robert McAlpine chaired the Consulting Association for eight of its 17 years. You were there for three or four years—the record that we have is four, I think. Your HR manager did it for three years at the end. That is more than anyone else; between you, you had it for eight of the 17 years, which suggests to us that you were pretty much the main instigators, guiders and drivers—whatever parallel you wish to draw—of the association. Is that a fair assumption for us to make?

Cullum McAlpine: No, I do not think it is. It is an assumption based on the fact that we were there at the start and we were there at the finish. That does not mean that we were driving the association for the 13 years that we were not involved.

Q1591 Chair: But you were there longer than anybody else. If there were 20 to 40 companies, you would have thought that it would have been rotated in a more even fashion.

Cullum McAlpine: I think I tried to answer that by saying that, because of the large projects that we undertake and the sensitive nature of them, we felt that being a member of the Consulting Association was, although possibly expensive, a good insurance policy.

Chair: I will come back to insurance in a moment.

Q1592 Jim McGovern: I want to go back a step, if I may. We have received information that very early in the procedure Mr Kerr got a phone call from David Cochrane asking what documents that had your name on them had been seized. Are you aware of that?

Cullum McAlpine: Absolutely not.

Q1593 Jim McGovern: So an awful lot of things of which you are unaware have been going on on your watch.

Cullum McAlpine: I said before that I cannot see any point in trying to receive information to try to keep things clandestine once all the information was in the Information Commissioner's hands. I just do not see the point of that; I do not see the logic of that approach.

Q1594 Jim McGovern: I have to say for the record that, in my view, the witness is hiding not only behind David Cochrane but behind Ian Kerr, who cannot answer.

Cullum McAlpine: I am telling you, under oath, exactly what my recollection was.

22 January 2013 Cullum McAlpine

Q1595 Lindsay Roy: Who made you aware that the Information Commissioner had visited the Consulting Association?

Cullum McAlpine: Yes, I am aware of that.

Q1596 Lindsay Roy: Who made you aware of it, and what was the nature of that conversation?

Cullum McAlpine: Colin Weekley, who was the director of operations at the time, made me aware of that.

Q1597 Lindsay Roy: How was that communicated to you?

Cullum McAlpine: He told me what had happened.

Q1598 Lindsay Roy: By telephone? By a meeting?

Cullum McAlpine: By telephone.

Q1599 Lindsay Roy: What was your reaction?

Cullum McAlpine: I was surprised.

Q1600 Lindsay Roy: Why?

Cullum McAlpine: Because it came out of the blue.

Q1601 Chair: Unless you want to pursue that, I will turn back to paragraph 5 of your statement. You have referred a couple of times to insurance. You say, “The main purpose of TCA was effectively to help the industry act as insurance”. I do not quite understand the insurance parallel. If something bad happens, with insurance you get money back. This was not a sort of mutual support group, so if somebody had a strike, the other contractors clubbed together to give you some money. I do not quite understand how you can use that word. Can you enlighten me?

Cullum McAlpine: I use that word in the context of individual members, not insurance as a whole. I think individual members, some of whom may have had contracts with very large time penalties on them or, say, a sense that they needed to complete them on time, to programme, would have liked to be aware of people who—

Q1602 Chair: That is not insurance—it is a preventive measure. The point of insurance is that it does not actually prevent things from happening. As I understand it, this was designed to prevent things from happening. Is the word “insurance” a lawyerly word? Was this your word, or was it drafted for you?

Cullum McAlpine: It is my word.

Q1603 Chair: This is one of the bits that you did yourself.

Cullum McAlpine: That is probably why it is wrong.

Q1604 Chair: Is it unfair for us to criticise it, then?

Cullum McAlpine: It is my word.

Q1605 Chair: Do you accept that it is the wrong word?

Cullum McAlpine: Yes, I do.

Q1606 Chair: That is helpful in terms of our understanding. Who did the £10,000 or so for the Economic League’s database go to? Do you know?

Cullum McAlpine: I think it went to—what is the name of the thing that—Caprim?

Chair: Caprim?

Cullum McAlpine: Yes.

Q1607 Chair: Okay. We will clarify some of that with them. In paragraph 8, you say that “TCA was intended to protect SRM and other construction companies against deliberately disruptive and unlawful behaviour”. I think we have covered that by saying that it is a mechanism that would allow you to stop various people getting jobs on site.

Cullum McAlpine: I do not think I am able to answer that question.

Q1608 Chair: That is helpful, in a way. You have made it clear that you have not seen any of the evidence; that is helpful. Have you seen any of the cards and things subsequently?

Cullum McAlpine: No.

Q1609 Chair: I turn to the last paragraph of your statement. You say, “Our view was based on humanitarian rather than commercial factors. Unfortunately that view was not shared by most of the subscribers in 2009.” The fact that you approached only two of them and did not get money from anybody leads us to the view, perhaps, that not everybody was as charitable and humanitarian as you. Presumably, the other firms involved knew that Mr Kerr was in this position and were prepared to let him hang out to dry. Is that a fair analysis of the situation?

Cullum McAlpine: It may be. I cannot speak for them, but certainly they were not helpful.

Q1610 Chair: Why else would somebody not step in to help somebody who, as I understand it, had been a loyal servant of the Consulting Association during his time there?

Cullum McAlpine: It may be that, at the time of the demise of the Consulting Association, it was not popular with some of the fellow members and they did not want to have anything to do with it again because of what had happened, the fines and so on—that they just wanted to wash their hands of it and walk away. I am speculating, and I should not do that.

Q1611 Chair: Am I right in thinking that, had the Consulting Association not been closed down in the way that it was, McAlpine would have continued to use it?

Cullum McAlpine: Again, that is speculation.

Q1612 Chair: That is right.

Cullum McAlpine: I cannot predict.

Q1613 Chair: You had not had a damascene conversion. You had not suddenly woken up one morning and said, “Really, we must get out of this”, unlike some of the other companies, which have suggested that they suddenly saw the light and so on. Is it fair for me to assume that, had this not been closed down, you would have continued using it?

Cullum McAlpine: I am sorry, but I am told I cannot answer the question.

22 January 2013 Cullum McAlpine

Chair: That is okay.

Q1614 Lindsay Roy: Were there any plans in the company to stop using the Consulting Association at the time that it was closed down?

Cullum McAlpine: No.

Chair: Do colleagues have any other questions?

Q1615 Pamela Nash: I appreciate that your role in the company may be higher up than individual contract negotiations, but I was wondering whether you are aware whether blacklisting or the Consulting Association was ever discussed in any contract negotiations on the larger-scale projects—the bigger projects—you referred to earlier. I am thinking particularly of the Government contracts that you had. I am interested to know whether it was ever raised with you or any of your colleagues in Sir Robert McAlpine Ltd. Were you ever asked about it?

Cullum McAlpine: From Government or quasi-Government sources?

Pamela Nash: Yes, from the customer. Did the customer ever ask whether you were using blacklisting or the Consulting Association?

Cullum McAlpine: Not to my knowledge.

Q1616 Pamela Nash: Are minutes of these contract negotiations ever taken, particularly when they are sensitive—if they are with Government at national or local level?

Cullum McAlpine: When you say contract negotiations, are you talking about—

Pamela Nash: Are minutes taken as a matter of habit at contract negotiations with Government?

Cullum McAlpine: I would have thought that notes would be taken in most cases.

Q1617 Pamela Nash: Could you look within the company to see whether there is any history of those?

Cullum McAlpine: I am sure each company would take notes on negotiations.

Q1618 Pamela Nash: Within Sir Robert McAlpine Ltd, would there be notes on contract negotiations with Government?

Cullum McAlpine: Probably. The notes would be progress notes to getting to a conclusion. They would never have referred or related to industrial relations problems—that is very unlikely—unless they were about contracts where the Government as a client wanted to have its own vetting procedures in place or it was a condition of the contract. In a lot of MOD contracts, all of the work force get vetted by the MOD before they get on site. The same applied to the Olympics.

Q1619 Pamela Nash: Vetted by whom?

Cullum McAlpine: By the Ministry of Defence, in the case of the MOD works, and I would guess the Home Office, I suppose, for the Olympics. Everybody who went on to the Olympic site, at whatever level, had to go through security vetting.

Q1620 Pamela Nash: But you could also seek references from the Consulting Association. Indeed,

you said earlier that that was possible for workers on the Olympic site.

Cullum McAlpine: Yes.

Q1621 Pamela Nash: Just so that we are very clear on the record, in the evidence you gave earlier, you talked about the more high-profile and larger projects. So the more high-profile, politically sensitive or sensitive in the media a project might be, the more likely Sir Robert McAlpine Ltd was to seek references from the Consulting Association.

Cullum McAlpine: I would not say it is about being politically sensitive. I would just say that the bigger projects that had their own financial sensitivities and delivery schedules—tight timetables—would have been emphasised more.

Q1622 Chair: Can I clarify whether Hampden Park comes into that category? It has been suggested to me that McAlpine built all of it, or big chunks of it, or did some renovation work there.

Cullum McAlpine: On Hampden Park we were a management contractor, so we did not employ any labour directly. We just provided a management service, so I would very much doubt that there was—

Q1623 Chair: That leads me on to another point, before I bring Jim in. You used the Consulting Association yourselves, directly. On a number of jobs, you would obviously have subcontractors of various sorts, shapes and sizes, and all the rest of it. Did you ensure that they did so as well, or did you take names from them to run through the Consulting Association, because even though your side of things may have been working fine, a subcontractor could very well have screwed up the timetable? Was that done?

Cullum McAlpine: Yes, and it became more prevalent in the last three or four years.

Q1624 Chair: Was that a condition of becoming a subcontractor on a McAlpine site?

Cullum McAlpine: No.

Q1625 Chair: So how did you communicate this to the subcontractors?

Cullum McAlpine: On most construction sites where there are lots of subcontractors, they have to supply a record of their employees, just as a matter of management—who is there, what they are doing and so on. We used those records.

Q1626 Chair: Let me be clear. You would have a subcontractor supply you with a list of names of people who were working on its behalf on that site, and you would then run them through the Consulting Association.

Cullum McAlpine: Yes.

Q1627 Chair: What happened if a name came back that you did not like?

Cullum McAlpine: You will not be surprised—

Chair: Sorry?

Cullum McAlpine: I cannot answer that question.

22 January 2013 Cullum McAlpine

Q1628 Chair: That is fair enough. I shall come back to the question of Hampden. I am sorry, but I cannot remember the term you used. Was it a managing agent?

Cullum McAlpine: We were supplying management services at Hampden.

Q1629 Chair: So were all the subcontractors working to you? Would you therefore apply the sorts of rules and guidelines that we have just discussed in those circumstances too?

Cullum McAlpine: I do not know what happened at Hampden. It was a long time ago. I really do not know. I am not sure whether we paid the subcontractors or whether the client paid them directly. Sometimes on management contracts the relationship is between the client and individual subcontractors, in which case we would not have anything to do other than manage the project. Sometimes the management contractor pays all the subcontractors.

Q1630 Chair: I see. However, if you are responsible for running the site, presumably as a managing agent you are responsible to the client to some extent for the subcontractors. Presumably the whole point of having a managing agent is that you are there between them and all the subcontractors. Does it not seem reasonable that, in those circumstances, you would be checking their manpower and personnel records in the way that you would if you had your own employees?

Cullum McAlpine: I think it is quite possible, had we had the relationship that you describe.

Q1631 Chair: I think it would be helpful if you could let us know what the position was for Hampden.

Cullum McAlpine: We will try to do that, but it is a long time ago, and I doubt that those records will be around. We will look.

Q1632 Chair: Yes, but presumably there is a collective memory in the company that would enable you to clarify some of these things. You have been there for almost several hundred years, so you will remember lots of things. There will be other people there who will remember these things as well, I would have thought.

Cullum McAlpine: We will find out.

Chair: Fine.

Q1633 Jim McGovern: The witness statement indicates that you became a director on 1 January 1970. In over 40 years, would it not be true to say that McAlpine has been up to its neck and beyond in blacklisting workers? I can give an example. When I was an apprentice in the construction industry in the mid '70s, General Accident, the insurance company, was building its world headquarters in Cherrybank in Perth. I worked with a Dundee company, and we were told that when we went on site we were not to admit that we were from Dundee, because McAlpine did not allow Dundee people on its sites. Is it not true to say that not only did McAlpine blacklist individuals but, in this case, it blacklisted a whole city?

Cullum McAlpine: Two questions. First, McAlpine has never operated a blacklist—full stop. I saw your comment about General Accident in Perth during Mr Kerr's evidence and made some inquiries. The response I got back was that the project in Perth was run by an Edinburgh-based site manager and his foreman, who were responsible for taking on the work force, and that they were reluctant to take on anybody who was not from Edinburgh. Now, that is the comment I have had back. It is a long time ago, I am afraid, but that is the comment.

Q1634 Jim McGovern: It is a long time ago, but even at that early age I asked our own management, "Why do we have to lie when we go on site?" and was told, "McAlpine don't allow Dundee people on site."

Cullum McAlpine: I think that it was because of the management team on that site. Apparently then we had a big Edinburgh base that came up from Edinburgh every day, and the works manager felt comfortable with recruiting people from that city.

Q1635 Jim McGovern: So we had to sneak on site and lie about where we were from.

Cullum McAlpine: If you say so, but that is what happened.

Q1636 Chair: Was the site agent a McAlpine employee?

Cullum McAlpine: Yes. He would have been responsible for recruiting the work force on the site.

Q1637 Chair: So he was acting on behalf of the company.

Cullum McAlpine: As I understand it, most of the project had a nucleus of Edinburgh people there, who travelled up every day. This particular individual and his team were all from Edinburgh, and they felt comfortable with the boys from Edinburgh—probably the girls, too. That was the attitude they had. It is nothing to do with blacklisting or a company policy; it is what those guys did.

Q1638 Jim McGovern: Can I pursue it to some sort of conclusion? The information I received at the time from my management in Dundee was that McAlpine had been involved in building the Michelin tyre plant in Dundee in 1970–71—just when you were getting your position—and there had been some industrial unrest there, and that McAlpine had sworn that it would never allow a Dundee worker on its sites again.

Cullum McAlpine: Well, all I can tell you is that we have just finished our third project, I think, in Dundee in the last five years.

Q1639 Jim McGovern: Against my better judgment.

Cullum McAlpine: I think we might differ there.

Jim McGovern: I think you are now the main contractor for the waterfront development in Dundee—again, against my better judgment. I would be interested to find out whether some of the people who have contacted me about blacklisting could get on to a McAlpine site in Dundee now.

22 January 2013 Cullum McAlpine

Chair: Presumably the Edinburgh site agent, or whatever he was called, never spoke to you; otherwise it would have been instantly recognisable that you are not from Edinburgh.

Jim McGovern: When I asked for a peh.

Chair: Indeed—he would have heard that you were from Dundee.

Q1640 Pamela Nash: You just said that Sir Robert McAlpine Ltd had never operated a blacklist. Are you saying that the list the Consulting Association had was not a blacklist?

Cullum McAlpine: I am afraid I cannot answer that question.

Q1641 Pamela Nash: But can I take it that you have already answered it, because you said that McAlpine had never operated a blacklist, yet you have given us details today of your involvement in the Consulting Association?

Cullum McAlpine: I said that Sir Robert McAlpine has never operated or sought to operate a blacklist.

Q1642 Pamela Nash: I just want to be clear. Are you saying this because, in your mind, the Consulting Association is separate from Sir Robert McAlpine Ltd, or are you saying that the list was not a blacklist?

Cullum McAlpine: I am answering your specific question.

Chair: I think we understand that point.

Q1643 Mr Reid: At the time we are talking about, it was not illegal to operate a blacklist. That became illegal only when the 2010 regulations were passed. How can you be advised not to answer the question when what you were asked about was not illegal at the time?

Cullum McAlpine: I am told that I cannot answer questions about a blacklist in the context of the Consulting Association.

Q1644 Pamela Nash: Has your company ever asked someone else to operate a blacklist on your behalf?

Cullum McAlpine: No.

Pamela Nash: You have not.

Q1645 Chair: Can I clarify what you think the Consulting Association was doing then?

Cullum McAlpine: I think I explained that as much as I can in my initial statement to you.

Q1646 Chair: Can you define for me what you think the term blacklisting means, if it is not what the Consulting Association was doing?

Cullum McAlpine: My understanding of the term “blacklist” is a list of names that automatically prohibits or prevents those listed from enjoying whatever the benefit is, whether it is a club, employment or whatever. That is my understanding of the term “blacklist”. It is something automatic.

Q1647 Chair: It has automaticity, as distinct from what you understand the Consulting Association to have been doing, which was providing information that individual companies could use to decide whether

to blacklist somebody—or rather, to refuse somebody employment. I just want to be clear about the distinction. Is it the automaticity argument that makes the difference?

Cullum McAlpine: That is my understanding of the definition.

Q1648 Chair: Fine. Can I come back to one point that you made earlier? Maybe I misheard, but when we were discussing the Olympic Delivery Authority—the ODA—I think you said that, as far as you were aware, McAlpine had never been asked by the ODA whether it was operating or involved in any sort of blacklisting. Is that what you said?

Cullum McAlpine: No, I did not comment on that.

Chair: Sorry?

Cullum McAlpine: I did not make that comment.

Q1649 Chair: I am sorry; I obviously misheard you. Can I seek clarification then? While you were working on bidding for the jobs with the ODA, did it at any time raise with you the question of blacklisting and whether you were, would be, or would undertake not to be, involved in blacklisting? Did it raise that question with you at all?

Cullum McAlpine: No, but it was made clear that anybody going on to the Olympic Park site would be subject to security vetting by the Home Office. As I said earlier, I do not think any employers or clients understood about the Consulting Association, so there has never been any discussion of that sort of activity.

Q1650 Chair: I can see that the Home Office or other people might have a range of vetting mechanisms; that is a different thing. However, when we have spoken to some people related to the Olympics, they have indicated to us that they were very strong in making sure that there was no such thing as a blacklist being operated by any of their contractors. What you seem to be saying to us—your shake of the head confirms it—is that, as far as you are aware, you were never asked anything about that.

Cullum McAlpine: Certainly not.

Q1651 Chair: Can we ask you to go back and check whether anybody else in the firm was asked? It is possible that something happened of which you are not aware.

Cullum McAlpine: Your question was: was this raised at the time we were negotiating the contract and so on? My answer to you is no, it was not.

Q1652 Chair: Was it raised at any other time in your dealings with the ODA?

Cullum McAlpine: Yes, it has been raised subsequent to the completion of the whole of the Olympic Park by all the contractors.

Q1653 Chair: There is not much point in raising these things afterwards, is there?

Cullum McAlpine: That is the only reference I am aware of.

Q1654 Chair: Do you know what the point was of raising it afterwards?

22 January 2013 Cullum McAlpine

Cullum McAlpine: I think it was in response to some political pressure.

Q1655 Chair: Right. What did you tell them?

Cullum McAlpine: I can't remember what we said, actually, but I think we said that we had never refused any employment to anybody on the Olympic site while we had been there, and that nobody was refused employment activities.

Q1656 Chair: Did you tell them that you checked lots of names, however?

Cullum McAlpine: That was not the question, actually.

Q1657 Chair: I know that was not the question, but it is a not unreasonable point to have volunteered.

Cullum McAlpine: In 2008, when we were starting on the ground works of the Olympic stadium, we did check the workers who came on to the site. There were no references, so nobody was affected. By the time the main project started, the Consulting Association had been raided by the ICO, so that was not an issue.

Q1658 Chair: Let me be clear about the two phases. In the first phase, nobody's name was flagged up.

Cullum McAlpine: Correct.

Q1659 Chair: But had somebody's name been flagged up by the Consulting Association, you might very well have refused them the job.

Cullum McAlpine: I do not think I can answer that question.

Q1660 Chair: No, I do not think you can either. In terms of what is happening now, is there any other organisation with which McAlpine is in contact that is providing any sort of service similar to that provided by the Consulting Association?

Cullum McAlpine: No, there is not.

Q1661 Chair: Can I remind you that you are on oath?

Cullum McAlpine: Absolutely.

Q1662 Chair: Did McAlpine receive directly any information about construction workers from the police, the security services or any other organisation that could be described as an agency of the state?

Cullum McAlpine: No, not to my knowledge.

Q1663 Chair: Would you have known if that had happened?

Cullum McAlpine: Probably not.

Q1664 Chair: That is helpful, just to clarify matters. Did you ever provide any information about any employees to any of the agencies I have mentioned?

Cullum McAlpine: Again, not to my knowledge. I would very much doubt it.

Chair: Do my colleagues have any further questions?

Q1665 Jim McGovern: I have one point. The witness has obviously read the previous statements

and evidence, so he will be aware of this, but for anyone who was not here at the previous evidence-taking afternoon, I will make the point again about the agencies that his company has used. I have already mentioned blacklisting a whole city, but in terms of blacklisting individuals, I wonder whether he is aware—I think he will be, given the previous evidence—that a disabled war veteran from Dundee, who lost a leg and the sight in both eyes, ended up on the list that his company used, on the grounds that, because Dundee had granted Nelson Mandela the freedom of the city, he was regarded as some sort of lefty. Do you think that is fair?

Cullum McAlpine: Absolutely not. He should never have been there. As I said before, the whole objective of this organisation was to make reference to those who had been subversive—sabotaging is probably the right word—or had done things illegally on building sites. That was the whole point of this organisation. These other references, which came, I think, originally from the list that was purchased from the Economic League—

Jim McGovern: Which your company used.

Cullum McAlpine: They should never have been there. We would never have taken any cognisance of that kind of reference.

Q1666 Mr Reid: One thing that surprises me about the Consulting Association is the way it ended—with a raid by the Information Commissioner's Office and a fine being levied on the chief executive. Yet those involved in the Consulting Association were senior HR people and senior people like you with plenty of experience in business. Why do you think it never occurred to any members of the Consulting Association that it was operating in breach of the Data Protection Act?

Cullum McAlpine: I think that, with hindsight, that is a very good question, but you will probably have noted that, following the raid on the association, the majority of the members of the Consulting Association were actually given warnings by the ICO that their own houses were not in order in terms of the DPA and stuff like that. It is an extremely good question. Clearly they were not aware of that, otherwise they would have had their own houses in order. It is extraordinary.

Q1667 Mr Reid: Yes. Are there any business procedures that could be put in place to stop that happening again?

Cullum McAlpine: I am sure they are all in place now in the various companies concerned. I would be surprised if they were not.

Q1668 Mr Reid: Have you any suggestions to make to the Committee about changes in the law or working practices that we could be recommending to stop such a situation happening again?

Cullum McAlpine: I have thought about this. To my mind, the only fair way of running this kind of service is probably for it to be transparent, under the law as it now is. In 1993 that was not the issue.

22 January 2013 Cullum McAlpine

Q1669 Mr Reid: If my memory is correct, when the Data Protection Act was amended around 1997–98—
Cullum McAlpine: I think it was in 2001.

Mr Reid: Was it 2001? Transparency then became a legal requirement. Are you suggesting that all these companies, including the Consulting Association, never noticed the change in the law?

Cullum McAlpine: It is extraordinary, but that is what happened. I think transparency would actually have been a better solution.

Q1670 Mr Reid: We would definitely be in agreement there.

Cullum McAlpine: It would have ensured that any references were absolutely cast-iron and factual, and were not subjective, possibly, or from a different field altogether—and that they could be challenged.

Chair: Jim, you want to come in with another point.

Q1671 Jim McGovern: I do not know whether my colleague Mr Reid was covering this point, but you have already said that your company has never been involved in blacklisting. I think there is an air of scepticism about that, but do you think it still goes on? I am asking for an opinion.

Cullum McAlpine: I would hope not.

Jim McGovern: That is not quite the answer. What do you believe? I think we would all say that we hope not.

Q1672 Chair: Can you clarify what you said there? I did not quite hear it.

Cullum McAlpine: I said I would hope not.

Q1673 Chair: Why do you hope not? You were involved in this.

Cullum McAlpine: No. The question was about a blacklist.

Q1674 Chair: Oh yes, that is the automaticity.

Cullum McAlpine: We have had a discussion about that.

Q1675 Jim McGovern: As a supplementary to that, I have just received information that, as recently as 2010, David Cochrane contacted Ian Kerr and offered him 1,500 names. Ian Kerr was not interested, but David Cochrane said he had refused him. Were you aware of that?

Cullum McAlpine: Certainly not. What on earth was the point of doing that?

Q1676 Jim McGovern: I do not know. I am asking you for an explanation, actually.

Cullum McAlpine: I am as amazed as you are. I cannot think of any point in doing that. I am actually amazed that Mr Cochrane had 1,500 names.

Q1677 Chair: Normally, when we finish these sessions we ask people whether they have any answers prepared to questions that we have not asked—any points that we have not already covered that they want to make sure they place on the record at the meeting. I will do the same thing here. I think we have been pretty comprehensive, but there may well be some additional points that we have not touched on that you want to put in front of us.

Cullum McAlpine: I do not think so, Chairman. I think that what I have said in my statement has been covered in the evidence today, and, further, I would say that McAlpine has never operated or sought to operate a blacklist. I would also say that the Consulting Association used members' references only in relation to sabotage and unlawful activity. That was the way it was set up in 1993. That is the way that, to my knowledge, from my three years of chairmanship, it carried on. I think it is unfortunate that some of the other references were not removed earlier than they obviously were.

Chair: Before I draw the meeting to a close, I indicate to those members of the public who are here that we want the witness to be able to leave uninterrupted. We will let the public leave afterwards.

Tuesday 5 February 2013

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Graeme Morrice
Pamela Nash

Sir James Paice
Mr Alan Reid
Lindsay Roy

Examination of Witness

Witness: **Jack Winder**, former Director, Caprim Ltd, gave sworn evidence.

Q1678 Chair: I ask the Clerk to administer the oath. (*Jack Winder was sworn*) Thank you very much, Mr Winder. I welcome you to this meeting of the Scottish Affairs Committee. Could you introduce yourself and tell us a little bit about your background?

Jack Winder: My adult life has been spent as follows: 10 years in the British Army, 30 years with the Economic League, 15 years with Caprim, 18 months self-employed, three years and counting retired. Will that do?

Q1679 Chair: I think that encapsulates things. As well as being retired, you are now a regular correspondent to *The Daily Telegraph*, I understand.

Jack Winder: You noticed.

Q1680 Chair: We did indeed. In fact, I thought one of your letters was so good that I would quote it. This was in *The Daily Telegraph* of 4 February last year. It says: "SIR—When Chris Huhne, the former Energy Secretary, described the decision to prosecute him for an alleged perversion of justice as 'deeply regrettable'...what he meant was that he deeply regrets it." It goes on from there. I thought it was worth while to draw that to the attention of a wider audience, and particularly appropriate today.

Jack Winder: I see you have done your research, Chairman.

Q1681 Chair: Well, there you are. I thought it was particularly appropriate today, of all days. Can we start by asking you about the Economic League and your involvement there? What was your role and function? You have already mentioned that you were with the league for 30 years.

Jack Winder: Yes.

Q1682 Chair: Can you tell us what you did there?

Jack Winder: I joined it out of the Army in 1963 as a training officer. That was about spreading the gospel of good economics, mostly to apprentices and that sort of thing. I did that for nine years. In 1972 I was asked to take on the role of industrial relations adviser. I was in the Birmingham office, in the midlands. This was really a matter of keeping our companies informed of the activities of the far left, which seeks to use industry as a political football and to subvert both management and the trade unions. Apparently, I did a fairly good job. I was then made understudy to the director of information and research—part time in 1974 and full time in 1976. He retired in 1977. I took over as director of information and research in 1977

and held that position until 1987. I then went back to Birmingham as the regional director for a couple of years. In the final four years of the league, as the league shrank, I combined the roles of director of information and research, and director of the midland region. That, in a nutshell, was my career at the league.

Q1683 Chair: Can I ask you a bit about the director of research role? We have been focusing mainly on issues to do with records and so on for individuals. Can I clarify what your role was in relation to that area of the Economic League's work?

Jack Winder: The principal role of the director of information and research was to be the public voice of the league—to write everything the league wrote and to answer any inquiries that came in. To be able to do that, I had to read all the stuff that I could lay my hands on, because the other part of the role was going to companies and having meetings in various places around the country to explain what was happening in the world of what we called subversion—that is, the activities of the groups that tried to use industry for a political purpose.

Q1684 Chair: We had Ian Kerr in front of us earlier, and we are generally aware of the scanning role, in terms of collecting information on various Trotskyist and other groups, and so on, and disseminating that. I wanted to try to clarify what your role was in relation to files on individuals. Were you involved in that aspect of the league's activities?

Jack Winder: Not directly. I had an input, if I came across information during my research that was worth keeping. I need to explain that most of the information one gets is what you call raw information, and you know that 95% of it is going to be useless. The trouble is that you do not know which 5% will be useful, so you keep it squirreled away. My role was to keep the general information that would support our publications, our public utterances, and me when I was talking. The information for the central research department, which was where the records were held that could be accessed by the member companies, if they wanted to vet potential employees, was held in the northern regions—that is to say, Scotland, the north-east and the north-west. The other regions—that is to say, the midlands and the south-west—managed to avoid holding those records and got the information straight down to the central records in Thornton Heath. Part of the reason for that was that the northern regions wanted to retain as much autonomy as they

5 February 2013 Jack Winder

could, because someone in, shall we say, Edinburgh would rather ring the Glasgow office than ring London. Likewise, someone in Newcastle would rather ring Leeds. That was the reason for that. So they collected their information. My role in this was very limited, frankly. As I said, my role was to keep the information that supported our publications and our activities in a national sense.

Q1685 Chair: So if somebody appeared in an article in the *Morning Star* or one of the 57 varieties of Trotskyist newspaper, you would identify the name and then feed that on to the people who were compiling the records.

Jack Winder: No, I would keep that among my own records, because it was raw information. It would be pretty useless to have a system where people could ring in, fax in or whatever to check against something if the information you had was useless. After all, if you are ringing me to check a name, and all I have is a name and “written to the *Morning Star*”, we do not know who he is. We have not got an address or anything about him, so it is useless information. There was an awful lot of stuff that came in from the regions that was incomplete. Then the central people had to ring back the three northern regions to check it. So the system was, frankly, imperfect. There is no doubt about that, but it erred on the side of never saying anything that you could not substantiate. That was very important.

Q1686 Chair: I am slightly perplexed, because I have been to see the Information Commissioner’s Office and have gone through some of the card indexes that the Consulting Association was using, which it had inherited from the Economic League. Some of those do refer to attendance at meetings and so on, or there was a press cutting attached about a particular meeting somebody had been involved in. If you collected this information, did you then marry it up with the names that were on the file, or did you supply that press cutting to somebody who was retaining the files? I am not quite clear about that.

Jack Winder: That is a bit of a googly. I am not quite sure how to answer that one. You collect the information. The central records department had a system of what you call Rotadex, which had little slips in referring to the cards. There may well have been cards in that system, but, if they were not reflected on the Rotadex, someone applying from outside for information would not get to that card. That was a fail-safe device, if you like, because it was not on the Rotadex. Does that explain it?

Chair: Yes, I think that explains much of it.

Q1687 Graeme Morrice: To follow on from that last response, can you describe what sounds like a very chaotic system? You said that most or much of the information you collected or collated was useless. Why were you doing it in the first place, then? What was the point of it? Why go to all the trouble?

Jack Winder: Whenever you are involved in intelligence gathering, you collect stuff because it may form part of a jigsaw. You may get more information later that enables you to identify that activity, that

person or whoever it may be. Yes, chaotic is a fair description, because the league was a rather federal system. It had a central office in London, and a central council, but each region had a council, and they did like their autonomy. Although there was nominal control from the centre, the regional director would play off his own council against another council, and so on. It was chaotic, and a lot of information was gathered that was, frankly, useless in the long term. It was not until we centralised the whole thing in 1991—no, it was before then; we centralised the whole thing in the late ’80s—that we started to go through all these records and get rid of a lot of the rubbish that was there. In the end, we had a fraction of what had been there, because by that time we had been closing regional offices and could take the stuff off them. Without being too grandiose, I have often compared it to the President of the United States: he is President, but he does not control what happens in Alabama. It was a bit like that.

Q1688 Chair: I understand some of that, but I am still slightly confused. When I saw the files that the Information Commissioner held, attached to some of them were press cuttings that had presumably been compiled by your office.

Jack Winder: Not necessarily.

Q1689 Chair: Not necessarily?

Jack Winder: No. We often said that if the league had not bought the *Morning Star*, the thing would have collapsed.

Chair: Indeed.

Jack Winder: And *Socialist Worker* and other things like that.

Q1690 Jim McGovern: I am sorry, could you repeat that?

Jack Winder: It was an in-joke—that, if we in the league had not bought the *Morning Star*, the paper would have collapsed because its circulation was so small. It is a joke, but—

Q1691 Jim McGovern: So you were almost depending on each other—almost.

Jack Winder: It meant that people in the different regions bought the *Morning Star* and took something out of it that applied to that part of the country. Then it was all amalgamated nationally.

Q1692 Graeme Morrice: The Economic League ceased to exist in 1994, and then—

Jack Winder: In 1993.

Graeme Morrice: It was 1993; my notes say 1994, but that is fine. Then you and Stan Hardy went about creating Caprim. How did you go about that? What was the purpose of Caprim?

Jack Winder: The purpose of Caprim was to give Stan and me a job, basically, because we were out of work. I had the knowledge that I had accumulated over a number of years doing the job I had been doing with the league. Stan is a bit of an entrepreneur, had the gift of the gab and was good at talking to companies. We thought we had something to offer, which was to continue the part of the league’s work that I had been

5 February 2013 Jack Winder

involved in—that is to say, warning companies about threats to their well-being from all sorts of organisations. As time went on, of course, it became much less about actual parties like the Socialist Workers and so on, and much more about single-issue campaigns, which involved all sorts of people. It did not matter what the campaign was: if it posed a threat to a company, they had a right to know about it. It may have been justified, but they had a right to know. That is what our focus was in Caprim.

Q1693 Graeme Morrice: So what was the essential difference between Caprim and the Economic League?

Jack Winder: The essential difference was that there was no vetting system supplied by Caprim. We had no personal records.

Q1694 Graeme Morrice: Who else was involved in the formation and operation of Caprim?

Jack Winder: The formation involved Stan Hardy and myself. We employed two people from the league, one very short term and one who stayed with us all the way through.

Q1695 Chair: Who were they?

Jack Winder: We started the company in May 1993 and employed Geoff Hume until, I think, March 1994, because we quickly learned we were now in the commercial world. The league was a company limited by guarantee, and people gave it money because they thought it was a good thing—pro bono publico, almost—whereas we were now a commercial company, and we quickly learned that you had to pay your way. We therefore cut our wages by 20% in the first year and got rid of a company secretary and the salesman. That left Stan and myself, a secretary in the office and Jack Bramwell, who had joined the league in the late '80s and who was an expert on security and that sort of thing.

Chair: Jim, do you want to come in on that point?

Q1696 Jim McGovern: Yes, on the same point. Thanks very much for coming along, Mr Winder. When you say that Caprim was set up to look at organisations, was it to look at organisations or individuals?

Jack Winder: Organisations.

Q1697 Jim McGovern: Never individuals.

Jack Winder: No, never.

Q1698 Jim McGovern: So no one was on a list.

Jack Winder: No. May I explain why? The league had gone down largely because of bad publicity and leakage of some of this dreadful information, which formed the basis of all sorts of attacks on the league. That is why it had gone down. We had lost some of the biggest subscribers that used the system, so it would not have been very clever to start a company and do the same thing again, which had become discredited, however much we may have defended it. Whatever people may have said about Caprim, they could not prove it, because it was not true.

Q1699 Jim McGovern: So if this Committee used freedom of information requests to look into the records of your company, there would be no mention of individuals.

Jack Winder: No. The only thing we did do was to offer CV checks. Everybody does that.

Q1700 Jim McGovern: Of individuals?

Jack Winder: Yes. If you have applied for a job with a company, you give the company your CV. They then pass it someone to say whether it is accurate. We offered that, but hardly ever did it; I think you could count on the fingers of one hand the times when we did it. There were no records kept of people. Checking CVs is what all sorts of consultants do—“Has he got this degree?”, “Did he work there?” and so on. That is a completely different thing.

Q1701 Jim McGovern: So you did look at individuals, but only very rarely. You initially said never, but now you are saying very rarely.

Jack Winder: We did not ourselves have records of individuals. We had no records of people at all.

Q1702 Jim McGovern: Okay. The other point you made that intrigued me was when you said that you started the company and paid off the secretary.

Jack Winder: The company secretary?

Jim McGovern: Yes, and the salesman. What was the salesman selling?

Jack Winder: He was selling Caprim's service.

Q1703 Jim McGovern: Which was what?

Jack Winder: Which was going around warning companies about what was happening that might be a problem to them.

Q1704 Jim McGovern: So somebody was selling that information.

Jack Winder: Selling the service—saying, “This is what we do.” One of the great problems we found, by the way—if I may expand on that point—was that when you are trying to sell a service that is information, you have to prove to people that you know what you are talking about. It can take several visits and quite a lot of information to establish that reputation. Even then, some of them say, “Thanks very much, but we're not going to pay you.” Some will say, “Okay, we'll retain you.” Once your usefulness is finished—once whatever threat it was is deemed to have gone away—they say, “Thank you very much.”

Q1705 Jim McGovern: That is fine, but you can confirm that it was sale of information.

Jack Winder: Yes.

Q1706 Sir James Paice: Can I clarify one point? You say that you checked CVs. When you had checked a CV and reported back to the employer, did you retain from that any of the information that you had discovered in the course of your investigation?

Jack Winder: No, of course not. Can I clarify the point? I can certainly count on the fingers of two hands the number of times we did it in 15 years. It

5 February 2013 Jack Winder

was a thing we offered, but very few people took it up because, generally speaking, if you are in a company and are in the habit of recruiting people to important positions, whether they are technical, managerial, financial or whatever, you usually have a system to check CVs—you already have people who do it for you. In that event, we were trying to break into a market that was pretty well populated. I mention it in the interests of being accurate and telling you the whole story, but we virtually did not do it, really.

Q1707 Graeme Morrice: Can I ask Mr Winder—
Jack Winder: May I say, it is pronounced “Win-der”.
Graeme Morrice: I beg your pardon. Can I ask you to clarify how your company was actually funded?

Jack Winder: First of all, Stan Hardy and I put in our own money. We got an input of £10,000, which Stan got, I understand, from McAlpine, partly as a good-will gesture and partly to say, “Keep clear of Ian Kerr and all his works.”

Graeme Morrice: I am sorry, what was the last thing you said?

Jack Winder: “Keep clear of Ian Kerr and all his works.” I will tell you the reason for that. I had recruited Ian in 1969 as a training officer, so I knew him well. When the league was breaking up, I said, “You’re the lucky one; you’ve got a job to go to.” “Yes,” he said, “But I’ve been told in no uncertain terms to have nothing to do with anybody who was with the league and may start something else.” He knew Stan and I were trying to set something up. We had guilt by association, of course, and they wanted to have a completely new start.

Q1708 Graeme Morrice: Roughly what would your annual turnover have been?

Jack Winder: I can tell you what it was over 15 years. It was just short of £1 million in 15 years. If you divide that, you are looking at an average of £60,000. It is minuscule. We were a very small company. The people we had were Stan Hardy, Jack Bramwell and myself. Stan spent most of his time going round to see companies, I was the engine room and Jack was the security specialist who did security work for us when requested by a company.

Q1709 Jim McGovern: We have heard evidence from Ian Kerr—unfortunately now deceased—and from Cullum McAlpine. If my memory serves me correctly—and I am sure it does—Cullum McAlpine indicated that his company put up £10,000 to start up Ian Kerr in 1993. You are saying that he also put up £10,000 to start up your company and told you to avoid Ian Kerr.

Jack Winder: I do not know anything about the £10,000 to Ian Kerr. All I know is that, as I said to you, we started this company in May 1993, and I remember—because it was such a substantial sum to a small company trying to get off the ground—that it was September or October when we got this £10,000, which was a long time after we started. I understood that Stan had spoken to, I think, McAlpine and told them what we were doing, and they had said, “For good will, we will give you a boost, on the

understanding that you don’t interfere with Ian Kerr’s operation.” That is how I understand it.

Q1710 Jim McGovern: You initially said, “Steer clear of Ian Kerr.”

Jack Winder: Yes, that is right, because we did not want him polluted by us. It was that way round.

Q1711 Jim McGovern: Would I be reasonably correct in deducing that McAlpine was starting up two different companies with the same objects, but telling you to steer clear of each other?

Jack Winder: No, it did not start us up; we had already been running for four months. It was a one-off payment that, to the best of my memory, was partly good will and partly to say, “Don’t approach any of the companies in Ian Kerr’s operation.” We did not know who they were.

Q1712 Chair: Can I clarify this £10,000? My understanding was that the Consulting Association got money from McAlpine to buy the records of the support group of the Economic League, to pay for—

Jack Winder: What is the support group?

Chair: Sorry, the services group. My understanding was that there was a £10,000 payment for the intellectual property—the files, records and so on. Is that the same sum?

Jack Winder: No, I do not think so, because the services group information was the property of the companies.

Q1713 Chair: McAlpine and Ian Kerr told us that they paid £10,000 for the files.

Jack Winder: Perhaps because they had been held by the league for so long—it started in 1973 or 1974—they felt the league was due some money for that. My understanding was always that the services group worked on the principle of the companies supplying money to a central point, which was then regurgitated for their use.

Q1714 Chair: I see. As I understand it, at the end the Economic League went bust owing money to its liquidators.

Jack Winder: I am sure that is right.

Q1715 Chair: It had debts that were unmet, and one of the assets it had was the files, or cards, for which £10,000 was paid. You seem to be telling us that that £10,000 went to yourself and Mr Hardy to set up another company, rather than to meet some of the outstanding bills of the Economic League.

Jack Winder: I do not know how many sums of £10,000 were involved; there may be more than one. All I know is that in September or October 1993 we got £10,000, which was a real windfall. I understood that it came from McAlpine and that it was for the reasons I have given you. We had nothing to sell, anyway. We had no records to sell.

Q1716 Chair: What happened to the Economic League’s records?

Jack Winder: They were destroyed.

5 February 2013 Jack Winder

Q1717 Chair: By whom?

Jack Winder: By Securicor. It was decreed by the chairman of the league that all these records should be destroyed. Securicor came to the Birmingham office and took away all the stuff for secure destruction. Stan and I had to sign a statement to that effect for the central council.

Q1718 Chair: That was that all the records held in the Birmingham office had been taken away.

Jack Winder: Yes.

Q1719 Chair: But you have already indicated to us that there were records held in other offices.

Jack Winder: I also made the point that, in the late '80s, when the league was shrinking—

Chair: They had all been collated.

Jack Winder: They had all been collated into the centre.

Q1720 Chair: Mr Kerr told us that the services group's initial records, which it was using to sell its service, had actually come from the Economic League. Clearly, not all the records were destroyed.

Jack Winder: No, the services group's records were supplied by the companies.

Q1721 Chair: Let me tackle this in a slightly different way, if I can. There were file cards on individuals that the Economic League held.

Jack Winder: Yes.

Q1722 Chair: That is right. Some of those related to companies that were operating within the services group, and others were on other industries, groups and companies. Unfortunately, the *Hansard* writer does not record nodding of the head, so we will just have it recorded that you agreed with that.

Jack Winder: Okay.

Q1723 Chair: So the services group records went off with Ian Kerr, and the rest were destroyed, you say.

Jack Winder: Correct.

Q1724 Chair: Mr Kerr told us that those services group records, having been part of the intellectual property of the Economic League, were paid for with £10,000.

Jack Winder: I do not know about that. All I know is that the services group records were exclusive to the companies in the services group. You know the history; you know why the services group was set up.

Chair: No. Maybe you can help us.

Jack Winder: There was a national strike in 1972, which led to a lot of picketing, threats and goodness knows what else, largely in the north-west of England. The employers said, "We're not going to allow this to happen again." All these companies had records of people who had worked for them and left—some of whom they wanted back and some of whom they did not want back. They decided to pool this information. Of course, no one company wanted to do the job, so they approached the league and said, "Would you do this for us?" As there was money, and the league was

always strapped for cash, the league said yes. One person was put in charge of this whole operation. In each of the regions, as they were then in the early '70s, there was one person who was the liaison man for this system. Sometimes that person doubled up as a training officer as well, because there was liaison with the companies on more general information, not simply names and so on. The services group companies therefore provided the information and added to it. It was put into the services group file, which was separate from the league file, and then regurgitated only to those companies. Nobody else had the right to have that information. That, in brief, is how it worked.

Q1725 Chair: The confusion, then, for me is that we have had evidence both from Cullum McAlpine and, if I remember correctly, from Ian Kerr that they paid £10,000 for these services group files, but you are saying that, in fact, they owned those anyway. There does seem to be a £10,000 sum that went to start up Caprim when, perhaps, it might more appropriately either not have been paid at all or have been given to the Economic League, to meet the outstanding bills that it had when it collapsed.

Jack Winder: I cannot argue with the logic of that. I can only tell you what I think happened, to the best of my knowledge. I had no knowledge whatever of a payment to the league for Ian Kerr's records.

Q1726 Chair: So you think McAlpine paid you money just as a good-will gesture and to stop you pestering Ian Kerr.

Jack Winder: That is my recollection of it. I was not directly involved, but that is how I understood it.

Q1727 Chair: Who was directly involved in that?

Jack Winder: I think Stan Hardy was.

Chair: Right. We have tried to locate Stan Hardy, but we have not been able to do so. *[Interruption.]* I am sorry; I am told by the Clerk that we have now done so. It was originally our intention to have you here together, but until this very moment I was not aware that we had successfully found him. We will obviously have to pursue that further. Graeme, do you have a question?

Graeme Morrice: I have finished, Chair.

Q1728 Jim McGovern: Mr Winder, you said that the reason why you started up Caprim was that you had all this information and you thought it might be helpful, and a business opportunity. But since then you have said that all the information was destroyed. Which is true?

Jack Winder: They are both true. I had knowledge of how these organisations worked, and I was still getting all the publications. When you get things like *Socialist Worker*, they did not send it to the offices of the Economic League; they sent it to my house, so I still had all that sort of information coming in to me individually. I had knowledge; that is perhaps a better word than "information".

5 February 2013 Jack Winder

Q1729 Jim McGovern: Were you starting afresh, or were you using previous stuff, whether it was on file, up here, or wherever?

Jack Winder: The league had published booklets in the past and had published a monthly review, which was publicly available, so we had that sort of stuff for background. That is fair enough. I had written a lot of that stuff.

Q1730 Jim McGovern: So not everything was destroyed.

Jack Winder: All the personal records—all the records of individuals—were destroyed.

Q1731 Jim McGovern: But presumably you had some sort of filing cabinet at home.

Jack Winder: Yes, I had a file for *Socialist Worker* and—

Q1732 Jim McGovern: That answers the question: you did. You kept information and sold it.

Jack Winder: Yes.

Q1733 Pamela Nash: Earlier you mentioned that it was less about political parties and more about single-issue campaigns. Could you explain that a bit more?

Jack Winder: Yes. During the 1980s various Conservative Governments passed industrial relations legislation. That made it much more difficult for political extremists to gain positions in unions and to influence industrial relations. To give one example of this, I think that at one time the Socialist Workers party had a dozen of what it calls “fractions” for different industries—car workers, Post Office workers and things like that. It shut them all down in the late ’80s. I do not suppose they all went away, joined the Young Conservatives and played tennis or anything; I am sure they were all still politically the same way inclined. Neither am I saying that they established new operations—although I have no doubt that some of them got involved.

Going into the 1990s, when Caprim started, the sort of things that exercised our minds were campaigns against multinational companies. You had the Transnational Information Exchange in Amsterdam, which had offshoots in this country, and *Multinational Monitor*, based in Washington DC. You had campaigns against the City of London, culminating in, I think, three consecutive years of riots in London, run by an outfit called Reclaim the Streets. These were anarchists. They did not target only the financial institutions; companies with head offices in London were also targeted. We made it our business to find out what was going on and to warn the companies about that. Then you had the whole ethical industry—people who set themselves up as arbiters of what is ethical in business. They advised investors on whether they should invest in a company and on how they should vote at the shareholders meeting. There was also advice on being an ethical consumer. They would say, “Don’t buy this bun because it’s made by a company that’s part of a conglomerate involving an arms company”—all that sort of stuff. There were then three specific things: the Campaign Against Arms Trade, which is obviously tied to the arms trade; the

pharmaceutical industry, which was under attack from animal rights activists; and the agro-chemical industry, which was under attack from GM activists, who actually trashed the crops and so on. As time went on, these became the main focus of our attention.

Q1734 Pamela Nash: Was that in response to your and Mr Hardy’s concerns changing, or were companies and construction companies raising concerns with you about individuals or groups of people who might be involved in these campaigns?

Jack Winder: You said construction companies.

Pamela Nash: I am sorry; I meant companies that you were using.

Jack Winder: Not construction companies. Part of intelligence is to go out and find out what is happening, and then hope that you get in there before the company that is going to be affected knows about it. Then you are bringing them news, so when you say, “Do you know that this is about to happen?” they are much more likely to prick up their ears and say, “Oh my goodness!” That is what we did. We researched and laid our hands on all the things we could read—all that sort of stuff.

Q1735 Pamela Nash: I am trying to visualise your relationship with the companies. Would it put you ahead of the game if you knew that someone was involved in a certain campaign? Rather than the companies raising these concerns with you, you would go to them.

Jack Winder: Yes. Generally speaking, we would alert the company to something. We would usually start at the top, with the managing director’s secretary, and perhaps get fobbed off with someone else. If we had something useful to say, they would say, “Come and tell us”, and we would go and tell them. Then, depending on how important it was and how much of a problem they thought it might be, they might say, “We’ll retain you for a few months and see what happens.”

Q1736 Pamela Nash: How did you collect this information? Did you attend campaign meetings under cover?

Jack Winder: Within our limitations, when we could, we did. For example, at one point there was the big attempt to disrupt the City. I mentioned it a moment ago—the Stop the City campaigns. They published a newspaper that looked like the *Evening Standard*, so you could get hold of that. That said what was going to happen. It is quite clear that the companies themselves could have done that, but they tend not to; they tend to be more concerned with their own business. We were trying to show that these companies had a little gap in their knowledge, which could affect them.

Q1737 Pamela Nash: Finally, on collection—to go back to the party political side—did you meet party members and politicians at all? Did you have a relationship with any of the political parties to gather information?

Jack Winder: No, not really. I will declare an interest: I am a member of the Conservative party, so I know

5 February 2013 Jack Winder

my local MP and have met some people in the party. There is something else I ought to say. While I was with the league we had very good relations with certain trade union leaders, who were very concerned about the problems created and fed off by the far left.

Q1738 Chair: Will you tell us who those were? Can I remind you that you are under oath?

Jack Winder: I do not need reminding, Chairman; I am quite well aware of that. Do you want names?

Chair: Yes.

Jack Winder: Leif Mills, from the banking union; Terry Carroll, from the engineering union; Eric Hammond, from the electricians; Dennis Mills, from the midland region of the transport union; and Kate Losinska, from the Civil and Public Services Association. There are some for you.

Q1739 Chair: Are there more?

Jack Winder: You are taxing my memory—you are going back 20-odd years—but there were.

Chair: It would be helpful if you could give us a note subsequent to this. I appreciate that you will not necessarily have a whole list off the top of your head, but you could provide additional notes. We have done this with other witnesses. I appreciate that some of this happened a while ago, but there has been a certain amount of public interest in these aspects. I think we would want to have that on the record.

Jim McGovern: On a legal point, Chair, is any information that we receive in written form afterwards also under oath?

Chair: Yes.

Jack Winder: I am not sure how many more I can remember, because it is a long time ago, but I will do my best.

Q1740 Chair: I myself often remember going out of meetings and then suddenly remembering somebody, and so on. As you lie awake in bed tonight wondering what you forgot, as it were—I am sure that other names will come back to you—could you just switch on the light, scribble them down and send us a note later on?

Jack Winder: Chairman, I hope to get a good night's sleep tonight. I shall not be worrying about this.

Chair: I did not mean that you would be worrying, just that you would be trying to remember, and trying to be as helpful as possible to us by recalling any additional information.

Jack Winder: Indeed, yes.

Q1741 Graeme Morrice: You have outlined the discourse you had previously with a whole range of people, and you mentioned your affiliation in terms of party politics. Did you have any discussion with members of the Conservative party and, in particular, elected politicians—especially Government Ministers?

Jack Winder: Yes, when the new Government came in in 1979, I had a talk once with the first Secretary of State for Employment, Jim—I cannot remember his name.

Graeme Morrice: Prior.

Jack Winder: Yes, Jim Prior. I went to see him; he invited me. Of course, I would also go to party conferences, where you would meet people and chat to them, but there was no formal relationship.

Q1742 Graeme Morrice: Just to clarify, on the election of the first Margaret Thatcher Administration in 1979, you were—if I heard correctly—invited specifically to meet the then Secretary of State for Employment, Jim Prior MP.

Jack Winder: Yes. That was the only time.

Q1743 Graeme Morrice: What did you discuss?

Jack Winder: We discussed the whole industrial relations scene. My particular expertise, if you want to use the word, was knowledge of what was happening on the far left.

Q1744 Graeme Morrice: Right. So you talked about extremist politics.

Jack Winder: Yes.

Q1745 Lindsay Roy: Good afternoon. As I understand it, what you have said recently is that, in terms of CVs, you could count on the fingers of two hands the number of people on whom you gave information. We have read that Caprim told potential customers that it “helps its clients by checking...bona fides”. What does that mean?

Jack Winder: It meant exactly that—checking people's CVs. That was the publicity material we did when we started, hoping to raise business from that activity.

Q1746 Lindsay Roy: But CVs could be checked by any company, I would have thought.

Jack Winder: I know they can, but consultants offer that service. We offered the service.

Q1747 Lindsay Roy: The quote continues, “whether external or members of staff. A simple CV check is often sufficient—and economical”.

Jack Winder: Yes.

Q1748 Lindsay Roy: If it is not, what else was required?

Jack Winder: That is perhaps slack writing.

Lindsay Roy: I am sorry, I missed that.

Jack Winder: That may have been slack drafting. When we said that a CV check is often enough, all we meant was that a CV check was what we would do. That is all I can say to that.

Lindsay Roy: A “CV check is often sufficient—and economical.”

Jack Winder: Yes.

Q1749 Lindsay Roy: What sort of questions would your clients ask?

Jack Winder: Can I answer this in a different way? When you start a company, you say, “What sort of things can we do?” You put it down on paper, because you can then give that to people, and so on. In this particular case, with CVs and any other sort of bona fides checks, it virtually never happened. As I said,

5 February 2013 Jack Winder

maybe the number of times could be counted on one hand; it was very, very seldom.

Q1750 Lindsay Roy: It is therefore likely that, with all of them, you would remember clearly what kind of questions clients would ask.

Jack Winder: They did not ask any questions. They came to us with a CV.

Q1751 Lindsay Roy: So they asked no questions at all. They just said, “Can you provide a CV?”

Jack Winder: Not “Can you provide a CV?” When someone applies for a job, they provide the potential employer with a CV. The potential employer then says to the consultant, “Will you check those details for me?” The consultant looks and sees that this chap says he has a degree, so they ring up the college and ask, “Have you got a record of this chap doing a degree?” Or he says that he worked at this or that company, and you check that. That is what you do. It is completely straightforward and simple.

Q1752 Lindsay Roy: If that was the case, why were there so few? It is very easy to check up on CVs.

Jack Winder: Because companies already had people doing it.

Q1753 Lindsay Roy: So which companies did not?

Jack Winder: I do not know. As I said to you, it happened so seldom—frankly, I wish I had not mentioned it—that it was hardly worth talking about.

Q1754 Lindsay Roy: But if it happened so seldom, I would have remembered, in my own position. I just wondered why you cannot recall which companies made contact for additional information.

Jack Winder: I honestly cannot remember. We certainly have no records of it.

Q1755 Lindsay Roy: None at all.

Jack Winder: No.

Q1756 Lindsay Roy: And you did not keep records on individuals.

Jack Winder: No, we did not.

Q1757 Lindsay Roy: So what sort of clients did Caprim have?

Jack Winder: The companies in the industries I mentioned to Ms Nash. We got the clients in the industries where we identified problems.

Q1758 Lindsay Roy: Were there any sectors of business that were particularly involved?

Jack Winder: Yes. I mentioned pharmaceuticals, agro-chemicals—

Q1759 Lindsay Roy: Which companies in pharmaceuticals?

Jack Winder: GlaxoSmithKline, Novartis—people like that.

Q1760 Chair: In a sense, it is not sufficient to say “people like that”. I think we want to be clear, since

this is on the record: these companies were your clients.

Jack Winder: Yes.

Q1761 Chair: Please provide some additional names in pharmaceuticals. Which other companies were there in pharmaceuticals?

Jack Winder: Rhône-Poulenc, Zeneca—that is as far as my memory goes.

Q1762 Lindsay Roy: You mentioned other sectors.

Jack Winder: Yes: agro-chemicals.

Q1763 Lindsay Roy: Okay. Can you give us some names?

Jack Winder: Monsanto is the obvious one that comes to mind.

Q1764 Lindsay Roy: Any others?

Jack Winder: Not off the top of my head.

Q1765 Lindsay Roy: Were any other sectors of industry involved with Caprim?

Jack Winder: Yes. I have mentioned the Campaign Against Arms Trade. There were multinational companies.

Q1766 Chair: Which multinational companies?

Jack Winder: Rio Tinto, Morgan Crucible, JP Morgan, Morgan Stanley—these were companies that at times were clients of Caprim.

Q1767 Lindsay Roy: So companies in the big league.

Jack Winder: Yes.

Q1768 Chair: Did you have any competitors in the business that you were in of selling information about various Trotskyist and other groups, malcontents, malevolent elements and so on, or were you the only people doing this?

Jack Winder: It was not so much Trotskyists and malcontents; it was organisations such as Greenpeace, which was very big in anti-GM and so on, and the Campaign Against Arms Trade. No doubt there were all sorts of elements mixed up in those. You asked about competitors. I did not know of any.

Q1769 Chair: So there was never an occasion when you went along to somebody’s door and said, “Excuse me, we would like you to buy this service,” and they said, “No, we already get it from Fred Bloggs (Anti-Trotskyist)”?

Jack Winder: No, we were unique.

Q1770 Chair: Okay. So you had the market to yourselves, as far as we can ascertain, but you were not really able to make a go of it, because of your turnover. Why was that? Was it because companies did this external scanning themselves?

Jack Winder: No. I think that we were very small and could cope with only a certain amount. As time went on, and companies fell by the wayside, and we got older, it was almost always the prospect of traipsing down to London to see someone important enough in

5 February 2013 Jack Winder

a large company, and in some cases, perhaps, spending several months persuading them that we knew what we were talking about. By this time Stan Hardy had left the company—he left in 2000—so Jack Bramwell and I merely said, “As people go, we’ll let them go.” Eventually it petered out until, in October 2008, we shut up shop.

Chair: Jim, you wanted to pick up questions 8, 9 and 10.

Q1771 Jim McGovern: On the subject we have just been talking about, Mr Winder, you said you were not aware of any competition at the time. I would have thought that Ian Kerr’s company would have been regarded as competition. Were you not both working in the same field?

Jack Winder: First of all, we had no contact whatever with Ian Kerr.

Jim McGovern: That is not the question.

Jack Winder: Let me make the point. Ian Kerr’s operation was a very restricted operation. As I understood it—if it was still the same as it had been when it was the services group in the league—it was a matter of helping a certain number of companies in the construction industry avoid employing people they did not want to employ. That was his business. That was nothing whatever to do with Caprim. As I have said before, we had no interest in names, vetting or anything like that.

Q1772 Jim McGovern: If I understand you correctly, you would say that there was no similarity between what Caprim was doing and what Ian Kerr’s organisation was doing.

Jack Winder: No.

Q1773 Jim McGovern: No similarity whatsoever.

Jack Winder: As I did not know precisely what it was doing after 1993, I cannot be exact, but we had no contact with it. I did not even know where its offices were. So I have to say no, there was nothing similar at all.

Q1774 Jim McGovern: I do find it incredible that your company and Ian Kerr’s company were both set up by McAlpine and you had no links—one did not know what the other was doing

Jack Winder: No, we were not set up by McAlpine.

Q1775 Jim McGovern: Well, you were given a start-up.

Jack Winder: Right. We were given a leg-up, if you like, as I understand it.

Q1776 Jim McGovern: We have heard from Cullum McAlpine that, certainly for the organisation that Ian Kerr led, the money was a loan, and he could prove that it was repaid. Was it also a loan for Caprim?

Jack Winder: No.

Q1777 Jim McGovern: It was just a bung.

Jack Winder: Yes.

Q1778 Jim McGovern: That is helpful; thank you. Did Caprim have any contact or swap information with any members of the police or security services?

Jack Winder: No. When we were with the league we had contact with special branch, but not when we were with Caprim.

Q1779 Jim McGovern: What was different? Why did that stop?

Jack Winder: Because the contacts I had with the police were with the Metropolitan Police Special Branch. We were now based in the midlands, and I was there in the office.

Q1780 Jim McGovern: So it was just geographical.

Jack Winder: Yes, plus the fact that we really were trying to do something quite different—quite open and above board. We did not want to be anything that looked faintly underhand. We were quite open about what we did, so we did not want to get involved with anything like that. You mentioned the security services, and there have been suggestions that the league was in cahoots with MI5. No, it was not: we had no connections whatever with MI5.

Q1781 Jim McGovern: But if you were in cahoots with the police, presumably they were in cahoots with MI5.

Jack Winder: That may well be.

Q1782 Chair: You would not necessarily know if they were MI5, would you?

Jack Winder: I suppose that is a fair point.

Q1783 Jim McGovern: It would be naive to say that you did not think about whether the information you were passing to the police would end up with MI5.

Jack Winder: I suppose it would, so perhaps I was naive.

Jim McGovern: I don’t think so, somehow.

Jack Winder: That is kind of you. Thank you.

Chair: We have read your letters to *The Daily Telegraph*.

Q1784 Jim McGovern: Would you characterise Caprim as a blacklisting organisation?

Jack Winder: Absolutely not.

Q1785 Jim McGovern: Why not?

Jack Winder: Because we did not have any records of people to blacklist.

Q1786 Jim McGovern: You have already told us you had records in your filing cabinet in your bedroom.

Jack Winder: We had no records of individuals; I have told you that.

Q1787 Jim McGovern: You started up a company because you had information from a previous company, which did keep records on individuals. You kept that in your bedroom somewhere, or in your attic or wherever it was.

5 February 2013 Jack Winder

Jack Winder: No. As I said, the records on individuals were destroyed, on the orders of the central council.

Q1788 Jim McGovern: Yes, but you kept some in your home—or in an office somewhere.

Jack Winder: Not on individuals.

Q1789 Jim McGovern: You have already told this Committee that you started up a new company because you had information that you thought would provide a good business opportunity.

Jack Winder: Yes, information—not individual records. It depends on what you are asking me. I have already said that there were publications that we kept from the league that I and other people had written. That provided a basis. We were still getting all the current publications, so we were up to date. I had the knowledge of the background—I can say that without being too boastful—and we had the current stuff, but we did not keep individual records.

Q1790 Chair: You said to Mr McGovern that Caprim was not a blacklisting organisation. Was the Economic League a blacklisting organisation?

Jack Winder: No, not by my definition. The Economic League sourced information itself. The basis of the information—if you are talking about people—was people who were members of, avowed supporters of, or active in organisations that sought to use industry for political purposes. They ranged from the Communist party, whose strategy was to achieve a de facto communist Government under a de jure Labour Government—that was its pie in the sky—to those on the far left of the Communist party, such as the Socialist Workers party and so on. They were really impossibilists, and were just in for disruption, because they believed that the Communist party had betrayed the working class by supporting the Soviet Union, that the Hungarian uprising was one of the great things, and then the Prague spring, which led to all these splits. That is all history. The league amassed this information. As I understand it, historically—before I joined it—it was some of the companies that said, “You’re amassing this information. Can we have access to it?” That is how the thing worked, but the decision on whether someone would be given a job was not the league’s decision; it was the company’s decision.

Q1791 Chair: Yes, but you—the Economic League—supplied to individual companies information about individuals that in many cases was not likely to enhance somebody’s chance of getting a job, at the very least, and in many cases would result in their being refused a job.

Jack Winder: In many cases, some cases; I do not know.

Q1792 Chair: What do you mean by “In many cases, some cases”?

Jack Winder: You said “in many cases”. It may have been in many cases—

Q1793 Chair: Okay, let’s say, “in cases”. If that is not a blacklisting organisation, what is?

Jack Winder: Because we did not make the decision.

Q1794 Chair: Okay, you did not make the decision—but the decision would not have been made were it not for the information you supplied, so you were complicit in blacklisting, if not actually the blacklisters. Is that fair?

Jack Winder: I suppose that is a fair way of putting it. I would not argue with that.

Q1795 Chair: Right. When you and your colleague were in front of the House of Commons Employment Committee—in 1990, I think—you certainly were not prepared to admit that you were even complicit in blacklisting. Have your opinions changed with time?

Jack Winder: I cannot remember what we said in 1990.

Chair: Neither can I, but I have had the opportunity to look it up, so I thought I would check.

Q1796 Graeme Morrice: Following that, would you accept that companies used the information that you provided to blacklist employees or potential employees?

Jack Winder: Not to engage them for a particular post—yes, they would do.

Q1797 Graeme Morrice: On the basis of their political affiliations and beliefs.

Jack Winder: Yes.

Q1798 Graeme Morrice: Would you accept that that was, in effect, blacklisting?

Jack Winder: Yes. I also make the point, if I may, that it was drummed into me when I started this particular type of work—and I instilled it in all our staff whenever I could—that it does not really matter what you hold. There is nothing illegal—or there was not then—about holding records on people; it is about what you give out. The moment you give out information, you lose control of it. The person you have given it to may well turn around and say, “What’s the reason for that? What’s the back-up? How do you prove it?” And if you can’t, you’re dead.

Q1799 Jim McGovern: But you were not giving it out; you were selling it.

Jack Winder: What, the league?

Q1800 Jim McGovern: You were selling the information.

Jack Winder: Giving it out or selling it. We had already sold it, because the league worked on subscription. A company paid a subscription for a year, and you could then access this information. Giving it out or selling it—it is a matter of semantics.

Q1801 Jim McGovern: We heard from two witnesses who worked in the construction industry in my home town of Dundee. I should say that they started work in the construction industry but then could not find work in Dundee because they were on a blacklist. Unfortunately, I do not have the information in front of me just now, but it was information that was compiled by the Economic

5 February 2013 Jack Winder

League saying, “These two are not to be trusted. This one is the mouthpiece, while this one is the brains”, and so on. Do you think it is fair to keep information like that about people?

Jack Winder: I will not challenge what you are saying, because obviously—

Jim McGovern: I can send it to you.

Jack Winder: Okay—there may be a reason for it. That would have been compiled by our people in Glasgow, but they should not have compiled any information about people that was not based on a political reason.

Q1802 Jim McGovern: I do not make any apologies for repeating this one. Everybody on the Committee—and possibly members of the public, too—has heard me make this point before. A Dundee man named Syd Scroggie, a war veteran who had lost his leg and his sight in both eyes, wrote to the local press commending Dundee council for awarding the freedom of the city to Nelson Mandela, and he ended up on this list—the list that you were in charge of. Do you think that is fair?

Jack Winder: Not the list I was in charge of. That was the list that would have been held—

Q1803 Jim McGovern: It was the list you were using.

Jack Winder: I didn’t use it. Anyway, to counter that point, how old was this fellow with one leg who was blind?

Jim McGovern: He would be in his 70s by then.

Jack Winder: Well, what job would he be applying for?

Q1804 Jim McGovern: None. That is my point. Why, therefore, should he be on a blacklist?

Jack Winder: He was not on a blacklist; he was on a list of information—but no one would ask about him. If no one asked about him—

Q1805 Jim McGovern: Why should he be on a list?

Jack Winder: Because if he was supporting the Anti-Apartheid Movement—

Q1806 Jim McGovern: He lost a leg and the sight in both eyes serving this country—his country—and he ended up on a list, and you are condoning that.

Jack Winder: I know; let me finish. If he was supporting the Anti-Apartheid Movement at that time—this was in the early ’80s or something like that, I suppose—the Anti-Apartheid Movement had, from memory, a council or committee of 30, about a dozen of whom were members of the Communist party. If you have 40% of an organisation, you are going to control it. At that time, therefore, the Anti-Apartheid Movement was seen as being manipulated, at least, by the Communist party. So if someone is commending the Anti-Apartheid Movement, you put that in your raw information, because it may eventually form part of a pattern. But he is not going to be blacklisted, is he? Did we know his address?

Jim McGovern: Yes. His name and address were on the list.

Chair: He put it in the letter to the newspaper.

Jack Winder: There was nothing illegal in having that record, was there?

Q1807 Jim McGovern: Do you condone it even morally?

Jack Winder: No, I do not condone it.

Q1808 Jim McGovern: A disabled war veteran ends up on a blacklist because he writes to the local press saying, “I am glad Dundee council has awarded Nelson Mandela the freedom of this city”, and you think it is correct that he should be on a blacklist.

Jack Winder: No, I do not think it is correct. Don’t put words in my mouth.

Q1809 Jim McGovern: But you are condoning it.

Jack Winder: No, I do not condone it.

Q1810 Jim McGovern: Well, you are trying to explain it, at least.

Jack Winder: No, I am trying to explain why it was done at the time—30 years ago. You have to look at the time and the context.

Q1811 Chair: To be fair, I think he is in his 70s now. He was not in his 70s when that was done 30 years ago, so he might very well have gone for jobs. Obviously, it is difficult to see in the circumstances what job he might have gone for. I presume that his letter did not necessarily say that he was blind and a war veteran. The point is that somebody who was a member of the Anti-Apartheid Movement, who may not have known that 40% of the leadership were members of the Communist party, was being blacklisted. It is a bit like saying that, because there are some odious people in the Conservative party, everybody in the Conservative party should be tarred with that brush. That seems to me to be somewhat excessive. They do bite off babies’ heads—I am prepared to accept that—but not everybody in the Conservative party bites off babies’ heads.

Jack Winder: That is a fair point.

Q1812 Chair: But this broad-brush approach was being used by the Economic League at that time. Jim’s point is that, apparently, it ruined a substantial number of lives, because people simply could not get employment.

Jack Winder: I do not accept that, for the reason that no one seems to put this in context. First of all, at the maximum, I think the league had something like several thousand names—let us say 10,000 names—on its records, out of a working population of 25 million. What is that—one in 2,500?

Q1813 Chair: Yes, but for anybody who was on that list, they were 100% on the list.

Jack Winder: Yes, but the other part of the context you have to look at is the size of the league’s operation. In 1984, I think, the league’s income actually reached £1 million. If you divide that by 1,000 companies, you have got companies paying £1,000, but some of them were paying £20,000. So the number of companies involved in the league was under 1,000. The engineering industry alone had

5 February 2013 Jack Winder

20,000 companies, so the effect of the Economic League on the overall economy and employment situation in this country was that of a gnat on the back of an elephant, frankly.

Q1814 Chair: As I understand it, you are expressing the view to us that you are regretting that you were not more effective, because you had only a small percentage of troublemakers in what was a large pool, as it were, and that if you had had more names you would have been more effective. We have already discussed how efficient and effective you were—and I think we have identified certain gaps—but for somebody who was on your files and was refused work as a result as being blacklisted, that was 100% loss of employment to them. We have already had people here—

Jack Winder: They lost a job.

Q1815 Chair: You say they lost a job.

Jack Winder: They went next door that way, next door that way and—

Q1816 Chair: No. Earlier, this Committee has heard from people who had to leave their home city and travel elsewhere in the country in order to get employment, and who were away from their wives and families for substantial—

Jack Winder: What industry were they in?

Chair: In construction.

Jack Winder: Ah, well, as I have said to you, the construction industry had its own information. It was quite separate from us.

Q1817 Chair: Yes, but it was part of the Economic League.

Jack Winder: No, it was not. The services group information was information compiled and supplied by those companies. That is much nearer to a blacklist than what the league was doing in the other industries.

Q1818 Chair: Some of this is somewhat dated; we just want to clarify things. It is clear that you do not see Caprim as a blacklisting organisation but that it was complicit in that. I think that is a fair way of putting it.

Jack Winder: No, Caprim was not.

Chair: Sorry, you are right. The Economic League was complicit in it.

Jack Winder: Yes.

Q1819 Graeme Morrice: Going back to Caprim, when and why was it wound up?

Jack Winder: As I think I explained before, as we lost clients and got older, and as it got more and more difficult to get new ones, we simply let the thing run down. In October 2008 we wound it up and ceased operating.

Q1820 Graeme Morrice: Was there any connection with the Information Commissioner's raid on the Consulting Association?

Jack Winder: No, that postdated the end of Caprim.

Q1821 Graeme Morrice: Did you have any dealings with—

Jack Winder: Plus the fact that, as I have said several times, we did not know anything about the Consulting Association.

Q1822 Graeme Morrice: Are you are saying, therefore, that you did not have any dealings with the Consulting Association?

Jack Winder: Correct.

Q1823 Graeme Morrice: But you were aware of it.

Jack Winder: I did not know what it was called, and I did not know where it was.

Q1824 Graeme Morrice: So you did not know what it was doing.

Jack Winder: I knew when Ian Kerr left that he was going off to do that thing, but it was made perfectly clear to us that we should not have any contact, and we did not. Ian Kerr—poor old Ian—was a very upright and straightforward fellow. If he was told, “Don't do this”, he simply would not do it. In fact—for what it is worth, Chairman—we had known each other as families, but all contact in that regard ceased as well. He took it absolutely literally. So there was no contact at all.

Q1825 Graeme Morrice: Why?

Jack Winder: Because he was told not to have any, and he took it literally. I think he felt that even a personal contact would contaminate him in some way.

Q1826 Graeme Morrice: Why was he told that?

Jack Winder: Because it was the league that had been brought into disrepute, and the services group, being set up as a separate entity under a different name, would be doing its own thing and would not be contaminated by being stuck with the likes of me.

Q1827 Graeme Morrice: So it was toxic.

Jack Winder: That is what they thought, yes.

Q1828 Chair: So some of the personnel from the Economic League and the records from the Economic League were taken off, with funding from people who had been in the Economic League, but it was set up separately, privately and secretly, and divorced entirely from anybody else in the Economic League.

Jack Winder: This is the services group?

Chair: Yes.

Jack Winder: Yes.

Q1829 Lindsay Roy: Why do you think the demand for your services decreased to the extent that you wound up the business?

Jack Winder: For two reasons. First, when you are advising people on a particular aspect—a particular threat—and that threat diminishes, eventually they say, “Thank you very much, but we don't need you any more.” In some cases, they actually get their own source of information: their own staff do it. As I said before, the other reason was that we simply got to the point that we did not want to go chasing money any

5 February 2013 Jack Winder

more. I was quite happy to put down my pick and shovel and pick up my golf club.

Q1830 Lindsay Roy: What were the last big perceived threats you were dealing with?

Jack Winder: GM crops and pharmaceuticals.

Q1831 Lindsay Roy: In what context?

Jack Winder: Animal rights and GM crops.

Q1832 Sir James Paice: I am slightly confused by something you said a few minutes ago. Graeme used the word “toxic”. You gave me the impression, unless I misunderstood you, that the services group and the cadre of people from the Economic League who went into that were told to stay away from you because you were toxic—I think that was what was said. Yet earlier in the proceedings you said that McAlpine gave your business £10,000 to get started, on condition that you stayed away from them, which implies that it was they who were toxic. Can you clarify this for me?

Jack Winder: Not really. But “Don’t you come near my daughter again” is the same thing as saying to your daughter, “Don’t go near him again.”

Q1833 Sir James Paice: So McAlpine gave you £10,000 because you were toxic.

Jack Winder: No. First of all, when you talk about Economic League staff, there was actually only one of them. Ian Kerr was the only member of staff in that organisation. He told me in no uncertain terms that he had been told he was to steer clear of us, but companies like that—I am saying McAlpine, as that is the name that comes to mind—had known the league for an awful long time. They knew the value of the greater work—the greater sort of monitoring—that the league did. I understand that, on that basis, they were prepared to give us help, not to start us—we had started—but to give us a leg-up to get going.

Q1834 Sir James Paice: So Mr McAlpine—or McAlpine—gave your company £10,000 to start up, on condition that you stayed away from Mr Kerr, on the basis that it would contaminate his business if he had anything to do with you. I am getting puzzled—perhaps it is just me, having come to this quite recently—as to which way round this problem existed.

Jack Winder: I think it was the league—you used the word “toxic”—that was seen as toxic. That is why it was done that way.

Q1835 Chair: That is right. The league was seen as toxic, and McAlpine then seems to have funded two separate offshoots of the league, with staff from the league, to do work that the league had been doing before. Neither of them was to work with the other, and both things were done in secret. We have some doubts about whether or not the £10,000 that you got was actually for the intellectual property that the league had held, which the services group then used, because we have evidence saying that that is what that £10,000 was for.

Jack Winder: Ah, by intellectual property, do you mean the cards—the names?

Chair: Yes.

Jack Winder: All I know is that those under my control were destroyed. I was there when it was done.

Q1836 Chair: Okay. We will have to pursue the question of why or how exactly you got this money. Do I take it that Caprim was not registered as a data controller?

Jack Winder: No, it was not.

Q1837 Chair: Because you had no data, basically.

Jack Winder: Correct.

Q1838 Chair: Can I go back a little bit, because I think we are getting towards the end now, and I want to try to sweep up some things? When Caprim was established, you and Mr Hardy were the main workers—the employees. You mentioned two other people, one who was there short term and one who came longer term.

Jack Winder: To be grandiose, we were joint managing directors.

Q1839 Chair: Of a company that had more managing directors than staff. I understand that, but were there other directors on the board?

Jack Winder: We had two non-executive directors.

Q1840 Chair: Who were they?

Jack Winder: Saxon Tate—

Chair: That is Tate of Tate and Lyle.

Jack Winder: Yes, who died last October. The other was a man called Bernard Forbes.

Q1841 Chair: Who was Bernard Forbes?

Jack Winder: He recruited me to the Economic League in 1963.

Q1842 Chair: So he was a member of staff at the league, was he?

Jack Winder: Yes, but he left in 1968. We just kept up a relationship.

Q1843 Chair: Right. You mentioned Mr Tate of Tate and Lyle. Tate and Lyle was a big funder, was it not, of the Economic League?

Jack Winder: Saxon had been chairman of the league at one point.

Q1844 Chair: So a former chair of the league was then involved in setting up an offshoot—or a phoenix that came from the wreckage of the league.

Jack Winder: Yes.

Q1845 Chair: Was he hands-on and involved, or was he there just to get you off the ground?

Jack Winder: No, they were non-executive directors to advise us, because we were new to running a company—the classic role of a non-executive director.

Q1846 Chair: So they were just advising you how things were done, and you were getting on with doing, as it were, the work you were undertaking. I am slightly confused about addresses and so on, because I got some stuff from Companies House and you seem to have had a number of addresses, different company

5 February 2013 Jack Winder

secretaries, different shareholders and so on. Can you clarify matters? Did Mr Hardy leave at some point? Were you and your wife then the directors?

Jack Winder: Yes.

Q1847 Chair: But your wife was not one of the original directors.

Jack Winder: No. Stan simply handed his shares, which were worthless, to my wife.

Q1848 Chair: So he gave his worthless shares to your wife. She then became co-director with you and was company secretary.

Jack Winder: Yes.

Q1849 Chair: In the latter years, then, Mr Hardy was not directly involved, because by then he had gone off to other things.

Jack Winder: Yes. He went part time in 1998. He got a job with the Institute of Directors up in Leeds. He also worked for Business for Sterling.

Q1850 Chair: That is right. As I understand it, he got a job with the Institute of Directors in Leeds. I believe he was also one of the leading lights in Business for Sterling in his area. He now works for, I think, Northern Defence Industries.

Jack Winder: I did not know about that.

Chair: No doubt we will clarify all of that with him when he comes.

Jack Winder: He therefore took a hefty cut in his salary in 1998, which helped the company, but he left completely in 2000.

Q1851 Jim McGovern: On the subject of the sale of information, if my memory serves me correctly, we heard that the Consulting Association would charge £2.20 for each inquiry that it received about an individual. How much did Caprim charge for each inquiry about either an individual or an organisation?

Jack Winder: We did not have any inquiries like that.

Q1852 Jim McGovern: You were just on a retainer.

Jack Winder: Exactly. They paid a retainer and we did work. If they wanted us to do specialist things—for example, one of the agro-chemical companies worried about the activists who would go and trash GM crops might ask us for security advice, and Jack Bramwell, who was the security specialist, would go and advise it on that—then they might pay us more for that specific thing, but for the overall general work they paid a retainer.

Q1853 Jim McGovern: Can you recall what sort of payment there would be for that sort of action by your company?

Jack Winder: Frankly, I cannot. It would depend on the nature of the work, how long it would take and so on, and we would negotiate a price. There was no scale; we did not have a scale of charges.

Q1854 Jim McGovern: Was it just negotiable?

Jack Winder: Yes.

Q1855 Jim McGovern: For the example that you have just given of people trashing crops, or whatever it was you said, would it be five grand, 10 grand or 20 grand?

Jack Winder: No, it would be nothing like that. It would probably be hundreds.

Jim McGovern: Three and six.

Jack Winder: Yes, something like that.

Jim McGovern: Right—I don't think.

Jack Winder: Of course not, but it was not thousands and thousands.

Q1856 Chair: Presumably the company's accounts will still exist, so some of this will—

Jack Winder: We do not have them.

Q1857 Chair: Presumably you still have accounts.

Jack Winder: Yes, back to 2006.

Q1858 Chair: You have the accounts to 2006, so the question of who your customers and clients were and how much they were paying you will be in those books.

Jack Winder: Yes.

Q1859 Chair: Fine. I take it that you have no difficulty letting us have copies of those.

Jack Winder: That is right.

Q1860 Chair: Fine. That will clarify some of that for us. Rather than you just taking a note, the staff will write to you saying what we have agreed to ask for. On green issues, one of the things that we heard when we were discussing environmental activists with Mr Kerr was that they had been keeping files on individual environmental activists, which were not seized by the Information Commissioner because they were in a different filing cabinet, and the commissioner seized only the main section. When you were collating information on green issues, were you identifying individuals in any way?

Jack Winder: No.

Q1861 Chair: So you were just discussing general trends, groups, organisations and structures.

Jack Winder: Yes—and what was happening.

Q1862 Chair: But if people were facing activists turning up at their company AGM, surely it would have made sense to let them know who might be involved as individuals, as well as the general questioning that they might want to pursue.

Jack Winder: I do not recall any occasion when we were asked that question.

Q1863 Chair: Okay. I said earlier that if there were any answers that you had prepared for questions that we have not asked, we would give you an opportunity at the end. If there are any points that you want to raise with us now, we would welcome that.

Jack Winder: You have not asked me whether blacklisting exists today.

Chair: Fine.

Jack Winder: May I quote from a blog in *The Daily Telegraph* on 29 January, by Dan Hodges? Dan

5 February 2013 Jack Winder

Hodges “has worked for the Labour Party, the GMB trade union and managed numerous independent political campaigns. He writes about Labour with tribal loyalty and without reservation.” He describes himself as “a Blairite cuckoo in the Miliband nest”. He is writing about the British National party. He says that he holds no brief—nor do I—for the British National party. However, “When people say ‘How can we make a special case just because it’s the BNP and we don’t like them?’”—that is, how can we discriminate against them?—“they ignore the fact we already do. Membership of the BNP is prohibited amongst members of the police service and the prison service.” So they operate a blacklist of BNP members. In 2007, the railwaymen’s union, ASLEF, expelled a member because he was a member of the British National party. He won two tribunals against unfair expulsion before the union took it to that august body the European Court of Human Rights, which overturned the decision. In 2008, Labour MPs were “pushing for trade unions to be given the right to expel members who belong to the BNP without penalty.” That, to me, is blacklisting, because you are expelling people or not allowing them to be members of an organisation or to get a job, because they are members of a party.

Q1864 Chair: That, I understand, is open, above board and known, isn’t it? It is well known that the police will not accept somebody from the BNP, for reasons we need not go into here. Anybody who was on your files would not necessarily know that they were on them, so it would be done secretly. That is a clear distinction, isn’t it?

Jack Winder: Yes, it is, but my point was that blacklisting still exists. People are still deprived of things because of who they are.

Q1865 Chair: One of the other areas that we wanted to touch on was whether, in your understanding, industrial blacklisting still goes on. You are obviously involved in these sorts of spheres; presumably you have a hobbyist’s interests in such matters. Do you think it is still going on?

Jack Winder: I really do not know. I am well and truly retired.

Q1866 Chair: We are not clear whether you are a “don’t know” or a “won’t tell”.

Jack Winder: I am a “don’t know”. You did remind me I was under oath. I did not need reminding—I know what it is about. I am a genuine “don’t know”.

Q1867 Chair: That is helpful. Can I go back to one point? Earlier you mentioned that, in your capacity as an employee of the Economic League, you met Jim Prior, prior to industrial legislation being drawn up. Were you the only member of the Economic League who met Mr Prior?

Jack Winder: As far as I know.

Q1868 Chair: Right. So you had an input into the industrial relations legislation that then came forward.

Jack Winder: No.

Q1869 Chair: Your conversation had no impact at all, then.

Jack Winder: I do not know. He was newly appointed and thought I might have something worth saying, so we had a brief meeting, somewhere in here, for half an hour.

Q1870 Chair: Can I go back to the Economic League and the question of links with the police? You mentioned that you had links with the Metropolitan Police when you were down here. Did you have any reason to believe that that was unique to the London area? Were your colleagues elsewhere in the country saying, “We too meet Special Branch to discuss this, that and the other”?

Jack Winder: It was not unique. I remember meeting a Special Branch man with my Scottish colleague in a pub in Maryhill. That was one example. When I was in the midlands, I also had a contact in the West Midlands police special branch. More than that I do not know.

Q1871 Chair: I just wanted to clarify that your relationship was not unique. What was the nature of this relationship? Was it an ongoing one over a long period of time?

Jack Winder: Yes.

Q1872 Chair: Was it a mutually advantageous exchange of information?

Jack Winder: I inherited Metropolitan Police contacts from my predecessor. He stressed to me, and said to me, “The one thing to remember is that these people can do you a lot of harm, so don’t ask them anything that will embarrass them.” You never ask them a question about information on individuals or anything like that, because of their contacts. The door was open to those people; we had to put a foot in the door. They could do us a great deal of harm if we got on the wrong side of them and they simply said, “They’re dodgy; don’t touch them.” We used to meet in the Buckingham in Petty France over a couple of pints at lunch time and just chat about what was going on—mutual discussion about what was happening and so on. There was no exchange of detailed information about people. That was absolutely forbidden.

Chair: I am sorry, but I did not catch the last bit.

Jack Winder: There was no detailed information about people—about individuals. That was the sort of thing I was schooled not to ask them about, because they would either have to refuse, which would not be good, or have to break their own rules and tell me something. It was just a useful thing—sounding boards to them and sounding boards to me.

Q1873 Chair: Presumably you were supplying them with information just about movements, organisations and groups, and having a general chit-chat.

Jack Winder: Yes, a general chit-chat.

Q1874 Chair: I think I know the Buckingham: it is just round the corner from New Scotland Yard. It is a real ale pub, and is in the CAMRA *Good Beer Guide*, if I remember correctly. I am wondering how selective

5 February 2013 Jack Winder

you were in Maryhill. Was there a similar alehouse in Maryhill?

Jack Winder: I think my colleague wanted me to see one of the more salubrious areas of Glasgow.

Chair: One of the more salubrious areas? Goodness me, I will bear that in mind.

Jim McGovern: I was born in Maryhill.

Chair: That is right—Jim is a Maryhill boy. I just wondered whether you could recall the name of the pub you went to in Maryhill.

Jack Winder: No, I can't remember that.

Chair: It might boost its trade—or not, as the case might be.

Jack Winder: Yes, it could.

Chair: Are there any other points that my colleagues want to make?

Q1875 Jim McGovern: There is just one point I would like to make to Mr Winder. I disagree with most of what he has said, but I think he has been very candid. However, I think it is unfortunate that he used the comments that you invited him to make to compare people who choose to join a trade union to people who choose to join the British National party.

Jack Winder: The BNP has its own trade union, hasn't it?

Q1876 Jim McGovern: I have no idea. I have nothing to do with the BNP.

Jack Winder: Neither have I. We can agree to disagree on that.

Q1877 Chair: Just to sweep things up, we have already heard of two offshoots of the Economic

League—Caprim and the Consulting Association. Were there others?

Jack Winder: No, I am quite sure there were not.

Q1878 Chair: You would have known. You were not warned off speaking to anybody else.

Jack Winder: I think I would have known. I say no; I have no knowledge of any others.

Q1879 Chair: One of the suggestions we had was that Caprim had events as well, and that Stella Rimington, formerly of the secret service, had been involved.

Jack Winder: That is wonderful.

Chair: We have to raise these things with you.

Jack Winder: This is wonderful stuff. The name Caprim was spelled CAPRiM. I dreamed up the name: Corporate Asset Protection and Risk Management—a wonderful title. They said, “The RiM stands for Rimington.” I have never met the lady; I know nothing at all about her.

Q1880 Chair: We are glad to have clarified that. Is there anything else you want to add?

Jack Winder: I do not think so, thank you.

Chair: Colleagues, I think we have had everything. Mr Winder, the staff will drop you a note saying what we have agreed that you will try to supply us with. If anything comes to us later on, I hope you do not mind if we contact you to seek clarification on it. Thank you very much for coming along this afternoon and being helpful to us.

Tuesday 12 February 2013

Members present:

Mr Ian Davidson (Chair)

Mike Crockart
Graeme Morrice
Pamela Nash

Sir James Paice
Lindsay Roy

Examination of Witness

Witness: **Stanley Hardy TD**, former Director, Caprim Ltd, gave evidence.

Q1881 Chair: We will have you sworn in first and then make a start. (*Stanley Hardy was sworn in.*) Mr Hardy, thank you for coming along to see us today. As you know, we originally intended to have you last week, but we changed the dates because of your domestic circumstances, so we will maybe end up going over some of the ground that we covered last week with your colleague.

The Scottish Affairs Committee has been conducting an investigation into health and safety in Scotland. That led us to look at blacklisting and various related matters. Can I start by welcoming you to the Committee and ask you to introduce yourself and tell us just a little about your employment history?

Stanley Hardy: Certainly, Chairman. I am Stanley Hardy. Gosh, I am 68 years old and married with two grown-up sons—one, sadly, disabled. I started my working life in banking—the old-fashioned high-street banking, not what they do now. I spent four years in the Army. After a couple of false starts, as it were, after the Army, I got a management traineeship with GKN Group, with which I remained on and off for about 14 years. In between time, I also created a textile retail operation, as a family partnership operation, and had an interest in a small engineering company.

In the late autumn of 1988—just before Christmas—I joined the league. I knew of the league from my time with GKN—you may want to come back to that—and stayed with it for four and a half years. I started off in the north of England. In May 1989, I became a director of operations, which was a sort of halfway house, because the director general had left the organisation and the then chairman had become almost a non-executive director general, so I reported to him. I became the director general towards the end of 1989, just in time for the recession to start, and left the league when it closed in 1993.

Mr Winder and I started Caprim, basically, as a means of earning a living, even though I had the small textile operation. I stayed with Caprim until 1997, when I became very much part time, and finally severed all connection with Caprim in 2000, because I had other things I wanted to do, one of which was to go and work overseas for a period of time. I came back to the UK in 2002 and picked up a role as a project director working with trade associations, regional development agencies and others such as the China-Britain Business Council to promote UK component manufacturing overseas. I spent a lot of time in Japan, China and most of western Europe attending

conferences, trade fairs and that kind of thing, and finally retired in 2006.

I had a couple of unremunerated non-exec roles, one of which was for an educational charity, which I held on to for about another year. I now hold two non-exec roles, one of which is with a social enterprise operating within the national health service, and I work as a volunteer for two charities. As you know, my domestic circumstances are such that I will probably have to—well, they are coming to a time-expired point anyway.

Q1882 Chair: I was under the impression that you had also worked for Northern Defence Industries—or was that your colleague?

Stanley Hardy: I was a non-exec for Northern Defence Industries, while I was working with the trade associations and the component manufacturers. The objective behind Northern Defence Industries, which was originally a Government initiative, was to try to encourage SMEs to get involved in supplying as subcontractors and sub-assembly producers with the major defence contractors. In this country, that means primarily BAE Defence Systems. My usefulness in that sense really expired within a year of being retired, because I no longer had any contact with any SMEs, so I ceased to do it.

Q1883 Chair: And that was not in any way related to your previous work with the Economic League or with Caprim.

Stanley Hardy: In no way whatsoever.

Q1884 Chair: And the Institute of Directors?

Stanley Hardy: Yes, indeed. I was the chair and actually became a full-time employee, for a period of time, with the Institute of Directors when it began to develop a regional network.

Q1885 Chair: Was that before you were in the Economic League or was that after?

Stanley Hardy: No. That was around 2000, which is why I said I had other things I wanted to do. One of those was the Institute of Directors.

Q1886 Chair: Can I clarify what you did? What was the job of director of operations with the Economic League?

Stanley Hardy: Trying to sort it out. The former director general—

Q1887 Chair: Who was who?

12 February 2013 Stanley Hardy TD

Stanley Hardy: Michael Noar. He parted company with the league in May of that year—May 1989. The whole thing was subject to a confidentiality agreement, and I am not quite sure because I do not know the details of what actually went on.

Q1888 Chair: He was subject to a confidentiality agreement, but not yourself.

Stanley Hardy: Not myself, so I do not know what was entailed by the confidentiality agreement. I think Michael had fallen out with the regional directors, most of the board and a lot of the member companies of the Economic League, partly because of one of the things he did do, which I think was very laudable. For a long time, the league's information, such as it was held, was held in regional offices spread around the country. These offices were operated like mini-fiefdoms by the regional directors. They reported, as they saw it, to their regional councils, rather than necessarily to Michael Noar as the director general and to the national council. I have absolutely no knowledge of this, but I think there was a supposition on Michael's part that some of the regional directors and the information that they held were not in accordance with what the league was actually trying to achieve, so he centralised the information. That put several noses out of joint, not least the noses of the regional directors and some of the regional councils. There was a situation before my time, when all of this was going on, when the regional director of the north-west, I think, left the league under something of a cloud and then, as someone described it to me, vented his spleen by blowing the whistle and selling his soul to the devil. He certainly appeared in a number of television programmes and so on, castigating the league and making all kinds of accusations about how it worked.

Q1889 Chair: I am aware of much of that background, because we have read literature from the time. What I am not entirely clear about is what you did as director of operations.

Stanley Hardy: Theoretically—not theoretically, but in fact—I was the chairman's sort of guy on the ground. What I was trying to do was to get the thing back on its feet, because it had lost a huge amount of credibility with a lot of the members. I am sure Michael would not take exception—he may; I do not know—if I say that he was not the most personable person. He was not a people person, and he found it quite difficult to relate to people. There was a lot of cementing of relationships that had to be done. That was very much my role at that stage.

Q1890 Chair: Right, but what was the Economic League actually doing that you were operating?

Stanley Hardy: There were really two strands, but they were in parallel. The first was that it set about to monitor and report on the activities of organisations and groups that were bent on causing damage to British companies. As a consequence of that investigative work, information about individuals—the people who were very active—became apparent. Can I say straight away that this did not mean that anybody who was a member of a trade union was

automatically a target for the league or, indeed, that anybody who was a member of the Labour party was a target? That is absolutely out of the question. However, the circumstances that preceded it were the hijacking of the electricians' union by the Communist party, through the ballot-rigging scandal, and the prosecutions that followed. You had the situation that, irrespective of the impact on the jobs of his members, it is fairly certain that Derek Robinson was intent on bringing British Leyland to its knees. Don't forget that, if that had happened, not just British Leyland but all the supply chain would have been materially affected.

So companies were extremely concerned to know what was happening out there across the piece. I have to say that in those days it was perceived that the extreme left was the major threat. The advent, if you like, of special interest groups such as environmentalists and things of that nature was still very much in its infancy; it was there, but it was nevertheless in its infancy. The main thrust, I suppose, of the league's work was the hard left but also the hard right, because we had begun to see the growth of the British National party in embryo, following on from the National Front, and the impact that it was having. So there were extremists at both ends.

Q1891 Chair: To be fair, the evidence you gave to the Employment Select Committee in 1990 indicated that there were very few fascists and that it was overwhelmingly the left.

Stanley Hardy: Absolutely; that was the perception at the time. Obviously, the balance has changed quite significantly. The number of actual left-wing extremists is probably extremely tiny. I do not think there ever were a huge number anyway. The league never identified an enormous number of people, but the activities were quite a problem.

I go back to my time with GKN, for example. Let me say straight away that the steel strike was not caused by extremists—let us get it absolutely right—but in terms of the information that was coming out to companies about the run-up to the dispute, how it was being conducted and so on, the most objective, comprehensive and accurate reports that were coming out about that were actually coming from the league. I was sitting, if you like, where the customer sits. One of the things that the league did—you will find them here in your own library, and they are certainly in the British Library—was to produce a whole stack of publications, bulletins and newsletters on these very issues. There was nothing clandestine about the league: its logo was there; its address was there; it was a registered company; it was above board; and it acted within the law. But there were certain individuals such as Derek Robinson—they were obviously identified by the media anyway—people like that, whom companies expected the league to be watching.

Q1892 Chair: So you were watching lots of people as well. As I understand it, you had card files on hosts of people.

Stanley Hardy: Not hosts of people, but certainly there were card files. I think most people would

12 February 2013 Stanley Hardy TD

probably be disappointed to see what was actually on them, in the sense that they were expecting an awful lot more information. The only thing that the league recorded was that which it could prove.

Q1893 Chair: So how many card files did you have?

Stanley Hardy: In my time, I do not think we ever had more than about 2,000 to 2,500. I think that was the very tops.

Q1894 Chair: You say 2,000 to 2,500. I find that difficult to accept, because my understanding is that about 3,000-odd files were transferred to the Consulting Association.

Stanley Hardy: That is a different issue. I was talking about league information. I am sorry, but I do not want to confuse it; I am talking about league information. Do you want to talk about the services group?

Q1895 Chair: It was within the Economic League, wasn't it?

Stanley Hardy: It was housed—accommodated—by the Economic League. Can I put the record straight on this one? The services group was a completely self-contained operation, formed from construction companies and used exclusively by those companies. All the league did was provide it with a home. League members were not—I repeat, not—given any access to that information, nor were league staff. The only person within the league's orbit who had access to that information was Ian Kerr. I have to say that I was never comfortable with that shoebox of cards, if you like. It never belonged to the league; it was always the property of the services group, and the services group took it away.

Chair: Right. Graeme, can we switch to you about Caprim? We will come back to some of that.

Q1896 Graeme Morrice: I wanted to pick up on some of the issues that we have just discussed, but we may come back to those later. Can I clarify whether Caprim was formed before or after the demise of the Economic League?

Stanley Hardy: The actual company itself was registered before the league disappeared. Jack and I had no authority or control over the future of the league. The league was a membership organisation—the members alone could determine that. We made recommendations about what should happen to the league, but the members alone could make that decision. During the early 1990s, we had the recession. A lot of companies left membership of the league during the recession because they had closed. A lot of companies stopped using the league because they were no longer recruiting—they were actually shedding labour—and, I have to say, as a consequence of the last Select Committee hearing, when they saw Ford being crucified, as they described it, by the Select Committee. Ford disappeared immediately after that Committee hearing. A lot of companies said, "We know what you do; we like what you do; but we can't afford to be associated with you." There came a point when I said to the chairman, "Look, we could hold a membership meeting of all our members in a portakabin. This thing is going nowhere."

The end result was that Jack Winder and I decided—Jack needed a job anyway—to form a company that did not do what the league did, because we thought that was suicide. Why organise a service that nobody was prepared to sign up to? What was still there was this opportunity to continue monitoring, particularly now the growing influence of special interest groups and protest groups. That was becoming quite a real issue, particularly for organisations such as chemical companies, petrochemical companies and so on. But doing checks against names, no; that was a non-starter. We never did it, had no intention of doing it, were never asked to do it and would not have done it anyway.

Q1897 Graeme Morrice: So the answer to my question is "before". Around 1993, you established Caprim along with Jack Winder. We obviously took evidence from Mr Winder last week. How did you go about setting up the organisation—Caprim—and what was its specific purpose?

Stanley Hardy: Caprim was organised only about a month to six weeks before the league closed down; we are not talking about years or whatever.

Q1898 Graeme Morrice: I do not know; that is why I asked.

Stanley Hardy: I take the point. The objective of Caprim was primarily to give Jack and two others a job, but we also believed—it was probably right then; it soon did not become right, if you like—that we had a unique selling point, which was that we were monitoring organisations that other security companies were not. In order to make ourselves even more marketable, we undertook mainstream security activities, particularly fraud and theft prevention advice and, indeed, in some cases, fraud and theft investigations of companies. In that sense, we were just like any security company.

Q1899 Graeme Morrice: What was your specific role in Caprim?

Stanley Hardy: Initially, to try to secure the customers.

Q1900 Chair: Yes, we were told earlier that you were the smoothie, as it were—the salesman.

Stanley Hardy: I am not sure I think that was the case.

Q1901 Chair: That is the way it was presented to us by your colleague: basically—he did not quite put it this way—he did the work and you did the talking. You went out to try and find people to give you money and stuff. Does that seem a fair representation?

Stanley Hardy: Yes. I can give you an example of how that operated. Jack would scour all kinds of obscure publications—obscure, perhaps, to us in the mainstream but not obscure to activists in, say, environmental groups. As an example, he came across a publication called *Green Anarchist*, which was a quarterly publication, quite well put together, written by a group of anarchists who were against all kinds of things. In particular, they were against building sites, especially motorway construction—things of that sort. There was one particular publication—you are

12 February 2013 Stanley Hardy TD

probably not as old as I am, Chairman, but I do not know whether you remember the *Eagle* comic—

Chair: I do indeed remember the *Eagle*.

Stanley Hardy: and those wonderful cutaway drawings.

Chair: I never thought of them as green anarchists, I must confess.

Stanley Hardy: No, but it used to have superb cutaway drawings of steam engines and all kinds of things in the middle pages. This particular copy of *Green Anarchist* had done that with a JCB. What they had done was identify, because of certain design issues that they had identified, how easy it was to sabotage a JCB. That gave me an opportunity to ring up JCB, take the publication with me and say, “This is actually being peddled. We know who is doing it. Would you like us to continue investigating for you?” As it happened, JCB did not know about this, but I think it had its own very good security operation. Basically, it said, “Thank you very much. We will pay you for that, but we don’t want to be associated further.”

It was that kind of process—and very much responsive to Jack’s monitoring of what was going on and all these publications. There were some really strange things that were being published, which gave us an opportunity to ring up a company and say, “Look, there is something here we think you ought to be aware of. Can I come and see you and show it to you?”

Q1902 Graeme Morrice: How did you go about developing your customer base?

Stanley Hardy: In exactly that way.

Q1903 Graeme Morrice: Did you just nick all the previous members of the Economic League?

Stanley Hardy: Nobody—I say nobody, but I mean very few people—wanted to know us.

Q1904 Chair: So who were your customers?

Stanley Hardy: Whoever we could get hold of. We had a couple of banks and the petrochemical industries. We did not have the main construction companies.

Q1905 Chair: But which companies? Just saying pharmaceutical companies—

Stanley Hardy: The old Midland Bank was a member. We had a number of merchant banks; sadly, one of them disappeared thanks to Leeson and his activities. I have now forgotten the bank’s name, but it was a customer of ours. It wanted to know not because of what the bank was itself doing as a service but because of the customers that it had; it wanted to be informed about what was going on. We had AstraZeneca, Monsanto and people like that. I am sorry—it is 20 years ago.

Q1906 Chair: I understand that. However, given that you were the man who went out and spoke to them, visited them and, presumably, saw them on site, as it were, or in their offices, there might very well be some of them that you recalled. Is the paperwork from the company still in existence?

Stanley Hardy: I do not know. I left the company in 2000, so I have no idea. I do not have any anyway.

Q1907 Sir James Paice: Mr Hardy, you have agreed—although there is some debate about the quantity of records—that a large number of records were held by the Economic League. Am I right in thinking from what you have said that you remained operations director until the league’s demise?

Stanley Hardy: No; I became the director general in late 1989.

Q1908 Sir James Paice: So nobody would be in a better position than you to know what happened to the material that was in the Economic League’s possession when it failed as a business. What happened to all that information?

Stanley Hardy: When the central council held the extraordinary general meeting at which the vote was taken, and it was put to the vote, on whether the league should try to continue or should close, I think the chairman—this is from memory, so I apologise if I have got it wrong—had already organised or arranged for Securicor to collect all the league’s records, because they had been deemed to have zero value; they were not an asset in that sense. He then received a signed statement from Securicor that all the records had been destroyed. I can say now quite categorically that neither Caprim nor Jack Winder nor I nor anybody else inherited, acquired, created, collated, held or maintained—whatever you like—any lists, record cards, records or files about any individuals whatsoever for any purpose, certainly not any of the league’s material.

Q1909 Sir James Paice: Thank you for that. Can we pursue the issue of the services group and its relationship to the Economic League? Did it collapse?

Stanley Hardy: No. I say no because I don’t know. I was approached in late January or early February by Ian Kerr. I saw Ian Kerr very rarely, because he reported to the services group itself. He said that the services group was worried that the league was going to collapse and about the publicity that had attended the league, certainly since the Select Committee. It was concerned about what would happen to the records that the league housed for the services group if the league collapsed tomorrow, and what would happen about the identities of the services group’s members. I said, “As it stands at the moment, I don’t know whether or not the league is going to close, because that is in the hands of the central council.” He said, “What the services group meeting has just told me to tell you is that I am now removing the services group material in its entirety. It belongs to the services group; it’s theirs, and they want it back. I have started to take it out.”

Q1910 Sir James Paice: From where? From the Economic League?

Stanley Hardy: Yes, from the league’s offices. It was a totally separate set of records. It was not in the generality of the league’s records—it was totally separate. He was the only person who had access to it. If you had been a league customer who had rung

12 February 2013 Stanley Hardy TD

up and said, “Do you know anything about Fred Bloggs of 43 Acacia Avenue?” and there had been no record in the league’s Rotadex about Fred Bloggs of 43 Acacia Avenue, you would have been told, “There is no record.” If, however, you had been a services group member, you would not have come through to the league’s Rotadex; you would have gone to the services group’s records and been told if there was a record of Fred Bloggs. It was that tight and circumspect, or whatever. The records went in about March.

Q1911 Sir James Paice: To be clear, up until then, the services group and the Economic League shared offices. These two sets of records were in those offices, but were they separate—either in separate offices or rooms?

Stanley Hardy: They were in completely separate rooms.

Q1912 Sir James Paice: So when Mr Kerr said to you that he was going to remove them, it meant physically from the building.

Stanley Hardy: Yes, absolutely—and all the information that related to or could identify the services group’s members.

Q1913 Sir James Paice: We have established from you that Caprim took no records either from the league or from the services group.

Stanley Hardy: Absolutely none at all.

Q1914 Sir James Paice: We are obviously interested in those records. You have told us that the league’s records were certificated as destroyed by Securicor, but the services group’s records were taken by Mr Kerr. When Mr McAlpine of Robert McAlpine gave evidence to the Committee, he told the Committee that his company gave £10,000 to the Consulting Association to purchase the records from the services group. Were you aware of that?

Stanley Hardy: Hang on—to purchase from the services group? They were theirs. It was theirs to throw out.

Q1915 Sir James Paice: When you say “theirs”, whose were they?

Stanley Hardy: The services group’s. They never belonged to the league.

Q1916 Sir James Paice: They were the services group’s. I accept that was separate from you but that you shared offices. Mr McAlpine said that the services group was paid £10,000, provided by McAlpine, to sell or transfer those records to this new organisation called the Consulting Association, which Mr Kerr was then going to run. Is this as you understand it?

Stanley Hardy: No. Ian Kerr ran the services group operation. It was totally separate from the league, although it lived with us. I am now going back way, way before my time, but the services group as was needed a home for the material and asked the league to take it. The league said, “Yes, okay, we’ll house it.” The services group said, “Yes, but it’s going to be separate. It’s our material.” It was contributed to by

the services group alone and used by the services group alone. It never belonged to anybody else. In terms of who had title to it, that title was never the league’s; it was always the services group’s.

Q1917 Sir James Paice: I am not suggesting it was.
Stanley Hardy: Well, why pay for something you already own?

Q1918 Sir James Paice: Are you suggesting that the services group and the Consulting Association were the same thing? We were led to believe that the Consulting Association was set up, involving Mr Kerr heavily and with this money from McAlpine that bought the records—the database—from the services group and transferred it to the Consulting Association.
Stanley Hardy: I had never heard of the Consulting Association until several months afterwards. That is the first point; perhaps we will come back to that in a minute. Ian Kerr took out of the office all the records that belonged to the services group and they were transferred.

Q1919 Sir James Paice: Transferred to whom?

Stanley Hardy: To wherever he went—I do not know. I have no idea where he went. That meeting was the last occasion I ever spoke to or saw Ian Kerr. That was it; we never met again. One of the things he did ask was whether he could buy a computer, a printer, a fax machine and a few bits and pieces. I referred him to the company secretary, Jim Barnes, who had the depreciated values of these things. They came to whatever arrangement they came to, that was invoiced—I think to McAlpine, but I would not swear to it—by the league and was paid for before the league closed. That was the only transfer of any assets between the league and Mr Kerr, if you like, but not—I repeat, not—the records. They never belonged to the league. The league had no right to sell them. We never had the title to them.

Q1920 Sir James Paice: Mr Winder, your colleague, told us last week that when you set up Caprim—this is separate from what I was just describing—you were given £10,000 by McAlpine to assist you in setting up. Do you agree with that?

Stanley Hardy: No—not to assist in setting up.

Q1921 Sir James Paice: Okay, for what?

Stanley Hardy: One of the things that Ian Kerr said at the last meeting that we had was that he had also been instructed by the services group never to have anything to do with anybody from the league. We accepted that.

Q1922 Sir James Paice: Mr Kerr told you that.

Stanley Hardy: Absolutely. That was an instruction he had received from the services group committee, council or whatever it was. It was in January or February that that conversation took place and when Mr Kerr took the records out of the building. Caprim really started business in May 1993. Jack and I started that business by putting our own money in. There was no other source of revenue; we actually invested that

12 February 2013 Stanley Hardy TD

and started the business ourselves. We were living hand to mouth; there were no two ways about it.

We were quite surprised—I had been on holiday, so it must have been in late August—to get an approach from McAlpine, asking us whether we would go and see them. I met Cullum McAlpine in his office just round the corner from Russell Square. Forgive me, I am paraphrasing, but the conversation basically went like this: “How are things going?” “It’s a struggle, but we’re getting there.” “What are you doing?” “Well, we are monitoring this, reporting on activities and so on, and doing fraud and theft investigations.” I think I actually gave him a brochure on what we were doing. He said, “You’re not doing what the league did in terms of name chasing.” I said, “Absolutely not. That would be the kiss of death for Caprim. It’s something we are not going to do and will never do.” He said, “I have to say I’m impressed, because you have kept your word.” I said, “What do you mean?” He said, “You have not been in touch with Ian Kerr.” I said, “Why should we be?” He said, “That’s good.” I think the conversation went something like, “McAlpine are looking at tendering for certain sensitive contracts, and some of the protest groups might cause us an issue.” “Could McAlpine use your services?” I said, “Yes, that’s one of the things we do, but please don’t ask us to check names.” He said, “That’s not necessary. I wouldn’t need that.” What he said was, “Look, if you raise an invoice for £10,000, I’ll get it paid, and then I’ve got you on tap if we need you to talk about protest groups.”

An invoice was raised in September. That was the first time I had heard the term Consulting Association, but I did not actually associate it with Ian Kerr, because throughout the conversation, if we referred to Ian Kerr, it was as the services group. It was the first time I had heard about the Consulting Association. I thought the Consulting Association was part of McAlpine, because he asked that the invoice be sent to him, and it was paid. It was paid in September or October.

Q1923 Sir James Paice: Did you feel there were any strings attached to that, apart from the fact you were effectively being paid a retainer?

Stanley Hardy: No. I did not ask for the money. I did not go expecting to get payment.

Q1924 Sir James Paice: I think you just told us that Mr Kerr said to you that he had been told to have nothing to do with you and Mr Winder in the future.

Stanley Hardy: Or anyone from the league—not just us.

Q1925 Sir James Paice: Or anybody from the league; okay. When you spoke to Mr McAlpine, he said that you had kept your word and had not spoken to Mr Kerr. Did Mr McAlpine in any way suggest that actually it was a condition of your £10,000 that you did not have anything to do with him?

Stanley Hardy: Absolutely. That embargo on contact was absolutely maintained.

Q1926 Sir James Paice: Okay. That was a one-off payment; it was not a loan or anything like that.

Stanley Hardy: It was not a loan; it was a properly invoiced payment. As far as I know, we were never asked by McAlpine to do anything. I have never seen Cullum McAlpine since that day.

Q1927 Chair: Can I be clear? When we met Cullum McAlpine, he said this, and I can quote directly, “Ian Kerr told us that the construction databank from the services group had to be paid for and was going to cost £10,000.” A payment of £10,000 was then made by McAlpine for the services group papers.

Stanley Hardy: Not to the league and not to Caprim.

Q1928 Sir James Paice: You were not aware of that, or were you?

Stanley Hardy: No.

Q1929 Chair: You can see why we are in a bit of difficulty here. Admittedly, this was a while ago, but we have several people telling us different things about what may or may not in fact be the same £10,000. Mr Kerr has, unfortunately, passed away. Can I go back a moment? Are you saying that the Economic League did not have card-index files on people?

Stanley Hardy: Oh, no. Yes, it did.

Q1930 Chair: In quite substantial numbers.

Stanley Hardy: If you take the services group chunk out of it, in my time—I do not know about previous times; they had been gone through and cleaned out, if you like, by Michael Noar—I cannot remember there being more than 2,000 to 2,500.

Q1931 Chair: None of those would have been transferred to the Consulting Association, because the services group’s records were completely separate.

Stanley Hardy: They were completely separate.

Q1932 Chair: At an earlier stage in the operation of the services group, would it have accessed at that stage some information that was held by the Economic League? My understanding is partly that the Consulting Association developed out of the Economic League, so presumably it would have had access to its information.

Stanley Hardy: No. As I said, I did not even know that the Consulting Association existed until I had the conversation with Cullum McAlpine, and I did not actually associate it with the services group.

Q1933 Chair: I am sorry, but who did you think these people in your offices were?

Stanley Hardy: There was only one—Ian Kerr.

Q1934 Chair: When you say that you had never heard of them, or that you had not heard of the services group—

Stanley Hardy: No. The services group—yes; the Consulting Association—no. It was only Ian Kerr. Ian Kerr was the linchpin; Ian Kerr was the services group.

12 February 2013 Stanley Hardy TD

Q1935 Chair: Fine. Some of his information had come from the Economic League before you arrived, had it not?

Stanley Hardy: Absolutely. Let me get something absolutely straight. Information went into the services group information from services group members and was shared purely among services group members, but Ian Kerr, of course, had access to the general information held by the league. If he then added that to this shoebox, as it were, it would have done.

Q1936 Chair: That is what we were trying to clarify. We have already had hearings clarifying how things went in and out once it was established. Presumably, when the services group was established, it accessed what was already available through the league and used that as the basis on which to move forward.

Stanley Hardy: Bear in mind that the services group existed before it brought its stuff to the league.

Q1937 Chair: I was not aware of that. So the services group already existed as an organisation—of which, I must admit, we had never previously heard except in this context—and then came into the league. It had its own shoebox, or whatever, arrangements and stuff.

Stanley Hardy: Yes. All we did was provide it with accommodation.

Q1938 Chair: And it could access your material.

Stanley Hardy: Yes, but the reverse did not happen.

Q1939 Chair: So you would not be certain how much of your material it had accessed.

Stanley Hardy: I think Ian Kerr probably accessed the whole of our material. There is no reason why he should not have.

Q1940 Sir James Paice: Would it be reasonable to assume, therefore, that the destruction of the league's material is effectively irrelevant, because it is quite possible that by then all of its content had also been transferred additionally into the services group material?

Stanley Hardy: I think that Ian Kerr would have concentrated on material that related to the construction industry alone. Any other industry would have been immaterial to him in a real sense. To be fair, the construction industry is actually quite a small village in terms of employment and so on. The real concern that I had—the misgivings that I had, if you like—and, to a certain extent, the relief I felt when the services group stuff went was that we, as the league, could not validate or verify the information that it was holding, whereas the league operated in accordance with a published code of practice in terms of validating and verifying information. Incidentally, that code is lodged here somewhere in your records and archives. No such code of practice existed for the services group. A name could have appeared in the services group's records as "Don't employ Fred Bloggs of 43 Acacia Avenue, because I don't like the way he looks," which is a complete nonsense. There was nothing to stop that going in to the services group. That is not a process that the league would have used.

Q1941 Sir James Paice: But, if there was something more substantive about Mr Fred Bloggs of 43 Acacia Avenue in the league's information, the services group could access that information and transfer it into its own database.

Stanley Hardy: Yes.

Q1942 Chair: Can I be clear about dates? The Consulting Association went off formally from the Economic League or left the premises and so on in 1997.

Stanley Hardy: No. The services group disappeared or left—Ian Kerr shot off with his records—about six to eight weeks before the league closed.

Q1943 Chair: Which was when?

Stanley Hardy: The league closed in April 1993.

Q1944 Chair: So if there is anything on the files of the Consulting Association that are presently held by the Information Commissioner that is pre-1993, either Ian Kerr brought it with him from the services group or he took it from Economic League files, and we have no way of distinguishing at the moment—at least, not that I am aware of—which of these it was.

Stanley Hardy: I think it would be impossible now, Mr Chairman.

Chair: Fine. We are going to have a look at the files, but now I know that I am looking for two possible sources. We will go back to that.

Q1945 Mike Crockart: I turn now more to Caprim. You have talked about the services group being a construction group and that being quite a small village. What was Caprim's focus? On what areas or sectors of industry did you concentrate?

Stanley Hardy: As I said earlier, we would go like a rat up a drainpipe after any business opportunity. Whatever Jack found that was verifiable material, such as *Green Anarchist* and other issues, we would go for. Our reception was not always a good one. I vividly remember when Jack found something that indicated the beginnings of concern, shall we say, about the possible impact of Muslim fundamentalism being shown the door by a bank very quickly, so we were not always made welcome by these kinds of things. I am not racist, but if somebody says in a publication, "The Muslim Brotherhood is going to do this, that and the other against this bank because it is involved in this activity," why don't we go and tell them?

I suppose to a certain extent there is also the problem that there are none so blind as those who will not see. When the Reclaim the Streets organisation started planning for the Stop the City campaign, we were castigated by a lot of security people in the City of London, who complained that we were scaremongering and that there was no possibility of a riot taking place. History demonstrates that, sadly, we were right and they were wrong. The problem is that nobody likes a smartarse. We suffered from that as well.

The problem is that Caprim was so tiny, and here we were talking to big organisations. There are organisations such as Kroll Associates, which is a

12 February 2013 Stanley Hardy TD

multinational security and intelligence-gathering organisation, Control Risks, which is organised and run by former SAS personnel, and people like that—all embedded in the City of London, all doing fantastic things—and there is this tuppenny-ha’penny little outfit from the west midlands saying, “Hang on a minute, there is something here you should look at.” Sometimes people thought, “What the hell will they know?” Actually, very often we knew a damned sight more than the big people did, largely because of assiduous analysis and intelligence gathering.

Jack spent I do not know how many years with the Army, but the Army, the police and any organisation that is in intelligence gathering use the intelligence cycle. That involves acquisition of information, which you then collate and evaluate. You then disseminate that which you can prove. From that dissemination, you can perhaps make recommendations. If you say something that is wrong, you are dead in the water, so more times than not you err on the side of caution.

Q1946 Mike Crockart: Equally, in general, building a business goes through certain stages of identifying your strategy and target markets and then going after them. It does not sound like you really had very much of that process.

Stanley Hardy: In the world of protest, it is very much a moveable feast. It would be nice to say, “We are going after the banking sector,” “We are going after the chemical sector,” or whatever. If nothing is happening that affects them, you are going nowhere in terms of sales. I did not have a bag of samples I could take and say, “Would you like to buy a widget, please?” I was selling information. It had to be live information. It could not be old information; it had to be pertinent, and I had to be the first with that information. We were a small business. I do not know whether you have ever started a small business; I have started two or three small businesses in my time, and it is almost the case that you will do anything legal for anybody to build up the business. If somebody says, “I want my widget painted green,” you paint it green, because you want the business.

Q1947 Mike Crockart: You say that you will do anything if you are asked for it. In general, we are talking about strategic advice on risks to businesses, but one of the services that you seemed to provide was a CV-checking service.

Stanley Hardy: Yes. Actually, that is a very common service. Most recruitment agencies offer it for their clients, so that they can produce a shortlist from a very big pile of applications. It is a standard thing—checking the qualifications, checking the work history, and identifying and reporting on any gaps. I do not think we ever did very many, and those that we did were mainly for quite senior managerial posts. The objective was to say, “Right, you gave us a CV. That’s right; that’s right; that’s right; that’s not quite right; that’s right.” If the “not quite right” was pertinent and they wanted us to investigate it further, we are talking about a straight private investigator’s investigation—nothing more sinister than that.

Q1948 Mike Crockart: You say you did not do it very many times.

Stanley Hardy: It is a pretty crowded marketplace. You have people such as Kroll, which can do it internationally. It was not just the recession and all the other things; we were also coming up against technology. I have not been involved in recruitment for a long time, but I have friends who are involved in HR. You advertise a post and get 50 applications. One of the first things that they do in the HR department is sit at the keyboard and start googling. I actually did this on Sunday. I am sorry, Chairman, this might sound a bit trite—

Chair: I would like to hear some things about the other Members of the Committee.

Stanley Hardy: Let me start again.

Mike Crockart: I would be delighted to hear some things about the Chair.

Stanley Hardy: This is just Google, but don’t forget that these HR people hit Google, Wikipedia and the social networking sites, from which you can get attitudes to Government, companies, industries and all kinds of things. You can build up a huge picture about people. Have you any idea how many items there are on Google about you, Chairman?

Chair: Four hundred and thirty-three.

Stanley Hardy: There are 152,000. There are about 7,000 for Dr Whiteford, which is quite small. The record is for Mr Reid, who is not here. Mr Reid has 4,930,000 Google items. As an HR practitioner, you can build up a wonderful picture about somebody very quickly and reduce the pile of 50 applications down to 10. That is where recruitment goes these days. That is how it is done.

Q1949 Mike Crockart: Can I pin you down? You say that you did not do it very many times. Can you give us a ballpark figure?

Stanley Hardy: I would be surprised if we did more than 20 or 25. As I said, we aimed for the executive market rather than anything else. It was fairly pointless doing it for any other market.

Q1950 Mike Crockart: So this was not a huge part of the service that you provided.

Stanley Hardy: No, but, if you are providing a security service, you are expected to be able to offer certain things. That is one of the expectations. As I said, it has rapidly been taken over by recruitment agencies and head-hunting agencies.

Q1951 Chair: Can I be clear? If you were doing scanning, so to speak, for companies and informing them of potential threats and all the rest of it, presumably, you would come across a variety of names and individuals involved in various things and activities. Presumably, you would identify some of these individuals to the companies involved, who might come along and protest at their annual general meeting, for example.

Stanley Hardy: Absolutely, but one of the things about the protest movement is that these people are not backward in coming forward. One of the key players in the Campaign Against Arms Trade, for example, is a lady called Angie Zelter. Angie is

12 February 2013 Stanley Hardy TD

famous. She is the lady who led a team that broke into a British Aerospace factory and smashed up the cockpits of Hawk trainers that were being prepared for delivery to a customer. She did not only do it, she videoed it. Then, having smashed up the cockpits, they stood there with the hammers waiting to be arrested. It was the publicity that they wanted. We did not have to identify them—they were there. They had publications and so on.

Q1952 Chair: That is right. I understand that they were there, but part of the whole exercise—I think you have identified this—was the question of collation and then distribution, so presumably you would be distributing information on names and so on. It was not a methodical, all-encompassing set of files, but there would be some names of, say, green people against agrochemicals that would come up, would there not?

Stanley Hardy: Yes, but I think the difference is that what we did not do was have a bank of names and respond to any kind of pre-employment vetting inquiry. If we had a report to make to a company or to an industry about an activity that was taking place—trashing GM crops or whatever—and we were able to identify the individuals who were going to do it, why not? That would be in the report, but it was not in a file somewhere for us to respond to a pre-employment check.

Chair: I understand that.

Q1953 Pamela Nash: I would like to take you back to some of your previous answers so that we can get some clarification. You were very clear at the beginning that the services group was completely separate but within the Economic League. Can you explain why it was housed within the Economic League?

Stanley Hardy: Because none of them wanted to hold it.

Q1954 Pamela Nash: None of whom?

Stanley Hardy: None of the services group companies wanted to hold it. It was a hot potato. That is the only way to describe it.

Q1955 Pamela Nash: Who agreed for it to be within the Economic League?

Stanley Hardy: One of the previous director generals several years ago—largely, I think, because the money that was dangled in front of the league was so attractive. He was asked, “Can you give this a home? Would you provide somebody to look after it as a totally discrete operation? We will pay you X for the process”, and he said, “Oh yes.”

Q1956 Pamela Nash: So large sums of money were paid to the Economic League in order to house—

Stanley Hardy: I would not say large—

Pamela Nash: But more than the rent of the room.

Stanley Hardy: Let me put it this way. The revenue from the services group, which was a single item, was the largest single source of income for the league.

Q1957 Pamela Nash: Are there any papers that would be able to show us how much money was transferred?

Stanley Hardy: I have no idea, except for what is in the hands of the liquidator, if it still keeps them. I do not know what the law requires in terms of retention.

Pamela Nash: Okay. I will go on to that.

Q1958 Chair: On that general point, do you have any papers relating to the Economic League or Caprim? Unfortunately, *Hansard* does not record nodding or shaking of heads.

Stanley Hardy: I am sorry. No, I do not.

Q1959 Chair: And you do not have a garage where you happen to hoard things or anything like that.

Stanley Hardy: No, I do not.

Chair: It is something we have to ask, obviously, just in case it is floating about.

Q1960 Pamela Nash: Just to be clear, it was a financial arrangement for the Economic League to house that.

Stanley Hardy: Yes, pure and simple.

Q1961 Pamela Nash: Was part of that payment to allow the services group access to the Economic League’s files as well?

Stanley Hardy: Yes.

Q1962 Pamela Nash: I wanted to clarify why Ian Kerr had access to Economic League files while that was not reciprocated. So that was part of that agreement. When Mr Kerr appeared before the Committee, he was very clear that the files that he was using in the Consulting Association were purchased from Caprim by McAlpine. We have been led to believe that that was what the £10,000 payment was for.

Stanley Hardy: Caprim took nothing out of the league.

Q1963 Pamela Nash: It took nothing out of the league.

Stanley Hardy: I am sorry, that is not strictly true, because Jack Winder had back copies of publications, which had been delivered to his home. That was the routine, so he could read them at home: *Socialist Worker*, *Militant*, the *Morning Star*, *Green Anarchist* and all the other things. These were back copies. He continued to have these things delivered at home when he was operating Caprim. In that sense, they were just newspapers. No files, no records, no card indices—nothing—came out of the league to Caprim. We started a fresh, new company—pure and simple.

Q1964 Pamela Nash: Can I ask again about the beginning of the company? You stated in response to Mr Morrice that the company was initiated before the end of the Economic League.

Stanley Hardy: Only registered. It did not trade.

Q1965 Pamela Nash: Okay. My understanding is that the Economic League went into liquidation. Were there people who were owed money at that time?

12 February 2013 Stanley Hardy TD

Stanley Hardy: This is one of the great canards about the Economic League. The membership actually determined that it should close down. There were very few trade creditors per se—i.e. suppliers of goods, as it were. The largest trade creditor was actually a firm of solicitors that had acted for the league in respect of an issue with, I think, a newspaper. The majority of the £300,000 deficit resulted from the capitalisation of the unexpired portion of leases on premises. For example, the league had 22 years of a 25-year lease remaining on a City of London central property, which was capitalised by the landlord as part of the claim against the league. That was where the majority of the money came from. Apart from the solicitors, the next largest trade creditor, if you like, was the staff. That was mainly Jack and me, basically.

Q1966 Pamela Nash: Just to be clear, did you and Mr Winder have any responsibility? Did creditors have a claim on you for any of the money that was owed by the Economic League?

Stanley Hardy: No, none at all.

Q1967 Pamela Nash: So there was no connection with your setting up Caprim.

Stanley Hardy: We were not directors of the league. The term “director” meant a manager. The directors of the league were elected by the membership from the membership—pure and simple—and they were all non-execs, from the chairman downwards. They were the ones who held the legal authority for operating the league and closing it down. They had a personal liability as directors, but, because it was a company limited by guarantee, that liability was itself limited.

Chair: Can I clarify that point? Pamela, do you want to pursue this question of the money?

Pamela Nash: No.

Q1968 Chair: Can I be clear? When the Economic League went down, it did go down owing people money.

Stanley Hardy: Yes.

Q1969 Chair: In that context, you can understand our surprise that £10,000 seems to have come to Caprim for what was described as hush money in another context, which, we were also told, was being paid for the purchase of the services group files.

Stanley Hardy: That £10,000 did not buy anything from the league apart from a retainer—i.e. we were at the end of a piece of string, if necessary. I do not think that piece of string was ever tugged.

Q1970 Chair: And silence.

Stanley Hardy: Yes, I think that was part of it.

Q1971 Sir James Paice: As far as you are concerned, that £10,000 is distinct from any £10,000 paid to the services group for its data.

Stanley Hardy: I had no idea of that other £10,000. I really do not understand this, because why should the services group pay itself £10,000? That is what you are saying, in essence.

Q1972 Sir James Paice: McAlpine paid it to the services group to transfer the data to the Consulting Association, which Mr Kerr then ran.

Stanley Hardy: But the services group was a member of the league, not a part of the league. The information belonged to it. It had title to it throughout, from the day it brought it in—I think John Dettmer was the director general then—to the day it took it out. Title was never transferred to the league.

Q1973 Pamela Nash: Have you any idea why Mr Kerr would tell the Committee that?

Stanley Hardy: I am sorry, but I do not know. I have no idea.

Q1974 Pamela Nash: You can understand why we are struggling with this.

Stanley Hardy: Sure.

Q1975 Pamela Nash: You are telling us that you were paid £10,000 for a retainer that, by your own admission, was never used. Last week, Mr Winder told us that it was a good-will gesture for the beginning of your company. That is what he told us last week.

Stanley Hardy: It could well be.

Q1976 Pamela Nash: He did not use the word “retainer” and he did not suggest it was for future service last week. That is my recollection.

Stanley Hardy: Bear in mind that Jack and I have not seen each other for 20 years.

Q1977 Pamela Nash: No, but you were both around at that time, even though I understand that was a long time ago. I want to move on a bit to your work with Caprim. Were there other companies or organisations providing the same service that you were providing at the time?

Stanley Hardy: Security services, yes—they are legion; there are an awful lot of them. As I said earlier, I believe our unique selling point was the fact that we were monitoring these activities, which were growing in importance. In that sense, I think we were the first in the marketplace. As with all things, the moment other organisations discovered a potential—particularly if, like Control Risks and people like that, they had more resources—they leaped into the marketplace as well, and they made a lot of money out of it.

Q1978 Pamela Nash: On the information you were collecting to provide this service, were you working with the police or security services during your time in Caprim?

Stanley Hardy: No.

Q1979 Pamela Nash: There was no communication between you and the police or security services.

Stanley Hardy: If any information went between the police and Caprim, it was one way—it went from us to the police. For example, we informed the police of the information about Reclaim the Streets. [Interruption.] I am sorry, is that the vote you were talking about?

12 February 2013 Stanley Hardy TD

Chair: No, that is not for us.

Stanley Hardy: It came entirely from us. It would have been improper for them to give us information and entirely improper of us to ask for it. In terms of special branch, I have met police officers in my life, but I do not even know whether I have ever met a special branch officer. I do not think they would come up and say, "Hello, Mr Hardy, I am from the special branch." No, we had no connection. We certainly were not working with them. We had no interface with them. They certainly would not give us information.

Pamela Nash: I am pretty sure Mr Winder said something different last week.

Q1980 Chair: Yes, Mr Winder told us that he had meetings with police officers.

Stanley Hardy: I am sorry, I am talking about me. I had no meetings.

Q1981 Chair: But he was meeting them on behalf of the Economic League. He told us where he met them—the Buckingham Arms, which is proud to be one of only seven pubs that has been in every edition of the CAMRA *Good Beer Guide* ever since it was begun.

Stanley Hardy: Really.

Chair: That is right. He was quite explicit about saying that he had met them. Given that you were higher up the food chain in the Economic League than he was, it would seem reasonable that you had met them as well.

Stanley Hardy: No. Jack's work was Jack's work. This might sound very remiss, but bear in mind that I was the director general for a very short period of time, and Jack was there for an awfully long time. I did not go to any meetings with Jack to meet police. I am aware that information went to the police from Jack, and that is fine.

Q1982 Chair: So you are telling us on oath that you had no meetings, formal or informal, with anybody from either the police or the security services or anything else like that.

Stanley Hardy: Absolutely, as far as I know. As I say—

Chair: Because you would not necessarily know who they were.

Stanley Hardy: I would not necessarily know who they were.

Chair: Absolutely. I understand that point.

Q1983 Pamela Nash: The Chair mentioned Mr Winder's evidence in relation to the Economic League. Are you aware of anyone other than yourself who had meetings with the police or security services on behalf of Caprim?

Stanley Hardy: No. If Jack spoke to the police—bear in mind that I was with Caprim for a relatively short time, and Jack continued the business long after that. I do not know what happened after I left and cannot comment on that, so I would prefer not to.

Q1984 Pamela Nash: Okay. You understand why we are asking this. The Information Commissioner's Office has said on record that there is information in

the Consulting Association's files that could have come only from the police or the security services. I know that you have said today that that information did not come through Caprim.

Stanley Hardy: Certainly not.

Q1985 Pamela Nash: But other evidence that the Committee has heard suggests otherwise. Finally, did you ever have any meetings in your role at Caprim with politicians or anyone involved with any political party or organisation?

Stanley Hardy: I do not think I did. I cannot recall that I did. I did not go out to seek politicians and hold meetings with them, although I know that a number of politicians were on our mailing list for bulletins. Indeed, the House itself was—there was stuff that came into the House Library as well as the British Library. Politicians were in receipt of our information via bulletins and publications, but I am not—

Q1986 Chair: That is the sort of stuff that you were producing that was a bit like the Fabians, wasn't it? There was some stuff—environmental, political comment and all the rest of it—that you sent out quite widely. We understand that. The point that is being pursued here is whether or not you had any discussions on policy matters with anybody in politics.

Stanley Hardy: I did not.

Q1987 Chair: Were you aware of anybody else in the Economic League doing so?

Stanley Hardy: Possibly Michael Noar. I think it is fairly safe to say that the league tried to move away from politics—or politicians—during Michael Noar's term or immediately after that. I did not have any meetings with politicians that I can recall.

Q1988 Chair: Remind me how long you were with the Economic League.

Stanley Hardy: Four and a bit years.

Chair: Okay. Pamela, do you have any more questions?

Pamela Nash: That will do for now.

Q1989 Graeme Morrice: I welcome the hon. Member for Glenrothes.

In your opinion, was Caprim a blacklisting organisation?

Stanley Hardy: Definitely not.

Q1990 Graeme Morrice: Why do you say that?

Stanley Hardy: Because it never, ever maintained files on people or passed information that could be used in such a way.

Q1991 Graeme Morrice: Are you absolutely confident that information that you did impart to your members or customers was not in turn used for blacklisting purposes?

Stanley Hardy: The only information about people would have been in reports about activities such as were described earlier. An employer may have lifted that and put it in a file somewhere, although it is most unlikely. The moment you give out information, you

12 February 2013 Stanley Hardy TD

have lost control of it—it is like any kind of intelligence—but we did not operate a system whereby you could ring up and say, “What do you know about Fred Bloggs of 43 Acacia Avenue?” and we would come back and say, “There is a record,” or, “There is not a record.” That did not happen. We never responded and would never respond to such an inquiry.

Q1992 Graeme Morrice: Going back to the '90s, when you were operating, at various levels, along with your colleagues, including Mr Winder, were you aware that blacklisting was happening in society?

Stanley Hardy: I do not mean to be flippant, but I suspect blacklisting has operated since the pyramids were being built, and I genuinely mean that.

Q1993 Graeme Morrice: We have moved on from the times of the Egyptians.

Stanley Hardy: Maybe, but the reality is that I do not think there is an HR professional in the world who does not have a filing cabinet with a drawer in it that is marked “do not re-employ”. I do not believe that conversations don't take place between managers of companies, in particular, small communities or supply chains: “Do you know anything about Fred Bloggs of 43 Acacia Avenue—a widget basher?” “Yeah, why?” “Oh, he has applied for a job.” “I wouldn't touch him with a bargepole.” Those conversations take place. I think it is probably very likely, given that you are the Scottish Affairs Committee, that at the height of the Scottish shipbuilding industry times—in their heyday—the shipbuilding companies shared information between themselves about people they would prefer to keep out of the industry. If I read it correctly, and from what I have heard this afternoon, that is very much what the Consulting Association was doing. It was sharing information between organisations. As I said earlier, given the amount of information you can get now from the internet, that is probably the biggest blacklist in the world.

Q1994 Graeme Morrice: You did not have the internet in the early '90s, of course. Why did you leave Caprim?

Stanley Hardy: I wasn't ever going to get rich. My input was minimal, basically. In terms of the expertise of the organisation, the two Jacks were contributing far more, and I had other things to do, such as the Institute of Directors. I still had business interests elsewhere—nothing to do with security; I am talking about retail and so on.

Q1995 Chair: Can you clarify for us who the two Jacks were?

Stanley Hardy: Jack Winder and Jack Bramwell. It was time to move on. To be fair, I was younger than both of them, I had youngish children—a youngish family, though not young—and responsibilities, and there were other opportunities and more exciting things. I did not fall out with them, but I actually lost contact with them.

Q1996 Graeme Morrice: A career change.

Stanley Hardy: A mid-life crisis.

Q1997 Graeme Morrice: Do you think there is still a need for the sort of service that Caprim or the Consulting Association provided?

Stanley Hardy: Let us differentiate. Caprim and the Consulting Association did not operate the same services.

Q1998 Graeme Morrice: Okay, we will take that question in two parts then.

Stanley Hardy: Is there a need for an organisation like Caprim?

Graeme Morrice: Or the services that were provided by Caprim.

Stanley Hardy: Security, intelligence gathering and monitoring are going on today, with a much more sophisticated, much larger structure than Caprim could ever provide; they are also much better resourced. So the answer is yes, because the demand is there and the demand will be supplied.

Is there a need for a service like the Consulting Association? What is interesting—because it is a slightly different industry—is that *The Daily Telegraph* is exposing the banks for holding paper files on customers that contain gossip, hearsay and other references and are being shared between them. The Consulting Association lasted for the best part of 20 years as a stand-alone but way-below-the-parapet operation. It was not recorded and was not registered as a company; it was operating as what I think is described as an unincorporated association. The league was a limited company, up front, easily identified and publicly known about; the Consulting Association was way below the parapet. Does that not beg the question that there may be more than one somewhere?

Q1999 Graeme Morrice: Finally, following on from some of Ms Nash's earlier questioning, you said that you had not knowingly met with politicians and so on. Was the company ever asked for information by the Government of the day?

Stanley Hardy: I do not know about the Government of the day. Jack was often asked questions by researchers finding information for their Members of Parliament, possibly to answer or to ask a question in the House. That kind of question often came up, and Jack responded to it.

Q2000 Graeme Morrice: Just to clarify, you received requests from researchers for Members of Parliament.

Stanley Hardy: Yes—of both sides of the House, incidentally, not just from Government.

Q2001 Graeme Morrice: But not specifically from Government Ministers at the time—that you are aware of.

Stanley Hardy: Jack was invited to go and see Jim Prior at one stage—this goes back way before my time—but I think it was a fairly unproductive meeting. Nothing came of it anyway.

Q2002 Graeme Morrice: For whom?

Stanley Hardy: Probably Jack, I think, because at the end of the day nothing came of it. It is now 2013. If

12 February 2013 Stanley Hardy TD

you go back to the 1970s and what was happening then, there was a huge amount of fear floating around in employment. As I said, you had had British Leyland and all kinds of other issues. With respect to Scottish shipbuilding—I am really going back now to the '60s—in the '50s and '60s there seemed every week to be yet another dispute based on demarcation between the boiler makers, the riveters, the platelayers and whatever. Companies were saying, “Hang on a minute. This is making British shipbuilding too expensive and too unreliable on the international market.” There were all these things. It is a different world from what it was in those days.

Q2003 Chair: Can I come back to the point about blacklisting organisations? You have mentioned that Caprim was not one. Could you fairly describe the Economic League as a blacklisting organisation?

Stanley Hardy: I would not, but it depends on your interpretation. If your interpretation is, “Did it respond to pre-employment inquiries about individuals?” that is one of the things that it did.

Q2004 Chair: Right, but being on the Economic League files and having that reported to somebody generally was not likely to enhance somebody's chances of employment, was it?

Stanley Hardy: Probably not. When we had the Select Committee hearing in the 1990s, Members of Parliament actually asked for copies of their records. I think most of them were quite disappointed in how anodyne they were, because what they said was, “Mr So-and-so MP wrote an article published in”.

Q2005 Chair: That is right. I have seen some of the Consulting Association files. I think somebody wrote a letter to the *Crawley Observer* and it was down in their file. That did not necessarily seem to me to be a particularly radical or destructive step, so I wonder why it was in their file at all.

Stanley Hardy: If you think about it, there would be an almost identical record card in the newspaper. There would be an equal one probably in the library.

Q2006 Chair: So why did you do it then?

Stanley Hardy: It is part of this intelligence gathering.

Q2007 Chair: It was not designed to help people get work, was it? It was designed to help employers weed out people that they would not want to take on.

Stanley Hardy: If you were an employer and a subscribing member of the league and you rang the league and asked, “Have you got any information about Stan Hardy?” it would say, “Yeah, we have a record, and this is what it says.”

Q2008 Chair: But the Economic League was not compiling files, as I understand it, on everybody in the population or on everybody who wrote a letter to the papers.

Stanley Hardy: No, absolutely not.

Q2009 Chair: There was a focus on particular political and industrial subjects, areas and involvements. Therefore, the fact that somebody was

an activist was unlikely to enhance their chances of employment.

Stanley Hardy: It depends on what you mean by activist. I think this is the point. Earlier, you mentioned health and safety. If somebody was genuinely pursuing health and safety issues in the workplace, that was of no interest to the league.

Q2010 Chair: In that case, they would not have been on your files.

Stanley Hardy: They should not have been, no.

Q2011 Chair: Can I try to clarify a couple of things before we go? Going backwards, was the Economic League's involvement in industrial disputes and so on all before your time and you would not know anything about it?

Stanley Hardy: Which disputes are we talking about, Chairman?

Q2012 Chair: One that was drawn to my attention was the Burnsall strike, involving mainly Asian workers in Manchester. There was the stuff to do with the Shrewsbury pickets.

Stanley Hardy: That was before my time.

Q2013 Chair: All of that was before your time, no records are extant and there is no corporate memory of any of that still alive.

Stanley Hardy: Certainly not with me.

Q2014 Chair: Not with you, okay. I turn to the customers of the Economic League. Were any of them in the public sector?

Stanley Hardy: No.

Q2015 Chair: So it was only a private sector organisation.

Stanley Hardy: Absolutely. Let us go through them. The armed forces, the police, the national health service, local government, the civil service and the emergency services—none of them would ever have needed to use the league.

Q2016 Chair: What about nationalised industries?

Stanley Hardy: Certainly, British Rail would not have needed to use it, but when it was privatised there was a different issue. Nationalised industries would not necessarily have used it.

Q2017 Chair: I understand that they would not necessarily have used it. I am asking you whether they did.

Stanley Hardy: No, they were not customers.

Q2018 Chair: So nothing in the public sector was involved in any of this.

Stanley Hardy: Or defence contractors.

Q2019 Chair: Or defence contractors. You surprise me.

Stanley Hardy: Security clearance for defence contractors' employees is dealt with by the state. It is now with the Defence Vetting Agency.

12 February 2013 Stanley Hardy TD

Q2020 Chair: That is right, but somebody's reliability in terms of defence matters and confidentiality would not necessarily go over on to health and safety issues or trade union issues. I can see that there is potentially an overlap, but there is not inevitably one.

Stanley Hardy: No. What I am saying is that they would not ring us up and say, "Have you got a record of Fred Bloggs?" because they don't need to.

Q2021 Chair: Right, because MI5 or somebody in special branch could supply all of that to the vetting agency. How do you know that they had these files and that they were doing that?

Stanley Hardy: I have been security vetted myself.

Q2022 Chair: You have been.

Stanley Hardy: When I joined the Army.

Q2023 Chair: That was quite a long time ago, though. You could have been up to all sorts of mischief since then.

Stanley Hardy: Probably, yes.

Chair: Okay. Colleagues, do you have any other points?

Q2024 Sir James Paice: Can I come back to a point you made earlier in answer to Pamela? If I am right, you said that the relationship with the services group was more than just a relationship with tenants of part of the league's office and that it was paying the league for sharing the data that the league had. Did I understand that correctly?

Stanley Hardy: It had access to the league's information.

Q2025 Sir James Paice: And it paid the league for that information.

Stanley Hardy: That was part of the—

Q2026 Sir James Paice: I think you then said that it was the biggest individual—

Stanley Hardy: My memory is that it was the largest single—

Q2027 Sir James Paice: Can you put a percentage on it? How much of the league's income was, therefore, from the services group? Was it 20%, 60% or 90%?

Stanley Hardy: It was something like 20% or 22%. It was the largest single source.

Q2028 Sir James Paice: But not the majority.

Stanley Hardy: No, not the majority, but the largest single source.

Chair: Pamela, do you have another point?

Q2029 Pamela Nash: Thank you, Chair. In answer to our Chair, you said that there were only private sector companies, but how do you know that they did not have public sector contracts? Did they specify the contract when they made the request for information?

Stanley Hardy: Do you mean that the public sector was behind the private sector operation?

Pamela Nash: Yes.

Stanley Hardy: We would not have known that.

Q2030 Pamela Nash: So it is very possible that those private sector companies that were requesting information from the Economic League were doing so for public sector contracts.

Stanley Hardy: They might well have been. If you were building a motorway or something, it is quite possible, but the public sector end would not necessarily have been employing anybody itself. What seems now to be the case in terms of due diligence, tendering requirements and so on, even allowing for the human rights issues and all the rest of it, is that there is probably an understanding between the contracting or commissioning agent and the tendering company that they will ensure that they have made whatever checks are necessary and taken up references to ensure that things work. I do not know, because I am not involved with that, but it would stand to reason, wouldn't it?

Q2031 Pamela Nash: Our hope is that there is an understanding from Government that the company does not participate in blacklisting. That is why we are here and what we are trying to get to the bottom of.

Stanley Hardy: Yes, indeed; absolutely.

Q2032 Pamela Nash: Is that the case for Caprim as well? Would there be the possibility of any public sector contracts from customers of Caprim?

Stanley Hardy: We were looking at the company's own security, rather than necessarily any particular contract that it got. If Monsanto was doing some sort of chemical research or whatever—more particularly, if it was doing research that involved animal testing—the important thing from its perspective was actually the protection of its employees and managers, not the end user, the national health service, which would presumably use the medicine that it finally designed and managed to sell to the national health service.

Q2033 Pamela Nash: I am getting a message that we are just about to get a vote. I have one final question, unless you want to ask something different on that, Chair.

Chair: No, not if you want to.

Pamela Nash: Caprim did not cease to exist until 2000. Is that correct? I am sorry, your involvement with Caprim ended in 2000.

Stanley Hardy: Yes, I left in the middle of 2000.

Q2034 Pamela Nash: Did you register Caprim with the Information Commissioner's Office?

Stanley Hardy: I did not, because it did not have any information.

Q2035 Pamela Nash: But you were processing information on individuals. From 1998, any organisation doing that should have been registered with the Information Commissioner's Office.

Stanley Hardy: We were not processing information about individuals. They may have been mentioned in a publication or a report, but we were not processing. We certainly were not holding information about individuals. I do not know what Jack—

12 February 2013 Stanley Hardy TD

Q2036 Pamela Nash: My understanding is that you would do CV checks on individuals.

Stanley Hardy: I am sorry—I see what you mean. We got the CV, and we gave the report and the CV back. We did not hold it.

Q2037 Pamela Nash: Yes, but the rules in the Data Protection Act do not specify that you have to hold it. It is only if you are processing the information.

Stanley Hardy: If we were in error, it was an error of omission, not deliberate—not by any means. There was no intention to try to conceal it. In fact, we probably did about 10 of these things, or 20 of them at the most. Does that apply to every private investigator who is doing a matrimonial investigation?

Pamela Nash: That is the ICO's job, but, yes, those are the rules.

Q2038 Chair: When I spoke to you before the meeting, I said that there would be an opportunity for you to give us any answers you had prepared to questions that we had not yet asked, rather than you artificially working them into questions. Are there any points that you want to draw to our attention that you feel we ought to be aware of?

Stanley Hardy: I suppose the only thing is that I was prepared to say, "Do you think blacklisting is going on at the moment?" In fact, that question has been asked and has been debated very thoroughly now. If you want an honest opinion, I do not think you will ever, ever stop it.

Q2039 Chair: I was interested by your answer. I think there is a difference between me or anybody else deciding that they are not going to take X back on, and having it just in their heads or even on a bit of paper in their own office, and having a structure, as the Economic League and the Consulting Association did, where people who have no knowledge of an individual can phone in and be told something, where there is a sort of central clearing house, with the concept of either a list or individual file cards. That is the issue that is in question.

Stanley Hardy: I appreciate what you are saying, but I still think you would have difficulty stopping it. The league operated within the law, quite specifically. The law changed, and by then the league was dead. If I have got it correctly—I may be totally wrong, and I apologise if I am—but the Consulting Association operated very much as a clearing house for a small group of companies and a particular industry, and the information was not challengeable and not verifiable. Almost, in a sense, the league could not do right for doing wrong. Before my time—although this was not required to comply, because it was paper documentation—the league actually pronounced as part of its code of practice that, as with a credit rating agency, if anybody thought they had an issue, they should write to it and it would tell them what it had on them. The league was immediately castigated for creating a do-it-yourself blacklist.

Chair: Absolutely.

Stanley Hardy: It really was a no-win scenario. Genuinely, if you had rung up and said, "Look, I am Ian Davidson. I am a Member of Parliament"—no,

maybe not a Member of Parliament; "I am Ian Davidson of 43 Acacia Avenue. Have you got anything on me?"—you would have been told.

Q2040 Chair: How many people were told during the days of the Economic League?

Stanley Hardy: I do not know, but we were approached and we responded—and we responded honestly. As I said earlier, the critical thing was that whatever we said about a person was verifiable and provable. If they had written an article, been critical in an article, had done something and it was there and a matter of record—

Q2041 Chair: You would agree that, the way you have described it, it all sounds very innocuous, yet people's lives have been ruined by their being unable to get employment as a result of the blacklist that the Economic League and the Consulting Association were running.

Stanley Hardy: Please do not link us with the Consulting Association because it was a quite different method of operation and a quite different process. Literally, at this moment in time, a group of drivers who used to work for Tesco and were transferred under TUPE to Stobart, which then made them redundant, are now complaining that they cannot get agency jobs because they believe they are being blacklisted. It is still going on.

Q2042 Chair: That makes it okay then, does it?

Stanley Hardy: No. I am saying that I think you have a problem.

Q2043 Chair: Fine. I think we are getting to the stage where we will make a call for evidence about blacklisting continuing. However, now that it is illegal, do you accept that you may have some doubts about whether or not keeping files on people in the past was morally wrong?

Stanley Hardy: When the thing was created and was running, I do not think the question of morals ever came into it from anywhere. There was great fear in industry and commerce. In some companies, there is still an attitude of "If in doubt, keep 'em out." That exists in any kind of recruitment process. If you are working in an HR department, you have a responsibility and obligation to your company to make sure that the right person gets into the right job. If that means asking questions, going on the internet and googling people, or whatever, they will do that. The moral question is really down to, do you tell the individual that you are making inquiries beyond the CV and application they have submitted? That is probably where the thing falls down. If it were left to me, I would put something at the bottom of every application form that said, "The company reserves the right to make any further inquiries about you and your background that it wishes." If you want to look at things such as political involvement, trade union activity or whatever, the company should do that.

Q2044 Chair: But if it operates on the same principle of "If in doubt, keep 'em out," anybody who

12 February 2013 Stanley Hardy TD

has been involved in a trade union or a political party is unlikely to get employment.

Stanley Hardy: I am not saying it is right. What I am saying is that it is probably appropriate that you tell the person you are going to make the inquiries.

Q2045 Chair: Right. I think we have got our vote now, so that draws matters quite neatly to a

conclusion. Thank you very much for coming along today.

Stanley Hardy: It was my pleasure. I hope I have helped.

Chair: Yes, you have—not as much as we might have wanted, but you have indeed helped. Thank you very much.

Tuesday 5 March 2013

Members present:

Mr Ian Davidson (Chair)

Graeme Morrice
Pamela Nash
Sir James Paice

Mr Alan Reid
Lindsay Roy

Examination of Witness

Witness: **Harvey Francis**, Executive Vice-President, Human Resources, Communications and IT, Skanska UK, gave sworn evidence.

Q2046 Chair: Gentlemen, welcome to this meeting of the Scottish Affairs Select Committee. As you will probably be aware, we started with an investigation of health and safety in Scotland and have now moved on to blacklisting, because it became clear that blacklisting was one of the issues affecting health and safety matters in Scotland, particularly in the construction industry.

First, I will ask you to introduce yourselves. I understand that Mr Francis has a statement that he then wishes to read out. In fact, the Clerk is just about to remind me, that before I ask you to do that, we want to put you under oath. (*Harvey Francis and Simon Hall were sworn*) Mr Francis is the witness; Mr Hall is here as an adviser, rather than as a witness. Mr Hall can whisper in Mr Francis's ear, rather than slipping him notes, but, as was the case previously when people brought folk along, he is not here to give evidence himself.

Mr Francis, who are you and why are you here? Read us your three paragraphs.

Harvey Francis: Thank you, Chairman. My name is Harvey Francis. I am executive vice-president of human resources, communications and IT at Skanska UK plc. I am a director of that company. I sit on the board and on the executive management team. I am responsible for all human resources matters within Skanska UK plc and have been in post since September 2008. I joined Skanska from outside the construction industry a year before that, in October 2007.

Mats Williamson, the chief executive officer of Skanska UK plc at the time this issue came to light, in March 2009, had hoped to be able to join me before the Committee today. However, as I think the Committee is aware, regrettably he is unable to attend today. I will therefore deal with the points Mr Williamson was to cover.

I would like to make it clear that I have never personally used the Consulting Association. I was not personally involved in Skanska's use of the Consulting Association, and I had not heard of the Consulting Association or what it did until Skanska was contacted by a journalist just prior to the Information Commissioner's Office serving an enforcement notice on the Consulting Association in March 2009.

Q2047 Chair: It may be worth while just now to clarify some points on the sub judice rule. In your statement, which has been circulated to members and

will appear as part of the record, you mention that you want to have some reservations about what you say to us on some issues. I ask the Clerk to give us the legal advice that we have had about how this applies.

Eliot Wilson: I will simply say that the House's sub judice resolution does not engage in this particular case, because you have not been formally named as defendants and the date for the court case has not yet been set down. It is also worth saying that anything you say to the Committee is, of course, protected by parliamentary privilege and cannot be used in a court.

Q2048 Chair: To take account of the fact that you have some reservations about some matters being explained in full to us, we agreed before starting the meeting that some of your evidence could be taken in private at the end of the formal hearing, so that we would have another hearing. This time it would be in private. Obviously records would be taken, and we would want to use that as material we might build on, but it would not be publicly disclosed at this time. As I understand it, it remains the position of the parliamentary authorities that it is then up to us to decide when or whether we wish to use that evidence in any way.

I would like to start by clarifying a couple of points relating to what you have said to us today. You said that you joined Skanska in October 2007. In what post was that? Was that also in personnel?

Harvey Francis: Yes, it was. At the time, the organisation was split into two core halves: infrastructure, which looked after the civils businesses, and building, which looked after the core construction. I was hired as the HR director for the infrastructure side of the business. I also had responsibility for looking at the way HR was organised and structured, and moving to a different model of delivery.

Q2049 Chair: So you had HR responsibilities from October 2007.

Harvey Francis: That is correct.

Q2050 Chair: First, can I clarify the involvement of Skanska and its predecessor companies with the Economic League and the Consulting Association, as far as you are aware?

Harvey Francis: As far as we understand it, there was no link with the Economic League; certainly, our investigation has shown no links with that.

5 March 2013 Harvey Francis

Q2051 Chair: Does that apply to your predecessor companies? I refer to the companies you took over, Trafalgar House and Kvaerner.

Harvey Francis: That is not clear. I would need to come back to you on that one.

Q2052 Chair: We take the view that you as a company inherited the assets but also the liabilities of any of the companies that you took over and that, therefore, the question of what part Skanska or its predecessors played in the Economic League and then the transition to the Consulting Association is relevant. Can you tell us about Skanska's initial involvement with the Consulting Association?

Harvey Francis: Are you referring to Skanska or our predecessor companies?

Chair: Either/or—you tell us.

Harvey Francis: Okay. Would you mind if I take off my jacket?

Chair: No, but I think you should stop there.

Harvey Francis: I give you my assurance I shall.

We conducted a full investigation into our historical use. It is clear that Skanska and our predecessor companies did use the services of the Consulting Association for reference checking. They also used the news cuttings service and some of the industrial relations-type forums that were run.

Q2053 Chair: So you were full and active members of the Consulting Association.

Harvey Francis: Yes.

Q2054 Chair: You put information in and took information out.

Harvey Francis: Yes, the investigation indicates that we both put in and took out.

Q2055 Lindsay Roy: What was the nature of the news cuttings service? What was the focus of the information?

Harvey Francis: I have never actually seen the cuttings. But from talking to the people who did receive them, I understand that it was pretty much as Ian Kerr outlined when he presented evidence to the Committee—just cuttings from extremist press and things of that kind. As I said, I have not actually seen the copies myself.

Q2056 Lindsay Roy: So that did not come out in your investigation.

Harvey Francis: There were no hard copies, just people talking about the fact that the cuttings existed. When I talked to people, it did not seem that the cuttings were of any particular value or use. They were something that people read if and when they had time.

Q2057 Lindsay Roy: During your investigation, how far did you probe into the nature of these cuttings?

Harvey Francis: Probably not hugely, because the primary focus of the investigation was very much on what was happening on the ground—our involvement in the referencing service, primarily. That is what we wanted to get under the skin of, so that we could decide what had happened, get the fullest account we

could, and decide what steps we needed to put in place to ensure that it would not happen again.

Q2058 Lindsay Roy: Would it be fair to say that that part of the investigation was not particularly robust?

Harvey Francis: I would not say it was not particularly robust. I guess it was viewed as of less consequence than the referencing service. That was a judgment call that I took.

Q2059 Sir James Paice: Good afternoon. Can you clarify the other aspect of this—the fees that you paid? We understand that you paid £118,000 between 2005 and 2009. Have you been able to uncover any evidence of what services you were getting for those fees?

Harvey Francis: Yes, absolutely. There was the annual membership fee, which was somewhere in the order of £3,000 a year, I think. Then there was a payment made for each individual check that was done with the association.

Q2060 Sir James Paice: On an individual basis.

Harvey Francis: Yes, on an individual basis.

Q2061 Sir James Paice: So there were obviously a lot of people.

Harvey Francis: Yes, a lot of checks.

Q2062 Sir James Paice: Do you have any idea of how many people were checked in that period?

Harvey Francis: It is difficult to tell for sure, because the records that exist are very patchy. We have not seen the database, so we do not know for sure, but extrapolating from the invoices, the number is around 66,000. That looks like a huge number—I am not sitting here trying to excuse that in any way—but by way of context, if you look at 2008, which was one of our peak years in terms of volume and large buildings, we had something like over 90,000 people working on our sites during that one year alone. You need to think about the cyclical nature of how the trades come on to projects and go off, and then the churn within that. I just wanted to explain by way of context why the number looks big, and is big.

Q2063 Sir James Paice: Who in Skanska would actually authorise the expenditure on each of those requests for information and subsequent payment of the fee?

Harvey Francis: They were signed off within one of the human resources departments.

Q2064 Sir James Paice: With reference to your own position, you have just said that there were two human resources departments at that stage, before the company merged the two—or were there more in sub-units?

Harvey Francis: There were two of what we call operational HR streams. It is also important to say, as a point of context to help the Committee understand, that back then Skanska was a very fragmented organisation. I think that is also indicative of its history in terms of acquisition and the way the different parts of the businesses have been bolted

5 March 2013 Harvey Francis

together. Certainly since 2008, when there was a brand new exec management team and a new CEO, we have been looking at how to create a much more cohesive organisation, to make sure that we have better governance, stronger ethics and all the kinds of things you would expect in a company of our standing.

Q2065 Sir James Paice: When you say that an HR department would have authorised this expenditure, how many HR departments would there have been at that time?

Harvey Francis: There were about 12 operating units, so every operating unit would have had a small HR team. There were then two HR directors and a third HR director who ran all the industrial relations and those kinds of specialist topics.

Q2066 Sir James Paice: Would the decision of an HR team to seek information about an individual have had to be referred to one of the two operational HR directors?

Harvey Francis: No, not in terms of the usage. Would it help for me to explain how it worked?

Sir James Paice: Yes, please.

Harvey Francis: Essentially, once the decision had been taken to use the service on a project, the pre-induction questionnaire that people wanting access to our sites would fill in was collated on to a template, as we understand it, which was faxed over to the Consulting Association. If a flag appeared against any one of those names, a phone call would come through, which would be dealt with by one of the senior HR team. Then a decision would be taken on what to do—on whether to grant or to deny access.

Q2067 Sir James Paice: When you say that it would be dealt with by one of the senior HR team, do you mean within the 10 or 12 units you talked about or at a level higher than that? I am trying to clarify how high up the structure people knew that this was going on.

Harvey Francis: It would have been one of the HR directors.

Q2068 Sir James Paice: One of the two.

Harvey Francis: No—the third HR director, who looked after the industrial relations side of things.

Q2069 Chair: I am sorry, can I clarify who that was?

Harvey Francis: I can share the name with you, but one of the things that I would rather do is take corporate responsibility for this.

Q2070 Chair: No. I think the way this works is that we ask you questions, you are on oath, and you answer. We have asked you for the name of the individual.

Harvey Francis: Apologies, Chairman. It was Stephen Quant.

Q2071 Sir James Paice: What exactly was his role?

Harvey Francis: He was director of industrial relations.

Q2072 Sir James Paice: Was that on the same tier as you were when you first joined?

Harvey Francis: Yes. We were all part of what was called the HR directors group.

Q2073 Sir James Paice: You said that in 2007–08, when you were one of them, before you took on overall responsibility, you had no knowledge that Mr Quant was using this service.

Harvey Francis: That is correct.

Q2074 Sir James Paice: It never came up at any meeting or anything like that.

Harvey Francis: No.

Q2075 Sir James Paice: So the decision by an individual unit—I think I am using your words—to use the service on a particular project would have been taken by Mr Quant or by one of the HR team in that unit.

Harvey Francis: Yes.

Q2076 Sir James Paice: Okay. Have you any idea of how many of the many different units that there were then used the service?

Harvey Francis: Yes. Not all of them did. Primarily, the units that used it were the ones working on large jobs, on what we deemed to be high-profile and high-risk jobs—the big building jobs, if you like, such as education, defence and hospitals.

Q2077 Sir James Paice: I have one final question, which relates to your introductory statement. You said that you “had not heard of the Consulting Association...until Skanska was contacted by a journalist just prior to the Information Commissioner’s Office serving an enforcement notice”. Can you clarify what you mean by “just prior to”?

Harvey Francis: I think it was *The Guardian* that ran the story on a Friday. I think we took a telephone call through our communications team on the Wednesday or Thursday giving us advance notice that the story was going to run and asking whether Skanska wanted to comment. That was the point at which I became aware of it.

Q2078 Sir James Paice: By that stage, Mr Quant had left the organisation.

Harvey Francis: No; Mr Quant was still in the organisation.

Q2079 Sir James Paice: He was still in post then.

Harvey Francis: Yes.

Q2080 Sir James Paice: But they came to you because by then you had overall responsibility.

Harvey Francis: Yes; I was the exec VP for HR.

Q2081 Sir James Paice: At that point, you were senior to Mr Quant, who operated under you.

Harvey Francis: Yes.

5 March 2013 Harvey Francis

Q2082 Lindsay Roy: Mr Francis, why do you think a fax and not an e-mail facility was used? Was it because it could not be tracked so readily?

Harvey Francis: I can't say with certainty. I don't think it is a question that we asked in the investigation, which was focused more on the information rather than necessarily on the method of transmission.

Q2083 Chair: Are you aware that Ian Kerr told us that they were sent in that form so that they could be destroyed at the end of the day and left no trace?

Harvey Francis: I watched part of the video evidence that Mr Kerr gave. I don't remember that particular point.

Q2084 Pamela Nash: Are there guidelines from your company to human resources at the moment on what they should and should not take into consideration when they employ new staff?

Harvey Francis: Yes, there are. The other point of distinction I would draw here is that many of the people who, we understand from the investigation, were checked were not actually people Skanska was going to employ. They were subcontract workers we were looking to have placed on our sites. The employment processes are a little different from the access procedures for subcontract workers.

Q2085 Pamela Nash: Can you be clear on why there was that differentiation? Why was the service not used for your own workers? Why was it used only for subcontractors?

Harvey Francis: As we understand it, primarily because the supply chains in some of the areas where we were working on some of the projects were unknown. Again, because we have not seen the database, we do not have the picture of who was and was not checked, but we understand that the majority of people who were checked were subcontract workers looking to gain access, rather than people looking to gain employment. The way our business model works is that we do more project and programme management, so we don't have that many trades directly employed. Most of them come through our subcontract operators.

Q2086 Chair: Can I clarify this procedure for checking the names of subcontractors? Your unit would send off to the Consulting Association, as well as the names of people you were thinking of employing, the names of a string of people who were employed by a subcontractor. I am sorry, but *Hansard* does not record nodding.

Harvey Francis: I am sorry—yes.

Q2087 Chair: If the Consulting Association had a reference to one of the subcontractor's staff, what happened then?

Harvey Francis: Then a review would be undertaken by the senior HR person reviewing the case. A decision would then be made around the nature of the entry—as we understand it, the amount of time that had passed. Then a decision would be made on whether or not to allow access.

Q2088 Chair: Presumably, there were cases where you refused to allow subcontractors' staff on to your sites, which could very well result not in you yourselves sacking them but in the subcontractor doing so.

Harvey Francis: Hypothetically, yes, I guess. Having said that, because of the disparate nature of the way the organisation worked and the fact that not every part of Skanska used the service, it is quite conceivable that someone might not be granted access to one our sites but might move half a mile and get access.

Q2089 Chair: To another of your sites.

Harvey Francis: To another of our sites that was not using the service.

Chair: This is the sort of argument that we have heard from people before—that it was always possible for somebody to go and get a job elsewhere, and therefore they were not being stopped from getting employment altogether, as they could go and work in another location.

Q2090 Lindsay Roy: How was that information communicated to the owner of the subcontracting company? Were they told that they had to remove that person from the site, or that, if they did not, the subcontract would be terminated?

Harvey Francis: No. We understand that typically—bearing in mind that these checks were made before someone was granted access to the site—a phone call would be made to the person providing the labour through the subcontractor to advise them that that person was not being granted access to the site.

Q2091 Chair: Was any explanation given?

Harvey Francis: I am not sure.

Q2092 Chair: Did you ask anybody?

Harvey Francis: Whether an explanation was given?

Chair: Yes. You are pretty high powered in Skanska. You have run an investigation. I am seeking to clarify whether that is one of the points that was raised.

Harvey Francis: I cannot recall. What I can do is re-read the report and make a representation back to the Committee.

Q2093 Chair: Rather than you reading the report and commenting on it to us, why don't you just let us have a copy of the report? That would be helpful and would give us an indication of the entire range of investigations you undertook. Is that acceptable?

Harvey Francis: I am being advised that that document is legally privileged. Maybe we need to pick that up.

Chair: Can I clarify the point with the Clerk? Shall we take that in closed session at the end?

Harvey Francis: Yes, let's do that.

Q2094 Lindsay Roy: Can I suggest to you gently that the report would appear not to be particularly robust, because you are very vague about e-mailing, news cuttings and explanations of why people were not engaged?

5 March 2013 Harvey Francis

Harvey Francis: I think the primary focus of the investigation was to understand what was happening, the extent to which we had used the service and, therefore, what we needed to do, going forward, to change the culture. That is the approach that we decided to take in terms of how we dealt with this. We did look at all those areas, but I guess that in any investigation there are always themes that emerge that appear to be more important than others.

Q2095 Pamela Nash: I want to return to company guidelines on employment of staff. Just to be clear, there are not guidelines when you are looking at staff who are coming from subcontractors.

Harvey Francis: Yes, there are guidelines.

Q2096 Pamela Nash: Are they different from the guidelines for direct employment?

Harvey Francis: Yes, they are.

Q2097 Pamela Nash: Have they changed? When were they last updated?

Harvey Francis: In the last—

Pamela Nash: I am interested in whether they are different from 2009.

Harvey Francis: In the last couple of years. Yes, absolutely; we have done an awful lot of work since then around training, processes, procedures and culture—all those things—as a result of this.

Q2098 Pamela Nash: Is there anything in those that says that it is not acceptable for someone to be denied employment because of trade union membership or the fact that they may have reported fears about health and safety in the workplace?

Harvey Francis: We have a code of conduct on which we have trained very heavily. The issues of both health and safety and trade union membership are contained in that. In fact, we have very good relationships with the unions. One of the first things I did when this was brought to my attention was call UCATT to talk to it, because obviously we were very concerned. We struck up a relationship and a discussion with Alan Ritchie, who was the general secretary of UCATT, and had full and frank discussions. Mats Williamson and I actually met Alan, and Jim Kennedy, to try to talk face to face.

Q2099 Chair: That is right. In my understanding, the first time that you met Mr Ritchie and Jim Kennedy, both of whom have obviously been in contact with the Committee, you indicated that there was no evidence that Skanska had been involved with the Consulting Association. Only at a subsequent meeting, when evidence was provided to you by the union that Stephen Quant, in particular, was involved, were you prepared to concede the point.

Harvey Francis: No, that is not correct. When we met UCATT we talked about the investigation, which was ongoing. We shared openly and candidly what we had found. At that point, the investigation indicated that, although we had received information, we had not actually contributed information. I think that, when Jim Kennedy came before the Committee, he said that when we subsequently found out we did not inform

the Information Commissioner's Office. That is not true, because we then received one piece of information that indicated that we had supplied information to the Consulting Association, and we wrote to the Information Commissioner's Office to let it know that that was a piece of information that we had.

Chair: From the records that I have seen, you seem to have been the biggest single contributor of names to the Consulting Association lists. Maybe we can come back to the detail of that in a moment.

Q2100 Pamela Nash: Just to finish that line of questioning, have the guidelines on these issues in the code of conduct been changed as a result of the Consulting Association being raided in 2009, or were your own code of conduct and regulations being broken if your staff were using the Consulting Association blacklist?

Harvey Francis: The code of conduct calls for the highest ethical behaviour. It also talks about the commitment to health and safety, the commitment to employee relations and the commitment to the employees' right to join or form trade unions; so that is all in there. As I said, I haven't seen the database, so I can't comment on what information Skanska did or did not contribute. The guidelines that we have set out are that any references taken are in writing. We have done an awful lot of training with all the HR teams around how references are to be done. One of our policies says that no line manager is to take or give references; all of it needs to be done through the HR department. In that way, we believe that we can exercise more control.

Q2101 Pamela Nash: Finally, did you uncover any evidence that references had been sought from the Consulting Association when people were being made redundant, rather than just for employment at the start of a contract?

Harvey Francis: When people were made redundant? I am sorry, but I am not sure that I fully understand the question.

Q2102 Pamela Nash: You said yourself that there was a peak of employment by your company in 2008, so obviously people have been made redundant since then. Has there ever been a case where references have been sought, or people have been moved up the list of those being made redundant for trade union membership, or because they are health and safety reporters?

Harvey Francis: I see what you mean. No, there was nothing in the investigation; it was all about before somebody joined or required access to the site.

Q2103 Chair: Can I come back to this question of the money for a moment? These seem to be fairly substantial sums. According to the figures I have seen, you were checking roughly 40 people, on average, every day, spread over the whole year; if you were only working a five-day week it would be more. I am not clear about how many of your units were undertaking this exercise and how exactly it was paid for. What was the mechanism by which a unit that had

5 March 2013 Harvey Francis

had, say, 50 names checked ensured that those involved got paid? Were they paid from the local unit, or did it have to be done centrally?

Harvey Francis: As far as I understand, the invoice came in centrally and money was then charged to individual cost codes.

Q2104 Chair: Right; so it all depended on the Consulting Association sending in the invoice. It covered it, rather than the local unit notifying headquarters that this was a bill that was to be paid.

Harvey Francis: Yes, as I understand it.

Q2105 Chair: How were these invoices authorised by Skanska centrally? Was it simply by Stephen Quant, or whoever was in his position?

Harvey Francis: Yes.

Q2106 Chair: And nobody else knew.

Harvey Francis: The invoices were signed off and paid through the internal accounting system.

Q2107 Chair: But nobody else knew what they were for, presumably, apart from this one individual.

Harvey Francis: No, it appears not, because they were just signed off as another invoice, which would have been passed to the finance department, which would just have paid it, once it had an authorised signature on it.

Q2108 Chair: Are you saying to us that nobody else in the company knew about the payment? You were a senior personnel figure in the company from October 2007, and the raid did not take place until March 2009. While you were there, thousands of people were being checked. You are telling us that you were not aware of any of this.

Harvey Francis: That is right.

Q2109 Chair: And you were a senior member of the HR management team. I am sorry, but nodding does not get picked up.

Harvey Francis: Yes. That is right—I was not aware.

Q2110 Chair: You can understand why we are slightly sceptical, can you not? These were substantial sums of money. It was clearly a policy to undertake such widespread checking, yet you, who were one of the top three HR professionals in the company and later became the top HR professional—even, in fact, when you were the top HR professional in the company—knew nothing about this.

Harvey Francis: No. All I can tell you is the way it is, which is that I was not aware. In fairness, prior to my promotion and joining the exec team, the bulk of my time was spent on the HR organisation redesign. Obviously, I was looking after the infrastructure businesses as well, but, as I said, it was very decentralised. That is the whole context for this: the organisation was very decentralised. I know that may sound slightly absurd now. That is the reason for some of the steps that we have taken to try to bring the company together more.

Q2111 Chair: I was getting the impression that it was extremely centralised, in the sense that one individual in the centre seems to have been running all this. How many of your units—I think you said that there were 12—were using the Consulting Association and paying money?

Harvey Francis: Seven or eight.

Q2112 Chair: So two thirds of the units were utilising the Consulting Association and you, who were the head of HR, knew nothing about it.

Harvey Francis: That is correct.

Q2113 Chair: Right. Were the people in the units who authorised the checks doing this on their own, or had they been advised to do so?

Harvey Francis: They were advised to do so.

Q2114 Chair: By whom? By the bad boy?

Harvey Francis: I am not sure who you are referring to as the bad boy.

Q2115 Chair: Stephen Quant. He seems to be the bad boy at the centre of this. He seems to be the one who ran all this, with nobody else knowing anything about it. Is that a fair assumption for me to make?

Harvey Francis: As we understand it, Stephen Quant was certainly the person who was the primary contact and organised how it all worked.

Q2116 Mr Reid: What happened when Mr Quant went on holiday or was off sick? If invoices came in or checks had to be made, how was that dealt with in his absence?

Harvey Francis: He had a consultant working with him—somebody who was not an employee of the company but worked on a consultancy basis.

Q2117 Mr Reid: That individual would carry out Mr Quant's duties when he was not available.

Harvey Francis: Yes.

Q2118 Chair: Who was that?

Harvey Francis: John Dickinson.

Q2119 Chair: Coming back to authorising the spending within the individual units, what was the process by which somebody who was working on, say, a PFI unit that was starting up from scratch knew that that was something that they were meant to do—to have names sent off to this place in the west midlands and then get told what to do with the results that came back? Presumably you discovered what the process was. Somebody must have told them that.

Harvey Francis: Yes; there would have been a discussion at the project start-up.

Q2120 Chair: Between whom and whom?

Harvey Francis: Between the HR manager and Mr Quant.

Q2121 Chair: So the HR manager on every project would be told by Mr Quant that this was the procedure.

Harvey Francis: Yes.

5 March 2013 Harvey Francis

Q2122 Chair: You indicated to us earlier that you had large numbers of projects, so presumably you must have had large numbers of HR managers who came and went and knew that this was the procedure.

Harvey Francis: We did not have HR managers on each of the projects. We had HR managers in each of the operating units from which the projects were run.

Q2123 Chair: So how many people altogether would know that this procedure was operating?

Harvey Francis: There was one nominated HR contact in each of the operating units.

Q2124 Chair: So only 12 people knew.

Harvey Francis: Yes, 12 plus Mr Quant.

Q2125 Chair: Thirteen. Clarify for me exactly what the process was for submitting names to the Consulting Association. Presumably the HR managers did not deal themselves with every application for employment for every single site. Were all the names passed to them from the local areas? Clarify that for us.

Harvey Francis: That is right. They were sent in from the project to a co-ordination point. An administrator would then, under instruction, just fax the list. That is how it worked.

Q2126 Chair: How were the people at the grass roots then told who they could and could not employ?

Harvey Francis: As I said, if a notification came back that there was a potential issue, once the decision was taken, Mr Quant would be the one who dealt with that.

Q2127 Chair: Dealt with that? I am sorry, but I am not quite clear what the process was.

Harvey Francis: He made the decision and advised the site that that person would not be able to start.

Q2128 Chair: So every site could have had somebody who had been told by Mr Quant that a particular individual or individuals were not to be employed.

Harvey Francis: Yes.

Q2129 Chair: So they would all know that there was a process of blacklisting going on.

Harvey Francis: They knew that there was a process of checks being done, yes.

Q2130 Chair: And that some people were then being refused employment.

Harvey Francis: Yes.

Q2131 Chair: So all these people knew, but you did not. As far as you are aware, nobody else in the hierarchy of the company knew, either.

Harvey Francis: The board knew that we had a reference-checking process in place, to varying degrees of knowledge. It was not discussed at board level, nor was there a board instruction that it should be used, but various members of the board were aware that we did take references.

Q2132 Chair: Yes, but this is a bit more than taking references, isn't it? Taking references implies checking somebody's professional credibility, work record and so on. This was blacklisting people for trade union activities and the like, was it not?

Harvey Francis: As I said, we have not seen the database. I don't know what was contained on it. All I can tell you is that, from discussions with the board, they knew to varying degrees of knowledge that reference checking was carried out, but not the detail.

Q2133 Mr Reid: Thank you for coming along, Mr Francis. You said earlier that, of the 12 units, seven or eight were operating the system of checks with the Consulting Association. Do you know why four or five chose not to and the other seven or eight chose to do so?

Harvey Francis: It was done primarily on assessment of risk, in terms of profile of the job and the risk of potential issues arising.

Q2134 Mr Reid: What were the units that decided, on the basis of risk, that they would go through this reference-checking process? Do you have a list of which ones were actually involved?

Harvey Francis: Yes, we do.

Q2135 Mr Reid: Can you tell us? Do you have it with you?

Harvey Francis: It was used in our central and regions, which is one of our construction units; in our mechanical, electrical and facilities businesses, which stopped checks in 2003 for employees but not for subcontractors; in our steel decking business, which we have now sold; in our piling and foundations business, which stopped in 2006; and in our ceilings business, which stopped in 1993. In civil engineering, it was not possible to get the date when it was stopped, but it had not been used in recent years. In our commercial building, our utilities, small civils and corporate, it was not used.

Q2136 Mr Reid: Why were they assessed as being at risk and other areas as not being at risk?

Harvey Francis: It was because of the type of work being done and, I guess, local knowledge. In some cases, the HR manager in the unit said, despite being advised to use it, that they did not want to use it.

Q2137 Mr Reid: What criteria would they use to assess that a particular unit was at risk?

Harvey Francis: High risk, high profile.

Q2138 Mr Reid: High profile.

Harvey Francis: Yes. As I said, typically it was education projects, defence projects and schools projects.

Q2139 Mr Reid: Why were high-profile projects seen to be more at risk?

Harvey Francis: I guess because of the potential for disruption.

5 March 2013 Harvey Francis

Q2140 Mr Reid: Were the checks made in order to identify people the HR manager thought were likely to be disruptive?

Harvey Francis: Yes—people with a history of health and safety breaches or drugs and alcohol abuse, and people seeking to step outside the agreed industrial relations frameworks that we put in on each project to provide assurances for people working on the project that things are run properly and that correct procedures are in place for bargaining, discussions, employee welfare and things like that.

Q2141 Mr Reid: In what sort of format was the information when it came back from the Consulting Association? Was there a template, or was it just a free hand? What tended to come back?

Harvey Francis: As I said, I have not seen the database. I have seen one extract; that is all. It was just typed.

Q2142 Mr Reid: Can you give an example of public sector projects that were deemed to be at high risk?

Harvey Francis: Yes: projects such as the Ministry of Defence building in Whitehall, RAF Wyton, some of the hospitals in the midlands—Coventry, Derby, Mansfield and Walsall—Barts and the London, Bristol schools, Dovegate prison, and a couple of the fire control centres.

Q2143 Mr Reid: You mentioned people with drugs and alcohol problems and people who may have been guilty of health and safety breaches. Why do you think people with a history of, say, health and safety breaches are more likely to cause problems on a high-profile job than on a low-profile job?

Harvey Francis: I guess because of the disruption. We take health and safety very seriously and put a lot of steps in place to make sure that we provide best in class and best in industry from a safety standard—

Q2144 Mr Reid: But you seem to be—sorry, carry on.

Harvey Francis: I was going to say that, if there is a health and safety breach and an issue, obviously that results in lost time. We also do not want to put people who work on our sites at unnecessary risk.

Q2145 Mr Reid: What is puzzling me is why, if the project is high profile, you seem to think that the health and safety risk is different from that on a project that is low profile. I do not quite follow that.

Harvey Francis: I understand—apologies. I guess it is more about the financial penalties on some of the high-profile projects, through lost time.

Q2146 Mr Reid: When you said high profile, I interpreted that as something that was likely to be in the public eye. Is that correct?

Harvey Francis: Yes.

Q2147 Mr Reid: I am sorry, but I am still not clear about why a project that is in the public eye is more likely to have health and safety issues than a project that is not in the public eye.

Harvey Francis: What you allude to, quite correctly, is that the criteria were not black and white. All that I can share with you is the picture that we built through the investigation, through talking to the people who were involved. That was the consistent story coming through.

Q2148 Chair: Before we move off one of the points that you made there, you seemed to say that in some circumstances the person on the site could decide not to use the services of the Consulting Association, even though they were briefed to do so by Stephen Quant or somebody else—if they felt that they had local knowledge, that it was not necessary, and so on. Is that correct? Have I understood that point correctly?

Harvey Francis: The point of decision seemed to be the local HR manager.

Q2149 Chair: So this was not a complete company policy. The local HR manager could decide to use or not to use the service, as the case might be.

Harvey Francis: It might be helpful to understand that this was never written down as a policy. This was all done through verbal briefings, discussions and activities of that kind.

Q2150 Chair: What causes me some confusion about this is that, shortly after all this broke, you were reported in *People Management* magazine in November 2009 as saying that your involvement with the Consulting Association was “to ensure the safety of people working on our sites” and not to blacklist people. I would have thought that, if that was why you were using it, you would have wanted to make it policy that it had to be used everywhere, and that health and safety was not simply a question that people could take or leave, as they saw fit.

Harvey Francis: I think we have already established that, because it was not a company policy, the decisions were taken on a more local basis. The company had and continues to have many things in place to assure the health and safety of people on site, but they do not include the kind of activities that the Consulting Association pursued.

Q2151 Chair: In that case, it is difficult to see what the role of the Consulting Association was in those circumstances, isn't it?

Harvey Francis: As I said, when we talked to people through the investigation, they said that it was about keeping people who had a history of breaches of that kind away from the site, so that we could continue to provide a safe, healthy, productive working environment for people who wanted to come and do a good day's work for a good day's pay.

Q2152 Chair: You believed that, did you?

Harvey Francis: I had no reason not to believe it.

Q2153 Chair: I have seen substantial numbers of the index cards and have quotes from them, some of which I will give you later. There were very few that said anything about drug or alcohol use. I can recall only one that said anything about alcohol and two that said anything about drugs—and that is out of over

5 March 2013 Harvey Francis

3,000. To be fair, there were also a couple about metal theft, which I can see is a reprehensible practice but could be covered in other ways; there is no need for secrecy there. The vast majority of them were about things to do with trade union activities. Health and safety was often mentioned, but it was in the context of people raising complaints about health and safety. Companies were being warned that individuals were liable to raise health and safety concerns in a way that might be disruptive to the smooth running of the job. Your point about financial penalties through lost time is really at the centre of this, isn't it? This was about weeding out people who might cause the company to incur financial penalties through lost time because of industrial disputes about health and safety or anything else, rather than any spurious attempt to make sure that nobody who used alcohol or drugs inappropriately got on to the site.

Harvey Francis: No, I do not think that is correct. Obviously there are financial penalties—I have mentioned that already—but health and safety is of absolute importance. I know it is going to sound like a cliché when I say it, but we do work safely or not at all. I have not seen the database, so I can't make any comment on what we have or have not supplied, but I would be very surprised if any of our people had made entries about people raising safety concerns. We have in place, and have had in place for a while, things like a “near miss” card. If somebody sees something that could have been an accident but was not an accident, they can fill in one of these cards—

Q2154 Chair: Fine, but you should do that anyway. For example, I think one of the entries is that your company blacklisted every electrician on the Jubilee line because there had been an industrial dispute there, and the names of all of them were submitted to the Consulting Association. As I understand it, you had electricians working on the Jubilee line, because they were signed off by an “SQ” and your code number was beside them. Those names—there were about 500 of them in total, which seem to be in addition to the 3,200—seem to have nothing at all to do with health and safety. The description beside their names was entirely to do with having participated in an industrial dispute.

Harvey Francis: That is news to me, Mr Chairman. I find it difficult to comment without—it's a new piece of information, which I can't comment on.

Q2155 Chair: You seem to be amazingly high up in the organisation to be constantly getting new pieces of information. You did not notice anything when all this was going on, and you are only hearing things now. I am genuinely surprised to hear that you have only seen, I think, one card—because these have been circulating quite widely in quite a lot of the press. I do not know who you are paying for your briefings, but I suspect that you are not getting the sort of briefings you deserve in these circumstances.

Harvey Francis: Actually, I do not want to see the cards.

Q2156 Chair: No, but surely you should have had a briefing about what exactly had been going on on your watch.

Harvey Francis: We have in our possession a small number of these cards—one that was provided to us as an example and a further two that were provided to us through employment tribunal claims. We have taken the decision to lock down access to those cards. We would have destroyed them, had it not been for the fact that obviously we need to retain these documents.

Q2157 Pamela Nash: We have been here for 50 minutes now, and your response to many of the questions that have been put to you is that you can't comment because you haven't seen the cards. I am pretty horrified that you just said that you don't want to see them. I can understand why you want to limit their circulation, because one of the reasons we are having this inquiry is that the information on those cards is damaging, but I can't see any reason why you should not look at those cards. If you are responsible for human resources for your company, and the information that is on thousands of those cards, why do you not want to see them?

Harvey Francis: On the Chairman's point, I have been briefed on the nature of the generic content of those cards, but the work that we have done has been focused very much on making sure that this could not happen again. We deeply regret what happened in the past; there is no excuse for what happened. What we have tried to do is put absolutely all our efforts into making sure that this could never happen again. That has been the focus.

Q2158 Pamela Nash: I congratulate you on that effort—but that does not mean that the many people who were denied a job, or the health and safety implications for your sites, should be ignored.

Harvey Francis: But we have not seen the database extracts.

Q2159 Pamela Nash: Exactly, so why don't you look at them? Why don't you request to see them?

Harvey Francis: My understanding was that we could not request to see them.

Q2160 Pamela Nash: But just a few moments ago you said you did not want to.

Harvey Francis: I do not particularly want to see them personally, but I am pretty sure that we asked the Information Commissioner whether—

Chair: That is right. The Information Commissioner will not hand over the entire set of cards. However, quite a lot of them have come out as a result of industrial tribunals or something else, and could be considered to be in the public domain. A reasonable bit of digging would quite easily have given you access to a substantial number of them. You would have been able to see the pattern, and then you would accept that the suggestion that this is all about health and safety breaches and so on, or about alcohol and drugs, is simply an untenable defence. Perhaps that is why you have not made yourself aware of them.

5 March 2013 Harvey Francis

Q2161 Lindsay Roy: As HR director, can you tell us about Skanska's track record on health and safety, and whether there is a differential between big projects and small projects? Have you done any kind of analysis?

Harvey Francis: I do not have that here, but we do have that kind of analysis. Certainly, our health and safety stats compared with the industry are more favourable. I go out on site quite often, as do most of my colleagues. One of the things we always do is talk to the workers and ask them what the standards are like on Skanska sites compared with other sites they work on. Categorically and almost without exception, they always say that standards on a Skanska site are higher than those anywhere else. When we talked to UCATT when this broke, UCATT said, "We have no issue with Skanska. You run good sites, with very high standards on your sites." That is why I was trying to explain earlier some of the things that we had in place, such as the near miss cards. We pay £1 to Mencap for everybody who fills in one of those cards. We do global safety stand-downs if there has been a fatality anywhere in the world on our sites. To me, those do not sound like the actions of a company that would blacklist people for raising concerns that we ourselves raise. Actually, I was on a site 18 months ago where I did not think the standards were right, and I stopped the job. All I can tell you is the experiences I have, the experiences I see and what came from the investigation. That is why if, as you tell me, we have put somebody on to the database for raising legitimate health and safety concerns, I would be very surprised and disgusted.

Q2162 Lindsay Roy: Given your statement earlier, it would be helpful if you could differentiate health and safety on the bigger projects from health and safety on the smaller projects. If you have that evidence, could you submit it to the Committee?

Harvey Francis: I am sure we can do that.

Q2163 Mr Reid: When Skanska was contributing to the Consulting Association, did any members of Skanska or any of its subsidiaries attend meetings of the Consulting Association?

Harvey Francis: Yes; there are some records that indicate that people did attend some of the meetings.

Q2164 Mr Reid: You say "some of the meetings". Was it on a regular basis, or just a one-off?

Harvey Francis: It was regular. I think some of the committees met a couple of times a year. Usually Skanska would have somebody at one of those meetings.

Q2165 Mr Reid: Are there any records of what the Skanska reps raised at these meetings, or reports back on what was discussed there?

Harvey Francis: I think we have at least one set of minutes, but they were quite short.

Q2166 Mr Reid: Can you summarise for us what was in the short report?

Chair: You could just let us have a copy, if that is acceptable to you.

Harvey Francis: Yes, of course. That might be easier.

Q2167 Mr Reid: What benefits were perceived within Skanska from being a member of the Consulting Association, other than using it for referencing?

Harvey Francis: I think that the perceived benefit of using the Consulting Association was for the referencing service. Again, that is why we focused our investigation more on our use of the referencing element of it, rather than the press clippings and the other forums.

Q2168 Mr Reid: You referred to it as a referencing service. Would you say calling it a blacklisting organisation was a fair comment?

Harvey Francis: I can see why people would call it a blacklisting organisation. You end up in all kinds of points of technicality.

Q2169 Mr Reid: There is now a legal definition.

Harvey Francis: Absolutely; there is now.

Mr Reid: There was no law against blacklisting at that time. Is it your view as an HR professional that, if the Consulting Association were operating today, it would be in breach of the current blacklisting regulations?

Harvey Francis: Yes, absolutely. I can give the Committee my assurance that, had I found out about it before the Information Commissioner, I would have stopped it. When it was brought to our and my attention, I intuitively knew that it was the wrong thing to do—but also the wrong thing to do morally, almost irrespective of what the law says. If information is being held that people do not know about and decisions are being taken, it is absolutely wrong and indefensible.

Q2170 Chair: Lots of people in your company were doing that, though. Do they not have the same moral standards as you?

Harvey Francis: The practice had been going on for a long time; it dates back to 1993. During that period of time, we have also seen changes in data protection law. Certainly, everybody we have spoken to says, "Actually, with the benefit of hindsight, maybe we should have asked more questions," but everybody also says, "We didn't believe that we were acting unlawfully." I guess the point is that nobody stopped to question what they were doing, which is often the case when something becomes what you do. Maybe you do not ask enough questions about why you are doing it and whether you should be doing it.

Chair: Alan, have you finished with the point about meetings?

Mr Reid: Yes.

Q2171 Chair: Can I come back to the question of meetings? You have minutes of one meeting. I have seen minutes of a meeting where a Skanska representative or representatives were present, at which the police's anti-subversion unit, NETCU, was holding a discussion and there was a dialogue about exchanging information and so on, and about warnings being given about this, that and the other.

5 March 2013 Harvey Francis

That does not seem to fit well with the points you were making to us earlier about this being an anti-alcohol and anti-drug crusade. Surely somebody from your company who was there at that meeting must have realised that this perhaps went slightly wider than the parameters that you have indicated. Did they not report back?

Harvey Francis: Again, I do not have any knowledge of that, so it is not really possible for me to comment on what thoughts and decision processes the people there were using.

Q2172 Chair: I just find it difficult to believe that people were going along to these meetings and not realising that this was a blacklisting organisation. I find it inconceivable that the discussions did not touch on that at some point and, therefore, that there was not wide knowledge of this within sections of your company. I just do not buy—I do not think any of us do—the single bad apple, rogue elephant, bad boy or what have you. There seems to have been a culture within the company at that time that allowed this to continue. I find it very difficult to understand why somebody in such an important position as you did not know anything at all about it.

Harvey Francis: We are certainly not claiming the rotten apple defence here at all. We are standing up to this as a company. We are sorry for what we did and our involvement in it, for sure, and have taken great steps. I think you are right—the culture was not right. The work that we have done over the last four or five years has been focused on making sure that we have the right culture. We have published a number of ethical dilemmas and get each of our management teams to discuss and debate an ethical dilemma three or four times a year at management meetings. We are doing everything that we can to try to raise our ethical standards to be as robust and strong as they can be. In relation to your point about my not knowing, I empower my team, I trust my team, and I have people who run the specialisms. In fairness, it is not a question I ever thought I would need to ask. You have used the term blacklisting; when I came into a company, I would never have expected any kind of covert referencing service, blacklisting, or whatever you want to call it, to be in operation. It is not the sort of question that I would ever really have thought to ask.

Q2173 Chair: You must have had a very sheltered background, not to realise, first, that these things went on, and secondly, that they went on in the construction industry. It has been common knowledge in the construction industry for years and years; it's just that people were never able to prove it before.

Harvey Francis: As I said, I had been in the industry for 10 months when I was appointed to this job. I can honestly say that I was not aware of this. I guess it is the Committee's prerogative whether to believe me.

Chair: You are on oath. We understand that.

Q2174 Mr Reid: In your inquiries, did you find out whether Skanska or any of the subsidiaries were using any other reference organisations similar to the Consulting Association?

Harvey Francis: We asked the question and were told no, the Consulting Association was the only thing of its kind being used.

Q2175 Chair: What about Caprim?

Harvey Francis: I had never heard of Caprim until you started your investigations. We have done some internal checks to check that we did not use Caprim, and we have not used it.

Q2176 Chair: But, based on what we have seen so far, your companies could be using all sorts of things and you would not know about it.

Harvey Francis: No. For Caprim we ran a check through all the companies that we have paid, through our finance systems, as well as the interviews that we did, just as a double check to make sure. Those checks came back negative.

Q2177 Graeme Morrice: When the Consulting Association was raided by the Information Commissioner back in 2009 and your company's involvement came to light, I believe your company gave a commitment to carry out an internal investigation.

Harvey Francis: That is correct.

Q2178 Graeme Morrice: Can I confirm that one was carried out and ask what the outcome of that internal investigation was?

Harvey Francis: It was. We conducted the investigation and discussed it as an exec management team. It was impossible, I think, to get the absolute facts, because we were relying on people's memories and building a picture from discussion, bearing in mind that there was not much that existed in terms of records, so we decided that we would not take the scapegoating and retrospective penalisation route. What we would do, as I have already said, was make sure that we put in place all the steps that we would need to satisfy ourselves, first, that it could never happen again, and secondly, that we were operating to the highest standards. That was very much the focus. We trained all our HR people in data protection. I wrote to all the managing directors about this personally to say that under no circumstances must anything like this ever be used in future.

Q2179 Graeme Morrice: So it was a case of *mea culpa*.

Harvey Francis: We were honest about our usage, yes.

Q2180 Graeme Morrice: So you accepted that there were wrongs that were undertaken. Earlier you said that it was "morally" wrong. Would you accept that?

Harvey Francis: Absolutely.

Q2181 Graeme Morrice: Back in 2009, when you met the trade union representatives from UCATT whom you mentioned, you said that your company had used the services of the Consulting Association only "to ensure safe sites". What did you mean by that? I think the Chairman alluded to this earlier. I

5 March 2013 Harvey Francis

would be grateful if you could expand on what you meant by that.

Harvey Francis: Again, based on the people we talked to in the investigation, it was about people with breaches of health and safety, drug and alcohol issues, troublemaking and people trying to act outside the established protocols that we have in place relating to how we run the sites and deal from a trade union and industrial relations perspective.

Q2182 Graeme Morrice: We discussed that earlier. Earlier there was reference to Stephen Quant being, it was suggested, a bad boy in this regard. When did he leave your company? What were the circumstances surrounding his departure?

Harvey Francis: Stephen retired towards the end of 2009.

Q2183 Graeme Morrice: Was that an early retirement?

Harvey Francis: Yes, it was.

Q2184 Chair: As I understand it, he finished with you on a Friday and started with somebody else on the Monday. Can you clarify whether or not the company had any involvement in that change of employment?

Harvey Francis: As I said, Stephen retired. We do not talk about the employment relationships between us and any of our employees outside the organisation, because we also have a duty of confidentiality to them.

Chair: Fine. Maybe we will have that at the end of the session as well.

Q2185 Graeme Morrice: Why did you think Skanska was not issued with an enforcement notice by the ICO after the raids on the Consulting Association?

Harvey Francis: I guess that the Information Commissioner is the only person who can fully explain that. I would hope that it was because of the full co-operation, transparency and candidness with which we shared information. As the investigation proceeded, we were in regular contact with the Information Commission and were as transparent and open as we could be on everything that we found.

Q2186 Graeme Morrice: Did you plead mitigation?

Harvey Francis: No, absolutely not. All we did was talk about the investigation and what we had found. I am guessing that the Information Commissioner made his own judgment about what he wanted to do and the approach he wanted to take.

Q2187 Chair: Can I clarify things? When the Information Commissioner sent out his letters, you responded to those.

Harvey Francis: Yes, absolutely.

Q2188 Chair: Some people did not. I just wanted to be clear that you did.

Harvey Francis: We responded very quickly to say that we had acknowledged it, and what we were doing. We kept the Information Commissioner apprised throughout the investigation. As I said, when

we had a second piece of information, which was that it appeared that we had contributed, we wrote to the Information Commissioner and told him that had happened.

Q2189 Graeme Morrice: Earlier you said that you met union representatives back in April 2009 and told them that you had not supplied any information on employees to the Consulting Association. Later you said that that was not the case—that you discovered that you had. You mentioned earlier that, as a consequence of that, you informed the ICO. What was the change of circumstances? How did you discover that you had indeed supplied that information?

Harvey Francis: It was related to the final Consulting Association invoice that had come in. We took a decision that we would not pay it. I received a call from my counterpart at McAlpine asking me to pay the final invoice. I informed him that we would not be paying it and he sent me a copy of the constitution, on the grounds that that was the reason we should pay the outstanding invoice. It was literally a three or four-minute call. I think I said to him that my understanding was that we had not supplied any information, and he said, “I don’t think that’s correct.” Completely unsolicited, he sent me one extract just to demonstrate that we probably had.

Q2190 Lindsay Roy: You have spoken a lot about the internal investigation. Was it really robust? Earlier you said that it had brought about a change in culture. How do you know? It is easy to say that there is a change in culture. What indicators are there to illustrate that change in culture?

Harvey Francis: We have changed the structure. We have quite a number of people in new posts, including the exec team, only two of whom were part of the old board. The way we run the company, the kind of meetings we have, the ethos and all of those things are very different.

Q2191 Lindsay Roy: Can you tell us what is different?

Harvey Francis: Primarily around structure, we have moved away from a board to an executive team and a senior team, so there is much closer working. The senior team is much less fragmented, meets much more quickly and is much closer. We have different ways of forecasting and reporting. We have done lots of work around things like diversity and inclusion. We have done data protection training for HR, have issued guidelines to managers and have made more information more available to more people. I would say that we generally have more discussions. Earlier I used the example of the ethical dilemmas. We rolled out code of conduct training to every employee, and these ethical dilemmas formed part of that. What we are trying to do is to encourage people in the organisation to talk about things that historically they may have found uncomfortable, because the senior team believes that, through getting people comfortable with talking about things that historically might be uncomfortable, you build understanding and people are much more likely to speak up when there is an issue. We have also implemented the new

5 March 2013 Harvey Francis

whistleblower hotline, which is run by an external company. Anybody who has a discomfort with something that is going on rings this, is given a reference and can call back at any time to see what progress has been made on it. We also take out any identifying features of the things that are reported through the whistleblower hotline and publish them back on to our company intranet for anybody to see. If anybody is concerned that if they speak up either something bad will happen or nothing will happen, we are trying to give people the reassurance by publishing these things that, if they report something, we will look into it and take the necessary action.

Q2192 Graeme Morrice: Are your employees using the whistleblower service?

Harvey Francis: Yes.

Q2193 Graeme Morrice: Are employees of subcontractors also using it?

Harvey Francis: Yes, absolutely. It is available to anybody working on our sites. We also implemented an ethics committee; I sit as part of that. Its purpose is twofold—to guide the organisation on how we maintain the focus on the code of conduct and business ethics, but also to provide a channel. If line management is unable to resolve an issue to do with business hospitality, commercial ethics or whatever else, it has this kind of sideways route for raising issues with the ethics committee and we will provide guidance. Once we have provided that guidance, we will publish it back online. We have built up quite a bank of things people can look at to get a sense, ethically, of where the organisation is going.

Q2194 Graeme Morrice: Are there employee and trade union representatives involved in the ethics committee?

Harvey Francis: No. One of the things that we have talked about, although I am not sure where we are in the process, is actually appointing somebody from one of our operating units—from an operative side—to the ethics committee, because we identified it as a gap the last time we met.

Q2195 Chair: I wonder whether I can pick up one point arising from that. You emphasised that when all of this was discovered, the emphasis was on moving forward rather than retrospective penalties and so on. Does that mean that nobody at all got any sort of detriment for the activities that they undertook while they were employed by you and working to, as it were, and in co-operation with, the Consulting Association?

Harvey Francis: That is correct.

Q2196 Chair: So nobody has been sacked, dismissed or received any penalties whatsoever for these things that you have conceded were morally wrong.

Harvey Francis: That is right. What we were told all the way through the investigation was that nobody had stopped to question the lawfulness or legality of what was being done. What had and had not been breached is certainly a moot point in terms of the enforcement, or lack of enforcement, by the ICO. I think the point

was made earlier that blacklisting was a bit of a hole in terms of the legislation that, thankfully and fortunately, has now been closed. So we decided—we still think it was the right thing to do—to make the focus of this moving forward, to make sure that it could never happen again.

Q2197 Chair: What about the people who were adversely affected by what you did? There was no opportunity for them to move forward at the time when you refused to employ them.

Harvey Francis: There are routes of redress subsequently. There was the opportunity to raise an issue through an employment tribunal.

Q2198 Chair: But many of those people were caught by you on the subcontractors rule, rather than being employed directly by you. There is no response for them to you on that.

Harvey Francis: Of course, the opportunity now exists through a class action for anybody who feels that we have deprived them of opportunities to—

Q2199 Chair: That is right, but I understand that you are going to resist that. Part of the reason why we are going to have a closed session later is that you may be involved in that class action, and you are actually going to defend it. You are actually going to resist people's claims that you were part of a conspiracy to deprive them of employment. That is not entirely consistent, is it, with your position that this is a morally abhorrent practice?

Harvey Francis: If the results of our actions in terms of providing information deprived people of the opportunity to work, we would look at any claim that was made to us on an individual basis to assess its validity.

Q2200 Chair: I will let in my colleague in a moment. Earlier I mentioned one of the things that I saw when I was at the Consulting Association. Again, I am sworn to secrecy to some extent, but here is a quote: "The following list believed to have been employed in JLE"—the Jubilee line extension—"from 1995 to 1997. Source—". It then gives Skanska's code number and a reference that identifies an individual. The quote continues, "This list has everyone employed on the JLE". There is another entry that I came across, which was common to a whole host of people. It said, "worked on the Jubilee line extension, allowed himself to be drawn along with the course of events at JLE. Not in front line of action." That sounds not too bad, but when I examined the card, on 15 further occasions, right up until September 2008, it was marked "Company has not furthered". You put people's names on there at the time of the Jubilee line extension in 1997. A decade later, people were still being refused employment on the grounds that they were simply named as one of those who were employed on that site at that time. Does that provide you with the sort of evidence that would allow you to consider compensation to an individual who was involved in that way?

Harvey Francis: As I said, if somebody, whoever that refers to, can demonstrate that our actions prejudiced

5 March 2013 Harvey Francis

them from getting work and they have suffered loss as a result, we would look at it—absolutely.

Q2201 Chair: Would you not defend that by saying that they could have gone and got work somewhere else?

Harvey Francis: I guess it depends on whether they did suffer loss.

Q2202 Chair: I understand that. Proving loss after a substantial period of time will obviously be extremely difficult. I remember two of the witnesses who were in front of us, both from Dundee. One of them almost ended up in tears because he was outlining that being on a blacklist had meant that he had had to travel the country and had been away from his wife and family for a substantial period of time. His wife had now died, and they had actually spent most of their married life apart because of the blacklist. He would not necessarily be able to demonstrate financial loss, because he had ended up getting work somewhere else in the country, but clearly he had suffered enormous emotional loss. Under the sort of criteria you are spelling out, that would not be covered, would it?

Harvey Francis: As I said, we would need to look at each case on its merits. It is new information to me; I cannot comment without seeing the details.

Q2203 Chair: Can I come back to you on another point? It relates to the closure of the Consulting Association. We met Ian Kerr and took evidence from him. He indicated that he felt rather as if he had been hung out to dry at the end, because all the companies that had been using his services had simply deserted him in his hour of need, and it looked rather as if he would have to pay the £5,000 fine himself. All the closure costs had to be met by somebody; if McAlpine had not stepped in, he might have ended up being personally liable. Surely in those circumstances you had a moral responsibility, having done something wrong, at least to clean up your mess afterwards.

Harvey Francis: It is an interesting point. I think it is one of those almost impossible questions to answer.

Q2204 Chair: Why is it impossible to answer? I think it is straightforward.

Harvey Francis: We took the view that our participation and involvement in the Consulting Association was wrong. It therefore seemed wrong then to pay more money for something that—

Q2205 Chair: To close it down.

Harvey Francis: Yes.

Q2206 Chair: The same argument could apply to all those cases in which individuals have been damaged, unless you are paying money into a pot for compensation. Presumably you would not want to be involved with any of them any more. Can I turn to what you said about the question of subcontractors and the way in which you vetted them? If I remember correctly, you were the main contractor at the King's Mill hospital site in Mansfield.

Harvey Francis: That is correct.

Q2207 Chair: You will be aware of the debate and discussion that came up there about Lithuanian workers being grossly underpaid—some of them getting less than £100 a week and some being paid rates like 70p an hour by the time various deductions had been made. Given that you have said that you regarded yourselves as having responsibility for all your subcontractors to keep troublemakers off the site, why did you not have the same commitment to those sorts of workers in these circumstances?

Harvey Francis: We did. As soon as we became aware of it, we actually went up, dealt with the subcontractor and made very clear that, if it was not addressed, its contract would be terminated. We now conduct regular industrial relations audits on these contracts. We have somebody who goes into the site, looks at the audits, checks the payroll and looks at the payslips to make sure that everything is in order, because we believe that that is the right thing to do to stop these kinds of things happening again.

Q2208 Chair: Is it true that, until you as a company were caught using the Consulting Association, you denied on every possible occasion that you were involved in any such activity?

Harvey Francis: That we denied it beforehand?

Chair: Yes.

Harvey Francis: On which occasions do you think that we denied that?

Chair: I understand that you were asked, for example, in relation to the Olympics, whether you were a company that was involved in blacklisting in any shape or form. You gave assurances then, but at the same time you were actually involved in blacklisting on other sites. I am not certain whether you were involved directly in blacklisting on the Olympics site—maybe you can tell us that—but it seems that, on every occasion when you were asked something like that, you did not admit it until you were caught.

Harvey Francis: I was not aware of a question being asked beforehand. Certainly, we were asked about it directly recently by the ODA.

Q2209 Chair: That is right. You responded by saying that you did not do any of that, it was entirely contrary to your values and all the rest of it, yet at the time when the media centre, in particular, was being started, you were the biggest single user of the Consulting Association. Given the description that you gave us earlier of the sort of jobs you might use the Consulting Association for, it seems unlikely—looking at it, as we do, from the outside—that you would not have used the Consulting Association there as well.

Harvey Francis: Before we gave an answer to that request, we did another investigation focused purely on the three projects that we had in the Olympic park. We talked to the operations managers and the HR managers, and the response came back that categorical assurances were given that the Consulting Association was not used for the Olympics.

Q2210 Chair: In that case, why not? If it was your normal practice on big projects to use the Consulting Association, why was it not used for the Olympics?

5 March 2013 Harvey Francis

Harvey Francis: I think some of it was about timing. I cannot remember exactly when we started the work on the media centre—and we were not the primary contractor for the media centre—so I will have to check the timing, but we were given categorical assurances that it was not used. That is the basis on which we made the representation back to Dennis Hone.

Q2211 Chair: Can I try to clarify one or two loose ends? Am I correct in thinking that all paperwork and the like on your involvement with the Consulting Association has now been destroyed?

Harvey Francis: We have a very, very limited number of documents—a small handful; I think it is about four documents—that appear to show correspondence between the two parties.

Q2212 Chair: What about invoices, bills and things like that? Presumably these would be allocated to individual projects, wouldn't they?

Harvey Francis: That is right. We obviously have the invoices.

Q2213 Chair: So you have all those.

Harvey Francis: Yes, we do.

Q2214 Chair: So you would be able to give us a list of all the projects on which you paid money to have people vetted.

Harvey Francis: Yes.

Q2215 Chair: Do you agree to do so?

Harvey Francis: Yes.

Q2216 Chair: Fine. Thank you very much. Can I clarify one point about Stephen Quant's chairmanship of the Consulting Association? Chairman of the Consulting Association seems a fairly significant role. Did nobody else in the company know anything about this?

Harvey Francis: No, not to our knowledge.

Q2217 Chair: So you could go off and become the chairman of all sorts of clandestine organisations—or any organisation you liked—and the company would not bat an eyelid.

Harvey Francis: I guess I would go back to what I have said before. Back then, because of the slightly more fragmented nature of the company, it was much easier for those things to happen. It is certainly less likely that that would happen now.

Q2218 Chair: Basically, do you accept that, along with McAlpine, Skanska was the main driving force behind the Consulting Association? You were the biggest user, you provided the chairman for a couple of years and you fed in information on as many individual employees as, if not more than, almost anybody else. Do you accept that you bear a heavy burden of responsibility for that?

Harvey Francis: I think all I can answer is to the fact that the records indicate that we were one of the highest users. I have no facts to support the suggestion that we were a driving force. We were a user, for sure.

I guess whether we were a driving force is a question that I cannot answer, because I do not have the facts to enable me to form a view.

Q2219 Chair: But having the chairman of the organisation would tend to give an indication of a leading role, wouldn't it? You did have the chair for a couple of years.

Harvey Francis: My understanding was that, because it was an unincorporated trade association, the chair rotated. We took it for a while and McAlpine had it for a while.

Chair: Right. Are there any other questions?

Q2220 Pamela Nash: In response to Mr Roy's question about what Skanska has done since to prevent this from happening again, you went into quite a lot of detail about health and safety measures and reporting measures that have been put in place. Can you tell us a bit more about your role now, and what you have put in place to ensure that if there were blacklisting you would be made aware of it? Many times in the session today you have said that you were not aware of what was going on at the time. Are you confident now that if any employee of Skanska were using a blacklist you would know about it?

Harvey Francis: Yes, I am sure. The reason I can give you that assurance is that communication and connectivity around the organisation are better. I think the other things that we have put in place help us to give that assurance. There are a couple of other things that I forgot to mention. We have established joint consultative committees on some of the projects and some of the sites. We also have a European works council, on which a couple of our trade union representatives sit. So we have a much more open and transparent culture in the organisation. I would say that that has been one of the most significant bits of work that the exec team have done, to really drive those changes through. Certainly, if you look at the results of our employee survey, all those key indices around staff engagement, culture and whether you have a great boss—so leadership skills—are increasing year on year. We have done a lot of work to educate and professionalise, if you like, our line managers to make sure that they are good line managers and know how they should behave. We have invested a lot of time and effort in all of those things.

Q2221 Pamela Nash: Finally, the Chair asked you about the action that you took against your own staff. You were clear that no action has been taken against Skanska staff for using blacklists. There is evidence available of what information was recorded, and of the Consulting Association information that was put in by your company. You referred to the code of conduct, which states very clearly your commitment to health and safety. Do you not think that that would be enough to allow you to discipline members of staff who were using the blacklist?

Harvey Francis: I guess we would need to look at the evidence contained there and take a decision. Employment law is a very involved and complex area, so we would have to look at it and take a decision as a company on whether we felt there was enough, and

5 March 2013 Harvey Francis

whether it would be right to take any action, given the time that has elapsed.

Q2222 Pamela Nash: So will you go away and look at all the evidence that is available to you?

Harvey Francis: I guess it depends on what you mean by the evidence that is available to us.

Pamela Nash: Everything that is available publicly and within your own company.

Harvey Francis: Yes, we would take a look at that—absolutely.

Chair: Graeme has a question on the back of that.

Q2223 Graeme Morrice: It is on the back of what Pamela was asking. We discussed earlier the fact that there was an internal investigation. Obviously you came across a lot of wrongdoing, but you decided to draw a line and move on—to paraphrase, in effect, what you said. You may not want to name names, but you must have come across some employees at the time who were involved in this kind of activity. Are these people still employed with the company, or have they left the organisation over the last number of years?

Harvey Francis: Some are still with us and some have left.

Q2224 Graeme Morrice: Were there any particular reasons why those who left did so? Did they leave for their own reasons, or were they encouraged to leave because of what had happened?

Harvey Francis: No, it is just the general kind of ebb and flow of natural attrition, retirements and early retirements—the usual kind of comings and goings with any function or team.

Q2225 Mr Reid: What procedures do you have these days for deciding which potential employees, either of you or of your subcontractors, are suitable to be allowed on to your sites?

Harvey Francis: It is done on the required skills.

Q2226 Mr Reid: Do you check people's backgrounds? You mentioned drugs, alcoholism, breaches of health and safety and potential disruption. Do you do any checks like that at all now?

Harvey Francis: No.

Q2227 Mr Reid: Do you ask for references?

Harvey Francis: We ask for references for people we are going to employ, but not for subcontractors.

Q2228 Mr Reid: For subcontractors, you leave it purely to the subcontractor to decide.

Harvey Francis: Yes, that is right.

Q2229 Mr Reid: Do you have any evidence of whether blacklisting is still going on in the construction industry?

Harvey Francis: There is nothing that leads me to think it is.

Q2230 Chair: Could I follow up on one point that Alan made about subcontractors? Many of the self-employed work on building sites. Is there no process

by which you would vet any of those? Would you leave that to the subcontractor? Presumably you have some staff who are self-employed working with you directly, do you not?

Harvey Francis: Yes, we do. That is correct.

Q2231 Chair: What is the vetting procedure for those people?

Harvey Francis: Basically, if a reference is taken up, it is from a previous employer. Obviously, we also do right to work in the UK checks with the Border Agency.

Q2232 Chair: I have a couple of points of clarification. In the past, you would have checked self-employed people through the Consulting Association as well, because they would have been included in those who were coming on to your sites.

Harvey Francis: Yes. The investigation indicates that it was primarily subcontractors but that some people we employed directly would also potentially have been checked.

Q2233 Chair: The final point that I have is about such checks in Sweden. You are a Swedish company. Do you undertake any checks in Sweden similar to those undertaken by the Consulting Association, or does the parent company do it anywhere else abroad?

Harvey Francis: No, I have no reason to think it does. I would say the reaction in Sweden was even stronger than the reaction in the UK in terms of both the media and the Swedish unions. Obviously, Skanska AB, the parent company, was very concerned. I went over to address the European works council and talked to it about the situation in terms of how we had been involved and the steps that we had put it in place, to give it the assurance that this could never happen again.

Q2234 Chair: Many of these things about the company's culture, the structures and so on were in place while you were involved with the Consulting Association. What sort of guarantee is there that a European works council would be able to stop it in another offshoot of Skanska, if it were kept in the dark?

Harvey Francis: I think the difference is the work we have done around structure, culture and organisation—around the way the organisation works. That is what gives me the reassurance that some of these things would never happen again. The previous organisation to 2008 was very siloed. Lots of the things that we have put in place—such as the creation of a senior management team, which is essentially the exec team plus the managing directors of the operating units, which meets much more frequently, has a much more common agenda and has common bonus measures so that everybody stands or loses by the same kind of things—are very structural things hard-wired into the organisation to make sure that change happens and is sustainable.

Q2235 Chair: Finally, we always give people the opportunity to answer any questions that you wish we had asked but we have not—anything that you think

5 March 2013 Harvey Francis

we should have given you the opportunity to raise that has not come up. Are there any additional points that you want to draw to our attention?

Harvey Francis: No. I guess the only point that I would like to make is that the company is truly sorry for its involvement. I hope you have got the sense that I have been trying not to explain away what we did, but purely to provide some rationalisation in terms of how it happened and the changes that we have put in place to make sure that the company is a very different company now from what it was a few years ago. I guess that is what I have been trying to convey to the Committee.

Q2236 Chair: Notwithstanding where you are now, do you accept that the company did a large number of

very bad things to a considerable number of people, that it has suffered no penalty whatsoever, and that it has made no recompense whatsoever to anybody who was affected?

Harvey Francis: Because I have not seen the information, all I can do is put my hand up absolutely to the fact that we did checks and appear to have provided information. Anything else would be, to a degree, guesswork on my part about the contents of some of that. I take the Committee's point about some of the information that is publicly available, which we will have a look at.

Chair: Unless there are any other points, we will now go into closed session for a moment. I ask the appropriate members of the public and staff to leave.

Tuesday 12 March 2013

Members present:

Mr Ian Davidson (Chair)

Jim McGovern
Graeme Morrice
Pamela Nash

Simon Reeve
Mr Alan Reid
Lindsay Roy

Examination of Witness

Witness: Mike Peasland, CEO, Construction Services UK, Balfour Beatty, gave sworn evidence.

Q2236 Chair: We will just put you under oath first, if you don't mind. (*Mike Peasland was sworn*) Do we have to swear in the lawyers, since we do not allow them to speak? No?

Simon Reeve: You did not need to look quite so nervous at the prospect.

Chair: Welcome to the Committee, Mr Peasland. Can you introduce yourself and your companion and give us a little background on yourself and why you are here on behalf of the company?

Mike Peasland: I am Mike Peasland. I am the chief executive officer of Balfour Beatty's construction business in the UK. I have been at Balfour Beatty for 43 years, since I left school in Edinburgh. I started off in Balfour Beatty Construction as a civil engineering technician. I eventually became the general manager for construction for Balfour Beatty in Scotland. I then moved to Balfour Kilpatrick, where I was the managing director in 1999. When we acquired Mansell, our building business, in 2004, I was the managing director of Mansell. In 2006 I moved to the group and became the group managing director. In 2010 I took up the position of CEO for our construction business in the UK, which includes all our building, our civil engineering and our engineering services business.

Chair: Thanks very much.

Jim McGovern: For the purposes of clarity, I am not sure whether Mr de Freitas refused to take the oath.

Chair: No. I indicated that, on reflection, because he is not a witness and is not allowed to say anything—

Jim McGovern: So any advice he gives to Mr Peasland is not covered by oath.

Chair: No. There again, we would not hear it.

Jim McGovern: No; normally they do it by whispering.

Simon Reeve: It would be covered by privilege anyway.

Chair: We have just had some more free legal advice from Mr Reeve as well. Goodness me, this does not happen very often, so make the most of receiving free legal advice.

Jim McGovern: So Mr de Freitas has indicated that he does not want to be here under oath.

Chair: No. To be fair, I took the view just now that, on reflection, we did not need to have the lawyer under oath, because he is quite clearly not going to be a witness. He will not be answering.

Simon Reeve: Because he is not giving evidence to the Committee, the effect of the oath would be to force him to tell the truth under oath to his client. He does not need an oath to do that. That is covered by

privilege anyway, so the oath would not matter. It is slightly misleading, because they are sitting next to each other. If he were sitting behind, you would not think to put him under oath. There is nothing at all unusual about that.

Jim McGovern: You are the lawyer.

Q2237 Chair: It does not mean that we always accept what you say, but we will on this occasion.

We have heard from our previous inquiries into blacklisting that Balfour Beatty, in its various divisions, was a founder member of the Consulting Association, was previously involved with the Economic League and was involved in the services group. Can you take us through that? First, is that true, and secondly, why did you feel the need to be involved in these organisations?

Mike Peasland: We were members of the Economic League from some time in the 1970s. It changed, and we became members of the Consulting Association. I became aware of the Consulting Association in 1999, when I moved to Balfour Kilpatrick.

Q2238 Chair: But you are here speaking on behalf of the company and the group.

Mike Peasland: Correct.

Q2239 Chair: You mentioned earlier that you had moved between various divisions. Were all the divisions part of the Economic League and the Consulting Association, or was this handled centrally? What was the structure?

Mike Peasland: There were six individual operating companies. Balfour Beatty Civil Engineering, Balfour Beatty Northern, Balfour Beatty Scottish and Southern, Balfour Kilpatrick and Haden Young were the operating companies involved.

Q2240 Chair: We also have mention of Raynesway, which was Balfour Beatty Infrastructure Services, and Balfour Beatty Scottish and Southern.

Mike Peasland: Correct. I said that.

Q2241 Chair: I just wanted to be clear. As far as you are aware, all of those were, either individually or as part of the group, members of both the Economic League and the Consulting Association.

Mike Peasland: Yes. Each of these individual companies took checks from the Consulting Association. The membership was taken by one of the operating companies, Balfour Beatty Civil Engineering Ltd.

12 March 2013 Mike Peasland, CEO

Q2242 Lindsay Roy: Good afternoon, Mr Peasland. Balfour Beatty spent thousands of pounds a year on the Consulting Association. What was the money for?

Mike Peasland: The money was for various things. There was the subscription, and there were the individual checks for referencing purposes.

Q2243 Lindsay Roy: When you say subscription, what was that for? Was it for a membership?

Mike Peasland: A membership subscription.

Q2244 Lindsay Roy: What kind of checks were done?

Mike Peasland: Basically, a name and an insurance number would be sent to the Consulting Association. Either that would not come back at all or it might come back with a comment.

Q2245 Lindsay Roy: How was it sent and how did it come back? Was it by e-mail?

Mike Peasland: I believe it was sent by fax. I am sorry; it was sent in various ways, I believe. I am not sure how it was actually sent.

Q2246 Lindsay Roy: Does it not seem strange that, first, you are not sure, and secondly, from what we understand, it was by fax and not by e-mail? You would have thought that in the last five or six years e-mail would have been used quite prolifically.

Mike Peasland: It may have been, but it probably was by fax. I think fax was the way it was sent.

Q2247 Lindsay Roy: Was it value for money?

Mike Peasland: Shall I say at the outset that we do regret the use of the Consulting Association? It should not have happened, and we apologise to all the workers and their families who were affected by this.

Q2248 Lindsay Roy: Does the company still do independent checks?

Mike Peasland: We do not do any independent checks of that sort. We have in place an ethics code of conduct that ensures that no references are taken without the individual's knowledge, which would be the normal part of an employment referencing situation.

Q2249 Lindsay Roy: Can you explain why you used an independent company before? Again, can I probe you on value for money? Most businesses monitor very closely a value-for-money approach.

Mike Peasland: At the time, we were suffering huge amounts of disruption in our business from unlawful acts on our sites. That would have led to major issues in terms of disruption for our customers, for our staff and for our own work force. We felt that this was a way to help prevent unlawful acts on our sites from happening.

Q2250 Chair: What sort of unlawful acts are we talking about?

Mike Peasland: We are talking about unofficial action by workers and things such as harassment and bullying on our sites.

Q2251 Chair: Right. When you use the term unlawful, you have in mind violence and so on, but most of this could be described as trade union action, even if it was unofficial, rather than unlawful action.

Mike Peasland: I would say both. I have experience of both unofficial action and acts of harassment and bullying.

Q2252 Simon Reeve: What do you actually mean by an act of bullying? Give me an example so I can understand.

Mike Peasland: People being coerced into going off site when they would rather have stayed on site and done some work, people being coerced into doing their work more slowly than they normally would, and other acts such as sabotage on the projects.

Q2253 Simon Reeve: Are you saying that you were encountering an organised programme of people trying to disrupt and sabotage projects?

Mike Peasland: I could not say for certain that it was organised, but it certainly did occur.

Q2254 Simon Reeve: To what extent and by whom?

Mike Peasland: By individuals on our projects.

Q2255 Simon Reeve: In what sort of numbers? I am trying to understand this. You are going to an organisation and giving it a name and a national insurance number to see whether somebody should be employed. I am trying to understand what you are actually worried they might do if you employed them, how they would work and with whom.

Mike Peasland: The main worry was unofficial action that would disrupt the normal operation of our sites.

Q2256 Simon Reeve: But what does that mean? You have talked about whispering in someone's ear to go slowly.

Mike Peasland: It means people not working to our programme, people leaving the site, and our site not operating efficiently and effectively, as it should do.

Q2257 Simon Reeve: Are you talking about someone being lazy and going home early, or are you talking about some sort of organised programme of disruption?

Mike Peasland: It was a programme of disruption.

Q2258 Simon Reeve: What did you believe was behind that?

Mike Peasland: Purely disobedience—civil disobedience.

Q2259 Jim McGovern: Disobedience to your company.

Mike Peasland: Yes.

Q2260 Simon Reeve: Are you suggesting that there were individuals who were targeting your company for reasons of civil disobedience?

Mike Peasland: In some cases.

12 March 2013 Mike Peasland, CEO

Q2261 Simon Reeve: So they just didn't like your company—so much so that they wanted to work for you in order to be disruptive.

Mike Peasland: It was not something directed purely at Balfour Beatty; this was an industry-wide problem. That is why the industry as a whole was using the services of the Consulting Association.

Q2262 Simon Reeve: So they wanted a job in the building industry in order to be disruptive in the building industry.

Mike Peasland: I cannot say for certain. I am not in the business of—

Q2263 Simon Reeve: You used the company. You must have had an idea why you used this company.

Mike Peasland: As I said, because we were keen, and felt it was important, to avoid disruption on our sites in terms of the proper operation of our site activities.

Q2264 Simon Reeve: I am trying to gauge the threat that you perceived—whether you thought there might be a few lazy people out there who, if you employed them, would not work very hard, or whether you thought there was this group of people who wanted jobs in the construction industry so they could try and bring it to its knees. I do not understand what you are saying.

Mike Peasland: The reason was unofficial action on our sites. That manifested itself in some different ways. Most of the time, it was unofficial action that meant that work stopped and people left the sites. In some cases, there was evidence that there was some harassment and some bullying.

Q2265 Simon Reeve: Is this unofficial action to a purpose? Are these pockets of things that are in concert? Is that what you are suggesting?

Mike Peasland: They may not have been linked—they may have been separate—but it is all around unofficial action on the projects.

Q2266 Simon Reeve: It just sounds a bit as if you did not want to employ anyone you thought might be slightly awkward.

Mike Peasland: No, certainly not.

Simon Reeve: You were concerned.

Q2267 Jim McGovern: I have a couple of points. We have heard evidence that people who promoted health and safety—such as safety reps on building sites who said, “We should have a toilet on this site,” or, “We should have somewhere decent to sit and have a sandwich at lunch time,” or whatever—were blacklisted because they were raising such issues.

Mike Peasland: We would never discriminate against people for legitimate health and—

Q2268 Jim McGovern: Remember that you are under oath.

Mike Peasland: Absolutely. We would never discriminate against people for genuine health and safety grievances. Our quality in terms of what we do on safety has improved immensely over the years. In the last 10 years our accident frequency rate has more

than halved, while our man hours have actually doubled to something like 120 million man hours per year. In that time, our accident frequency rate has actually halved.

Q2269 Jim McGovern: Is that because safety reps have been snuffed out?

Mike Peasland: Not at all. We introduced ListenUp, which is a whistleblowing line that allows anybody to name or anonymously to raise issues of health and safety or any concerns at all on our projects. These are taken up and investigated by the compliance officers in our company. Health and safety performance has actually improved through the behavioural safety that we have put in place with our work force. We are looking for our work force to help us. We provide the leadership, but we are looking for the work force to raise any of these issues and, in terms of behaviour, to look after themselves and their colleagues and to help us as a company to improve our safety record.

Q2270 Jim McGovern: The second point I want to make relates to something that you mentioned earlier. You referred to the annual subscription plus a fee for each inquiry. I do not know what the annual subscription was—perhaps you can tell us that—but we have heard evidence that, for each inquiry you made about an individual, the fee was either £1.75 or £2.20. Is that accurate?

Mike Peasland: I have a fact sheet here, so I would be happy to give you that information. Our overall spend between 2004 and 2008 was £50,998.

Q2271 Jim McGovern: Was that the annual subscription?

Mike Peasland: No; that is the spend.

Q2272 Jim McGovern: What was the annual subscription?

Mike Peasland: The membership fees were £3,500 per year, and the reference fee check was £2.40 to £3 per individual.

Q2273 Simon Reeve: Sorry, could you just confirm that? I didn't get my pen going in time. This was for 2004 to 2008.

Mike Peasland: Correct.

Q2274 Simon Reeve: What was the total spend?

Mike Peasland: It was £50,998.

Q2275 Simon Reeve: What was the annual fee?

Mike Peasland: It was £3,500.

Q2276 Simon Reeve: So £50,900 less £14,000, divided by the inquiry fee, would be the number of inquiries in four years.

Mike Peasland: It is about 15,000 checks per year.

Q2277 Jim McGovern: So, for between £2.50 and £3.50, you could prevent someone from getting a job and feeding their family.

Mike Peasland: No, the purpose of this was a reference check. It was an additional reference check

12 March 2013 Mike Peasland, CEO

to our normal reference checking. It was one of the tools we used, as we would normally do, when referencing somebody for a project. It was not the sole reason why somebody would or would not be appointed to the project.

Q2278 Jim McGovern: We have seen written evidence from people who have been blacklisted by your company and other companies where the advice is not to give them a job because they are trade union activists, shop stewards or health and safety reps. Presumably your company took that advice.

Mike Peasland: We took that advice into consideration when deciding whether or not we would employ somebody, along with the other factors of previous experience and previous knowledge of their work and skills, as you would do in a normal employment referencing situation or with a normal recruitment issue.

Q2279 Chair: Can I be clear? From the evidence we have had, some of the people involved were put on the blacklist because they had raised issues related to health and safety; that is why some of them got on to the blacklist. Also, in the evidence that we heard from Ian Kerr, he said, “The Balfour Beatty companies were particularly hard-nosed, I found”. The evidence he gave us indicated that Balfour Beatty, in particular, tended just to refuse to take on people on the basis that their names were on the list—that they would not be employed if their names were flagged up at all, and that you were far worse than anybody else that he named. When we pursued him, he then mentioned some others that were baddish, but you were the baddest—as it were—which tends not to support your suggestion that this was one of the things that you took into account. We very much had the impression from Mr Kerr, both publicly and privately, that simply to have the name on the list at all was sufficient for Balfour Beatty to rule people out of employment.

Mike Peasland: That is not my understanding of what we did.

Q2280 Chair: On what do you base your understanding?

Mike Peasland: On being in the company at the time.

Q2281 Chair: You became aware of this only in 1999. Were you actually handling the forms directly and making the decisions?

Mike Peasland: No, I was not.

Q2282 Chair: So how do you know what was happening?

Mike Peasland: Through the employees who were working with me.

Q2283 Chair: So you were under the impression that they were not doing as Ian Kerr suggested.

Mike Peasland: I do not understand and am not sure what he meant by “hard-nosed”. If he meant that we checked every single person on a project, I would agree that that was hard-nosed. We were a heavy user of the Consulting Association.

Q2284 Simon Reeve: If you do not understand what he meant, I can help you. He said that there were some companies—and you were one—where he would actually hold back information unless he was certain that he had the right person and the fullest information, because some people would act just on a first name or on partial information. In other words, the slightest whiff of anything and that was it: the person was not going to get the job. That was the sort of thing he was talking about.

Mike Peasland: As I said, if any information came from the Consulting Association about any issues with a person, it would come back to a senior member of our HR team and a decision would be made, as part of our recruitment agenda, as to whether or not they would be given a start.

Q2285 Chair: I can give you the whole quote from Ian Kerr’s evidence. He said, “It could be shown that some companies took a harder line, to be fair, and didn’t employ because—I think this is what you are saying—the name was there. Some would say, ‘Well, that was a long time ago’, or ‘He’s not to come along with any of the others,’—say there were half a dozen involved in a project. ‘We’ll take a chance. We will note and monitor.’ In other cases, if the information was quite old or they thought it was minor, or if they knew the person it had come from and they thought that person was too hard, too harsh, they would say, ‘We’ll take him on.’ This depended, to a degree, on the company’s philosophy. Some were more hard and earnest than others.” In a later part of the evidence, he says, “The Balfour Beatty companies were particularly hard-nosed, I found”. That does tend to indicate that you were the hardest of all. It has been suggested to us—again, this is from other conversations—that if somebody’s name appeared on the list that was it. It was not a question of taking other things into account—the whiff of suspicion was sufficient.

Mike Peasland: It is difficult to comment on that, because I do not know what others were doing and how they acted. If that is Mr Kerr’s evidence, that is Mr Kerr’s evidence.

Chair: That is right, but Mr Kerr’s evidence was based on the companies reporting back on whether or not they took people on. He was the one person, as it were, who was in the centre of the web and would be able to compare and contrast. It is perhaps significant that he saw you as particularly hard-nosed.

Q2286 Mr Reid: Earlier you used words such as “coerced”, “harassment” and “bullying” to refer to things you were concerned about. Have there been experiences on your sites of coercion, harassment and bullying involving violence or threats of violence?

Mike Peasland: Yes, there have.

Q2287 Mr Reid: Actual violence.

Mike Peasland: Yes.

Q2288 Mr Reid: When information about an individual came back from the Consulting Association, would it include allegations that that

12 March 2013 Mike Peasland, CEO

person had been involved in violence or making threats of violence?

Mike Peasland: The information would come back as cleared or not cleared. In fact, potentially, if it was cleared, it would not come back at all. If it was not cleared, it would come back and there would be a discussion about that.

Q2289 Mr Reid: You say that there would be a discussion. So the information that came back was not black and white; it involved a discussion. Was that discussion within Balfour Beatty, or backwards and forwards with Mr Kerr?

Mike Peasland: That would be from Mr Kerr's organisation back to us. Then internally we would make a decision ourselves as to whether it was appropriate to employ that person, subject to other information that we gleaned on that person through normal recruitment methods.

Q2290 Mr Reid: So the information that came back from Mr Kerr might say "cleared". If it did not say "cleared"—if it said that the individual was not cleared—would it give the reason for their not being cleared?

Mike Peasland: He would come back and explain verbally why that was.

Q2291 Mr Reid: Would that be on the telephone?

Mike Peasland: Yes.

Q2292 Mr Reid: Did that information sometimes say that individuals had been involved in threatening violence or acts of violence?

Mike Peasland: I do not know the detail of what that information would have been. I was not directly involved in that.

Q2293 Mr Reid: Can you tell us which employees within the company would have been directly involved in talking to Mr Kerr on the phone?

Mike Peasland: These were individuals who were following company procedure. If you need to know the names, the names can be provided.

Chair: Fine. It would be helpful if you gave us these names after the meeting.

Q2294 Mr Reid: Did a central unit deal with Mr Kerr, or did different projects have different units?

Mike Peasland: It would be done centrally within each of the operating companies.

Q2295 Mr Reid: But they all had to follow a policy issued by the company.

Mike Peasland: Each of the operating companies had individual policies.

Q2296 Mr Reid: Were those individual companies' operating policies in writing?

Mike Peasland: There were procedures within each of the individual companies—

Q2297 Mr Reid: Would you be able to send us copies of those procedures?

Mike Peasland: If they are available, we will send those.

Chair: That would be helpful.

Q2298 Simon Reeve: Why might they not be available?

Mike Peasland: Because that is not something that we have now. Since 2009 we have totally revamped our policies. Our data protection policy has been redone, our ethics code of conduct has been redone—

Q2299 Simon Reeve: If they exist, you will send them. You understand that there is a difference between saying you will send them if they exist, and saying you will send them if they are available.

Mike Peasland: Okay.

Q2300 Graeme Morrice: I want to follow on from the discussion about disruptive behaviour, as you put it, on work sites by certain individuals, which you suggested might be undertaken in a concerted way. You used the term "civil disobedience" as well. Obviously this was your perception or belief, but you never actually said why all this was happening. Why did people do it? If it was indeed happening—and you are making these allegations—to what end was it happening?

Mike Peasland: In my personal experience, some of these projects were around the millennium—the end of the century—so the ability to disrupt the projects and for them therefore not to be completed on time was a big issue for the individual companies. The issue around creating that disruption was for the disruption itself, but obviously additional payments to complete by the millennium were another issue.

Q2301 Graeme Morrice: I am sorry, but I am not sure what you mean by that last point. Do you mean that, the longer it took, the more it cost the company?

Mike Peasland: No, I meant that there would be accelerated and additional payments to ensure that it did finish on time.

Q2302 Graeme Morrice: Are you suggesting that people were holding things up so that, the longer it took, those employees—we are talking about employees, not subcontractors—would end up benefiting financially as a result?

Mike Peasland: Yes.

Q2303 Graeme Morrice: Is that civil disobedience?

Mike Peasland: I am not a lawyer. I probably used the wrong term; I apologise if it is not—

Chair: "Capitalism" might be a way of describing it.

Mike Peasland: I know I've got a blue tie on, but—

Graeme Morrice: I thought that, when you referred to civil disobedience, you were suggesting that people were trying to bring down capitalism by joining a company and helping with a few building projects—but perhaps not.

Q2304 Chair: Can I be clear? I think that you are saying to us—understandably, if I have got this right—that the actions that were being taken through unofficial strikes and so on were costing you money,

12 March 2013 Mike Peasland, CEO

that you were incurring penalties on contracts, late payments and so on, and that this was an investment to try to save you money, to make sure that you did not incur those other expenses.

Mike Peasland: They were disrupting our clients, our own staff and our own work force. Obviously customers themselves—our clients—do not want disruption on their jobs. This was industry-wide at that time. Why it was used cannot be justified—again, we regret the use of the Consulting Association—but, if we had not been using it and had been subject to more disruption than others, it could have affected us in terms of our projects.

Q2305 Lindsay Roy: Can you give us instances of disruption and the costs that were incurred?

Mike Peasland: I can give you instances of disruption. The costs, to an extent, are very subjective.

Q2306 Chair: How do you know there were costs, then? We are assuming that—

Mike Peasland: If the project overruns, obviously we have costs.

Q2307 Lindsay Roy: A penalty clause.

Mike Peasland: You have your own costs in the prolongation of the project, your own costs if you have to accelerate back to finish near the completion date, and the costs of liquidated damages, which would be coming from our customer.

Q2308 Lindsay Roy: At what level in the company was this spend authorised?

Mike Peasland: Which spend?

Q2309 Lindsay Roy: At what level in the company was this expenditure—the investment with the Consulting Association—authorised?

Mike Peasland: It was done within each of the individual operating companies, through the HR departments.

Q2310 Lindsay Roy: So the chief executive knew about it.

Mike Peasland: When I was at Balfour Kilpatrick as the managing director, I knew about it.

Q2311 Lindsay Roy: I assume the same would be the case with other companies.

Mike Peasland: The managing directors of the other companies would know about it.

Q2312 Lindsay Roy: You said there were around 15,000 checks a year. How many people were embargoed from working for Balfour Beatty and its associated companies over that period, roughly, per year? How many were blacklisted?

Mike Peasland: I do not actually have information about how many we did not take on.

Q2313 Lindsay Roy: I would have thought that, as a business that was concerned about value for money, you would have kept a check on that—how effective the system was, what the purpose was and whether the purpose was being achieved.

Mike Peasland: We kept a list of those who were cleared, so that if they came up for employment again we did not pay for the check again.

Q2314 Lindsay Roy: I would have thought that, as part of the monitoring, you would have known who these people were and what the focus of the concern was—whether it was unofficial action, health and safety, or whatever.

Mike Peasland: We would look at each individual project. As I said, we would clear everybody on every project. This was a sort of standard procedure within the company, so we would do a clearance procedure for everybody and check everybody every time. Skills and so on are different for different projects. We would be looking at different skills.

Q2315 Lindsay Roy: Did you feed information into the Consulting Association?

Mike Peasland: We did.

Q2316 Lindsay Roy: How frequently?

Mike Peasland: We have very limited information on what that was, but I am aware that information was passed to the Consulting Association from us in 1999 and 2000.

Q2317 Lindsay Roy: Why is the information limited?

Mike Peasland: I have no evidence of it. There could have been more than that; I am just not able to tell you, because I do not know.

Q2318 Lindsay Roy: Was this a covert operation, then? Given the way in which businesses operate, you would have thought that it would be up front—that the expenditure and the value for money would be there to highlight any dividends to the company from this process.

Mike Peasland: The costs of it were up front and were put through the system. Invoices came from the Consulting Association and we paid the Consulting Association. That went through the books of each of the individual operating companies.

Q2319 Chair: In terms of the way in which the accounting was done for this, can I clarify whether it was charged against particular projects? If you were building a school in, say, Coatbridge, they were proposing to take on 30 people and sent off names, the names were faxed in and so on, and the invoice came back, would that be charged against that project?

Mike Peasland: No. It was held centrally in the individual operating companies.

Q2320 Chair: Right. When we spoke with Skanska, it indicated that it would be charged to individual projects. You are saying that you did not do that.

Mike Peasland: No.

Q2321 Chair: Are you able to tell us from the records that you have which projects did use the Consulting Association, so that we are able to identify schools, hospitals or any other projects that you did?

12 March 2013 Mike Peasland, CEO

Mike Peasland: As I said, generally it was used as a standard procedure through the business, so we did it on all our projects. If you have any specific projects in mind, we can check back.

Q2322 Chair: No. I think that covers it, if you are saying that you did it on all your projects.

Mike Peasland: We did not discriminate according to whether it was a private project or a public project, or whether it was a big project or a small project.

Chair: Fine. Skanska said something different to us. We just wanted to clarify that.

Q2323 Lindsay Roy: Was it also done through subcontractors? Did you engage subcontractors in that process as well?

Mike Peasland: Yes, in a very limited way. It was not a standard procedure to involve subcontractors. Subcontractor selection is done in a different way, through the companies themselves, looking at the various elements—as well as price, their ethics, their sustainability, their health and safety record and so on. We look at the company or subcontractor holistically, rather than at individual members of that subcontract organisation.

Q2324 Lindsay Roy: Could subcontractor employees not have brought disruption to sites?

Mike Peasland: That may have been the case, but we employ subcontractors at varying levels. We have an approved subcontractor, which is the bottom level. Then you go up the list to a preferred subcontractor, and from there to a strategic subcontractor. These are subcontractors that are all known to us and used on our projects on a regular basis.

Q2325 Pamela Nash: You said that there was no physical evidence left of the checks, but have the people who were carrying out the checks on behalf of Balfour Beatty been asked for any evidence about this at any stage?

Mike Peasland: I am not sure whether they have—
[Interruption] Yes, they have.

Q2326 Pamela Nash: Has that now been taken down as written evidence within Balfour Beatty?

Mike Peasland: I am advised that that is legally privileged and I cannot answer that question.

Q2327 Pamela Nash: You also mentioned that 15,000 checks were carried out per year.

Mike Peasland: On average, obviously.

Q2328 Pamela Nash: You said that, while you did not have a record of those who had been denied employment, you did have a record of those who were cleared by that check. I guess a simple subtraction would be able to tell us how many people had been denied employment as a result of those checks. Would you be able to provide us with the figures for how many were given employment after you were told that they were not on the blacklist?

Mike Peasland: We could look into that.

Q2329 Chair: You say you could look into that. We want to be quite clear that you will look into that.

Mike Peasland: We will look into it. If we have that information, we will provide it.

Q2330 Pamela Nash: If you do not, will you tell us that, too?

Mike Peasland: Correct.

Q2331 Pamela Nash: I would also be interested to see whether there are any examples within the company, or at least within the memory of the company, of persons who were granted employment despite being found to be on the blacklist. Earlier you were very clear when you said that your understanding of the working of the blacklist was dependent on the information that was in the file, not just the fact that someone was on it. For us to see that, it would be good to see whether people who were found to be on the blacklist were subsequently given employment. Are you aware of any examples of people who were given employment?

Mike Peasland: There are examples. We will provide that information if we have it.

Q2332 Pamela Nash: Okay. You said that all projects were checked through the Consulting Association. Just to be clear, was that the case in every single operating company within Balfour Beatty?

Mike Peasland: Yes, in the six companies I named.

Q2333 Chair: I am sorry, but I did not catch that. In the ones that were what?

Mike Peasland: I gave you the names of the six companies.

Chair: Oh yes.

Pamela Nash: So that was the case in all six companies.

Q2334 Jim McGovern: Can we move on to subcontractors?

Mike Peasland: Are we on—? I thought we were talking about something else. Are we talking about subcontractors?

Pamela Nash: I wasn't, but—

Chair: No, not at the moment. We are on the question of the main companies. I will come back to that, Jim.

Q2335 Pamela Nash: We were talking about public sector projects. Just so we are clear, even though you said it was used for all the projects you worked on, can you give us a list of all the public sector projects you have worked on that have used blacklisting, or sought the services of the Consulting Association?

Mike Peasland: From when to when?

Q2336 Pamela Nash: Until you finished using the blacklist.

Chair: From the beginning of the Consulting Association until the end. That should be perfectly straightforward. You are bound to have a record of the jobs you have worked on.

Mike Peasland: Yes. I was thinking about the number of projects, but yes, if we can provide that, we will.

12 March 2013 Mike Peasland, CEO

Q2337 Pamela Nash: That is what concerns us—whether there will be a long list of projects.

Mike Peasland: We are a major company. We are the biggest construction contractor in UK.

Chair: That is right. We understand that. The fact that you have a footprint in a whole number of areas means that the blacklisting of workers was not confined to single areas, so there are a large number of areas of the country where people might have been blacklisted. We want to pick that up.

Q2338 Pamela Nash: I am sure you will appreciate that a lot of our colleagues in local government are now concerned that they have been employing companies using the blacklist for projects in their area, so I would ask for us to have the detail of the list down to that level. I would like to return to the line of questioning that Mr Reeve and Mr Morrice pursued earlier about unlawful disruption, civil disobedience, capitalism or whatever we are going to call it now. You said a lot of this was about employees trying to drag out a project, maybe to get a bonus or extra money. Can you provide us with the link to the information that was held on the blacklist, given that the information on the blacklist was mostly about someone's trade union membership or reporting health and safety problems on the construction site? How would that help you prevent that disruption?

Mike Peasland: Again, we would not discriminate against anybody for being a member of a trade union. We have good relationships with the trade unions, but obviously our relationship with the unions has been somewhat tarnished by this whole process. That is something that we need to address, but we have always had good relationships with UCATT, Unite and GMB. We intend to repair any damage that has been done to those.

Q2339 Chair: Can I clarify that? You had good relationships with these trade unions while you were actually blacklisting some of their members. At the time when you were blacklisting them, you were not open and honest with those unions and telling them that you were doing blacklisting: you were doing it in a sort of organised conspiracy. Would your relationships with the unions involved have been as good if you had told them that you were blacklisting people?

Mike Peasland: It is a hypothetical question. As I said, we regret the use of the Consulting Association and the issues that have been caused. Again, we apologise to all the workers who have been affected by our using the Consulting Association.

Q2340 Pamela Nash: I do not think it is a hypothetical question, but I think it is one for your trade union colleagues, who might be able to answer it. You said earlier that Balfour Beatty had also contributed information to the Consulting Association blacklist. Did you say that that ended in 2000 and that you had records only up till then?

Mike Peasland: That is the only evidence I am aware of that we contributed names to the Consulting Association.

Q2341 Pamela Nash: Do you have a record of the information that was provided to the Consulting Association at that point?

Mike Peasland: There will be, but it will be subject to the ICO and so on.

Q2342 Chair: I am sorry, subject to what?

Mike Peasland: The Information Commissioner's Office. All that information is beyond use.

Pamela Nash: In terms of its being published, but could we not have access to it?

Q2343 Chair: Can I be clear? You are saying that the only records of which you are aware are those actually held by the Information Commissioner.

Mike Peasland: Yes.

Q2344 Chair: I was not clear about whether you said that you as a company had information about the names that you had submitted to the Consulting Association. Which is it? Do you still retain information yourselves, or is the only place that the information exists—

Mike Peasland: There is information retained, which is put beyond use because of the pending legal action that is to take place. We have complied with the enforcement notice of the ICO and put the information beyond use.

Q2345 Chair: When you say “put beyond use”, what does that mean?

Mike Peasland: It means that it is parked up and that, since the ICO closed down the Consulting Association, none of that information has ever been used. There has been no—

Q2346 Chair: Ian Kerr told us that he burned a lot of stuff. That has put it beyond use. That is slightly different from your putting it beyond use: as I understand it, you have retained it and still have it.

Mike Peasland: And the ICO is aware of that.

Q2347 Pamela Nash: It would be interesting to know what information Balfour Beatty gave to the Consulting Association. Most of the files that the Committee has seen have contained information about trade union membership, health and safety reps or people reporting health and safety incidents, so you can understand why the Committee is interested to see whether that sort of information was given by Balfour Beatty.

Mike Peasland: I appreciate that, but I can only reiterate that we would never discriminate against anybody who was a bona fide member of a trade union and would never discriminate against anybody who had bona fide health and safety issues. We would want to—

Q2348 Pamela Nash: I am still not clear about what exactly you were looking for on the blacklist when you were looking for evidence.

Mike Peasland: We were looking for people who were likely to disrupt our projects.

12 March 2013 Mike Peasland, CEO

Q2349 Pamela Nash: What information would tell you whether they were likely to disrupt?

Mike Peasland: Potentially, some information that would come back from the Consulting Association, which we would then take into account with the rest of the recruitment process, and our knowledge of that person from other jobs where they may have worked with us.

Q2350 Pamela Nash: What specific information would you be looking for on someone's file on the blacklist that would indicate to you that they would be likely to disrupt a job?

Mike Peasland: We would not be looking for specific information; it would depend on what information came back. We would have no prerequisite for the information we were asking for; it was just a question of sending a name and a national insurance number. We did not say on what basis. We waited to see what information, if any, came back from the Consulting Association. We would then make a decision based on that and the other information that we took into account.

Q2351 Pamela Nash: Are you saying that if, like the majority of cards that the Committee has seen, a person's record just said that they were a member of a trade union or a political party, or that they had reported a health and safety incident in the past, that person could continue to get employment with Balfour Beatty?

Mike Peasland: That is correct.

Q2352 Pamela Nash: But you have not given me any examples of what could be on that file that would prevent someone from getting employment.

Mike Peasland: As I said, the examples of reasons for not getting employment were about disruption—disrupting the projects.

Q2353 Simon Reevell: What were the words?

Pamela Nash: Yes, what would it say?

Mike Peasland: I could not say what exactly it would say.

Q2354 Pamela Nash: Do you mean that they had caused disruption in the past? Would there be anything else?

Mike Peasland: It would be about what they had done in the past.

Q2355 Mr Reid: Did information saying things like, "On a previous site, this individual threatened other workers," come back from the Consulting Association about people?

Mike Peasland: I do not have actual information on the individual things that were said—on exactly what was said.

Q2356 Mr Reid: Did anything ever come back from the Consulting Association on any individual that said, "This individual has disrupted a site"?

Mike Peasland: That would be the nature of the information that would come back.

Q2357 Mr Reid: Are you saying that, on at least one occasion, information did come back from the Consulting Association saying that an individual had disrupted a site?

Mike Peasland: I would say that that would be the case probably on more than one occasion.

Q2358 Jim McGovern: You said that your company's use of the services of the Consulting Association would be clear on the books. I suppose that is fair comment, but were the people who were blacklisted aware that they were being blacklisted? We have heard evidence here from people who have said, "I just wondered why I couldn't get a job. I'm a fully qualified sparky living in Dundee, but I had to spend years and years away from my family, and I've only found out since then that I was on a blacklist." You talk about transparency, but were the people who were blacklisted by your company aware that they were on a blacklist?

Mike Peasland: The people we did not clear through our processes were not aware of that. The central location would go back to the site and say "not cleared"; that would be the limit of the information. It would not go to the individual.

Q2359 Jim McGovern: We have seen information here: we have it on paper. All that was on the list for one person, an electrician, who gave evidence to the Committee was a name, a national insurance number and "not wanted". Does that sound fair?

Mike Peasland: It certainly does not. As I said, we are highly embarrassed by the whole issue around using the offices of the Consulting Association. It is something we are not proud of. As I said, we apologise to those workers for the issues that have occurred.

Q2360 Jim McGovern: I am sure you are aware that there was a House of Commons debate on this issue fairly recently. One of the Members said that, because he had been jailed during the miners' strike in the mid-'80s, his wife could not get a job. She was on a blacklist because of his trade union activities. Does that sound fair to you?

Mike Peasland: Certainly not.

Chair: Before I ask Graeme—I am sorry.

Mike Peasland: It is all right. I was just going to say again that we would not discriminate against anybody for being a member of a trade union. As I said, we work with the trade unions, not against them.

Q2361 Chair: Graeme wants to come in, but could I follow up on a couple of the points that have been touched on? Unless I am mistaken, you have said to us that you still have files, which you have put beyond use. Are these files on workers you yourselves refused to employ, on workers whose names you put in to the Consulting Association, or both?

Mike Peasland: I am not sure—[*Interruption*] We do have information on the ones we checked through the system. The ones we are talking about as not cleared are taken from information from our people. There is not a list for that.

Chair: I am sorry, but I am not clear.

12 March 2013 Mike Peasland, CEO

Q2362 Jim McGovern: Whether or not the people who were on the blacklist were informed at the time, I think you said that you had retained the names of the people who were on that list, although it is not used now. Do you intend to inform those people, “You were on this list”?

Mike Peasland: I think that, again, that is subject to—
Jim McGovern: Your lawyer.

Q2363 Simon Reeve: Can you tell us why it is? The question you have been asked is: are you going to inform some people whose names you hold of the circumstances in which you hold the names? If you are saying that there is some sort of privilege attaching to the answer to that question, perhaps you would explain why.

Mike Peasland: I am not a lawyer.

Simon Reeve: No, but Mr de Freitas and I both are.

Chair: We are not going to have a dispute between lawyers, because life is too short.

Simon Reeve: I am just asking the witness to answer the question—or to provide us with an explanation of why he cannot.

Q2364 Chair: Maybe I can cut to the chase more quickly. I have been allowed by the Information Commissioner to see, with a member of my staff, the files that he has. I have seen them all, under conditions of confidentiality. I want to see yours, under the same conditions, and to clarify exactly what you have, so that at some stage in the future it can inform our discussions and dialogue. If you wish, we will do this in private at the end of the meeting, but what has become clear to me is that you, unlike the other firms, seem still to be retaining files on employees. We want to get to the bottom of this. Maybe we can lay it to one side at the moment and discuss it in private at the end. The other point I want to be absolutely clear on, which I am not at the moment, is whether or not you systematically ran the names of contractors’ staff through the Consulting Association. I am presuming that you were advised before you came along to this meeting about what other people have been asked and so on.

Mike Peasland: Yes.

Q2365 Chair: Other people have told us that there were circumstances in which the names of contractors’ staff had to be submitted to the main contractor and were then run through the Consulting Association. Did you do that?

Mike Peasland: There were instances where that did occur, yes.

Q2366 Chair: Right. Subsequently you would go back and tell the firms involved that such and such an individual was not acceptable on your site.

Mike Peasland: Correct.

Chair: Fine. I wanted to be clear about that as well.

Q2367 Graeme Morrice: You said earlier that you would not have discriminated against anyone on the basis of their trade union membership or of reporting a legitimate health and safety concern, but that you would look at those who had been involved in

previous disruption. Occasionally there would have been instances of involvement in official trade union industrial action. Would you have discriminated on the basis of that kind of disruption?

Mike Peasland: Not for legitimate trade union activity.

Graeme Morrice: So categorically no.

Mike Peasland: From the evidence I have and in my own personal experience, that would be the case.

Q2368 Graeme Morrice: You said right at the beginning that there were instances of individual disruption but also of concerted disruption on sites. Were you suggesting that that concerted action involved the trade unions in any way?

Mike Peasland: No.

Q2369 Graeme Morrice: Would it involve trade union members?

Mike Peasland: I presume that some may have been trade union members.

Chair: As you would imagine, we have been briefed as well, so we have a list of questions that we wanted to cover. Graeme, can you pick up question 8, about meetings?

Graeme Morrice: Question 8 has been asked umpteen times by several different members.

Chair: Sorry, I meant question 9.

Q2370 Graeme Morrice: Mr Peasland, can you confirm that it was the case that representatives of Balfour Beatty attended meetings of the Consulting Association?

Mike Peasland: Yes.

Q2371 Graeme Morrice: Can you elaborate on the kind of meetings, the occasions, the frequency, what representatives of Balfour Beatty were involved and at what level?

Mike Peasland: We were involved in meetings of the Consulting Association. These would be forum meetings and meetings that would be attended by a cohort of senior HR managers from individual companies.

Q2372 Graeme Morrice: What kind of meetings were these? Were they information exchange meetings? Were they to discuss the operation of the Consulting Association? Were they to discuss policy? Were they to discuss future work streams?

Mike Peasland: These would be meetings to discuss the general atmosphere or the general nature of industrial action across projects in the UK—a general exchange of information on industrial action across sites in the UK.

Q2373 Graeme Morrice: Did you attend any of these meetings?

Mike Peasland: No, I did not personally.

Q2374 Graeme Morrice: Were people at a senior level of your company at the meetings?

Mike Peasland: It would be the HR members of the individual operating companies.

12 March 2013 Mike Peasland, CEO

Q2375 Graeme Morrice: Were there regular reports back to the chief executive officer, the board of directors and other senior managers within the company?

Mike Peasland: There was no regular, detailed or written information that went back into the company. It was done through the HR people.

Q2376 Graeme Morrice: Did you meet any politicians at the time to discuss the issue of blacklisting?

Mike Peasland: No, I did not.

Chair: I am sorry, but you are not here just as an individual.

Mike Peasland: I am not aware that the company met any politicians.

Chair: In Scots there is sometimes the term “youse”, which is the second person plural. When we say “you”, we mean “youse”, if I can use that term.

Mike Peasland: If you had made it more explicit and said “youse yins”, I would have understood what you were saying.

Chair: We may go on to say “youse bad yins”—but we will leave that aside for the moment. You are here as a representative of the company.

Mike Peasland: Correct.

Chair: You are therefore here not simply as an individual, so we expect you to speak on behalf of the company as a whole.

Mike Peasland: Absolutely. All I was trying to do was to evidence things, where I can, through my personal involvement, but you are right—I am representing the company as a whole.

Q2377 Graeme Morrice: Were there any meetings with the police or the security services?

Mike Peasland: There is no evidence to suggest that there were any meetings with the police or security services.

Q2378 Graeme Morrice: You say that there is no evidence, but were there any meetings?

Mike Peasland: Not that I am aware of, and not that the company is aware of.

Graeme Morrice: So that is a no.

Mike Peasland: That is a no.

Q2379 Chair: Well, there was; we know that there was. To the best of my recollection, I believe that representatives of Balfour Beatty were there. How can this be?

Mike Peasland: I am not aware of that.

Chair: If you do not know that—

Graeme Morrice: You should not have said no.

Q2380 Chair: If you do not know that, what confidence can we have in the trawl for information that you have undertaken? I will go and check, but I am pretty certain that Balfour Beatty was represented at the meeting referred to last week in the evidence from Skanska, at which it met an organisation in the police whose initials I forget; I am being told that it was NETCU. I am not quite sure what the initials stand for, but basically it is the police unit against bad people, extremists and stuff like that. I am being told

that it is the national extremism tactical co-ordination unit. I would add that the “T” is not for Trotskyists, although it could very well have been. We understand that Balfour Beatty were there, although we will check that. You have been asked that specifically and you have given us an answer that is incorrect. I am quite prepared to accept that you might have been unaware of the meeting, but it does cast doubt on the extent to which you are reasonably speaking on behalf of the company.

Mike Peasland: We have no record of that and no access to these files that you have. We as a company are unaware of that.

Q2381 Chair: How thoroughly, then, were you prepared and briefed for this? Given that we discussed this last week with Skanska, I would have thought that those staff working on your behalf would have run that question past those who might have been at various meetings, to check what their recollection was. Presumably you know that we are likely to ask you whether or not you have any minutes remaining of the meetings of the Consulting Association, and if so, whether we can have them. Presumably you have been prepared for that.

Mike Peasland: Absolutely.

Chair: So I am surprised you have not been prepared for this one.

Mike Peasland: I am certainly not aware of that particular issue.

Q2382 Jim McGovern: I know you have your lawyer sitting next to you, but constantly saying, “There is no evidence,” or, “There is no record,” does not mean that something did not happen, does it?

Mike Peasland: It is trying to be categorical. If you are being categorical, you go through all the information you’ve got, everything that you’ve checked and everything you are aware of. Therefore, if there is no evidence you are not aware of it—but you cannot be absolutely cast-iron certain that something did not happen. I have given you the best information I can give you.

Q2383 Jim McGovern: We have heard evidence that the Consulting Association was set up with money from Sir Robert McAlpine Ltd, and Cullum McAlpine has given evidence here—if my memory serves me correctly—that he chaired the meetings. I think you have just said that the people from Balfour Beatty who attended the meetings were there to discuss how it was progressing, industrial unrest and so on. If my memory serves me correctly, Cullum McAlpine said that these meetings only discussed finance.

Mike Peasland: These are separate meetings. There would be a meeting of the finance committee and there would be the general meetings that took place with the HR people. There was a finance committee—

Q2384 Jim McGovern: Were both formal? Did Cullum McAlpine chair both of them?

Mike Peasland: Cullum McAlpine will have chaired them. I think he did say that he chaired them for a time.

12 March 2013 Mike Peasland, CEO

Jim McGovern: Yes, but he said that they only discussed finance. You are saying that they discussed industrial relations and industrial unrest.

Mike Peasland: The finance meetings only discussed finance.

Jim McGovern: Yes, but there were other meetings.

Mike Peasland: There were other meetings that took place.

Jim McGovern: Chaired by Cullum McAlpine—

Mike Peasland: There was a revolving chair, so there would be different people chairing those meetings. Those forum meetings would be chaired by a revolving chair around the companies.

Jim McGovern: Of which McAlpine was one.

Mike Peasland: McAlpine would have been one of those companies.

Jim McGovern: So someone is not being quite up front.

Q2385 Chair: Balfour Beatty also chaired the Consulting Association at one point, did it not?

Mike Peasland: It did—we did.

Q2386 Chair: Why was Balfour Beatty willing to take the chair of this, rather than just be passive members?

Mike Peasland: It was just part of the industry-wide issue in supporting the Consulting Association. The industry was involved, so it was appropriate that the chair of these meetings was spread around the companies that were involved.

Q2387 Chair: Right. However, from recollection, there were only four or five companies that had the chair. You were obviously one of the main users, protagonists and drivers of the Consulting Association during its life. Is that fair?

Mike Peasland: We were heavy users of the Consulting Association, as were some of the others that you have mentioned, on the basis that we are all major companies within the UK. That is the reason we were heavy users.

Q2388 Pamela Nash: Can I ask a further question about your obligations as one of the main members? We spoke earlier about Balfour Beatty providing information for the blacklist. While you do not have evidence of that past 2000, was there an obligation on you as a member to provide information?

Mike Peasland: There was no obligation to provide information.

Q2389 Pamela Nash: Was there an unofficial obligation? Was there an expectation that you would provide information on certain criteria?

Mike Peasland: No; there was not any expectation or any obligation on the companies to do that.

Q2390 Pamela Nash: How did it work, then? How did the Consulting Association ensure that it had enough information on the blacklist to make it a value-for-money membership for companies?

Mike Peasland: I think that that was one of the issues: there were no checks and balances on the Consulting Association by any of the members.

Q2391 Pamela Nash: But how could it guarantee that it had enough information if members were not obliged to put in information? If I were setting up the Consulting Association, there would be an obligation on members to provide information to put into the files, as well as the ability to purchase information out of them. I cannot understand how it would be able to operate a business model if it was not guaranteed incoming information.

Mike Peasland: I can only tell you that there was no obligation on the members to provide information.

Chair: But you did.

Mike Peasland: But we did.

Q2392 Lindsay Roy: Did Balfour Beatty try to have some kind of formative input into shaping how the Consulting Association operated?

Mike Peasland: We were not part of setting up the Consulting Association.

Lindsay Roy: No, but as a member—

Mike Peasland: We were a member of it. At the meetings, questions would be asked of Mr Kerr about the operation of his business, but Mr Kerr very much ran the business. It was down to him to do that.

Q2393 Lindsay Roy: Did Balfour Beatty indicate any ways in which it thought the Consulting Association could be more effective in what it was trying to do?

Mike Peasland: Not that I am aware of.

Q2394 Chair: But you did have the chair for a period. Presumably the chair did not just sit there and chair the meetings. Presumably he was helping to drive it forward and being the member of the board, as it were, to whom Ian Kerr would respond in the first instance.

Mike Peasland: It would be chairing the meeting and chairing on the finances of the company—what the finances were, what the balance sheet looked like and whether it was a viable business. Those would be the issues. The running of the company was down to Mr Kerr.

Q2395 Lindsay Roy: But there was more than that. There were meetings about its effectiveness in terms of identifying those who might want to disrupt construction businesses.

Mike Peasland: That would not be the case for the finance committee.

Q2396 Lindsay Roy: No, but you have already indicated that there were other committees that met.

Mike Peasland: Those were about general industrial action. There was no mention of individuals in any of those meetings.

Q2397 Lindsay Roy: Did Balfour Beatty chair any of these meetings?

Mike Peasland: As I said, there would be a revolving chair, so we would have chaired some of those meetings.

Q2398 Lindsay Roy: Are you suggesting to us that you had no input into trying to make this operation

12 March 2013 Mike Peasland, CEO

more effective? Were you happy with the way things were organised?

Mike Peasland: In general, it did what it did—yes.

Q2399 Simon Reeve: If I am right, you have told us that in 1999 and 2000, certainly, you fed in information about people. You know that because, for those two years, you have the information. Is that right?

Mike Peasland: That is correct. We have the information, which has been gleaned from our people.

Q2400 Simon Reeve: You do not know whether you fed in information in other years, because you do not have the data.

Mike Peasland: That is correct.

Simon Reeve: If there are any data.

Mike Peasland: That is correct.

Q2401 Simon Reeve: You told us that there was no obligation on a member company to feed in information.

Mike Peasland: Yes.

Simon Reeve: Who at Balfour Beatty decided that Balfour Beatty would begin to feed in information, and when was that decision made?

Mike Peasland: I do not know the answer to that. I can only talk for the ones that I know about—

Q2402 Simon Reeve: I am talking the policy. There was a point where Balfour Beatty as a member did not feed in information, nor was it obliged to. A decision was made that, although there was no obligation to feed in information, information would be fed in. That decision must have been taken before 1999, because in 1999 information was fed in.

Mike Peasland: Correct.

Q2403 Simon Reeve: What I am asking is: who made that policy decision and when?

Mike Peasland: I do not know the answer to that.

Simon Reeve: Can you find out?

Mike Peasland: If we have the information, I will provide it.

Simon Reeve: Presumably you will be able to find out by asking people.

Mike Peasland: Correct.

Q2404 Simon Reeve: You have referred to Mr Kerr's organisation, but it wasn't Mr Kerr's organisation, was it?

Mike Peasland: The Consulting Association was Mr Kerr's business.

Q2405 Simon Reeve: How was it funded?

Mike Peasland: There were initial set-up funds. Then it was funded by—

Q2406 Simon Reeve: Who provided the initial set-up funds?

Mike Peasland: From the evidence I have heard, McAlpine provided that.

Q2407 Simon Reeve: Other companies became a part of it and funded it through an annual fee, and the finance committee made all the decisions.

Mike Peasland: I think the finance committee was there to ensure that the company that was running was still a viable business.

Q2408 Simon Reeve: So it is not Mr Kerr's organisation in the sense that a shopkeeper owns and opens a shop and sees who comes to do business. Mr Kerr is working on behalf of the companies that, between them, are funding the organisation.

Mike Peasland: Through the check-off, we were receiving a service for which we paid.

Q2409 Simon Reeve: But you were also instrumental in funding it through an annual fee. I am trying to draw the distinction between Mr Kerr knocking on your door to say, "I've got my business here. This is what I do, and I want to do it for you," and you saying, "Thank you, we'll have some of that," and people putting something together and sticking Mr Kerr in the middle of it. This was the latter.

Mike Peasland: It depends on how you see the fee. The fee could be seen as a cash-flow issue—to help the cash flow of the business, and for a minimum amount of checks in the year. The remainder was then the individual checks. It is a moot point what a membership fee actually is.

Q2410 Simon Reeve: Who had the greater authority—Mr Kerr or the chairman of the finance committee?

Mike Peasland: Mr Kerr.

Q2411 Simon Reeve: So Mr Kerr's decisions go, as far as all these arrangements are concerned.

Mike Peasland: As far as I am aware.

Q2412 Chair: Are you aware of the evidence from Mr Kerr in which he says, "I was asked to become its salaried Chief Officer and I signed a Contract of Employment to this effect"?

Mike Peasland: We can find no evidence of any involvement by Balfour Beatty in terms of the contract set up with Mr Kerr.

Q2413 Chair: To be fair, that was not quite what I asked you. The written evidence that we have had from Ian Kerr, which you should either have seen or have had drawn to your attention, makes quite clear that the Consulting Association started out of the services group, which was operated by and within the Economic League, of which you were members. We have already had evidence, of which you will no doubt be aware, from Cullum McAlpine that the services group decided to keep going and then decided to employ Ian Kerr, so that Ian Kerr was an employee, rather than the principal of a business. Is that news to you?

Mike Peasland: I saw Mr Kerr as being the owner of the company.

Chair: I just want to make it clear that that is incorrect and is contradicted by the evidence. Maybe you ought to have been briefed, either by your legal

12 March 2013 Mike Peasland, CEO

advisers or by someone else, about what the position was.

Q2414 Simon Reeve: Am I to understand that your evidence is that, at a time when you were an MD of a company that was dealing with this organisation, you believed that you were dealing with a private company owned by Mr Kerr?

Mike Peasland: That is correct.

Q2415 Simon Reeve: Did your colleagues in other Balfour Beatty companies at the same level to whom you spoke about this indicate a similar belief?

Mike Peasland: I did not speak to any of my colleagues in other parts of the business about it.

Q2416 Simon Reeve: Did your belief that you were dealing with a private company owned by Mr Kerr change at any point?

Mike Peasland: No. I saw that this was a company whose services we used and that we paid for those services, partly through a fee and partly through a payment per person that went through the checking procedure.

Q2417 Simon Reeve: So your understanding was that, on about 15,000 occasions per year, you went to an independent private company for data that contributed to your decision about whether or not to employ someone.

Mike Peasland: That is my understanding.

Q2418 Simon Reeve: We are talking about 2004 to 2008, because we have these 15,000 occasions from your figures. After the first year, during which you went to this company 15,000 times, how many times had it provided useful information?

Mike Peasland: It is difficult to say. I do not have those figures.

Q2419 Simon Reeve: The following year you went back about 15,000 more times, so at the end of two years you had been in contact with it 30,000 times. Even if we assume every day is a working day, we can work out quite easily how many times a day, and therefore how many times an hour of the working day, you were in touch with it. Presumably you were getting something back, because in year 3 you embarked on another 15,000 contacts with this company. From these 15,000 annual contacts, how much useful information were you getting?

Mike Peasland: From what you have said and the information that we have, we were getting a service we were happy with. We therefore continued to pay for that service. If we were not happy with a service, as in any company, we would either speak to the principals of that company to say, "The service is not good enough. We want an improved service," or stop using the services of that company and go elsewhere.

Q2420 Simon Reeve: With your experience and knowledge of the company for which you have worked for over four decades, if we are talking about 15,000 pieces of information per year, what sort of

percentage of those would have to be helpful to you to make it a valuable exercise?

Mike Peasland: Generally, the information would mostly be of value to us.

Q2421 Simon Reeve: So if 10% of these 15,000 gave you information to act on, that would not represent a good return.

Mike Peasland: I would have said that it would be adequate.

Simon Reeve: That would be adequate.

Mike Peasland: Yes.

Q2422 Simon Reeve: So is it nearly all of them, or is it about 10%?

Mike Peasland: Can you give me the question again?

Q2423 Simon Reeve: Let me try to explain it to you. In each of four years, you have 15,000 interactions with this company that you pay for one after the other. Every time you pay for one, you go back to it and pay for another. What I am trying to understand is how many of those transactions would be of benefit to your company and give you information that you wanted.

Mike Peasland: We would assume that they would all be of some benefit, either through the fact that people were cleared or through the fact that information came back that said they were not cleared.

Q2424 Simon Reeve: You told us that the ones that were cleared did not come back to you. It was just the ones that were not cleared that came back.

Mike Peasland: Yes.

Simon Reeve: So how did you know that a request had not been missed?

Mike Peasland: We would not necessarily know that.

Q2425 Simon Reeve: So you had a system that involved 60,000 transactions over four years that meant you sent details to what you believed was a private company that might or might not reply; you had no means of checking. Based on its reply—if it sent a reply—you would look at the information and it might or might not influence your decision to employ someone.

Mike Peasland: That is the way that we operated.

Q2426 Simon Reeve: As far as your subcontractors were concerned, some of them you introduced to this and some of them you did not.

Mike Peasland: That is correct.

Q2427 Simon Reeve: So the first obvious gap is the requests you make to which this company simply does not respond. The second obvious gap is the subcontractors that do not use this system, who employ all the people you are trying to keep off site.

Mike Peasland: As I said, we have a different system for employing subcontractors. We are looking for the subcontractors themselves to maintain their own work force.

Q2428 Simon Reeve: How are you looking for them to do that?

12 March 2013 Mike Peasland, CEO

Mike Peasland: Through their record of having worked with us, because we will be using a cohort of the same subcontractors again as preferred or strategic subcontractors in our supply chain.

Q2429 Simon Reeve: Yes, but subcontractors are not the same as employees working for subcontractors, are they? If I subcontract to you, you do not know who I am going to bring along to the site to do the work, do you?

Mike Peasland: Within our employment contracts, we would look for the subcontractors directly to employ their work force as bona fide workers.

Q2430 Simon Reeve: How is that achieved? If I am subcontracting for you, how do you know that my work force are bona fide workers?

Mike Peasland: Basically, because of the subcontractors that we use. If we were to find any evidence that they were not, we have remedies through the contract to determine their contracts and put them off the job.

Q2431 Simon Reeve: I do not understand the detail of this. Are you saying that your subcontractors had an approved list of people to employ?

Mike Peasland: No. We approved the subcontractor companies. It was for the subcontractor to determine their employment regime with their own employees.

Q2432 Simon Reeve: And you introduced some of the subcontractors to this system of blacklisting—the names of the people employed by your subcontractors were fed in and checked.

Mike Peasland: Yes. You said that we introduced the subcontractors. We did not introduce the subcontractors. In some circumstances, we would ask the subcontractor for the names of the subcontractors that they intended to employ on that site.

Q2433 Simon Reeve: So you subcontract to me, and you want a list from me of the people I am going to employ. You then send that to be checked.

Mike Peasland: That is correct.

Q2434 Simon Reeve: Do you do that with all your subcontractors?

Mike Peasland: No.

Q2435 Simon Reeve: Why do it with some but not with all?

Mike Peasland: I cannot answer for that, because it is about whatever the individual operating companies did at a particular time. There was a procedure that we would check all our directly employed operatives, but there was not a procedure that said we would check every single subcontractor.

Q2436 Simon Reeve: Could anybody be directly employed by you without being vetted by this company?

Mike Peasland: By the Consulting Association?

Simon Reeve: Yes.

Mike Peasland: No, it was a standard procedure that, among the other vetting that we would do, we would put them through the Consulting Association.

Q2437 Simon Reeve: So, to come back to the 15,000 contacts per year, they are requests that represent everybody in a given year whom you were thinking of employing directly.

Mike Peasland: That was largely so, yes.

Q2438 Simon Reeve: You would know how many people you needed to employ in a given year.

Mike Peasland: Yes.

Q2439 Simon Reeve: The difference between the number of people checked and the number of people you needed to employ would be those who were cast aside in the process because they were failed.

Mike Peasland: Not necessarily. We could have put through checks on 10 people, looked at all 10 and had clearances. Our vetting procedures may have said that all 10 were cleared, but we might employ only five.

Q2440 Simon Reeve: At what stage in the process was this vetting procedure utilised?

Chair: I am sorry, but I think we will have to stop there because we have a vote in the Commons. We have to go down to vote, and we will then come back again. We will recommence at a quarter past 4, if we can be back by then—but if there are two votes, we will not be able to start again until about half-past 4. I am sorry about that, but there is nothing else we can do.

Sitting suspended for Divisions in the House.

On resuming—

Q2441 Chair: I wonder if we could restart. I understand, Mr Peasland, that you want to make a point about the earlier line of questioning for clarification.

Mike Peasland: Yes. It was the questioning from Mr Reeve. You took down some figures that I was reading from my fact sheet. Just to remind you, I said that the overall expenditure between 2004 and 2008 was £50,998.

Simon Reeve: Yes.

Mike Peasland: You picked that up. I gave you the reference fee at £2.40 to £3, and the membership fee at £3,500. Maybe I did not clarify it properly. Over the period 2004–2008 there were, approximately, 15,000 checks. So it is 15,000 over that period.

Q2442 Simon Reeve: It is 3,750, which is just over 10 a day.

Mike Peasland: It is 3,000 a year for five years.

Q2443 Simon Reeve: That is 15,000 between 2004 and 2008.

Mike Peasland: Including 2004 to 2008.

Q2444 Simon Reeve: They are not financial years but four calendar years.

Mike Peasland: Four years with 3,000 checks.

12 March 2013 Mike Peasland, CEO

Q2445 Simon Reeve: We have dropped down below 10 a day. Thank you. You said on a number of occasions that people were never blacklisted for raising genuine health and safety concerns. The phrase “genuine health and safety concerns” is at point 4.1 of the document that you have prepared for us today. Who decided whether a health and safety concern that had raised was genuine or not?

Mike Peasland: It would be decided by the management on the project.

Q2446 Simon Reeve: If there was a well-meaning health and safety concern that the project management decided was not genuine, that could affect whether or not you would employ the person who had raised it.

Mike Peasland: If they were using or hiding behind health and safety for some other reason, then, yes, that would be a form of disruption and, therefore, that would lead to an exclusion.

Q2447 Simon Reeve: What I asked was, if somebody raised what they believed to be a genuine health and safety issue but your site manager decided it was not genuine, could that mean that the person in future would not be employed?

Mike Peasland: It would not necessarily mean that, no.

Simon Reeve: It would not necessarily, but it could.

Mike Peasland: It could.

Q2448 Simon Reeve: So someone who genuinely thought that they were raising an important health and safety issue could find themselves blacklisted for doing that if the site management, genuinely, took the view that they were wrong.

Mike Peasland: If that was a genuine position, correct.

Q2449 Simon Reeve: I just want to be clear. You used the word “genuine” and I was sure you would not have used it unless there was a reason. It is the subjective view of your site management whether the health and safety complaint is genuine.

Mike Peasland: No. There are health and safety regulations, and we meet those health and safety regulations.

Q2450 Simon Reeve: The word used is “concerns”. I am reading from your piece, “we have seen no evidence that Balfour Beatty workers were ever blacklisted for raising genuine health and safety concerns.” That means that somebody had to decide, when the health and safety concern was raised, whether it was genuine or not.

Mike Peasland: That is correct.

Q2451 Simon Reeve: It was down to the site manager to decide if it was a genuine health and safety concern. Is that right?

Mike Peasland: That would be the case.

Q2452 Simon Reeve: If he took the view that it was not genuine, that could see somebody blacklisted in the future.

Mike Peasland: Your question is about taking a view. He would take into account the legislation, the requirements of health and safety and the requirements of Balfour Beatty in terms of our health and safety policy. All these things would be taken into account. It is not a matter of just taking a view.

Q2453 Simon Reeve: You know the regulations are not black and white in every eventuality. If somebody raises a concern because they think that something is happening that is dangerous, and the site manager takes the view that that is an unnecessary concern and it is not dangerous—so one person thinks that there is a genuine health and safety concern and the site manager says that there is not—someone who persists in that complaint could find themselves blacklisted.

Mike Peasland: If there was a consistent complaint about health and safety that was not bona fide, then that may be the case.

Q2454 Simon Reeve: The point I am making, and I think you know, is that the decision about whether it is bona fide is the subjective decision of the site manager.

Mike Peasland: It is the view of the management.

Q2455 Simon Reeve: Was anything done to make sure that those assessments of health and safety concerns were fair, because a manager under pressure to finish a particular job might say, “No, no, no, that is not a genuine concern”, for reasons that were not legitimate? Was that ever monitored?

Mike Peasland: If there was any issue or anything that continued, it would go to a senior level of management. Someone beyond the contracts manager would intervene if this became an issue. Then it would go to a higher level to confirm whether that judgment was correct or not.

Q2456 Simon Reeve: Who takes it to the higher level?

Mike Peasland: It would be the contracts manager himself in his visits, who would be recognising that something needed to be dealt with. That is why he is there as a senior manager. Therefore, he would pick up that point.

Q2457 Simon Reeve: That is different, is it not? That is if the senior manager comes along and sees for himself something that concerns him from a health and safety perspective.

Mike Peasland: It is his job to do that.

Simon Reeve: Yes, it is.

Mike Peasland: It is his job to oversee these sites and be on these sites on a regular basis.

Q2458 Simon Reeve: Yes, it is. I am asking you about what happens when an employee raises what he believes to be a genuine health and safety concern and the site manager says it is not. I am asking you who would know about that and who would be able to determine whether the site manager’s assessment was fair and objective.

Mike Peasland: The contracts manager.

12 March 2013 Mike Peasland, CEO

Q2459 Simon Reeve: How would he come to know about it?

Mike Peasland: Because it had become an issue on the site.

Q2460 Simon Reeve: So there is no system. If I come to you to complain about a health and safety issue and you tell me to get lost—

Mike Peasland: We have totally revamped our systems and the way these systems work.

Q2461 Simon Reeve: We are talking about this time, are we not? It does not really matter, with respect, what is happening today, or I hope it does not, but let's talk about this period of time.

Mike Peasland: Okay, but it very much does matter what is happening today to make sure that these sorts of things, and these kinds of issues which fall between the gaps of whose view is what, are properly dealt with so that a person can raise it anonymously to the business and the business as a whole can take it up, not just relying on the site manager's version of events and so on.

Q2462 Simon Reeve: You mentioned "anonymously", because part of the provisions that you have at the moment is for someone to raise a health and safety concern anonymously.

Mike Peasland: It does not have to be anonymously.

Simon Reeve: No, no, but it can be anonymously.

Mike Peasland: If they wish it to be anonymous, it can be, which means that it is as open as it possibly can be for people to raise issues of health and safety.

Q2463 Simon Reeve: Why do issues of health and safety still need to be raised anonymously?

Mike Peasland: It is just giving the opportunity to anybody in our business to raise any issues—not just health and safety.

Q2464 Simon Reeve: Let us stick with the question. Why does the culture of your company necessitate a means of raising health and safety concerns anonymously today?

Mike Peasland: Only to give everybody the opportunity to make and raise issues that they feel they do not want to raise as an individual. We have a whistleblowing policy and people can raise issues, some of which are raised anonymously, and in some cases names are given.

Q2465 Simon Reeve: They are raised anonymously so that people do not worry that they might suffer as a result of raising them.

Mike Peasland: In some cases it may be because they are raising an issue about a colleague and, therefore, do not want to be in a situation where they get into conflict with a colleague because they have raised an issue that could be about health and safety or a number of issues about the behaviour of a colleague. They want it to be investigated but they don't want to be part of that evidence gathering because of the conflict that may affect them.

Q2466 Simon Reeve: Let me phrase it this way. There is provision to do it anonymously so that they cannot be identified. That is inevitably part of the process of anonymity. The reason for that is to give them the confidence to come forward, if they require the confidence of anonymity to come forward.

Mike Peasland: If they require anonymity, they can do so and, obviously, that anonymity is preserved.

Q2467 Simon Reeve: In the period of time that we are talking about, was somebody able to raise a health and safety concern anonymously in the same way?

Mike Peasland: There wasn't a proper and robust procedure at that time.

Q2468 Simon Reeve: People had to raise health and safety concerns in person.

Mike Peasland: They would do that.

Q2469 Simon Reeve: If the site manager and/or someone else decided it was not genuine, then they could end up being blacklisted.

Mike Peasland: That is supposition, but it may be the case.

Q2470 Simon Reeve: The reason why you have introduced the anonymity provisions is to deal with that problem.

Mike Peasland: Somebody could raise an issue of health and safety genuinely, they could get a genuine answer as to why that was not a health and safety issue and things would continue as normal. People could raise an issue of health and safety, they could be told that what was being done was correct and they would continue in employment.

Q2471 Simon Reeve: You had a subsidiary called Haden Young; is that right?

Mike Peasland: That is correct.

Q2472 Simon Reeve: There was an employee who worked for Haden Young who raised concerns about blacklisting; is that right?

Mike Peasland: That is correct.

Q2473 Simon Reeve: That was Mr Wainwright.

Mike Peasland: Yes.

Q2474 Simon Reeve: He raised those concerns in 2005.

Mike Peasland: In 2005–2006.

Q2475 Simon Reeve: First of all, at what level in Haden Young did he work?

Mike Peasland: He was a labour manager in Haden Young.

Q2476 Simon Reeve: Give us an idea of what that means in terms of that company's structure.

Mike Peasland: That would be a middle manager.

Q2477 Simon Reeve: A middle manager. Within Haden Young, how far up did his concerns go?

Mike Peasland: They would go to the managing director of Haden Young.

12 March 2013 Mike Peasland, CEO

Q2478 Simon Reeve: It is a subsidiary company, so which part of your company was it linked to?

Mike Peasland: Haden Young no longer exists. Haden Young has now joined with Balfour Kilpatrick and it is now the company of Balfour Beatty Engineering Services.

Q2479 Simon Reeve: So that I can understand, which bit of Balfour Beatty was Haden Young related to or closest to?

Mike Peasland: Haden Young was part of the Balfour Beatty group.

Q2480 Simon Reeve: Who did the MD of Haden Young report to?

Mike Peasland: He would have reported to a group managing director of the Balfour Beatty group.

Q2481 Simon Reeve: Who was above him?

Mike Peasland: Above the Balfour Beatty group director would have been the chief executive of the Balfour Beatty group.

Q2482 Simon Reeve: The MD of Haden Young, you have told us, was made aware of Mr Wainwright's concerns. What was the name of the MD of Haden Young?

Mike Peasland: At that time it was David Beck.

Q2483 Simon Reeve: With whom did Mr Beck raise that within Balfour Beatty?

Mike Peasland: It was raised with Mr Raby.

Q2484 Simon Reeve: Who is Mr Raby?

Mike Peasland: Mr Raby is the senior HR director.

Q2485 Simon Reeve: Where does he fit into the overall scheme of things?

Mike Peasland: He sits at group level.

Q2486 Simon Reeve: A moment or two ago when you were explaining the structure, you told us that there was the chief executive and below him was the person to whom Mr Beck would report. What was the name of the person below the chief executive at that time?

Mike Peasland: Mr Wivell.

Q2487 Simon Reeve: Is Mr Wivell on the same level as the senior HR person?

Mike Peasland: He would have been at group level.

Simon Reeve: Is that the same level?

Mike Peasland: Yes.

Q2488 Simon Reeve: But, normally, Mr Beck would report to Mr Wivell.

Mike Peasland: Correct.

Q2489 Simon Reeve: Do you know why Mr Beck did not report this issue to Mr Wivell?

Mike Peasland: It was seen as something that would be dealt with within the operating company itself.

Q2490 Simon Reeve: Just explain what you mean by that.

Mike Peasland: The way that Balfour Beatty ran at that time was that there were autonomous businesses, so each of those businesses ran independently. Haden Young ran independently; the management above that was a thin level of management. All their business was done within the company itself.

Q2491 Simon Reeve: The HR person that Mr Beck reported to was who?

Mike Peasland: He did not report to the HR person.

Simon Reeve: I am sorry. The person who he spoke to was?

Mike Peasland: It was Mr Raby.

Q2492 Simon Reeve: Who does Mr Raby report to?

Mike Peasland: He reports to the chief executive.

Q2493 Simon Reeve: Does he go through Mr Wivell to get to the chief exec or does he go straight to the chief exec?

Mike Peasland: He would go straight to the chief exec.

Q2494 Simon Reeve: Mr Beck reports to Mr Raby—

Mike Peasland: No.

Simon Reeve:—a concern. He reports in the sense of communicates.

Mike Peasland: Okay. I am sorry; I thought you meant management reporting.

Simon Reeve: No, no. He reports to Mr Raby a concern about blacklisting. Does Mr Raby take this to the chief executive?

Mike Peasland: No.

Q2495 Simon Reeve: Do you know why not?

Mike Peasland: He felt he could deal with it himself.

Q2496 Simon Reeve: How did he deal with it?

Mike Peasland: That is subject to legal privilege.

Q2497 Simon Reeve: Right. So he dealt with it in a way that you don't want to talk about.

Mike Peasland: It is subject to legal privilege.

Q2498 Simon Reeve: Do you mean legal privilege or are you saying that it is sub judice?

Mike Peasland: It is legal privilege.

Q2499 Simon Reeve: I see. So there are reasons of legal confidentiality that preclude you from telling us what steps Mr Raby took in terms of his knowledge of the blacklisting.

Mike Peasland: That is correct.

Q2500 Simon Reeve: Are you, personally, facing litigation in respect of this?

Mike Peasland: We are.

Q2501 Simon Reeve: No, you personally.

Mike Peasland: No.

Q2502 Simon Reeve: Are you a witness as far as your employer is concerned?

12 March 2013 Mike Peasland, CEO

Mike Peasland: No.

Q2503 Simon Reeve: So you, personally, are not named on court papers and you have not made a witness statement in relation to any court proceedings.

Mike Peasland: No.

Q2504 Simon Reeve: All right. Do you want to ask your lawyer to advise you on what basis you are claiming legal privilege, bearing in mind you are under oath? *[Interruption.]*

Mike Peasland: It is legal privilege. I am not prepared to go into the whys and wherefores of that because then I would be waiving legal privilege.

Q2505 Simon Reeve: I see. Do you happen to know if one of Mr de Freitas's specialities is crisis management?

Mike Peasland: I am not aware of that.

Q2506 Simon Reeve: He was not asked to come along on the off chance that there might be a crisis or there already was one.

Mike Peasland: Not at all. He is here purely to support me and to support the company, as has been the case with other companies.

Q2507 Simon Reeve: We know that Mr Wainwright raised the question within Haden Young; we know that Mr Beck became aware; we know that Mr Raby became aware because Mr Beck told him; and that is as far as you feel able to help us today.

Mike Peasland: That is correct.

Q2508 Simon Reeve: When was the company first proactive in terms of doing something about its use of blacklisting?

Mike Peasland: When the ICO raided the offices of the Consulting Association we were put under an enforcement notice. At that time, which was obviously complying with the Data Protection Act and also not using any information from the Consulting Association, we then reviewed our whole situation on data protection, our code of conduct and our ListenUp where there was whistleblowing. We did a complete review of all of those things.

Q2509 Simon Reeve: Were you in any way proactive before you were raided?

Mike Peasland: No.

Q2510 Simon Reeve: Did you have any plans to change any of those things before you were raided?

Mike Peasland: We did not have any plans.

Q2511 Simon Reeve: In paragraph 2.4 of the document that you have supplied, you say "we recognise that we were slow to move with changing times and public expectations in the area of data privacy." Do you recognise, and you might want to ask Mr de Freitas if you are allowed to answer this, that you were somewhat slow to move as far as the law was concerned as well?

Mike Peasland: Yes.

Simon Reeve: Thank you very much.

Chair: I now turn to Jim McGovern, who wants to pick up questions 12 and 13.

Jim McGovern: I think Simon has probably covered them—certainly no. 12 anyway.

Chair: Maybe just to clarify, to ask you about your reaction, I think it is worth our while asking both you and the company what was the reaction when the activities of the Consulting Association came to light following the Information Commissioner's raid.

Mike Peasland: The reaction was to review exactly where we were with what we were doing and to change and improve our policies both in terms of our code of conduct and data protection.

Q2512 Chair: Am I right in thinking that, had you not been caught, things would have gone on as they were before?

Mike Peasland: I, personally, believe that we would have got there. We would just have been slower in getting there, but we would have got to that point.

Q2513 Chair: What sort of evidence is there that you would have got there?

Mike Peasland: There is no evidence of that.

Q2514 Jim McGovern: What point would you have got to?

Mike Peasland: At some stage.

Q2515 Jim McGovern: Yes, but which point?

Mike Peasland: At some stage we would have got to the point where the use of the Consulting Association was not the right thing to do. We needed to stop doing that.

Q2516 Chair: What evidence have you got for that?

Mike Peasland: None.

Q2517 Chair: When Alan Wainwright kicked up a fuss about it, that would have been an opportunity for people to review it, but you did not take it then. I am struck by your submission where you said, "We regret this." I am left with the view that you regret getting caught—certainly I think you are pretty clear about that—but there is no evidence that at the time the company regretted using the Consulting Association at all.

Jim McGovern: On the contrary, I think Mr Peasland said that the company was happy with the service. I am quoting you here. You said that you were happy with the service you were getting.

Mike Peasland: I did say that; I did say that.

Q2518 Chair: You did regret getting caught because you would have been perfectly happy to have carried on, and, maybe, at some time in the future you might have had a review. You are aware that other companies have said to us that they became unhappy about the procedure used by the Consulting Association and stopped using it before they were caught. I am sorry but nodding does not work because we have to take a record. You are nodding your head. I take it that that is an agreement.

Mike Peasland: I was waiting for you to complete your question.

12 March 2013 Mike Peasland, CEO

Chair: I am sorry. I thought your enthusiasm to respond was why you were nodding. Other companies pulled out voluntarily. You did not. As a result, that leaves us with a view that you don't regret having used it at all, that you regret now but you did not regret it at the time, and you would have been perfectly happy to have carried on.

Mike Peasland: As I said before, we regret using the Consulting Association. I believe that we would have got there eventually and that we would have stopped using the Consulting Association, irrespective of whether the ICO had raided the Consulting Association.

Chair: But you have absolutely no evidence of that.

Q2519 Jim McGovern: You have said that it was a service that you were happy with.

Mike Peasland: Yes, but over time we were talking about—

Q2520 Simon Reeve: Over what period do you think you might have come to stop using it?

Mike Peasland: It is hypothetical. I would have thought that—

Simon Reeve: You raised it. Over what period do you think?

Mike Peasland: I would have thought, probably, within about a couple of years.

Q2521 Simon Reeve: So, from having no plans at all to do anything, you would have got to the point of not using it within 24 months if you hadn't got caught.

Mike Peasland: That would be my belief.

Q2522 Graeme Morrice: When you were at the time using the services of the Consulting Association—you said you were happy about the service—did you have any qualms about the morality of what you were doing?

Mike Peasland: When I took over as MD of Balfour Kilpatrick I was made aware of the Consulting Association. I viewed it in my own mind. On the balance of the disruption, the unofficial action that we were experiencing and the problems with our projects, my decision was to continue.

Q2523 Graeme Morrice: On balance, you reviewed it within your own mind, as you said. Obviously, you looked at the pros and the cons, so you believed that there were cons to using it. Could you maybe explain what your concerns were? But obviously on balance, you decided to press ahead. Nevertheless, what were your concerns when you were reviewing it within your own mind?

Mike Peasland: It was on the basis of whether it was the right thing to do in my own mind.

Q2524 Jim McGovern: The best way to make money for the company.

Mike Peasland: No. It was the best way to prevent disruption on our projects.

Q2525 Jim McGovern: But certainly not the best way to prevent accidents.

Mike Peasland: I thought that I had explained that earlier. I do believe that our health and safety performance has continually improved. Since 2002, our accident frequency rate has halved over that period. We have done significant amounts with our work force in our behavioural safety plans—Safe on Site, Whatever it takes!, Mad About Safety and Make Safety Personal. All these are issues to engage with the work force to help us as leaders to make our sites much safer. That is the whole intent of what we are doing. In 2008 we introduced Zero Harm, which was a worldwide initiative on improvements in safety.

Q2526 Jim McGovern: Let me give you an example. My own background prior to being in this job was in the construction industry. Under health and safety legislation, a ladder is meant to give you access to a job that you are going to be doing. It is not meant to be a work platform. I am a glazier. If I said to the management every time a window was broken on the third storey of a tenement building, "No, I can't do that from a ladder. I will need a scaffold," they would say, "No. You're sacked. You're finished. You're not getting that." Are you telling me, or can I understand you to be saying, that Balfour Beatty adhered to that health and safety legislation as closely as that?

Mike Peasland: Yes. We only use access platforms and proper staging. The only time that we would use a ladder would be where there has been no other means than using that ladder, and that would be under a permit-to-work system. There would have to be a formal request that the ladder is the only methodology that could be used; you could not use a MEWP, an access platform or a mobile scaffold. Therefore, you would ask for a specific—

Q2527 Jim McGovern: I understand you. You are quoting health and safety legislation. The question was, does Balfour Beatty adhere to it as strictly as that?

Mike Peasland: You asked me what we would do. That is the policy in Balfour Beatty.

Jim McGovern: Apologies for my scepticism.

Q2528 Graeme Morrice: Just going back to the initial line of questioning from myself, you say that when you reviewed this whole aspect of whether it was the right thing to do to utilise the services of the Consulting Association, did you feel that those kinds of concerns that you did have in your own mind were troubling or worrying in some way? Could you maybe elucidate and indicate what those troubles and concerns were? What were the doubts that you had?

Mike Peasland: Again, it was a general, "Is this the right thing to do?", and balancing that against the disruption and unofficial actions that we were having on our sites.

Q2529 Graeme Morrice: I understand that, but why did you ask that question, "Is it the right thing to do?" If people do wrong things, they probably know why they are doing it. They may still do it, but at least they will know why they are doing it. Why did you have those concerns and what were those particular concerns specifically?

12 March 2013 Mike Peasland, CEO

Mike Peasland: Just about using a third party in terms of using those checks.

Q2530 Graeme Morrice: It was simply just using a third party and not about the morality of blacklisting, or using a blacklisting outfit.

Mike Peasland: I was looking more about the clearance procedure and how we went about that. I think that Mr Reevell asked if we were capturing everything. Were we capturing all the things—

Graeme Morrice: That is about the effectiveness of it, not about the morality of using a blacklisting organisation.

Mike Peasland: I still had checks in my own mind that, if there were some issues with this company, then was it the right thing to do? In other words, could there have been incorrect information?

Q2531 Simon Reevell: Was it the method or the principle that you were concerned about?

Mike Peasland: Personally, I rolled over in my own mind the principle of using the Consulting Association. On balance, I decided—

Q2532 Simon Reevell: Is it the principle of blacklisting or the method by which the firm you used compiled its blacklisting data?

Mike Peasland: It was to do with the methodology of the Consulting Association.

Q2533 Chair: That was on the basis that it might not have been particularly efficient.

Mike Peasland: That is correct.

Q2534 Chair: If it had been more efficient and more effective and able to blacklist more accurately, that would not have been a problem.

Mike Peasland: It was about the checking procedure, and I say, on balance, again, was the checking the right thing to do?

Q2535 Chair: Were you or the company aware that from 2003 what the Consulting Association was doing was illegal?

Mike Peasland: I was not.

Q2536 Chair: Was the company?

Mike Peasland: I don't believe so.

Q2537 Chair: When it was raised by Alan Wainwright, did nobody go and check whether or not this was actually legal or illegal?

Mike Peasland: [Interruption] I am being advised that we are getting into areas of privilege that I cannot answer.

Q2538 Chair: I must confess I don't understand why that should be privileged. If you did not have a lawyer beside you, you would have gone ahead and, presumably, said that you didn't know. Maybe we have made a mistake in that regard, because I think you are hiding behind the lawyer on this. Okay, so you did not know that.

Can I just come back to the question of your reaction? Your reaction when you got caught doing this was to

have a review of all the things that you were doing. The Information Commissioner gave you enforcement notices to stop doing what you were doing, did it not?

Mike Peasland: That is correct.

Q2539 Chair: And it did not issue enforcement notices to some other companies, did it?

Mike Peasland: I believe that is correct.

Q2540 Chair: Why do you think that you got enforcement notices and other people didn't?

Mike Peasland: I don't know the answer to that. I don't know why the ICO decided that we should get enforcement notices rather than some of the other companies.

Q2541 Jim McGovern: There were 14 enforcement notices issued, and six of them were to Balfour Beatty companies. It does seem to be quite a large proportion of the notices. You have no explanation for that.

Mike Peasland: We were a large user. As you said, we were a heavy user of the Consulting Association and probably one of the biggest users. As you said, there were six companies that used the services of the Consulting Association.

Q2542 Chair: Did you not seek legal advice at the time? I am surprised that you are not telling us that that is legally privileged as well? Did you not seek legal advice about that at the time, or do you feel that you can discuss this with us?

Mike Peasland: The enforcement notices were put in place. At that point there was a question of looking at the whole issue around what we needed to do to bring ourselves up to scratch in terms of our code of conduct and the issues around the Data Protection Act. There would be a prohibition on anybody using or supporting any kind of list that excluded people. That would be the subject of disciplinary action and could lead to dismissal from the company. There were very strict rules around that. Compliance officers were put into the business. Since that time, these six companies do not exist in that form any more. So we have one company, which is called Construction Services UK, of which I am the CEO, and below that there are now three business streams. Those three business streams are operational business streams. They look at the front end, towards the customer, at the enabling functions, and the services elements are all now controlled centrally as well. So our HR function no longer sits within the six companies or three business streams. It sits centrally and it is controlled centrally. So we have much more control and compliance over the things that we do now than we did in the past.

Q2543 Simon Reevell: Could I ask something, Chair? At the time that Mr Beck received the complaint that we have talked about and he took it to Mr Raby, did the HR department have in-house lawyers who were working within the company?

Mike Peasland: At that time there was an in-house company lawyer.

12 March 2013 Mike Peasland, CEO

Q2544 Simon Reeve: Did you have external lawyers who were either retained by the company or to whom you went on a regular basis?

Mike Peasland: We did and do have external lawyers that we use for specific elements of whatever it might be, in terms of mergers and acquisitions, or whether it is employment law or whatever. We use specific lawyers for these individual specialities as such.

Q2545 Simon Reeve: Such as crisis management. At the time that Mr Beck spoke to Mr Raby, there was an in-house lawyer, and there was also a regular system of access to whatever external lawyers were needed.

Mike Peasland: That was the system in place.

Q2546 Lindsay Roy: Would it be fair to say that Balfour Beatty did not know how effective their engagement with the Consulting Association was in this so-called business?

Mike Peasland: I can only look at the outcome, and the outcome was that over the period generally our sites were well run and undisrupted by the methodology of the checking system that we used, and the Consulting Association was a part of that.

Q2547 Lindsay Roy: Was there a reduction in disruption and industrial action over the period that you were involved with the Consulting Association?

Mike Peasland: There were ups and downs over the period.

Q2548 Lindsay Roy: So, in effect, you don't know how effective it was.

Mike Peasland: In the '70s there was quite a lot of industrial action. Again, it happened in the '80s and then we saw it, again, as I mentioned to you earlier, at round about the millennium. There were waves of industrial disputes throughout the period. As far as Balfour Beatty was concerned, in general, the checking system that we used meant that we had less disruption than otherwise might have been the case.

Q2549 Lindsay Roy: How do you know that?

Mike Peasland: That is my opinion.

Q2550 Lindsay Roy: It strikes me that it has been a very complacent management and leadership system where you invest this money and don't know what the outcomes are.

Mike Peasland: As I said, I believe the outcome was that we had less unofficial industrial action and disputes than we would otherwise have had on our projects.

Q2551 Lindsay Roy: You say you believe that, but do you have hard evidence to support that?

Mike Peasland: Yes. There is evidence of our businesses and projects being well run.

Q2552 Lindsay Roy: Can you provide the evidence to us then? We are talking here about disruption and unofficial industrial action. Can you provide evidence to us that indicates that this has been a worthwhile investment?

Mike Peasland: I can attempt to provide information on sites in those periods where we had industrial action as opposed to when we did not. I am trying to provide you with information that we have.

Q2553 Graeme Morrice: You said some time ago that in using blacklisting companies you did not discriminate against anyone on the basis of legitimate trade union activities, such as industrial action.

Mike Peasland: That is correct.

Q2554 Graeme Morrice: But you have just said that your industrial relations record was better than others'. In other words, you were indicating that there were less official industrial disputes compared with other companies as a result of using blacklisting organisations and the information leading form it.

Mike Peasland: When I said "industrial disputes", I meant unofficial action and wildcat strikes.

Q2555 Graeme Morrice: But you did not say "unofficial wildcat strikes". You said "industrial action". To me, industrial action is legitimate, official conduct by trade unions.

Lindsay Roy: Can you provide us with that evidence?

Mike Peasland: I have said it a number of times. It was due to unofficial, disruptive action. In that last sentence I said "industrial action" because I left out the adjective "unjustifiable".

Q2556 Lindsay Roy: Can you provide us with that evidence?

Mike Peasland: I will attempt to do that.

Q2557 Lindsay Roy: In terms of numerical values—

Mike Peasland: Numbers?

Lindsay Roy:—numbers of incidents and numbers of people involved. According to what you say, there should be a declining curve.

Mike Peasland: I can attempt to do that. I can attempt to give you some evidence, if possible.

Q2558 Mr Reid: After the ICO raid on the Consulting Association, you carried out an internal review. What were the revelations of that review?

Mike Peasland: The review was that both our data protection policies and our code of conduct needed to be reviewed and strengthened to make it much more visible and explicit in terms of the actions that would be taken for either the use of or support of lists that supported people being excluded from sites without reference. It was specifically about referencing. It was again that no reference would be taken on anybody without that person knowing, and seeking approval and getting approval from that individual that they had approval to seek a reference from another employer.

Q2559 Mr Reid: Did you not have procedures in place before that raid? For example, the data protection law was changed. Did you not have procedures in place that your lawyers would tell you, "This particular law has been changed? You need to"—

Mike Peasland: There were procedures in place.

12 March 2013 Mike Peasland, CEO

Q2560 Mr Reid: So why do you think that they did not work in this case?

Mike Peasland: They obviously were not robust enough.

Q2561 Mr Reid: Are you confident that these procedures are now robust enough? In what way weren't they robust enough? What changes have you made to make them robust?

Mike Peasland: We have introduced a mandatory e-learning course so that, on their induction into the company, everybody receives an e-learning course on data protection. Each individual now, as opposed to relying on a procedure, gets that e-learning course at their induction, when they start with the company, on data protection in association with other things, like health and safety requirements and so on.

Q2562 Mr Reid: If the law on, say, health and safety data protection employment rights changes, do you have a part of your company that monitors what Parliament does and then draws your attention to any changes that have to be made?

Mike Peasland: Yes. It is incumbent upon us to what you would call "horizon scan", to know what is the up-and-coming legislation, what things are coming that we need to be aware of. Do we need to look at our processes and procedures, and do we need to upgrade them, subject to new things appearing on the statute?

Q2563 Mr Reid: Has that procedure only been introduced since 2009?

Mike Peasland: In terms of that situation, yes.

Q2564 Mr Reid: Would you be able to give us a copy of the internal review?

Mike Peasland: I can give you a copy of our code of conduct and a copy of our data protection policy.

Q2565 Mr Reid: What about the internal review itself—the report that was produced to you? Would you give us a copy of that?

Mike Peasland: No. These reviews are internal for our own use.

Q2566 Chair: No, sorry. We are asking you for a copy of the report. We are not concerned with whether or not it is internal. We want to have a copy; we want to see the report. We want to see the analysis that you drew.

Mike Peasland: [Interruption.] We can check and we can provide that, if we can.

Q2567 Chair: Sorry, what is it that you have got to check?

Mike Peasland: If it was checked by external lawyers, then it is subject to legal privilege. If it was checked by an internal review, then, obviously, we will make it available.

Q2568 Chair: We would want to have the House of Commons legal advice involved in that process rather than simply having your own definition of whether or not it is legally privileged. I am sure that lawyers can

butt heads over that in due course and we can correspond.

Can I clarify this? I am told that the new legislation on data protection came through in 2003. None of your lawyers drew to your attention that you were behaving illegally until you were caught. That just seems astounding. Did anybody get sacked, disciplined or punished in any way, or did everybody just carry on as before or get promoted?

Mike Peasland: Nobody was made redundant because of that situation.

Q2569 Jim McGovern: Redundancy is a different thing from sacking, isn't it?

Mike Peasland: Nobody was sacked because of that situation.

Q2570 Mr Reid: Was anybody disciplined in any way?

Mike Peasland: Not that I am aware of. There was no disciplinary action.

Q2571 Chair: Did you get new lawyers or anything like that?

Mike Peasland: Our lawyers remained the same.

Q2572 Chair: Can you understand why there seems here to be one rule for management staff and another for people on the sites? If somebody on the sites had made a mistake the equivalent in scale to this, surely they would have been sacked and blacklisted.

Mike Peasland: Our employees were following the procedures of the company at the time.

Q2573 Chair: No, no. The procedure, surely, was to tell you that you were behaving illegally. You don't have an instruction, do you, to your lawyers saying, "Don't tell us if we are behaving illegally"? There is either a question that they were deliberately not telling you, or there is a question of competence. Now which is it?

Mike Peasland: There may have been a situation where we obviously weren't doing what we should have been doing.

Q2574 Mr Reid: But the data protection law changed in 2003. Who in the company was responsible for flagging that change up to senior management?

Mike Peasland: It would have been any of the individual heads of legal within individual companies.

Q2575 Mr Reid: So none of the heads of legal in each of your different companies flagged up that the data protection law had been changed.

Mike Peasland: The process now is that there is a much more robust system in place, which means that we look at these issues much more closely.

Q2576 Graeme Morrice: This is about the law. The law was changed. A new law was introduced—the Data Protection Act—in 2003. Did your company take a decision? Did your senior management, your board of directors or whoever, take a decision that your lawyers would look at this, or did your lawyers come

12 March 2013 Mike Peasland, CEO

in and say, “We need to review this because there has been a change in the law”?

Mike Peasland: There was no direct instruction or agreement that we would be breaching the law.

Q2577 Chair: Okay. Was that reviewed? They just didn’t tell you.

Mr Reid: Was there anybody in the company charged with monitoring Parliament and flagging up when the law changed?

Mike Peasland: No.

Q2578 Mr Reid: Was it only data protection law that you have fallen foul of? When employment law and health and safety law changed, did you fall foul of those?

Mike Peasland: Not really. We haven’t fallen foul of any other.

Mr Reid: Just data protection.

Q2579 Chair: But to be fair, you were not aware of breaching data protection law until you got caught. By definition, you could be breaking all sorts of laws, but until you are caught, presumably, your defence is, “We didn’t know.”

Mike Peasland: We have very robust systems in the likes of health and safety. We are very aware of health and safety legislation as it comes forward. In fact, in a lot of cases we like to be ahead of legislation in terms of what is coming so that we can—

Q2580 Chair: I understand that. That is what we would expect from a major company for reputational reasons.

Mike Peasland: Again, employment law would be the same. There is no evidence of us having missed anything on health and safety laws, nor any evidence that we have missed anything on employment law.

Q2581 Mr Reid: Going back to 2003, were your lawyers just charged with looking at specific areas of the law rather than the law as a whole?

Mike Peasland: As I was saying earlier, we would use specific legal companies for particular specialisms, such as employment, health and safety and other areas of the law.

Q2582 Mr Reid: Are you able to give us a list of the particular specialisms that you had asked to be informed of when the law changed?

Mike Peasland: I don’t know the answer to that one.

Mr Reid: Could you go back and investigate and find out?

Q2583 Chair: You can understand why a major company, along with other major companies, completely seemed to have overlooked a change in legislation, when ignoring it was enormously to their financial benefit, and only stopped breaking the law when they were caught. You can understand why we have some anxieties about this situation and why we are trying to clarify the position.

Mike Peasland: Absolutely.

Chair: There are a couple of other points that we want to raise. Do you still want to continue? I see that Alan Reid wants to ask a question.

Q2584 Mr Reid: Are you now confident that the changes in procedures you put in place following the 2009 raid will mean that you will not be engaged in blacklisting?

Mike Peasland: We are confident of that. As I said, we have put in these robust procedures. We have our whistleblowing line in place. Just to give you some information, since 2009, since we introduced ListenUp, which is our hotline, a total of 216 reports have been made; 28 related to health and safety issues. From the resultant investigations, seven of the 28 health and safety-related cases were substantiated and we dealt with them. In that period there were no issues raised on blacklisting.

Q2585 Chair: Did you ever, as a company, deny being involved in blacklisting while you were doing it?

Mike Peasland: Not that I am aware of. I do not want to get into moot points about what blacklisting means, but from our point of view we were using the Consulting Association for reference checking, and that reference checking was part of our overall recruitment policy.

Q2586 Chair: That is a good one. If you define blacklisting in the way that you wish, then nobody ever blacklists anybody; I understand that. Can I phrase it differently, then? This was a secret—clandestine—system of checking references. Do you think that that is a fair assessment?

Mike Peasland: It would be secret to the workers. That is correct.

Q2587 Chair: It was secret to everybody, wasn’t it? Nobody else outside management in construction companies knew that the Consulting Association existed or was active.

Mike Peasland: The companies that used it—it was industry-wide—knew it.

Q2588 Chair: But the unions didn’t use it, none of the employees used it, the press didn’t know of it, and nobody else knew about it at all, did they?

Mike Peasland: That is correct.

Q2589 Chair: Faxes were sent in and Ian Kerr was under instructions to destroy them at the end of the day so that there was no trace. That tends to make me think it was secret. Nothing seems to have been written down in any of the companies. That tends to make me think it was secret. That is why I am making the point about it being clandestine. Coming back, then, to this clandestine operation—you can quibble about whether or not it is blacklisting—did you ever deny being involved in this while you were doing it?

Mike Peasland: Not that I am aware of.

Chair: Have you checked? Maybe you could go back and check that, because we are going to check with you and a number of other companies to see if you can identify any evidence about companies having denied

12 March 2013 Mike Peasland, CEO

being involved in blacklisting while they were actually doing it. Obviously, we would be upset about that if we discovered that, because it would call into question the veracity of any assurances that we are receiving at the moment.

Q2590 Jim McGovern: Chairman, could I ask Mr Peasland a question on that subject about the law? Do you have an opinion—you might want to speak to your lawyer about it—on why Ian Kerr was fined £5,000 and, of course, McAlpine paid his fine, his legal fees and so on, and why the companies like your company that were breaking the law were never taken to court?

Mike Peasland: I don't know the answer to that. It was the ICO that made that decision. I presume that they would give a reason for that, but I have no idea why they did that.

Q2591 Jim McGovern: But you freely admit that your company and numerous other companies were in breach of the law.

Mike Peasland: Yes; we were using the Consulting Association.

Q2592 Chair: You have given us a statement, which is very helpful, which is marked "Privileged and Confidential". I assume that it is neither. It is neither privileged in the sense of legal privilege, nor is it confidential, since it would be our intention, as a public body, to publish everything.

Mike Peasland: We have given you that as a record document for public consumption.

Q2593 Chair: Right. So in fact it is neither privileged nor confidential. Can I come to paragraph 2.1 where you acknowledge using the services of the Consulting Association? Then you go on to say: "We regret this. It should not have happened and we apologise".

I have some qualms about the genuineness of your apology and about the genuineness of your regret, given that it is my understanding that you intend to fight, as vigorously as you possibly can, any claim for compensation that is brought against you by anybody at all. I can understand it if the company said, "Look, we put up our hands. We recognise that we have adversely affected people. We are prepared, in these circumstances, to pay compensation." But, to admit that you were a part of this conspiracy, you admit that you were doing things that you should not have done, and then be prepared to vigorously defend them in court, can you see how, from our perspective, there does seem to be somewhat of a contradiction there?

Mike Peasland: We will make financial recompense to those who have been affected by this.

Q2594 Chair: How do people go about proving it? One of the difficulties that we have with this is that, if somebody went for a job with you and was refused, and then had to travel to the other end of the country and got a job there, can they prove loss of wages there? Well, not if the wages were the same.

Mike Peasland: The courts are there to make the decisions—proper decisions. They are there to support

individuals and people in law in what should be done. Having said that, if there are genuine cases that fall between the cracks, as you might say, in circumstances that you have just mentioned, then, obviously, we would be looking at that as to whether compensation was due or not.

Q2595 Chair: When you say "we would be looking at that", are you looking at that?

Mike Peasland: I don't know the nature of the claims at the moment. I haven't seen them.

Q2596 Chair: As I understand it, there are some legal claims but there are no other unofficial claims. Can you understand why we are surprised? As I understand it, you are not just simply going to be leaving the court to determine damages, but you are going to vigorously defend every case that comes in front of the court to which you are attached. It looks as if you don't really regret it at all. You only regret being caught.

Mike Peasland: There are maybe claims that are not competent, which are not there for compensation to be applied.

Q2597 Chair: That is a very helpful point. We have had cases, as I understand it, rejected by tribunals and courts where, say, a subcontractor has been sacked because of the actions of the main contractor, but because the person involved was not employed directly by the person who made the decision, they could not take a case against them. The main contractor hid behind that legal technicality. Or some cases have been out of time and, therefore, have fallen. That, again, is a legal technicality. Morally, the main company is as responsible as it would have been earlier on had the case come on earlier. Do you not see that, in terms of reputation, there is a difficulty for companies like yours if you are seen to be hiding behind and vigorously fighting legal cases, while at the same time pretending—well, giving the impression—that you are genuinely upset and regretful about what you did?

Mike Peasland: We are genuinely upset and regretful. Personally, it is an issue for me. But the courts are there to protect people, and that is where they should take these cases. We will pay what is due. As I said, if there are legitimate claims where people fall between the cracks because there is dubiety about the issue, then we will seriously look at that.

Q2598 Jim McGovern: How can people find out if they have been on a blacklist?

Mike Peasland: I understand that each individual can make representation to the ICO. I believe that is what was done.

Q2599 Jim McGovern: Previously, why people would not do that was because, if they made a phone call, they had to pay a fee for the information, and, if they found out they were not on a blacklist, they were immediately put on it because the organisation was saying, "They must have something to hide so we are going to put them on a blacklist."

12 March 2013 Mike Peasland, CEO

Mike Peasland: I thought you were meaning now, Jim. I thought you were meaning at this moment; that is how they find it. But now they would go to the—

Q2600 Jim McGovern: You can understand why people would be a bit reticent about approaching them or pursuing that. They are going to end up on a blacklist because they were trying to find out if they had been on one.

Mike Peasland: That would not be the case now. Certainly within our organisation, the way that we operate now, the robust procedures that we have put in place means that anybody using or supporting any kind of list would be subject to serious disciplinary action.

Q2601 Jim McGovern: Chair, can I ask another question? Given the nature of the whole blacklisting thing—it might go further or it might end up on a par with the Leveson inquiry, I don't know—and given that most of the people who suffered because of blacklisting were involved in trade union activities, how is your company engaging now with trade unions to ensure that it never happens again and to try and address the problems that have happened before?

Mike Peasland: We have certainly invested in the way that we have redone our policies and procedures to make sure that it does not happen again. We have got compliance officers in place. We will be engaging with the unions as we go forward.

Q2602 Jim McGovern: I know that this is asking for an opinion rather than some sort of statement of fact, but do you think it still exists in the construction industry?

Mike Peasland: I am not aware of that. I, personally, have not seen or heard of any anecdotal evidence, personally, that it still exists.

Jim McGovern: Okay, thank you.

Q2603 Chair: I wonder if I could sweep up some smaller points that are outstanding. When the Consulting Association closed down, there were obviously costs involved. I understand that Mr Kerr's fine was paid by McAlpine and so on. There were obviously the costs of closing down the business. Were you, as a company, asked to contribute to those at all?

Mike Peasland: We were sent invoices by lawyers for costs.

Q2604 Chair: Did you, therefore, contribute towards the closing-down costs?

Mike Peasland: We didn't pay that. We sent those costs on to the ICO. We sent those invoices on to the ICO.

Q2605 Chair: But were these closing-down costs as distinct from invoices for services that you had already received? Do you understand the distinction?

Mike Peasland: Yes. I don't actually know what the invoices were for. I can find out what the invoices were for.

Q2606 Chair: There were ongoing invoices; that is when the business was stopped. We understand that some companies were approached and declined to pay a share of the closing-down costs and that Mr Kerr and his family feel, quite understandably, that he was hung out to dry by the companies involved, which had been happy to use his services and then walked away at a time of difficulties. Had McAlpine not met all the costs, then he might have ended up personally liable. I am trying to clarify what your actions, activities and views were at that stage.

Mike Peasland: The actions were to cease any communication with the Consulting Association on the basis that we may have been breaching the enforcement notice that was put on us.

Q2607 Chair: Did you take legal advice on that?

Mike Peasland: Not that I am aware of.

Q2608 Chair: You have hidden behind the lawyers on a number of occasions here. It seems surprising that you did not take legal advice on something like that, since those were legal processes that were being undertaken. It does sound to me rather as if you were one of those who left Ian Kerr hanging out to dry. Is that a fair assessment?

Mike Peasland: We certainly did not pay any of the costs for the close-down of the Consulting Association.

Q2609 Chair: Were you asked to do so?

Mike Peasland: We were not asked to do so.

Chair: If you weren't asked, I think that is slightly different.

Mike Peasland: I said that we were not asked to contribute from the Consulting Association, but, separately, we were sent invoices from lawyers for costs that we did not pay and forwarded directly to the ICO.

Q2610 Chair: I want to clarify this. Were they the costs of the business that had been ongoing or were they costs—

Mike Peasland: I will clarify that for you. I don't have that information to hand.

Q2611 Chair: But you did not take any legal advice about whether or not there was any liability to you at that stage. You just ignored it and hoped that it would go away, and indeed it did because McAlpine took the view, "It's a relatively small sum of money so we'll just pay it."

Jim McGovern: I think, Chair, Callum McAlpine said that they paid the fine and the associated expenses for humanitarian reasons.

Chair: That is right, because everybody else ran away.

Jim McGovern: But Balfour Beatty did not see it that way, for humanitarian reasons.

Mike Peasland: We took the view that we could be in breach of the enforcement notice and, therefore, we passed the costs back to the ICO.

Jim McGovern: I should make it clear that I don't believe Callum McAlpine when he says that it was done for humanitarian reasons.

12 March 2013 Mike Peasland, CEO

Chair: That is another issue. But you did not seek or receive any legal advice on that. I think you have agreed that earlier on. That was just an assessment that was made by staff.

Q2612 Lindsay Roy: Were these invoices from lawyers acting on behalf of the Consultancy Association, and, if so, who were they?

Mike Peasland: I don't know. If I can provide that information, I will.

Q2613 Chair: Were you aware as a company at any stage that the files held by the Consulting Association contained the lists of names of environmentalists, green activists and the like?

Mike Peasland: I wasn't aware of that.

Chair: You have not been made aware of that at all in your preparation for this meeting.

Mike Peasland: No.

Chair: I am genuinely surprised at that.

Mike Peasland: We don't have the information that you have. I have not seen the files.

Chair: No, no; I understand that. But a lot of this is in the public domain. That information about the holding of files on environmentalists has been raised in our public hearings. I would have thought that as part of the briefings that you received for coming along here you would have had a response ready for that. I accept that some companies would not have used those, but they were obviously being held for a reason and that is what we are trying to clarify.

Jim McGovern: It is also fair to say that we don't have the information that you have.

Chair: That is a very fair point. Are there any other questions that colleagues want to raise?

Q2614 Pamela Nash: I would presume, unfortunately, that there have been redundancies from Balfour Beatty over the last few years. Do you have set criteria for those who are made redundant? Are those different for the different companies that make up the Balfour Beatty group, or is that across the group?

Mike Peasland: It has changed over time. If you look at where it would have been in the past, there would have been an element of last in, first out. Over time we have spoken with the unions and negotiated with them that we should be looking at skills. Therefore, the selection for redundancy was skills-based rather than a time-based situation.

Q2615 Pamela Nash: At the time when it was last in, first out, was a vetting criteria agreed or was it just in and out?

Mike Peasland: It would be straightforward. If you were last to be employed, therefore you would be first to go.

Q2616 Pamela Nash: It would just be that. There are now set criteria; is that correct? Is there a document that sets out the criteria for redundancy—

Mike Peasland: There is certainly agreement with the unions in terms of how we would go about selection for redundancy.

Q2617 Pamela Nash: Is that a written document?

Mike Peasland: I will check to see what is available.

Q2618 Pamela Nash: It would be helpful for us to see that because there have also been allegations of redundancies being allocated in response to people's trade union or health and safety work. You said something that was different from other companies. You said that your bill to the Consulting Association was paid centrally for the whole group. Was there one main contact, one person, who was in contact with the Association?

Mike Peasland: No. When I said "centrally", one of the companies took the lead in terms of paying the membership fee, but each of the individual companies did their cheques to the Consulting Association and paid the check fee separately. That was invoiced to those companies. So one of the operating companies took the fee on but the other companies paid—

Q2619 Pamela Nash: Who was that?

Mike Peasland: It was Balfour Beatty Civil Engineering Limited.

Q2620 Pamela Nash: Was there a person from Civil Engineering who represented Balfour Beatty at the meetings? It was one person. Who was that?

Mike Peasland: There was, and we can provide that for you.

Q2621 Pamela Nash: That has to be done privately. Can I just ask this? If there are people involved from the other companies within the group and this person, we will take private evidence from them. Are they still employed by Balfour Beatty at the moment?

Mike Peasland: The person whom we are talking about here has retired and is no longer employed.

Pamela Nash: Thank you.

Q2622 Chair: Could I draw to your attention one of the sheets I have had that is in the public domain? It is a card for somebody, and it refers to action that took place on 21 June 2000. That was when the information was put in. It says: "In addition, the following were not re-employed by"—and it gives you a code number—"following the unofficial action at Pfizer, Sandwich, between mid-April and mid-May 2000. These were regarded as followers rather than leaders of the unofficial action." Then there is a list of about 30 to 40 names. Again, it says that the source of that information was you. We have notes here indicating that this record was following them, and in one case—the latest here is 27 July 2007—where the company has not furthered. Does it not seem to you to be a bit harsh that somebody who, by your company, was described as a "follower" rather than a leader of the unofficial action is still getting turned down for jobs on your recommendation seven years later?

Mike Peasland: Certainly from my point of view, as I said earlier, a number of people were almost forced to follow what the requirements were. I would really regret the situation if anybody in that position was denied employment for feeling that they had to follow a course of action that they did not believe in.

12 March 2013 Mike Peasland, CEO

Q2623 Lindsay Roy: What evidence do you have that they were forced to follow?

Mike Peasland: Would you say that again?

Lindsay Roy: What evidence did you have that they were forced to follow?

Mike Peasland: I don't know what evidence was available.

Lindsay Roy: But you have just stated that.

Mike Peasland: I am just quoting from the Chairman. You were talking about the follower. I am just giving that information.

Q2624 Chair: Your company blacklisted these people and said that these were regarded as followers rather than leaders, and seven years later people were still rejecting them for jobs on the basis that they were on the list. If you remember, you were described as among the most hard-nosed of companies of all in that regard, so, had anything like this come in, I think we have to draw the conclusion that if anybody else had put in that somebody was regarded as a follower you would have rejected their application right away. We have covered most of that.

Finally, from my perspective, can I ask you what confidence workers can have that you are not still blacklisting, when quite a lot of the people who were involved in the blacklisting, who did things like the contributions by putting that in, are still with the company? In particular, a Gerry Harvey is remaining in a senior HR role, who seems to have been a major contact with the blacklisting group. Given the fact that nobody who did all this seems to have been punished, rebuked, chastised or sacked in any way, people, surely, can draw the conclusion that they are still up to their old tricks but now you are just cleverer about concealing it than you were before.

Mike Peasland: As I say, prior to 2009 these employees were following the company procedure; they were doing what was asked of them by the company. Since 2009 the whole checking system, the code of conduct and the various checks that have been put in place have all been revised, and anybody who is supporting or using any of that kind of information would be subject to dismissal. We have compliance officers and we do regular audits of all of this. As I say, we have also our ListenUp hotline for people to report any of these issues. We are constantly monitoring these things. I have no evidence that this is continuing and I am confident that it is not continuing, and it has not continued since 2009. This is an historical issue that has not been repeated.

Q2625 Chair: Can I clarify that your defence for these people is that they were only obeying orders?

Mike Peasland: That is right. They were following the procedures and processes that were in place.

Jim McGovern: It was a long time ago and they were obeying orders.

Chair: That is right. That is what it boils down to—that these people were only obeying orders.

Q2626 Lindsay Roy: Who in the company instructed this policy to be carried out?

Mike Peasland: It was a policy or a procedure that had been in place for a long time. It was just

something that was almost indigenous within our organisation.

Q2627 Lindsay Roy: There must be a record of the decision to pursue that with the Consultancy Association somewhere within the company records, whether it is a board of directors' meeting or whatever.

Mike Peasland: We, obviously, have some of the Consulting Association minutes, but we have no record of that information.

Lindsay Roy: I am not talking about records of meetings with the Consulting Association.

Mike Peasland: I thought you were asking for information.

Lindsay Roy: I am talking about records within the company as to how to pursue this process.

Mike Peasland: We have not found any records of that information.

Lindsay Roy: Have you looked for them?

Mike Peasland: We have looked.

Q2628 Chair: Given the point that you were just obeying orders, if there is not individual guilt, there surely is a general principle here of collective guilt for the company as a whole. We have just seen banks fined huge amounts of money, both in damages and exemplary damages. Do you think it is appropriate that the same thing either should happen to you through the courts or that you and other building firms should be voluntarily making financial contributions in order to compensate some of the workers whose lives have been ruined by your actions, and from which you have profited?

Mike Peasland: As I said, the courts are there to support the people. The first course of action for them is through the courts. That is what the courts are for. But we will not rest on that wholly. We will look at any individual case where there is a bona fide issue and an issue against Balfour Beatty.

Chair: We did say earlier on informally when we met outside that, at the end, we would give you the opportunity to answer any—

Q2629 Jim McGovern: I have one more question. When was this submission to the Committee written and who was it compiled by?

Mike Peasland: We have been iterating it over time. It was submitted to you this week, so it would have been completed this week.

Q2630 Jim McGovern: I am just intrigued because it says: "We have ceased all contact with Ian Kerr." He died last year, so it is obvious that you have ceased all contact with him. Is this contemporaneous or is it old stuff?

Mike Peasland: That is information that we put in the latest information. Ian Kerr is AKA the Consulting Association.

Q2631 Chair: As I was saying, are there any questions for which you had answers prepared that we have not asked, or are there any points that you want to make that you feel we have not covered adequately?

12 March 2013 Mike Peasland, CEO

Mike Peasland: I think we have covered all the points. I would add that we have robust processes in place. This will not happen again. This is a historical issue. This has not happened in Balfour Beatty since 2009, and we are confident that this will not happen going forward. We have no evidence that this has happened since 2009.

Chair: Fine. Thank you very much for being with us for so long. We had not anticipated that we would necessarily take so long, but there was quite a lot of ground to cover, as you will appreciate. Thank you very much.

Written evidence

Written evidence submitted by Kenny Newton

My name appears on the Consulting Association data base along with another 279 whose “file” contains only a name and nothing else. If one uses their imagination you could multiply many times the number of people that this may have affected.

As to having proof of being blacklisted well that could be in the majority of cases difficult to prove. I could write a book on the number of times that I have been victimised by my past employers. While working for a number electrical construction companies I was deliberately kept off jobs and in many cases worked as the sole electrician on construction sites. Most companies are quite subtle and are usually economical with the truth when you approached regarding such matters.

I would like to enlighten you with one such case that happened to me.

I was working for electrical company on the Shell Oil Refinery in Ellesmere Port I had been employed at the time for over a year. It was common knowledge that I was about to be elected shop steward. On the morning of the election myself and the other electrician were informed because of which was a minor problem. We would have to be transferred to another site for two weeks and a promise of a return back to site. I informed the site manager of the situation but his hands were tied and rather than create a problem for my work colleagues I resigned. I and my work colleague then went to work on another site in the Wirral area. After three days a request was made for my work colleague to return to the Shell Oil Refinery. I then continued working for that company for over a further 10 years.

The company employed dozens of electricians on the Shell Oil refinery throughout that time and I was never (allowed) to set foot on that site again.

The construction industry is by its nature is a here today gone tomorrow industry you get use to that. Also part of the game is you know if you stand up to the boss there is a good chance you will be shot at. During my 50 years in the electrical construction I was lucky I was able to spend a lot of time with small local companies but a company or someone took time out to put my name on the CA data base. There are plenty of my colleagues who have suffered long term unemployment and their family’s extreme hardship from many a spiteful employer but proving it is another matter.

June 2012

Written evidence submitted by the Joseph Rowntree Foundation

Thank you for the opportunity to address the Committee on the subject of forced labour as part of its inquiry on Blacklisting in Employment. I committed to follow up with a brief note on the current and potential future remit of the Gangmaster’s Licensing Authority, and more broadly, the wider regulatory environment.

GAPS/WEAKNESSES IN THE CURRENT REGULATORY FRAMEWORK

At present, enforcement of an individual’s employment rights (pay, terms and conditions etc) is largely dependent on employee action. This means that the employee needs to both understand their rights and the route by which they might enforce them as well as be prepared to take action. For migrant workers, particularly vulnerable isolated migrants, this is not an effective option.

A second problem is the scale and complexity of the UK’s regulatory environment, as recognised by the Hampton Review (2005). Unlike many European countries, the UK has no single agency organising labour inspections, and this has led to differential protection of workers rights by sector or type of employment (set out in the table at appendix i). This complexity makes joint working, or shared training and standards far more difficult to achieve.

THE GANGMASTERS LICENSING AUTHORITY

The GLA is widely perceived to be effective as a consequence of its risk assessment and intelligence led approach (amongst other things this reduces dependence on complaints from an individual worker). Along with other agencies, JRF would urge that serious consideration be given to extending its remit to cover all sectors characterised by the use of labour providers or agency workers.

In addition, the main sanction available to the GLA (removal of license) has the consequence of rendering the exploited worker redundant. There is increasing recognition in the field of the need to provide an adequate system of compensation and support for victims, not least in order to encourage whistleblowing. Enabling the GLA to impose civil penalties could form an important part of that system. For instance, one such penalty would be to require immediate payment of unpaid wages, and place the offending gangmaster on notice that future infractions would lead to a removal of their license to operate.

This potential to increase the effectiveness of regulators by giving them access to civil remedies has been recognised in number of reviews, including Hampton. Indeed, the recent Ministerial statement on the GLA in response to the Red Tape Challenge explicitly recognises the need for such measures including “*penalties for low-level and technical minor offences, including a measure similar to a repayment order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed*”.

I hope this of use, and if there is anything else we can do to support the work of the Committee, please do not hesitate to contact us.

SOURCES

Balch, Alex (2012) Regulation and Forced Labour: a systematic response, JRF
<http://www.jrf.org.uk/publications/regulation-and-enforcement-forced-labour>

Written Statement by the Minister of State for Agriculture and Food (Citation: HL Deb, 24 May 2012, c95WS)
<http://www.theyworkforyou.com/wms/?id=2012-05-24a.95.0>

APPENDIX I

ENFORCEMENT AGENCIES AND EMPLOYMENT RIGHTS PROTECTED

<i>Enforcement agency</i>	<i>Rules enforced</i>	<i>Rights protected/ how protected</i>	<i>Universal coverage?</i>
Her Majesty’s Revenue and Customs (HMRC)	National minimum wage (on behalf of BIS)	Right to fair pay/via tribunal system or complaints investigated by HMRC	No—some types of employment exempt
Department for Environment, Food and Rural Affairs (Defra)	Agricultural minimum wage	Right to fair pay/complaints-based enforcement regime operated by the Agricultural Wages Enforcement Team (AWT)	No—specific sectors or types of employment
Employment Agency Standards Inspectorate (part of Department of Business, Innovation and Skills, BIS)	Employment agency standards	EAS works with employers of agency workers to ensure compliance with employment rights	No—specific sectors or types of employment
Gangmasters Licensing Authority—a Non-Departmental Public Body (NDPB) sponsored by Defra	Gangmaster licensing standards	GLA regulates businesses in certain sectors to ensure employment rights are observed	No—specific sectors or types of employment
Health and Safety Executive—an NDPB sponsored by Department for Work and Pensions (DWP)	Health and safety and working time	Right to safe working environment, working time rights/investigates complaints made to Health and Safety Executive	Yes

Source: The author; BERR (now BIS) (2008, p. 10); Unite (2010)
 July 2012

Written evidence submitted by Unite the Union

INTRODUCTION

This submission represents the views of Unite the Union. Unite is the UK’s largest trade union with approximately 1.5 million members working in a raft of industrial sectors including construction, energy, manufacturing, engineering, transport, information technology, finance, local authorities and the health sector.

Unite is now the sole or joint signatory union to every significant national collective agreement across the whole of the UK construction industry and also throughout the construction products supply chain. In addition, Unite represents skilled craft workers operating across the public sector.

Unite believes that many of its members, especially those employed in the UK construction industry, have had their employment opportunities blighted by the existence of blacklists.

HISTORICAL CONTEXT

Unite is mindful of the fact that the transient nature of the UK construction industry, and the covert nature of the activity of blacklisting itself, has made it difficult to establish objectively the existence of such blacklists.

Unite therefore welcomes the fact that, since the investigation into the activities of The Consulting Association by the Information Commissioner's Office (ICO) in March 2009, the practice has been objectively exposed.

Unite are confident that blacklisting is not just a recent and ongoing activity.

Unite would encourage the Committee to consider the existence (between 1919 and 1993) of the Economic League, a controversial service that gathered information on "left wingers" and was used to vet people for jobs, including construction workers.¹

The actions of the Economic League were entirely consistent with their core objective to "combat the fallacious economic doctrines of collectivism, socialism and communism".² Although the political language is dated by modern standards, it does demonstrate an unfounded and irrational fear of union activity in the workplace. By their own admission, the Economic League believed that "a shop steward can acquire influence out of all proportion to the real nature of his position".³

Despite the assertion that the Economic League was disbanded in 1993 following allegations that much of the information they held was inaccurate⁴, Unite continued to maintain that the blacklisting of workers in the UK construction industry was still taking place.

RECENT ACTIVITY

This assertion, based on anecdotal evidence provided to us by our membership, was borne out by the aforementioned investigation undertaken by the ICO.

In reality the exposure of the blacklist—containing details on 3,213 construction workers, used by over 40 construction companies to vet individuals for employment, and administered by The Consulting Association—only served to reaffirm the suspicions of a significant number of Unite's members.

Unite would encourage the Committee to consider the fact that the ICO, during its investigation into the Consulting Association, discovered that companies paid an annual fee of £3,000 and £2.20 each time they wanted to check details held on an individual. To put the scale of activity into context, the ICO seized annual invoices up to the value of £28,000 for individual companies during its investigation.

Furthermore Unite would point out that evidence suggested that The Consulting Association had in its possession information which pre-dated its existence. For Unite this clearly demonstrated the long standing operation and use of blacklists in the UK construction industry.

Whilst the nature of the industry has made it difficult to establish their existence, Unite has been advised by a number of its members that blacklists other than the one held by The Consulting Association exist.

In addition Unite believes that a range of less formalised arrangements have also existed which in effect lead to blacklisting. Anecdotal evidence suggests that a number of organisations in the construction industry have in the past engaged relatively junior members of staff to monitor employment tribunals and local media for the sole purpose of identifying individuals who are perceived to have had previous "employment issues" and who may make an application for employment in their organisation.

Unite would also highlight the somewhat contentious practice which has previously operated in the offshore oil and gas industry, known colloquially as "NRB" or "not required back". This practice involved operatives, engaged indirectly through a contract with a service provider, being removed from site at the discretion of the offshore installation manager, acting for the duty holder. The power afforded to the offshore installation manager has meant that the operative has had little or no recourse to the decision which can effectively blacklist them from the whole sector.

Unite members have expressed concerns that they have been subject to such procedures simply because of their union involvement and activities.

IMPACT ON BLACKLISTED WORKERS

Unite is keen that the Committee fully understands the dreadful consequences of blacklisting for thousands of UK construction workers. Particularly when they are denied gainful employment in a trade for which they have served an apprenticeship and spent many years acquiring additional skills and experience.

We might consider for example *Electrician A* who has asked to remain anonymous for fear of continued blacklisting.

¹ Labour White Paper No.23, What is the Economic League?—Labour Research Department 1927

² Labour White Paper No.23, What is the Economic League?—Labour Research Department 1927

³ Subversion in Industry—The Economic League Ltd (London & South Eastern Region) 1958

⁴ Building Magazine—20 March 2009

Electrician A entered the industry as an apprentice at the age of 16 and became a qualified electrician in 1988. He spent a number of years working in the industry moving between jobs, as is the nature of the work, without any difficulty.

He gained employment on a major infrastructure project in 1995 and was duly elected as one of the Trade Union Shop Stewards. He remained in employment until 2000, when the project came to an end. During these five years he was a productive worker and an active Shop Steward.

His career progression after the year 2000 was a very different picture.

By 2001 it became apparent that despite making numerous applications there was an issue in gaining employment on major projects, despite the fact that the industry was in a period of sustained growth and his skills were very much in demand.

Consequently *Electrician A* took up a series of employment opportunities in the building maintenance sector, which although maintaining an income considerably impacted on his career progression and earning potential.

It was not until 2007 that *Electrician A* managed to gain employment on a major construction project. However this job was short lived when he raised issues around health & safety and lack of accredited training.

The existence of the blacklist was well known, albeit unproven, amongst the construction industry workforce and over time *Electrician A* came to the realisation that this was the reason for his lack of employment opportunities, having made somewhere in the region of 40 separate applications from the year 2000 and having them all turned down.

In 2009 with the exposure of The Consulting Association the assumptions of *Electrician A* were proven. What came as a shock however was the extent and detail of the information held.

Electrician A discovered that The Consulting Association had an 18 page file on him going right back to his election as a Shop Steward, which included not only details of every job for which he was turned down, but also personal details.

Electrician A is convinced that this information, which included dates of various house moves, was so detailed that it could only have been obtained through some form of surveillance.

Interestingly this dynamic has been alluded to by the Guardian Policy Editor, Daniel Boffey, in his article of 3 March 2012 titled "Police are linked to blacklist of construction workers".

Despite the exposure of The Consulting Association *Electrician A* is still unable to gain employment on any major construction project and has been told unofficially that he will never work in the industry again.

As the Committee will be only too well aware the experience of *Electrician A* is unfortunately not unique. Unite is very mindful of the experience of its longstanding member Colin Trousdale.

Colin joined the Union in 1975 as an apprentice and qualified as an electrician in 1979, he first took up an elected shop steward role in 1982.

The first experience Colin had working for one of the companies named as participating in blacklisting by the ICO was when he started work for the Scottish company Balfour Kilpatrick (now known as Balfour Beatty Engineering Services) in 1985. He found their style of management draconian and left for another job after three months. His departure was not welcomed and he was told he would never work for the company again.

Despite this threat Colin did have several other periods of employment with the company. He worked on the Channel Tunnel project between 1989 and 1990 and on Manchester University project between 1999 and 2000.

Colin was made redundant from the Manchester University project in 2000, shortly after demonstrating sympathy with fellow Union members engaged in a dispute with Balfour Kilpatrick at the Pfizers chemical plant project in Kent.

The last period of employment Colin had with Balfour Kilpatrick was on the Manchester Royal Infirmary project in 2005, where he was elected as a Shop Steward. This coincides with the start of his file at The Consulting Association.

He was made redundant from the project in 2006, at which time he was assured that he would be recalled for the second phase in 2007. However this never happened.

Colin took the company to an employment tribunal in 2008 at which time they denied the existence of the blacklist and of The Consulting Association.

A year later the blacklist was exposed and Colin found that details of the tribunal were included in his file and with details of his activities.

Despite being vastly experienced in the industry and having worked on several high profile construction projects since 2006, Colin has found it increasingly difficult to gain employment and has not worked again for

Balfour Beatty or any of its subsidiaries. In fact following the exposure of the blacklist in 2009 Colin has found it more difficult to gain employment.

This experience is also shared by Unite member Tony Jones who has been forced to leave the industry altogether.

Tony entered the construction industry at the age of 16 as an apprentice electrician and qualified in 1988. He was an active Union member working on a range of sites and major projects. In 2001 he was working for a small electrical contracting company where he was duly elected as the Shop Steward. This coincides with the start of his Consulting Association file. Notably, it wasn't his employer that placed him on the file, rather a major contractor indentified by the ICO, who clearly had undue influence over the supply chain.

Unite notes with interest that Tony's Consulting Association file includes details of all major projects on which he sought employment and was subsequently turned down. This includes his application to AMEC in 2005 for work on Heathrow Terminal 5 (at the time was the largest construction site in Europe).

On occasions where Tony has gained employment with smaller subcontractors, including the Piccadilly Gardens project (2003) and Manchester Royal Infirmary project (2005) he has found these opportunities short lived and subsequently was made redundant. The subcontractors in question have admitted to being put under pressure by certain major contractors not to employ Tony and others.

RECOURSE FOR BLACKLISTED WORKERS

Unite hold the view that the blacklisting should be categorised as a criminal offence with appropriate penalties.

When government announced in July 2009 that it would consult on blacklisting legislation,⁵ Unite were encouraged that real and decisive action would be taken against this abhorrent breach of human rights.

However this optimism was short lived when the proposals were studied in detail.

Despite a significant number of consultation responses from a range of Trade Unions no significant changes were made to the original proposals.

Of particular concern for Unite was the lack of any automatic or retrospective compensation for blacklisted workers, and only in effect the recovery of lost earnings when these could be unequivocally proved to have occurred as a direct result of blacklisting.

Unite also expressed apprehension about the restrictive nature of the definitions within the proposed regulations—such as the distinction between “trade union activities” and “trade union related activities”—which would ensure in effect that much legitimate activity remained outside of the regulations.

In reality, the burden of proof and lack of any retrospective compensation scheme for blacklisted workers means that the only remedy for a significant number of blacklisted workers is through a complaint to the European Court of Human Rights in respect of a breach of their Convention rights—Article 8 on privacy and Article 11 on freedom of association.

CONCLUSION

Unite are encouraged by the fact that the Scottish Affairs Committee are undertaking a rigorous inquiry into blacklisting.

The clandestine nature of this abhorrent activity makes it very difficult to prove objectively. However anecdotal evidence provided by Unite members from every corner of the UK suggests that blacklisting is still a practice undertaken by less scrupulous employers in the construction industry.

Not only are Unite concerned about the impact of this activity on the career progression and remuneration of its members, but we are also legitimately concerned that the crucial work undertaken, on behalf of the whole industry, by Trade Union Shop Stewards and Health & Safety Reps is being undermined by the threat to their future employment prospects.

At time of writing Unite have legitimate concerns about the employment opportunities for some of our construction members at the Ineos Grangemouth refinery and the BP Kinniel projects. Specifically, our concerns centre on reports that active and vocal Unite members have been selected for redundancy on other projects whilst recruitment is still taking place at Grangemouth, and that had these members been offered the opportunity to transfer to Grangemouth, then their continued employment would have been protected, thereby mitigating any requirement to make them redundant.

The Committee will be interested to note that as a result of the 2012 Unite Policy Conference, we intend to campaign politically and industrially for clear contract procurement and tendering policies that prohibit work being placed with companies found guilty of blacklisting workers.

⁵ The Blacklisting of Trade Unionists: Consultation on Revised Draft Regulations—Department for Business Innovation & Skills, July 2009

Unite would highlight the fact that a number of the companies named by the ICO undertake major private and public sector construction work in Scotland. Current projects involving such companies include improvement works at Edinburgh Waverley Station, refurbishment of Glasgow Royal Infirmary and the redevelopment of Edinburgh University.

Unite are looking forward to seeing the result of this inquiry and remain available to provide further evidence should it be required.

August 2012

Supplementary written evidence submitted by Unite the Union

This information is provided further to Ms Cartmail's undertaking to the Inquiry to provide comparative injury statistics (transcript reference Q668).

Data has been provided to the union by the Health and Safety Executive regarding injuries to electricians and electrical fitters for the five year period 2006–07 to 2010–11. The five year span minimises the risk of too much random year-on-year variability.

It will also be noted that this period coincides with a significant economic downturn in the construction industry.

Whilst of course no statistics can be completely accurate nor take every single factor into account, these figures yield the following information regarding injuries to electricians and electrical fitters.

In the *construction* sector over this five year period there were four fatal injuries, 1071 non-fatal injuries and 2035 over three day injuries, a total of **3,110** injuries, to electricians and electrical fitters.

This compares with four fatalities, 229 non-fatal injuries, and 657 over three day injuries, a total of **890** injuries, to electricians and electrical fitters working in the *manufacturing* sector, which has the next highest number of injuries to this occupational group recorded during the same five year period.

December 2012

Written evidence submitted by the Gangmasters Licensing Authority

1. INTRODUCTION

1.1 This paper explains the role and remit of the Gangmasters Licensing Authority ("GLA") with particular reference to its impact in Scotland.

2. BACKGROUND

2.1 The Gangmasters (Licensing) Act 2004 (the "Act") paved the way for creating the GLA. Sponsored by the Department of Environment, Food and Rural Affairs, the GLA is a non-departmental public body and was set up in April 2005 to address worker exploitation in agriculture, shellfish gathering and food processing and packaging in the UK.

2.2 The regulatory means for achieving this is through licensing those who supply or use a worker to provide a service in the sectors covered by licensing. For the shellfish industry, anyone who uses a worker to gather shellfish also needs to be licensed.

2.3 "Gangmasters"—often referred to as labour providers—range from recognisable high street recruitment agencies supplying large-scale food manufacturers to micro-sized businesses with a few workers providing agricultural services to local farmers.

2.4 The GLA is financed by grant-in-aid by Defra and through a SLA with Defra.

2.5 The GLA is directed by an independent Board (see annex A for a list of Board members).

3. WHO NEEDS A LICENCE

3.1 Section 4 of the Gangmasters (Licensing) Act 2004 defines the term "gangmaster". In summary, a licence is required for anyone:

- Supplying a worker to agriculture, shellfish gathering and food processing and packaging,
- Using a worker to provide a service in the regulated sector, or
- Using a worker to gather shellfish.

3.2 A licence can be granted to any kind of legal entity, individuals (sole traders), limited companies, unincorporated associations or partnerships. The GLA takes a wide interpretation of the term "supply". It does not matter whether the worker is supplied on a temporary or permanent basis.

3.3 If the work is undertaken in the UK, a licence is required regardless of where the business is located.

4. GLA LICENSING STANDARDS

4.1 The Authority's Licensing Standards set out what the GLA expects applicants and licence holders to comply with. The Licensing Standards are the conditions of a licence and comprise the requirements set out in the Gangmasters (Licensing Conditions) Rules 2009 plus other relevant law.

4.2 In summary, they include:

- A general fit and proper test,
- The indicators of forced labour, including withholding wages, physical and mental treatment, restricting a worker's movement and debt bondage,
- Paying the correct amounts of PAYE, National Insurance and VAT,
- National Minimum Wage, including the relevant Agricultural Wages Order,
- Working time, paying the correct statutory benefits and providing payslips,
- Quality of accommodation,
- The right to belong to a trade union and not replacing striking workers,
- Health and safety, including transport and specific standards relating to gathering shellfish,
- Recruitment and contractual matters, including prohibition on job finding fees, and
- Not using unlicensed subcontractors.

5. ASSESSING COMPLIANCE

5.1 The GLA adopts a proportionate approach when applying the Licensing Standards. The Authority is concerned with identifying the more persistent and systematic exploitation rather than isolated non-compliances, unless the non-compliance is "critical" in its own right. Compliance is assessed through inspections.

5.2 The information gathered during an inspection will be used to determine an application or whether any action should be taken against an existing licence holder.

5.3 The inspection will test the relevant licensing standards, which will result in an overall score. Each standard has an associated score. Standards designated as "critical" are worth 30 points. All other standards are worth 8 points, except standard 1.4 which can score up to 16 points. There are three possible outcomes:

No issues identified

5.4 For applicants, a licence will be granted. There would be no change for existing licence holders.

Inspection score is below 30 points

5.5 Additional Licence Conditions (ALCs) will be attached to the licence. An ALC is a specific requirement which a licence holder must comply with. Usually, ALCs will be against individual non-Critical standards where non-compliance has been identified. The licence will become conditional on those non-compliances being corrected.

Inspection score is 30 points or more

5.6 The application or licence will normally be refused or revoked. However, the GLA may consider attaching ALCs where it is proportionate to do so after considering the extent and nature of the non-compliance.

5.7 If an application is refused, the applicant must not trade in the licensable sectors. Any revocation will be with or without immediate effect depending on which standards are failed and the seriousness of the issues. If a licence is revoked, the business will be notified as to whether trading may continue, usually until the outcome of any appeal is determined, or whether they must stop immediately.

EXAMPLE OF GLA LICENSING STANDARDS SCORING SYSTEM

Scottish Border Dykers was a gangmaster supplying workers in agriculture based in Hawick, Scotland. The Principal Authority was Mr John Armstrong. A compliance inspection of the business led to decision to fail the following Licensing Standards:

- Minimum Wage (Standard 2.2): unable to produce sufficient records to demonstrate the agricultural minimum wage was being paid. Standard 2.2 is a critical standard with a score of 30.
- Health and Safety—Assigning Responsibility and Assessing Risk (Standard 6.1): did not cooperate with clients to make sure responsibility was assigned and risk properly assessed. Standard 6.1 is a non-critical standard with a score of 8 points.

- Health and Safety—Instruction and Training (Standard 6.2): did not cooperate with clients to make sure training was provided. Standard 6.2 is a non-critical standard with a score of 8 points.
- Health and Safety—Safety at Work (Standard 6.3): failing to provide Personal Protective Equipment. Standard 6.3 is a non-critical standard with a score of 8 points.
- Contractual Arrangements and Records with Workers (Standard 7.3): non-compliant contracts and poor record keeping. Standard 7.3 is a non-critical standard with a score of 8 points.
- Agreements and Records with Labour Users (Standard 7.4): no contracts with clients. Standard 7.4 is a non-critical standard with a score of 8 points.

Licence holders must score less than 30 points. As Scottish Border Dykers scored 70 points, its licence was revoked without immediate effect. Scottish Border Dykers did not appeal the decision.

5.8 The GLA will usually automatically refuse applications for a two year period where an applicant has been found not fit and proper or if they have been refused or revoked twice in the previous two years. Otherwise, the GLA is willing to consider applications from business's previously refused or revocation on its merits if it has corrected the non-compliances.

6. RIGHT OF APPEAL

6.1 There is right of appeal against any decision of the GLA to refuse or revoke a licence, attaching conditions to licence as well as refusing to transfer a licence to another person.

7. CRIMINAL OFFENCES

7.1 The GLA enforces the following criminal offences in the Act on behalf of Defra in Great Britain and the Department of Agriculture and Rural Development in Northern Ireland:

Section 12(1): Acting as a gangmaster without a licence

7.2 It is illegal to act as a gangmaster without a licence.

Section 12(2): Possessing False Documents

7.3 A person commits an offence if, in an attempt to make another person believe they are licensed, they possess or control:

- A relevant document that is false or they know or believe is false,
- A relevant document that was improperly obtained and/or that they know or believe was improperly obtained, or
- A relevant document that relates to someone else.

7.4 "Relevant" means any document the GLA issues in connection to a licence and being licensed.

Section 13(1): Using an unlicensed gangmaster

7.5 It is illegal to use an unlicensed gangmaster.

Section 18(1): Obstruction

7.6 It is an offence to obstruct a GLA officer in the course of their duties. It is also an offence to fail to comply, without reasonable cause, with any requirement made by a GLA officer.

8. WORKING WITH OTHER GOVERNMENT DEPARTMENTS AND ENFORCEMENT AGENCIES

8.1 The GLA works closely with other Government Departments and enforcement bodies. The Authority has Memorandums of Understanding ("MoUs") with a range of other agencies:

- Association of Chief Police Officers and the Association of Chief Police Officers in Scotland.
- Employment Agencies Inspectorate, Department for Business Innovation and Skills.
- Fraud Investigation Service, Department for Work and Pensions.
- Health and Safety Executive.
- HM Revenue and Customs ("HMRC").
- UK Border Agency.
- National Minimum Wage Enforcement Team, HMRC.
- Serious and Organised Crime Agency.

8.2 These MoUs cover information sharing (using section 19 of the Act) and joint working. These agreements create a framework for exchanging and gathering intelligence which helps focus the GLA's and other agencies operational work.

8.3 The GLA is still able to work closely and exchange information with bodies without a formal MoU agreement.

8.4 As part of the application process, the GLA will run checks with other Government departments and enforcement agencies:

- Companies House.
- Department for Work and Pensions.
- Employment Agency Standards Inspectorate, Department for Business, Innovation and Skills.
- Health and Safety Executive.
- HM Revenue and Customs ("HMRC").
- Insolvency Service.
- National Minimum Wage Enforcement Team, HMRC.
- Police.
- UK Border Agency.
- Vehicle and Operator Services Agency.
- Internal check with GLA's intelligence database.

8.5 The GLA will also run checks with other bodies where necessary (for example, Land Register).

8.6 Where necessary, the GLA will also check with authorities in other countries to check if the business is compliant with the relevant domestic legislation and requirements.

9. RED TAPE CHALLENGE

9.1 The GLA was considered under the employment theme of the Government's red tape challenge last year. Jim Paice MP's Written Ministerial Statement of 24 May 2012 announced the outcome of the red tape challenge process. The statement proposed a range of measures to better focus the Authority's work towards tackling the most serious problems while easing the burden on compliant businesses.

9.2 The proposals will be developed over the next 12 months, including consulting publically on the changes.

10. IMPACT OF THE GLA

10.1 Appendix B (*not printed*) details various licence statistics as of 3 August 2012. Appendix C sets out information on GLA prosecutions.

In Scotland

10.2 12 licences have been revoked in Scotland:

One on One Recruitment Ltd

Location: Airdrie

Principal Authority: Mary Ferguson

Date of decision: 18 April 2007

Reasons for decision: attempted to mislead the GLA by providing false documents; illegal deductions from wages; potentially unsafe vehicles used to transport workers; drivers not having the appropriate Passenger Carrying Vehicles licence.

Outcome: the company withdrew its appeal after successfully reapplying for a new licence. The second licence has now expired.

A & M Penman & Sons

Location: Fife

Principal Authority: Mary Penman

Date of decision: 27 July 2007

Reasons for decision: vehicle used to transport workers had no valid MOT; not having a Public Service Vehicle licence; drivers not having the appropriate Passenger Carrying Vehicles licence; attempted to mislead the GLA by providing false documents.

Outcome: the company withdrew its appeal after successfully reapplying for a new licence. The second licence has now expired.

Pure Recruitment

Location: Glasgow

Principal Authority: Colin Carmichael

Date of decision: 14 November 2007

Reasons for decision: not correcting ALCs relating to health and safety and worker records.
Outcome: appeal dismissed. Business successfully re-applied. The second licence has now expired.

Ian Smith

Location: Perth and Kinross
Principal Authority: Ian Smith
Date of decision: 28 March 2008
Reasons for decision: not correcting ALCs relating to managing health and safety and worker records; other issues related to record keeping.
Outcome: business did not appeal.

Renavatio Limited

Location: Turriff, Aberdeenshire
Principal Authority: Ieva Osite
Date of decision: 30 May 2008
Reasons for decision: not correcting ALC relating to health and safety; PAYE tax debts; 48 hour opt out not voluntary; non-compliant worker terms and conditions.
Outcome: appeal dismissed.

Lorna McConaghy

Location: Glenrothes
Principal Authority: Lorna McConaghy
Date of decision: 2 March 2009
Reasons for decision: lack of control of business; not paying the agricultural minimum wage.
Outcome: Ms McConaghy did not appeal.

Ronald Shennan

Location: Dalbeattie
Principal Authority: Ronald Shennan
Date of decision: 6 July 2009
Reasons for decision: obstruction; tax debts; not correcting ALCs related to record keeping.
Outcome: Mr Shennan did not appeal.

Victor Wolf Limited

Location: Angus
Principal Authority: Max Wolf
Date of decision: 24 June 2009
Reasons for decision:
Outcome: appeal withdrawn.

Grapevine Recruitment Ltd

Location: Glasgow
Principal Authority: Ian Wright
Reasons for decision: significant tax debts.
Outcome: business did not appeal.

M & A Gielty

Location: Lasswade
Principal Authority: Mr M Gielty
Reasons for decision: not correcting ALC related to non-compliant worker terms and conditions.
Outcome: Mr Gielty did not appeal.

Scottish Border Dykers

Location: Hawick
Principal Authority: John Armstrong
Reasons for decision: insufficient records to prove minimum wage is paid; issues related to health and safety; issues with worker and labour user contracts.
Outcome: business did not appeal.

Muirfield Recruitment Limited

Location: Ellon
Principal Authority: Graeme Dickie
Date of decision: 23 January 2012
Reasons for decision: not accurately calculating and deducting tax and NICs; not paying the Scottish Agricultural Minimum Wage and insufficient records; withholding holiday pay; issues with worker's terms and conditions.
Outcome: the company withdrew its appeal after successfully reapplying for a new licence.

10.3 The GLA has refused nine applications in Scotland:

A1 Harvester Limited

Location: Mid Lothian
Principal Authority: Sandra Melville
Date of decision: 15 June 2006
Reasons for decision: deductions from wages; not paying Scottish Agricultural Wage; not providing

statutory benefits; inaccurate payslips; issues with records; issues related to managing health and safety.

Outcome: business did not appeal but did correct the non-compliances and was granted a licence after a further application. That licence has now expired.

Fiona Clark

Location: Blairgowrie

Principal Authority: Fiona Clark

Date of decision: 15 November 2006

Reasons for decision: not accurately calculating and deducting tax and NICs; inaccurate payslips; issues related to record keeping.

Outcome: Ms Clark did not appeal. She was subsequently prosecuted for acting as a gangmaster without a licence.

Mindrin & Co Ltd

Location: Newton Stewart

Principal Authority: Viaceslavas Mindrinas

Date of decision: 4 December 2007

Reasons for decision: not accurately calculating and deducting tax and NICs; not providing statutory benefits; no gas or electrical certificates for accommodation provided to workers; no knowledge of Working Time Regulations; issues related to health and safety; poor records.

Outcome: business did not appeal but did correct the non-compliances and was granted a licence after a further application. That licence has now expired.

Myers Agricultural Services Limited

Location: Dalkeith

Principal Authority: Thomas Myers

Date of decision: 21 December 2006

Reasons for decision: attempted to mislead GLA on whether transport was provided to workers.

Outcome: appeal dismissed.

Christopher Murray

Location: Dunscore

Date of decision: 9 July 2009

Reasons for decision: unable to demonstrate sufficient knowledge of the Licensing Standards.

Outcome: appeal withdrawn. Mr Murray was also prosecuted for acting as a gangmaster without a licence. Mr Murray is now licensed under CFM Tree Surgery and Forestry.

RCS Resources Ltd

Location: Haddington

Principal Authority: John Friel

Date of decision: 8 March 2011

Reason for decision: connected to business that had gone into liquidation.

Outcome: business did not appeal.

RTO Solutions Limited

Location: Airdrie

Principal Authority: Alistair Munroe

Date of decision: 25 July 2011

Reason for decision: connection to Pure Recruitment Ltd; Mr Munroe was not considered a competent person.

Outcome: appeal withdrawn after business went into liquidation.

Primo Executive Recruitment Ltd

Location: Motherwell

Principal Authority: Mr A Devine

Date of decision: 1 March 2012

Reasons for decision: connected with a person the GLA considers not fit and proper; issues with worker and labour user contracts.

Outcome: business did not appeal. Individuals involved in business also issued with Procurator Fiscal warning for acting as a gangmaster without a licence.

Written evidence submitted by Carillion

INTRODUCTION

1. Carillion plc welcomes the opportunity to provide a written submission to the Scottish Affairs Committee enquiry into blacklisting in Scotland. Carillion plc does not condone or engage in blacklisting and takes such accusations very seriously.

2. In order to put our comments into context, it may be helpful to outline briefly our role across the UK.

3. Carillion plc was created in 1999 by a demerger from Tarmac plc. Headquartered in Wolverhampton, Carillion operates internationally, employing 45,000 people globally and 20,000 in the UK.

4. We provide:

- (a) All the facilities management, maintenance and other services needed to keep buildings, particularly large, complex property estates, fully operational for public and private sector customers.
- (b) Energy efficiency services for domestic, commercial and public sector customers. We provide asset management and maintenance services for road and railway infrastructure and for utilities, including telecommunications, water, electricity and gas.
- (c) Public Private Partnership projects (PPP) for schools, hospitals, prisons, defence and other Government accommodation, and also for roads and railways.
- (d) A strong and selective construction services capability, which plays a key role in providing integrated solutions for PPP projects and for our support services customers.
- (e) Carillion is the largest employer of apprentices in the construction sector, and one of the largest in the UK, with over 2,000 apprentices being trained at any one time. With a UK network of 13 construction apprentice training centres, we are also one of the largest training providers, and provide courses not only to employees but to the wider community.
- (f) Since 2008, Carillion Training Services has worked in partnership with TIGERS (Training Initiatives Generating Effective Results in Scotland) to create more than 400 modern apprenticeships for young people in the construction industry. In the past year, Carillion has also worked on a major capital project to design and re-build a new prison (HMP Low-Moss), with the Carillion Craft Centre in Bishopbriggs, East Dunbartonshire supplying up to 20 apprentices at any one time during the peak rebuilding period.

5. After the demerger, Carillion plc acquired a number of other companies, including Mowlem plc (2006), Alfred McAlpine plc (2008) and eaga plc (2011).

6. Carillion plc is strongly committed to embodying its values in every aspect of its work. These are: openness; collaboration; mutual dependency; professional delivery; innovation; and sustainable profit growth. The decision to make this submission to the Scottish Affairs Committee was taken in part because of Carillion's strong commitment to openness, honesty and transparency.

SUBMISSION RESPONSE

7. Testimony previously supplied to this committee has made a number of allegations about Carillion's historic involvement with the Consulting Association ("the CA"). These are addressed in this submission. Carillion is grateful for the opportunity to clarify the facts and make its position a matter of public record.

8. Carillion is offering this information and detail to the Scottish Affairs Committee in the hope that it will assist the Committee with its inquiry. This submission provides factual information about what Carillion plc knows about the CA and about the interaction between a Carillion subsidiary and the CA database until early 2004.

9. It is important that this submission explains that what Carillion can tell the Committee is constrained by privilege attaching to documentation Carillion has seen in an Employment Tribunal by Mr Dave Smith, heard earlier in 2012. Mr Smith obtained, without any objection from Carillion, an order of the Tribunal requesting disclosure by the Information Commissioner's Office ("ICO") of extracts from the CA database, strictly for the purpose in which the order was made. To use extracted data for any purpose of the proceedings other than those Tribunal proceedings may be a contempt of court.

10. In any event, we would stress that Carillion has not seen the full Consulting Association database.

11. As much as Carillion desires to refer the Committee to detailed data it has seen via the Tribunal proceedings—especially given that it has been used by others to present misleading claims to this Committee—it cannot abuse the legal privilege attached to this data. At the present time our submission is therefore limited by this constraint on what we can legally say.

12. Carillion would therefore urge the Committee to seek access to the full database held by ICO (redacted as may be deemed appropriate). If the Committee is able to gain access to and share the full database, we will

be able to make a more complete response to the Committee's enquiries. Until then, Carillion cannot address questions about the detailed content of the database, and what that shows about the nature and use of the data.

13. The submission also offers perspectives about the historical context and the issues affecting the construction sector in the late 1990s and early 2000s. These issues are described later in this submission.

THE CONSULTING ASSOCIATION

14. In 2009, a raid by the ICO on the premises of the CA uncovered a manually operated database containing data concerning 3,212 people.

15. It is understood that for a fee, members could access a range of CA services. One of these services allowed members to cross-reference names of potential workers with CA's database.

16. Information about potentially disruptive behaviour (including criminal offences such as theft, violent or threatening behaviour, and unlawful strike activity) was recorded in the database. Carillion's understanding is that that information contained in the database was not generally focused on union affiliation, but rather on the identification of disruptive and/or unlawful behaviour.

17. Membership of a trade union was emphatically *not* a reason to avoid employing a worker. Every worker with the relevant Carillion subsidiary business unit during the period in question was required to be Joint Industry Board ("JIB") registered. Under the JIB agreement, most, if not all, JIB registered tradesmen were understood to be trade union members.

18. The CA also organised periodic meetings for members to network and discuss best practice in various industry sectors. Such meetings were unrelated to the database or to allegations of blacklisting.

BLACKLISTING AND THE LAW

19. After the ICO investigation, legislation was brought into force to make blacklisting on the basis of union membership illegal (Employment Relations Act 1999 (Blacklists) Regulations 2010). These Regulations do not have retrospective effect.

20. The practice of sharing personal data with third parties was an offence by the Consulting Association under the Data Protection Act ("DPA") 1998 (but the DPA restrictions were not fully extended to manually operated databases such as that generated by the CA until 2001).

21. It was (and remains) unlawful to refuse employment or subject to any detriment on the grounds of trade union membership (Trade Unions and Labour Relations (Consolidation) Act 1992).

CARILLION AND THE CONSULTING ASSOCIATION

22. Carillion plc was not involved with the CA. Senior management was not aware of any use of the CA's database. If it had been, then the practice would have been banned. However, following on-going internal investigations since 2009, when the ICO investigation brought the referencing database to light, Carillion can confirm that one of its then business units, Crown House Engineering ("CHE") used the database until early 2004. A subsidiary of another business (Mowlem plc) used the database *before* Carillion acquired the group in 2006.

23. We understand that CHE stopped using the CA database almost a decade ago because it was felt to be wrong. Carillion categorically denies the assertion that it made use of CA blacklists until the date of the ICO raid in 2009. This claim is based on a single invoice for £56.46 for attendance at a CA security meeting to discuss site security issues in May 2008. This was not connected in any way with blacklisting activity.

24. Carillion's investigation of events indicates that CA security meetings were a forum for managers from a number of construction companies to discuss general security issues on site and how to combat them (for example, spates of thefts from sites in particular locations, or how to make sites more secure). Carillion understands that companies did *not* share information about specific individuals at such meetings.

Crown House Engineering

25. Carillion business unit, CHE, subscribed to the Consulting Association. CHE was a business unit within Carillion Construction Limited ("CCL"). The CA's relationship was with Crown House managers. This subscription was proactively stopped in early 2004 by a Mrs Liz Keates, who was uncomfortable about using it.

26. CHE was a Mechanical and Electrical Engineering ("M&E") business acquired by Tarmac in 1992 and which became part of Carillion through the demerger of Tarmac in 1999. It was a separate and distinct business. The five geographical divisions of CHE also operated independently of each other to a significant extent. CCL sold CHE in 2004 to the newly incorporated company, Crown House Technologies Limited, part of the Laing O'Rourke Group. Any renewed involvement by CHE with the CA after the 2004 sale is of no relevance to Carillion.

27. Mrs Liz Keates, currently Head of Employee Relations at Carillion plc, was one of the employees responsible for accessing the CA database at CHE to obtain referencing information when it was owned by Carillion. During the period in question, Mrs Keates was an Employee Relations Manager at CHE and inherited responsibility for consulting the database from a superior, Mr Kevin Gorman.

28. By 2004, Mrs Keates was concerned as to the CA's methods and how it acquired information covertly. She decided that the referencing service should no longer be used.

29. CHE used the CA referencing service to check the backgrounds of potential workers during the period in question. The nature of CHE's work meant that the company's Labour Managers needed to source large numbers of qualified M&E tradesmen on a weekly basis. The Labour Managers' forecasts for their staffing requirements were submitted in advance, and actual requirements often differed substantially from original estimates. Carillion understands that many more names were therefore cross-referenced with the CA database than would ever have been required or employed by CHE.

WHY DID THE BLACKLIST EXIST AND WHY DID CROWN HOUSE USE IT?

30. The M&E industry had serious employment relations problems concerning electricians during the period in question.

31. At the time, the separate divisions of CHE in England and Scotland had large, directly employed workforces of tradesmen, particularly electricians. In Scotland, CHE specialised in delivering small-scale, complex projects and more maintenance projects than the other four geographical divisions. As a result, Carillion's internal investigation has produced little evidence that CHE used the database in Scotland. It appears that the database was primarily consulted in England and Wales, where CHE undertook larger projects.

32. A number of militant electricians, where employed in significant numbers and on big projects, were engaging in unlawful, costly and damaging walkouts/industrial action. The Committee will probably not be surprised that in relation to such unofficial action, perpetrated without the authority or approval of recognised trade unions, there was suspected or actually reported sabotage, threatening behaviour and intimidation. Such disputes could cost millions of pounds in contractual penalties, and of course impacted workers who may have been victims of intimidation. Such behaviour was obviously of serious concern to companies across the construction sector.

33. CHE's use of the database was emphatically *not* to deny trade union members and activists employment. Carillion was *not* part of an anti-union conspiracy, nor does it believe that there was such a conspiracy. Carillion currently has national recognition arrangements in place with a number of unions, including UNISON, Unite, RMT, and the TSSA, and enjoys constructive working relationships with them.

34. There is evidence to suggest that at least one union was aware of the CA database and may also have supplied information to it, indicating that they condoned its use to screen out extremist elements operating without official union sanction. The evidence of Mr Alan Wainwright, an ex-CHE employee, was influential in bringing about the ICO investigation into the CA in 2009. Mr Wainwright published the names of 500 individuals known to be on the CA database on his blog in 2006. Mr Wainwright said that he supplied this evidence to the General Secretary of Amicus (now Unite) in the same year.

CARILLION'S RESPONSE TO EVIDENCE PRESENTED BY MR DAVE SMITH

35. Testimony presented to the Committee by Mr Dave Smith made several erroneous claims about Carillion plc. Detailed comment cannot be made as legal proceedings brought by Mr Smith are not yet concluded, however we would like to take the opportunity to clarify a number of key points as a matter of public record.

36. Mr Smith's assertions are linked to his attempt to claim against Carillion in employment tribunal (alongside approximately 22 other companies). His claims (and hence his personal experiences as related to the Committee) relate to Schal, a Tarmac company, and John Mowlem Construction plc, both relating to the period 1998–99. This predates the creation of Carillion and is some eight years before Carillion acquired John Mowlem. Mr Smith withdrew his claim in that tribunal against Carillion itself.

37. Schal was a construction management company that supervised sites. It did not employ or supervise any tradesmen. Mr Smith has never been an employee of Carillion plc, its subsidiaries or its predecessor, Tarmac. However, Mr Smith took part in and helped to organise unlawful industrial action against Schal following his dismissal by the sub-contractor that engaged him. He cited health and safety concerns on the project, but did not have union endorsement for this action. Tarmac was concerned by this unlawful activity, including unofficial secondary picketing, on a Schal supervised site. He has never been a union safety representative for Tarmac or Carillion employees.

CARILLION'S COMMITMENT TO HEALTH AND SAFETY

38. One of the gravest concerns is the allegation against Carillion's Health and Safety performance. Carillion plc is, and has always been, very strongly committed to maintaining the highest standards of health and safety. Carillion has one of the best Health & Safety records in the construction industry. Within our construction business, Carillion policies and frameworks have contributed to a culture of continuous improvement.

39. For example:

- (a) All businesses and contracts have Safety Action Groups, with members drawn from the workforce, which review local safety performance and recommend changes to improve and promote safety.
- (b) We currently work with approximately 600 Carillion Health and Safety representatives across our UK construction businesses, including approximately 60 in Scotland.
- (c) Carillion’s *Don’t Walk By* engagement programme encourages awareness and openness, with workers prompted to spot things that are not as they should be and take direct actions themselves, or report it to Carillion. *Don’t Walk By* has seen great success in identifying and addressing potential hazards and risks.
- (d) Each of Carillion’s construction businesses in the UK has a weekly Health and Safety call involving the Managing Director of the business and other operational directors. These meetings review performance and any incidents occurring in the previous week, and determine steps to address any issues.
- (e) Monthly briefings are issued to all construction businesses, and are underpinned by specific action plans.
- (f) Occupational health services are provided for those whose jobs expose them to any significant health risks, to monitor health and ensure that the right precautions are being taken to protect health.
- (g) Senior managers are required to be qualified to a minimum standard of NEBOSH General Certificate. In 2012, 481 of our Senior Managers completed their NEBOSH qualification, including approximately 65 in Scotland.

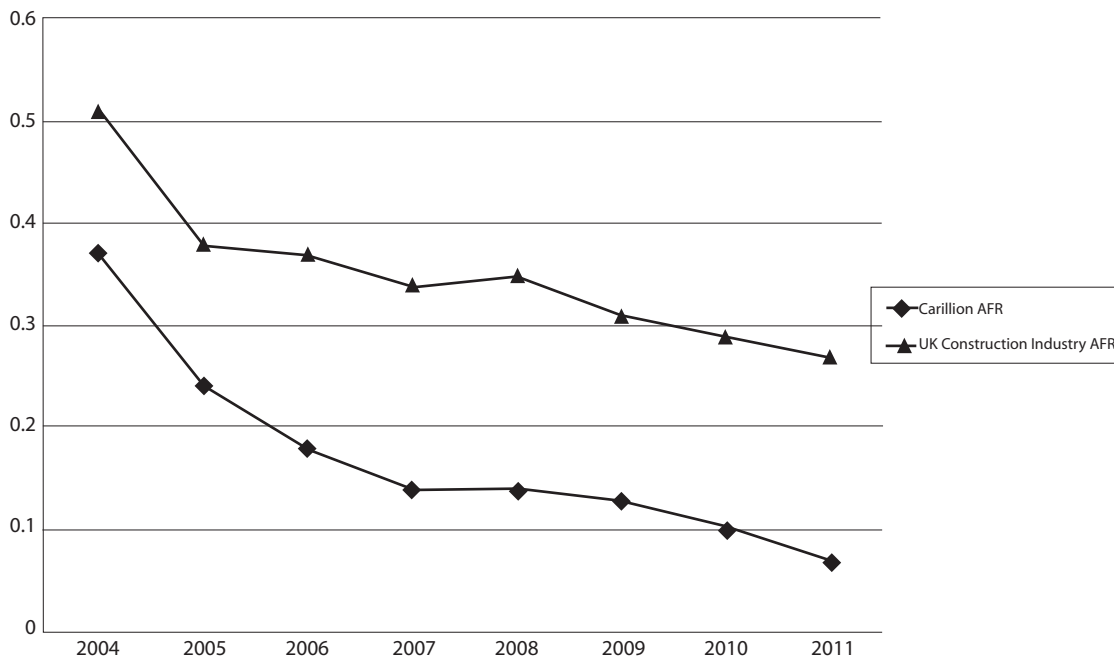
40. According to statistics gathered by the Health and Safety Executive (HSE), in 2010–11 there were 50 fatal injuries to workers in the construction industry, compared to a five year average of 61 per year. Fatalities have fallen by two thirds over the last 20 years. Reported non-fatal injuries have fallen by more than a third over the past four years. It would therefore be a mistake to believe, as has been suggested, that health and safety conditions are deteriorating in the construction sector—they are actually improving. The HSE statistics are available at:

<http://www.hse.gov.uk/statistics/industry/construction/construction.pdf>.

41. Carillion’s own Accident Frequency Rate (AFR) is significantly better than the industry average, as demonstrated by the chart below. We also enclose a timeline to show how the AFR has continued to fall in line with the initiatives outlined above.

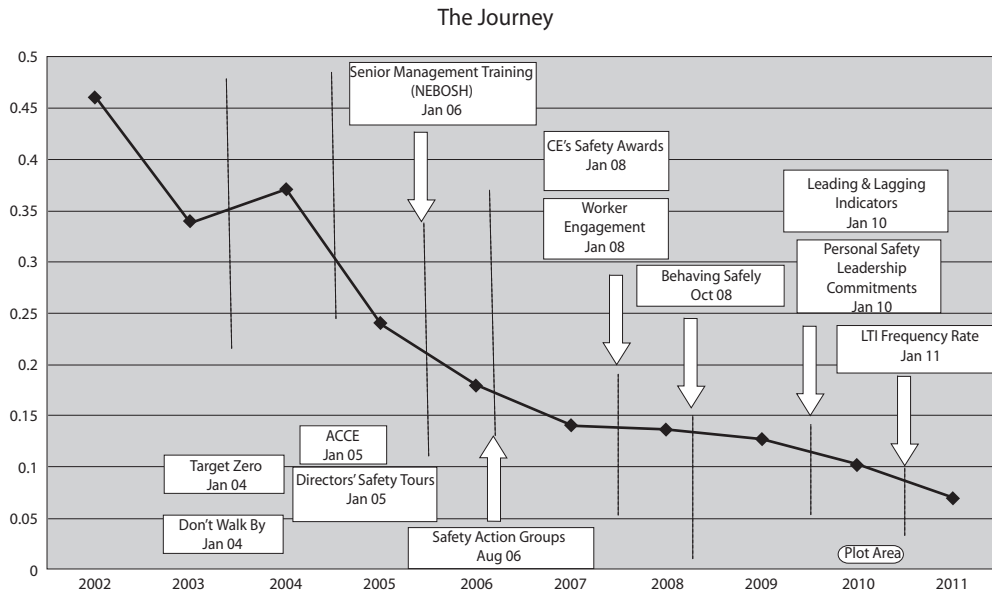
42.

CHART COMPARING CARILLION AFR WITH INDUSTRY AVERAGE, 2004–11



43.

TIMELINE SHOWING AFR DECLINE, 2002–11



CONCLUDING REMARKS

44. Carillion does not tolerate blacklisting at any of our sites, nor does it engage in blacklisting. To suggest otherwise is simply wrong, and any allegations of such practices are taken extremely seriously. Carillion does not condone the practice either within the company or its subsidiaries.

45. It has been eight years since the Consulting Association referencing service was last used by a business unit of a Carillion subsidiary, which acted as a user (rather than as a supplier) of data.

46. However, it is important to understand that any involvement with the referencing database was proactively and independently stopped six years before such activity became unlawful. The practice, although clearly not to be condoned, was a specific response to a very difficult industrial relations climate at the time, with unlawful disruption caused by a small minority outside official union channels in addition to bullying, coercion, and site sabotage.

47. The assertion that Carillion was at the centre of a blacklisting conspiracy, and that it was responsible for a significant amount of blacklisting activity is wholly untrue. The level of involvement was strictly limited and occurred many years ago—it deeply regrettable that it is being grossly exaggerated to suit unconnected agendas.

48. This submission has been produced to the best of our knowledge and is based on information derived from our own factual research and from observation. Upon discovering links to the CA, Carillion has made every possible effort to investigate what they amount to, as they run counter to its very strong values and ethics.

49. Carillion has sought to supply this information to set the record straight, set out the facts as we understand them, and explain the background and context to the use of the Consulting Association database in the past. Carillion hopes that this information is useful to the House of Commons Scottish Affairs Committee. We are happy to provide further information or clarification upon request.

September 2012

Additional written evidence submitted by Adam Green, Managing Director, Carillion UK Construction

I write in response to the written evidence recently submitted to the Scottish Affairs Committee by Alan Wainwright as part of your inquiry into blacklisting in employment.

Carillion can categorically state that the “RH” referred to on page 56 of Alan Wainwright’s written evidence to the Committee, and on pages 69 and 70 of the appendices to his evidence, is not Richard Howson, the current Chief Executive of Carillion plc.

Richard Howson has never been employed in Crown House Engineering or served in any operational HR role. The “RH” refers to another individual who held HR responsibilities for Crown House Engineering in 2004.

To suggest that our Chief Executive was involved in blacklisting on the basis of the inclusion of a common set of initials on a couple of the records held by the Consulting Association is totally wrong, and we shall robustly defend any claim to the contrary.

I hope this clarifies the matter for the Committee. Please do not hesitate to contact me if you have any questions.

December 2012

Supplementary written evidence submitted by Carillion plc

INTRODUCTION

1. This document is intended to be read alongside Carillion plc's original submission to the Scottish Affairs Committee inquiry into Blacklisting in Employment. Since our original submission, made on 28 September 2012, the Committee has cross-examined a number of individuals and companies, bringing further information to light. We have continued to conduct our own internal investigations and we are grateful for the opportunity to bring the Committee up to date with what we know, clarify or correct certain points and again make our position a matter of public record.

CARILLION'S INVOLVEMENT WITH THE CONSULTING ASSOCIATION—KEY FACTS

2. Carillion repeats that we *do not* condone or engage in blacklisting and we take such allegations very seriously. In addition, we have taken action to ensure that such practices are not present within our supply chain.

3. Carillion is not aware of any evidence of contemporary blacklisting taking place within the construction industry. Such activity was made illegal in 2010 and any company found to be doing so would be breaking the law.

4. The Carillion business, Crown House Engineering, stopped using the Consulting Association's (CA) referencing service in 2004. The practice was proactively stopped because the HR manager responsible for checking the database at that time, Liz Keates, believed it was wrong. This decision to stop using the CA database has been corroborated by the financial records submitted by the late Mr Ian Kerr to the Scottish Affairs Committee.

5. Beyond this, the CA's ledger shows that Carillion received three invoices, together totalling just over £100, for attendance at meetings in November 2005, December 2006, and May 2008. These meetings were not connected in any way with blacklisting activity or use of the Consulting Association's database to reference individuals. The meetings were convened to discuss best practice site security, to help flag up current and future issues, such as thefts of plant from site, and discuss how to deal with them. Carillion's representative at these meetings, John Edwards, had no managerial responsibilities and was unconnected to Carillion's HR and recruitment functions. The meetings, certainly by 2008, were primarily concerned with the threat of terrorism rather than environmental activism. A typical discussion point would be to ensure a consistency in approach to security where several contractors were working together on a large project.

6. There is no evidence to suggest that the referencing service was known about at Carillion board level until the raid on the CA by the Information Commissioner's Office in 2009. Obviously if any substantive evidence emerges in future, we will make every effort to investigate it thoroughly.

7. Carillion cannot speak for other companies, but in the late 1990s and early 2000s Crown House Engineering was concerned to protect itself from serious employment relations issues affecting the Mechanical and Electrical engineering (M&E) sector. During this period, a number of militant electricians were engaging in unlawful and damaging walkouts/industrial action outside official trade union channels. Such behaviour was accompanied by suspected or actually reported sabotage, threatening behaviour and intimidation. In 1999 alone, Crown House Engineering lost 597 working days to unofficial action, significantly affecting the company's finances, threatening employment and undermining its ability to deliver on contracts. Use of the database was emphatically **not** to deny employment to trade union members or union Health and Safety representatives.

CARILLION INVESTIGATION—EVIDENCE

8. Our internal investigation has relied on several different sources of evidence:

- (i) The first-hand account of Liz Keates, who joined Crown House Engineering in 1998, and is currently Head of Employee Relations at Carillion plc.
- (ii) Interviews with former Carillion employees.
- (iii) The CA's ledger book between 1999 and 2004.
- (iv) Testimony supplied to the Committee by individuals such as Ian Kerr and Alan Wainwright, which has been placed in the public domain.
- (v) A number of invoices dating from 2001–04.
- (vi) Excerpts from the Consulting Association database. In the course of Employment Tribunal proceedings, including Dave Smith's, the ICO was ordered to disclose copies of all of the entries on CA files that refer to the use made of the database by Carillion companies. Carillion will not make direct reference to any personal information from such extracts.

9. Carillion has never had access to the full CA database (although the Information Commissioner's Office has supplied this to several trade unions and individuals). The ICO has refused Carillion's request to view this evidence.

10. Carillion has attempted to investigate the alleged involvement of other named individuals mentioned in the Committee's cross examination. It must be understood that Carillion is unable to compel former employees, some of whom left the company more than a decade ago, to comply with requests for information. We have contacted several individuals (some on multiple occasions) who have declined to respond to our enquiries. We no longer have contemporary contact information for several other individuals, in particular those who have retired, and have been unable to locate them thus far, though attempts are continuing.

11. Carillion has made extensive attempts to locate documentation which may be connected to use of the CA. For example, we have searched our accounts database to seek evidence of any other payments which may have been made to the CA, and we have reviewed extant recruitment databases for any evidence of data or negative comments against individuals. No such evidence has been found.

USE OF THE DATABASE—ADDITIONAL NUMBERS

12. From a review of available evidence supplied to us by the ICO, Carillion believes that:

- (i) Up to 2004, searches undertaken by Tarmac/Carillion and Mowlem resulted in **110** positive matches occurring against **81 different individuals** (some searches being conducted against the same individual on multiple occasions). These numbers are *much* lower than that alleged by campaigners.
- (ii) A proportion of these individuals may not have been employed in any case, as upcoming labour forecasts changed and fewer individuals were needed than originally anticipated. However, it is reasonable to suppose that a proportion of this number may have been refused employment on the basis of their CA record.
- (iii) The entries of interest to Carillion included information about disruptive behaviours and misconduct (including giving false National Insurance numbers and names, criminal offences such as theft, violent or threatening behaviour and unlawful strike activity).
- (iv) Up until 2003, Tarmac/Carillion and Mowlem apparently supplied information to the CA on **27** occasions, concerning **77** different individuals, mainly in the 1990s.
- (v) There is no evidence that any Carillion company supplied information to the CA after 2003.
- (vi) Ms Keates was aware that historically Mowlem had subscribed to the CA and following Carillion's acquisition of Mowlem confirmed that this use had ceased.
- (vii) Removing duplication this indicates that searches were carried out or data was supplied in relation to a total of **148** individuals.

WHO KNEW WHAT—AND WHEN?

13. Liz Keates joined Crown House Engineering, which was part of Tarmac, in 1998 as its Employee Relations Manager. She was delegated responsibility for contact with the CA by her superior, Kevin Gorman, who was Head of HR. Mr Gorman was familiar with the existence of the database and how it operated. As part of its internal investigation, Carillion has attempted to contact Mr Gorman, but he has declined further involvement.

14. Contrary to what is alleged in written papers submitted to the Committee by Ian Kerr's family, Mrs Keates has never worked for Laing O'Rourke and was never the CA contact for Laing O'Rourke.

15. Detailed knowledge of what the database was and how it operated was confined within Crown House Engineering to Mr Gorman and Mrs Keates. Our internal investigation has confirmed that an individual called John Ball, who was an Employee Relations Manager for Tarmac, and later Carillion, was aware of the existence and operation of the CA database also. John Ball left Carillion in 2000, but responded to our request for information. Another HR Manager, Roy Hay, would authorise occasional searches, and a clerk was also tasked with submitting names on a regular basis. Initials for these individuals can be seen on the database.

16. Approval for CA invoices received was processed by Mrs Keates, or Mr Gorman, as the amounts accrued were simply not large enough to require signoff from senior management.

17. Carillion is aware of the testimony supplied to the Scottish Affairs Committee by Mr Alan Wainwright, and has sought to establish the veracity of his account. His testimony conflicts with that of Mrs Keates, who expressly states that there was no internally held "no file" or blacklist held by Crown House and that senior management at Crown House were not aware of how the Consulting Association database was used to reference individuals. Carillion's original submission deals with these points in more detail. We have also made efforts to locate written evidence, either in hard or soft copy, which would substantiate Mr Wainwright's testimony but no such evidence has come to light.

18. Analysis of the database entries we have seen suggests that there were many duplicate searches over the years, which would not have occurred if an internal “no file” existed. To the best of our knowledge, our investigations make it clear that there was no internally operated blacklist.

19. To the best of our knowledge, Crown House Engineering never checked the CA database on behalf of any subcontractor.

ALLEGATIONS OF MR DAVE SMITH

20. Testimony presented to the Committee by Mr Dave Smith made a number of misleading claims about Carillion. Legal proceedings are ongoing by way of Mr Smith’s appeal to the Employment Appeal Tribunal; however, we would like to take the opportunity to clarify a number of points as a matter of public record.

21. Mr Smith’s claims against Carillion plc were withdrawn by Mr Smith. His claims against two subsidiary companies, Mowlem and Schal, were dismissed by the tribunal. Mr Smith has been given leave to appeal the tribunal decision regarding the subsidiary companies but the appeal relates to the interpretation of UK legislation.

22. Mr Smith has never been an employee of Carillion plc, its subsidiaries or its predecessor, Tarmac. His claims had nothing to do with Carillion plc, nor with Crown House Engineering, which was not a party to the proceedings. Mowlem was not owned by Carillion in 1998 or 1999—the period to which Mr Smith’s claims relate. He has never been a union Health and Safety representative for Tarmac or Carillion employees.

23. The entries made by the Consulting Association on its files during 1998–99 in question came from Mowlem, which became part of Carillion many years later in 2006.

24. Although Mr Smith did not work for Schal or Carillion Construction’s predecessor Tarmac Construction, evidence from Mr Smith’s employment tribunal hearing shows that Mr Smith helped organise illegal, unofficial picketing against Schal in 1999, causing disruption to work at its site.

LEGACY—CONTEMPORARY PRACTICE

25. Any use of the CA database by a Carillion subsidiary ceased nine years ago. Since that time, Carillion has not used any such method of referencing to screen potential employees or subcontractors. In addition, the use of proprietary software packages for recruitment, and especially of software as a service (where the system is owned and maintained by an external provider, and the data is owned and maintained by Carillion) would mean that any form of blacklisting would now be immediately obvious. The proprietary software systems that we use would have no facility to maintain that sort of data, and have been built and operated within the current data protection laws. Our recruitment policies are robust and up to date, and very clear about acceptable practice in recruitment.

26. Since the ICO raid brought the use of the CA’s database to light, Carillion has taken steps to communicate its position on blacklisting very clearly to subcontractors and suppliers. In December 2012, Adam Green, Managing Director of Carillion Construction Services, wrote to our M&E (mechanical and electrical) subcontractors to make absolutely clear that we do not condone subscribing to or using any blacklist or similar referencing service to vet potential employees without their knowledge—under any circumstances.

27. As a leader within our sector we are also considering what additional actions we can take with our supply chain to make our position clear and to ensure that there is no further use of any such practices in future.

March 2013

Written evidence submitted by Alan Wainwright

A WAINWRIGHT—EMPLOYMENT HISTORY

1979–89—Mac Electrical—Apprentice Electrician/Electrician

1989–93—TES Recruitment—Owner (Supply Crown House)

1993–94—Carillion (Tarmac)—NCS (Mechanical & Electrical Manager)

1995–2000—Carillion (Tarmac)—Crown House (National Labour Manager)

2000—Emcor Drake & Scull—Business Improvement Director

2001—Leave the industry

2004–05—Haden Young Ltd (Balfour Beatty plc)—Regional Production & Resources Manager

(Sick leave June 2005 to resignation in Jan 2006)

2006—(Aug–Sept)—Carillion—HR Business Partner

2007—Self employed from mid to late 2007 in other industry

CHRONOLOGY OF EVENTS
CARILLION

1997—I set up the Crown House Central Labour Department in Manchester office to provide a central control of all agency labour recruitment for all UK sites with electronic time and attendance systems, incentive/bonus schemes for full workforce.

Tarmac HR Director Frank Duggan instructs me (via Kevin Gorman) to meet Ian Kerr and introduce his checking system.

Meet Ian Kerr in Manchester.

1. Ian Kerr shows me computerised records of blacklisted workers (Excel spread-sheets).
2. Informed that system was fully functional with Carillion and other major construction companies.
3. Now rolling this out to the mechanical and electrical sector and Crown House were to be the first.

System implemented, but revised after a few weeks to go via Group Personnel Director, Frank Duggan's office via his PA, Anne Johnson.

1. Agency labour frequently move contracts for better hours/pay so turnover was high. 30 to 40 agency workers checked weekly between 1997 and 2000.
2. To the best of my recollection, no more than five workers were rejected in this time. The system was in its infancy in M&E sector and we had robust legitimate reference checking procedures with our three preferred recruitment partners.
3. Kevin Gorman informs me in passing conversation that two workers from a site in Grimsby had been "taken care of". *See appendix 2(n)*.

2000—*Leave Carillion to join Emcor Drake & Scull*

EMCOR DRAKE & SCULL

August 2000—Sheila Knight (Group Personnel Director) distributes lists of electricians from Pfizer, Royal Opera House (Balfour Kilpatrick's projects) and Jubilee Line Extension (Emcor Drake & Scull/Sir Robert McAlpine Joint Venture) to Emcor Drake & Scull labour managers. *See appendix 4*.

I'm informed that these three projects had industrial relations problems.

Memo states "*please keep this information confidential and make your own enquiries thereafter*".

Many operatives from these lists show on the CA files. *See appendix 4(a) and 4(b)*.

I leave Emcor Drake & Scull and the industry a month or so later.

BALFOUR BEATTY & SUBSIDIARIES, HADEN YOUNG & BALFOUR KILPATRICK

Mid 2004—Join Haden Young Limited

January 2005—Region start recruiting labour via agencies and I learn of checking procedure from Labour Manager, Neil Cappell. Checking procedure goes via Personnel Director, Prue Jackson's assistant, Frieda at Haden Young head office.

I discuss checking procedure with Personnel Director, Prue Jackson by telephone who confirms the checks are made via Ian Kerr.

February 2005—Prue Jackson telephones to instruct me that an operative Michael Shakespeare (submitted on a list of names on 3 February 2004) should not be used on site. *See appendix 3(c)*.

April 2005—I make a protected disclosure to Personnel Director, Prue Jackson about my Regional Director, Alex Currie trying to cover up bonus scheme fraud by a 30-year service site supervisor. Prue Jackson arranges for Co-Director and 20 year colleague of Alex Currie, Lawson Elliott (who both originate from the same office in Glasgow) to investigate.

- Managing Director David Beck (who I later learn had taken the decision for Lawson Elliott to investigate) was also a long serving employee of some 40 years, again originating from the Glasgow office.

There's a distinct change in attitude toward me after this by my manager David Brindley and regional Director, Alex Currie with verbal abuse (including swearing and shouting at me), false accusations, constant criticism of my work, removal from training opportunities, and removal of my lodging allowance.

May 2005—I report the matter to Balfour Beatty plc company secretary Chris Pearson (Disclosure Officer) and meet with him and group HR Director Paul Raby.

June 2005—I continue to be treated badly which affects my health and I'm diagnosed with "work related stress" by my doctor and signed off sick. My condition does not improve and I remain off sick for the next seven months until I resign. I am not receiving any pay for most of this period and lose in the region of fifteen thousand pounds in income.

17 July 2005—I raise an official grievance in writing with Prue Jackson about the way I had been treated after making the disclosures and include an additional concern that I would now become a victim of their blacklisting procedure (I go into detail about the check sheets and our conversation about Michael Shakespeare).

22 July 2005—Prue Jackson responds and agrees to grievance meeting, but does not refer to the blacklisting concerns raised.

29 July 2005—I respond reiterating my concerns about blacklisting. I mention I have additional blacklisting information in relation to another Balfour Beatty subsidiary and that I may bring a trade union representative to the grievance meeting.

3 August 2005—Prue Jackson responds by stating that the company has no blacklisting policy.

I contact Micky Tuff from the Amicus/Unite trade union around this time and explain the concerns I have about being blacklisted. We meet up and Mr Tuff arranges for me to immediately re-join the union. I had previously been a member of the union on and off since I was sixteen. Mr Tuff agrees to help me and agrees to attend my grievance meeting, during which he is aware he will come into possession of the Blacklisting evidence.

10 August 2005—I respond by stating Micky Tuff from the Amicus union will accompany me at the grievance meeting and that I have to look at what she says in relation to there being no blacklisting policy with a degree of scepticism based on previous discussions we'd had about this.

12 August 2005—Prue Jackson states that she is sorry I feel sceptical.

25 August 2005—Stage 2 Grievance meeting with Haden Young Director, Peter Barnes, Roy Bowdler (Haden Young), and Micky Tuff from Amicus/Unite.

I reiterate my concerns about being blacklisted by the company and produce the evidence in my possession. See appendices 3 and 4.

The subsequent notes Peter Barnes makes from his investigation into my grievances (disclosed for my tribunal) make no reference to any discussions or investigation into the blacklisting.

27 September 2005—I write to Peter Barnes for an update, as it had now been ten weeks since I had first raised my grievances on 17 July 2005.

11 October 2005—I write to Peter Barnes again as I have still not received a response to my grievances.

12 October 2005—Peter Barnes responds stating that he is unable to uphold any of my grievances.

The relevant section in relation to the Blacklisting reads as follows:

"10. Fear that AW would be blacklisted with adverse affects on future employment prospects.

AW said his grievance was about how he might be treated in the future. PB said he was aware the matter had been raised by AW with Prue Jackson, Personel Director who had written to AW assuring him there was no policy of blacklisting, he would not be blacklisted and would be fairly dealt with in regard to references. PB said whilst AW remained in the Company's employment, as he presently did, no suggestion of unfair or improper treatment could arise in this regard and he could not consider a grievance in regard to a future eventuality. AW said he would like to explain the basis of his concerns and did so.

Conclusions

As stated in the meeting, it is not considered that there is a grievance to consider in regard to the matter raised. I do not find it possible for AW to raise a grievance as to what may happen in the future in circumstances where he has already been assured that his concern will not happen"

20 October 2005—I respond in writing to Prue Jackson stating that Peter Barnes had ignored the conclusive proof I'd provided that the company operated a blacklisting procedure. I reiterate all the previous points I'd raised about the blacklisting procedure within the company and even mention that I'd asked for Prue to be present at the grievance meeting to which Peter Barnes had taken the decision that she would not attend. Cc Micky Tuff (Amicus/Unite).

11 November 2005—Stage 3 Grievance Meeting with Haden Young MD, David Beck, Barry Hyams (Haden Young), Micky Tuff (Amicus/Unite) and myself.

6 December 2005—David Beck writes to me stating that he did not believe Peter Barnes acted unfairly in hearing my grievances and that he supported his conclusions.

He makes no reference to the blacklisting.

7 December 2005—I respond and again make reference to the blacklisting. Cc Micky Tuff (Amicus/Unite).

9 December 2005—I write to David Beck stating the following:

“You have also totally disregarded my serious concerns about the company’s procedure for blacklisting operatives and staff. This after I had provided conclusive proof to Peter that this takes place within the business”.

I go on to say:

“I have also lost considerable income during this time (approximately 15,000 and have feared returning to work for fear of reprisals from those I had made the allegations against”.

And further on:

“In effect, what you are really asking me to do is turn a blind eye to the following:

8. That the company operates a blacklisting procedure against operatives and staff who are deemed to be troublemakers or have a background/history of industrial action and that I could be blacklisted under this for raising these matters.”

And further on:

“It is now apparent that you have no interest in uncovering the truth.

Your failures to seriously consider and investigate the facts I have presented to you leave me with no alternative than to hand in my resignation”.

Cc Micky Tuff (Amicus/Unite) and Paul Raby (Balfour Beatty HR Director)

MY BLACKLISTING BLOG IN 2006

I launch a website blog in March 2006, called “Q: ARE YOU A BLACKLISTED ELECTRICIAN?”, publishing the names distributed between Balfour Kilpatrick and Emcor Drake & Scull in relation to the Pfizer, Royal Opera House and Jubilee Line Extension projects. I call for people to contact me if they feel they may be blacklisted.

This can be viewed in greater detail via my current website blog but I would draw the committee’s attention to the entry about Steve Keevil.

Steve had been unable to find any work since leaving the Jubilee Line Extension project and provides one example where he is inducted at a Balfour Kilpatrick project, Pfizer, but then sent home later that day.

Appendix 2(o) details names of operatives (including Steve Keevil) supplied to the CA by source 3221 (most probably Emcor Drake & Scull) from the Jubilee Line Extension. There are entries for Michael Aird for Balfour Kilpatrick in 1998 and Liz Keates for Carillion’s Sky Blue agency in 2003.

Another entry on this website details a statement made to me by a supervisor Tony Willoughby at the Jubilee Line Extension project on 4 May 2006.

In this he states that the supervisors were taken to a room to complete a questionnaire on a number of key individuals singled out as troublemakers.

I speak to Tony Willoughby again on 10 May 2006 and he confirms that Gillian Hone is the Emcor Drake & Scull representative at the meeting. *See appendix 2(q).*

I go on to help other operatives on this blog gain compensation for the detriment they had suffered over the next twelve months.

AMICUS/UNITE AND THE BLACKLISTING EVIDENCE

I write to Micky Tuff on 10 January 2006 to inform him that I’ve resigned and to ask for assistance in taking Haden Young to a Tribunal. He’d previously promised to write to head office to ask them to support a claim. I did not hear back and wrote to him again on 19 January and 6 February 2006.

I did not receive a response to either of these letters and contacted him in late February to say that I could not wait any longer as I was running out of time. I inform him that in the absence of a decision from the union, that I would have no other option that to seek private legal advice.

I did not hear back and therefore contact him again on 21 March 2006 to establish what progress he was making with the evidence I’d provided. He said they were holding back as requested until my grievance had been resolved. I inform him (as he well knew) that the grievance procedure ended on 6 December 2005 and that it was now 21 March 2006. His response was “no comment”. *See appendix 2(p).*

To the best of my knowledge, I did not hear from or speak to Micky Tuff again.

In June 2006 I write to the General Secretary, Derek Simpson three times to ask for help. He does not provide any and does not appear to do anything with the evidence in his possession. I go into greater detail about the Amicus/Unite trade union and the Blacklisting on my blog.

APPLICATIONS FOR WORK IN 2006 TO 2007

I make approximately 150–200 unsuccessful applications for work in 2006 and 2007. One of these is to Murray Reed at NG Bailey. He does not reply.

I'm later informed by one of the electricians I've been in contact with over the last few years that MR appears on one of the blacklist files for NG Bailey. I do not have any evidence of this.

WORKING FOR CARILLION IN 2006

Around August 2006 I receive a call from a recruitment consultant who has noticed my previous seven years employment at Carillion. I attend an interview with a senior manager from Accenture (Carillion had outsourced part of their HR function to Accenture) in Carillion's office in Wolverhampton and I'm hired that day as HR Manager for the Apprentice Training Division that Richard Howson makes reference to in his written submission to the committee.

All is well and I enjoy the work. I need this job. My employment suddenly ends a day (or two at the most) after bumping into Liz Keates at Carillion's head office. My contract is terminated immediately and I'm given no explanation as to why I've been released. I press the recruitment consultant for an explanation but he avoids taking my calls.

I'm aware that Carillion are advertising for HR Business partners on their website and immediately make an online application. I hear nothing until the following January when I receive a letter stating my application had been unsuccessful.

Again, I go into greater detail about these matters on my blog.

MY TRIBUNAL WITH HADEN YOUNG IN NOVEMBER 2006

I attend my 10 day tribunal and learn the following March that I had lost. From evidence that has come into my possession very recently, I can now prove (what I knew back then) that those giving evidence at my Tribunal committed perjury. They blatantly denied any knowledge of a blacklist over long periods of questioning and if my memory serves me correct, it was only Peter Barnes who buckled under cross-examination to at most concede the points in 98.1 and 98.2 below.

We now know from the very limited evidence in Appendix 2 that the information was two way and that it did apply to staff positions as I was placed on Ian Kerrs blacklist in January 2007, a month or so after my Tribunal, with the reason given as providing evidence at employment tribunals.

My three-page file was redacted, so as yet, I do not know the source of this.

The following is the extract from the judgment that relates to the Blacklisting:

2.5 On 17 July 2005, the claimant wrote a grievance letter to Ms Jackson repeating most of the Exeter Schools allegations already raised, together with a list of the acts complained of which were said to comprise the detrimental treatment of him on the grounds that he had made the allegations. However, on this occasion, the claimant submitted that a new and additional disclosure was made. This was an allegation that the respondent maintained a "blacklist" of construction workers. Initially, Section 137 Trade Union and Labour Relations Consolidation Act 1992 was relied upon by the claimant to demonstrate the illegality of the blacklist but, in closing arguments after the conclusion of the evidence, it was conceded on his behalf that there was no evidence that the supposed blacklist was restricted to, or in any way concerned with, trade union members and that it could not be said to be unlawful on that account. It was further conceded that it could not in any other way qualify as a protected disclosure according to the qualifying criteria in Section 43B(1). Consequently, that allegation was abandoned. Nevertheless, the claimant continued to rely on the respondent's proposed intention to include his name upon the blacklist as one of the detrimental acts he complained resulted from the earlier disclosures and, alternatively, as contributing to his lack of trust and confidence in the respondent entitling him to resign.

2.6 All the above allegations were repeated in similar form in the claimant's letter of appeal against the outcome of his grievance dated 20 October 2005.

The Grievance Meeting

98 There was, however, one new allegation, namely that the company operated a blacklist of employees and that it was Mr Wainwright's fear that it was the company's intention to place his name on it so that he would find it difficult, even impossible, to obtain new employment in the construction industry. As to this allegation, it emerged that it is the company's practice, in addition to taking up references, to submit the names of new starters to a third party trade organisation. The purpose was stated to be a "security check" as the organisation retained information on police convictions and the like. The respondent conceded, however, that the organisation's information would probably include the names of perceived troublemakers (although no one could define to us the degree of trouble one would need to cause in order to be entered on the list). What was apparent, and what led Mr Burgher to withdraw the suggestion that this was a disclosure qualifying as a

protected disclosure, was that the list was not synonymous with trade union membership or activity. Mr Burgher was not able to allege that the blacklist was unlawful on any other ground. The respondent's witnesses did not accept the description of their practice as a "blacklist," although that question is probably one of semantics and we can understand why the claimant might describe it that way. More importantly, they also told us and, because we have found them generally to be reliable witnesses and there was no evidence to gainsay them, we accept:

98.1 the respondent does not submit information to the trade organisation in a two-way exchange, and

98.2 the listings related to site operatives only and not to staff of any grade, so it would not be possible to include Mr Wainwright's name, even if the company had been so minded.

There is no evidence of any detriment. At best, the claimant's case was that he was in fear of being subjected to one but even that, we find, was not a reasonable fear.

Alleged Detriments

134. As to the alleged blacklist, our finding is that none existed (at least in relation to the claimant's grade of employee) and Mr Wainwright's fear that he would be placed upon one had no sound basis other than his own, rather wild assumptions arising out of an increasing mistrust of his employer which he has been unable to show was in any way justified.

MEETING BERNARD CARTER (DTI) IN JANUARY 2007

I met with Bernard Carter at a hotel in Chester on 12 January 2007. I have a report from him following this meeting should this be required.

GIVING EVIDENCE—ACHESON & OTHERS V LOGIC CONTROLS IN JANUARY 2007

I gave evidence at this Tribunal and the Chairman found in favour of Acheson & Others.

An interesting point about this Tribunal is that Logic were a very small sub contractor, with the main contractor being Balfour Kilpatrick. Logic's Counsel was the high profile barrister, Ronald Thwaites QC. I recall that his main line of questioning toward me tried to suggest that I had a vendetta against Balfour Beatty. I did not.

My witness statement for this Tribunal is available on my blog.

THE ICO

David Clancy made contact with me in 2008 to say he was using the evidence from my Tribunal to expose the blacklisting.

I provided as much help as I could and believe that he tracked Ian Kerr down via information received from a meeting with Haden Young at their head office in Watford.

POLITICIANS

I have contacted a number of politicians for help over recent years, including local MP's David Hanson and Stephen Mosley. They have written to senior Ministers, but the responses from Jack Straw and more recently Norman Lamb were along the lines of "we brought in regulations in 1999 and that's it".

DISTURBING NEWS

I've had many conversations with some of the people on these lists over the last few years but the most disturbing one was with Electrician Steve Acheson who informed me that he had learned that three electricians from the Jubilee Line Extension project had committed suicide.

I spoke to Steve today (5 November 2012) and asked him to reveal the source of this information. Steve confirmed that this was Steve Kelly who also worked on the project.

I asked Steve to contact his source, Steve Kelly to confirm this. Steve Acheson called me back ten minutes later to confirm that he had spoken to Steve Kelly and provided me with two names of operatives Mr Kelly had stated had committed suicide.

I have not published the names in this report, but can confirm that they are on the Emcor Drake & Scull list from the Jubilee Line Extension project.

SUPPORTING DOCUMENTS

Appendix 1—Company Structure Charts

1(a) Carillion plc,

1(b) Balfour Beatty plc

Balfour Beatty plc subsidiaries, Haden Young Ltd and Balfour Kilpatrick Ltd rebrand to Balfour Beatty Engineering Services on 1 July 2009.

Appendix 2—Consulting Association Files

These Consulting Association files were provided to me on Friday 2 November 2012. They are not redacted.

The files are coded with company numbers and initials of those providing and accessing the information. I've therefore identified the people I strongly feel the initials are most to likely represent.

- 2(a) List of company codes from CA database:
 - 3271—Carillion.
 - 3223—Balfour Beatty.
 - 3223F—Balfour Kilpatrick Ltd (subsidiary of Balfour Beatty).
 - 3223M—Haden Young Ltd (subsidiary of Balfour Beatty).
- 2(b) Carillion—FD—Frank Duggan (Carillion Group Personnel Director):
 - Also Balfour Beatty contact from 1996—JD (not known).
- 2(c) Carillion—FD—Frank Duggan.
- 2(d) Carillion—JB—John Ball (Group HR Manager).
- 2(e) Carillion (NCS)—SP Sandy Palmer & DA Dave Aspinall.
- 2(f) Carillion (NCS)—SP & DA again.

A notable point here is the final line of entry relating to Ucatt Official, Barry Scragg.

- 2(g) Carillion—KG—Kevin Gorman (Crown House HR Manager).
- 2(h) Carillion (Sky Blue)—LK—Liz Keates (81 entries on CA files).
- 2(i) Carillion—RH—*Is this Richard Howson? (2004).*
- 2(j) Carillion—RH—*Is this Richard Howson? (2004).*
- 2(k) Carillion—RH—*Is this Richard Howson? (2004):*
 - Richard Howson has held senior positions within Tarmac/Carillion for over fifteen years.
- 2(l) Balfour Kilpatrick—MA—Michael Aird—(Balfour Beatty subsidiary) provides details of 40 plus operatives from the Royal Opera House project (see also appendix 4). A * indicates “one of the main troublemakers”.

Also PJ—Prue Jackson Haden Young (Balfour Beatty subsidiary) detailed on this record:

- 2(m) Same as 1(l) with LK—Liz Keates accessing the information for Carillion's in house agency, Sky Blue.
 - Also Haden Young contact CM from 2007 (not known).
- 2(n) Carillion—KG—Kevin Gorman—Courtaulds Grimsby.

I have previously made reference (in an earlier submission to the Committee Chairman) to Kevin Gorman and a project in Hull. I now believe that project was in Grimsby and this is the supporting document.

- 2(o) Balfour Kilpatrick—MA—Michael Aird and Liz Keates (Carillion) access names of operatives from the Jubilee Line Extension supplied by Company 3221.

I cannot establish company 3221 from the list of company codes but this will almost certainly be Emcor Drake & Scull.

Although only seven names can be identified from this CA record, the list is in alphabetical order starting at P (apart from Steve Keevil who has been typed on at the end), so this is most probably the second sheet of a two-page entry.

- 2(p) Emcor Drake & Scull and Amicus/Unite.

Contemporaneous notes of telephone discussions with Sheila Knight (Emcor Drake & Scull Group Personnel Director) and Micky Tuff (Amicus/Unite) on 20 March 2006 and 21 March 2006 respectively.

- 2(q) Emcor Drake & Scull.

Contemporaneous notes of telephone discussions with Supervisor, Tony Willoughby from the Jubilee Line Extension project.

Appendix 3—Haden Young Blacklisting Check Sheets

Appendix 4—Memo from Sheila Knight (Emcor Drake & Scull Group HR Director), which accompanied the lists exchanged between Balfour Kilpatrick and Emcor Drake & Scull

- 4(a) Operative data from appendix 4 also on CA files, provided by Michael Aird (Balfour Kilpatrick), accessed by Prue Jackson at Haden Young.

- 4(b) Operative data from appendix 4 also on CA files, provided by Michael Aird (Balfour Kilpatrick), accessed by Liz Keates for Carillion Sky Blue business.

5 November 2012

Written evidence from UCATT

UCATT was asked to provide information about Employment Tribunal claims and why they were unsuccessful. Full details, as provided by UCATT's solicitors, are given below.

1. UCATT members that were provided with copies of their blacklist files by the ICO found that the entries rarely contained evidence of actual discrimination, sufficient to support an Employment Tribunal claim.
2. Most blacklist entries made reference to the member's activities on site. There were references to industrial action, agitation and alleged troublemaking. Some entries also contained copies of newspaper articles either relating to or written by the subject of the entry. This included articles from union journals.
3. Many of the entries related to trade union membership or activities. Others referred to wider political activism, all of which were legal. Many of the entries went back 20 or 30 years or more. Some entries referred to events in the 1970s. Others were more recent.
4. Many cases were lodged on behalf of blacklisted members. In the absence of any legislation outlawing blacklisting per se, claims had to be brought under the Trade Union & Labour Relations (Consolidation) Act 1992 (TULRA). The minority of claims supported by UCATT concerned members who had been denied employment on grounds of their trade union membership or activities contrary to Section 137. These claims were based upon entries on the blacklist showing that their name had been checked by a specific company.
5. Other claims related to the suffering of a detriment under Section 146. Others too, related to dismissal or more usually, selection for redundancy contrary to Sections 152 and 153.
6. These claims were lodged with the Employment Tribunal. There were however a number of problems:

(a) *Time limits*

The normal time limit for pursuing a claim of this nature is three months from the date of the behaviour complained of. That was clearly impossible in this case as most of the members concerned had not become aware that they had been discriminated against on grounds of their trade union membership or activities until they read the blacklist entries. The Employment Tribunal generally took the view that the three month time limit did not run from the date of discovery of the blacklist entry. Instead they applied the time limit in Sections 139 and 147 TULRA by accepting that it was not reasonably practicable for the complaint to be presented within three months of the conduct complained of, and allowing a further reasonable period to lodge a claim. The time limit applications were applied stringently. Over a series of cases, it became clear that the individuals who waited three months from the date of obtaining his/her blacklist entries could well find their case ruled out of time. This approach allows employers to raise several time limit arguments: that the individual concerned had taken too long to apply to the ICO for his/her blacklist entries; that the individual concerned had waited too long from obtaining the blacklist entries to instruct a solicitor; that the individual and/or his/her solicitor had waited too long before lodging the claim with the Employment Tribunal. A number of claims were struck out by the Tribunal on the grounds that they were out of time.

(b) *Employers*

Many potential claims proved difficult to pursue on the grounds that the employer who committed the act of discrimination had ceased to exist. Even where the employer had been identified, it was often difficult to pursue a claim. Some employers eg the various Crown House or Laings companies raised complex defences that the company sued as their successor in title was not in fact the original company that had accessed the blacklist. This resulted in considerable research and complex arguments on the identity and provenance of the successor company to the one that accessed the blacklist.

(c) *Legislation*

Most of the legislation on which claims relating to detriment, dismissal or redundancy were based, had come into effect in the mid 1970s. This meant that any member who wanted to pursue such a claim could do so subject to providing evidence in support (see below). A problem arose with regard to cases relating to refusal of employment on grounds relating to trade union membership contrary to Section 137. That particular piece of legislation did not come into effect until 1991. The Employment Tribunal was quick to strike out cases involving alleged refusal of employment relating to blacklist entries prior

to 1991. This was on the grounds that there was no law against refusal of employment on trade union grounds up to that date.

(d) *Evidence*

With the burden of proof on the claimant, it was necessary to obtain evidence to show that the individual concerned had been refused employment or suffered detriment or dismissal as a result of the blacklist entries. As many of the events that had occurred had taken place, years or even decades before, it was simply impossible for individuals to provide evidence to prove the fact that they had been refused employment and were subjected to a detriment or even dismissed as a result of blacklist entries. Employers were never slow to argue that there was no proof. Claimants had to rely upon the blacklist entries themselves and other materials such as their Inland Revenue employment history to support their arguments. Very few of these claims survived the Pre-Hearing Review stage.

November 2012

Written evidence submitted by the Information Commissioner's Office

Following my evidence session at your Committee on 16 October, please find as promised, further information below. Having read the transcript of my evidence, I believe that this covers all the information the Committee requested.

ICO KNOWLEDGE OF CAPRIM OR ANY OTHER BLACKLISTING DATABASES

I have researched our records and can confirm that at no stage have we been provided with evidence on which to base an investigation into any blacklists other than the one held by the Consulting Association.

With regards to Caprim specifically, since our investigation into the Consulting Association database, we have been contacted by two individuals expressing concern about the existence of a database held by Caprim Limited. These concerns were raised in March 2009 shortly after our press release regarding the Consulting Association. They did not go into details about the nature of any information allegedly held by Caprim Ltd or provide us with enough of a basis from which to start a full investigation at that time. The suspicion raised was that Caprim were using information from the Economic League. From our investigation into the Consulting Association, it appeared that it was in fact the Consulting Association that had this information. These letters were therefore treated as intelligence and there was no further investigation. No further concerns have been raised with us since. Having checked the register with Companies House, it appears that Caprim Ltd was in fact dissolved on 11 August 2009.

There was just one investigation that we did conduct into a potential blacklist held by a company from August 2010 to June 2011. This investigation has since been closed after it was concluded that the alleged blacklist was no more than information held by the company's HR department in accordance with the provisions of the DPA.

COMPANIES WE WROTE TO AND THOSE THAT WERE ISSUED WITH ENFORCEMENT NOTICES

I enclose a list of all the companies we wrote to on 11 March 2009 following the execution of the search warrant on the Consulting Association (*not printed*). All these companies appeared on the database as members of the Consulting Association though this did not necessarily mean that they had access to the database itself. The names of these companies had been confirmed by us in a press release on 6 March 2009. Some of these names differ slightly from the names that we actually wrote to. This is because, following further investigation, they were found to have been taken over by other companies or officially known by another name. The press release also confirms, in the list of companies, those who were known at the time to be ex members who may not have existed in 2009 or may no longer have availed themselves of Kerr's service.

You asked if we could provide details of those who accessed the database and those who did not. This is unfortunately not an easy task due to the complexity of the records. It is right to say that the companies that we are certain accessed the database are those that were issued with enforcement notices. I can confirm that none of the companies against which enforcement notices were issued had denied involvement.

RESPONSES TO THE LETTERS BY THE COMPANIES

You asked if we could supply you with the responses of the companies that we wrote to. As I explained to the Committee on 16 October, I am unable to provide this information to you. This is because of section 59 of the DPA. This makes it an offence for us to disclose information, without lawful authority, that relates to an identifiable business and that has been obtained by or furnished to us for the purposes of the DPA. I am, however, able to provide you with our Enforcement Recommendation Report on which our analysis as to which companies were to be issued with enforcement notices was based (*not printed*). We have made one redaction in this document because of section 59 DPA. I cannot disclose the names of the companies to which each of the reasons relates but I can tell you that, in the order in which reasons appear in the report, the number of companies covered by them are 11, 6, 7 and 6 respectively.

 CLARIFICATION OF POINTS RAISED AT OUR APPEARANCE BEFORE YOUR COMMITTEE

Having read the transcript of the evidence given by David Clancy and me to your committee on 16 October, I would just like to put clearly on the record that although, when executing the search warrant on Kerr's premises, we were not specifically searching for evidence that employment blacklists existed in other industries we did not come across any such evidence. Furthermore, contrary to some suggestions in the press, we did not find any evidence to suggest that the number of construction workers blacklisted went beyond the 3,213 workers whose details we secured. In relation to the scope of our investigation I enclose a copy of information we provided in support of our application for a search warrant (*Annex 5 not printed*) and the search warrant that was granted (*Annex 6 not printed*).

I would also like to take this opportunity to clarify part of my explanation into how the DPA applies (at Q685). I stated that Kerr had an electronic index. In fact we do not know with certainty whether this was the case or not. The information we seized on which we based our further action consisted of a ring binder index in paper form. It was, however, apparent from the format of the information seized that the index had been processed electronically at some point. Essentially it was a print out. It nevertheless gave us sufficient evidence to confirm that the offence of processing of personal data without being notified had been committed. I can only apologise if I misled the Committee. This was certainly not my intention.

I trust that this answers the Committee's questions. Please do contact me though if we can be of any further assistance. In particular, if it would be helpful to your inquiry, we would, subject to the necessary assurances of confidentiality, be more than happy to allow you, as Chair of the Committee, to attend our office and view, with your own eyes, all the information that we seized from Kerr's premises. Please do let me know if you would like to take up this offer.

November 2012

 Written evidence submitted by Ian Kerr

MY BACKGROUND

1967–69 Primary school-teacher in Warley, West Midlands.

1969–93 The Economic League.

1993–2009 The Consulting Association.

I was never employed at any time in a police or security role.

FORMATION OF THE CONSULTING ASSOCIATION

1. The Consulting Association (TCA) was started out of the Services Group (SG), operated by and within the Economic League (EL). A Steering Committee of key people in construction companies of the SG drafted a constitution. Key operating features of TCA were decided by representatives of the major construction companies, who were the original members. I was asked to become its salaried Chief Officer and I signed a Contract of Employment to this effect. I was employed from its inception in April 1993 until closure by the ICO in February 2009, to oversee the services its member companies wanted. I was not the owner of TCA and I never sold information.

2. TCA was originally funded by a £10,000 loan from Sir Robert McAlpine Ltd in 1993, later repaid out of TCA income.

3. It was agreed by TCA's original committee that payment should be made for the intellectual property (IP) relating to construction names which, up to its demise, was part of the EL's bank of names. The actual details of how this £10,000 was determined I do not know, except to say that I believe it would have been a matter between either EL and TCA's committee or between EL's liquidator and Caprim. A payment of £10,000 was made to the directors of Caprim funded by a further loan to TCA from Sir Robert McAlpine Ltd. The two directors of Caprim were the Ex Director General of EL and the Ex Director of Information and Research of EL. This loan was repaid by TCA when subscription income started to come in. I do not know what happened to the rest of the EL's IP. It was of no further interest to TCA.

4. TCA was a non-profit making, unincorporated trade association. It was funded by annual subscriptions paid by all member companies plus quarterly charges for an amount determined by the use each company, and their subsidiaries, made of the reference-checking part of the service. Over time, some companies ceased their membership while new companies joined. Prospective new companies were put forward by existing members and had to be approved by the remainder. At any given time there were approximately 20 member companies paying an annual subscription.

5. Membership of TCA enabled companies to access information held on their behalf. Information sources were the construction industry member companies themselves. Member companies were national contractors and used the service for checking potential employees applying to their major contracts. These ranged from airport runways, govt buildings such as Portcullis House, Admiralty, MOD Whitehall, GCHQ, also Power

stations, Liquid Natural Gas terminals, The Jubilee Line, Millennium Dome, PFI Projects—Hospitals & Schools, 2012 Olympics, Road & Rail contracts, Shopping Precincts, Media Centres, Wembley Stadium, Army Barracks etc.

6. My role was to facilitate the exchange of the information between members that they themselves had provided. If TCA held information about a potential employee I simply read out over the phone what was on the reference card to one nominated senior representative of the enquiring company and recorded their employment decision which was either:

- Not employed.
- Employed but will take up references and monitor.
- Employed.

Reasons for decisions ranged from how serious the enquiring company viewed the reason for inclusion, how near to finishing the contract, how short the supply of skill in that trade was, the age of the information etc.

7. THE TCA SERVICES WERE THREEFOLD AND COMPLEMENTARY TO EACH OTHER

(i) *A central reference service, allowing member companies to access their own and other member's information*

The Consulting Association (TCA) acted as a central resource, which member companies could access via their unique reference number. Company directors and senior managers provided all the information that was recorded on the cards. I had no part in deciding what information was kept neither about individuals nor on the outcome of their job applications. Any inputs to the body of information were recorded exactly as the main contact dictated, with the co ref and main contact's initials to identify the person who inputted the information. Comments in the press quoting from reference cards were neither my comments nor were they judgements made by me.

The next time a name came up via another company's enquiry, I simply read out what was on the reference card, with neither interpretation nor additional comment to one nominated senior representative of the enquiring company and recorded their subsequent employment decision with their co ref number and main contact initials, and so on. This enabled member company's main contacts to refer directly to them if they wanted further or updated information that, for whatever reason, had not been communicated to me, in order to make a balanced decision regarding suitability for employment. Main contacts knew each other from TCA meeting forums and from numerous other industry platforms so would be able to gauge their colleagues' reasons for someone's inclusion into the system from their personal knowledge, track records and management styles.

The database was not a "blacklist". I would never have taken the job on if I had been required to run a system based just on a list of names of people not to be employed. Simply being named on the database did not mean that an individual would automatically be denied employment. In an average year there would be between 38,000 and 40,000 names referred by member companies to TCA for checking. Of these about 100 would be "positive", that is, information was known about them. In general, about half of these applicants would be employed and half would not. Employment decisions, together with the initials of the person who made the decision, were recorded on the card. The information held on behalf of the membership was weeded out on a rolling basis.

(ii) *Meetings Platforms, specifically for:*

- *General Industrial Relations Matters.*
- *Environmental Issues.*
- *Facilities Management.*

These ran at eight per year, held in South East, North of England and South Midlands in the main and helped in a large part to foster and develop an effective network within the industry. These enabled managers to discuss trends in the construction industry such as new legislation, implementation of national wage negotiations, skilled labour shortages, health and safety matters and training. These agenda items came from main contacts. Only main contacts attended these and were senior managers or at director level. All had expertise and experience in industrial relations, human resources and union liaison.

(iii) *Press Cutting Services*

These covered, separately:

- General Industrial Relations.
- Environmental Matters.
- Facilities Management.

These were intended to enhance and expand on meeting discussion topics and were taken mainly from radical press publications and websites.

8. During the second meeting between me, the Chairman of TCA and the ICO I was served with a notice to cease trading or register with the ICO as a data controller. The Chairman told David Clancy of the ICO that

TCA would stop trading immediately. David Clancy informed us that there would be a prosecution for failure to register under the Data Protection rules and he said that he had to fire this at someone. That someone turned out to be me. In the presence of the Chairman of TCA I signed a form accepting responsibility. I now believe I was the wrong person to prosecute.

9. EVIDENCE FROM ICO TO SCOTTISH AFFAIRS COMMITTEE

The ICO returned copies of all the information they seized during the initial raid of TCA offices. After the Crown Court prosecution I burned everything. There has been speculation in the press that names are still circulating. I can categorically say that I am in no way involved in whatever these may be. The ICO took all the lists. The 90–95% of what was left behind consisted of:

- Construction Union cards detailing head and regional office addresses, names of officials and the area covered by each one—all public domain information.
- Organisations of interest to construction—all taken from public domain.
- The remaining information consisted of copies of previously sent mail outs, files relating to some key projects—all public domain information.
- Past Meetings files.
- Admin files per member company—copies of invoices.
- Admin files relating to office running costs.
- Stationery.
- Some filing cabinet draws were empty.

TCA was set up, funded and controlled by construction companies for their own purposes. There would have been no point served by keeping information on other industries and this was not done.

10. EVIDENCE FROM ALAN WAINWRIGHT TO SAC

(i) *Initial meeting with him in Tarmac's Manchester Offices*

Mr Wainwright made an assumption that the example I showed him indicated that all the information was computerised. This was not the case. The computer was simply used as a word processor.

(ii) *Mr Wainwright's time at Drake & Scull*

He telephoned TCA office to say he had just started at this company as HR Manager and he was going to recommend to his MD that the company became a TCA member. He needed to know membership charges and procedures for acceptance and after speaking he would get back to me. I undertook to ask the other members' main contacts for their approval (this was the procedure outlined in TCA Constitution). Mr Wainwright did not get back to me and I later heard that he had ceased employment with them.

(iii) *Mr Wainwright's comments regarding other lists*

Mr Wainwright suggested that construction member companies might start compiling their own lists of names that were flagged up by TCA in order to save money. The suggestion was made by him that this would mean TCA would need to branch out into other industries in order to generate funds. This is incorrect. Even if companies were compiling their own lists, it would have been cheaper and more efficient to send all names through their own system, TCA, rather than attempt to filter their lists themselves.

This statement is true and accurate to the best of my knowledge.

November 2012

Written evidence submitted by Cullum McAlpine, Director of Sir Robert McAlpine Ltd.

THURSDAY 17 JANUARY 2013

1. The statement below is intended to provide the Committee with background detail on the role of Sir Robert McAlpine Ltd (SRM) in the Consulting Association (TCA) and the rationale behind the establishment of TCA by the construction and civil engineering industries. I was appointed as a Director of SRM on 1 January 1970; I am currently a non-executive Director.

2. The statement has been prepared on the basis of my recollection; I have not retained any documents which relate to my involvement with TCA, which ceased over 10 years ago. I have read the transcript of Mr Ian Kerr's evidence to the Committee as published on the Committee's website.

3. At the time of the establishment of TCA, its founding members agreed that there should be a chairman. I was appointed by the founding members to ensure that TCA was set up on a secure and viable commercial and financial basis. After my initial term had finished all following chairmen were from a Human Resource background.

4. Mr Kerr, (who was already involved informally when I was appointed) in his evidence to the Committee, stated that there were at least 14 founding members from major construction and civil engineering companies. SRM volunteered my services and, at the time of my appointment, it was intended that I should undertake the role for a period of three years. I was succeeded by four chairmen from different companies.

5. In his evidence, Mr Kerr was correct in stating that initial contributions of £20,000 were made by SRM. These funds were made available in the form of a loan and were to cover start-up activity. The loan was repaid once subscription income began to be received.

6. The main purpose of TCA was effectively to help the industry act as insurance against those who were intent on illegally disrupting the industry's ability to perform contracts for their customers and also to act as a forum for progressing industrial relations.

7. Around the time that TCA was founded there were discussions in respect of the acquisition of the records of the Economic League. It was agreed that, if these records were used, they would need to be amended to remove any and all references which were not relevant to the purposes of TCA going forward. For the avoidance of doubt, I was not personally involved at any time with the Economic League.

8. As far as I and SRM were concerned, TCA was intended to protect SRM and the other construction companies against deliberately disruptive and unlawful behaviour on construction sites, and not to be a mechanism for discriminating against members of trade unions.

9. SRM has always viewed a constructive relationship with trade unions as fundamental to the effective and safe operation of its construction projects, and I had no reason to believe that our major competitors had any different view. Throughout the period that the Committee is investigating, health and safety issues have grown in significance and the relationship between trade unions and construction companies is essential to the industry's success in improving its health and safety record.

10. At no time have I looked at the database which was eventually taken by the Information Commissioner's Office; other participants may be able to be of assistance to the Committee in that respect. I am therefore unable to offer any detailed comment on the way in which it was compiled and the references which it contained.

11. The finance meetings which I attended focused on material commercial and financial matters (including predictions of anticipated subscription income), and this may be what was in Mr Kerr's mind when he referred to the Finance Committee in his oral evidence to you. We certainly at no point discussed individuals' records.

12. The initial founding members were all large companies from the construction industry. In later years, and after my chairmanship had finished, TCA membership was extended to smaller companies and those participating in the mechanical and electrical sub-sector of the construction industry.

13. Whilst my links with, and knowledge of, TCA diminished over the years I have never had any knowledge of information being provided to or from TCA by the police, security forces or politicians. I can specifically confirm that SRM does not have a policy or procedure of passing generic information in respect of individuals to the police or security services.

14. I was made aware of the Information Commissioner's visit after it had occurred but not of any discussions between Mr Kerr, Mr Cochrane and the ICO officers. SRM was not one of the companies which received an enforcement notice from the ICO. When TCA was dissolved SRM was of the view—and remains of the view—that the subscribing members as a whole should ensure that the outstanding financial liabilities of TCA should be discharged by its then existing membership. Those liabilities included TCA's responsibility for Mr Kerr and his supporting staff and that is why SRM sanctioned the payments to which Mr Kerr has alluded in the closing sections of his testimony. Our view was based on humanitarian rather than commercial factors. Unfortunately that view was not shared by most of the subscribers in 2009.

This statement is true and accurate to the best of my knowledge.

January 2013

Supplementary written evidence from Cullum McAlpine, Director of Sir Robert McAlpine Ltd.

1. This supplementary statement is intended to provide the Scottish Affairs Committee with further background detail at the Committee's request following my appearance before them on 22 January 2013, The Committee's Clerk set out these requests in an e-mail to me dated 23 January 2013 and timed at 10,49 GMT.

2. I attach as Appendix 1, a copy of Sir Robert McAlpine Limited's ("SRM") 2012 Safety Audit.

3. I have caused enquiries to be made of all relevant personnel who are likely to have had custody of any extant minutes of meetings of The Consulting Association ("TCA"). If we had held any such minutes they would have been stored in our offices at Bristol or Hemel Hempstead, I personally, and all members of staff whom I have contacted, have been unable to locate any minutes,

4. The Committee have requested a list of projects, including those in Scotland, on which SRM used TCA's database to check names. We do not have these records but this causes me no surprise because of the way in

which the information was processed as set out in both my testimony and that of Mr Kerr. However, I am able to provide a list of all projects which were on going in the calendar year 2008 and I attach this to my statement as Appendix 2. I am able to furnish the Committee with similar data for any other period of time should this be of assistance to them.

5. SRM have paid fines which were levied on their employees if they were incurred as a direct result of the employee acting within his or her course of employment.

6. For the reasons set out in paragraph 4 of this statement I confirm that we have not maintained any specific records relating to access to TCA's database at Hampden Park and I have been unable to contact the relevant Office Manager who left us in 1993.

This statement is true and accurate to the best of my knowledge.

APPENDIX 1
HEALTH & SAFETY STATISTICS AND HISTORICAL DATA

ACCIDENT STATISTICS 2012—RIDDER ACCIDENTS

YEAR	FATAL ACCIDENTS		MAJOR ACCIDENTS		MINOR ACCIDENTS (Over 3/7 day)		TOTAL ACCIDENTS		AVERAGE LABOUR		MAN HOURS		INCIDENCE RATE		FREQUENCY RATE	
SCOTLAND	McAlpine	0	0	0	0	0	0	0	349	834,986	0.00	0.00	0.00	0.00	0.00	0.00
	Subcontractors	0	0	1	0	0	0	0	900	2,001,017	1.11	1.11	0.05	0.05	0.05	0.05
	Total	0	0	1	0	0	0	0	1,249	2,836,003	0.80	0.80	0.04	0.04	0.04	0.04
WALES AND THE WEST	McAlpine	0	0	0	0	0	0	0	117	263,583	0.00	0.00	0.00	0.00	0.00	0.00
	Subcontractors	0	0	2	1	1	3	3	515	949,311	5.83	5.83	0.32	0.32	0.32	0.32
	Total	0	0	2	1	1	3	3	632	1,212,894	4.75	4.75	0.25	0.25	0.25	0.25
MIDLANDS AND THE NORTH WEST	McAlpine	0	0	0	0	0	0	0	82	193,734	0.00	0.00	0.00	0.00	0.00	0.00
	Subcontractors	0	0	0	0	1	1	1	254	637,781	3.94	3.94	0.16	0.16	0.16	0.16
	Total	0	0	0	0	1	1	1	336	831,515	2.98	2.98	0.12	0.12	0.12	0.12
NORTH EAST	McAlpine	0	0	2	2	2	4	4	427	799,819	9.37	9.37	0.50	0.50	0.50	0.50
	Subcontractors	0	0	0	0	0	0	0	466	776,907	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0	0	2	2	2	4	4	893	1,576,726	4.48	4.48	0.25	0.25	0.25	0.25
LONDON AND THE SOUTH EAST	McAlpine	0	0	0	1	1	1	1	487	1,256,320	2.05	2.05	0.08	0.08	0.08	0.08
	Subcontractors	0	0	7	7	7	14	14	2,649	6,801,528	5.29	5.29	0.21	0.21	0.21	0.21
	Total	0	0	7	8	8	15	15	3,136	8,057,848	4.78	4.78	0.19	0.19	0.19	0.19
OFFICES & PLANT YARDS	McAlpine	0	0	0	0	0	0	0	330	672,770	0.00	0.00	0.00	0.00	0.00	0.00
	Subcontractors	0	0	0	0	0	0	0	63	105,791	0.00	0.00	0.00	0.00	0.00	0.00
	Total	0	0	0	0	0	0	0	393	778,561	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL	McAlpine	0	0	2	3	3	5	5	1,792	4,021,212	2.79	2.79	0.12	0.12	0.12	0.12
	Subcontractors	0	0	10	9	9	19	19	4,847	11,272,335	3.92	3.92	0.17	0.17	0.17	0.17
	Total	0	0	12	12	12	24	24	6,639	15,293,547	3.62	3.62	0.16	0.16	0.16	0.16

INCIDENCE RATE = NO. OF INJURIES X 1,000
AVERAGE NO. OF EMPLOYEES

FREQUENCY RATE = NO. OF INJURIES X 100,000
MAN HOURS WORKED

Note: *—there was 1 No. Over 3 day accident up to 5 April 2012, and 2 No. Over 7 day accidents after 6 April 2012

Note: **—there were No Over 3 day accidents and 2 No. Over 7 day accidents up to 5 April 2012, and 7 No. Over 7 day accidents after 6 April 2012

APPENDIX 2

ONGOING PROJECTS 2008

2012	A19 DBFO Routine Maintenance	Autolink
2012	M6 DBFO Routine Maintenance Phase 3, Scotland	Autolink
2011	The Quadrant (Block E1.3), Regent Street, London W1	Crown Estates Commissioners
2011	Olympic Stadium 2012, Stratford, London E15	Olympic Delivery Authority
2011	M74 Completion, Glasgow (25% JV with Balfour Beatty, Morgan Est & Morrison)	Glasgow City Council
2010	ExCeL Phase 2, London E16	ExCeL
2010	M1 Widening, Junctions 25–28, Nottinghamshire	Highways Agency
2010	Yellow & Blue Quadrant Remodel, MetroCentre, Gateshead	Capital Shopping Centres
2010	Building Schools for the Future, Newcastle	Newcastle City Council
2010	Sports Facility, Northumbria University, Newcastle	Northumbria University
2010	Cornwall Hotel & Spa, St Austell	CMR Leisure
2010	Eldon Square Phase 3, Newcastle	Capital Shopping Centres
2010	Southgate, Bath	Multi Development/ Morley Fund Management
2010	Office & merchandising laboratories, Eastleigh	B&Q Properties
2009	Edinburgh Forthside, Western Harbour	Forth Property Developments
2009	Hanslope Park Enhancement Works, Milton Keynes	Foreign & Commonwealth Office
2009	Cabot House, Bristol	Westmark Developments
2009	Reprovision of Stead PC & Redcar Health Centre PFI	Langbaugh NHS Primary Care Trust
2009	Riverbank House, London EC4	Pace Investments (City) Ltd/Helical Bar Plc
2009	Marie Curie Hospice Development, Glasgow	Marie Curie Developments Ltd
2009	Brunton First School, Newcastle	Newcastle City Council
2009	Fenwick, New Bond Street, London W1	Fenwick Ltd
2009	Leith Street, Edinburgh	Kilmartin Property Group
2009	St Austell Town Centre, St Austell	David McLean Developments
2009	No.1 New York Street, Manchester	Bruntwood
2009	The Snow Centre, Hemel Hempstead	Hemel Snowcentre Ltd
2009	Rednock School, Dursley	Gloucester City Council
2009	Gateshead Schools PFI	Pinnacle Schools (Gateshead Metropolitan Borough Council)
2009	Colchester Garrison	RMPA Services (Army 4th Division (MoD))
2009	Drapers Gardens, London EC2	Mourant & Co Trustees Ltd
2009	Watermark Place, London EC4	Watermark Place Oxford One Investment Ltd/ City Offices LLP
2009	Project INSPIRE, Salisbury & Portsmouth	Serco
2009	City Campus East, Newcastle	Northumbria University
2009	Trinity Gardens (preconstruction)	Ailsa Investments Ltd
2009	Highbury Square Residential Development, London N5	Highbury Holdings
2009	Q6 Quartermile, Edinburgh	Gladedale Ventures (JV between Gladedale & HBOS)
2008	19 Bruton Place, London W1	Timothy Taylor Galleries/Sebastian & Barquet
2008	The Quarry Phase 8, Edinburgh	Henderson UK Retail Warehouse Fund
2008	Alnwick Garden Orchard, Alnwick	Alnwick Garden Enterprises.
2008	V Shed, Avonmouth	Bristol Port Company
2008	High School Learning Resource Centre, Gosforth	Newcastle City Council
2008	Playgolf, East Kilbride	Playgolf Kilmartin Ltd
2008	Tanfield Redevelopment, Edinburgh	CEREP Investment TSarl.
2008	C Bay, Cardiff Bay	Concert Bay Ltd
2008	Music Building, Newcastle University	Newcastle University
2008	TMRC, Ninewells, Scotland	University Court of the University of Dundee

2008	Hotel Missoni, George IV Bridge, Edinburgh	The Mound Property Group
2008	Greenlaw Park 2, East Renfrewshire	The Greenlaw Partnership
2008	ICT Building, Milton Keynes	Foreign & Commonwealth Office
2008	Highcross, Leicester	Shires GP Ltd (Hammerson and Hermes Property Asset Management)
2008	Critical Care Unit, Warrington (ProCure21—JV with Norwest Holst)	North Cheshire Hospitals NHS Trust
2008	Q5 Quartermile Superstructure, Edinburgh	Gladedale Ventures (JV between Gladedale & HBOS)
2008	Bicester Village Phase 3, Bicester	Bicester II Nominees Ltd
2008	45 Church Street, Birmingham	Forty Five Church Street Ltd
2008	Cabot Circus, Bristol	Bristol Alliance (Hammerson/Land Securities JV)
2008	Kings Place, York Way, London NW1	Parabola Estates
2008	Duke of York HQ Phase 3, London SW3	Cadogan Estates
2008	Forthside Granton Infrastructure, Edinburgh	Forth Property Development
2008	Q16 & Q18 Quartermile, Edinburgh	Gladedale Ventures (JV between Gladedale & HBOS)
2008	Project Horizon, Production Facility, Pencoed	Ortho-Clinical Diagnostics
2008	Wandsworth Acute Unit, Tooting (50/50 JV with Norwest holst)	South West London & St George's Mental Health NHS Trust
2008	Children's Centre Play Group, Walbottle Campus, Newcastle upon Tyne	Newcastle City Council
2008	St Paul's RC Secondary School, Dundee	Dundee City Council (Discovery Education)
2008	Core Management Q2, Q5, Q16 & Q18, Quartermile, Edinburgh	Gladedale Ventures (JV between Gladedale & HBOS)
2008	Portwall Lane Fit-Out, Bristol	Solomon Hare LLP
2008	15 Carlos Place, London W1	Timothy Taylor Gallery
2008	The Ark, Hammersmith, London	Landid
2008	New Street Square, London EC4	Land Securities
2008	Radisson SAS Hotel, Durham	Closegate Developments
2008	Donaldsons College, Linlithgow	Donaldsons Trust
2008	Clinical Research Centre (CRC), Ninewells Hospital, Dundee	University of Dundee
2008	Pool Development, Hexham	Tynedale Council
2008	Sealine Pipebridge, Sellafield	BNF Plc
2008	St Andrews Grand Hotel	Wasserman Real Estate Capital
2008	Evolution House, Glasgow	Buccleuch Property Ltd
2008	Dalquharran Castle	KEZIA-DCM Limited
2008	Victoria Dock Enabling Works	Forth Property Developments
2008	Alnwick Garden Phase 2, Alnwick, Northumberland	The Alnwick Garden Trust Ltd

January 2013

Written evidence submitted by John Swinney MSP, Cabinet Secretary for Finance, Employment and Sustainable Growth

Thank you for your letter of 19 December regarding Shovel Ready projects and the Committee's inquiry into blacklisting in employment, with a particular focus on the construction industry.

The Scottish Government has made repeated calls to the Chancellor for additional capital funding to stimulate the economy. We therefore welcomed the allocation of capital consequential totalling £394.1 million in total over three years through the Autumn Statement on 5 December, although we are still facing a real terms cut to the Scottish capital DEL budget of 25.9% between 2010–11 and 2014–15.

On 19 December we announced how we intend to allocate the additional funding for 2012–13 and 2013–14. I attach at Annex A the list of projects to be taken forward. We will wish to reflect on the outcome of the UK Spending Review, which is expected to take place in the first half of 2013, before allocating the additional capital consequentials for 2014–15. As I reported to the Scottish Parliament in making this announcement, a significant proportion of this investment will commence this financial year, with the majority of projects starting construction in the first half of 2013–14. I will combine reporting on spend on these projects with our general budget reporting processes.

These announcements should be seen in the context of our drive to use all levers at our disposal to maximise investment and support economic growth. Our spending plans will ensure spending is targeted as effectively as possible and over the three year period until 2014–15 we will support investment of more than £10 billion through the capital budget, revenue-financed investment through the Non Profit Distributing (NPD) pipeline, Regulatory Asset Base (RAB) rail enhancements, capital receipts and switching more than £700 million from resource into capital.

The table below shows how our total infrastructure investment is increasing over the period until 2014–15.

<i>(£ billion, cash)</i>	<i>2012–13</i>	<i>2013–14</i>	<i>2014–15</i>
Capital DEL including consequentials	2.7	2.5	2.7
Total estimated SG capital investment (including capital funding, NPD, RAB, capital receipts and resource to capital switching)	3.1	3.4	4.2

The Committee asked whether the Scottish Government would be able to spend additional capital allocations and, if so, within what timetable. The Scottish Government has a list of Shovel Ready projects, which we regularly update. Please find attached at Annex B the full list of Shovel Ready projects totalling £820.8m for which I asked the Chancellor for additional capital funding in November in advance of the UK Government's Autumn Statement, in order to boost economic growth and jobs. We have to date received less than half of this amount from the UK Government. There is, therefore, significant potential for more spending on capital projects over the course of the next two years, and we will continue to make the case for additional allocations to limit the impact of the severe cuts to the Scottish capital DEL. As the Committee may be aware, each additional £100 million of public sector capital spending in 2012–13 supports around £160 million in output in the wider economy for that year, and around 1,400 full time equivalent jobs.

In relation to the Committee's inquiry into blacklisting in employment, with a particular focus on the construction industry, the Scottish Government is totally opposed to blacklisting or the compiling of a blacklist on such a basis. We welcome the Scottish Affairs Committee inquiry into this serious matter and await its findings with interest.

Annex A

ADDITIONAL CAPITAL ALLOCATIONS ANNOUNCED ON 19 DECEMBER 2012

	<i>2012–13</i>	<i>2013–14</i>	<i>2014–15</i>	<i>TOTAL</i>
		<i>£m</i>	<i>£m</i>	<i>£m</i>
LOCAL GOVERNMENT TOTAL	1.3	44.9		46.2
Trunk Road maintenance	5.0	5.0		10.0
Cycling infrastructure projects		2.7	1.2	3.9
Ferry port infrastructure	0.8	1.9		2.7
Canal infrastructure projects: Regeneration and Tourism	1.3	3.3		4.6
TRANSPORT TOTAL	7.1	12.9	1.2	21.2
Highland and Islands Enterprise: Economic Development Projects	37	2.9		6.6
Scottish Enterprise: Economic Development Projects	4.4			4.4
ENTERPRISE TOTAL	8.1	2.9		11.0
Forestry projects: access, road infrastructure and buildings refurbishment		3.2		3.2
National Parks: developing the rural economy	1.1	1.8	0.0	2.9
VisitScotland and Scottish Tourist Routes	0.6	0.9	0.2	1.6
RURAL, ENVIRONMENT AND TOURISM TOTAL	1.7	5.8	0.2	7.6
JUSTICE INCLUDING SCOTTISH COURT SERVICE ESTATE IMPROVEMENT, ESSENTIAL MAINTENANCE AND STATUTORY COMPLIANCE	3.9	6.5		10.4
HOUSING TOTAL		50.0		50.0
REGENERATION PROJECTS IN DALMARNOCK, IRVINE AND ARDROSSAN	2.8	10.8	8.4	22.0
CULTURE AND HERITAGE PROJECTS THROUGH NATIONAL THEATRE OF SCOTLAND, HISTORIC SCOTLAND, NATIONAL MUSEUMS OF SCOTLAND AND CREATIVE SCOTLAND	0.3	6.1	0.5	6.9

	2012–13	2013–14	2014–15	TOTAL
		£m	£m	£m
HEALTH MAINTENANCE		10.0		10.0
FURTHER AND HIGHER EDUCATION INCLUDING COLLEGE MAINTENANCE, ROSLIN INSTITUTE AND SABHAL MOR OSTAIG		14.8	5.0	19.8
TOTAL CAPITAL INVESTMENT	25.2	164.5	15.3	204.9

Note: Funding for 2012–13 will be given effect through the Spring Budget Revisions, funding for 2013–14 through the Budget Bill 2013–14, and funding for 2014–15 through the Budget Bill 2014–15.

Annex B

SHOVEL READY PROJECTS—LIST SENT TO THE CHANCELLOR ON 26 NOVEMBER 2012

<i>PROJECT</i>	<i>TOTAL SG FUNDING REQUIRED (EM)</i>
A96 Threapland	6.0
A68 Pathhead to Tynehead Junction	11.0
A95 Lackgie	4.0
A702 Candymill Bend and Edmonstone Brae	4.0
Trunk Road maintenance	34.0
Cycling infrastructure projects	3.9
Ferry port infrastructure	5.7
Canal infrastructure projects: Regeneration and Tourism	6.3
TRANSPORT TOTAL (8)	74.9
Highlands and Islands Enterprise: economic development projects	9.8
Scottish Enterprise: economic development projects	40.4
Port of Leith masterplanning	119.0
VisitScotland: investment in Visitor Centre infrastructure, including Glasgow Visitor Information Centre	1.3
Roslin International Centre for Livestock Improvement,	10.0
ENTERPRISE TOTAL (5)	180.5
Forestry projects: access, road infrastructure and buildings refurbishment	6.2
National Parks: developing the rural economy	12.4
Scottish Natural Heritage: co-location Fort William	0.2
RURAL AND ENVIRONMENT TOTAL (3)	18.8
Scottish Court Service: estate improvement, essential maintenance and statutory compliance	8.4
Upgrading the Safety Camera Network	2.4
JUSTICE TOTAL (2)	10.8
Affordable Housing Supply Programme: additional grant funding	40.0
HOUSING TOTAL (1)	40.0
Clyde Gateway: Office and Industrial Developments for Economic Growth	63.4
Irvine Enterprise Area: Infrastructure and Innovation Campus, and Irvine Ailsa Road Industrial Units	5.9
Ardrossan Quayside and Medical Centre	4.7
REGENERATION TOTAL (3)	74.0
National Theatre of Scotland: Glasgow regeneration project	2.0
Works to Historic Scotland's estate	1.4
National Museums of Scotland: maintenance	3.6
Creative Scotland: grants programme	1.5
CULTURE AND HERITAGE TOTAL (4)	8.5
College projects: targeted investment in priority estates	65.0
FURTHER AND HIGHER EDUCATION TOTAL (1)	65.0

<i>PROJECT</i>	<i>TOTAL SG FUNDING REQUIRED (EM)</i>
Health: backlog maintenance/equipment replacement *	75.0
Health: bring forward projects through capital funding projects currently earmarked for revenue funding	188.9
NHS Highland Renal and Endoscopy	2.0
NHS Highland Day Services	15.0
NHS Grampian Inverurie Health Centre and Community Maternity Unit	7.0
NHS Grampian: Aboyne Health Centre	2.0
NHS Grampian: Stonehaven Health Centre	2.0
NHS Grampian: additional theatre capacity	3.0
NHS Lanarkshire: Monklands—additional backlog investment	10.0
NHS Tayside: additional theatre capacity—Ninewells	3.0
NHS Tayside: intensive care unit upgrade	1.0
HEALTH TOTAL (11)	308.9
20 x 3G Pitches	6.0
National Sporting Facilities	2.0
School Investment	5.0
Community Hub investment	3.0
Sports legacy projects	23.6
SPORT TOTAL (5)	39.6
TOTAL CAPITAL INVESTMENT (43)	820.8

Notes:

- These projects could start work in either 2012–13 or 2013–14 if additional capital allocations were made available now.
- All of these projects have either completed the necessary planning and procurement processes or could get underway in 2013–14 if consented.
- Local Government: Councils have indicated that they would strongly welcome additional capital investment for regeneration and economic recovery. Councils' capital investment plans already recognise the importance of these areas, but additional resource in 2012–13 and 2013–14 for Local Government could accelerate regeneration and economic growth with improved outcomes for communities. Scottish Councils have localised priorities and specific projects will be identified to improve local outcomes. However in broad terms any additional investment could be targeted towards areas such as urban and town centre regeneration, roads, lighting and bridges. Additional investment in these core areas, delivered at a local level, will be a key catalyst for regeneration and economic recovery and can help lever in additional investment.

January 2013

Written evidence submitted by George Fuller

BLACKLISTING: HANDOVER FROM THE ECONOMIC LEAGUE (EL) TO THE CONSULTING ASSOCIATION

I understand that this Tuesday 5 February the Scottish Affairs Committee Blacklist hearings will hear from Jack Winder director of Caprim Ltd on the handover-over from the Economic League to The Consulting Association.

So far I have sat in on submissions to the committee from Ian Kerr and Cullum McAlpine.

Below I make observations and raise issues arising from my own experience regarding the E.L. and TCA:

- (1) The E. L. continuity TCA + violence. (2) 1982 on McAlpines Marble Arch site: Cullum McAlpine's wrong statements to the Scottish affairs committee. (3) TCA and Inland Revenue: questions not asked.*

(1) Continuity of Economic League and T.C.A. Files

My TCA file—first entry 1990—is headed by my addresses in Ipswich and London dating from the 1970s. This strongly suggests continuity between EL and TCA files on me.

At least two of my TCA 1990s file entries—by *Mowlem and Amec*—only fully make sense when read against the 1980's E.L. context.

1980's Mowlem at Hammersmith

In 1983* I worked as a bricklayer on a housing site in Hammersmith, London. The main contractor was Mowlem. A bricklayer colleague, John Kean, and myself were employed—bogus “self-employed”—along with around twenty others by a Mowlem’s subcontractor named London Brickwork.

The two of us, UCATT members, were sacked when we requested to be put on “the cards” PAYE. We refused to leave the site and were reinstated more than once following the interventions UCATT official John Gould. However, following my election/appointment as site UCATT steward and safety rep we were violently attacked by strangers recently brought on to the site. The police were called but the four assailants got clean away. Mowlem were aware of what was going on but said it was “Six of one and half-a-dozen of another.”

Duncan Campbell (later Guardian crime reporter) included the Mowlems incident in an article he wrote for City Limits* about a spate of violent attacks on London building trade union activists at this time. In 2010 John Gould wrote a statement supporting me in an employment tribunal blacklist claim. He held that the blacklist was involved on that site. (Sustained threats and harassment have occurred on two other E L/TCA connected jobs I have worked on).

Jack Winder should be asked whether the E.L. and TCA were involved in violence and intimidation in any way or level.

1980's Amec at City of London School

In early* 1985 I started work PAYE employee status with subcontractor Oliviera Brickwork on the new City of London school near St Pauls Cathedral. Main contractor was Faircloughs—part of the AMEC group (though I did not know this at the time). But at 8 am on the second morning I was told to transfer to an almost complete project elsewhere in London. The bricklayer foreman was apologetic. He said he could not understand why I was being transferred.

My Finsbury Park UCATT branch saw it as blacklisting and held a small demo outside the site. I refused the transfer and sat in the canteen for several days in a vain attempt to stay on the job. (Tony Holden, who now teaches trade union related studies at Tottenham College, was involved in these events).

In early 1990's I worked on a AMEC site. After three months I was appointed union safety rep and immediately sacked. Then transferred to another job—remaining as safety rep—where I received many threats.

(2) 1982* *On McAlpine's Marble Arch Site: Cullum McAlpine's Wrong Statements to the Scottish Affairs Committee*

Out of work I approached the Marble Arch site with some trepidation. I got a job with brickwork subcontractor Blanchhill under a false name, insurance number and address. I did this because I had recently been a UCATT union steward. I was aware that the main contractor McAlpine was influential in the Thatcher government. And I suspected I had been blacklisted in the past. As the false details—apart from the address—I'd given Blanchhill—were close to the correct details I hoped to “correct” the simple “mistake” when work on the site neared completion. The job was for the Church of England Commissioners.

Myself and the other thirty-odd bricklayers and labourers were employed as bogus “self-employed”; the foreman and the rest of the blokes were quite a decent crowd. After a few weeks my union instincts started to assert themselves. I was far from reconciled to “self-employment” as I had recently been working on “on the cards”—PAYE inside the industry Working Rule Agreement—which was seen as the basis for trade union organisation.

I thought that if I contacted the UCATT area organiser Dominic Hiehre he could come on the site, point out to Robert McAlpine and their subcontractor the error of their ways and the legalities and it would be a simple matter for the workforce to go over to PAYE/WRA. Communicating with the organiser by street phone I soon received the news that McAlpine’s labour manager had fixed a meeting with him. But I got a surprise when I later met up with the organiser.

McAlpine’s labour manager had produced for the organiser’s inspection PAYE and WRA holiday pay documents for all Blanchhill’s workforce—including mine under my false name! The next day the foreman came along the scaffold with recruitment slips saying: “Everybody has got to join the union”. Most people signed up—including myself—in my false name. Nobody went on PAYE/WRA.

I still have a photocopy of my stamped up and dated Holiday Pay card and Blanchhill documents for “self-employed” cashing of pay cheques at a specified Marble Arch branch of the National Westminster bank. The church still own the building and no doubt they have a record of the contractor and the date they moved in that would back up this account, as would the now retired UCATT organiser.

The above shows why I believe Cullum McAlpine was not speaking the truth when he told the Scottish affairs committee that the TCA existed to protect the WRA and the industry from sabotage and that the TCA was not a mechanism for discrimination against trade unionists.

(3) E.L./TCA and the Inland Revenue: Questions not asked so far by the Scottish Affairs Committee

Both Ian Kerr and Cullum McAlpine were asked at the hearings about what more was discussed at the TCA meetings. Ian Kerr said, "Employment matters". Cullum McAlpine said, "It was a talking shop." It is unbelievable to me that that the various Inland Revenue initiatives to stamp out multi-billion pound tax and National Insurance fraud was not discussed at the meetings. Bogus self-employment on the contractors' sites amounted to a massive subsidy and put labour and their unions at a big disadvantage regarding access to protective labour law and employment rights as well as benefits and pensions. Success of Inland Revenue clean-up campaign would have reversed the situation.

The various IR initiatives have always received big coverage in the construction trade press with mostly a tone of "IR persecution" coming from employers' and much made of the "complexity" of the IR proposals; but with some employers with unions taking a line supportive of IR. Unions and employers attended IR advisory meetings on the proposals.

In the light of all this it seems highly possible that the EL/TCA meetings were conspiracies to continue the massive bogus "self-employment" fraud as well as blacklisting. Defeating bogus self-employment was a central aim of the building unions and members trying to win this position would have been put on the TCA blacklist file. (For over 40 years every IR anti-fraud initiative has ended up incorporated into the main contractors' "self-employed" regime.)

All the entries in my TCA file were made by TCA main contractors where I was per-force employed on their site as bogus self-employed by their brickwork subcontractor. Not one TCA main contractor had bricklayers on site on PAYE.

February 2013

Written evidence submitted by Harvey Francis, Skanska, UK PLC

My name is Harvey Francis. I am Executive Vice President of Human Resources, Communications and IT at Skanska UK plc. I am a director of that company, I sit on the Board and on the Executive Management Team. I am responsible for all Human Resources matters within Skanska UK plc. I have been in this post since September 2008. I joined Skanska from outside the construction industry a year before that in October 2007.

Mats Williamson, the CEO of Skanska UK plc at the time this issue came to light in March 2009, had hoped to join me before the committee. However, as the committee are aware, regrettably he was unable to attend on this day. I will therefore deal with the points Mr Williamson was to cover.

I have never personally used the Consulting Association. I was not personally involved in Skanska's use of the Consulting Association, and I had not heard of the Consulting Association or what it did until Skanska was contacted by a journalist just prior to the Information Commissioner's Office serving an enforcement notice on the Consulting Association in March 2009.

As soon as I became aware of it, I instigated Skanska's internal investigation into its use of the Consulting Association and was responsible for Skanska's subsequent responses to the ICO's request for voluntary disclosure from Skanska. We co-operated fully, openly and transparently with the ICO investigation. The ICO did not take any enforcement action against Skanska.

I was also responsible for the steps taken by Skanska in response to our internal investigation.

Today I will be able to provide information about Skanska's past use of the Consulting Association. This is based on the findings of Skanska's internal investigation that I instigated that included discussions with the people previously responsible for this area. All my evidence therefore is based on that investigation rather than on my personal knowledge. I can also speak about the steps Skanska has implemented since then, and Skanska's current practices.

I want to be as open and as helpful as possible to the Committee today. However, there may be some areas where I may not be able to be as helpful as I would like. As I believe the Committee is aware, a number of people have commenced a case in the High Court against Sir Robert McAlpine Limited. In November 2012, solicitors instructed by Sir Robert McAlpine Limited informed us that they intend to join in Skanska as a defendant to the court case. Regrettably, therefore, there may be some questions I am not able to answer, either because of the imminent litigation or due to other legal considerations. I will though try to limit this and answer as many questions as I can.

In light of this, I am accompanied by my legal adviser who has helped marshal the relevant facts. I trust that the Committee will understand that I may refer to him if I stray into legally sensitive areas.

It may assist the Committee to understand that Skanska's current UK operations include a number of companies that originally operated as separate businesses and/or under different names and ownership. Skanska Europe AB, a Swedish company, bought Kvaerner Construction Group Limited (which now operates as Skanska UK plc) in 2000. Its previous names include Trafalgar House Construction Holdings Limited, Trafalgar House Construction Limited and. Kvaerner Construction. Limited. Other companies in the group include

Skanska Construction UK Limited and Skanska Rashleigh Weatherfoil Limited. Historically, the culture and structure of Skanska's various UK operations was decentralised and different parts of the business operated in different ways. This goes some way to explain why use of the Consulting Association at Skanska was confined to some parts of the business and not others.

The current executive management team, the board of Skanska UK plc, has worked hard to centralise operations more and to implement a consistent culture and ethos across Skanska's UK operations. We are committed to an ethical and lawful approach to business. We take health and safety extremely seriously and engender a culture of care for everyone who works for us or with us. We recognise and support employees' rights to form or join trade unions and this is enshrined in our Code of Conduct. We take a proactive approach to building good relationships with the unions. We value our good relationships with trade unions highly, and this is an integral part of our culture.

The use of blacklists is against the values and behaviours of our company. I can categorically confirm that Skanska is not engaged in any covert vetting or blacklisting and I am not aware of this continuing in the UK construction industry at all.

March 2013

Written evidence submitted by Balfour Beatty

1.1 Balfour Beatty (www.balfourbeatty.com), founded by George Balfour, a Scots mechanical engineer, and Andrew Beatty, an English chartered accountant in 1909, is a world-class infrastructure group with capabilities in professional services, construction services, support services and infrastructure investments.

1.2 Key infrastructure markets in the UK include transportation (roads, rail and airports); social infrastructure (education, specialist healthcare, and various types of accommodation); utilities (water, gas and power transmission and generation) and commercial (offices, leisure and retail).

1.3 The Group delivers services essential to the development, creation and care of these infrastructure assets including project design, financing and management, engineering and construction, and facilities management services.

1.4 Balfour Beatty employs 50,000 people around the world, of whom 30,000 are employed in the UK.

OUR ASSOCIATION WITH THE CONSULTING ASSOCIATION PRIOR TO 2009

2.1 Balfour Beatty acknowledges using the services of The Consulting Association ("TCA") up until 2009 to carry out reference checks on employees in the construction industry. We regret this. It should not have happened and we apologise to the workers and families who may have been adversely affected over the years by the blacklist. We appreciate that this practice may have caused grievances for some individuals who were the subject of TCA reference checks and we are sorry for this.

2.2 We recognise that in this instance we fell short of the ethical standards we set for ourselves. We try at all times to comply with the law but if the Courts determine that we have not done so in our dealings with TCA then of course we acknowledge that compensation may be due.

2.3 Whilst not trying to justify our actions, the reason for our involvement with TCA was to seek to mitigate and prevent any disruption caused on our construction sites throughout the UK by unofficial and unjustified industrial action. This type of action was prevalent for decades and was a symptom of an extremely difficult and turbulent industrial relations climate which had an adverse effect not only on our company but also on our industry and the country, as a whole.

2.4 That said, we recognise that we were slow to move with changing times and public expectations in the area of data privacy.

2.5 We have never set out to attack or suppress lawful Union activity or Union membership. Quite the reverse. We have always enjoyed good relations with Unite, GMB and other industry unions and we regret that our involvement with TCA has affected those relationships.

THE ICO'S INVESTIGATION IN 2009

3.1 We co-operated fully with the Information Commissioner (ICO) in his investigation in 2009.

3.2 Following receipt of the ICO's Enforcement Notices in 2009, we undertook steps to address the shortcomings revealed in our Data Protection practices.

3.3 This included the introduction of a Group-wide Data Protection Policy and a revised ethical Code of Conduct, both introduced in 2009.

3.4 The Code of Conduct includes a section on *Protecting Personal Information* which expressly includes a prohibition on:

- The use or support of databases of “blacklisted” people or the supply of information to such databases; and
- Checking references for job applicants without first obtaining consent.

3.5 Since these matters were first raised by the ICO in 2009:

- We have ceased all contact with Ian Kerr or TCA.
- There is no evidence that any data previously received from the TCA was acted upon by any operating company.
- There is no evidence of any breach of our Code of Conduct requirements, as outlined above.

3.6 Any breach of our Code of Conduct is a disciplinary offence. Every allegation of breach is investigated fully, taken very seriously and action taken where required.

3.7 Since these matters were first raised by the ICO with Balfour Beatty in 2009 we have not been involved in, nor have we any knowledge of, continued information sharing, either directly between companies or through intermediaries such as TCA.

3.8 Balfour Beatty does not engage in any form of blacklisting and we are committed to ensuring that robust internal controls and processes are maintained which ensure that this practice is never used by our Company.

HEALTH & SAFETY

4.1 We are particularly concerned to note suggestions made to the Committee linking the Consulting Services Association database to deteriorating safety performance on worksites. That was not the position on Balfour Beatty sites and we have seen no evidence that Balfour Beatty workers were ever blacklisted for raising genuine health and safety concerns.

4.2 Operating safely and continuously improving safety performance is critical to any business which aspires to a sustainable long term future and it is particularly important at Balfour Beatty. Nothing we do is so important that it cannot be done safely.

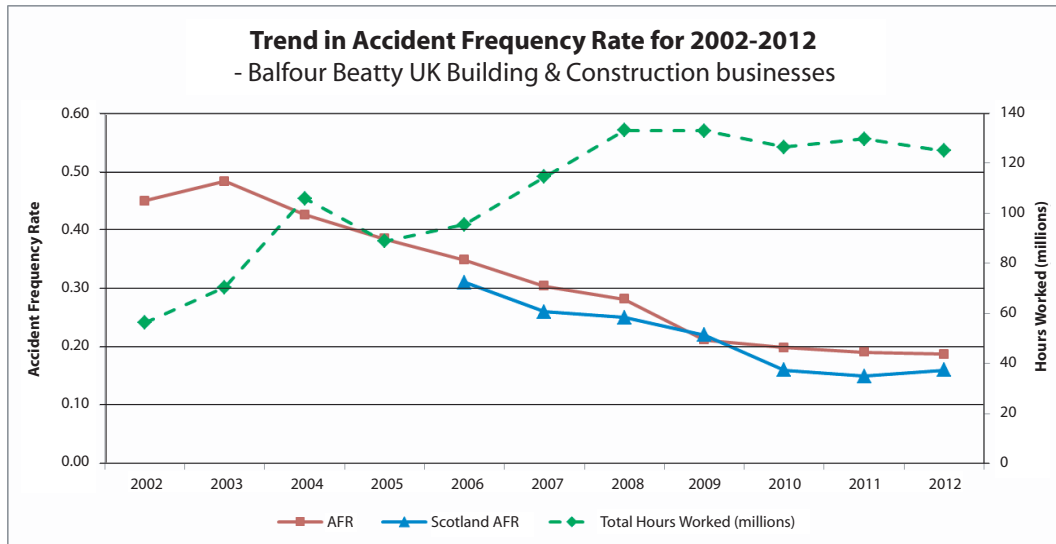
4.3 Our policy is to create an environment in which no one is harmed and where even the risk of harm is eliminated. We are proud of our recent success and track record as industry leaders in safety. Since the turn of the century Balfour Beatty and the wider UK construction industry have focussed strongly and made major strides in improving safety in the workplace. For example, in February 2001, at the construction industry summit, the industry set itself targets for improvements to its health and safety record and Balfour Beatty businesses have, over the last decade, introduced site-based campaigns such as “Safe on Site”, “Make Safety Personal” and “Take CARE”.

4.4 In 2008, these were joined by our “Zero Harm” global campaign which is designed to eliminate the likelihood of death or serious injury as a result of our operations.

4.5 All of these are observation and intervention-based programmes. They positively promote and in fact rely on our workforce speaking up and reporting unsafe acts and conditions and becoming personally involved along with the company in maintaining safety in the workplace.

4.6 As an indication of the level of engagement in these programmes, in the month of September 2012 alone, there were over 2,000 interventions by workers in our Regional Civil Engineering business.

4.7 While there is still a long way to go, these policies and programmes have resulted in a significant improvement in our safety performance, as illustrated in the table set out below. This shows that in the decade to 2012, our Accident Frequency Rate in our UK construction services businesses has been cut to less than one-half of the 2002 position while, in the same period, the number of hours worked in these businesses has more than doubled. In the period for which we have records, our AFR for our Scottish based operations is (apart from 2009) lower than our UK-wide AFR:



4.8 Since 2009, these programmes have been supplemented by our employee whistle-blowing programme called “Listen-Up”, through which employees are invited to report—anonously if required—ethical and safety concerns direct to senior management. All reports are investigated and findings are communicated back to the informant where anonymity does not prevent it.

IAN KERR

5.1 We would like to take this opportunity to place on the record our sincere condolences and sympathy to Ian Kerr’s wife and family on his sudden death last December.

5.2 With reference to Mr Kerr’s evidence to the Committee on 27 November, we wish to confirm that Balfour Beatty did not contribute to the paying of Mr Kerr’s fine imposed by the Court. Moreover, we were not asked to contribute and would have refused if we had been.

REMEDIAL ACTION

6.1 Recognising that this was an industry-wide problem, Balfour Beatty believes that an industry-wide solution is required. We believe that the whole industry needs to focus its attention on the business practices which are best in class. To this end, we have proposed the creation of a Business Practices Committee (“BPC”) of the UK Contractors Group, (chaired by Balfour Beatty’s Mike Peasland) to focus initially on establishing a Code of Conduct for our industry to cement across our industry best in class business practices in full compliance with privacy and data protection laws. Over time, the BPC would also seek to identify and pre-empt other compliance challenges and risks emerging in the UK construction industry.

March 2013

Written evidence submitted by Chidi Obihara

1. I left Morgan Stanley following a sustained period of racist abuse and a complaint I made to the FSA and SOCA regarding troubling practises at the firm, in 2005. I signed a compromise agreement waiving my right to sue them hoping this would stop them from making further defamatory statements against me (copy available on request).

2. I reported an assault to the local police station but was told that they wouldn’t take a report as it “should be dealt with by the firm”. I understand now that London banks in fact funded a PFI based relationship with the local police. I am in the process of confirming that there was a radio 4 BBC report into the matter, but the local police consider this uncontroversial.

3. During my time at the firm many things went wrong, ranging from poor or inadequate supervision to market abuse by traders linked to senior European bankers. I blew the whistle, lost my job and have been unable the work in the industry I trained for all my life since. There were some good individuals—within this difficult system—notably I received an apology from the then head of fixed income and now head of EMEA—

Colm Kelleher. A decent man hamstrung by the system that he works in and that is unable to stop the actions of a truly unpleasant group of people.

4. Prior to leaving the firm, I had been put through over 30 hours of cross examination by a team of HR staff and lawyers from Simmons and Simmons hired by Morgan Stanley. I was unrepresented. I later reported Simmons and Simmons to the law society, because they falsified the minutes of those in-house interviews with their team of lawyers lead by Julian Taylor a partner at the firm. Perhaps because I was not allowed representation, they later changed the “minutes” to “notes” and denied falsifying the testimony I gave. The law society said that their actions were “errors”.

5. In 2007 the now defunct Dresdner bank stated that they had contacted Morgan Stanley staff before withdrawing my signed employment contract. I later lost a claim of post-employment victimisation against them because both banks called in QCs and spent millions of pounds to stop the truth about their actions being heard. By the end of the case I tried to represent myself, but with a QC arguing the case for the bank and the judge dismissed the case for technical reasons during a pre-trial hearing.

6. One of the important aspects of the case involving Morgan Stanley and Dresdner banks was that they used a firms like “control risk plc” and “kroll” who are known across the industry for keeping records on individual bankers. A service they said did not breach any local laws.

7. On their websites above they say they carry out bespoke searches on individuals. At a recent industry conference. I asked one officer of controlrisks who told me she was unaware of any laws stopping them from maintaining an “informal” list of individuals. However I believe that this is incompatible with recent whistle blowing legislation—individuals now have the obligation (not just the right) to report wrong doing, but in doing so, they will be covertly banned by the banks in a way that is not vetted by neutral agencies like the FSA who keep legitimate lists.

8. Before I entered this process, last month in fact, I wrote to Morgan Stanley to ask them again not to continue to blacklist me. While the head of EMEA—Colm Kelleher—seemed willing to at least consider making it so, unfortunately the head of HR refused to follow his instructions. The HR led culture of blacklisting is deeply entrenched and is held as a counterweight to whistle blowing by individuals.

9. The crux of my submission is that the role that these firms (banks and their chosen “investigators”) play must be considered in relation to the FSA or other legitimate regulation/legislation. The financial services authority runs a legitimate list of banned individuals who have been shown to commit specific offenses. Firms like Morgan Stanley on the other hand appear to pre-emptively exclude individuals who might have reported them for carrying out such acts. Thus preventing FSA bans for the appropriate individuals.

Thank you for your time. And forgive the rudimentary nature of my submission. I am not a lawyer and cannot afford one right now. But need your help.

It is my intention to also write to the US sub-committee on investigations because I believe that cases like mine are not isolated, the individuals in involved are.

I am hoping that the culture of inappropriate banking behaviour towards whistle blows can be changed.

March 2013

Supplementary written evidence submitted by Mike Peasland

The following is a list of clarifications to the oral evidence given to the Scottish Affairs Select Committee by Mike Peasland on Tuesday 12 March 2013:

Question 2276: The number 15,000 referred to in Mr Peasland’s answer is the number of checks carried out during the entire period 2004–2008. This was clarified by Mr Peasland later in his oral evidence in his answers to Q2441–2444.

Questions 2312 and 2361: Balfour Beatty does have some limited information about the number of individuals who applied for employment with Balfour Kilpatrick Limited, or sought employment on a Balfour Kilpatrick site through an agency or a sub-contractor, who were then checked with the Consulting Association but were not subsequently recruited. Other operating companies within Balfour Beatty did not maintain this type of information.

Questions 2322 and 2332: Mr Peasland’s answers to these questions specifically related to projects for which Balfour Beatty companies directly employed individuals rather than to those projects where only sub-contractors were used.

Question 2399 and 2341: No written records relating to the provision of information to the Consulting Association in 1999 and 2000 have been identified. Mr Peasland’s evidence that such information was provided is the result of investigations with individuals.

Question 2402: The decision to provide information to the Consulting Association in 1999 and 2000 was taken by the Balfour Kilpatrick HR department specifically, and only, in relation to two projects (the Royal Opera House and Pfizer in Sandwich, Kent).

Question 2424: Mr Peasland's answer that, "It was just the ones that were not cleared that came back" refers to specific information about individuals coming back from the Consulting Association rather than to any communication coming back. If an individual was cleared, the Consulting Association would simply inform the company without providing any information.

Questions 2491, 2507 and 2543: Mr Peasland was mistaken in his understanding that it was Mr Beck that informed Mr Raby about Mr Wainwright's allegation of blacklisting. Mr Raby became aware of Mr Wainwright's allegation when Mr Wainwright raised the issue in 2006 and subsequently brought Employment Tribunal proceedings against Haden Young Limited.

Questions 2606 and 2611: Balfour Beatty ceased contact with the Consulting Association prior to receiving the ICO's Enforcement Notices. Balfour Beatty decided that, as the ICO was investigating the matter, it would be inappropriate to have any further contact with the Consulting Association, or to pay any further invoices.

March 2013

ISBN 978-0-215-05682-5

