PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

DEREGULATION BILL

First Sitting

Tuesday 25 February 2014

(Morning)

CONTENTS

Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
Motion to sit in private agreed to.
Examination of witnesses.
Adjourned till this day at Two o'clock.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 162) 2013 - 2014

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 1 March 2014

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

The Committee consisted of the following Members:

Chairs: †Mr Jim Hood, Mr Christopher Chope

† Barwell, Gavin *(Croydon Central)* (Con)
† Bingham, Andrew *(High Peak)* (Con)
† Brake, Tom *(Parliamentary Secretary, Office of the Leader of the House of Commons)*
† Bridgen, Andrew *(North West Leicestershire)* (Con)
† Cryer, John *(Leyton and Wanstead)* (Lab)
† Docherty, Thomas *(Dunfermline and West Fife)* (Lab)
† Duddridge, James *(Rochford and Southend East)* (Con)
† Heald, Oliver *(Solicitor-General)*
† Hemming, John *(Birmingham, Yardley)* (LD)
Hopkins, Kelvin *(Luton North)* (Lab)
† Johnson, Gareth *(Dartford)* (Con)
† Maynard, Paul *(Blackpool North and Cleveleys)* (Con)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Onwurah, Chi *(Newcastle upon Tyne Central)* (Lab)
† Perkins, Toby *(Chesterfield)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
Shannon, Jim *(Strangford)* (DUP)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Williamson, Chris *(Derby North)* (Lab)

Fergus Reid, David Slater, *Committee Clerks*

† attended the Committee

Witnesses

Richard Jones, Head of Policy and Public Affairs, Institution of Occupational Safety and Health

Sarah Veale CBE, Head of the Equality and Employment Rights Department, Trades Union Congress

Hugh Robertson, Senior Political Officer, Trades Union Congress

Jennie Formby, Political Director, Unite the Union

Susan Murray, National Health and Safety Adviser, Unite the Union

Mike Spicer, Head of Research, British Chambers of Commerce

Richard Hamer, Education Director & Head of Early Career Programmes, BAE Systems

Andrew Tate, Smaller Practices Group Chairman, R3

Louise Curtis, Head of Legal Services, Union of Shop, Distributive and Allied Workers

Public Bill Committee

Tuesday 25 February 2014

(Morning)

[Mr Jim Hood *in the Chair*]

Deregulation Bill

8.55 am

The Chair: Before we begin, I have a few preliminary announcements. Please could you switch your electronic devices off or on to silent? Tea and coffee are not allowed during sittings of the Committee. The notice period of amendments is three working days. Starred amendments—those that have been tabled with inadequate notice—will not normally be called.

To turn to today's proceedings, the Committee will first be asked to consider the programme motion on the amendment paper. Debate on that is limited to half an hour. We will then consider a motion to report written evidence and then a motion to permit the Committee to deliberate in private in advance of the oral evidence sessions. I hope that we can take those motions formally. Assuming that those motions are agreed to, the Committee will then move into private session. Once the Committee has deliberated, witnesses and members of the public will be invited into the room and the first oral evidence session will begin.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 8.55 am on Tuesday 25 February) meet—

(a) at 2.00 pm on Tuesday 25 February;

(b) at 11.30 am and 2.00 pm on Thursday 27 February;

(c) at 8.55 am and 2.00 pm on Tuesday 4 March;

(d) at 11.30 am and 2.00 pm on Thursday 6 March;

(e) at 8.55 am and 2.00 pm on Tuesday 11 March;

(f) at 11.30 am and 2.00 pm on Thursday 13 March;

(g) at 8.55 am and 2.00 pm on Tuesday 18 March;

(h) at 11.30 am and 2.00 pm on Thursday 20 March;

(i) at 8.55 am and 2.00 pm on Tuesday 25 March;

(2) the Committee shall hear oral evidence in accordance with the following table:

Date	*Time*	*Witness*
Tuesday 25 February	Until no later than 9.30 am	Institution of Occupational Safety and Health
Tuesday 25 February	Until no later than 10.00 am	Trades Union Congress; Unite
Tuesday 25 February	Until no later than 10.30 am	British Chambers of Commerce
Tuesday 25 February	Until no later than 11.00 am	BAE Systems
Tuesday 25 February	Until no later than 11.25 am	R3; Union of Shop, Distributive and Allied Workers (Usdaw)
Tuesday 25 February	Until no later than 2.30 pm	Janet Davis and Sarah Slade, on behalf of Natural England's Stakeholder Working Group on Unrecorded Rights of Way
Tuesday 25 February	Until no later than 3.00 pm	Local Government Association
Tuesday 25 February	Until no later than 3.45 pm	Association of School and College Leaders; Andy Grace, Principal of The Boulevard Academy, Hull
Tuesday 25 February	Until no later than 4.30 pm	Equality and Human Rights Commission
Tuesday 25 February	Until no later than 5.00 pm	Federation of Small Businesses; Institute of Directors
Tuesday 25 February	Until no later than 5.45 pm	Forum of Private Business; Professor Julia Black, Professor of Law, London School of Economics

(3) the proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 3; Schedule 1; Clauses 4 and 5; Schedule 2; Clause 6; Schedule 3; Clauses 7 to 11; Schedule 4; Clause 12; Schedule 5;Clauses 13 to 19; Schedule 6; Clauses 20 to 23; Schedule 7; Clause 24; Schedule 8; Clause 25; Schedule 9; Clauses 26 to 29; Schedule 10; Clause 30; Schedule 11; Clauses 31 to 35; Schedule 12; Clause 36; Schedule 13; Clause 37; Schedule 14; Clauses 38 and 39; Schedule 15; Clauses 40 to 57; Schedule 16; Clauses 58 to 60; Schedule 17; Clauses 61 to 69; new Clauses; new Schedules; remaining proceedings on the Bill;.

(4) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 25 March. *—(Tom Brake.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.*—(Tom Brake.)*

The Chair: Copies of written evidence that the Committee receives will be available in the Committee Room.

Resolved,

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.*—(Tom Brake.)*

The Chair: We will now briefly go into private session to discuss lines of questioning.

8.57 am

The Committee deliberated in private.

Examination of Witness

Richard Jones gave evidence.

9.5 am

The Chair: I said at the beginning of the sitting that no hot beverages are allowed in the Committee. I want to make that point again. We will now hear oral evidence from the Institution of Occupational Safety and Health. Before I call the first Member to ask a question, I

remind all Members that questions should be limited to matters within the scope of the Bill and that we must stick to the timing of the programme motion that the Committee has agreed, which states that the Committee will question the first witness until 9.30 am. Will the witness please introduce himself for the record?

Richard Jones: Good morning. My name is Richard Jones, and I am from the Institution of Occupational Safety and Health.

The Chair: Thank you, and welcome. I call Chi Onwurah.

Q1 Chi Onwurah (Newcastle upon Tyne Central) (Lab): Thank you, Mr Jones, for presenting evidence to us this morning. In your submission to the Joint Committee, you were clearly against the removal of health and safety legislation from the self-employed as set out in clause 1. It is telling that there are no witnesses in support of the clause today, so I will have to ask you to set out the case for the changes, such as it might be. Although the most recent survey from the Federation of Small Businesses showed that six out of 10 businesses cited the economy as the most important barrier to growth, and the businesses I speak to generally cite access to finance, there is a strong perception that health and safety regulation is a significant burden.

The Solicitor-General (Oliver Heald): On a point of order, Mr Hood. Is it in order to predict what future evidence will be when the written submissions suggest that the British Chambers of Commerce and other business interests support the change?

The Chair: That is not a question for me. The question is the responsibility of the Member asking it. As long as she is in order, that is okay.

Q2 Chi Onwurah: Thank you, Mr Hood. What work has the institution done to understand the evidence base for the concerns over health and safety regulation when it comes to small businesses and the self-employed?

Richard Jones: Our position is that we are firmly against the clause. The evidence that we have looked at suggests that there is not a strong case for including it. Professor Löfstedt, the Health and Safety Executive and the Federation of Small Businesses have all said that it will improve the perception of burden but not the reality. To our mind, the proposed exempted group—the numbers are projected to be around 840,000—is not overly burdened by health and safety at the moment. Our health and safety system is risk-based and proportionate, so people who do not employ others and who work in a relatively low-risk environment have very little call on them from the point of view of health and safety law. They are not required to register their business with the enforcement authorities, so it is very unlikely that the enforcement authorities will ever know of them and therefore they will never be visited. Anyone who employs fewer than five people is not required to have written health and safety policies or to write down their risk assessments, and they are exempted from the Health and Safety (Display Screen Equipment) Regulations 1992. It is hard to see what burden actually exists. It was telling that the HSE did an initial impact assessment before the consultation, and after the consultation it revised its impact assessment. One of the things it did in preparation for that revision was to identify 60 self-employed people who were not employers and would fall within the exempted group. Admittedly, that is not a big study, but the evidence was telling. Only five of that group of 60 thought they had any health and safety responsibilities at all. The rest either thought that they did not or were unsure. None thought that regulation was a factor for them, and many took health and safety precautions anyway. When asked why they did that, they said, "It is for my own protection and for the preservation of my livelihood. In any case, the actions that we take are common sense." Finally, the HSE asked them whether exemption from health and safety law would make any difference to them. I can give you the quote from the response. It said:

"The response was unanimous, with all 60 stating it would not."

Our view is that the proposal is unnecessary, unhelpful and unwise. Unnecessary because there does not seem to be a problem that needs to be fixed; the target group does not recognise it as a problem. It is unhelpful because the target group will not get any benefit from it. It is unwise because we believe that it will cause confusion and uncertainty.

Q3 John Hemming (Birmingham, Yardley) (LD): Referring back to the Joint Committee on the draft Deregulation Bill, if I remember rightly the impact assessment said that initially there would be additional costs for businesses and a saving only after time. Do you still see that to be the situation?

Richard Jones: The Health and Safety Executive has not revised its estimates on that.

Q4 John Hemming: So it will still cost money?

Richard Jones: There will be an upfront cost of about £1.7 million, averaged out over a 10-year period. It estimated that there will be a saving of about £300,000, which works out at about 37.5p per self-employed person. However, we think that is a gross overestimate, when you think about the research that the HSE has done subsequently in talking to the 60 self-employed people. They will not feel any benefit at all because they are not doing anything for heath and safety now, and they will not change what they are doing.

Q5 John Hemming: Given that the proposal will cost money to businesses now, would it be better to defer it until the economy is in a stronger position?

Richard Jones: I would suggest that it should be deferred for good.

Q6 Andrew Bridgen (North West Leicestershire) (Con): It is nice to see you again, Richard. We talked about the difference between perception and reality, but in politics and many other things perception is reality. You talked about your target group—the self-employed people who do not employ anybody—and said that they will not see any benefit. However, I put it to you that the target group is not the people who are currently self-employed but the people who might become self-employed in the future. The perception that they are not going to be

[Andrew Bridgen]

burdened by health and safety regulations might encourage them to become self-employed and further improve our economic performance.

When our major European competitors, such as Germany, Italy and France do not include the self-employed within the scope of health and safety regulation, how can we compete? They do not have horrendous health and safety records and are seen as safe countries. What are they doing differently from us?

Richard Jones: The systems in different countries are all different from ours. It is telling that the inclusion or non-inclusion of the self-employed across Europe is varied. Germany is probably the most pronounced, because it exempts the self-employed from most health and safety laws, although construction is different—the temporary and mobile sites directive explicitly requires the self-employed to be included. Sweden was mentioned, but it includes the self-employed in its law.

Q7 Andrew Bridgen: What about France and Italy?

Richard Jones: France and Italy are a little unsure. They do in some respects, but not all. When you look across Europe, the UK, Portugal, Spain and Ireland, all include the self-employed. I can see little evidence in the Löfstedt report for why we should go the way of Germany or France. Equally, you could ask why they do not go the way of the UK, Spain, Portugal and Ireland. However, it is not as simple as that, because the systems in each country are different. Martin Temple, chairman of the EEF—formerly the Engineering Employers Federation—has just concluded his triennial review of the Health and Safety Executive; that is another review within the past three years.

Q8 Andrew Bridgen: I understand that the Health and Safety Executive supports the clause?

Richard Jones: Our view is that they are civil servants and have to support it.

Martin Temple specifically asked a question in his evidence-gathering about whether we can learn from other systems in Europe, and he got very little evidence. In fact, he said that the German system is inappropriate because it is inflexible.

Q9 Chi Onwurah: I would like to explore the potential negative impacts of moving the self-employed out of health and safety regulations, in particular the elements of confusion to which you referred. We have had a massive growth in self-employment. Since 2008, three quarters of people leaving unemployment have gone into self-employment—three times the number going into traditional jobs—84% of whom are aged 50 and above. What likelihood do you see of these changes causing confusion? The hon. Member for North West Leicestershire suggested that health and safety regulations prevent people from becoming self-employed, yet we have had a massive increase in self-employment. What is the likelihood that they will cause confusion?

Have you had time to study the draft list of those who will be exempt? The Minister without Portfolio, the right hon. and learned Member for Rushcliffe (Mr Clarke), mentioned beekeeping and mountaineering in his speech on Second Reading. Is it easy to identify whether those occupations will be exempt or subject to health and safety legislation from looking at the list?

Richard Jones: Looking at the list, those occupations will not be included, as far as I can see. A number of occupations that pose a risk to other people are not included in the list. The figures from the Office for National Statistics that you quoted show that 367,000 new self-employed business started up between 2008 and 2012, so clearly health and safety did not put them off.

The other statistic that I found staggering is that there are 4.2 million self-employed people in the UK, of whom the Health and Safety Executive estimates that 3.1 million do not employ anybody. However, an additional 304,000 people are not self-employed in their main job, but are self-employed in a second job. That is nearly a third of a million people who probably do not recognise themselves as being in the self-employed category because they have a proper job. The main jobs that are cited are taxi and cab drivers—166,000—who are not on the list. Apart from the railways, there is nobody in any form of transport in that list, although they clearly pose a risk. It cites "other construction trades", but does not go into what they are—161,000—carpenters and joiners, 140,000, and farmers, but it does not give the number. Taxi drivers, cab drivers, carpenters and joiners are all in the top occupations for this, but you could include landscape gardeners, garden clearance people, handymen, odd-job men, removal men, house clearance, hairdressers, beauticians, complementary therapists, tattooists, body piercers, caterers, window cleaners, painters and decorators. The list of people who could pose a risk to others is quite extensive, but they will be exempt from this law. To our mind, just producing this list and saying, "If you are on it, you are not exempt; if you are not on it, you are exempt," is quite a dangerous move. It was not one of the recommendations made by Professor Löfstedt in his report, and it was not what the Health and Safety Executive consulted on, so arguably there is no mandate for this.

Our feeling is that an important safeguard has been lost. The Health and Safety Executive had concerns about this. I am citing again from its consultation document and impact assessment where it explored a wholly prescriptive approach using a comprehensive list, but it was warned against doing so by sector experts, who said that there were

> "many exceptions and atypical cases. Relying exclusively on such an approach would therefore risk unintended consequences of…exempting some self-employed who do pose a risk"

and that all the HSE's options were, therefore, heavily reliant on the self-employed having to assess the risk they posed to others. That safeguard has been lost in the new proposal.

Q10 Chi Onwurah: Might there be implications for civil litigation if someone was exempt from health and safety, and they not only posed a risk but caused harm or injury to a customer?

Richard Jones: The main duties on the self-employed stem from section 3(2) of the Health and Safety at Work, etc. Act 1974. That has been with us for 40 years, and there has never been a problem. That duty merely codified the common law duty that everybody has to take care of themselves and others who may be affected by their activities. Although they may be exempted

from criminal liability, they will not be exempt from civil liability so they can still be sued if their negligence causes harm to others.

Q11 The Solicitor-General: It is good to see you again. The nature of your institution is that you are practitioners who advise business and others about health and safety. Is that right?

Richard Jones: That is correct.

Q12 The Solicitor-General: And of course you are not in favour of any reduction in the businesses, enterprises or others who are covered by your members.

Richard Jones: Well, our view is that we are very much in favour of simplification and clarity in any legislation and guidance.

Q13 The Solicitor-General: Good. Now, Professor Löfstedt said that there was a case for doing what other countries do and

"exempting from health and safety law those self-employed people…whose workplace activities pose no potential risk of harm to others."

He said that 1 million people could be relieved of those obligations. You disagree with that. Why?

Richard Jones: The effect will be virtually nil, as far as we can see. It will not improve the situation.

Q14 The Solicitor-General: Say I am a businessman just starting up and I have to go through risk assessments and so on, when my business is that I am a professional writer who poses no hazards to other people. Why should I go through that?

Richard Jones: The thing is that what you would be required to do as a professional writer is virtually nothing. You go into your office, you have a—

Thomas Docherty (Dunfermline and West Fife) (Lab): On a point of order, Mr Hood.

The Chair: Order. We are not having points of order just to make comments. If it is a point of order, I will take it. If it is not, I will be less co-operative with future requests.

Thomas Docherty: Can you remind us what the procedure is for asking questions when the witness is trying to give an answer? Should the witness be given time fully to answer a question before Members ask supplementaries?

The Chair: That is not a point of order. I have made it clear that questions from Members should be brief. Since the witness is wanting to make representations to the Committee, I will give them a wee bit more leeway than I will Members. Short and sharp questions, please.

Richard Jones: Thank you, Chair. As I said, there would be very little effect. For those who would be exempted, the problem we see is the confusion and uncertainty that could be caused. Now that we have seen the prescribed list, that has made the situation somewhat worse for us, especially if the message goes out that a million self-employed are exempted from law.

In its impact assessment, to which I keep referring, the Health and Safety Executive commented:

"In theory, all 3.1 million self-employed who have no employees in the UK might think the exemption could apply to them, if they hear about it casually."

We know that it is very difficult to communicate messages to the target group; because of the numbers and diversity, we believe it is highly likely that most of them will hear about the exemption casually. Many who should not be exempted might think that they are. That is the big danger—it is not about the danger for people who are exempted.

Q15 The Solicitor-General: So really, your point is one about perception as well. You are saying that the perception should be that everybody is covered by health and safety.

Richard Jones: That is the reality now. Everybody is covered by health and safety, but if you exempt certain groups, others might wrongly think that they are exempted as well.

The Solicitor-General: So nobody should be exempt?

The Chair: Order. I am afraid that the next question will probably have to be the last as we have three minutes to go.

Q16 James Duddridge (Rochford and Southend East) (Con): How much does a risk assessment cost on average?

Richard Jones: I have not got a figure for that. In high-risk industries—for example, in the chemical industry, where they do HAZOPs and all the rest of it—it could take a team a week to do that for a new process.

Q17 James Duddridge: And the cost for that—a rough ballpark figure? Would it be £100,000 or £10,000? I am particularly interested in the lower-risk businesses.

Richard Jones: The lower risk is easier to do, particularly for the self-employed group. The cost would be zero.

Q18 James Duddridge: No, I asked how much it would cost for a business. I think you are purposely taking an extreme at one end and an extreme at the other. Will you answer my question? You are a professional in the industry and I am asking what a small business would pay on average. I do not think that that is an unreasonable question. You have given me an extreme example of the chemical industry and the example of someone who is self-employed.

Richard Jones: I was trying to answer the question from the perspective of a self-employed person who does not employ anyone, working in a low-risk industry.

Q19 James Duddridge: I said on average. What about two people in a business, then?

Richard Jones: It depends very much on their activities.

Q20 James Duddridge: As a professional in the industry, you cannot give me an average?

Richard Jones: I cannot give you an average, no.

James Duddridge: Okay. I think we just have to note that the professional in the industry cannot give the information.

The Chair: Order. The hon. Gentleman does not have to have a conversation with me about his interpretation of the answer.

James Duddridge: I was just saying that he is not giving us an answer.

The Chair: We have one minute remaining.

Q21 John Cryer (Leyton and Wanstead) (Lab): My question is about unintended consequences. Might there be a temptation for businesses that see the change to think that rather than having employees they will make their work force self-employed in order to gain the exemption?

Richard Jones: That is a possibility and a concern that we have. I would raise another aspect. If we are talking about perceptions, the Federation of Small Businesses thought that exempting this group would help to change perceptions of the health and safety burden. Our view is that it would not; it would reinforce it. If a group is taken out of the health and safety framework on the pretext that it relieves them of burden and if, at some point in the future, they want to expand and think about employing people, they may be deterred from employing those people, because they think this huge burden will descend on them.

The Chair: I am afraid that brings us to the end of the time allotted for the Committee to ask questions. I thank the witnesses for their evidence.

Examination of Witnesses

Sarah Veale, Hugh Robertson, Jennie Formby and Susan Murray gave evidence.

9.31 am

The Chair: We will now hear oral evidence from the Trades Union Congress and Unite. For this session, we have until 10 am. I invite the panel to introduce themselves.

Sarah Veale: Good morning. I am Sarah Veale, head of equality and employment rights at the Trades Union Congress.

Hugh Robertson: I am Hugh Robertson, senior policy officer for the TUC.

Jennie Formby: I am Jennie Formby, Unite the Union's political director.

Susan Murray: Good morning. I am Susan Murray, one of two national health and safety advisers for Unite.

The Chair: I welcome the panel to the Committee.

Q22 Toby Perkins (Chesterfield) (Lab): May I start by drawing the Committee's attention to the Register of Members' Financial Interests, in respect of my membership of Unite and registered donations?

Most people who I have spoken to about clause 2 say that although the power for tribunals to make wider recommendations is not used that much, the clause sends a message to people who might be worried about taking on employees that the Government are doing what they can to reduce the worries about the tribunal system. They would recognise that it is not being used all that much, which I would see as a positive, but, none the less, it will say to businesses, "It is safe to employ people in this sort of environment."

Can the panel give us their perspectives on how the power has actually been used and whether there is evidence of its being a positive factor or that major problems have been caused as a result of it?

Sarah Veale: Shall I start on behalf of the TUC? We were disappointed to see this provision being removed so quickly after it had been introduced. I think its main benefit was that it allowed the tribunals, when they were looking at an individual complaint, to work out as best they could whether it was just a one-off problem, where somebody had been racially abusive to someone else, or whether there was a much more serious underlying systemic problem in the business or the organisation. If it were the latter, it gave the tribunals the ability to go further in their recommendations, to say, "We would recommend that you overhaul your training procedures" —or whatever it was. "You collect statistics on whether this particular impact is coming in in other areas in your company and then make good." It also, critically, said to the employer that if these things were not done, and they were to end up back in a tribunal subsequently on another case, the tribunal would take a very harsh view indeed, because they had obviously ignored recommendations that were made in good faith about how the employer could make themselves much better.

I should have thought that most employers would have welcomed the assistance of the tribunal. Most employers would not want to be found to have discriminated; I should not think that any employer would want that. So I should have thought that any help with rectifying any systemic problems would be welcome.

The impact assessment was only able to look at a short period of time, so, of course, as you say, there were not many cases, but that does not mean that this would not have developed as a useful tool in the armoury of the employment tribunals. I completely agree with you: it gives the wrong message to employers in a very sensitive and difficult area. This is highly regrettable and we very much wish that this had at least been left on the statute book for longer and properly reviewed and assessed before a decision was taken—I think, for the wrong reasons. It is not really a burden on business; it is rarely used, as you say. But it is needed. It has a sort of reflexive impact on the way in which managers operate in these areas.

Q23 Toby Perkins: You are right to say that some critics are using the fact that it is rarely used as a reason to get rid of it. Other people might say that the fact that it is clearly being responsibly used by tribunals and the fact that it is advisory means that we should be positive about the fact that it is there to support businesses that want to make improvements after they have fallen on the wrong side of a tribunal verdict. The very fact that it is occasional should be an asset, rather than a reason to get rid of it.

Sarah Veale: I could not agree more. If you extend the logic to saying that something that is not used very much in the courts is not necessary, you could get rid of the murder laws. There are not that many murders, but that does not mean that you should get rid of the legislation, because it is there to tell people what they should and should not do. The power has that kind of impact on employers. Exactly as you are saying, it is

dangerous to take that away, because it gives a signal that these sorts of things are not regarded as being so important.

The Chair: Do you want to come in, James Duddridge?

James Duddridge: No.

Toby Perkins: For once, I was being generous.

The Chair: I will let James Duddridge come in later. Carry on, Mr Perkins.

Q24 Toby Perkins: One of the issues that concerns me on clause 1, which is about the health and safety regulations and the exemptions for the self-employed, is that it sends the message that health and safety is something that we can opt into or out of depending on how important it is. It also creates the impression that there is a huge burden that we need to alleviate businesses from. I worry that we are sending a message with the legislation that, when a business takes one of the most significant steps it can take by going from being one person to an employer, they will be opening themselves up to a huge level of risk. The legislation will be a barrier to growth; the self-employed will be deterred from taking someone on because they will see health and safety legislation as a major problem. Can you talk us through whether you have concerns on the legislation as a barrier to growth, what it says more broadly about the importance of health and safety and the extent to which it is a bad thing and something that we should try to prevent businesses having to comply with?

The Chair: Order. I just make the point that long questions take away time for the witnesses to give answers to the Committee.

Toby Perkins: Sorry.

The Chair: Who wants to take that question?

Jennie Formby: We would agree with all the points you just made on it being a barrier to growth, but another area that concerns us is the increasing numbers of people who are employed through agencies in major manufacturing, in road transport and, in particular, in the areas that do not cover the transportation of hazardous goods. They are employed on a zero-hours, self-employed basis. There are people who to all intents and purposes will look like employees working alongside other employees who are fully employed and members of the public. They will be exempt from this measure and there will be huge confusion, particularly with some of the details of the definitions of the prescribed activities, which were only circulated very late yesterday.

We heard the tail end of what a previous witness was saying to the Committee. The legislation will discourage permanent employment on the part of employers and they will be more likely to retain people on a self-employed basis or, as you were saying just now, be concerned about employing people on a permanent basis.

The other point that we would make is that the only justification for changing any element of health and safety legislation is on the basis of health and safety issues and not cost. There is no evidence whatsoever that the change will save individuals money. The Government's statistics on the projected savings and the number of self-employed people mean that the saving works out at 37p per self-employed person. It is clearly a nonsense. The overwhelming reason for clause 1 to be removed altogether is that there is no health and safety justification for it. We believe that it will make people less safe, whether they are self-employed, where there is a far greater incidence already of deaths and injuries, those working alongside them or members of the public.

Q25 Gareth Johnson (Dartford) (Con): May I ask you a general question on principles? Does the panel accept that if we can exempt—I am thinking about clause 1—small businesses and self-employed people from obligations under health and safety legislation without endangering anybody, that is a good thing? What is your opinion?

Hugh Robertson: We are in favour of simplification. We are in favour of not imposing unnecessary burdens. There is no question about that. We have worked closely with the HSE to try to ensure that, particularly for small businesses, because we do not see health and safety as a burden; but at the moment we have a simple situation whereby if someone is self-employed all they have to do is look at what they are doing and, if they do not have any risk to themselves or to other people, then there is nothing they really have to do, to be quite honest. It is as simple as that. They do not have to check lists. There is no confusion.

This will create much more confusion and much more burden. The problem is it is going to force a lot of self-employed people down the road of going to consultants to find out what the actual position is, especially when we have got just a list. There are already specific exemptions for small businesses—those with five employees or less. They do not have to do a written risk assessment; nor do self-employed people. They have already got that. We are in favour of getting rid of the bureaucracy, but this is not just in terms of the bureaucracy in terms of the self-employed; the important thing about this is the potential of the self-employed to do danger to other people. That is the issue. With self-employed people who injure and kill themselves the HSE has never, in 40 years, as far as I am aware, prosecuted.

Q26 Gareth Johnson: You say that you are in favour of removing the bureaucracy. Might I ask you to mention some? What current bureaucracy under the existing system would you like removed?

Hugh Robertson: What we have done is, because we have been involved in the simplification system the HSE has been running for a number of years, we put quite a lot of them into the pot early on, including ones about consolidation of regulations on chemicals, mining and so on. The chemical ones still have not been consolidated, in actual fact. The asbestos ones have; the construction ones have. So we have already made quite a number of recommendations around that—around simplification of risk assessment, around supporting small businesses: rather than just having the stick, also having the carrot. We have done detailed submissions to the HSE, and of course to the Löfstedt commission as well, on exactly that.

Q27 Gareth Johnson: Finally, would you accept that if you have somebody who is trying to set up a small business and become self-employed—inevitably, whatever industry they are going into, there will be myriad things they will have to take into account—having health and safety obligations in addition to other obligations is just one extra burden that is placed on a small business setting up, and that doing away with it makes it that much easier for them to set up their small business and become self-employed?

Hugh Robertson: No, because I do not think that having an obligation on businesses not to kill and injure people is a burden.

Q28 Gareth Johnson: In the law of tort you cannot endanger anybody else. That is a given.

Hugh Robertson: Yes.

Q29 Gareth Johnson: I am talking about extra regulations in terms of health and safety that a self-employed person has to go through when they are setting up a business, in addition to ordinary tort law which will exist anyway. Do you not accept that that is just one extra hurdle that someone has to overcome in order to set up a business and become self-employed?

Hugh Robertson: I am not sure which burden you are talking about—there is no requirement to do even a written risk assessment for a small business that has got less than five employees—any more than actually doing their tax return is a burden; it is not. It is a requirement. I think we should get away from burdens and talk about requirements. I think it is a sensible requirement. Do we really want a business being set up, perhaps because it only employs three or four people, doing acetylene torches and so on, without them even having thought of the implications of that?

Q30 Thomas Docherty: I draw colleagues' attention to my entry in the Register of Members' Financial Interests—I am a member of the Transport Salaried Staffs Association. Can I clarify, Mr Robertson: am I right in thinking that what you said a few moments ago was that there is a danger that you increase the bureaucracy on the self-employed by making them pay extra fees to go to outside consultancy and do more paperwork to make sure that they are not actually required to then do the current paperwork?

Hugh Robertson: It is not so much paperwork as to find out whether you are covered. At the moment, self-employed people should not have to do paperwork for risk assessment generally. There is no requirement on them to do that. They can do it in their head. They do not have to write it down. At the moment, whether or not you are covered is simple. Yes, you are covered. So if you are Rowling or someone who writes books, all you do is say, "Am I going to kill someone with my books?" The answer is probably not, so you do not have to do anything. But if you are working as a joiner, I would have no idea whether you are covered by part 1 of this list at the moment. I would then have to go and find out, but who do I ask? There may be guidance and so on, but I would want to be sure if I were setting up a business. Most self-employed people want to obey the law, and at the moment it is simple to do that.

Q31 David Rutley (Macclesfield) (Con): Thanks for the points you have been making. One thing is sure when you speak to small businesses—certainly when I do: health and safety is seen as a barrier. As you say, health and safety is important and we want to save lives, but many small businesses and self-employed people see it as a barrier to entry. Given the large number of people who have joined the ranks of the self-employed—that is a good thing because they will create growth, support their families and contribute to the local economy—should we not be doing everything we can to reduce barriers, perceived or real, to enable more people to become self-employed?

Sarah Veale: I am not sure what barriers have been identified. I think this is a solution trying to find a problem. It seems extraordinary to us that you are prepared to create this atmosphere where the default is that people will not be covered when in fact they are likely to be going into places where they could injure, not so much themselves—that is not the issue—but a fellow worker, a member of the public or someone like that. I think we find it quite hard to work out what the evidential basis is for doing this at all. It seems to us to be very high risk. The list is incomplete, it is questionable and it is complicated. I think it will send out all the wrong messages despite the spin that is sometimes put on it by those who are proposing it. I think people need to think very carefully about unintended consequences.

Susan Murray: I agree with Sarah. I am very concerned that health and safety requirements—we are talking about criminal liability, not just tort—are seen as a burden. An example in transport is that we are aware as a union—we are a transport union—that an increasing number of agency drivers are given false self-employment status, which leads to them potentially not knowing that they have responsibilities for a start, and being treated less favourably means that they will not raise issues because they will not have any duties. One of the most important ways of preventing injury, death and ill health is to raise concerns, including near misses. That is crucial for prevention, but our information is that temporary and agency workers who may have self-employed status are less likely to raise concerns because they will be shown the door. Obviously, employees are in a better position to be able to raise concerns because they are directly employed.

Q32 David Rutley: Thank you for your contribution. You must be speaking to different businesses from the ones I speak to in Macclesfield and round about because it is pretty clear from the responses from those I have spoken to, such as the Federation of Small Businesses and the chamber of commerce, that there is support for this move.

I and others here are talking about the need to remove barriers. When you look at what is going on in Germany, which was referred to earlier, there is a much higher contribution in terms of employment and to gross domestic product from small and micro businesses. We have a long way to go and it is vital to remove those barriers. Can you respond and contribute your thoughts on why Germany has gone down the route we are looking to move to when it has made such a strong contribution through small businesses to its economy?

Hugh Robertson: I think we are getting confused between small businesses and self-employed.

Q33 David Rutley: In Germany, the self-employed are exempt from this.

Hugh Robertson: In a number of countries, the self-employed are exempt from this because they are covered by other regulations or because there are different legal systems, as in Germany. Germany took the wording of the framework directive, which is the European law that covers it, and just applied it. Britain and many others did it in a more systematic, and I think intelligent, way. However, we were talking about small businesses, which is a different issue. We want jobs and we do not want unnecessary burdens, but we do not see how this is a burden. When the HSE consulted on the proposal, half the self-employed people who responded said they would find it confusing and did not support it. It is not just us saying that; a lot of self-employed people have given the same message.

Q34 Toby Perkins: Sarah, a moment ago you described the proposal as a solution in search of a problem. I was previously self-employed; I ran an internet business. I was one of the people whom the Bill is designed to help. However, I cannot think of anything I would have done differently as a result of being relieved of the right to sue myself for having the wrong keyboard. I cannot think what it would have resulted in me doing differently. This is the second evidence session, and we have heard a lot of people talk about perception. Can you think of any concrete, positive thing that self-employed people currently have to do that the proposal will stop their having to do?

Sarah Veale: No. The whole problem is that we cannot see any benefit. As Hugh just said, the problem is that people will find it confusing. To be sure about it, a responsible person will probably seek advice. Therefore, it will be good for consultancies, about which small businesses get agitated because they charge a fortune to tell them how to do something, and then tell them that they will have to come back three months later to see if they are doing it right. The proposal might encourage those small businesses to proliferate, but I do not think it will do anything for growth.

Even if you take off any subjectivity, we cannot find any objective, good reason for doing this. The spinning that is going on is mischievous and dangerous, because it encourages people who should be taking all sorts of responsibilities to feel that they do not have to do so, and to adopt a casual approach. We are talking about life, limb and long-term illness. The issue is about not only accidents and deaths, appalling though they are, but people becoming ill on a long-term basis while they are working. If you look ahead, it is likely to cause more trouble for the kinds of occupational diseases that grow as people expose themselves to them; they do not understand what risks they are supposed to be assessing themselves against.

Q35 Toby Perkins: On clause 2, are you or any of the panel aware of any problems that have been caused by a tribunal's wider recommendation and have had a negative impact on the employer?

Jennie Formby: If you look at the statistics—Sarah can talk extensively about how limited the application has been—in 2012, there were 19 cases in which tribunals issued wider recommendations, and in 15 of them the recommendation was for equality and diversity training. That is hardly a massive burden on employers, and in many cases it is something that they have welcomed because they have been unaware of how to avoid being found guilty of discrimination. Far from being a burden, it is positive. The fact that it is used in only a small number of cases does not mean it has no benefit or purpose. It demonstrates, as Sarah said, that although it is not used often it is valuable and helpful to employers. For example, it ensures that they do not find themselves guilty of discrimination. That is important. Those statistics are in the equal opportunities review.

Q36 Toby Perkins: And in fact, I believe that the Government's impact assessment suggested that the changes to the tribunal system would be a cost to businesses, rather than a saving, because they would not save those costs in the future. Therefore, we have two deregulatory measures that are likely to lead to businesses spending more, not less.

Sarah Veale: Exactly that. The impact assessment is also out of date, because it only looked at four cases, and there were a further eight cases after that. If you look at the nature of those cases, there was pretty appalling systemic bad behaviour, such as employees receiving sexist or racist e-mails from colleagues. That sort of thing has to be stopped. The tribunal can get in there and say, "It's not just that person who did it. It is because you don't have proper training for people in why that is unacceptable behaviour." It is a massive hit on your productivity if your employees are engaged in disputes with one another and conduct themselves in a way that does your business no good at all. It just seems to us to be a bit of a political scoring job: you have another out, in the one in, two out mantra. But it is not looking carefully at what you are taking out and it is not looking properly at the benefits to business that it was undoubtedly bringing.

Q37 The Solicitor-General: Of course, both sides can spin, but the point I wanted to put to you is that Professor Löfstedt, whose report this came from, is the most highly respected risk manager, and a professor at King's, London, and he concluded that there was a case for following a similar approach to other countries and relieving a million people who are self-employed from the burden of this regulation. It is a criminal enforcement regulation, in the sense that the duty is enforced by the criminal law and any self-employed person would have to take it seriously, wouldn't they?

Hugh Robertson: Thank you for that point. Actually, Professor Löfstedt recommended exempting from health and safety law

"those self-employed whose work activities pose no potential harm"—

risk of harm—

"to others"

Q38 The Solicitor-General: But you are disagreeing, aren't you?

Hugh Robertson: That is not actually what is being proposed here. This has gone much further than Professor Löfstedt asked for, or recommended. This is a list of prescribed activities, where the self-employed will retain their duties. That means anyone who is not on this list

will have no duties whatsoever. The self-employed on docks will be able to kill other people without any criminal requirement under the Health and Safety at Work, etc. Act.

Q39 The Solicitor-General: So are you saying that this should be a list of safe occupations?

Hugh Robertson: No, I am saying that that is not what Professor Löfstedt proposed. We supported all of Professor Löfstedt's recommendations apart from this, in actual fact, as you may be aware. Even when Löfstedt recommended it, we actually thought it was potentially dangerous and we did not think he had thought it through—in a very good report, but one out of perhaps 40 recommendations. Even this is not what Professor Löfstedt, in any way, recommended.

Q40 The Solicitor-General: But why have you been going on this morning as though this had no respectable academic basis to it, when the leading expert in the country has proposed it?

Hugh Robertson: I did not say it had no academic basis whatsoever. What I am saying is that, out of a large number of recommendations from the Löfstedt report, there was one we disagreed with, which the Government in their current amendment have not taken up but have changed entirely and put on its head. So this is not what was proposed by Professor Löfstedt.

In answer to your question about why we are opposing Professor Löfstedt, we have not been asked about his report; we have been asked about what is in the Deregulation Bill, which is a completely different proposal and much worse, in many ways.

Q41 The Solicitor-General: Well, clearly, if you want to exempt, you have to have an evidence base to work from and it is much easier to put forward an evidence base of what is unsafe than what is safe. So that is the logic behind this.

You have suggested that if this goes ahead, everybody will be rushing to the consultants for further advice, but the consultants are agreeing with you, saying, "Let's keep a million customers in the pot." What do you say to that? They are not saying what you are saying at all—that they will be losing business—but are keen to keep these self-employed.

Hugh Robertson: If you are talking about the Institution of Occupational Safety and Health, the vast majority of its members are not consultants, but are employed professional health and safety advisers. I have a conflict; I am a member of IOSH as well, I suppose. The majority of its members are not consultants; they are representing the whole membership and the general interests of health and safety.

Q42 The Solicitor-General: These wider recommendations are not enforceable, are they?

Hugh Robertson: Which wider recommendations?

The Solicitor-General: The wider recommendations that can be made on an equality case.

Hugh Robertson: Sorry, I am talking about clause 1.

Q43 The Solicitor-General: Sorry, I am having to be a bit quick.

Sarah Veale: Sorry, no, that is a different one. They are not directly enforceable, but if the employer ends up back in a tribunal again, they are admissible in evidence, so obviously they would then have the book thrown at them if they had ignored recommendations.

Q44 The Solicitor-General: Say you had lost a case anyway, on the basis that your managers did not fully understand equalities, and you are then back in front of the tribunal a few months later; that is something the tribunal can take into account anyway, isn't it?

Sarah Veale: But it would be so much easier for them to do so if they had made specific recommendations, all of which or some of which had not been implemented. It would make it quick and simple. They would say, "You were asked to do this. It was suggested that you do so-and-so. You've ignored that completely, so we are not going to take any more pleas that you are unable to understand why you should have trained your work force in this particular matter, for example.

Q45 The Solicitor-General: This has not been used much. It is not enforceable, but the concern of business is, of course, that the wider recommendations could be very burdensome.

Sarah Veale: If you say it has not been enforced and it has not been used, how can it be burdensome? You cannot have it both ways. It is either not being used and not burdensome or the other way round.

The Chair: I am afraid that brings us to the end of the time allotted for the Committee to ask questions of these witnesses. I thank you on behalf of the Committee for your evidence.

Examination of Witness

Mike Spicer gave evidence.

10 am

Q46 The Chair: We will now hear oral evidence from the British Chambers of Commerce. For this session, we have until 10.30 am. Will the witness please introduce himself for the record?

Mike Spicer: My name is Mike Spicer. I am director of research at the British Chambers of Commerce.

The Chair: Welcome to the Committee.

Q47 Toby Perkins: Maybe you could start on clause 1 —I know you are willing to be questioned on three or four clauses—which is to do with health and safety and the self-employed. As someone who was previously self-employed and working in an office himself, what do you think will be the most significant benefits, if any, of the exemption?

Mike Spicer: I think the exemption will clarify the position for self-employed workers. I have to apologise; I only had the list of prescribed sectors as of yesterday.

Toby Perkins: We are all in the same boat.

Mike Spicer: As I understand it, there will be a thorough consultation with business representative groups as well about the content of that list, and that is something we would support. I would like to make two points. The first is that as a principle, what this does is remove what we perceive to be some of the gold-plating around health and safety regulations by introducing the exemption for self-employed people, but, as has been brought out in the last session and others like it, it is clear that in some industries, such as construction, there are unique circumstances. That is why it is important to have the prescribed list of sectors. For us it provides a lot more clarity.

If you are a self-employed person sitting in front of a desk at home in a service-based industry—for example, if you are an internet start-up or whatever—you might be unsure about how health and safety regulation applies to you personally. What I have heard others say is, "Well, if they do not know what it is, does introducing a change really make any difference?", but I do not think that is any reason not to introduce it.

Q48 Toby Perkins: Can you point to anything positive that someone in precisely that kind of circumstance would no longer have to do that they previously would have, or is it simply a question of perception?

Mike Spicer: I think it is both, actually. If you are not on the prescribed list of sectors, as I understand it, you will not be required or will not have to carry out a risk assessment. If you are in an industry that is not on the list—as I said, there will be further consultation on what is included—you will not be required to carry that out. However, I think there is a perception issue, which is, in a sense, more important than that. There is a perception, certainly among those looking to start up a business, that it is a difficult, costly thing to do, and there are lots of regulations out there. You do not always necessarily understand how they apply to you and I think this clarifies how aspects of the law apply to you personally.

We also think, as we said in our witness submission to the earlier draft Bill, that aside from the change itself, the information function of the Health and Safety Executive is just as important—in some ways more important here. We would like to see that protected. It is important that, when changes such as this are introduced, they are communicated very clearly to the business community or to those who are about to join the business community by setting up their own business.

Q49 Toby Perkins: Perception is important. In terms of what you have just said, someone in that circumstance would not have to carry out a risk assessment now under the law. I recognise—and this is perhaps where there is a job for all of us—that the more we talk about burdens the more we create a disincentive for people to set up a business. No one has yet been able to come up with something specific that businesses would not have to do any more, so it then all ends up being about perception.

As someone who has set up my own business, I know that no one goes into business because they want to do more bureaucracy. People want to get on with doing business and selling goods. When the Conservative party was in opposition, it talked about burdens—all of us in business do—but sometimes it is important to ask what it is we are talking about. If we went to your members and said, "After all the talk there has been about regulation we now have a Deregulation Bill, and this is what it means," do you think there would be a sense of disappointment that the Bill is the answer to all the talk we have heard over the past 16 years?

Mike Spicer: I do not think that we can look at it in isolation, because there has been a broader sweep of changes to the regulatory burdens that businesses have faced over the past several years, stretching back more than one Government. We have had changes to the regulatory architecture, there has been the introduction of the regulatory policy committee and so on, so this is one—admittedly small—part of a bigger picture of deregulation and changes to the regulatory architecture.

I do not think that this, on its own, is likely to have a huge impact on businesses' perception of the regulatory burdens they face. Nevertheless, it is a welcome clarification of the law as it stands. As you alluded to, if this matter gets air time and we talk about it, we have our role to play as a business organisation in communicating the changes to members as well. I think it is a welcome clarification and provides a bit more clarity about what is expected of you as a self-employed person.

Q50 Toby Perkins: You say it will not make a big difference in terms of perception, but will it make a big difference in terms of practical application?

Mike Spicer: As I read it, the impact assessment stated that it expected, or the analysis had shown, that the direct impact in terms of cost would be small. The saving was estimated at about £300,000. In the grand scheme of regulatory burdens, that is quite small, but if it makes it easier for businesses to understand what is expected—with carrying out risk assessments, for example—it might make some changes. The broader impact, of how this fits into the broader picture of deregulatory movements, is harder to monetise from our perspective.

Q51 Toby Perkins: Finally, in 2010 the World Bank said that Britain is the easiest place in Europe to set up a business, and one of the easiest in the world. My worry is that the message we send to business is that it is difficult, frightening and dangerous. Actually, we have seen loads of people setting up businesses, as we often do in a recession, but the Bill potentially puts in place a barrier for those people who at the moment are self-employed and thinking of taking that big step of taking on their first employee. We are saying to them that the moment they go from being self-employed to having an employee, it all becomes dangerous and difficult, and there are loads of things they are going to have to comply with—we build a monster in people's minds that does not actually exist.

Do you share my concern that if we create that sense, when someone then thinks, "I am doing pretty well, so I want to take staff on," they will also think there is something to be worried about if they do?

Mike Spicer: I will make two points. The first is that I think you are right that there are cliff-edge effects in legislation such as this that we have to take account of. It is broader than just this change: if you look at the tax system, for example, or at the aspects of the regulatory

system that introduce small business exemptions, and so on, there are cliff-edge effects, and we have to manage and look at those closely.

There is a broader context to all this, however, which is that, first, although the UK does relatively well in its performance in setting up new businesses in a European sense, in a more global sense in performs less well. We have to look at what reasons are behind that. There is a complex picture out there that encompasses access to finance and a whole host of other things, but I believe that what we are doing in this particular case is just aligning Britain's approach to the regulation of the self-employed with best practice elsewhere in Europe and in the world. I do not believe that this, on its own, is likely to introduce such a big cliff-edge effect that it will have an impact on the rate of start-ups.

Q52 Andrew Bridgen: We heard from IOSH earlier that there is already considerable confusion among the self-employed. IOSH said that some people were doing something, some people were not doing anything at all and people did not know what they had to do. Mike, would you agree that having defined activities that will be covered by health and safety for the self-employed is a clarification in itself?

Mike Spicer: Yes.

Q53 Andrew Bridgen: I have lot of sympathy about the cliff edge in taking on employees, but the vast majority of self-employed people never take on an employee. Is that not another opportunity for Government to give a lot of support to self-employed people who are thinking about taking on employees? That is where we should be targeting the next lot of business support going forward. Will you comment on the growth duty for non-financial regulators as well?

Mike Spicer: Yes. Taking your first point about whether this is a clarification, yes, we do believe it is. On your second point that the Government should be doing more to help businesses grow beyond being one-man bands and into bigger companies, of course we certainly support that. As chambers of commerce, we see day in and day out the challenges that businesses face, and we help businesses through that process.

On the growth duty, to echo what I said earlier about the prescribed list of activities, I only saw the draft guidance to regulators on that yesterday. I do not know if we are all in the same position on that. With the growth duty, our position is quite simple. For the longest time, the British Chambers of Commerce has campaigned for more common sense in UK business regulation. That is not just about the regulations that businesses face; it is also about the relationship between regulators and the regulated.

If you look at some of the local pilots on improving relationships between regulators and businesses—for example, the "Better Business for All" pilots in Leicestershire and Birmingham—you will see some really good examples of how those relationships can improve and the benefits for business growth that come from that. We believe that we should strive for positive relationships between businesses and the regulators, within reason, but that there is an opportunity to improve relationships. That is what local pilots show, so we support the growth duty.

Having said that, as a caveat, we are not naive about the difficulties that the introduction of a broad-based measure like a growth duty might encounter if a lot of different non-economic regulators are operating in this country, all of which will have their own set of compliance regimes within which they operate. There is clearly a need to look closely at how that is written down in law, but we agree with the principle that regulators should have regard to the desirability of economic growth.

Many regulators would say, no doubt, that they already operate to that effect, and in certain parts of the country the feedback that we get is that some regulators are better than others in that regard. I think that a broad-based measure like this is welcome in principle; we just need to see the detail.

Q54 James Duddridge: To return to the health and safety issue, I wonder whether the Government are being far too timid and whether you would support a change that went further. If, as a sole trader in Southend, I set up a business selling rugby shirts in competition with Toby, I understand that it is just me, and under the new regulation I have no health and safety concerns. However, if I take on John as a partner and we both have a 50% equity share, two people are then involved in the business, and suddenly we have health and safety concerns. If both of us set up separately in competition with Toby, we would not have.

I am very conscious, having set up a couple of businesses myself, that sometimes they are set up in an unstructured way. It is not just one person; someone who might be a business partner in the longer term is just someone to discuss things with early on. Should the Government not be bolder and include partnerships or exemptions for that early stage, when people might be working for free and there is not an employment relationship?

Mike Spicer: Given the issues that surround that, that is something that we would want to test with out members. If I can be straight, that is not something that we have tested with members specifically, but we would be happy to get back to you on that.

Q55 The Parliamentary Secretary, Office of the Leader of the House of Commons (Tom Brake): May I bring you back to the growth duty? Could you give Members some concrete examples that illustrate what sort of impact you think this could make to your members?

Mike Spicer: Some practical examples would include regulators working more closely together to align their regulatory activities. Again, I am thinking about some of the local pilots around promoting better relationships. The kinds of changes that businesses have seen on the ground, for instance, are where you have more than one non-economic regulator co-ordinating their visits to a site to minimise the amount of time devoted to compliance activities. That is a practical example of where you have non-economic regulators that have that kind of a duty written into their objectives, and there is the opportunity to work more closely together with each other and businesses to minimise the impact of regulatory burden.

Q56 Tom Brake: To what extent have your members put pressure on you to try to get these changes through? Is the need for a growth duty at the forefront of their minds?

Mike Spicer: The growth duty is something that we agree with in principle, and the principle of regulators having regard to the desirability of business growth—or economic growth, as it is more broadly stated here—is something that we encounter a lot.

When we ask businesses about the sort of issues that concern them, they tend to talk about the burdens of regulation in a more general sense. When we tend to go down a little bit further and say, "Which specific regulations or aspects of the regulatory regime that you face most concern you?" the thing that tends to come back is, "Actually, we would prefer to have a relationship with our regulator where we can approach it, without fear, for advice on compliance issues." The growth duty speaks to that concern and makes it more likely that they will be able to approach their regulators like that.

Q57 Tom Brake: May I ask you a question on something that has not come up yet—apprenticeships? Through the Bill, the Government seek to give greater powers to businesses to be involved in apprenticeships. Perhaps, in some respects, businesses do not want that, because that would be an extra activity to undertake. What is business's view on whether they want to have a greater say over the way that apprenticeships are structured?

Mike Spicer: I think they support in principle the idea of apprenticeships being about meeting a particular standard. Let me give you a concrete example of what I mean. Let us say that you have an apprenticeship in mechanics and you have one business that builds buses and another that builds cars. There are subtle differences between the kinds of work that you would be doing in both cases.

The sort of feedback we have had is that businesses would prefer a system more tailored to the needs of those individual industries but that, nevertheless, gives them confidence that the apprenticeship meets a certain standard. That is an example of where, for apprentices, industry working together can promote a particular standard in mechanics, let us say, but, at the same time, their experience is more tailored to the work done within that particular business. Therefore, they could achieve that standard by working in one context or another. That is something that we have had quite a lot of feedback on from businesses, and they welcome it.

Q58 Tom Brake: Do they have an appetite to take on a greater degree of responsibility for the funding aspects?

Mike Spicer: The limited feedback that we have had on some of the proposals on, for instance, using the pay-as-you-earn system shows that there are mixed views out there. There is general support for the principle of apprenticeships and training more generally being more in the control of businesses and more demand led, but, on the other hand, using the PAYE system potentially brings in complications and burdens that were not there before. Therefore, without further information on that, it is difficult to say.

Q59 Tom Brake: Is there a different model they would prefer in terms of channelling the funding?

Mike Spicer: We have not had feedback that there is one model out of the several that are on the table. You could imagine funding models where grants are placed directly in the hands of employers, and then there is the option of clawing it back through the tax system. There are a number of options. We have not had feedback that any particular one of those is the favoured model, only that using the tax system—PAYE in this case—has some difficulties, particularly on whether it would clash with other elements of the tax system and how that would work out.

Q60 Thomas Docherty: Looking at the list of proposed regulators, have you had any feedback or ideas from your members about how the Drinking Water Inspectorate, which is supposed to keep our water clean, or the Office for Nuclear Regulation, which is supposed to stop nuclear power stations from blowing up, can encourage growth?

Mike Spicer: We have not had feedback on those specific regulators. Where we have had feedback, as I said, from the local "Better Business For All" pilots in the east and west midlands, it is that there is scope for regulators to work more closely with each other in terms of the timing of inspections and things like that, and to work with businesses to be seen not only as a regulator or a kind of external force, but as a helpful and critical friend, by being a body that they can go to for advice on compliance issues.

I cannot comment on the specifics of the two particular regulators you mentioned, but what I can say is that there is a lot of support for the principle.

Q61 Thomas Docherty: While I understand the principle across the board, can I put it to you that, having worked in the nuclear industry myself, the only companies that the ONR regulates are what is now EDF, what was British Nuclear Fuels and one other company? These are multi-billion-pound businesses, and it is in the public's interest for the inspectorate to be able to turn up unannounced at a nuclear power station. Would you be surprised if your members could think of ways that the nuclear inspectorate could make life easier for the multi-billion-pound industries as a priority?

Mike Spicer: The way we would see it is that there are a whole host of potential avenues for improving the relationship between the regulated and regulators. As I said before, some of the examples that we have seen on the ground have been simple things, such as better alignment of regulatory activities, for example, site visits.

In the cases that you have just mentioned, we are talking about regulators in specific cases, so I cannot comment on those cases specifically. We have not had any feedback from our members on those cases specifically, but I am happy to get back to you on that.

Q62 David Rutley: One thing we have not touched on so far is clause 2. I just wanted to check what the BCC's view is on the proposals to remove tribunals' power to make wider recommendations.

Mike Spicer: Our view is that it is an admittedly small but welcome move. We know that tribunals rarely make recommendations, so we are not necessarily talking about a big saving in terms of direct cost.

What we and our members are concerned about is more to do with the impact that having that power might have on an employer's decision to fight a case in tribunals. Recommendations made by tribunals are public,

so there is a potential reputational impact of making recommendations. Our concern is that it may be swaying some employers to decide one way or another whether they want to contest a case. As I said, it is a small move, because it is rare for tribunals to make recommendations. Nevertheless, we welcome the move.

Andrew Bridgen: I want to make a point based on the previous evidence. Both Sarah Veale and I served in the Löfstedt review back in 2011, which is some time ago. It would appear that we have a different recollection of Professor Löfstedt's recommendations. May I suggest to the Committee that we write to Professor Löfstedt for his view on clause 1 as it stands? That would be useful for clarification.

The Chair: It is not for the Chair to accept suggestions from Members during an evidence session. The point of evidence sessions is to take evidence from witnesses. Any comments on the evidence can be discussed in Committee.

Q63 David Rutley: Going back to the new growth duty, again you have spoken eloquently on the subject, but I want to check BCC's perception of whether this will help to reduce compliance costs for your members and how BCC will want to work with the Government to ensure that non-economic regulators follow through and deliver on the approach as we envisage it?

Mike Spicer: I think ongoing consultation with business representative groups, both in the way that the guidance is put together and in terms of any post-evaluation work would be welcome. Our businesses are capable of providing feedback on changes on the ground as they perceive them and are always happy to feed those back into the Department for Business, Innovation and Skills and the Government more widely. We all continue to do that.

As for whether the growth duty as it is written is likely to reduce compliance costs, we certainly hope so. When something is broad and principles-based, as this duty is and as the draft guidance is currently written, there is undoubtedly an issue about how to turn it into specifics on the ground. As I understand the draft guidance, the anticipated process from here to when the guidance is finalised is that individual regulators will be responsible for incorporating that into their objectives, their published standards of service and so on. That is something that our members can feed back on directly.

The Chair: I am afraid that this will probably have to be the last question as it is now 10.27 am.

Q64 Chris Williamson (Derby North) (Lab): I noted your response to the question about moving the power of tribunals to make wider recommendations. Will you comment on whether you think that will lead to your members amending their practices when they lose a tribunal, or is it likely to improve the situation in terms of them amending their practices? Will it have an effect either way?

Mike Spicer: I think the very small number of cases in which tribunals make recommendations indicate that it probably would not make a lot of difference because we are talking about such a small number of cases. Since the power was introduced, I think I am right in saying that we are talking about perhaps three dozen cases. The numbers involved are small. It is harder to say how the broader impacts would play out because the feedback we have had is that it is more to do with the decision to fight cases in the first place. This is a fairly new power. It was introduced fairly recently, just a few years ago. I do not believe there is any reason to expect a huge negative impact from removing it.

Q65 Chris Williamson: But if a tribunal made a wider recommendation, do you agree that not only might that have an impact on the employer involved, it might have a wider impact on other employers who might take cognisance of it? In the absence of that, could bad practices then continue?

Mike Spicer: No, because I believe there are other ways to promote best practice within an industry. Many industries, if not most, have representative bodies that are responsible and do great work in promoting best practice across the industry. I do not accept the idea that removing the power of a tribunal to make recommendations when historically tribunals have very rarely made recommendations is likely seriously to undermine the efforts of industries and individual sectors to promote best practice among themselves.

Q66 Chris Williamson: It might mean, though, that some employers do not realise that they are engaged in an unacceptable practice that they might otherwise have been able to tackle had they had the benefit of the wider recommendations being made.

Mike Spicer: I just reiterate that there are numerous channels by which bad practice can be exposed and good practice spread and shared.

The Chair: I am afraid that brings us to the end of the time allotted for questions. I thank the witness on behalf of the Committee.

Examination of Witness

Richard Hamer gave evidence.

10.30 am

The Chair: Mr Hamer, I invite you to tell the Committee who you are.

Richard Hamer: I am Richard Hamer, education director of BAE Systems, responsible for its apprenticeship and graduate early career programmes.

The Chair: Welcome, Mr Hamer. Mr Perkins.

Q67 Toby Perkins: It would help if you could start by taking us through your corporate view on the provisions of clauses 3 and 4. Do you welcome them? Can you identify any particular advantages or disadvantages?

Richard Hamer: In principle, we welcome both clauses. SASE—the specification of apprenticeship standards for England—was probably over-prescriptive and tied down employers and our advanced manufacturing sector in terms of how we run and deliver apprenticeships. We have a heritage of success in delivering those programmes.

The Department for Business, Innovation and Skills has the new trailblazers activity. I do not know if the Committee has seen the papers I forwarded and copied to the secretariat. We have created through trailblazers a new two-page standard. The simplification that the trailblazers activity allows is helpful. It is helpful for us as a sector to reflect at top level what an apprenticeship should look like. It is also helpful for small companies who often do not engage effectively with apprenticeships. Often we in the big companies may help to confuse the marketplace by creating over-complex arrangements for what apprenticeships look like.

Having a two-pager as a starter is a great help. It is also helpful for parents. When a mum or dad is considering apprenticeship versus university for a young person, having a more simplified and attractive proposal of what an apprenticeship looks like is helpful. Universities and colleges give good descriptions of courses. Often you look at an apprenticeship and, certainly with the SEMTA sector skills council, it can often be a bit of a nightmare, with 70 or 80 pages of detail about what the course might look like.

Having much more top-level description is a helpful way forward. We are fully behind that. We chose aircraft manufacturing fitter as an occupation as an example, but we plan as a sector to ripple that through the other occupations in our area. In terms of the first area and simplification, however, we support that.

My only concern, as I said in a note, was that when you do deregulate and take responsibility away from the sector skills councils that control or manage the apprenticeships, they could proliferate and individual employers or associations could create apprenticeship programmes that are not necessarily the best for their industry. There need to be caretaker arrangements for employers to put things in place to ensure that the quality of apprenticeship design is appropriate. At the moment, as I understand it, Ministers are in charge of any such changes. I cannot see the Department for Business, Innovation and Skills being in control of all apprenticeships—there are hundreds of them—and having the time to manage that.

We do need something like SEMTA. I know that we in the engineering sector would probably put support behind SEMTA or another body to manage those arrangements going forward. There does need to be some control around that, or else you could have a bit of anarchy with people doing their own things and quality not being as it should be.

Q68 Toby Perkins: You wrote to say that the apprenticeship brand is incredibly important.

Richard Hamer: It is.

Q69 Toby Perkins: My perception is that the BAE apprenticeship would be seen as a brand in itself that people would respect. The Labour party is keen on ensuring that that broader apprenticeship brand is strengthened and protected. How important is it for you as an employer—not just of someone who has taken on an apprenticeship, but perhaps of people in the later stages of their careers who have served an apprenticeship with other organisations—that that apprenticeship brand is preserved? You want to know, if you take on someone who has been through an apprenticeship, that they have a real base from which they have started their career.

Richard Hamer: I think it is vital. That is why we are working through the trailblazer with a range of employers. They are the usual suspects and include the engineering sector and, in particular, aerospace. We are also working with smaller companies, most directly in our supply chain, but also through Group Training Associations England. There are lots of small companies that it works with.

An apprenticeship should be a foundation for a whole career so that, should BAE Systems be getting smaller at certain locations, that individual can get a job elsewhere. The apprenticeship training that they get will serve them not just for aerospace, but for automotive, rail or nuclear and things like that. Equally, if they work for a small company, we want to ensure that the apprenticeship training that they receive will give them an opportunity to work for BAE Systems or Rolls-Royce or Network Rail.

The foundation part of the apprenticeship—the first year—must have some fairly common elements for the engineering sector. I have been chairing the aerospace trailblazer, and I have been working with Jaguar Land Rover, which chairs the automotive trailblazer. We have been ensuring that the same principles underpin that work across a number of different areas in the vast manufacturing sector. It is collectively in our interests as big employers and in the interests of the supply chain, but we also know that it is in the interests of young people and individuals in a more fluid world where you cannot guarantee employment from one company for a lifetime.

Q70 Toby Perkins: There are a number of small and medium-sized businesses that I have spoken to that have said that they would like to take on apprenticeships, but they are worried about the bureaucracy and whether what they get when the apprentices are sent to the further education system is relevant to the learning that they need. We want to look at how we can open up apprenticeships to more businesses and how we can encourage more businesses to have them. At the same time, we are strongly of the view that the apprenticeship brand needs to be strengthened. It needs to be absolutely paramount that people know that someone who has done an apprenticeship has a real body of work behind them.

A criticism of this Government has been that they have pushed the numbers of apprenticeships without being careful about quality. In terms of the changes proposed here, what caveats would you offer to the Government to ensure that we do what you and I both think is important, which is protecting the strength of the apprenticeship brand? How do we ensure that the opening up and simplification of the definitions does not weaken or fail to strengthen what an apprenticeship should be about, which is that sound base?

Richard Hamer: You need good governance arrangements that are inclusive and involve a range of different stakeholders: small companies, as well as the big companies. For us in the bigger companies, we can use our muscle with the awarding bodies, organisations and colleges to ensure that the provision provided is not only excellent for BAE Systems or Rolls-Royce, but is excellent for the smaller companies that we work with. By working together, we can provide a stronger apprenticeship offering and brand through the wider sector for young people.

That is one of the things that we are trying to do with the model. We are trying to show what a best practice solution should look like. It should drive up standards in our sector—that is how I think we can do it. There are also arrangements where large companies can over-train and provide training for the supply chain. For example, in Preston, we are providing a small number of apprentices. We are starting by providing 20 opportunities for smaller companies, offering a level of training and support that they would probably would not be able to get from local further education colleges or do themselves.

The Chair: Mr Hamer, I do not know whether it is the acoustics, but I can only just hear you. Perhaps you could speak a little more loudly and a little more directly into the microphone.

Q71 Caroline Nokes (Romsey and Southampton North) (Con): The 2012 independent review on apprenticeships by Doug Richard put a big emphasis on the need for Government to improve the quality of apprenticeships and to make them particularly focused on the needs of employers. Do you think that there is any danger that the specific needs of the apprenticeships themselves might be lost in that?

Richard Hamer: I do not think so, because an apprenticeship is fundamentally about an occupation and ensuring that that person can perform in an occupation, in terms of academic knowledge, technical knowledge and the behaviours that enable them to do a job. We as employers are in the best position to design programmes that meet our needs, but that also meet the needs of young people. There has been a tension, when there were FE college-led courses or training company-led courses, because it was a course rather than an actual job. If it is led by large or small employers, it is in our interest to ensure that on completion of an apprenticeship that person is picked to do the job. In our sector, apprenticeship costs are of the order of £90,000, which is a sizeable amount of money in terms of at least three years of training. We want to ensure that at the end of that journey the person is fit to do the role, not just in the short term but in the longer term.

Q72 Caroline Nokes: I now have a question on a completely different aspect, drawing on an example that I wish I could say was still in my constituency, but sadly is not. The Ford Motor Co. offers very good apprenticeship schemes all over the country, but I was particularly thinking that they could be found in both Dagenham and Wales. Do you think that the differential between the Welsh system and the English system will cause any problems for companies such as Ford, which operate in both England and Wales?

Richard Hamer: It is a challenge to operate across the different parts of the UK, but the large employers at least are used to doing that. We in BAE Systems do not have much of an apprentice presence in Wales—we have a small site at Glascoed with a small number of apprentices. You can work within that. I do not have detailed knowledge of the Welsh apprenticeship system, but I understand that it is slightly more generous in terms of support and what aid is given than the model in England.

Q73 Tom Brake: May I bring you back to the issue of quality, proliferation and perhaps transferability? We heard from an earlier witness that he thought that employers perhaps wanted an apprenticeship for mechanics that was about dealing with cars, then there might be a separate one for dealing with buses or lorries, for instance. How do you stop that proliferation, or is it something that you would welcome? How do you ensure that there is transferability? In other words, employers can see that someone has done an apprenticeship in x, y and z, and understand what it is that has been done and whether it is relevant to their business, which might be slightly different in nature.

Richard Hamer: My instinct is to have as few standards as we can. Just on a purely personal basis, there is the amount of work that is involved in trying to manage a whole range of different standards, so I would prefer smaller numbers. What we do do, as I mentioned earlier, is work with different sectors of engineering—for example, automotives. So in the first part of the apprenticeship programme, the foundation period, we would like there to be the core knowledge required, both practical skills and the academic underpinning, with the mathematical and science skills. The knowledge should be pretty transferable, whether you are a mechanic or an electrician, but also at different levels. In BAE Systems, we take people at 16 or 18, start them on the programme and assess their capabilities. So there could be core craft apprenticeship programmes, technician apprenticeships or hybrid apprenticeship programmes. You want to build in that kind of flexibility. The key ingredient is to ensure that in the first year, the foundation year, you have as much of a standard component as you can, and then in years two and three you can build in more variation.

We have an informal grouping in the engineering sector called the Large Engineering Employer Apprenticeship Consortium, which embraces all the usual suspects, but across a wide range of companies, not only in aerospace and defence—we have got Network Rail and JCB—and we talk about our apprenticeship solutions and how we are doing them. We try to ensure through the programmes that we have as much transferability as we can. It is in our interest. For example, in our Brough site, we had to reduce the number of our staff and we had to look at the future of the apprenticeship programme. Some of the apprentices went to Jaguar Land Rover, so it is in their interests and our interests that the skills the apprentices learned in the first part of the apprenticeship programme would work in the automotive sector, as it would do in the aerospace and defence sector.

Q74 Tom Brake: In your experience, how easy has it been to get the different employers to coalesce around the four core programmes? Do you have a reconciliation process, when people have differing views, to get agreement around the core programme?

Richard Hamer: Yes. For the trailblazer process, we have been happy to share what we have been producing and working on with the automotive sector in particular. We also had some discussion with other employers, which have not been engaged in the trailblazer activities. For example, we are working hand in glove with automotive to help ensure that the first part—the foundation part—of the programme has as much of the common elements as possible. It also makes it much easier for the awarding organisations when they are designing qualifications. If we simplify it and, rather than having a multiplicity of

different qualifications, have fewer, higher-standard qualifications, that will be easier for them and us. Big companies have the credibility and presence to influence providers, colleges and awarding organisations, but smaller companies do not. On your point about the governance and quality arrangements, it is helpful for us to work together to support the needs of smaller companies, which do not have the muscle that big companies have.

Q75 Tom Brake: May I ask one final question on how the employers should receive the funding for apprenticeships? Options are being considered, such as using the pay-as-you-earn system, or grants and vouchers. Do you, as an employer, have a view about which of those models you would prefer?

Richard Hamer: Based on our understanding of the different proposals, for BAE Systems the direct grant would be the easiest. We have a national arrangement in England to run our apprenticeship programmes, and we have a national contract with the Skills Funding Agency. It would be easier to transfer that across as it stands. The PAYE model, as I understand, would be linked to your PAYE reference points. Unfortunately, as BAE Systems is a complex organisation, we have 37 different PAYE reference points, and that would be complicated to manage. However, a large employer with only one large site may have only one PAYE reference, so it might not be a problem for some other companies. For us, it looks like the direct grant is the best option.

We are in discussions with the UK Commission for Employment and Skills and BIS about that. As I mentioned in my note, by coincidence we agreed to set up a session with our tax manager, our payroll manager and UKCES on Thursday. You could use us as a case study to understand how large companies with disparate businesses operate, from a tax and payroll perspective.

Q76 James Duddridge: May I ask you about the implementation? By way of context, I thank you for all the work you are doing. In Southend, which I represent, there is a college in which 600 apprentices are being trained. There is also London Southend airport, which, specifically on the aviation side, has well over 100 apprenticeships, and is fantastic.

I am concerned, because from our perspective this is a carry-over Bill, which technically means that it will take quite a while to become law. It may become law quite close to the general election, depending on how the Government timetable it, and I am conscious that you have term times. In my mind, it looks like these things will be implemented in September 2016. Is that the timeline, or can anything be done to bring forward some of the work so we can see the benefits earlier?

Richard Hamer: As a sector, for the first trailblazer and aircraft manufacturing fitters we are thinking of working to a timetable of having a pilot arrangement by September 2015. We would not roll it out nationally, because that would be risky from the point of view of colleges, employers and whatever. However, if the aircraft manufacturing fitters for a number of the larger employers—those that have engaged with the trailblazer—have existing relationships with local colleges, we can do that for September 2015, with a view that by September 2016 there will be a national roll-out.

I have been talking to some colleagues in the UK Commission for Employment and Skills. I have a colleague there, Judith Compton, with whom we worked on the skills, and she said that in the old days the Qualifications and Curriculum Authority often used to do pilots before the full roll-out so they had the benefit of feedback about how things had gone. Therefore, we will roll out on a more systemic basis in England from September 2016.

Q77 Tom Brake: Just to go back to the issue of how employers should receive funding, do you see that there is any greater risk of fraud attached to any of the options that are being considered? For example, if the Government go down the route of having a direct grant, what sort of checks, balances and controls would there have to be to ensure that the employer is actually using it?

Richard Hamer: We currently have direct grants, and we have audit arrangements with the Skills Funding Agency. We have quarterly meetings with it, and it gets all our data on the numbers of learners that we have and their achievement results. They work locally with the colleges, and there are inspections by Ofsted. There are a number of different layers of inspection that the Government can have. We have our own internal audit arrangements. I know the employer ownership of skills, where there also was a direct grant, also required independently audited accounts, so we had to get independent accountants to look at our books to make sure we are transparent with all the figures we have. There are pros and cons with all different approaches, in terms of the grant. The grant has been the standard arrangement, certainly for the 10 or so years that I have had this kind of role with BAE Systems. That has worked effectively with us, as a large employer.

Q78 Tom Brake: So you do not think any of the options that are being considered are more at risk of fraud than any of the others.

Richard Hamer: I do not think so, no, as long as controls are in place with each of those arrangements. With the provider method, where the money goes direct to the college, again there is a lot of audit around how the college spends its resources and things like that, so that is there. With PAYE, clearly you have all the overlay of Her Majesty's Revenue and Customs inspection and whatever. I know we had a consultation session with one of the HMRC officials, warning us of the big stick—"If you took this, you have to be aware of the way HMRC operates. If you were acting in a way that was construed to be fraudulent, we could obviously penalise you or send you to prison, or all those sorts of things."

At times, Government can be overly intrusive, maybe with too much activity. One of the things about simplification is standing back a bit and allowing a bit more trust and whatever. Clearly, as you see on programmes on TV, there are rogue people out there with apprenticeships, but I genuinely believe that they are in the minority rather than the generality. Be it companies or FE colleges and providers, the bulk of them are there to do a job, and that is about delivering an apprenticeship of a high quality. Although the new standards have just been talked about, if we work together, there is less scope to be running things in a way that is less than professional.

The Chair: If there are no further questions from Members, we will move on to the next panel of witnesses. I thank you for your evidence, Mr Hamer.

Examination of Witnesses

Andrew Tate and Louise Curtis gave evidence.

10.53 am

The Chair: We will now hear oral evidence from R3 and the Union of Shop, Distributive and Allied Workers. We will have to complete this session by 11.25 am. I invite the witnesses to introduce themselves for the record.

Andrew Tate: My name is Andrew Tate. I am a licensed insolvency practitioner. I have been undertaking insolvency work for over 25 years. I am a partner in an accountancy practice and I am also a council member of R3, so I am here today to represent R3. I also sit on the smaller practices group of R3.

Louise Curtis: I am Louise Curtis, head of legal services at USDAW. I am a solicitor and have been one for 20 years. I am here to speak about sections of the Bill.

The Chair: Thank you. Welcome.

Q79 Toby Perkins: Let me start with Andrew, if I may. R3 is the body representing insolvency practitioners. Presumably you have been involved in the germ of the idea of clause 10 as it came through. Will you talk us through where the idea came from and what your involvement was at the point at which R3 was consulted on the recommendations?

Andrew Tate: I would be very happy to. We understand that the germ of the idea for this arose some years ago. A few years ago, individual voluntary arrangements for individuals who have consumer debt problems had come more into the public eye and many more were being taken up, so a few years ago there was a move to look at whether insolvency practitioners should be qualified to do those things. Legislation was introduced, but it was not widely taken up. The Government have since looked at that, and they made these proposals on the back of it. However, clause 10 is different. We believe that the issue of insolvency practitioners giving specialist advice has largely been dealt with.

Q80 Toby Perkins: On clause 10, what does your organisation think will be the positive and/or negative implications of splitting up corporate and personal work?

Andrew Tate: R3 believes that clause 10 is simply misconceived. We do not believe that partial licences will benefit business, and we do not believe that the clause should be in the Bill. There are a number of reasons for that, which perhaps I can run through quickly. First, this is the Deregulation Bill, and we believe that the clause will not be deregulatory, but will add to regulation. The mere fact that there will be three licences for insolvency practitioners rather than one will add regulation.

The Government put forward three arguments about why the clause should be introduced: first, competition; secondly, there will be reduced training costs, which they say will benefit small firms; and thirdly, there will be less ongoing professional training for practitioners in the future if they specialise. We believe that none of those arguments have been proven by the Government. We do not believe that the clause will increase competition; in fact, it will dumb down the profession and have a negative impact on quality.

On the argument that training costs will benefit small firms, we surveyed our small firm members, and 90% said that they will not take out the partial licence option. The reason for that is simple, if I can take your time to explain it. I am an insolvency practitioner, and I deal with SME businesses. When I advise someone who is in financial distress, when I first see them I do not know whether I will be dealing with a corporate or a personal issue. Often, when owner-managed businesses get into financial distress, we find that the owner-manager has borrowed on credit cards or taken out loans to put money into the company to keep it going, and that is generally his main source of income. You find a strong correlation between corporate and personal issues when people come for advice in that situation. You have to be able to appreciate and advise them on the corporate aspects, and also have a view of the personal.

Q81 Toby Perkins: To clarify—if I have understood you correctly—you are the organisation responsible for representing insolvency practitioners, who presumably are the people we want to benefit from the deregulation. You are saying that it is not deregulatory, and 90% of your members would not train someone to take a partial licence. Can you see any advantages to it?

Andrew Tate: I am afraid that we do not. We do not see that it is going to be helpful for business or that it is going to be widely taken up. We disagree that it should be in the Bill. There are other aspects of the Bill that we fully support.

Q82 Toby Perkins: But you are saying that we should scrap clause 10, which directly applies to you?

Andrew Tate: We are. It is very unusual for us to say that, but in this instance we do.

Q83 Toby Perkins: You also mentioned small insolvency practitioners. As I understand it, the Government want to move to a kind of easyJet, "make yourself insolvent in 15 minutes" approach. Can you take me through what you think the impact of that will be? To what extent will the proposed changes benefit small insolvency practitioners, and to what extent will more of the business go to larger insolvency practitioners?

Andrew Tate: We think that if there is take-up of this, it will be with the larger firms. However, we believe that the larger firms will not take it up in great numbers. Again, the cost of the regulation will not be deregulatory. We have surveyed our members, and 90% said, "We need people who are skilled in both areas—corporate and personal. We would not train people to take partial licences and we would not employ someone to take partial licences." I understand the point that was made regarding specialist, and perhaps personal, advisory organisations, but we have also spoken to our members who specialise in personal insolvency and they also say that, when someone is training in insolvency, they should have an appreciation of both. Even for someone who

may have consumer debt issues, those issues may have derived from the failure of the business and the insolvency practitioner needs to understand that.

Toby Perkins: May I suggest, Mr Hood—obviously we have two witnesses who are dealing with very different clauses—that we give people an opportunity to quiz Andrew on clause 10 and then go on to clause 2, or that I finish off by doing clause 2 first? The clause 2 questions would be to Louise.

The Chair: The hon. Member can ask his questions to the witnesses as long as it is relevant to the evidence that we want to get.

Toby Perkins: So I can go on to Louise now on clause 2?

The Chair: Of course you can, but I just make the point that there are other people who want to ask questions.

Q84 Toby Perkins: So you want to just go between the two. On Clause 2 then, from USDAW's perspective, can you talk us through any negative consequences for businesses resulting from wider recommendations, or indeed any positive aspects resulting from businesses being advised about why there were recommendations coming from tribunal verdicts?

Louise Curtis: I think that we all agree that discrimination is a terrible thing and that prevention is better than cure. This wider recommendation's power has not been in place for very long. It was the power to do with a particular claimant in the proceedings. It was introduced for wider reasons, to stop prevention of discrimination claims going forward within a business. The number of discrimination claims that reach a full hearing and a tribunal is limited, which is good because a lot of cases are settled. We see, from organisations advising members of the union, that employers have taken discrimination more seriously in the 14 years that I have been involved in discrimination.

I was at the Equality and Human Rights Commission prior to USDAW so I was practising discrimination law full time. For the past 14 months I have been at USDAW as head of the legal team, doing a lot of employment tribunal claims. It is a massive benefit to have recommendations, because those at the tribunals are very well trained and, generally, when they are doing recommendations, the claimant's representative, when they go to a remedy hearing, will look at the money that they want for the client as well as the wider recommendations.

I was involved previously in the Gregory *v.* Royal Air Force case, which was a maternity discrimination case that also had recommendations for retraining for the RAF about how to deal with pregnant servicewomen. That is always going to be the better way. The tribunal hears all the evidence over a matter of weeks so knows where the system has fallen down and where discrimination has occurred. That is where we, as solicitors, can hear the evidence and suggest what the recommendations should be. They are often things like equality training, which is what a good employer would be doing, putting it in place in order to avoid discrimination occurring in the workplace and discrimination claims being brought. Every business looks at its risk profile—we do at USDAW—and can have equality training. They want to make sure that these things do not happen, because there can be large awards for discrimination; there is no upper limit on awards for discrimination. As well as the financial side, there is also the upset to individuals and to the whole organisation in having to do that. If useful recommendations can be made and followed up more widely then it is all for the better.

Q85 Andrew Bingham (High Peak) (Con): I want to return to Andrew and insolvency; you dealt with one or two of the points that I was going to raise when you answered Toby's questions. You talked about personal and corporate insolvency and you said that maybe somebody could come to you and you would end up doing both. Have you had a lot of experience of that? When someone comes to you with a corporate insolvency case, how many times, as a rule of thumb, does it spill into a personal insolvency issue?

Andrew Tate: I would say that it is more skewed towards the smaller businesses. Larger businesses will less often be in a situation where personal guarantees are affected. In smaller businesses, it is very prevalent. It is difficult to put a percentage on it, but I would say that the instance of people coming to me who have a spillover and to whom I have to give advice on both areas is over 60%.

Q86 Andrew Bingham: So with what I will call the twin-track authorisation, if that is what we want to call it, do you think smaller firms will do either/or but not both, and so it could disadvantage small insolvency practices over the big firms—is that what you are saying?

Andrew Tate: Yes. Smaller insolvency practitioners by definition deal with the smaller businesses and so they have to appreciate both the corporate and the personal aspects. They simply cannot take the two separately. That just would not work in a smaller practice environment, because the person coming in, who is distressed about their situation, wants to get the best advice.

The first point is that someone who has trained only in one area might miss an important point in the area that they have not trained in. The second aspect is that if I was advising someone on a corporate aspect and was authorised to deal only with the corporate aspect, and that person said, "Your advice is going to impact on my personal life because I have all these credit card liabilities, so what should I do about that? My house is going to come tumbling down", I would have to be able to deal with that. It would not be acceptable to someone in that situation for me to say, "Look, I'm really sorry but I'm going to have to stop the discussion here. You have to go to somebody else for that bit of advice." They need the whole thing.

It is a little bit like a GP—when we gave evidence on the draft Deregulation Bill, the analogy of a GP came up. If you went to a GP with a pain in one part of your body you would expect them to be able to give you general advice on any other ailments you had, although they might ultimately refer you to a specialist. That is exactly the same for insolvency practitioners.

Q87 Andrew Bingham: Do you not see it as one of the merits of the Bill that you would end up with quite a few small insolvency practitioners who specialise particularly in personal insolvency, thereby making it more accessible and easier for people? Obviously a corporate insolvency is a bigger thing. I ran a business, and thank God I never needed an insolvency practitioner, but people in business are aware of a lot of the pitfalls and the ins and outs. But personal insolvency is a very different animal. Do you not think that the twin system will mean easier access for personal insolvency and perhaps smaller practices?

Andrew Tate: I understand exactly what you are saying, but the evidence we have got back from our members is that that absolutely would not be the case. We have talked to smaller firms of insolvency practitioners specialising in personal insolvency work, and they have said that it is absolutely essential that you have a knowledge of the corporate aspect as well. There has been a move in recent years to larger-volume providers of personal insolvency work—some of the debt charities, and so on—and they specialise. Again, we have not seen the responses to the very short consultation that we have had, but we believe that they will also support the view that any insolvency practitioner dealing with any sort of insolvency needs to appreciate both aspects.

Q88 Andrew Bingham: What would you say to a system whereby insolvency practitioner A, who deals in personal insolvency, has an agreement with insolvency practitioner B, who deals with corporate insolvency, so that if somebody comes to practitioner A or practitioner B and there is a spillover, there is a relationship that can give the full service anyway?

Andrew Tate: I can see how you would look at that. I think it would be a very inefficient way of dealing with things, because you would have two insolvency practitioners dealing with the same individual. Again, going back to the analogy of a GP, the fact is that you have someone coming in who is financially distressed and in a very stressed situation, and they need a holistic approach to that situation—they need an insolvency practitioner to be able to tell them exactly what is going to happen.

As you just said, a relatively small number of people actually become very familiar with insolvency, and people become very confused about what it is going to mean to them. Part of the job of an insolvency practitioner is to counsel people who come to see us, to show them what it actually means for them. To restrict that to two separate areas is not something that would work.

Q89 Chris Williamson: This is a question for Louise about clause 2. Can you say a little about your assessment of the impact of the wider recommendations on other employers who are not party to the particular case that led to the wider recommendation being made? Is there any evidence that this has had an impact on the practice of other employers, other than the ones party to the case?

Louise Curtis: There might be some of that, because in the human resources and equality field not many of these decisions are made. Quite often the decisions of the employment tribunal are in the public domain, and those will be shared in journals like *Equal Opportunities Review*. That would just explain what decisions had been made and the recommendations made, often for training or to get companies to prioritise equality and take anti-discrimination measures forward. So that is for learning, because a lot of businesses do not have a lot of money for training, so those sort of decisions are out there and they can see them.

A discrimination decision tells you the story of the discrimination that has happened—you read about them and you can see what has gone wrong, quite often, and the tribunal knows that. Based on what has gone wrong and how they can put it right, recommendations are made to put things right so they do not happen again. I am sure everybody wants to avoid such discrimination and tribunal proceedings that come from it, so that can be useful as well.

If it is in one part of the business, then that business is likely to look at it on a wider basis than, say, one discrimination in a shop. Then it goes forward and, more broadly, we can learn lessons in the business. Obviously, a recommendation only affect the actual business, but the learning can be taken much wider.

Q90 Chris Williamson: Do you think it might have the effect of preventing the need for tribunal cases to be taken against other employers who may benefit from the wider recommendations made in a different tribunal?

Louise Curtis: Yes, because if it was in a similar business—say, distribution—it might be something about reasonable adjustments to do with something like fork-lift truck drivers or things like that. If you are in that business and you see a similar situation, you know it is an example. You get examples in codes of practice, but real-life examples are going to be real, because a lot of people seem to struggle with discrimination law and understanding what it means in practice, so practical recommendations can help business more widely.

Q91 Chris Williamson: So it could therefore be beneficial for workers and other employers?

Louise Curtis: Yes, to learn to put things right, because there is real expertise there that you can pick up from real cases.

The Chair: We have four Members indicating that they want to ask questions and we have 12 minutes left.

Q92 Paul Maynard (Blackpool North and Cleveleys) (Con): I have a quick question for Mr Tate. The Office of Fair Trading issued a report in June 2010 indicating that the corporate insolvency market was not functioning very well. Was that a report whose findings are fully accepted?

Andrew Tate: It is certainly a report that R3 have engaged with. We did not accept all the findings that were there, but certainly we have engaged with the Government and there are a number of different consultations taking place at the moment which stemmed from that. We are very happy to engage with them, but we do not accept all the findings.

Q93 James Duddridge: I understand the linkage between business and personal insolvency, but I am unsure the other way. If I was personally insolvent, why would I need somebody who understood business?

Andrew Tate: A lot of personal insolvency comes from a business which has failed.

Q94 James Duddridge: Have you a sense of the figure of business insolvencies relating to personal insolvencies? If 60% of personal insolvencies were linked to business insolvencies, that would strengthen your case. I am guessing it is nearer 20%—forgive me, but this is not my area.

Andrew Tate: Yes, it is going to be a lower figure because there are a lot of personal debt problems which derive from people who may be in PAYE or may be employees of companies that simply have debt problems. However, you would be surprised how many of those historic situations—

Q95 James Duddridge: But if I know that I have no business interests and I am already tight for money—clearly: I am insolvent—why would I want to pay someone who was also fully trained up in business? I know it is at the margin, but I would naturally be paying more for that better person.

Andrew Tate: I understand what you are saying; that is fine. This comes down to the competition aspect of it and I do not think that there will be a huge difference in the cost of administering that sort of procedure for someone who specialises with a partial licence. The reason I say that is because that person is still having to deal with a large number of insolvency cases and do a lot of training.

Someone who specialises in personal insolvency at the moment, having got both aspects of it, is better qualified, but I do not think that you would find someone who, simply because they had taken one exam instead of three as it is at the moment, would be charging the consumer in a different way. In any event, a lot of the costs of insolvency come out of money that would be available to creditors; it is the creditors who agree that aspect.

Q96 The Solicitor-General: In the bulk of your membership, is it the small insolvency practitioners who do a bit of both?

Andrew Tate: It is a real mixture. I would say that just under half of the R3 membership would class themselves as small practitioners. There are obviously the big four accountancy practices and other larger specialist organisations who are insolvency practitioners.

Q97 The Solicitor-General: Would you not agree that greater competition and specialisation in the insolvency practitioner marketplace has the potential to lower fees and mean greater returns for creditors?

Andrew Tate: I think the issue with competition is twofold. The first will be: what will be the take-up of this proposal? R3 is fully happy to engage in relation to matters of competition, but not at the expense of dumbing down or jeopardising advice to businesses.

Q98 The Solicitor-General: If these charities and the larger firms want to specialise, why should they not?

Andrew Tate: They can specialise already, and they already do. The issue is that the actual saving from taking one exam instead of three is only a very small part of this. The actual regulation that will come through from this is quite significant.

Q99 The Solicitor-General: What are the typical training costs charged by the main education providers for each of the three Joint Insolvency Examination Board insolvency papers?

Andrew Tate: I do not have exact numbers on that coming to this session, but I am very happy to follow up afterwards. I believe that the costs of an insolvency practitioner qualifying are somewhere in the region of £4,000 and there are three examinations.

Q100 The Solicitor-General: Pro rata?

Andrew Tate: Yes.

Q101 The Solicitor-General: Perhaps it would be acceptable for you to write to the Committee as you offered.

Andrew Tate: I am very happy to do that.

Q102 The Solicitor-General: Turning to USDAW and the wider recommendations, the survey done in 2008 showed that most employers who lost in the tribunal did make changes. Therefore, why is it necessary to have wider recommendations?

Louise Curtis: It depends on the nature of those changes. I think there would be better recommendations and suggestions from the tribunal than from just the employer, because that employer has been in some difficulty and had a finding of discrimination against them, but had not been wise enough to realise that they would have that finding of discrimination against them. They are getting bad advice. Often, they are unlucky, but if it has got as far as the tribunal hearing, they are unlikely to have had the best advice. The vast majority of claims in the employment tribunal are settled.

Q103 The Solicitor-General: About 250,000 cases a year are lodged and just less than half of those involve equalities issues of some sort or another. As you say, not that many get to a hearing. However, in the 20 cases a year where the wider recommendations are made, they are all of the same sort: for training.

Louise Curtis: Yes, they are generally for training, because that is what must be required. If the businesses had done that in the first place, they probably would not have got into that situation.

Q104 The Solicitor-General: The wider recommendations are unenforceable anyway.

Louise Curtis: As you are saying, most employers make changes after a tribunal, so there is better equality.

Q105 The Solicitor-General: They do that anyway. If there is a finding against them and they do not make any changes, a month later they are up at the tribunal again. That is, of course, something that would be bad for them.

Louise Curtis: It would be better if that had been prevented by not discriminating in the first place and not having had the anguish for the employees.

Q106 The Solicitor-General: That is what we are aiming for, is it not? The point is that for employers there is a concern that these wider recommendations could be burdensome and could put employers off defending cases that they really should defend because the merits are not there. What do you say to that?

Louise Curtis: The law has changed now, and if there is no merit to a case, at sift a judge will look at a claim; the law has been tightened up on that. That is a fallacy. That is what employers may think, but they are wrong on that. Very few discrimination claims are brought really, so I do not think there is an evidential base for employers' views on that.

Q107 The Solicitor-General: There is a difference between striking out a claim as completely meritless and having a claim that you want to defend and feel you have good reasons to defend, but do not because you are put off by this sort of extra burden, is there not?

Louise Curtis: You can still settle or fight all the way and then argue that you do not need recommendations by saying at the remedy stage, "We've done all this. This is not required. It's onerous and shouldn't be done." The tribunal will listen to that.

Q108 The Solicitor-General: I realise USDAW may want people to settle, but the fact is that if you are an employer, you might not want to, but these extra burdens might force you to. That is the concern.

Louise Curtis: I do not think it is an extra burden, if you are going to be training anyhow. As I have said, you can say to the judge that you do not need it because you have it in place and put that in evidence in the remedy hearing.

The Chair: May I just make the point that the Minister is not giving evidence? The Minister is supposed to be asking questions; the witness is giving evidence.

Q109 Toby Perkins: Andrew, a previous witness described a previous clause as a solution in search of a problem. In the context of clause 10, I am slightly mystified by how we have got to this point, given the evidence that you and your organisation have raised. Can you lead us to what problem is being solved here? Members have made the suggestion, "Can't two different organisations work together? Can't we create a partnership?" At the moment we do not need that. We are here: the Government are already looking at other forms of insolvency policy and will, we believe, bring an insolvency Bill forward. This is purely a deregulatory Bill. Can you lead us to any evidence to show how this will be deregulatory or what problem it is trying to solve? Is this indeed a solution in search of a problem?

Andrew Tate: I think that is a very good description actually. We simply believe that this is misconceived. We do not believe that there has been adequate consultation on this. We think it originally came from a different problem that has already been solved. I absolutely do not think that there are any merits to this clause whatsoever. As I say, very unusually, we just do not think it has merit; we think it should just be taken out.

Q110 Andrew Bridgen: Andrew, I put it to you that there must be a lot more personal insolvencies than there ever are corporate insolvencies—a huge number more: 10, 20, 30 times more. Would you be more supportive of the clause if, instead of an either/or, personal or corporate specialisation, all insolvency practitioners had to do personal first and then moved to corporate? They would be open to the larger market. Surely you can see from the Government's point of view, as regards the competition and efficiency savings—you have used health analogies—that having a full blown insolvency practitioner for most personal insolvencies, which are probably very straightforward, is rather like having a brain surgeon clipping a patient's toenails. It is not a good use of resources.

Andrew Tate: My response to that would be a couple of things. One would be that there is a lot more personal insolvency, but some of that is dealt with by the official receiver, which is not involved in this argument whatsoever. The other aspect is that a lot of individual voluntary arrangement insolvencies are dealt with by debt charities and so on. I still fervently believe that there needs to be an appreciation of both aspects. I do not think the analogy of a brain surgeon having to deal with someone is right; it is much more of a GP analogy. Those organisations that deal with those large numbers of personal insolvencies have very few insolvency practitioners themselves in those organisations, so the impact of this is going to be very small.

Q111 Andrew Bridgen: Would you be more supportive of a tiered qualification of personal first and then corporate, rather than the either/or?

Andrew Tate: No. I just think it is much more efficient for someone to do this as one.

The Chair: I am afraid that brings us to the end of the time allotted to the Committee for this morning's session. I thank the witnesses on behalf of the Committee for their evidence.

11.25 am

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

Adjourned till this day at Two o'clock.