



Justice Committee

Oral evidence: [Mesothelioma claims](#), HC 308

Tuesday 17 June 2014

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Written evidence from witnesses:

- [Lord Faulks, Minister of State for Civil Justice and Legal Policy, Ministry of Justice](#)

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Members present: **Sir Alan Beith (Chair); Robert Buckland; Rehman Chishti; Christopher Chope; Jeremy Corbyn; John Cryer; Elfyn Llwyd; Andy McDonald; John McDonnell; and Yasmin Qureshi**

Questions 60-102

Witness: **Lord Faulks**, Minister of State for Civil Justice and Legal Policy, Ministry of Justice, gave evidence.

Chair: Welcome, Lord Faulks. It is your first time in front of the Committee, although you and I have met to discuss Committee issues. If any members have interests relevant to what we are discussing today, this is the opportunity to declare them.

Andy McDonald: Sir Alan, I was formerly employed at Thompsons Solicitors. Although I did not conduct mesothelioma claims, the firm conducted a significant number of cases and I think I should make that clear.

John Cryer: I worked for Unite for just over four years. I did not deal with mesothelioma claims. I was part of the general plan for world domination, but I worked for the union anyway.

Q60 Chair: Lord Faulks, claimant lawyers and victims' representatives have said to us that your cost-benefit analysis is "premature conjecture." They say, along with Lord Justice Jackson himself, that it is too early to assess the impact of the LASPO Jackson reforms in relation to other cases. So why have you moved so swiftly on this?

Lord Faulks: Sir Rupert Jackson produced his very thorough report, which formed the basis of Part 2 of the LASPO Bill, and he considered all aspects of this area of litigation, in particular all personal injury cases, into which category claims for mesothelioma—I am sorry, that is how I pronounce it; I hope that is acceptable to the Committee—were included. He took the view that, although these were incredibly sad cases, there was nothing peculiar about it. He did not isolate it as being something that was different from any other serious or even non-serious personal injury claim. The suggestions that he made formed the basis of the Bill and the Government’s intention which they wished to carry through by the legislation.

As to the question of seeing how the reforms work generally for the LASPO reforms, clearly, what the Government have said is that they probably need three to five years to assess overall what sort of effect they will have on the questions of access to justice and how these claims work. The cost-benefit analysis seems to me to ask the correct questions and deal with the issues that one expects it to do. It is an analysis. There may be some aspects covering all these fields of personal injury claims that will prove, in the course of time, to be not quite as predicted, but in general terms it seemed to me that the cost-benefit analysis was a reasonable approach.

Q61 Chair: Defendant lawyers and insurers say that, given the relatively low degree of risk involved in mesothelioma claims, if I can adopt your pronunciation, the level of success fee should be much lower—I think the ABI said no higher than 11%—and some have argued that there is no need for success fees at all in these cases. Do you have a view on that?

Lord Faulks: It is arguable that competent and conscientious claimant lawyers should not charge a success fee at all. I was a Back Bencher at the time that the LASPO Bill went through the House of Lords and I was concerned about all the reforms, trying to take an objective view about it. I couldn’t see that mesothelioma was a different case from any of the other serious personal injury cases, but it did occur to me that they were no longer very difficult cases in that most of the hurdles, legally, which had existed had rather disappeared through a series of cases. I should declare an interest as having been in one of the cases about causation—the so-called single fibre theory—which meant that it was often impossible to pin liability on a particular employer, and it was not just a question of the length of exposure. For that reason I was not sure that a success fee was appropriate.

The success fee is a relatively modest success fee compared with some that have been charged. I would have hoped that claimants’ firms—I think this is the case with Leigh Day from their own documents which have been published—do not in fact charge success fees. After all, the claimant’s solicitors will be paid their reasonable costs if they are successful in these claims, but the maximum success fee that is permitted is by reference to general damages for pain and suffering, and loss of amenity only. It seems to me that that is a reasonable top rate of success fee, and I hope that competition and general concern for these deserving claimants and their families may mean that the success fee is less or does not exist at all.

Q62 Chair: One suggestion put to us was that you could carry out an exercise over a number of cases to establish what the risk of failure and the prospect of success were on average and then have a recommended flat fee for success that accurately reflected the drift of cases.

Lord Faulks: Yes; there is an argument to that extent. It is a question of trying to achieve some balance. What the Government are keen to ensure is that there is access to justice. They are not primarily concerned with the profitability of the lawyers on either side, but on the other hand we want them to be represented. Those who represent claimants and those who represent defendants are extremely experienced in this field, very good at what they do, and, actually, in terms of getting claimants to the appropriate solicitors, we think that it works pretty well at the moment.

Q63 Rehman Chishti: Lord Faulks, welcome to the Committee. Following on from the Chair's questions, what trends are developing in the ATE insurance markets for claims relating to other occupational diseases as a result of the introduction of the LASPO reforms?

Lord Faulks: It is a little early to say quite what is happening in the ATE market, because, of course, in general terms the LASPO reforms did not come on stream until April last year. What happened was that there was a huge spike in claims before April for those who wanted to get in under the old regime. As I understand it, the market is still in existence and it is covering various things. I don't think I can give a very clear view as to how it is doing overall and how it is responding, but those who felt that the market would disappear have been wrong.

Q64 Rehman Chishti: Just moving on to another relevant question, can you tell us how many mesothelioma compensation cases each year involve, first, the Government and, secondly, the rest of the public sector as employers, and how much have the Government paid out in compensation in such cases in the most recent period for which information is available?

Lord Faulks: I am afraid I do not have that information to hand, but, if I may, Sir Alan and Mr Chishti, I will write to the Committee with those details.

Chair: We would welcome that.

Q65 John McDonnell: We have had a discussion with the support groups and others on the evidence that came in, as you know, all through the debates around these Bills. Can I put to you some of the information that was provided to us? Claimant lawyers and victims' representatives described the Compensation Recovery Unit's figures of a 90% success rate in mesothelioma cases as a "statistical fallacy" and said that that ignored cases of mesothelioma where no claim is actually made. Ian McFall from Thompsons told us that the actual success

rate was about 50%, about the same as for other asbestos-related cases. Do you accept that the CRU's assessment figure is misleading?

Lord Faulks: I find that rather difficult to understand. I thought that his evidence seemed to me to be covering cases that were not purely mesothelioma and included other asbestos or other cases, because, of course, any compensation would involve the Compensation Recovery Unit. We think that the 90% success rate seems to be right because they have to be, as a matter of law, registered with the Compensation Recovery Unit. Of course, there may be a few cases that people turn down at an early stage for one reason or another in this field as in any other field, but, no, I was not convinced about the 50% and I was not satisfied the 90% was wrong, from what I had seen.

Q66 John McDonnell: The point he was making was that quite a number of cases just don't get that far. That is the point.

Lord Faulks: I am surprised, frankly, because, as I said earlier, these cases are not complex. Diagnosis is not, for example, an issue in these cases. Establishing liability is not complex, and if there is an untraced employer, for example, there is now the Mesothelioma Act 2014, which came from the Department for Work and Pensions, which covers that. I am struggling to know why there should be these difficulties, frankly.

Q67 John McDonnell: We also heard other evidence. Unison say in their written evidence that "defendant/insurer delay is a standard tactic, to keep hold of funds and put pressure on the claimant to abandon their case or accept a low settlement offer..." Insurers strongly denied this in their oral evidence to us. Have you come across any evidence of the use of delaying tactics?

Lord Faulks: I am unaware of any evidence of delaying tactics. We are anxious that there should be no delays at all because, of course, it is absolutely important that not only is compensation available but it is available quickly, for obvious reasons, in these types of cases. We are concerned to make sure there should be no delay in obtaining medical reports or in obtaining information from Revenue & Customs and the like. We hope that there can be a consensus between the parties on any improvements that need to be made to the procedure. To that end there is, as you probably know, a big tent meeting on 30 June, which is designed to make sure that any defects in the process are being ironed out. There is no excuse for delays in most of these cases. Of course, the defendant is entitled to make reasonable inquiries as to the strength of the case, but otherwise I can't see the need for the delays.

Q68 John McDonnell: On one point there is consensus across the industry. There is a consensus that the commencement of the Third Parties (Rights against Insurers) Act 2010 would be beneficial to these cases. Why have Ministers not brought that into force yet, and are you now intending to do so speedily?

Lord Faulks: I understand that it is one of the handout Bills, but I cannot take it any further than that. I am told it was considered that there was insufficient parliamentary time for this, but, I agree—it should be implemented, and I hope that I will be able to give some news to the Committee shortly. When I do, I will write, Sir Alan, if I may, about what has happened in respect of that Bill.

John McDonnell: It would be extremely helpful if this could be resolved as there is agreement across the industry.

Q69 Chair: Why does it need another Bill?

Lord Faulks: It is to do with having to restore companies to the record in certain circumstances—a formality which should be removed as a result of the legislation in cases of insolvency.

Q70 John McDonnell: Is that a Bill or delegated legislation?

Lord Faulks: It is an actual Bill, as I understand it.

Q71 John McDonnell: Is it?

Lord Faulks: Yes.

Q72 John McDonnell: There is a general view that there is a sense of urgency about this now because it would assist in moving things forward, definitely.

Lord Faulks: I will certainly take back your concerns.

Q73 John McDonnell: The second issue where general agreement or general concern is expressed is about speeding up the production of medical records and HMRC/Inland Revenue employment histories, which is often, we are told, a cause of unnecessary delay. What sort of action are the Government taking over that now?

Lord Faulks: We have been working closely with NHS England to encourage guidance at the CCG level to improve diagnosis—although, as I say, I do not think that is difficult—and reduce delay in obtaining medical reports, which obviously are required to confirm the condition and determine causation in so far as it is ever in dispute.

As to the question of Revenue & Customs, we have secured cross-Government clearance to add an amendment to the Deregulation Bill to enable Revenue & Customs to restore their previous practice of disclosing work records of deceased victims of mesothelioma to their dependants and personal representatives without the need for a court

order, which had sometimes held things up. As I say, we hope to provide an update on that in the big tent meeting on 30 June.

Q74 John McDonnell: The Deregulation Bill finishes with us next week, so that amendment is for that, is it?

Lord Faulks: Yes.

Q75 Chair: Is that something that can come into force fairly quickly?

Lord Faulks: Yes, I think so.

Q76 Yasmin Qureshi: We have heard some evidence that a number of claims are being brought by non-employees, such as people who contracted asbestos-related diseases at school. Do you see the application of the Jackson reforms having a much greater impact on those people, bearing in mind that it might be more difficult to establish a history of exposure and also the likelihood that many of those schools were not insured either, so the victims there are facing almost, you could say, a double whammy in finding who to claim against and, secondly, the issue about causation?

Lord Faulks: I am aware, anecdotally, that there are some cases, for example, in schools and cases outside the more conventional circumstances in which claimants sustain the damage which eventually results in mesothelioma. It was not a feature of the response to the consultation that this was a widespread issue, but I am sure there are such cases. We, of course, are concerned if anybody does not have a means of recovery if causation is established. Once again, I don't think diagnosis will be a problem in any case, regardless of the actual origin. Schools would normally be insured, certainly for public liability, if not employers' liability. We do not think, although these are concerning, that this justifies any change to our approach in relation to mesothelioma claims generally. The fact is that, in all sorts of fields of personal injury litigation, there are some cases which are a little more problematic than others, and these are obviously potentially slightly more difficult than the more traditional mesothelioma claims.

Q77 Yasmin Qureshi: This Committee has heard from people who say that the claims are being brought by what are called non-employees, i.e. people who were not directly working in factories producing these types of things. In light of the fact they are going to have these difficulties, are you saying that the Department is not going to change its policies towards those categories of people at all, and they are just going to have to go with the normal rules that exist?

Lord Faulks: We haven't seen any evidence that this is a major problem, no, and we do not have any intention of changing the overall approach. We feel that claimant lawyers

will be able to give proper advice to the claimants and that they should be able to establish liability if the facts are there.

Q78 Mr Llwyd: Good morning. In his response to the consultation the Secretary of State, in effect said, if I can paraphrase, there was nothing particularly special about these kinds of claims, but in the consultation itself there was no mention at all of a question such as, “What makes these claims special?” Do you not think that, had that question been posed in the section 48 review, the conclusions would have held perhaps greater weight?

Lord Faulks: I do not, no. Those who responded—of course, lots of people did respond and lots of claimants’ representatives responded—are experienced and well aware of the issues that this sort of litigation involves. Of course, it is a very sad situation when anybody gets mesothelioma. There is no cure for it and that makes it, in a sense, different from other cases, but, conceptually, I have to say I am not sure that there is any difference between it—I have said this in the course of the debates in the House of Lords—and any other serious personal injury or disease case. That is not in any way to diminish its severity. Conceptually, I did not think so, and I did not think that anything about the nature of the questions posed in the consultation would have prevented, if there was some special feature about these claims, those who were consulted from making any point they wanted to make.

Q79 Mr Llwyd: I would like to come back to that answer in a moment or two, but before I do, leaving aside sections 44 and 46, do you accept that the various other ways in which these claims are dealt with differently from other claims constitute, in effect, a recognition that they are very special cases?

Lord Faulks: They are special cases in the sense that it is important there is no delay, for the reasons we have described, but I am not sure that I really quite understand why they are different from other disease cases in conceptual terms. No, I do not understand that.

Q80 Mr Llwyd: I know the line from the insurance industry is that they are straightforward and simple; therefore, let’s keep all the necessary costs down. Broadly speaking, that is what the line is. But when you are faced with tracing employers, work records and the special feature of the awfully short life expectancy post-diagnosis, which is, I guess, a very special feature in these cases, coupled with what you said earlier about the case that you were involved in—in other words, the single fibre theory and so on—with great respect, Minister, these are not as simple and straightforward as you pose because, additionally as well, a host of different problems can arise from the ingestion of asbestos. Therefore, with respect, I do not think that the view that you are giving is necessarily one that I would accept. It is not as simple and straightforward as you are implying.

Lord Faulks: We are talking about mesothelioma claims rather than other claims in relation to lung disease, which are, of course, separate. The consultation was concerned specifically with mesothelioma, and, as I said, I acknowledge that the life expectation factor is separate. What we were concerned with in the consultation, among other things, were

various suggestions about speeding up the process. You can see that, in fact, we, the Government, rejected some of the insurers' proposals for various ways of streamlining the process. We were not satisfied that they helped. My view—and it is not just me who is saying so; Lord Brown of Eaton-under-Heywood said so in one of the cases—is that most of the hurdles, legally speaking, have been eroded, quite rightly in most people's view, such as the difficulties in causation, which were substantial. The recent legislation has helped in terms of untraced employers. So, sadly, I am afraid I am still not satisfied that these cases are in a separate category.

Mr Llwyd: I suppose we will agree to disagree.

Q81 John Cryer: On the subject of the consultation, the Government's consultation only asks a single question on whether sections 44 and 46 should be brought into force. Since that question was predicated on the introduction of the other reforms to the mesothelioma claims process contained in the document, would you accept that the interested parties have not had sufficient scope to make their feelings known, because it was only that one question, and that was predicated on the introduction of the other elements as well?

Lord Faulks: I do not really accept that. There were quite a number of questions in the consultation, which you no doubt have. You may be referring to question 15 in particular, where consultees were asked whether they agreed it should be brought into force. Just to remind the Committee, in relation to mesothelioma claims it said “in light of the proposed reforms described in this consultation, the increase in general damages and costs protection...”—that is a reference to QOCS—“...and the Mesothelioma Bill”, which is, I think, what you are referring to, Mr Cryer, which is the scheme. That was a fairly omnibus question, which, I would suggest, gave all consultees—particularly those who are experienced in the field—the opportunity to make the comments they wanted. I do not think that it conflated inappropriately those questions. During the course of the debates on the response to various amendments that were put forward in the Commons and the Lords, those who were putting forward the amendments, such as, for example Lord Alton, wanted synchronicity in terms of the DWP's work on the Mesothelioma Bill and the consultation, which was a response to the various defeats that the Government had in relation to the implementation of LASPO as regards mesothelioma claims. So I do not think that there was anything misleading about the question or that it prevented people from commenting as they thought appropriate.

Q82 John Cryer: Can I follow up a previous question about the slowness of certain hospitals in providing information? You referred, for want of a better phrase, to both the clerical processes and diagnosis. We got the impression in the previous hearing that it was not so much diagnosis—it was more the clerical processes within the hospitals that have been slow in providing the information. Would it be appropriate if I asked something like this? In any future discussions with the Department of Health, would it be possible to say to Health Ministers could some sort of letter or directive go out to the chief executives of acute trusts

saying, “We are talking about people who will only survive a few months after diagnosis. It is appropriate that you get the information out as rapidly as you possibly can because any delay might mean that people will die before they get anywhere near the process”?

Lord Faulks: That is an extremely reasonable request and certainly moves along those lines as something that I understand we are doing. It seems to me that that is a very sensible suggestion.

Q83 Chair: Can I just pick up a couple of points? Without going into the judicial review issues or cases, do you expect a delay in making the first payments under the Diffuse Mesothelioma Payment Scheme while the judicial review goes on?

Lord Faulks: No. The judicial review is due for hearing at the end of July. We were anxious that there should be an expedited hearing, and, as you know, Sir Alan, the scope of the judicial review is concerned with the consultation process. We do not anticipate any delays in the implementation.

Q84 John McDonnell: That means you are not deferring anything.

Lord Faulks: No.

Q85 Chair: In your foreword to the consultation response you say the Ministry “will continue to work with interested parties to explore valuable reforms to mesothelioma claims suggested in the responses to the consultation as well as new ways to improve the compensation claims process.” Shailesh Vara said much the same thing in the Westminster Hall debate in January, which was Mr McDonnell’s debate. What is under consideration, and is work going on?

Lord Faulks: We are open to all suggestions. As I say, the big tent meeting is going to involve all stakeholders—all those who may be able to come up with suggestions to improve the process. Lots of progress has been made, but we are not complacent. If there are matters such as those suggested by Mr Cryer that can be done to improve the process, then so much the better. I am not pointing to any particular lacuna that we think is there, but in general terms we don’t wish to sit on our hands and say it can’t be improved.

Q86 Andy McDonald: You will be aware that, following our recent evidence session, the ABI sent us a heads of agreement document, which is dated 13 July 2012, setting out terms agreed between the ABI and the Government. They may have been tinged with some regret since then, but the ABI say that the fact that you did not go ahead with the other proposals in the consultation really shows that they did not receive any favourable treatment. Can you explain the Government’s understanding of the nature of the agreement reached between the industry and the Government on mesothelioma claims processes?

Lord Faulks: If I have understood you, what lies behind your question is whether or not there was some sort of quid pro quo. From all my inquiries into it, I am satisfied that there

was no such quid pro quo. As I said in answer to an earlier question, there was certainly synchronicity in the sense that the approach of the insurers to what has become the Mesothelioma Act was something that was considered at the same time, but they were not contingent upon each other in terms of the approach.

The question of implementation of the mesothelioma provisions, of course, was something that the Government had always intended to do. It was part of their Bill, it followed precisely the suggestions of Sir Rupert Jackson, and this was an MOJ response to some of the excesses of the litigation culture. Simultaneously, the DWP was taking forward its own proposals to solve the very unsatisfactory situation of there not being cover sometimes in cases where insurers were untraceable, but all my inquiries do not suggest that there was some sort of underhand deal, if that is what you are suggesting.

Q87 Andy McDonald: I am suggesting that there would be an understanding that, in return for lifting the LASPO exemption, the diffuse system would be funded. Those are the big ticket items within the entire panoply of issues under consideration. If you follow the money, these are the big ones. The portal and the protocols are process issues. This is where the money lies in terms of the ATE and success fees opposite the payment scheme. I am grateful for the reassurance, but I am not quite there yet. The document that we saw was shrouded in secrecy. I rather suspect that the ABI very much regret ever having revealed it, but it puts us on notice that there was a very close and thorough discussion going on that does not fill us with confidence that this has been done in an open and transparent manner, and that agreements have been reached behind the scenes. You say you have made your own inquiries. I would like to hear a little bit more about what those inquiries were, who they were with and the conclusions you have drawn from them, because at the moment the Committee does not share your sense of confidence.

Lord Faulks: I do not know whether you are speaking, Mr McDonald, for the whole Committee in suggesting that you think there was something improper about this or whether—

Chair: Mr McDonald is asking a question.

Lord Faulks:—or whether you are saying that is the proper construction of the agreement or what. Of course, I was not a Minister at the time and I had no dealings with this. I can ask officials and I can seek reassurance. I cannot go beyond that. I have seen this document here and I can see the terms of this slightly unusual document—I do accept that. Certainly, in my practice as a lawyer, I have not seen something of this sort before. That is not to say that it is inappropriate, but it is somewhat unusual I do agree. We have the Government agreeing to deliver certain things and the industry agreeing to deliver certain things. In fact, the Government did not deliver quite a few of the things in the bullet points in that section, so it is a slightly unusual agreement in the context of an agreement as one would normally regard it.

Q88 Andy McDonald: You and I are both seasoned. In the course of agreements, you will put a whole range of issues on the table for discussion, but at the heart of it are the big ticket items as I am describing them. People are concentrating on where the money is. The other issues may be completely peripheral and collateral opposite the big issues.

Lord Faulks: Of course, I am absolutely prepared to accept that the ABI would be concerned with their own interests, and money would be a very significant part of that. The Government have objectives that are recorded and objectives that are to try and create a litigation system which is fairer, less expensive and remedies some of the faults that Sir Rupert found. As an agreement, it is rather unusual to have, as it were, terms of an agreement which are not actually implemented. An agreement, as you would know, Mr McDonald, normally records what the parties agree. If there is a breach of the term, the other party can sue on it. That is not really what this is.

Indeed, as I say, if one looks at the Government's response to the various things that the industry wanted, they don't actually agree to all that the industry required. However, the result of the various synchronous processes is that the Government intend to implement the LASPO changes, not excluding mesothelioma, and we have the Mesothelioma Act 2014, which deals with a particular problem, but I have not seen anything to suggest there was any inappropriate bargaining involved.

Q89 Mr Llwyd: On that point, following Mr McDonald's line of questioning, you said earlier that there was no quid pro quo. I fail to see how you can look at that agreement and conclude there isn't clearly a quid pro quo, whether it is appropriate or not. There are two sides to the agreement. One side is saying one thing, the other is saying the other, and most of it has been delivered.

Lord Faulks: Yes; most of it has. As I say, this is a discussion with the industry. It is not a conventional contractual arrangement between two parties who have a commercial interest in which they are trying to compromise by way of an agreement, so it is a slightly different context. It comes in the context of a Government wishing to legislate, for reasons that you would accept were entirely appropriate—at least certainly so far as the 2014 Act, as it became, was concerned—and seeking, for reasons which I suggest and you may not agree are appropriate, to limit the costs of litigation in Part 2 of the LASPO Bill. These are not typical contracting parties as in a commercial situation.

They are recording, I would say—it is a matter for construction and the Committee will form its own view—although it is described as “heads of agreement,” heads of agreement. It is summarising the bullet points on which the parties had come to a view as to what they had agreed, but it is not, as I said earlier, an agreement or a contract in the normal form.

Chair: Can I just welcome Mr Buckland back to the Committee and ask him if there are any interests he has to declare in relation to this matter?

Q90 Mr Buckland: Nothing, other than those that appear in the Register. I have no interest to declare on civil law. “Head of agreement”—“memorandum of understanding,” is that perhaps a better way to describe what this document is?

Lord Faulks: Mr Buckland, there are various different ways one might construe it and it is a matter for the Committee, ultimately, how they construe it. “Heads of agreement”, “memorandum of understanding,” whatever it might be, it is certainly not a traditional contract with terms in the way that one might expect.

Q91 John McDonnell: Can I get clear what we can all understand then? The industry has approached the Government and has sought a deal with the Government; the Government have met them and discussed on the basis of what is described as heads of agreement or memorandum of understanding. There has been that discussion, and what you are saying is that the implementation of quite a range of the demands of the industry is pure coincidence.

Lord Faulks: I am not saying it is pure coincidence. The DWP had been working on a scheme for some considerable time, as you will be aware. Indeed, there was a public statement, which I have just been handed, published on 25 July 2012, when it was announced that there would be this new scheme, funded by insurers as they faced the unique circumstances in addition to the £200 billion insurance industry. Lord Freud, the relevant Minister, described what was going on and why it was being done.

I am not sure that I understand why this is inappropriate. Here we have Government identifying something that needed attention, quite coincidentally. Those who were anxious to bring forward changes or, rather, not accept the changes in the LASPO Bill—those who were bringing forward the amendments in the House of Lords—wanted a synchronous approach. You can see that from *Hansard*. Not only in the Lords but in the Commons they wanted synchronicity. It would have been rather odd to have separate meetings with the industry about these matters. They were all concerned with the same subject matter, although they were not necessarily connected precisely.

Q92 John McDonnell: Understood. The general concern is this. If the Government think it is completely appropriate to enter into discussions with an industry, then to look at that industry’s agenda and then to agree with that industry that certain things will be implemented by Government in return for certain actions by that industry, there are issues about appropriateness there. However, at least it should be fully open and transparent. This was not in the general public domain until this was sent to us, possibly misguidedly, by the industry itself.

Lord Faulks: The Government were open in the sense that they responded to the consultation and they—

Q93 John McDonnell: This is hardly open because this was not told to us by Government. This was told to us by the industry, which now seeks to withdraw it, so it is hardly—

Lord Faulks: The industry tried to withdraw it, you say.

Q94 John McDonnell: Yes. This is the first we knew about this matter. The first we knew about the issue of the negotiations that were going on, the potential for quid pro quo, was when we had witnesses in front of this Committee. We were not informed by Government or Ministers.

Lord Faulks: I am not sure that I would be surprised that there were discussions going on with the industry any more than I was surprised if there were discussions going on with claimants' representatives.

Q95 John McDonnell: Wouldn't it have been better for them to be open and transparent?

Lord Faulks: There are discussions that go on between interested parties, stakeholders and Government on issues like this all the time. You would expect that.

Q96 John McDonnell: Ministers usually inform Parliament or inform the relevant Committees of those discussions, or they are made public.

Lord Faulks: There were discussions, I am sure. I can't give you chapter and verse, obviously, but I am sure there were discussions with claimants' representatives on a number of occasions about this issue.

Q97 Chair: Could I just be clear whether there was ever any doubt that the Government would proceed with the agenda that they had set, regardless of whether the industry funded the diffuse payment scheme?

Lord Faulks: The Government always intended to bring in these changes, which included all personal injury claims not excluding mesothelioma. That was their intention. During the passage of the Bill a great deal of amendments were put forward to Part 1 of the Bill, which was legal aid, and very few to Part 2. The focus in Part 2 was on mesothelioma, which, of course, is a very emotive issue. There were arguments that this was a special case. I have dealt with that in answer to various questions about why it was not a special case, and that was, indeed, what the Ministers said in the Commons and the Lords. Facing various defeats, in due course Lord McNally in the House of Lords, and in the House of Commons I think it was Jonathan Djanogly—but I may be wrong about that—decided to consult in the way that they did. Nothing from the consultation caused any rethink by the Government, but the consultation took place. There was nothing in any of the responses that would come as a surprise to the Government, and nothing, I would suggest, had it been available to Sir Rupert

Jackson, that would have caused him to think differently. Of course, that was what the Ministers agreed—to have the consultation. They set up the consultation and the Government responded to the consultation.

Q98 Chair: Are there any other matters in relation to this that you think you need to draw to our attention?

Lord Faulks: Just give me a moment, Chair. Thank you. I would just remind you of what the Minister Mr Djanogly said on 24 April. He said this: “I do not want to give any binding commitments about the process today,”—that is the process of consultation—“because things have not been finalised. However, I can tell the right hon. Gentleman that if the process is to be improved by the Department for Work and Pensions, which we hope it will be—he will have some insight into our proposals from the discussions he has had—that could well require DWP legislation, in which case we would look to roll the ending of the provisions into the commencement of the DWP provisions. That is how I foresee the process now but again, I am not making that a commitment.” I am not sure whether that helps the Committee, but it is what he said anyway at the time.

Q99 Chair: And there is nothing else that you want to add?

Lord Faulks: There is nothing else that I want to add, Chair.

Chair: In which case we can thank you very much for your careful—

Q100 Mr Chope: Can I just ask a question? You mentioned, Minister, this handout Private Member’s Bill.

Lord Faulks: Yes.

Q101 Mr Chope: What is in this Bill?

Lord Faulks: I do not have a copy of the report with me, I am afraid. I will certainly agree to send it to the Committee if it would help, but it is essentially getting rid of the formality of having to restore an insolvent company to the record, which should speed up the process and take away an impediment which could be there. I see that Mr McDonald is nodding.

Q102 Mr Chope: You will be able to publish it for us so that we can have a look at it soon?

Lord Faulks: Yes.

Chair: Thank you very much indeed. We would be grateful to receive that.