Scottish Affairs Committee

Oral evidence: Blacklisting in Employment, HC 272

Monday 14 July 2014

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Watch the meeting

Members present: Mr Ian Davidson (Chair); Jim McGovern; Graeme Morrice; Pamela Nash

Questions 3587-3709

Witnesses: **Gail Cartmail**, Assistant General Secretary, Unite, **Justin Bowden**, National Officer, GMB, and **Mr Steve Murphy**, General Secretary, UCATT, gave evidence.

Q3587 Welcome to this meeting of the Scottish Affairs Select Committee. As you will be aware, we have been conducting a substantial inquiry into blacklisting, which arose from an inquiry we had started into various matters related to health and safety. It subsequently moved on to issues relating to zero hours, the national minimum wage and so on. Today, we are coming back to blacklisting, but also to matters relating to umbrella companies and other structures that can be seen to be unusual, and which raise issues of public concern. Could we start off by asking you all to introduce yourselves for the record? Tell us why we have invited you—in the sense that you tell us what in your role is relevant to the sort of inquiry we are having.

Mr Murphy: I am Steve Murphy, general secretary of UCATT. We have been heavily involved in the inquiry into blacklisting. We had a document drawn up about blacklisting. I think our input into the inquiry has been very important. Today, I want to give some information about umbrella companies, which you just touched on, as well.

Justin Bowden: Good afternoon. I am Justin Bowden, GMB national officer with responsibility for our blacklisting campaign. I am very pleased to be before the Committee again today to give you a further update on progress in terms of that wider campaign; to give you specific information in relation to the construction workers compensation scheme, unilaterally launched the week before last; to give you, if there is time at the end, evidence of contemporary blacklisting going on in this country, and more widely in Europe; and to answer any questions in relation to umbrella companies, zero hours and all the elements that tie into construction, directly and indirectly, and the issue of blacklisting.

Gail Cartmail: Good afternoon. I am Gail Cartmail, assistant general secretary for Unite. The union has responsibility for, among other things, construction and within that blacklisting. Like my colleagues, I am happy to be here this afternoon. We have some case studies of umbrella companies which link into zero hours, because the basis of the relationship is a zero-hours contract. Likewise, I would like to pick up where we are with the construction workers compensation scheme that has been imposed. Finally, we have some evidence for the Committee in respect of Atlanco Rimec, building on points made earlier by Justin and Steve.

Q3588 Chair: Perhaps we could split the hearing into three sections: first, the whole question of umbrella companies and related matters; secondly, the compensation scheme; and, thirdly, Atlanco Rimec and any other related issues about current blacklisting. Could I go back to the beginning and ask whether or not you could tell us what is meant by false or bogus self-employment, explain and clarify the roles of payroll companies and umbrella companies, tell us whether or not there are differences between them and, if so, what those differences are?

Mr Murphy: First, false self-employment is when you are employed by a company but you look after your own tax affairs. You do not have any employment rights; you do not have sick pay or holiday pay. However, you are told where to go and what to do. False self-employment has been a scourge on the construction industry for many years. UCATT, along with sister unions, has been trying to fight this epidemic. Last year, the Government submitted a consultation document called "Onshore employment intermediaries: false self-employment." You have to remember that with false self-employment, where people do not pay the right amount of national insurance or tax, the Exchequer—the country—is losing in the region of £2 billion a year. The Government saw this as a problem and launched the consultation document.

We described the consultation document as a step forward in getting rid of false self-employment, but we said that it might create other issues, and that onshore employment intermediaries, or payroll companies, could find loopholes. We asked the Government to go further. We asked if they would, as proposed under Labour, introduce deeming proposals under which somebody who is genuinely self-employed would supply plant or equipment needed to carry out the work; supply all materials needed to carry out the work; provide others workers to assist with the work; be registered for VAT; and control their own tax affairs. We believed that if deeming proposals were not introduced it would create problems and loopholes would be found. Indeed, that is what we are finding. Since April 2014, because the loopholes tightened for payroll companies, we have seen a movement en masse of employed people from CIS—payroll companies employing people on CIS—to them working through umbrella companies.

Could I read out a letter sent to one of our members which explains what the movement is? It is a complex area and it will take me some time to work through, but perhaps you would give me the time.

Q3589 Chair: Could you let us have a copy of the letter subsequently?

Mr Murphy: I will, but I will read it out first so it gives you an indication. This is a worker who perhaps is not aware of some of the changes that are happening, but he or she gets this letter: "As you may be aware, the Government has introduced new Legislation, effective 6th April 2014 which focuses on the self-employed status of contractors working through intermediary companies. The new legislation, unlike general self-employment status rules looks at one test only, that test being the right to and/or working under the direction, supervision and control of the client in relation to the manner in which the work is completed.

"In light of the above changes, your agency has advised that they can no longer contract with Sterling CIS Limited as there may be elements of the contract that are under supervision with direct instruction from the client and could therefore fall within the new legislation. In order to enable you to continue working through your agency any assignments undertaken via them should be processed through Sterling Umbrella Limited." Obviously, those two organisations are linked.

"The Sterling Umbrella route operates differently to Sterling CIS, namely that you would be an employee of Sterling Umbrella. With this come numerous benefits such as holiday pay, pension contributions, statutory sick pay and the ability to have business related expenses processed."

People were not given a choice when this letter was sent out in April. They were told that because of the changes they were moving from CIS to umbrella company status. What effect does that have on the employee? First, what is an umbrella company? An umbrella company is a PAYE service for temporary workers across all sectors, private and public, whereby the worker is employed by the umbrella company via an overarching employment contract, so that comes from the payroll company to the umbrella company. I told you it was complicated; it gets more complicated. The umbrella company thereby takes responsibility as the employer for deducting relevant income tax and national insurance contributions from the funds received in relation to the worker.

The umbrella company gets money from the payroll company. The payroll company gets money from the client. If I am a payroll company, I go to the client and say, "I'm going to provide you with some bricklayers." I am paid, and they are working through the umbrella company. As it says here, it is a confusing relationship. It is based on a four-way relationship involving a worker, a payroll company, an agency and a client, so it gets extremely complicated. It gets even more complicated when you look at how individuals are paid through an umbrella company. Like sister unions, we have built up a catalogue of evidence on how umbrella companies pay individuals. We can give you evidence of that, and I think we should, so you can look at it yourselves.

In a simplified example—there will be a number of variables—it works as follows. Gross pay is reduced by deducting the fee for the payroll company and the employer's NI. This amount is reduced by expenses paid and retained holiday pay. The new amount is the gross pay for tax, as no tax needed to be paid on those items before. The employee's NI and taxes are deducted and the expenses are added back, and the amount that comes out of this is the net pay. Nevertheless, the salary paid is the total number of hours worked multiplied by the national minimum wage. I stress "multiplied by the national minimum wage." This is really important. We are talking about craft workers—skilled workers—who are paid effectively the national minimum wage. Whatever the worker has earned over the national minimum wage is shown as a bonus adjustment, or expenses.

We see this as a massive loophole. When you see examples of the wage slip, it amounts to an insult. Not only is it an insult—we believe it is a clear tax fiddle. You are adding something to take something out to pay somebody what is effectively just above the minimum wage.

We also have to remember that when the worker receives the pay slip they have no understanding of what is happening. It is very difficult. They are asking the question of us because they are paying employee NI and employer NI as well. The question asked of us is: “Why am I paying an employer NI and an employee NI?” We are looking at the tax relationship, and whether there is some sort of tax avoidance. There is certainly something not right with this. It is a very complicated area, which is new to the industry. I think it is a new scourge on our industry and we all need to look at it very closely.

I will give the Committee some documents. I know Gail has done some work on this. We also have to take into account what is going to happen with the construction industry where these organisations have been set up. People have been moved over from CIS to umbrella companies, and nobody will be training anybody in the construction industry. We already have a shortage of skills. Where are the skilled workers going to come from when we have umbrella companies operating through payroll companies?

Before we came into the Committee we said that it would be hard to explain how this is set up, but with these umbrella companies most contracts are running on zero hours. It is important to remember that. The other thing is that automatically you are opted out of a 48-hour working week. Holiday pay is often rolled up into pay anyway. Pay is often performance-related, with no indication of what you have to achieve to increase your pay.

Another thing we have discovered is that, because these contracts are set up in the way they are, you can be moved anywhere to work, including abroad, which is a difficulty in its own right. Workers can be requested to work on bank holidays without giving consent and they get paid the same. Again, importantly, there is absolutely no collective agreement through the trade unions. As you know, we have the CIJC national working rule agreement, but umbrella companies take absolutely no heed of it.

Workers cannot object to complete flexible working. They go and work for one of these umbrella companies and can be told to work where and when—the hours the umbrella company wants. Importantly, there is no regulatory oversight. Umbrella company service providers have no official regulatory body to oversee them, so all kinds of exploitation can happen.

In conclusion, these umbrella companies are another method by which the construction industry can shy away from its obligations. The employers do not have to employ anybody directly, so they do not have to pay holiday pay, sick pay or all the benefits people should be getting when working directly. It is a cop-out and a cheap route for the industry.

Q3590 Graeme Morrice: Steve, I think you have explained that quite well. It is clearly a very difficult, complex and technical issue. In relation to employees moving to this kind of umbrella company situation, which seems to be for payroll purposes—I confess I do not know the answer to this—does TUPE apply?

Mr Murphy: No, it does not apply.

Q3591 Graeme Morrice: I got the impression from what you said that it probably did not. Should it apply?

Mr Murphy: I do not think the law on TUPE would allow it to apply because it is a business. I would love it to apply—well, we wouldn't because we want everybody to be directly employed. To answer your question, categorically no; it is not a transfer of undertaking.

Justin Bowden: There is no transfer of an undertaking that would fall within the meaning of TUPE. The other part of your question was whether there should be some kind of legislation to capture that. In simple terms, yes.

Q3592 Graeme Morrice: Steve, I think you mentioned that where an employee transfers to one of these umbrella companies they have to pay a fee. You also said that they had to cover the employer's national insurance costs as well. The fee is one thing—perhaps you could explain what level we are talking about—but an employee covering the employer's national insurance contribution seems—

Justin Bowden: Very generous.

Q3593 Graeme Morrice: Very generous but very dodgy. Is it legal?

Mr Murphy: It is something we are taking advice on. Could I first answer the question about the fees? You are right to ask the question. The fees can be £20, £30 or £40; we have seen as much as £90 a month being charged by payroll companies. It is a huge sum of money for people to pay in fees.

On NI, the question we get regularly is, "How can an employee—a bricklayer or a joiner—be paying employer NI?" As I said at the outset, this is a relatively new concept. We have seen an en masse move since April this year—effectively two months. It has gained so much momentum up and down the country; it has completely exploded. Hundreds of thousands of employees are now working through these umbrella companies. It is a major issue for the industry and the country.

Q3594 Chair: It does not simply involve the construction industry though.

Mr Murphy: No.

Q3595 Chair: Mick Cash from RMT gave us the example of somebody working on the railways. He gave evidence that somebody working for an umbrella company said that their hourly rate was £9.50 but they ended up getting paid £6.19 by the time various deductions were made, so it is not just in the construction industry.

Mr Murphy: No, but I am speaking for the construction industry.

Q3596 Jim McGovern: Following up what Graeme said about TUPE, if someone transfers from direct employment to, for example, an umbrella company, are they in effect resigning?

Mr Murphy: No, because they were never employed directly through the payroll company; it was false self-employment by the payroll company, and when they received the letter all the payroll company did was to say, "We're moving you from CIS to the umbrella company where you will be directly employed by that company."

Q3597 Jim McGovern: Prior to that move they never had direct employment anyway.

Mr Murphy: They were not directly employed prior to the move; they were working through the payroll company. Because the Finance Bill 2014 tightened up the regulations on false self-employment, the payroll companies had to change and they did that by introducing the umbrella companies.

Q3598 Jim McGovern: It seems to me that every time a loophole is closed employers find another way to open it again and exploit it. My own background is the construction industry. Probably back in the early '80s you would see guys on the building site—brickies, joiners, sparkies, or whatever. On the Friday they were directly employed; on the Monday they would still be using the same cement mixer, scaffolding and so on, but suddenly they were on SE60s, 714s or whatever. It now seems to have moved from SE60s, 714s and CIS to umbrella companies. Every time one loophole is closed, employers find a way to open it up again.

Mr Murphy: Exactly.

Q3599 Chair: Do either of the other witnesses want to add anything to that explanation of umbrella and payroll companies?

Gail Cartmail: I have some examples of payslips that show deductions that I think the Committee will find quite interesting. I have two case studies. One shows the contract between the worker and the payroll company. As Steve pointed out, the trade unions and the TUC participated in the HMRC consultation, and we gave a cautious welcome to tightening up on bogus self-employment, but we have now gone straight from CIS to these payroll companies rather than direct employment. What we have is a critique of the contract. The relevance of it to this Committee, with respect, seems to us to be that it is predicated on zero hours. In my cases, one is an electrician and another is a scaffolder. Neither of these workers, one based in Scotland and the other in England, is going to put their head above the parapet on any building site and raise health and safety concerns; it simply is not going to happen because of the nature of the relationship. I think I am right in saying that if they withdrew their labour they would be on strike against themselves.

As to whether it is lawful, counsel's advice is that, unfortunately, there is not anything unlawful. As Steve says, it is zero hours subject to no collective agreement. There is a restrictive covenant saying that they cannot take up employment with the client on any basis. That is normally applied to very senior employees. There are real issues in respect of holidays. In one of my case studies, despite paying £85.29 per week as a deduction, their accrued holiday entitlement on leaving the assignment was £1 a day. Those sums do not add up.

There are also issues in respect of the working time regulations. In this instance, having finally got hold of the document and signed it, the electrician concerned was unaware that they had signed away their rights to the working time agreement. They had no idea that they had opted out, because it was so complicated. This is a qualified electrician paid the national minimum wage per hour, which is obviously ridiculous.

Q3600 Chair: Have umbrella companies now driven false self-employment out of business? Does false self-employment still exist? As I understood what you were saying, Mr Murphy, the Government rules had essentially ended false self-employment, but things have now moved on to another problem. I want to be clear, before we start going down the alleyway of false self-employment, whether or not it is a dead end.

Gail Cartmail: I do not think the status of these workers is what would normally be described as employed.

Q3601 Chair: I understand that, but they are not self-employed either.

Gail Cartmail: No; it is a new model.

Q3602 Chair: You seem to be identifying a different form of abuse. In those circumstances, if things have moved on, perhaps we need not spend as much time on bogus self-employment as we might otherwise have done. That's the point I am trying to clarify. Bogus self-employment is not really the issue any longer.

Mr Murphy: It is slightly, because this change was just for agencies and payroll companies, where payroll companies were employing people—bogusly or false self-employed. That was where the change came into effect, not particularly in relation to false self-employment, so we still have the issue of bogus employment today. This is in addition. It separated agencies and payroll companies.

Gail is absolutely right in what she just said, but can I pick up on something? This is a clear attack on people's pay. We talked about an electrician. This is a clear attempt to reduce pay as much as they can through umbrella companies. That is quite evident from the wage slips we have seen, and we can give you that information.

I am speaking for the industry now. This is going to undermine the industry. As Gail rightly said, it is about health and safety, welfare and all the things we have talked about over a number of years. This is a further big element that will undermine the construction industry.

Q3603 Chair: Can I come back to employer’s national insurance? I did not quite understand the explanation. Can you tell me again why employees or workers are paying employer’s national insurance?

Mr Murphy: It is on the wage slips, which I cannot find at the moment.

Gail Cartmail: I have one here.

Mr Murphy: You asked me for an explanation. I cannot explain why this is carrying on, other than what I said earlier about its being some form of tax avoidance—taking it off and then putting it back on to the wage slip. It just says here—on the wage slip—that you pay an employee national insurance and then the deduction for an employer national insurance.

Q3604 Chair: Does that mean that the construction company is not paying any employer’s national insurance at all?

Mr Murphy: No, because the employee is paying it.

Q3605 Chair: Surely, the clue is in the name. The point of having an employer’s national insurance contribution is that it is a national insurance contribution paid by the employer.

Mr Murphy: But in this case it is not. That is what we are saying.

Q3606 Chair: I do not quite understand how that can be. The law says that the employer pays a national insurance contribution; it does not say that it should be passed on to somebody else.

Gail Cartmail: It is because essentially the person is almost employing themselves. The umbrella company is providing a service. If you look at the payslip that I have just shared, he is paid £6.31 per hour for 39 hours, which equates to £246.09—don’t worry about the numbers. He then has deductions applied for national insurance and tax. That is another total. He then has something around £112 added for expenses, giving him another total in the take-home pay of £429—blah, blah. Then, from the original, the umbrella company deducts the following: employer’s national insurance, expenses and mark-up. They then deduct nearly £30 a week for retained holiday pay. If you make any sense of that, you are a better man than I am.

Q3607 Chair: That is a target for me to aim for. Presumably, the argument is that there is a whole raft of self-employed people who are being provided with a service by an umbrella company that is selling their services to a building employer.

Justin Bowden: They’re a front; they’re a broker.

Q3608 Chair: They are acting as a broker. It is another means of people being self-employed essentially. Since they are paying both the employer and the employee, they are a company within themselves, so it is basically a way round the legal changes that the Government introduced.

Gail Cartmail: Indeed.

Mr Murphy: That is exactly right.

Q3609 Chair: In which presumably the construction companies are all complicit.

Mr Murphy: Yes.

Q3610 Chair: Presumably, they are choosing to hire staff by this route rather than by direct employment.

Justin Bowden: Yes.

Q3611 Chair: What is the advantage to a construction company of employing people in this way rather than just having them directly employed?

Mr Murphy: It negates all responsibility for the employee.

Justin Bowden: With the ability to hire and fire without going through due process.

Mr Murphy: The client—the company—does not have to pay holiday pay, sick pay and the pension liability. The company does not have to pay all the things associated with direct employment.

Q3612 Chair: Presumably, that has to be reflected in the amount of pay. If we leave aside for a moment the question of whether or not there is an intention to save money, if we were spending the same amount of money, rather than the employer having to contribute to, say, employer’s national insurance, holiday pay and so on, the cost of that would be transferred and reflected in the wage paid to the self-employed person via the umbrella company.

Mr Murphy: Perhaps the person employed by the umbrella company is not paid as much as he or she would be if they were directly employed. When you first asked the question I said that it is to negate responsibility. That is exactly what it does. As Justin has just said, they do not have to worry about hiring and firing. Remember, we are talking about a zero-hours contract. There is no worry about hiring and firing; there is no worry about pay and the CIJC working rule agreement and rates of pay as a minimum standard; there is no worry about paying the pension—the auto-enrolment that has been introduced; and there is really no worry about training anybody up.

Q3613 Jim McGovern: Can I ask Steve or any of the witnesses how this impacts PPE? If somebody is in bogus self-employment, who provides the hard hat, the Totectors, the goggles and gloves?

Mr Murphy: That would vary from site to site. Some employers would provide it; very many would not provide it.

Justin Bowden: There is another deduction for that.

Mr Murphy: You probably would get a deduction for that. Taking health and safety alone, this is very important. You've touched on it. You know what our industry is like; you know the record of deaths and injuries in this industry. This is not going to help to improve the death or injury rate in the industry by any stretch of the imagination.

Q3614 Jim McGovern: Just on that point, Steve, if somebody suffered a bad injury which meant that maybe they could no longer work, who do they sue? Who do they take to court?

Mr Murphy: That's a very good point. It is a good question that I do not have the answer to. *[Interruption.]*

Chair: This is not an audience participation show. I understand the enthusiasm people might have.

Q3615 Jim McGovern: In terms of the impact on union membership, I mentioned that in the early '80s guys would be on a building site on a Friday and by the Monday they would be bogusly self-employed. Generally, they just dropped out of union membership, so is there an impact on union membership?

Mr Murphy: As I said earlier, this is only two or two and a half months down the line. You have to remember where these workers came from. They came from the payroll companies, so there was false self-employment in the first place. Then they moved over into an umbrella company. We still have lots of members who are working for umbrella companies; otherwise, we certainly would not have this evidence. Workers on site are now saying this is exploitation, so I see it as a potential increase in trade union membership.

Q3616 Jim McGovern: But presumably they would need to pay their subs by direct debit rather than—

Mr Murphy: Absolutely.

Gail Cartmail: This has caused absolute outrage among our members. It is so awfully unfair. I hope the Committee will have an opportunity to look at the evidence we are going to leave with you. It is summed up in a paragraph somebody wrote in respect of one of our case studies in Scotland. It says: “It appears, therefore, that our member in this case has received £429 in wages, paid his and the employer’s national insurance contributions, paid for his own holiday pay accrual, and also paid a mark-up of £23 to the umbrella company for his troubles.” It pretty well sums it up. I said to my colleague Steve prior to this evidence session that, if he was able to explain clearly and succinctly the nature of these umbrella companies, we would all give him a standing ovation, because it is so complicated and fraught with difficulty. But our members have smelt a rat, and surely this is something that should be put right.

Q3617 Jim McGovern: Since this is the Scottish Affairs Select Committee we have to focus pretty much on what is happening in Scotland. You have all mentioned these practices. Could you give us some idea of how prevalent they are in Scotland?

Mr Murphy: We have members affected in Scotland.

Gail Cartmail: This one was in Scotland.

Mr Murphy: That was the company Gail referred to earlier, and I have the document here as well.

Q3618 Jim McGovern: How widespread is it? Is there any way of gauging that?

Mr Murphy: It would be very difficult for us to gauge at this stage. Needless to say, we have had members affected quite widely in Scotland. I suspect that proportionately it is probably the same as in England and Wales, but I think that was evidence from—

Gail Cartmail: We have the Sterling Umbrella company here. I think this is Edinburgh and yours is Dundee.

Mr Murphy: Yes. We have members who are affected.

Justin Bowden: We have examples from Scotland. The model can be applied equally anywhere across the United Kingdom, and it is growing. It is a model that can be applied, and we expect it to be applied, widely across any sector of the economy, unless it is dealt with pretty speedily.

Q3619 Jim McGovern: If I understood it, Steve, I think you said earlier that some people were unaware they were being changed from one status to another. Is there evidence that people are being forced into that?

Mr Murphy: I think I said that people were unaware of the changes in the legislation. When they received this letter on the doormat saying, "You're going to have to change because the legislation has changed," they were really left with no alternative.

Q3620 Jim McGovern: So they are being forced into this change.

Mr Murphy: Absolutely. I do not think there is any question. They are given the option: in one of the letters I have read they are told, "You can leave if you want," but what option is that when you have to put food on the table?

Q3621 Chair: Can I clarify that there is evidence of employees being forced into this system, and not being given the choice?

Mr Murphy: It's Hobson's choice.

Justin Bowden: You heard Steve read out the letter. It is complicated enough in its own right anyway, but here it is being presented to people at relatively short notice that it is the result of a statutory change, so it is implied that it has to happen. Effectively, it is presented as, "If you want to carry on being paid in employment with us, you need do nothing other than sign this and return it," but people have no choice if they wish to continue in employment. It is Hobson's choice.

Q3622 Jim McGovern: I referred earlier to PPE. Do people who find themselves in this situation get the same level of training on site safety as they should?

Mr Murphy: I doubt it very much.

Jim McGovern: It is probably a silly question.

Mr Murphy: Who is going to train them? If you are now working for an umbrella company, who is going to train you? We are talking about complexities, but we also have to realise the real dangers for construction workers. There will not be any training in health and safety; there will be no training for apprentices coming into the industry, or in any other industries as a matter of fact. Importantly, there will be no training. We have one letter somewhere that said that any training you received could be claimed back as expenses. There will not be any training. It is just another ruse, and we can give you that evidence as well.

Justin Bowden: As we said, the company exists as a broker effectively; as you identified, Jim, it is there as a vehicle to find a means to deal with the previous loophole that was closed down, and find a new loophole in order to continue what is at best a pretty shonky practice.

Q3623 Jim McGovern: Somebody could be started on a building site on a Monday with no hard hat, goggles, gloves, overalls, or Totectors and no training in safety.

Justin Bowden: They are self-employed, Jim; it is their responsibility.

Mr Murphy: That happens; of course it does. There will be occasions when PPE won't be provided, but through the umbrella company system who has the responsibility to provide PPE? Are the umbrella companies going to provide it? Big question mark.

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

Q3624 Pamela Nash: We have been concentrating on umbrella companies so far. You mentioned that CIS is a continuing problem as well. Can you explain why it is a continuing problem and give us a short comparison between that and the new process?

Mr Murphy: The legislation was tightened up for payroll companies and agencies. That was seen by the Government as where the problem was, and the Finance Bill 2014 allowed for those changes to be made. This was introduced through payroll companies to establish umbrella companies. The legislative changes allowed that to happen. We still have false self-employment and CIS employment through companies, if you like, who are not payroll companies and not agencies. It is still a problem in the industry. There are some companies who employ directly. We would like to see all companies employ directly, but there are still a lot of companies employing through CIS.

Q3625 Pamela Nash: When companies are using CIS are they likely to move to other methods now? Is there any additional benefit to them continuing with CIS, or do you think that will fizzle out and companies will gradually move to those other means?

Mr Murphy: Lots of employees have been moved en masse to umbrella status. Referring back to what Jim said, it could be a dangerous trend. I said they have moved en masse and I think that will continue to happen, because it negates all responsibility by the employer or client.

Q3626 Pamela Nash: Do you think CIS should be abolished?

Mr Murphy: Yes.

Q3627 Pamela Nash: Would that have any other negative consequences to anyone, but particularly your members?

Mr Murphy: People will find loopholes whatever we put in place. What we want to see is an industry that has direct employment and workers' rights, and an industry that is much safer than it is now and where workers are not being killed and injured on far too regular a basis. We are saying, “An end to CIS.” Establish direct employment through companies. Let companies take full responsibility for the workers they employ.

Gail Cartmail: Can I go back to health and safety? I have now scoured the contract and found a reference to it. It says, “You must comply with health and safety obligations at the client’s site and you must read and comply with our safety information, which is to be found on our website.” That is in a contract of four pages. To me, that does not imply a particularly onerous approach to health and safety. I am sorry to go back to that issue, but I think that is germane.

Q3628 Chair: Who are the contractors on whose sites these people are working?

Mr Murphy: All contractors.

***Justin Bowden*:** Construction companies.

Q3629 Chair: It is not just one or two; it is widespread throughout the industry.

Mr Murphy: It is widespread.

Q3630 Chair: Presumably, this is a deliberate strategic choice being made by some of the major construction industry employers—not employers, construction industry firms.

Mr Murphy: Yes, companies. It is happening up and down the country. At almost every site our unions have visited we are seeing umbrella companies. I do not want to identify one company against another, because it is becoming more prevalent throughout the industry.

Q3631 Chair: So there are no companies that have direct employment work forces; everybody is moving to this.

Mr Murphy: There are still companies that have direct employment.

Q3632 Chair: Those that have direct employment will not be affected by this, and are not manipulating the system.

Mr Murphy: It depends. You might still have companies that directly employ people, but they might also use a payroll company.

Q3633 Chair: For supplementary labour.

Mr Murphy: Yes.

Gail Cartmail: It might work in this way: you have a client and a major contractor, but there might be certain packages of work—for example, electrical work. The contractor will subcontract that, and possibly in that instance approach an agency. The agency, through the new system, will now engage a payroll company, so you go through this rigmarole process. It means that you have, for example, a qualified electrician, working on high voltage work usually, who is basically on a zero-hours contract.

Q3634 Graeme Morrice: Steve, earlier you mentioned that the new measures the Government have introduced, applicable from April this year, are to be welcomed, but I got the impression that you do not think they went far enough.

Mr Murphy: No.

Q3635 Graeme Morrice: Can you explain what further actions could or should be taken by Government that you would be more satisfied with?

Mr Murphy: What was proposed by the last Labour Government to establish that somebody was genuinely self-employed was deeming. That is where somebody provides plant or materials for the work they are doing, or they employ people, and are VAT-registered and look after their own tax affairs. If they are then deemed to be genuinely self-employed, they are a business on their own.

Q3636 Graeme Morrice: On the question of definition of an employee, I think the Government came out with the definition that it was someone who was "subject to (or subject to the rights of) supervision, direction or control of anyone else in the contractual chain." Are you satisfied with that definition?

Mr Murphy: That is exactly what we are talking about with the umbrella companies. That affects the umbrella companies and the payroll companies. We would be satisfied if, as you rightly say, those provisions were implemented, but also, importantly, that it is when they supply the plant or equipment needed to carry out the work; they supply all the materials needed to carry out their work; they provide other workers to assist with the work; and are VAT-registered. If in the past I had been on CIS and I was a genuinely self-employed bricklayer, I could go over the road to Ian Davidson's house and give him a price for building a garage, and do it when I wanted to do it. But if you are bogusly self-employed you cannot go off a construction site and give somebody else a price for another job. If you are able to move your skills somewhere else, you are working where you want, you are a genuine business and you have covered the categories we touched on; you are genuinely self-employed. I believe that would satisfy the trade unions.

Q3637 Graeme Morrice: Apart from definition, what specific actions do you think the Government should be looking at in addition to what they have already agreed? Are there any penalties in place for employers who are breaching these new conditions, limited though they may be?

Mr Murphy: They are very much so, and I think the loopholes have dealt with that, so I will answer the last question first. I do not think there have been any penalties as such, but going back to the first question, the deeming proposals that were under Labour would satisfy the trade unions.

Q3638 Graeme Morrice: So we need a Labour Government.

Mr Murphy: Yes.

Q3639 Chair: That is not within the purview of this Committee at the moment. Do the other two witnesses agree with that view?

Justin Bowden: Yes. To supplement and perhaps simplify it, Steve explained pretty clearly that you can have quite a straightforward assessment of whether or not somebody is genuinely self-employed. I think all of us round this table have a reasonable understanding of what that would mean and what the test for it would be. Flowing out of that, it means you have two categories of employment effectively: the genuine self-employed, subject to those tests by which somebody is able to show that is the case, or the directly employed. There may be an issue as to who the employer may be, but they are directly employed by somebody.

As to enforcement of that, without doubt there has to be a punitive element. For most of these companies, the only way you will get their attention is by whacking them in the pocket in some way, so Government either need to legislate further to ensure that is the case or empower the tax authorities, or whatever other state regulator they believe appropriate, to make sure that there is in place that degree of protection both for individuals working in the widest possible sense but also for the taxpayer and the wider public, because essentially this is a scam for the benefit of those running it.

Gail Cartmail: I agree with all of that. The Government could definitely play a role in respect of procurement; for example, we heard evidence from EDF representatives, both employer and trade union. The client could say to the contractor companies, “We want direct employment.” The Government could be EDF in that sense and insist on direct employment, but the point that perhaps we have not touched on is that these umbrella companies wriggle out of the agency regulations. Albeit they could be improved, but at least after 12 weeks there should be equal pay. It is too soon to see, but I expect we will see that the situation in respect of the casualisation of the industry will be worse rather than better, and we have to ask ourselves: was that Government’s intention? Was it HMRC’s intention?

Q3640 Pamela Nash: Following up some of the earlier questions from the Chair about workers who are being moved to these new contracts, Gail, you gave very good examples, but taking the figures, maybe we do not know how much the people in those different professions should be paid. Is their take-home pay significantly less than it was previously? Would it be possible to give us some examples of the difference between what they were being paid before moving to these contracts, both take home and gross pay, and now?

Gail Cartmail: It is significantly less. I touched on the deductions. I do not have the comparator statistics, but I know we could provide a before and after comparison.

Chair: If you have not got them just now, let us have them.

Q3641 Pamela Nash: I do not want to put words into your mouth, but I think we would be interested to know that this is not just a move in responsibility but it has a financial impact.

Gail Cartmail: It is massive, which is why people are up in arms about it, because they are considerably worse off.

Q3642 Pamela Nash: That was my guess, but I wanted to get it absolutely clear on the record. If examples of the figures are available, it would be really helpful.

Mr Murphy: Under the national working rule agreement, for a tradesperson it is £11 an hour. In these umbrella companies, they talk about having expenses paid, but you can claim expenses through the working rule agreement. They are paid in a proper manner and there is no tax dodge. Gail is right. There is a significant reduction in pay, particularly compared with the working rule agreement which, by the way, is a minimum standard.

Gail Cartmail: I mentioned an electrician on the basic rate of national minimum wage, compared with the acknowledged electrician's wage of about £15 or £16.50. It is massively different. Granted this person gets what is called a performance-related pay element, but there is no clue as to what that relates to, and then you have all the additional deductions. Scaffolders are likewise on national minimum wage of £6.31 an hour, and one of the two relevant agreements would put that at £15.60, and there is no performance pay element there.

Another complication is that we are advised anecdotally—I do not have evidence of this—that, to make up the pay, workers are being encouraged to put in elaborate expense claims.

Q3643 Pamela Nash: That is just what I was going to ask you about.

Gail Cartmail: Our fear in respect of that is that we would expect HMRC to catch up with it.

Q3644 Pamela Nash: As Unite have publicly stated it already, can you give us the names of companies that you are aware are doing this?

Gail Cartmail: This is anecdotal, and we are picking it up from social media. I have another pile of papers that show social media reports, with which we are happy to provide the Committee.

Q3645 Pamela Nash: Are there any companies that you know of?

Gail Cartmail: Not that I can name off the top of my head.

Q3646 Pamela Nash: But you can provide that information.

Gail Cartmail: I think so.

Q3647 Pamela Nash: Is there any information that you have had directly from your members about that?

Gail Cartmail: As Steve mentioned, this is very new; it came in at the very beginning of April. Granted it is now July, but it has taken people a bit of time to catch up with it and provide the evidence, but the issue of being encouraged to claim expenses that may not be bona fide is very widely reported.

Q3648 Pamela Nash: Is that something you have heard from your members as well?

Mr Murphy: I referred to a letter earlier. It sets out a question from the employee: "Can I claim expenses?" and says, "As you will be a permanent employee of Sterling Umbrella working on temporary assignments you will be able to claim back work related expenses on a weekly basis. Additionally, Sterling Umbrella has a dispensation with HMRC allowing our employees to claim for subsistence to cover the incurred costs of food and non-alcoholic drink while away from home," and so on. I referred earlier to anecdotal evidence that umbrella companies were encouraging people to claim for training that they would never ever carry out. That is quite important.

Anecdotally, the following shows the mentality that we are talking about. One of our officials visited a site, and they explained that workers were like Wayne Rooney. Wayne Rooney technically is not employed by Manchester United; instead, he is a limited company in his own right. Comparing somebody on £300,000 with somebody on the national minimum wage is embarrassing and ridiculous, isn't it? But that is how our people are being compared.

Q3649 Chair: The thing they have in common is that they are both involved in tax dodging, presumably.

Mr Murphy: Exactly.

Justin Bowden: That is it in a nutshell.

Chair: Why else would somebody do it?

Graeme Morrice: With Manchester United, we have to be careful, Chair.

Q3650 Pamela Nash: The other suggestion was that companies were shifting responsibility for employer's national insurance and holiday pay on to employees. Do you have the names of any companies that have been involved in that?

Gail Cartmail: We do. We have named Sterling Umbrella. I have the documentation here.

Q3651 Pamela Nash: Do you have the names of construction companies?

Justin Bowden: Would it help if between the three of us we gave you a list?

Gail Cartmail: Yes, I think that might be more—

Mr Murphy: I think it is the umbrella companies. As I said earlier, the construction companies have negated responsibility by employing people through payroll companies and, ultimately, umbrella companies. We can give you a list of the umbrella companies that we are aware of.

Justin Bowden: But you are after two lists, aren't you? You want a list of the umbrella companies and who, effectively, is employing them on their sites.

Q3652 Chair: Yes. Whose sites are they on? Which construction giants are using their assistance?

Justin Bowden: Let us give you a joint list.

Chair: That would be helpful.

Q3653 Pamela Nash: I want to ask about HMRC's role in this. Are there any laws or rules that are being broken through these processes? In your view, is there anything HMRC could do at this stage?

Mr Murphy: Not that we have found at the moment.

Gail Cartmail: We do not think that what is happening is breaching any law, which is why it is incredibly important that the law is changed. If it were breaching any law, we would be challenging it. When we attended the round table discussions at HMRC, via the consultation, there was an extremely heavy lobby of agency and payroll companies, and accountants funnily enough—you couldn't move for accountants. Everybody was saying it was a very bad thing; it should not be implemented, but HMRC decided not to delay implementation. I genuinely do not believe that what has happened was the intention of HMRC. I think HMRC have been culpable in the sense of turning a blind eye when CIS was only an issue in construction, because what was explained at the round tables that we attended was that this was spreading from construction to retail and hospitality; in other words, it is really creating an issue of lost revenue to HMRC. To what extent the umbrella company scams, as I would call them, are also spreading to hospitality and retail we can only speculate. There is a tradition of unionisation in construction, and thankfully it is the case that we have people who are willing to come forward, as in these two case studies. Those two individuals were willing to come forward. I am not so sure that would be the case in hospitality or retail, but I do not believe that was HMRC's intention.

Q3654 Jim McGovern: The footballer analogy is interesting. Glasgow Rangers were operating some sort of scheme where they did not pay their top players; they said they were loaning money to them, and therefore it was tax free, but obviously the players never had to pay it back. HMRC challenged that, and Rangers subsequently went into administration and were relegated to the third division. Just last week the case went to court. Rangers won it and beat HMRC. Now the football club and Rangers supporters are saying that it was HMRC that made them go bust, as it were. Could the next scam be to say to brickies, sparkies, plumbers and so on, "We're not actually paying you; we're just loaning you this money"?

Mr Murphy: I would not be surprised at anything people in the construction industry came up with, but you are asking about something that may or may not happen in the future.

Q3655 Jim McGovern: As I was saying earlier, Steve, if one loophole gets closed they find a new one. Could that be the next one?

Mr Murphy: I would not be surprised by anything the industry comes up with to avoid employing people directly, and to avoid making sure they are safe at work and giving them the rights they deserve for doing the work they do.

Chair: Perhaps we can draw this section to a close. Jim, I think there was a point you wanted to pick up about exclusivity clauses.

Q3656 Jim McGovern: It is on zero hours. As you are aware, the Government announced a ban on exclusivity clauses in zero-hours contracts. I think most people would agree that is a good thing, but should they be doing more? I certainly believe they should be doing much more.

Justin Bowden: Zero-hours contracts continue to be prevalent right across the economy.

Q3657 Jim McGovern: But the exclusivity part of it means that you are tied to an employer. Even though they will not guarantee you any work, you are tied to them; you cannot go elsewhere to look for work. That has apparently now been banned.

Gail Cartmail: But the example of the contract from this umbrella company shows exclusivity.

Q3658 Jim McGovern: They are still allowed to do it.

Gail Cartmail: Apparently.

Mr Murphy: It is in the new contract.

Gail Cartmail: I have it here, and I am going to hand it to the Chair and the clerk.

Chair: We need to have that drawn formally to our attention, so that we can have a look at it and see whether or not it is a loophole or a breach, since it would appear to be either one or the other. On one, action can be taken; on the other, perhaps action cannot be as immediate.

Q3659 Jim McGovern: Ultimately, what would the trade unions like to see the Government doing about zero-hours contracts?

Mr Murphy: Abolish all of them.

Justin Bowden: Ban them completely. We covered it in a different part of your investigation into umbrella companies. There should be two sorts of employment. We have already said it should be genuine self-employment or direct employment on a proper contract of employment with a proper number of hours of work a week as required. With a zero-hours contract, you can introduce a similar series of checks and balances, as you can around genuine self-employment. It is pretty straightforward. If somebody goes in every week and does 20 hours of whatever it is they happen to do, after a period of time it is perfectly obvious that there is a job there.

Q3660 Jim McGovern: We heard evidence that it might suit some people—for example, teachers—to be on supply and be told when work is available for them. The majority of people we have heard evidence from say that is ridiculous; they have to sit by the phone waiting to find out if they are getting a day’s work, but do you agree that it may suit some people?

Mr Murphy: It may suit some people, but I think you have to go with the majority. If banning zero-hours contracts, giving people the right to have decent hours of work that they want, is the one that suits people, and that is the majority, that is the majority. There will always be a minority, won’t there?

Justin Bowden: I think we are talking almost at cross-purposes. There is a difference between that and an as-and-when contract that suits somebody who does not want to be tied to working 20 hours every week doing whatever the job is, because it suits their lifestyle to work some weeks and not others.

Q3661 Jim McGovern: But if we abolished them we would abolish that.

Justin Bowden: No. It is how the legislation is drafted, isn't it? A separate point is that every week I go in and do 20 hours of work for a job that clearly exists, because it has to be done by somebody. I want that job and I want regular employment, but I am on a zero-hours contract because it suits that employer, effectively, to bypass my employment rights by giving me a zero-hours contract. It might as well be called a zero-rights contract.

Gail Cartmail: There are models. For example, there are bank nurses. A hospital may have a relationship with a list of nurses who provide nursing hours on a mutually agreed basis. They do not want to be permanently employed, and they are not needed to be permanently employed, but it is a mutual agreement. That model can be accommodated.

Jim McGovern: I understand that.

Q3662 Chair: Could I clarify a couple of minor points? You mentioned deductions. Could deductions be so large as effectively to push someone below the national minimum wage, and are there any examples of that?

Mr Murphy: We do not have any examples of that—not below the national minimum wage.

Q3663 Chair: In circumstances where people are effectively employed by an umbrella company, do they have employment rights restored to them that they did not have previously when they were bogusly self-employed, and, if not, why not?

Mr Murphy: Technically, they should have employment rights restored to them, because technically they are an employee of the company, but the challenge is: are the people working on these contracts going to challenge the umbrella company on pensions, for example?

Justin Bowden: We do not know yet, Chair; it is too soon. There will be test cases sooner rather than later where employees will test the employment relationship between them and umbrella company x.

Q3664 Chair: We are going to have to try to pick up some of this stuff directly in Scotland. Are there publicly funded contracts in Scotland where these new umbrella company mechanisms apply? If you are not in a position to tell us just now, could you let us know subsequently?

Mr Murphy: We will. We think we know of one, but I want to get it categoric.

Q3665 Chair: My understanding would be that in those circumstances, as in so many others, the ultimate client would have the right to say that they did not want to have these sorts of practices applying.

Justin Bowden: That was Gail's procurement point.

Gail Cartmail: That was my point. Government can take the place of EDF, can't it?

Q3666 Chair: Yes. I just wanted to clarify whether or not there were situations where these contracts were being applied in Scotland.

Mr Murphy: We believe so. We will get that information to you.

Justin Bowden: That can be addressed by straightforward contract compliance terms set out by the tendering authority.

Gail Cartmail: On the question of employment rights, the example we have here shows that statutory sick pay would be paid, but that has to be seen in the context of the worker paying for their own holiday pay above any holiday pay that they would recover. How on earth statutory sick pay is ever going to be paid in those circumstances defeats me.

Q3667 Chair: We are going to get a fair chunk of information from you about this, which we will look at and take forward. Could we draw a line under that just now and move on to the construction workers compensation scheme? I think it was launched formally on 4 July. I had a letter from the scheme: "Following eight months of discussions with unions and worker representatives, the scheme has now been finalised." It has now been launched. It also says that the eight companies are confident that TCWCS meets the unions' stated objectives. Can I clarify whether or not you see this as being a great step forward and successfully addressing all the issues you had in relation to blacklisting, and, if not, why not?

Justin Bowden: There is a resounding no from all of us together. I know you would like some more detail.

Q3668 Chair: We are giving you this opportunity. As you know, we are seeing some of the employers in the scheme next week, so we want to be absolutely clear about your position.

Justin Bowden: There is an awful lot wrong with it. I don't expect you will find a cigarette paper between the three of us on those issues. GMB submitted some written evidence on it. It was a brief two-page summary, but I think it captures most of the points; but I am happy to give you a little more detail around those 13 points.

In essence, the biggest single fault with the scheme is the amount of compensation that the companies have been prepared to offer. On our analysis, the eight companies involved in the construction workers compensation scheme have an annual turnover of some £34 billion-plus and make pre-tax profits in excess of £1 billion, yet on our calculations the price they have placed on 15 years of systematic blacklisting, spying and lying is between the £15 million to £20 million mark.

In their so-called fast-track side of the scheme they offer compensation of between £4,000 and £20,000. In our view, the £4,000 is probably the only adequate, or thereabouts, figure contained in that as a whole; and to offer somebody £20,000 for systematically denying them employment, potentially for 10 or more years, is laughable. That is the biggest single issue with the scheme.

Breaking it down into some of the more specific points, the Committee will recall that the evidence given to it by Ian Kerr explained how the files had been purchased, as I understood it, from the Economic League and transferred to the Consulting Association. Those formed the basis for a large number of the files held on individuals. The scheme, certainly under the fast track, effectively excludes people who have an Economic League-only file—so pre-1993—from claiming compensation, for reasons you can put to the companies themselves on Wednesday, but those individuals have a claim in the High Court, along with the other 600 or so individuals who are bringing claims through one of the three unions in the blacklist support group. We have considerable difficulty with that.

The scheme is time limited through to June 2016. We have no idea what the particular reason for that would be.

Individuals entering the scheme are forced to give up their legal rights before they go into it and know what they are entitled to, so effectively they are taking a leap of faith with the people who blacklisted them previously.

The fast-track figures provide no payment for defamation and do not recognise any other consequential loss, so for the majority of the people for whom we are making claims—by "we," I mean the three unions in the blacklist support group—who have a claim for defamation, no account is taken of that in the compensation on offer.

Legal fees are heavily restricted, so claimants will not have proper advice on whether or not they should go into the scheme, because it is capped. The blacklisting companies or their agents have written out with some suggested lawyers to talk to, but those are not law firms that are properly or fully conversant with blacklisting issues. They are therefore unlikely to offer the level of impartiality or professional expertise that other lawyers would be able to offer.

There is no disclosure of the information held by the companies. For a number of our members that is a really big issue. To know exactly what information is held, by whom, and what is going to be done with it is sometimes as important as the compensation. In some cases it may be only a few lines and the file that was seized by the ICO may constitute all the information, but it seems pretty unlikely, given that 40-plus firms were involved, that there is not other information out there about some, if not all, of the people on the blacklist.

The construction company scheme severely restricts the evidence that can be submitted about the impact of blacklisting on individuals. It does not take proper account of the financial and emotional side, which will lead to their claims being significantly undervalued. In the detailed scheme, it is capped at £100,000. We have no idea why

£100,000 has been picked, other than that it forms a round number. All of us have individuals for whom we are bringing claims in the High Court whose potential loss would be well in excess of £250,000—more in some cases—so for those individuals there would be a great shortfall. We believe that the £100,000 figure does not take account of more than a decade of unemployment, in some cases, and the reduced earnings potential that people suffered accordingly.

There is a right of appeal of sorts within the scheme, but once the individuals agree to join it effectively they are bound into it and cannot pursue a High Court claim or any other employment law claim, should they feel that they are not getting a fair crack of the whip.

There is no compensation for distress and emotional harm, even in claims where distress damages are normally awarded. The claims that we are bringing in the High Court will take account of that. I have already made the point about defamation and damage to reputation, but part of the payment where a claim of that sort is successful includes an award for that loss.

We believe that the reason the scheme is trying to avoid dealing with defamation is that an award in the courts is potentially so high. Our legal advice tells us that those are particularly strong elements of our claim. There are awards in the court not only for general damages but for special and exemplary damages on top.

That is the information in terms of loss of reputation, emotional distress, impact on life and family and the conduct of the defendants in accruing and using information. That is an important point. The Committee has drawn out extremely effectively how the information was gathered in the first place; the way it was controlled, which was in secret; and how they used the information. I think that is pretty clear, although probably you have been able only to scratch the surface on the sharing of information with the security services, the police and so on. The fact that all of this took place in secret would suggest a degree of aggravation and therefore a higher level of compensation.

There is also the issue of the care that was taken of the information—in other words, was it accurate? You have heard evidence, in written form or otherwise, from people who were blacklisted for jobs they had never even worked on. In one case, an individual who had never been to London was blacklisted for supposedly being involved in a dispute on the Jubilee line.

Finally, as was very apparent in the High Court hearing last week, the defendants' lawyers applied to the court for the litigation in effect to be placed on hold to allow their scheme an opportunity to progress. The purpose of that, of course, was to give people the appearance that there was no chance of justice through the court system in the near or foreseeable future and that therefore the only show in town was the scheme dreamed up by the people who had blacklisted them in the first place. Fortunately, that was overturned. The master has agreed that this will now move forward to a group litigation hearing, with the next appearance of everybody in court in October.

I have one useful anecdote for the Committee. There was a considerable debate about what the litigation, as opposed to the compensation scheme, should be called, with the defendants objecting to the use of the word "blacklisting." At that point, the judge hearing the case asked, "What do you call this list if not a blacklist?" The reason for highlighting that to the Committee is that here we are, two years on in your investigation and some five years after the raid that sparked off the whole thing. You have had a number of the companies in front of you telling you how terribly sorry they are for what they did, yet there would appear to be a denial, beautifully exemplified by the fact that the companies are still saying that they did not take part in blacklisting. It was apparently vetting, or some other euphemism for what they actually did.

I hope that gives you a reasonably good flavour of what the problems are. We can give you probably another 15 or 20 points, if that would help.

Q3669 Chair: But apart from that it is okay.

Justin Bowden: Apart from that it is pretty good.

Gail Cartmail: Can I make one additional point on employment, which is a shared issue between us? One of the points that we put to the scheme representatives is that a real test of whether or not a company has cleansed contains a number of things: first, a transparent employment policy, and driving that through the contractor chain; and, secondly, taking positive action measures to employ and subsequently upskill blacklisted workers.

I am afraid that the response from the scheme representatives was disingenuous. They said that instigating positive discrimination—ignoring that this would be positive action—in favour of a set group of workers could leave the companies open to legal action. That came from a very reputable legal firm, and it is disingenuous. Of course an employer can take positive action measures if there are disadvantaged groups. For example, if you have two qualified electricians and it is a tie-break, you certainly can take positive action in favour of a disadvantaged group. That was really disappointing.

In the bundle that we are going to hand you, there is a case study of a blacklisted electrician. We show the minimal effort and cost required to upskill that person, who has not had a job on a major contract since being blacklisted. We are engaged in supporting that worker, but it is a rather hopeless cause if there is not a job at the end of it. What the scheme representatives proposed to do was work out some means by which they might support and assist upskilling, but not provide any support in respect of direct employment and a job. That is one thing that they could easily do. Some of the companies involved do have directly employed people, but it was emphatically and flatly refused. We feel that that is a measure of the scheme being a way of getting rid of the cases, as opposed to genuinely changing the habits of the industry.

Mr Murphy: As Justin said, there is not a cigarette paper between us on this; we have worked together very closely. I would like to make one very quick point. There is no remedy other than compensation. For example, the adjudicator cannot force the companies to undertake not to blacklist them again in the future. We have already discussed this afternoon how loopholes can be found and what the industry is like. That is a very important point, along with the other points that have already been made.

Q3670 Chair: Can you be clear about that? Where has the adjudicator said that he cannot instruct them not to blacklist?

> ***Mr Murphy***: That is what they have said. They cannot force the companies to undertake not to blacklist them again in the future.

Q3671 Chair: What are you reading from? Is it something from the scheme, or is it your own note?

> ***Mr Murphy***: This is from the lawyers' brief.

Q3672 Pamela Nash: I do not quite understand that point, because blacklisting is illegal.

> ***Mr Murphy***: We want the industry to say that it will not blacklist anybody again in the future. It is all right to say it is illegal, but all the trade unions want that statement to be made by the companies.

Q3673 Chair: Is that not covered by the proposed adoption of the code of practice from the personnel and development people?

> ***Gail Cartmail***: Not really. The Committee heard evidence from the chief executive of the contractors' organisation, who famously did not acquit himself very well. Subsequently, the contractors' association came out with a statement that it would welcome a code of practice. Our view is that, frankly, there needs to be a statutory code of practice—not a voluntary one—that would have status in employment tribunal courts. The scheme representatives have declined to pick that up. Clearly, they do not have an appetite for a statutory code.
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> We could not come up with a statutory code of conduct; the employers could not come up with such a code. All we asked was that we go together to Government—to BIS—and make the case to ACAS and Government representatives for a statutory code. That was declined.

Q3674 Chair: Can I go back to the recommendations we were making a while ago? There were two areas: looking back and looking forward. Looking back, we thought it was important that apologies were given. Do you feel that the industry or the companies involved have made adequate apologies?

> ***Justin Bowden***: Referring to the point that Steve has just made to you, it will be largely about cash at this stage because there is not an awful lot more that can be got for people. They may consider that the amount of money that they have proposed is a "sorry"—a genuine act of contrition. Our view is that it is not, with the exception of the four grand for the name-only individuals.

In terms of an apology, one would have thought, given the protestations of regret made under oath to you, that they would be able to come up with a pretty serious and simple way of saying, "We're sorry for what we did." I am greatly troubled that as recently as last Thursday their very highly paid lawyers were trying to dance on the head of a pin in the High Court to argue that they had not taken part in blacklisting at all and that in fact it was just a vetting operation. That suggests that there is not genuine contrition and that they are not really sorry, beyond the point that the Committee has put to a number of different people a number of times, which is that they are sorry only that they got caught. We would have expected to see a much clearer apology than we have got, supported by all of the elements we have referred to—in particular, by proper levels of compensation.

Q3675 Chair: To cut across what we were going to ask you, let me turn to the levels of compensation. The media announcement that TCWCS sent out says in its second point that the scheme is offering compensation levels "significantly higher than those through the High Court"; those words are in black type. The scheme seems to be suggesting that they are offering much more than would be available by any other route, which obviously would be a recommendation to people to accept it. Can you clarify whether or not that is your view?

Justin Bowden: That is just not the case. I will deal again with the point about the £4,000 for individuals who are name only. As this Committee established, when the raid was carried out by the ICO, only between 5% and 10% of the information there was seized. Because whatever additional information may have been there has probably now been destroyed, there is not the depth of evidence for those people that there is for other claimants, so the £4,000 may represent what people could stand to win in court, or perhaps a little more. For the people who are right down at the bottom end, who primarily are not construction workers but, we believe, are most likely environmental activists, it may be just about fair for the construction companies to say that.

For pretty much everybody else, that is not the advice that we have. I have two things to say on that. One is that we are hoping to have some worked examples for you—they will be anonymised—in advance of Wednesday to give you some proper information with real cases, but without names, to show you what somebody would stand to win if they voluntarily entered into the scheme, against what the lawyers are telling us somebody would stand to win in court. Secondly, to give you a flavour of that, when I asked about this specific point, the lawyers told me that our claimants who are construction workers would be looking at a factor of probably three to five times what is being proposed, certainly under the fast-track scheme.

On that basis, it is nonsense to say that people stand to get much more than they would by going to court. That is just ridiculous. If it were the case, we would advise them to take all this money. What would we have to gain from spending potentially millions of pounds in court to win people less than was on the table for them now? It is completely counter-intuitive.

Q3676 Chair: Is there a basis on which the figure of £100,000 has been arrived at? You were involved in discussions with them for eight months, if my notes are correct. Was the £100,000 discussed? Was that identified as a figure to which any particular significance was attached? If the upper figure is £100,000 and the lowest figure is £4,000, presumably that sets a ladder in between the two and has consequential knock-on effects upon the other assessments. I am just trying to identify the basis of this £100,000 maximum.

Justin Bowden: To the best of my recollection, it does not have any scientific basis. It is not a percentage or factor of any other amount. I guess it is just a nice round figure that is designed to grab the attention of people they would like to buy off through their scheme or to get some kind of media coverage.

Q3677 Chair: Was there any discussion about the size of the overall envelope—the payout as a whole—that was being established as a target figure or an amount that was being set aside, and that therefore drove the consequential individual amounts?

Justin Bowden: No. I asked whether there was a capped figure and an amount of cash that they had to spend in total and was told that there was not. I took it at face value that that was the case, but from the way in which it is constructed it looks very much as if there is a round figure within which people are being expected to work. That is a question you will have to ask the companies and the lawyers when they come in.

Q3678 Chair: You are here today, so we are asking you.

Justin Bowden: Our experience of dealing with large private sector companies around everything from pay through to other negotiations is that somebody at a senior level says, “Don’t spend more than this and go off and deal with it.” It would seem logical that that is the case. I cannot believe that the lawyers drawing up the scheme did not have to go back and get sign-off and that they had an open cheque book.

Gail Cartmail: There are two additional points. One is that the first the trade unions knew of this scheme was the day the embargoed press release was issued. Why is that relevant? It is relevant because the person who was visiting our offices had a pretty clear idea in his head about the starting and finishing points of awards, so it did seem predetermined. They did change a bit. In a sense, it feels like there has always been a plan in respect of the awards. The second thing is that there are staging posts, almost like a tariff—name only is £4,000 and you have to jump through some hoops to get to the maximum award—but they are not transparent and do not relate to anything. They are simply amounts of money that the scheme representatives have advanced.

Mr Murphy: It is very important to remember that the trade unions have not gone into negotiations on any figures.

Q3679 Chair: Did you not table figures at any stage of the discussions? If you had this dialogue for eight months, what were you talking about?

Mr Murphy: What dialogue?

Q3680 Chair: Surely figures came up at some point.

Gail Cartmail: The impression given by the press releases, which were obviously put out highly professionally, was that there was something that you would recognise as negotiation—the sort of thing that you might normally have between the trade union and the contractor. This was conducted via lawyers. My union had one meeting in person with the legal representatives; there were then discussions between legal representatives, but we ran out of road. On really important things, like not seeing this simply as a financial scheme but looking wider at the industry's employment practice and so on, we ran out of road at a fairly early stage. Some of the parameters of the scheme did change for the better. The £1,000 is now £4,000, but our representation at the earliest stage was to say that the figures being advanced by the scheme representatives were nowhere near enough.

Justin Bowden: GMB had more than one face-to-face meeting with the lawyers acting for the construction companies. Figures were mentioned, particularly by the lawyers, in the course of those discussions. The last piece of correspondence, which I wrote to them back in June, said, in a nutshell, that the amounts of money that they had in mind were way short of what would be reasonable compensation for what had happened and of what they were looking for, which was some kind of endorsement from us as part of the scheme. Of course figures will have been mentioned, but the figures they came up with and launched are way short.

Q3681 Jim McGovern: I get the impression that we are saying that one size fits none, as it were. You cannot just say, "We'll give everybody four or 100 grand." Two of the very first witnesses we heard in our inquiry into blacklisting were construction industry workers from Dundee. It is a bit ironic that you mentioned electricians. These guys were both electricians. Both are now retired, so upskilling and finding new employment does not apply to them. They provided documentary evidence to prove that they had been blacklisted. They could not find work in their own city and had to leave Dundee to seek it elsewhere. They did seek and gain alternative employment. Gail, you said it was up to the lawyers to gauge what the compensation should be, but how would you gauge that for someone who managed to find alternative work but had to leave their family and home to do so?

Gail Cartmail: That is not within the calculation of this scheme. That is one of our complaints, as Justin referenced earlier.

Justin Bowden: In some respects, you cannot put a price on something like that. It is almost impossible.

Q3682 Jim McGovern: I still see these guys, who ask me what they should be trying to claim. I say, "Have a word with your lawyers."

Justin Bowden: Some of that loss is priceless, but the job of the courts is to try to attach a figure to some of these things. As Gail quite correctly says, the scheme does not take account of anything like that, so the only way in which you can get some kind of compensation for it is through the court process. The courts will have precedents for making payments that they will consider appropriate for that type of loss. Whether you or we would agree that they were fair is another matter, but at least there would be some payment. The scheme as it stands does not take into account that type of thing.

Q3683 Jim McGovern: So your recommendation to your members is not to get involved in the scheme but to pursue it through the courts and let the courts decide what compensation they are entitled to.

Justin Bowden: From the GMB's point of view, very simply, we would look at each individual's claim on its merits and what they would stand to get from the scheme and advise them accordingly. We would give them a straight answer. If they would be better off entering the scheme, we would advise them to do it; if they would be better off going to court, we would give them that advice. For the vast majority of people, they would be better off going to court. The only ones who may stand to do better out of this are the name-only individuals, who could get four grand. I am trying to give you a very objective response.

Q3684 Jim McGovern: The very comprehensive explanation of the disadvantages of the scheme that you gave would suggest that most people would be better going to court.

Justin Bowden: Yes. Our job as trade unions is not to make the decision for people but to give them accurate information and the legal advice that they need to make the right decision for them. As it stands, outside the name-only individuals, the advice we would generally give to people is that they can win an awful lot more, potentially, if they go to court. That is then a decision for the individual, quite rightly.

Q3685 Chair: Part of the difficulty of going to court is the length of time. I want to explore with you the extent to which people are going to be caught in a dilemma. As I understand it, it is proposed that the scheme will be open for only two years. I am not quite sure why it is two years; if you could cast any light on that, that would be helpful. My understanding is that the court cases might not be determined within two years. People would be faced with the dilemma that the scheme was about to self-terminate, as it were, and they would not know what the precedent was going to be for the court cases, so they would have a choice about what decision to make. Is that correct?

Justin Bowden: It is interesting that that date has been picked. As we have already said today, in our view that is one of the reasons the lawyers acting for the construction companies have sought to delay the court process, if they can. It presents people with at least the certainty of what we view as an inadequate payment, versus the uncertainty of when the court may ultimately hear their case. That said, the judge was very clear last Thursday. As he described it, the skids were under this case and it was moving inexorably to trial. He said, “If I have anything to do with it, this case will be tried”—in other words, will have completed—“by April 2016.”

Q3686 Chair: So it would be finished before the scheme expires.

Justin Bowden: Yes.

Q3687 Chair: If that timetable is stuck to, it will be possible for people to wait and see whether or not they would do better in court than in the scheme and, if better in the scheme, to rush into that at the last minute.

Justin Bowden: Potentially. Throughout the negotiations, all three unions have adopted the position of saying that the scheme should not be time limited and should be open-ended. We have done so for a whole variety of reasons, including one we have not touched on today—the fact that there are still hundreds and hundreds of people who do not know that they are on the blacklist in the first place. If this is more than a time-limited public relations exercise designed to get an embarrassing irritation, to say the least, out of the way, there should not be any rush to close the scheme. It should be there effectively to allow people an opportunity to come into it. We also said early in the negotiations that people should have a choice. They should be able to go into the scheme to see what they would get and, if necessary, to decide at the end that that was not for them, to come out and to continue with the High Court.

Q3688 Jim McGovern: The two witnesses I mentioned earlier, who were construction industry workers from Dundee, were definitely blacklisted. I do not know whether you would say they were being cynical or pragmatic, but they say to me, “Jim, we’re pensioners now. They’re just waiting for us to die. There will be no compensation.”

Gail Cartmail: That is a pressure. One thing that has not been touched on is that the scheme representatives failed to get disclosure of the names and addresses.

Q3689 Chair: Can I come on to that in a moment? I want to finish this point.

Gail Cartmail: The reason I was picking it up is that we know that if the scheme writes to everybody for whom there is a name and address there will be very vulnerable people, who may be ill, because of the onerous nature of the industry, or older, for whom anything above £4,000 is a very big amount of money. That is a concern.

Justin Bowden: It took until October last year for the companies—and then only eight of them—to put up their hands and make some kind of apology and to say that they wished to enter into some kind of compensation scheme. Quite rightly, we have rubbished the scheme itself to a large degree, but it took several years even to get to that position.

Q3690 Jim McGovern: I have nothing but the greatest admiration for the way the trade unions have pursued it.

Justin Bowden: The individuals are right to be cynical; the reasons for that are perfectly understandable. The construction companies adopted a very cynical approach to them, which was to try to get away with what they did. Ultimately, they have been dragged kicking and screaming to be held accountable by you, apart from anybody else, and forced to cough up and compensate—to own up, clean up and pay up. We had to campaign for 18 to 24 months to get them even to come to the table.

Q3691 Jim McGovern: Employers have done it for many, many years to individuals in that situation, haven't they?

Justin Bowden: Those individuals have to make the right choice for them. All we can do is give them the information. It is up to them.

Q3692 Chair: In terms of choices, I am unhappy about the idea that people have to throw a dice and to go this or that route. I have been approached with the suggestion that the scheme should be in the nature of an interim award. If at a subsequent date the court establishes benchmarks, the scheme should recast the ladder of financial settlements. If somebody settled just now for a certain figure, perhaps on the basis that they were worried about how long they had to live, and the court subsequently found that people in equivalent circumstances should get more, the scheme would increase that payment and that person or their descendants would get an enhanced sum of money. Was something like that ever discussed with you?

Justin Bowden: It was certainly put forward jointly from our side. I stand to be corrected on the exact date, but I believe it went in just before or after Christmas, as part of a package of comments, criticisms and alternative proposals around the original scheme from the employers. For want of a better expression, somebody could have a payment on account as an interim payment in advance of something happening. We would be interested in doing that.

A wider point is that, when the scheme was launched, in the first contacts that we had with those representing the companies we were told that they were approaching it with a blank sheet of paper and that anything and everything was open to negotiation. Very quickly it proved to be the case that that was not what they had in mind. They came with a fairly tightly restricted and preconceived idea of what the scheme would look like and how it would operate. They were prepared to make some changes on the periphery and to increase some of the figures. In percentage terms, an increase from £1,000 to £4,000 sounds quite exciting, but for blacklisted construction workers the figures have not moved significantly. The 100 grand that you have rightly questioned has not moved at all.

Q3693 Chair: Coming back to the question of any settlement under the scheme being in the nature of an interim payment to be subsequently changed, should there be a court judgment, would that meet with your agreement and approval?

Justin Bowden: Yes. That could be the basis for further discussion and negotiation. It is not a ridiculous idea; indeed, we suggested it previously.

Q3694 Chair: The third point is the one you touched on, Gail—the question of people in the industry getting re-employed. The information that we have had is that there are circumstances where special arrangements can be made to enhance people's opportunities and so on. Has there been any dialogue between your lawyers and the scheme's lawyers that would allow this to be further explored, or is all dialogue between the two groups completely finished?

Gail Cartmail: We are not in dialogue on that now. There was an absolute blanket refusal to look seriously at the question of employment. These are highly qualified lawyers who wrongly characterised our proposals as direct discrimination. We were talking about direct action. It was said by the lawyers for the scheme that a contractor cannot compel a labour supplier or agency to employ this or that person. Truth be told, this Committee knows very well that contractor organisations compelled agencies to dismiss. If they can fire, they can compel to hire. This is absolutely doable. It is so frustrating to our people of working age who have had significant loss of income because they are doing jobbing work.

Q3695 Chair: I understand the general moral point. None of us here is legally trained. This is something we will raise with the companies and will want to pursue at some stage. It also relates to my point about how we want to look forward. One was the question, as at Hinkley Point, of direct employment; we still stick by that. However, there was also the question of the guidelines, as at Hinkley Point, on how any recruitment scheme would be monitored. If people were trained up to the appropriate level, having been previously discriminated against, it would be open to you to monitor the employment procedure to make sure that they were not discriminated against again. That is not quite the same thing as giving them positive discrimination, but it would ensure that they were not being discriminated against or blacklisted again. Would that not be a route forward?

Gail Cartmail: I have included in the bundle to leave with this Committee the Balfour Beatty policy for the recruitment of permanent, fixed-term, temporary and contract workers. It is opaque, to say the very least, in respect of real life. Under this very weighty recruitment policy, there is a small bit that in real life would be applicable to electricians, mechanical operatives and the sorts of people we have put forward, who are the disproportionately larger number of blacklisted workers. For temporary and contract workers, Balfour Beatty has engaged the services of Advantage xPO, but there is nothing about that in this document. I do not believe this is an industry that is capable of self-regulation. There has to be a statutory code.

That said, unless and until organisations are willing to take more responsibility for direct employment and to show transparency in their recruitment processes, we will get nowhere. It is really hard for people. The reason I am looking at Balfour Beatty is that anecdotally we have people who are frustrated in their attempts to get employment with the company. We asked to see the recruitment procedure, which was provided very promptly, but it is hard to apply that to the sort of people who are complaining that they have not been employed. It is a vicious circle. Until we get a breakthrough where a company says, “Do you know what? We admit it. We subscribed to the Consulting Association and are guilty as charged. We know that there are operatives on that list who are highly skilled and qualified. We’re going to open our doors and be a welcoming employer,” we will never really feel confident that this is an industry that is willing to self-cleanse.

Mr Murphy: Gail is absolutely right, but the trade unions have a huge role to play in that, haven’t they? There has to be engagement by the employers with the trade unions to make sure that this does not happen again. We should have representation within these companies.

Justin Bowden: The position you set out would make a huge difference, Chair. So would what Gail said, which would give it the whole ticket, but what you have said is workable and would make a huge difference.

Q3696 Chair: What I am proposing is based on what you drew to our attention, which has already been adopted by Laing O’Rourke at Hinkley Point and EDF. It is obviously doable in the industry.

Justin Bowden: Where there’s a will, there’s a way on this. You have relayed a working example that operates as we speak.

Gail Cartmail: The key thing is that it is by negotiation with the trade unions. Nowhere in this scheme is there any acknowledgment of a trade union role. Who is going to monitor objectively with EDF the performance of contractors in respect of transparent employment?

Q3697 Chair: Is that not in the personnel development people’s guidelines?

Gail Cartmail: In our view, the CIPD guidelines are not fit for purpose for the construction industry.

Q3698 Chair: I had not picked that up before. Did they have dialogue with you when formulating those?

Justin Bowden: No.

Gail Cartmail: I was consulted on the CIPD guidelines. I saw a draft copy and put forward quite detailed concerns, none of which has been accommodated. It is a broad brush. It might be fine for a retail organisation that employs people directly in the main, or whatever, but it is not fit for purpose for the construction industry.

Q3699 Chair: The scheme were resting some of their case about having moved on from the past on saying that they were adopting the CIPD’s code of conduct. I do not think the

Committee was aware that that code of conduct had not been drawn up with much input from you or that it was not agreeable to you.

Gail Cartmail: The TUC was provided with the opportunity to comment; it saw great shortfalls. I was offered the opportunity to comment; I saw great shortfalls. In my view, the final product is not fit for purpose for an industry that has undertaken these practices carte blanche. It is not construction specific. There are characteristics of construction that are different from other sectors of the economy.

Chair: That has been very helpful.

Q3700 Graeme Morrice: Going back to the issue of compensation, you probably answered the question I was going to ask when Jim McGovern asked you what advice you would give to your members about their participation in the scheme. Justin said that it is horses for courses and depends on their individual situation. It may be advantageous to go for it, but it may be advantageous to continue to pursue court action. That is fair enough. Can I get an indication of what kind of uptake there has been from your respective members in relation to the scheme in, say, the first 10 days of its introduction?

Mr Murphy: We do not have any indication of that. Members have not reported back to us on whether or not they have taken up the scheme. What is important is that each of us has a large number of cases going to the High Court, as you know.

I tried to catch Ian's eye on one point, but we went on to another debate. The scheme has a time scale of two years. In our view, it is very cynical not to allow proper time if our members want to go to court and have their say. It was only because the judge said last Thursday that the skids were under it that it may get there no later than April 2016. A question really needs to be asked about the two-year time scale.

Q3701 Chair: Is it your view that the firms are deliberately trying to spin this out?

Justin Bowden: Yes.

Mr Murphy: I think they are trying to do it within that time frame. I know I am repeating myself, but it was only because the judge said the skids were under this and they were going to try to get it done by April 2016. I think they had not taken that into account when they put the two-year time frame on it. It is putting a gun to people's heads. Jim referred earlier to people who have retired. You can absolutely see that, but I believe this is blackmailing members to jump before they can have a fair hearing in the courts.

Justin Bowden: Two separate processes are going on in opposite directions here. The companies would like to accelerate and to proceed as quickly as possible with their compensation scheme, with as many people as they can possibly persuade and entice into it, while seeking to delay and slow down the court process as far as they can. There is a clear relationship between those two points, which you have completely grasped. The one feeds the other.

Q3702 Chair: That would tend to indicate, would it not, that they are neither genuinely repenting nor self-cleansing? That has consequences for other things, doesn't it? Is that your view? I want to be absolutely clear. Unfortunately, nodding does not get recorded by *Hansard*.

Justin Bowden: Very clearly, this does not constitute genuine contrition. In our view, in no way does it constitute self-cleansing, either literally in terms of the guidance and legislation or metaphorically in the widest sense. Our view would be that the fullest possible weight of the public procurement process should be brought to bear on the companies.

Gail Cartmail: I agree with that. I was nodding vigorously because from the very start it did not seem a sincere attempt at negotiation. Somebody came to us on the day the press release was issued with a very specific predetermined agenda. I do not think we were really invited to discuss the content but rather the delivery. I referred earlier to the failed attempt by the scheme representatives to get disclosure of the names and addresses held by the ICO, which was conspicuous bad faith. It would have been quite outrageous if the organisations that blacklisted these workers had managed to get their names and addresses. That did not happen, but it does show a bit of mindset—"We know what's best for these blacklisted workers. If you would only allow us to get at them with this scheme, lots of them would join up." It is not respectful and just adds injury upon injury to people who have lost out terribly.

Q3703 Chair: I must admit that I was a bit surprised when I heard of the direct approach to the ICO, because in the discussions that we had had with the scheme that had never been mentioned. We will raise that with them in due course.

We can now draw a line under that item. The third issue is to do with Atlanco Rimec. This is mainly a case of your giving us material that we can study later on and progress. We do not want you necessarily to read it all out; maybe you could summate the position you have arrived at.

Justin Bowden: I will not read it out. I have given the Committee for public consumption a three-page note on a company called Atlanco Rimec. GMB and the other trade unions, which are working very closely together, are in the process of undertaking a very detailed investigation into this company. We hope to conclude a very detailed report around the end of the summer or in early autumn. We would be more than happy both to give that to the Committee and to give further evidence on it, should you consider it to be appropriate.

Suffice it to say that we can place on record now what we know in summary about Atlanco Rimec. The most important thing about that is that they are contemporary blacklisters. We can look you in the eye and say with all confidence that we have evidence that they have been undertaking blacklisting of workers in the extremely recent past.

As to what or who they are, they are an agency. They could also be described as a temporary employment broker. They are a very large and sophisticated company that is made up of a web of some 60-plus companies. There are probably 70 to 80, including those that they close down. They open them up and close them down as they accumulate debt or the issues become too great. You will be surprised to hear that many of the shareholding companies are based in Jersey.

The financial officer of several of the companies—this is very complex, as I said—is Catherine Foy. She has admitted to DR, the Danish Broadcasting Corporation, that it does keep a register of its workers. We believe that this recruitment agency has up to 500,000 employees on its books. It has offices in the UK, as well as a number of other countries across Europe, and is run by a guy at the top called Michael O'Shea. Basically, its model is bidding on contracts at northern European prices, in simple terms, and employing labour at southern and eastern European rates, generally from those countries. It then creams the bit out of the middle. Frequently it creams out tax and national insurance to boot on the back of that, so it makes a healthy rate of return on that basis.

We have some UK examples of blacklisting by the company. I will read out a couple: "No. Not a reliable person. Contacted unions"—"No" means "not to re-employ," by the way; "Worker was involved in union struggles, turning other workers against Rimec"; "No. Left without notice; involved in the union; turned the other workers against Rimec"; "No. He will never be employed by Rimec again." So it goes on.

Several of the building companies that operated the Consulting Association database also use Atlanco Rimec to provide labour for them. We know that there are names that appear on both the Consulting Association blacklist and the Atlanco Rimec blacklist, so we have uncovered an apparent crossover between those. Gail will give you some details of that in a minute.

Importantly, one of Atlanco Rimec's many recruitment companies, Pure Healthcare Staffing, based in Northampton, is an accredited provider to the NHS, bringing in nurses and healthcare agency staff from Bulgaria, Greece, Hungary, Italy, Portugal, Romania, Spain and so on. It is one of 39 approved nursing and social care agencies that supply to the NHS through a national framework agreement with the Government Procurement Service. That is probably slightly outside the remit of this inquiry, but I imagine that you will be concerned to know that.

UK projects have included St Barts in London; Langage power station in Plymouth; the Isle of Grain terminal at Rochester; Dragon LNG terminal at Milford Haven; BVT Surface Fleet Solutions in Scotland; the 3Rs school project in Aberdeen; and Glendoe hydroelectric scheme at Fort Augustus. In our view, this is the real deal. It is an extremely sophisticated and hard-nosed company that is clearly exploiting workers and—I choose my words very carefully—arguably engaging in modern-day slavery.

Gail Cartmail: There was a particular situation—I have the details here—involving a particular Alstom contract. A man called Brian Mills, who lives in Scotland and is Scottish, had an unblemished career as an apprenticed erector from 1974 to 2008. He started working for this organisation and immediately reported his concerns about health and safety. I have a statement from him: "What I saw in relation to rigging was horrific." He challenged the absence of safety passports. We have attached a job advert, which stated that speaking Polish was a requirement. There were all sorts of issues. The way this situation was parsed was that this was a British job for British workers, but those were not the facts at all. The upshot was that 18 workers were dismissed. The charge hand supervisor was asked by the Swiss representative of Atlanco Rimec whether he was supporting those 18 workers. He said he was and was therefore fired.

We fast-forward to now. Between 2008 and his incurring ill health in 2012, he had only one year's employment, despite making many applications. He had never had a broken employment period prior to that. His employment was as an erector, not as a charge hand or supervisor.

When we got disclosure of his Consulting Association file, it said: "Above orchestrated strike action of 18 workers at Langage power station project, Plymouth, and was centred on 200 positions on site to be filled by agency Atlanco. Of these, 18 workers were let go in favour of Polish immigrants. Issue was one of British jobs for British workers. The above general foreman was the leader who sucked the others, all easily led." This guy had never been a trade union representative; he was merely a member of the trade union and had stood alongside people because of his concern about health and well-being. That is quite an extraordinary example when you look at it in the big world, but in the world of blacklisting it is typical. I have the statement and the ICO file for the Committee to have a look at.

Q3704 Chair: It would be helpful if we had that, because we would be interested in who put the information into the file. You mentioned a crossover, but what I am not clear about from what both of you have said is whether there was a crossover of data from the Consulting Association to this firm, and vice versa, or whether the same individuals were identified by each of them—not necessarily simultaneously—and had records. Obviously the two things are different.

Gail Cartmail: This person was dismissed by this agency in 2008. Apart from one year, he had no other work until he became unable to work due to ill health in 2012, despite making many applications to different companies. We know that he was put on TCA's list in 2008.

Q3705 Chair: As a result of his involvement with Atlanco.

Gail Cartmail: Indeed.

Q3706 Chair: That is what I wanted to be clear about.

Gail Cartmail: The TCA note wrongly claims that he was a leader of workers.

Q3707 Chair: Obviously we will have a look at the material. You are suggesting that, like the construction companies, this agency was feeding names into TCA and therefore should be caught in many ways by the same sort of process of contrition.

Gail Cartmail: It is even more interesting. We do not know that Atlanco Rimec fed it in, but we do know that it was there coinciding with his dismissal. What is important to note here is that he had never had a problem with employment; in fact, he had a problem with too many job offers. Despite applications to myriad different organisations, he was not employed. That is an experience that cannot easily be explained.

Q3708 Chair: I understand the point entirely. He got on to the blacklist and was then blacklisted. What I am not clear about from what you are saying is who put him on to it and whether or not he came on to it from Atlanco.

Gail Cartmail: We do not know that. What we do know is that Atlanco Rimec has a blacklist and that TCA had a blacklist. It is highly probable that this person was on those two lists at least. The spread of the effect of this blacklisting is possibly wider than even those companies that subscribed to TCA.

Q3709 Chair: We will have to have more evidence on some of these points before we can draw firm conclusions.

Justin Bowden: We will provide that.

Chair: In the meantime, if you could give us the material you have, that would be very helpful. We are interested in looking specifically at contracts and sites in Scotland. Again, there is the question of whether or not these are public sector contracts and of the extent to which the public sector in Scotland could reasonably be expected to have known some of these things. There are some they might reasonably not have known, but they ken noo, as it were. We will therefore have to look at how we take forward some of these issues.

I think that covers that as well. Normally the last point is whether you have any answers prepared to questions we have not asked, which gives you the opportunity to raise any other points. You cannot have many unexpressed thoughts, but just in case there are any issues we have not picked up we thought we would give you the chance to say so. If not, thank you.