



Scottish Affairs Committee

Oral evidence: [Blacklisting in Employment](#), HC
272–ii

Wednesday 16 July 2014

Ordered by the House of Commons to be published on 16 July 2014.

[Watch the meeting](#)

Members present: Mr Ian Davidson (Chair); Mike Crockart; Jim McGovern; Mark Menzies; Graeme Morrice; Pamela Nash; Sir James Paice; Simon Reeve; Mr Alan Reid; Lindsay Roy

Questions 3710 - 4161

Witnesses: **Callum Tuckett**, Group Finance and Commercial Director, Laing O'Rourke, **Andrew Ridley-Barker**, Managing Director, VINCI Construction UK, and **Nick Pollard**, Chief Executive Officer, Balfour Beatty, gave sworn evidence.

Q3710 Gentlemen, as you will be aware, the Committee has been looking at blacklisting for quite some time. We started off by looking at health and safety issues, and that led us to this. Subsequently, we have been looking at various other issues, such as the national minimum wage, zero hours and so on. Today, initially we want to focus particularly on your three companies. We have already had some evidence from Balfour Beatty, but we want to clarify its position and that of the other two companies as well. Perhaps we could start off by asking each of the companies, starting at this end, to clarify what your involvement was with the Consulting Association and its predecessor the Economic League.

Nick Pollard: As you say, Chair, Mike Peasland gave evidence to this Committee and therefore you had it first hand. I am unable to add to that particularly in any way. My understanding is that during a period that ended in 2009 the business was involved with the Consulting Association and did things that, in hindsight, we deeply regret and wish we had never done. We clearly behaved in a manner that morally we wished we had not; it was wrong. The fact that it was industry practice does not make it right. Essentially, that is why we are here today.

Q3711 Chair: Can I just clarify: the Economic League?

Nick Pollard: I have no other details to add to that. I am aware of the Consulting Association and have read Mr Peasland's evidence, but I have no further information on that, I am afraid.

Q3712 Chair: You are coming along today not knowing whether or not your firm was involved with the Economic League, which was the predecessor of the Consulting Association?

Nick Pollard: My understanding is that some of those records were involved in the work that the Consulting Association executed, but I am afraid I have no first-hand knowledge of the Economic League.

Q3713 Chair: To be fair, when we ask witnesses along on behalf of their companies we do not necessarily want to rely on first-hand knowledge. We expect the individual to be speaking on behalf of the organisation. I just want to clarify whether or not your company or its various predecessors were involved, as far as you are aware, with the Economic League.

Nick Pollard: I am afraid I have nothing further to add to my comment. I do not want to go off on some tangent that I am not personally confident of giving you evidence on. I am under oath. I am not going to sit here and pretend that I know something if I don't—I am sorry.

Q3714 Chair: In that case, we would ask you to clarify for us subsequently, in writing, the involvement of your firm with the Economic League.

Nick Pollard: I will do that with the greatest of pleasure, Chair; thank you.

Q3715 Chair: I would not expect it necessarily to be with pleasure, but I understand the point you are making. Mr Ridley-Barker?

Andrew Ridley-Barker: VINCI was a member of TCA from 1993 until 2009 when the activities of the organisation ceased. Again, I would like to take this opportunity to apologise for the activities of our organisation, for its membership of TCA at that time and any harm it may have caused any individuals from that association. It is wrong; we should not have been part of it. We are very clear on that.

With regard to the Economic League, in the investigations that I have undertaken, I have not been able to find any evidence that VINCI was part of the Economic League. As you may be aware, VINCI acquired Taylor Woodrow in 2008. Taylor Woodrow was also a member of TCA from 1993. It ceased its membership in 2000.

Q3716 Chair: Thanks. Mr Tuckett?

Callum Tuckett: Laing O'Rourke's involvement with TCA essentially revolves around two companies that we acquired. We acquired Crown House Technologies in 2004 and prior to that the O'Rourke business acquired the John Laing organisation. The involvement with TCA was principally through those two organisations. It did continue after the point of acquisition, and it ceased in 2009. There is another instance of a Laing

O'Rourke company being involved in using TCA, or seeking information from TCA, but that related only to existing employees, and I believe it was checking references, essentially.

Q3717 Chair: Can you be a little clearer about the last comment you made? What was the date of that?

Callum Tuckett: That would be between 2007 and 2009. Very clearly, from the investigations we did there certainly was some contact with TCA from Laing O'Rourke organisations at that point, but, to be clear, that was existing employees; it was not a situation where anybody was denied employment through that.

Q3718 Chair: What was the point of checking existing employees with TCA?

Callum Tuckett: Essentially, the information I have and the notes I have been given from the investigations we have done internally is that it was checking qualifications that people had put forward. If they had provided specific cards or types of information they had about qualifications, it was to check those. There were never any responses from TCA, so inquiries were made but no responses were forthcoming.

Q3719 Chair: But TCA did not hold professional qualifications.

Callum Tuckett: That is the information I have. I do not know what TCA did and did not hold, to be honest.

Q3720 Chair: And the Economic League?

Callum Tuckett: I am quite sure that the John Laing business had some involvement with the Economic League, but none of the Laing O'Rourke or O'Rourke companies had any involvement with it.

Q3721 Graeme Morrice: Can I ask all three of you when you ceased to use the services of the Consulting Association?

Nick Pollard: When we ceased to use it?

Graeme Morrice: Yes.

Nick Pollard: The investigation showed that we ceased using the Consulting Association in 2009.

Q3722 Graeme Morrice: Was that before or after the ICO raid?

Nick Pollard: There had already been a recognition before the ICO raid that this was a practice that should stop, and the business, I understand, stopped any involvement with TCA in 2009. I am not aware of the specific date, but it would be a similar time.

Q3723 Graeme Morrice: You are not sure whether it was before or after, but it was round about that time.

Nick Pollard: I would imagine it was either at the time or before.

Q3724 Graeme Morrice: But you could confirm in writing specifically.

Nick Pollard: Sure.

Q3725 Graeme Morrice: That would be useful. Mr Ridley-Barker?

Andrew Ridley-Barker: VINCI ceased activities with TCA when TCA ceased operation.

Q3726 Graeme Morrice: Can you confirm the year?

Andrew Ridley-Barker: In 2009.

Q3727 Graeme Morrice: In 2009.

Andrew Ridley-Barker: Correct.

Q3728 Graeme Morrice: Was that after the raid then?

Andrew Ridley-Barker: Yes, when TCA was disbanded.

Q3729 Graeme Morrice: So after the raid. Mr Tucker?

Callum Tuckett: The ICO raised the issue with us in 2009; I think it was March 2009, from memory. We commenced some internal investigations at that point and identified that the Crown House business we had acquired was accessing information through TCA at the time, and any involvement with TCA ceased at that point.

Q3730 Graeme Morrice: To clarify, that was following the ICO raid.

Callum Tuckett: Yes.

Q3731 Chair: Two of you said that you stopped using it only in 2009. The assumption we can draw is that you would have continued to use it had it not been shut down. You stopped using it because it was shut; you did not have the option of carrying on using it. Is that correct?

Callum Tuckett: If I can respond to that, Chair, the minute that our business became aware that the practice of accessing this information was going on—so the minute it was understood at a very senior level in our business, or through our general counsel and others—we investigated that. To reinforce what my colleagues have said, the practice is completely unacceptable. It is a practice that we do not condone in any way whatsoever. It is extremely unfortunate that it has adversely affected some people. As soon as we became aware of that we ceased any practice in that. To a degree, it is uncomfortable that our organisation was not aware of that at the most senior levels, but as soon as they were they stopped that practice.

Q3732 Lindsay Roy: Can you clarify “accessing information”? For what purpose?

Callum Tuckett: Sorry?

Q3733 Lindsay Roy: Accessing information for what purpose?

Callum Tuckett: From the Crown House records?

Q3734 Lindsay Roy: From the Consulting Association.

Callum Tuckett: On the individual cases I do not know exactly why they were accessing the information. Essentially, there were two individuals involved with John Laing and Crown House who had historically been using this process.

Q3735 Lindsay Roy: Surely, you must have some idea.

Callum Tuckett: I think they were checking information about those individuals; they were checking qualifications. Beyond that, I do not know specifically what they were checking for. Individual cases will be investigated obviously, and are being investigated at the moment, but on a case-by-case basis I do not know exactly what it was.

Q3736 Lindsay Roy: All the information you have at the present time is that it was to do with qualifications.

Callum Tuckett: I think we were accessing information on those individuals. Exactly what it was I don't know. There will be a number of records of what they were asking. I don't know exactly what they were looking for.

Q3737 Chair: You are saying that there are a number of records available in terms of what they were asking.

Callum Tuckett: The ICO have a number of records in terms of cards.

Q3738 Chair: Do you as a company have records of what was being asked?

Callum Tuckett: No. The only information we have as a company is the invoices that came from TCA.

Q3739 Lindsay Roy: Mr Ridley-Barker?

Andrew Ridley-Barker: Apart from it being a hypothetical question, I would absolutely hope that we would not continue the activities of membership of TCA. I am unable to comment on whether we would or would not be.

Q3740 Lindsay Roy: It is not a hypothetical question. It was accessing information for what purpose?

Andrew Ridley-Barker: Sorry, I beg your pardon. Why were we members of TCA?

Q3741 Lindsay Roy: What information were you trying to acquire?

Andrew Ridley-Barker: I imagine we were looking to identify unsuitable individuals for employment on our projects.

Q3742 Lindsay Roy: With all due respect, imagining and not being clear about the information being sought is very unhelpful to this Committee. I would have thought you would have done your homework.

Callum Tuckett: I have certainly done the homework and read as much as I can about this, but on a case-by-case basis I do not know exactly what information was being sought. We do not have any records; we do not know how the communications happened, or whether it was verbal. The only information we have as a company that I am aware of are the invoices that came from TCA. To be quite frank, they are very limited, because the access we had as a company post-acquisition of Crown House and John Laing was very limited.

Q3743 Lindsay Roy: So there are no HR personnel left who were involved in this.

Callum Tuckett: No. Unfortunately, one is deceased and the other left the company, I think, in 2009.

Q3744 Lindsay Roy: Did you make any inquiries with him?

Callum Tuckett: There have been interviews, yes, with him.

Q3745 Lindsay Roy: And the outcome?

Callum Tuckett: In terms of?

Q3746 Lindsay Roy: Why they were seeking information.

Callum Tuckett: In the papers I have read there is no specific reference to it that I can remember.

Q3747 Lindsay Roy: In the contact with the individual concerned what feedback did you get on that?

Callum Tuckett: They explained that it was an historic thing; it was something they had done essentially throughout their careers. It was a practice that had existed in Crown House and the other organisation for quite some time. I think it is an historic issue. As my colleagues have mentioned, this is completely unacceptable. As an individual who sits on our main board, I find it a completely unacceptable activity, and it is something we would not condone.

Q3748 Simon Reeve: You are apologising an awful lot if all that happened was that somebody made a phone call to check some qualifications. Does hearing what Mr Ridley-Barker said it was all about refresh your memory as to why this was going on, or do you still say it was just about checking qualifications? If it is qualifications, could you help us as to why you are apologising?

Callum Tuckett: The fact that a business accesses information on individuals to check anything, I think, is not a practice that we would condone.

Q3749 Simon Reeve: Are we saying “information” or are we saying “qualifications”?

Callum Tuckett: What I have read—I am clear on what I said—is that the information they accessed was about checking qualifications. That is what I have read in the evidence statements.

Q3750 Simon Reeve: What do you think was going on?

Callum Tuckett: I think people were checking people's appropriateness for work, personally.

Q3751 Simon Reeve: We could have saved a lot of time, could we not?

Callum Tuckett: That is my opinion from what I have read.

Q3752 Lindsay Roy: What do you mean by "appropriateness for work"?

Callum Tuckett: Whether they had the right qualifications.

Q3753 Simon Reeve: Their height perhaps.

Callum Tuckett: I do not think height is particularly relevant.

Q3754 Simon Reeve: What sorts of things do you think it was?

Lindsay Roy: Convictions, trade union membership, health and safety?

Callum Tuckett: It could be a number of things. Today, it would be on good health and safety performance—absolutely—and checking that they had no history of that type of thing. I can imagine people checking things like that now. Back then I do not know exactly what they were checking.

Q3755 Simon Reeve: How do you know it was deplorable if you do not know what it was? What must it have been for you to condemn it as deplorable?

Callum Tuckett: I think checking information on anybody when people are not aware of that information being held on them is not appropriate behaviour. That is my personal opinion.

Q3756 Simon Reeve: Are you going to answer the question about the sorts of things you think it would have been that make you happy to describe it as deplorable? Mr Ridley-Barker has told us the answer to this.

Callum Tuckett: Mr Ridley-Barker said it was accessing information on whether or not people were appropriate for the role. I can imagine that is what it was. Exactly what the list of all those things is I do not know. I am sure it will depend on what the role was. I do not know how to be more specific with you. I am not trying to avoid the issue.

Q3757 Lindsay Roy: The difference is that you have spoken to the HR director who was involved.

Callum Tuckett: I have not personally spoken to the HR director.

Q3758 Lindsay Roy: Your company has.

Callum Tuckett: I have read a statement that he has made, and that was about whether he was involved in it and was accessing information from TCA. He was. We do not have any records of that, so we were checking with him if he had done it, and he had.

Q3759 Lindsay Roy: Would you agree that it seems less than rigorous and robust?

Callum Tuckett: Sorry?

Q3760 Lindsay Roy: Any inquiry with the HR director.

Callum Tuckett: What additional information would you hope for?

Q3761 Lindsay Roy: What I am asking is: was there anything that you believed, beyond qualifications, you could achieve from the information, or indeed was there any questioning of the HR director about that?

Callum Tuckett: I think, from what I have read in the press and various other things, obviously there is suspicion that there was significantly more information in some instances kept in TCA, and that would be around union membership, people's activities in disputes and various other things. I do not think that kind of information should be kept on anybody, and it certainly should not affect anybody's ability to be employed.

Q3762 Lindsay Roy: But your company has a responsibility, never mind reading it in the press.

Callum Tuckett: You have asked what information I have. I have read the statements. I have told you what I read in the statements. I am sharing that with you. I have also shared my personal opinion. As a main board director of our company, I am saying it is

completely unacceptable to keep records of anybody and for that to influence whether or not they can get future employment.

Q3763 Lindsay Roy: You said that nobody in senior management knew about it. Are you surprised about that?

Callum Tuckett: I am. I am very uncomfortable about that. I think they should have known about it.

Q3764 Lindsay Roy: Why did that happen?

Callum Tuckett: We acquired the company. We went through huge due diligence, as you do in a company. They were both quite large companies at the time, and for some reason that was something that was not picked up. I think that the processes and systems we have as a business now would stop something like that occurring again.

Q3765 Lindsay Roy: Your due diligence is more robust now.

Callum Tuckett: It is significantly more robust.

Q3766 Lindsay Roy: Mr Ridley-Barker, would you like to comment?

Andrew Ridley-Barker: The use of TCA was wrong; we should not have done it. It was obviously to identify individuals who were deemed unsuitable for employment on our projects. There was obviously concern at the time that those individuals would disrupt the progress of the project.

Q3767 Lindsay Roy: What were the criteria for unsuitability?

Andrew Ridley-Barker: From reading your interim report, I understand the criteria ranged from some rather bizarre or innocuous alliances or friendships with people who were also deemed to be unsuitable. It ranged from union membership right through to communist support or affiliation.

Q3768 Lindsay Roy: That is all read in the press. I am interested in what you know about your company.

Andrew Ridley-Barker: I am sorry. Could you be—

Q3769 Lindsay Roy: I am interested in what you know about your company from the information you have read. What kind of rigour and robustness was there in any investigation by your company?

Andrew Ridley-Barker: Okay; okay. This issue came to my attention in 2012. At that time I started an investigation. I must say I was completely taken aback by the allegations at that particular point in time. We undertook an investigation, led by our senior counsel, and engaged the services of an external firm of solicitors to investigate what had transpired, what our activities were and who was undertaking it. Our usage may appear relatively minor, but, none the less, we were members of TCA between the dates that I mentioned—1993 and 2009. We undertook payments to TCA of both annual subscriptions as well as payments by usage. I am sure you are aware of the system in operation at the time. Our annual payments to TCA ranged from £3,000 to £5,000. On that basis, I understand that we contributed to TCA in the range—because we do not have all the contemporary records, and did not uncover those during our investigation—of £48,000 and £68,000 over the duration of TCA from 1993 to 2009.

Q3770 Lindsay Roy: What were the findings of your solicitors' report?

Callum Tuckett: The knowledge of the activities of TCA and our membership of it was limited within our organisation. Our contact with TCA was our industrial relations officer, and to a large extent all activities were, therefore, contained with him. He represented the organisation at meetings with TCA, and it was he who undertook the contact with Ian Kerr. Faxes were sent from our HR department to TCA. These may have been handwritten notes or typed-out lists of names. I am told it may have been a page and a half on a weekly basis.

Q3771 Lindsay Roy: It is a significant amount of money. Why was that not picked up?

Andrew Ridley-Barker: The monthly payments would have been in the order of around £200 to £500. They were signed off by our IR manager. They were well within his remit and authority to sign off.

Q3772 Lindsay Roy: What has happened to that individual?

Andrew Ridley-Barker: He has retired from the organisation. He retired in December 2011.

Q3773 Lindsay Roy: Was any action taken against him? Did you interview him?

Andrew Ridley-Barker: He had left the company by the time it came to my attention. We have interviewed him on two occasions and have had numerous phone conversations with him.

Q3774 Lindsay Roy: But this happened in 2009 and he left in 2011.

Andrew Ridley-Barker: That is correct.

Q3775 Lindsay Roy: Surely there was time to be proactive and deal with it urgently.

Andrew Ridley-Barker: I agree. It did not come to my attention until 2012.

Q3776 Lindsay Roy: Why was that?

Andrew Ridley-Barker: At the time I obviously kept abreast with the situation of the ICO closing down the activities of TCA through the press and media; I had an understanding of that, but I had no knowledge of our participation during that time. It was only in late 2012 that it was brought to my attention we had been part of TCA.

Q3777 Lindsay Roy: Who brought it to your attention?

Andrew Ridley-Barker: I had a meeting with Sir Robert McAlpine, who were advising that they were wishing to conjoin us in their defence and bring part 20 proceedings against us, at which point I was taken aback. I then undertook investigations and found out that we were indeed members of the organisation.

Q3778 Lindsay Roy: Nobody from within the organisation alerted you at all.

Andrew Ridley-Barker: Not up to that point, no.

Q3779 Mike Crockart: We have kind of danced round the exact services that each of you was paying for. Mr Pollard, we have not heard very much from you. Do you have any clearer view of what you were actually paying for? What services did TCA provide for you?

Nick Pollard: I think Mike Peasland gave you extensive evidence on that here—

Q3780 Mike Crockart: Well, you are here. If it is going to be your answer to every question that you have nothing to add, then I think we are going to get quite annoyed, a bit fed up and wonder what the point is of your coming along to give evidence today. So can I make that point up front, and then ask you if you know what services TCA was providing?

Nick Pollard: If you had allowed me to finish my sentence—

Mike Crockart: Go ahead.

Nick Pollard: I have read Mike Peasland's testimony. His evidence was that it was being used to prevent disruption on construction sites. That is my understanding, because that was the evidence he gave. I have seen nothing to the contrary of that at all anywhere. I am not able to add a lot more to that.

Q3781 Mike Crockart: You do not have an internal report that has been done that you can give us as to what happened in your company.

Nick Pollard: I was briefed on this shortly after I joined the company a year ago. I was briefed by our general counsel on the matter. Before that, I was not particularly aware of the practice. I had been working abroad for part of the time before that, but I read stuff in the trade press. As to the briefings I have had, I have not sat down and read through internal reports and things of that nature. I have relied on the briefings I have been given, and my interest has been to take the company forward out of this. The phrase I have used is: it is good to look at the past but it is rude to stare. I recognise fully the problems we had in using the services of the Consulting Association. My focus has been to take this forward.

Q3782 Mike Crockart: I am sorry to butt in, but you cannot give evidence saying that you recognise fully the problems that were caused if you can't even tell me what services were provided.

Nick Pollard: The services were, for a limited number of people in Balfour Beatty, to contact the Consulting Association and ask for checks to be made on individuals. Why those checks were made I can only conjecture. I can only offer the evidence that has been given to you, which was full. I have not seen anything additive to that; I have not seen anything so far that is contrary to that. Mr Peasland's testimony was that it was in order to avoid disruption on the sites.

Q3783 Mike Crockart: I hesitate even to go on with the next part of the questioning, but let's give it a go anyway. What information did you provide to TCA?

Nick Pollard: I have no detailed knowledge of that at all, I am afraid. I understood we participated in TCA, and I have not seen any detail of what information we provided.

Q3784 Mike Crockart: You say you participated in TCA. What did that extend to?

Nick Pollard: My understanding is that we paid them a fee, and before employing people, we took references on some of those people from TCA.

Q3785 Mike Crockart: That was not my question. My question was: what information did you give to TCA, or did you give information?

Nick Pollard: I can find out and write to the Committee, but I do not have any detailed knowledge I can offer to you here.

Q3786 Mike Crockart: So no internal inquiry has established whether you were full participants in TCA in giving information to them about your own employees.

Nick Pollard: There was an internal inquiry, but I am afraid I cannot offer any detail on what information was provided to TCA sat here this afternoon. I can certainly write to you with those details. I apologise.

Q3787 Chair: On the question of the internal inquiry, we have asked you to let us have a copy of that and you have refused. Have you changed your position on that?

Nick Pollard: My understanding is that we took legal advice on the internal inquiry itself and that legal advice was that we were not allowed to provide that. I do not know if that is right or wrong. If you give me a moment, I can consult my general counsel—he is sat behind me—and find out if that is factual.

Chair: Rather than have to-ing and fro-ing in the middle of the meeting, we are concerned that you have had an internal report which you are refusing to let us see on the grounds of legal advice. We will also check whether or not we accept the argument.

Q3788 Lindsay Roy: Are you saying the lawyers did not allow you? Is that what you are saying?

Nick Pollard: I understand the legal advice was that it was subject to legal privilege and could not be provided. That could well be wrong. If you would allow me to check it, I will check it and come back to you.

Q3789 Simon Reeve: Chair, I suggest that if whoever is giving this legal advice is in the room we establish what this legal advice is.

Nick Pollard: We could establish first of all whether I am right, so perhaps you would allow me to ask the question, please, Chair.

Chair: Fine; okay.

[The witness conferred.]

Nick Pollard: I am right in what I have said to you, I am afraid, which is that the advice we were given was that it was subject to legal privilege and should not be offered.

Q3790 Simon Reeve: Not allowed to or you do not have to?

Nick Pollard: That it was subject to legal privilege and therefore would not be offered.

Q3791 Simon Reeve: But you said earlier that you were not allowed to. Are you saying you are not allowed to, or are you saying that because of legal privilege you are not going to? You can ask him if you want. I could ask him.

Nick Pollard: If you'd like to ask him, you are more than welcome.

Mike Crockett: He could just nod.

[The witness conferred.]

Nick Pollard: We were not required to make that available to you, because it was subject to legal privilege.

Simon Reeve: When you said "not allowed to," we should cross that out.

Q3792 Chair: To be clear, you are not giving this to us because you do not want to. You are not precluded from giving it to us because of any legal reasons; you are choosing not to give it to a Committee of Parliament. Is that a correct assumption of the position?

Nick Pollard: Your understanding is not fully correct in that.

Q3793 Chair: Maybe you want to seek clarification from your legal counsel. Are you legally precluded from giving it to us? What law would you be breaking if you gave it to us?

Nick Pollard: I am not suggesting we would be breaking any law, Mr Chair. You asked me why we refused to provide it to you. I have answered you as truthfully as I can. Having checked, it was a decision; it was under legal privilege and the company did not provide it for that reason. I am quite happy to take that away and—

Q3794 Chair: You are not providing it to us because you do not want to provide it, and you think you are covered by legal privilege. That is not an argument as to why you do not put it forward.

Nick Pollard: Since that was not my decision, I would like to take that away. I will be very happy to review it and I will be very happy to write to you on the topic. If we believe that is the right thing to do and it should be provided to you, I will be happy to do that, but I would like to take it away and review it. I am not going to sit here and—

Q3795 Chair: All right; you take it away and review it, and we would reserve the right to call you back again if we are unhappy with the nature of your response.

Nick Pollard: Of course. We will come back at any time.

Q3796 Graeme Morrice: Mr Pollard stated that this was a management decision based on legal advice that you could accept or not accept. You accepted it and took a management decision accordingly. Is that what you are saying?

Nick Pollard: That is my understanding.

Q3797 Chair: The legal advice that I have just received—which is the great advantage of an iPad—is that we can insist. I think you ought maybe to check this very carefully to clarify whether or not we do have the power to insist. That, as I say, is the legal advice we have had by those watching the programme and who act as our legal advisers. I don't have to ask somebody behind me.

Nick Pollard: I would be very happy to do that.

Q3798 Lindsay Roy: Given the controversy, why were you not prepared to be open and transparent about this?

Nick Pollard: I have no idea why it was not provided. I will go and investigate. I will come back to the Committee in writing, and I hope that we will be able to find a way forward.

Chair: Can I clarify the reply from the two other witnesses as well? If you have internal reviews of this, we would want to see them, and, if you are refusing to do so, we would want a very clear explanation as to the basis on which you are coming to that conclusion, given that we are a Committee of Parliament and we are asking. If you wanted to ask us to keep it confidential, we would obviously consider that, but ultimately we would reserve the right to make it publicly available, if we thought it was in the public interest. Clearly, if it mentioned particular individuals, it may very well be that we would accept your argument that it was inappropriate for this to be put in the public domain, but since generally we would want to err on the side of openness I could not give you a guarantee that that is how we would proceed.

Q3799 Mike Crockart: I wanted to ask the same question of the other two witnesses. Specifically, did you provide information to TCA? We have had evidence that it came the other way—that you were doing checks—but did you provide information?

Andrew Ridley-Barker: During the course of the investigations the individuals who we interviewed a number of times denied supplying any information to TCA; they denied providing names to TCA—to Ian Kerr. When challenged on why it appears that reference to the information coming from VINCI is in TCA's records, the responses were along the lines that "It must have been an assumption made by Ian Kerr that I provided the information." That is the extent to which we have been able to get to the bottom of that particular issue. I am not able to say categorically that we did not or that we did.

Q3800 Mike Crockart: To be clear, the evidence of the information on the database suggests that information was given by VINCI to TCA.

Andrew Ridley-Barker: Absolutely; I agree, and that is the contradiction that I just described.

Mike Crockart: I understand.

Callum Tuckett: We went through each of the individuals involved. Our investigations suggest that the Crown House part of the business did supply information to TCA, even post-acquisition, so I am being completely open with you. There is very little detail on what that was. When the individuals were pressed they acknowledged that verbally they probably did share information, but we do not have detail on exactly what that was. To answer your question specifically, yes, one of the entities we acquired did provide TCA with information.

Q3801 Mike Crockart: But neither of you knows what type of information was being provided.

Callum Tuckett: I do not, but, in responding to the Chair's request—and to an extent Nick has made this point already—we are trying to look forward, but absolutely, I think, accept the potential impact of what has gone on in the past. We do want to be transparent about it, so we will be willing to share information with the Committee. The only thing I can say without legal advice is that I suspect there may be elements of that which may be subject to current ongoing cases that might need to be excluded from that, but that is only a suggestion. I need to check that, but we will definitely share the information with you.

Q3802 Mike Crockart: Mr Ridley-Barker, do you know—

Andrew Ridley-Barker: Unfortunately, during the investigations the individuals concerned confirmed that they never passed information, so we were not able to interrogate, therefore, what information they did not pass, so my investigation was inconclusive in that regard.

Q3803 Lindsay Roy: Would you accept that those looking into this today see this as a superficial rather than robust investigation?

Andrew Ridley-Barker: Absolutely not. We have endeavoured to identify exactly what our role was within TCA, who was doing it within our organisation, why we were doing it, and how we were participating. I have exhausted all avenues within our organisation to identify the extent of it.

Q3804 Lindsay Roy: You are checking with employees who are currently still operating within the company?

Andrew Ridley-Barker: There are no employees in the organisation who participated in TCA.

Q3805 Lindsay Roy: None at all.

Andrew Ridley-Barker: No.

Q3806 Pamela Nash: Gentlemen, I want to ask you a series of questions to establish the impact of blacklisting on your employees, and potential employees. Before I do so, Mr Tuckett, I notice that in your responses so far you have repeatedly referred to the companies that were acquired by your company. My understanding, from a quick Google search, is that Laing was acquired in 2001.

Callum Tuckett: That is correct, yes.

Q3807 Pamela Nash: But it was involved up until 2009.

Callum Tuckett: Correct, yes.

Q3808 Pamela Nash: So it is part of your company.

Callum Tuckett: That is absolutely true.

Q3809 Pamela Nash: I think it is a bit disingenuous to keep talking about a company that was acquired. I appreciate that it was acquired, but it was part of your company during the time it was accused of blacklisting.

Callum Tuckett: I apologise for cutting across you, but when I was making those responses I wanted to be clear that they were companies that were acquired. I did say it is embarrassing, quite frankly, that, through the due diligence we did when we acquired these companies, we did not identify practices that were absolutely not what our business does. I am just trying to put some context round this. I am not trying to be disingenuous at all. I find this incredibly frustrating. We are a direct employer of resource; we are a company that employs people to deliver our work. We are probably the largest construction employer in the UK. We are a direct PAYE employer with no silly games going on. That is why my frustration is coming through, and, yes, I do feel uncomfortable as an individual and from a corporate perspective that we did not identify that. It was actually February 2009 we identified it. I apologise if I appeared disingenuous.

Q3810 Pamela Nash: I want to establish that while the blacklisting may have begun prior to that—

Callum Tuckett: It did continue after.

Q3811 Pamela Nash: It continued for eight years after it acquired that company.

Callum Tuckett: Yes.

Q3812 Pamela Nash: Therefore, your company was involved in this; it was not a company that you later acquired.

Callum Tuckett: Yes, and I accept that; and it was happening through one individual, who unfortunately is now deceased.

Q3813 Pamela Nash: Can I clarify there are no fears that R O'Rourke & Son—that section of the company—was involved in blacklisting?

Callum Tuckett: There is absolutely no evidence—none whatsoever—that there was any activity round accessing any information from TCA or others from the O'Rourke organisations.

Q3814 Pamela Nash: Have any concerns been expressed to you within your company that there was any involvement by R O'Rourke & Son prior to the merger?

Callum Tuckett: No.

Q3815 Pamela Nash: Thanks for that. You mentioned that current employees—when I say “current” I don't mean now but employees at the time—had been checked as well. Was anyone denied employment as a result of going through your normal recruitment process and then having their names checked against TCA's list?

Callum Tuckett: From the investigations we have done through the Laing O'Rourke company I spoke about—I am not being disingenuous, but just clarifying the acquisition and the different HR streams going on—where the Laing O'Rourke companies did check existing employees nobody was adversely affected by that. However, from our investigations it is apparent that some may have been affected by the inquiries or investigations that Crown House made.

Q3816 Pamela Nash: Do you know how many?

Callum Tuckett: I have a note somewhere.

Pamela Nash: I am going to ask the other witnesses as well, so you might want to look through your notes.

Chair: Or consult your counsel, as the case may be.

Pamela Nash: Ask the audience.

Callum Tuckett: I apologise. I do not have it immediately to hand. I will double-check the number, but it is approximately 20 people. In my mind—no matter what anybody else says—that is a significant number. I will clarify it in writing.

Q3817 Chair: The figures that have been given to me indicate that you refused to employ workers on 87 occasions.

Callum Tuckett: The majority of the 87 were pre-acquisition, so they were not Laing O'Rourke companies when that was going on.

Q3818 Chair: You are familiar with the figure of 87.

Callum Tuckett: It is 79, but I assume it is the same source. I am familiar with that, and we can give you a breakdown of exactly what it was.

Q3819 Chair: It would certainly be helpful if you were willing to be open about this in the way you have indicated.

Callum Tuckett: Absolutely. To be absolutely clear, although the figure I had was 79, it would be the same source, and approximately 20 of those were post-acquisition in the period between 2001 and 2009.

Q3820 Pamela Nash: Perhaps you can check that 20 figure, and if that proves wrong could you correct that?

Callum Tuckett: I will check my notes as we are talking and come back to you.

Q3821 Pamela Nash: Mr Ridley-Barker, can I ask you the same question? How many people are you aware were denied employment as a result of being checked against the list?

Andrew Ridley-Barker: Again, unfortunately in the interviews we undertook with those involved, they reported that, while we were requesting the vetting services of TCA by sending names to them, they did not receive back any phone calls from Ian Kerr. I have not been able to find any other evidence. At the same time, I note there are data which

confirm that we did deny employment to individuals. I cannot remember the exact number and I am afraid I do not have it with me, but I will write back to you.

Q3822 Chair: The figure I have is 32.

Andrew Ridley-Barker: I had in my head 40, but unfortunately in my investigations everyone denied a return from those investigations.

Q3823 Simon Reeve: It was a waste of 68,000 quid, was it not?

Andrew Ridley-Barker: Yes; it is an entirely reprehensible business.

Chair: No; that is a different reprehensibility.

Q3824 Simon Reeve: You spent £68,000 and no one phoned back week after week.

Andrew Ridley-Barker: Exactly; I agree.

Q3825 Simon Reeve: It must have been infuriating.

Andrew Ridley-Barker: Not that we would want them to phone back, but yes.

Q3826 Chair: Can you understand why we are having some difficulty believing that? You are an organisation paying over quite a lot of money on a regular basis and nobody is phoning you back—seriously?

Andrew Ridley-Barker: I agree.

Q3827 Pamela Nash: Honestly, do you believe that? I appreciate you are saying it was other colleagues and you have had to conduct an internal investigation to get that information. Do you believe it was the case that TCA was not calling back when your company was making contact with it?

Andrew Ridley-Barker: It would be my own personal view.

Q3828 Pamela Nash: You cannot give that—

Andrew Ridley-Barker: My own personal view is that, yes, I would find that difficult to believe. That is my own personal view, Chair.

Q3829 Pamela Nash: I asked you about potential employees who were being checked. Were any current employees, as Mr Tuckett referred to in his company, who had details checked?

Andrew Ridley-Barker: Not that I am aware of.

Callum Tuckett: Can I just clarify that it was 28 post-acquisition? There were 79 in total and 28 were post-acquisition of the two companies I talked about.

Q3830 Chair: Since our figures are slightly different, maybe we will ask our staff and whoever is advising you to help clarify it.

Callum Tuckett: We will share our records with you. There is no problem with that at all.

Chair: That openness is very much welcomed.

Q3831 Pamela Nash: Can I just be clear? Is it 79 in total, or 79 prior to acquisition?

Callum Tuckett: Seventy-nine in total is the number I have.

Q3832 Pamela Nash: That is including the 28.

Callum Tuckett: Including the 28.

Q3833 Sir James Paice: Mr Ridley-Barker, I am slightly puzzled that you say, using my colleague's phrase, that nobody phoned you back but that was your personal view. Presumably, there is something more substantive in the fact that you are part of the compensation scheme. Is that not implicitly accepting that people did phone back and you used their services, or are you just joining the compensation scheme because you subscribed to TCA?

Andrew Ridley-Barker: We recognise that the actions of a few individuals within our organisation were not an act of maverick behaviour. We acknowledged that corporately we were responsible for our actions. We needed to make reparations, set the record straight and right the wrong that our membership of this organisation caused. I fully understand that, and it is why we wanted to join in the construction workers compensation scheme.

Chair: Jim, do you have a point relating directly to this?

Q3834 Jim McGovern: Yes, and it is a point, please, to Mr Tuckett particularly. Your evidence seems to differ certainly from that of Mr Ridley-Barker. Mr Ridley-Barker is saying, “We knew it was going on, and we regret it and are sorry about it.” You seem to be saying that, although Laing O’Rourke were the parent company, you were completely unaware that this was happening.

Callum Tuckett: No. I am asserting much the same as Mr Ridley-Barker, in that we are embarrassed that we were not aware of it going on. As soon as we did become aware of it going on we addressed it.

Q3835 Jim McGovern: How long was it going on before you became aware of it?

Callum Tuckett: It was going on for eight years, and I think we discussed that earlier.

Q3836 Jim McGovern: Yes, I heard that. For eight years you were unaware of it.

Callum Tuckett: Yes, and I was very clear. It is embarrassing.

Q3837 Jim McGovern: Where does the buck stop then?

Callum Tuckett: We have a corporate responsibility.

Q3838 Jim McGovern: “It wasn’t me, guv; it was somebody else.”

Callum Tuckett: No, no, absolutely not. It was our company. After we acquired those companies it was our responsibility. We acquired those companies. What I am trying to say, in terms of the ethos of our company, is that it is absolutely against the ethos of our company to do things like this. That is the only point I was trying to make—the only point. We would not be contributing to the scheme if we were in any way saying that this was an acceptable way to behave. It is not. It is absolutely not.

Q3839 Jim McGovern: But it was happening right under the nose of Laing O’Rourke, and you are saying Laing O’Rourke was unaware of it.

Callum Tuckett: Yes. It is a very difficult thing for me to sit here and defend, because it is not acceptable. It is embarrassing that that was not uncovered. We have developed as an organisation over that time. We have very, very strong corporate governance now, and it is something which I am now proud of. I think that as a corporation we are proud of it, but we missed things. That is a mistake. It is one of the reasons we are actively involving ourselves in the scheme and trying to move forward. People have been wronged by what has been done. There is absolutely no doubt about that, and they should get reasonable reparation for that.

Q3840 Pamela Nash: Mr Pollard, can I ask you the same question? How many potential employees were checked and then denied employment by Balfour Beatty?

Nick Pollard: I absolutely understand there were hundreds of people who were checked. As I understand it, it was a check made as part of employing people. If they were denied employment it would perhaps be because of this, or perhaps because of other reasons in that checking, too, but there is no way for me to imagine there were not people whose working life was damaged because they were not taken on as a result of checks being made through this. I haven't got an exact number for you, I am afraid.

Q3841 Pamela Nash: Have you asked?

Nick Pollard: I have, and I cannot remember whether we had a figure from the report. I think we simply didn't know, to tell you the truth. I think we simply didn't know.

Q3842 Pamela Nash: Going back to a previous question, you were asked by one of my colleagues whether your company had provided information to TCA and you said you did not know. Did you ask for that information in preparation for today? It is a pretty obvious question that you were going to be asked by this Committee.

Nick Pollard: Forgive me. In preparing for today, my understanding was that the thing the Committee was particularly interested in was the compensation scheme that has just been launched, so I devoted most of my preparation, I am afraid, Chair, towards that end rather than trying to bone up on past history. Since you had already had extensive evidence from Mr Peasland and my company, I must admit that I did not try to learn lines to come here. I apologise, Chair, if I misunderstood.

Q3843 Pamela Nash: I completely appreciate that, and we are coming on to that. However, these are very, very basic questions and, considering the audience who are watching and paying attention to this today, I do think it is pretty reasonable to have expected that we would go over the basic facts of the case. I do not think it is going into depth asking if you gave evidence to the Consulting Association, and how many people were affected within your company. To be clear, you do not know how many people were denied employment after having their files checked at TCA.

Nick Pollard: I do not have a figure with me for that. I can investigate and, like Mr Ridley-Barker, write to you.

Q3844 Pamela Nash: Can I ask you to investigate both potential employees—people who had been through a recruitment process—and also existing employees, and whether they had their details checked with TCA?

Nick Pollard: I am not aware that we ever checked current employees at all, but I will find out that point.

Q3845 Pamela Nash: If you could confirm that either way, I would appreciate it. Mr Pollard, would you consider that your company was operating a blacklist?

Nick Pollard: I think we were operating in a completely wrong manner. We were dealing with a company—a consulting business—that was compiling records behind people's backs and without any factual foundation. It seems to me completely and utterly wrong. I can only apologise. I find it extremely—

Q3846 Pamela Nash: Just to be clear, what I am asking you is: would you define that as a blacklist?

Nick Pollard: I think that is a matter that the court is trying to decide at the moment as to what—

Q3847 Chair: No, sorry, we are asking you now: were you complicit in blacklisting?

Nick Pollard: Were we—sorry?

Q3848 Chair: Were you involved in blacklisting?

Nick Pollard: No, I do not think we were as it is defined as some activity that just simply cuts off union membership, for instance. We were involved in the activity of taking references on people in a way that was just morally wrong. Whether it was legally wrong at that time or not I understand there is an argument about. I do not want to start gypping about mental or verbal gymnastics on blacklisting, but my understanding of blacklisting is not what was done. What was done was wrong—the use of the consultancy.

Q3849 Chair: There was a procedure whereby you, along with other companies, paid an organisation who collected lists of names and had things written down about them. You and other companies phoned in, found out what was being said about those workers and then decided whether or not to employ them. That seems as close a description of blacklisting as I have ever heard. Do you accept that that was the procedure, or are you suggesting that that is not blacklisting?

Nick Pollard: I readily accept that was the procedure.

Q3850 Chair: And your argument is what—that that is not blacklisting?

Nick Pollard: It is simply that you and I have a different understanding of the term “blacklist.”

Q3851 Chair: Clarify for me then what your definition of blacklisting is.

Nick Pollard: I think that blacklisting in the industrial context is directed solely to anti-union activities, and that was certainly not the case. Forgive me, but that is my understanding of the term “blacklist.” If you have a different understanding I am sorry for that, but I have answered your question truthfully and I agree with the procedure that you are describing.

Chair: Some of this will depend upon the assessment made of the individual cards.

Q3852 Jim McGovern: Are you saying that, if you carried out an analysis of the number of people on these lists, you would find quite a large number of operatives who were not trade union members? I would suggest that probably every one of them was a trade union member.

Nick Pollard: That is not my understanding. I have not seen the list obviously. Maybe my understanding is flawed, but I understand that some of the names in the Consulting Association’s list are not even related to construction employment.

Q3853 Jim McGovern: That is true.

Nick Pollard: I am not sure that every one was a union employee by any means.

Q3854 Pamela Nash: So that I can understand your definition of this, my understanding of this list is that the majority were trade union members but not every single one. We are talking about over 3,000 names here. Are you saying that if there were one or two who were not trade union members you would not consider that a blacklist?

Nick Pollard: No, sorry; in that case, I have absolutely not got that understanding. My point was that the purpose of using this list was not to discriminate against trade union members. My understanding of the term “blacklisting” is that it is a process used to discriminate against union members. I want to be really clear that this was not my understanding of why this list was used.

Q3855 Chair: Who was this designed to discriminate against?

Nick Pollard: Mr Peasland’s evidence was that it was against people who were going to be disruptive on site.

Q3856 Simon Reeve: Can I understand where your definition of “blacklisting” comes from? Is it your own, or have you been given it?

Nick Pollard: That is my personal understanding, and that was how I understood blacklisting.

Q3857 Chair: Is that based on the brief from your legal brain, or did you arrive at it yourself?

Nick Pollard: No. It is my understanding of what blacklisting is.

Q3858 Chair: Did you not discuss the question of what is blacklisting before you came along here with somebody?

Nick Pollard: That is my understanding of blacklisting.

Q3859 Chair: But did you not seek advice? This is an investigation into blacklisting. Did you not ask anybody, “What is blacklisting? Can you just clarify for me what is meant by ‘blacklisting’?”

Nick Pollard: I am absolutely clear from my brief that that is part of the discussion that is apparently going on in the court. It is my understanding that that was why the court did not describe the group legal affair as blacklisting but corporate vetting, or whatever they termed it as. I am aware of that; so I am aware there is some dispute around that term. All I can tell you is what my understanding of blacklisting is.

Q3860 Simon Reeve: Is that your understanding as you grew up, and one you have always had since you were a boy?

Nick Pollard: I do not think I was into this when I was a boy, and I am not into it now. I have been 30 years in the industry, and blacklisting, to me, is an anti-union activity, which is equally wrong—don’t get me wrong.

Q3861 Simon Reeve: If you do the same thing against people who are not in a union, it is not blacklisting because they are not in a union.

Nick Pollard: I think it is incorrect discrimination, which is now illegal because it is a breach of data laws.

Q3862 Simon Reeve: You heard what I said. You are describing something where, if you do that thing against members of a union, it is blacklisting; if you do the identical thing

against people who are not members of a trade union, your argument is that it is not blacklisting.

Nick Pollard: To be quite honest—

Simon Reeve: Try and go with the question.

Nick Pollard: I will. I tell you now—

Simon Reeve: No, no. Tell me the answer to the question now.

Nick Pollard: I will.

Simon Reeve: Go on then.

Nick Pollard: The answer is that I did not come here to play mental gymnastics over the definition of a particular word, and I am disappointed that we are doing that because I thought that was what you did not want.

Q3863 Simon Reeve: You may be disappointed, but will you answer my question?

Nick Pollard: I have answered your question once.

Q3864 Simon Reeve: No; you have not.

Nick Pollard: I will answer it again now for you, which is that my understanding is that blacklisting relates to an anti-union activity, and this was not an anti-union activity. Therefore, to my understanding it is not blacklisting.

Q3865 Simon Reeve: So if you go back to my question—

Nick Pollard: It is wrong—utterly morally and completely wrong—but my understanding is that it is not blacklisting.

Q3866 Simon Reeve: To go back to my question, an identical way of behaving as between group A and group B is that it is blacklisting if group A are trade unionists but not blacklisting if group B are not trade unionists.

Nick Pollard: That is right; that is my understanding.

Q3867 Simon Reeve: Your understanding is that the defining feature of blacklisting is whether the people who are blacklisted are trade union members.

Nick Pollard: My understanding of the term “blacklisting” is that it is discrimination against trade union members.

Q3868 Simon Reeve: Have you checked with anyone before you came here whether that was an accurate or reasonable definition?

Nick Pollard: As I have already explained to the Committee, before coming here I am perfectly aware that the GLO was not termed as blacklisting. My belief is that that is because it is not necessarily blacklisting. It is perhaps a wider issue or a narrower issue, but, to answer your question and yours, that is my understanding.

Pamela Nash: Legally?

Q3869 Simon Reeve: My question was: did you check with anyone before you came here whether your definition of “blacklisting,” which is that it is dependent purely on whether the victim is a member of a trade union, was an accurate one?

Nick Pollard: My understanding from talking with my general counsel before I came here—

Q3870 Simon Reeve: So you did check.

Nick Pollard: It was not to check on the term “blacklisting” but to understand what was going on. My understanding of what is going on at the moment is that there is some legal argy-bargy, which, frankly, you are much better equipped to know about than me, around the definition of that term. Therefore, for my purpose I do not think that term is accurately described. I think it has a number of different meanings in common parlance, none of which help us deal with a wrongful past and to recompense people for hurt that they were inevitably caused by a wrongful practice. That is exactly my understanding.

Q3871 Simon Reeve: Right. So you have no idea whether the gentleman behind you is squirming at your definition or not.

Nick Pollard: No, and I don’t care because I have told you my understanding of the truth.

Q3872 Pamela Nash: To me, a blacklist is a group of people or organisations that are discriminated against or put on a list. That was why I was interested in what you said earlier. The reason I was asking about your definition is that you had not given a number and were not aware of anybody who had particularly not been employed as a result of this. For me, that would define whether or not your company was blacklisting as well; that would be part of it.

Nick Pollard: I understand that.

Q3873 Pamela Nash: That is why it is extremely important to this Committee and why we are very interested to see the internal report. We will be pursuing that and will want to see those figures.

Mr Ridley-Barker, would you consider your company as having participated in a blacklist?

Andrew Ridley-Barker: As Nick said, the issue is very much at the core—at the heart—of the litigation at the moment that is ongoing. To comment on that around whether it was blacklisting or a vetting service, we did partake in the activities of TCA; we were members; we submitted names for checking against the records of TCA. It was wrong; we should not have done it.

Q3874 Pamela Nash: Would you say that is blacklisting?

Andrew Ridley-Barker: As I said, the issue is right at the core of the litigation, but it is not right for me to say whether that was the—the terminology is what we used. My understanding of a blacklist—I know we have just had a long discussion around it—is that it is automatic denial. TCA did not automatically deny a lot of people. It did deny a lot of people employment and it should not have done. That is the definition which needs to be determined, and I am not capable or qualified to determine that.

Q3875 Pamela Nash: Under that definition it would be the companies that would be operating the blacklist because they would be using the list. They would have access to this list, but they would be denying the employment.

Andrew Ridley-Barker: Sorry?

Pamela Nash: I am not saying whether or not that definition is correct; I would need to seek advice on that. Under your definition, if there was a blacklist there would have to be an absolute denial of employment if you were on the list. In that case, rather than TCA, it would be the individual companies that would be operating a blacklist, because they are the customer and they are denying employment.

Andrew Ridley-Barker: My understanding is that, if your name was on the list, it did not automatically mean that you were denied employment.

Q3876 Pamela Nash: Is it one or two examples out of thousands where someone was still given a job? Can I ask Mr Tuckett the same question?

Callum Tuckett: This is an uncomfortable response obviously. Without me reiterating everything that has already been said, the advice I was given—because I did seek advice before I came here—was that the term “blacklisting” unfortunately is absolutely at the

heart of a number of current litigations going on. For me to try to articulate my personal opinion of what a blacklist is or is not would probably be beyond me.

Q3877 Chair: Can I clarify from the three of you if I am right in thinking that you are of the view that, if you admit to blacklisting, it will cost you a great deal more money than if you just admit to reprehensible behaviour?

Callum Tuckett: I do not think it is about the money actually. It is about the inaccuracy of what we might say. If you are willing, Chair, we have a legal representative here who can assist.

Q3878 Chair: We are going to bring them on in due course. I have to admit what genuinely surprises me about what is happening at the moment is that all three of you seem to be entirely unwilling to accept that you have been engaged in blacklisting. The only interpretation I can place on that, since none of you are stupid men, is that you have been advised that to admit blacklisting will have a detrimental financial effect upon your businesses in a way that simply admitting reprehensible behaviour would not. Does that seem a reasonable assumption—otherwise, we would not be dancing about the head of a pin?

Callum Tuckett: It sounds like a reasonable assumption, but, if I can give you an absolutely honest and direct answer to it, the term “blacklisting” is absolutely at the core of submissions that have been made to the court on both sides in current actions. I personally have been instructed not to comment on the term. What I will comment on, and have done, is that people have been negatively affected by past activities, because they are not current. From my perspective, the term “blacklisting” is nothing to do with the financial situation.

Chair: I understand that. One more point and then I want to cover some detail.

Q3879 Pamela Nash: Before we move on to the compensation scheme and the future, we have concentrated on the financial impact, emotional impact and the impact on quality of life of those who have been denied employment. The reason the Committee took this on originally was the concern, as well as the financial implications, for potential employees about health and safety on sites. We looked at the health and safety records on construction sites in the UK, particularly in Scotland as we are the Scottish Affairs Committee. We looked at those figures, which are particularly bad. As a result, we were concerned that people were not getting employment if they had raised health and safety concerns, which a lot of the entries on the list indicate. That was why they were on the list; they had been seen as troublemakers, but actually they were raising health and safety concerns.

Can I ask each of you how you feel when I am putting that point to you? What is your companies’ response to the impact that might have had on the health and safety records at the construction sites your companies were operating at the time, if you were denying employment to people who were raising health and safety concerns, and not just that, but

spreading fear throughout the construction industry that someone might lose their job or not get further employment if they did raise health and safety concerns?

Callum Tuckett: As a specific response, our organisation and I think the majority of the major organisations are involved in this. In the late 90s and, certainly from our perspective, in 2001 when we acquired the John Laing business, we started a behavioural approach to health and safety, much like that which had been applied in the oil and gas industry and others for some time. There has been quite a dramatic improvement in the health and safety performance in the construction industry over that time. It still is not good enough, because people in our industry are being hurt and are dying, unfortunately, but it is a dramatic improvement.

The behavioural focus certainly from our perspective in our organisation is that every man and woman who comes on to our site has a one-to-one interview with the project leaders. Usually a limited number of senior staff are allowed to do it. They are given the phone numbers of the senior members of our site staff so they have direct contact. It is trying to engender that openness. We now have near-miss cards. We all know that people on sites do not particularly like filling out near-miss cards. Culturally, we are not yet in a position where people are comfortable doing things like that, but we think we are doing everything we possibly can to engender those types of behaviour. All the communication we are doing is round that. I can speak only from the perspective of my own organisation. The reason we directly employ is that we feel we can have much greater control over the work environment. That is why we have an environment where most of our employees—nearly 90%—are PAYE. That is where we are at.

Q3880 Pamela Nash: I appreciate that. I can see the work that your company is doing to overcome it, but you just said there was not already a culture of people filling in near-miss cards. I suggest that a lot of that is due to what we are talking about today. People had that fear at the time.

Callum Tuckett: I would not normally do this in this kind of situation, but I am inclined to disagree with you. I do not think it is one specific issue. There is a cultural issue where people do not like to complain about things. We are trying to combat that; we are trying to make it so that people can be much more open. We are doing simple things, not trying to be too corporate about it, so people realise they have access to somebody in the company, no matter how senior they are. It is nothing to do with the hierarchy. I am not talking for the rest of the panel; I am talking from my company's perspective. I know that our two main shareholders are absolutely focused on that. If they are on site, they do not speak just to the project leaders; they speak to everybody on the site. They genuinely care about their work force, I know they do, and I know how uncomfortable and personally aggrieved they are that we were associated with something like this. I wish we could change it more quickly—genuinely.

Andrew Ridley-Barker: It is very clear that any culture of fear around health and safety is not helpful, and particularly will drive health and safety issues underground. People will not report any health and safety issues for fear of recriminations, so any activity around that which suppresses an open and transparent dialogue around health and safety is absolutely wrong. We now work very hard to encourage all members of our team and all

operatives on our projects to have confidence to put their hand up and say if there is something wrong. I have stood at project site meetings and spoken to all of our work force on individual projects and given them my personal assurance that they have an absolute right to do so.

We receive over 10,000 close call and positive intervention cards a year from our work force. These are forms completed by the work force on our project; over 10,000 a year are submitted, which I think demonstrates that our work force are keen to raise issues. Every single one of those is answered. We have notice boards on a number of our sites saying, “You said, and we did,” and we address the issues raised. To have an engaged work force who care about health and safety is not only good from a moral perspective—we do not want people to get hurt—but it is also good for business. It means that we can have more efficient and productive sites.

Nick Pollard: It is exactly the same: Balfour Beatty started the zero harm campaign a long time back. The level of injury has fallen steadily over the course of certainly the last decade. That is in line with most of the major companies in the UK. We have all been working in similar ways, learning from other industries, such as oil and gas or aerospace, and engaging the work force. The whole success of that campaign has been about getting people to speak out, whether that is with toolbox talks on site—we have a big safety stand-down day coming up in a couple of weeks when every site in the UK will stop work, and everyone on the site will be engaged in conversations on safety and what can be better, with near-miss observations or positive observations. All the major companies are using very similar systems. It is crucial that we engage with people and create an environment that is not full of fear, that is open and people can say what they believe is the case in their particular work space, and leaders of the projects are seen to deal with that. The “You said, we did” boards and things of that nature are very common. Various schemes are run to encourage people to report things in a positive manner, with donations to charity or whatever it is, and we encourage our projects to do exactly those kinds of activities.

If you look at the industry as a whole, it has had to work very hard, and recognised that it was behind the eight ball compared with other sectors 10 or 15 years ago. I am sure that, if we had any of the eight businesses involved in TCWCS here, we would all be saying a similar thing, whether that is Kier or whoever. The industry has shared a lot of good practice at forums like the CBI Construction Council or UKCG. That is absolutely right, and we are working hard to do that.

As Mr Tuckett said, there is still a long way to go, for everybody, but we need to get to a place where we can work with zero harm. Everybody has the right to come to work and go home at the end of their shift unharmed. That is how it should be. Our industry has not achieved that yet, but a tremendous amount of progress has been made. I find it very hard to imagine that, at the same time as all that was going on, discrimination was occurring because people were raising safety concerns. It is counter-intuitive. To answer your question, I think our industry has been working tremendously hard to create that openness. I agree with Mr Tuckett. The history of engagement with TCA and all that has gone on is deeply unhelpful in that because it discourages people from openness.

Q3881 Pamela Nash: Do you have any concerns that employees of yours might have been injured as an indirect result of blacklisting?

Nick Pollard: Injured through an industrial accident?

Q3882 Pamela Nash: Injured on site because people were not reporting health and safety concerns because they were frightened they would lose their jobs.

Nick Pollard: I see. I have no evidence at all that anyone has been injured because of some kind of fear. I have the opposite at the moment; we are seeing openness and transparency improve on sites. We work hard with our supply chain—tier 2s and tier 3s—to make sure that they are all engaged in a similar manner. You can look in those companies and see the similar journeys they have all been on, right the way across the industry. We all have a long way to go. It takes a huge amount of pressure to make those changes stick and become culturally embedded, which I think was your point, Andrew.

Q3883 Chair: I ought to make it clear at this stage—maybe I ought to have done so at the beginning—that these three companies are here because you were volunteered by Pinsent Masons and Grayling as three construction companies we ought to speak to about the compensation scheme. There are other companies involved, with whom we will also want to raise a number of points. You are singled out, as it were, because you were volunteered, and presumably volunteered yourselves, to come along to speak to us about this. The fact that you are here does not necessarily make you worse than everybody else in the industry. It is appropriate to present it in that context. However, there are a number of more detailed points that I want to raise and have you respond to either now or subsequently in writing, if you could, since the detail of these things is important.

In terms of Balfour Beatty, the information—the briefing we have had—is that you were paying £110,000 for usage of the blacklisting service, which equates to approximately 75,000 name-checks. Can you clarify for us at the moment or subsequently, whether or not you were name-checking workers employed via agencies in subcontractors as well as any directly employed staff?

Nick Pollard: I would need to check that and come back to you, if I may.

Q3884 Chair: Fine. Ian Kerr said to us in his evidence that Balfour Beatty were particularly hard-nosed and would refuse to employ people even with only a partial hit—for example, just a name—and you distinguished yourselves in the industry by that. Do you have any comments on that?

Nick Pollard: Only that the evidence you took from Mike Peasland was quite to the contrary. He did not recognise that scenario at all.

Q3885 Chair: The file we have seen is that Balfour Beatty supplied information to the blacklist about individuals on more than 450 occasions and refused to employ workers on 350 occasions, which was exceptionally high compared with other Consulting Association companies. Do you have any comment on that?

Nick Pollard: No, because I am not aware of what the other companies that used the Consulting Association did.

Q3886 Chair: I am sure we can supply you with that.

Nick Pollard: I will come back to you with a written response, if I may.

Q3887 Chair: Fine. We understand that scores of workers were added to the blacklist by Balfour Beatty after the Pfizer dispute in Kent, of which you may be aware. Many of those names did not end up on individual cards but were on written lists available to TCA and may or may not have been accessed. Do you feel that wrong was done to those workers as well?

Nick Pollard: I feel that every person who had their name on that Consulting Association list was wronged, whether or not it was accessed.

Q3888 Chair: We heard that the lists were in different forms. Some were on cards; some were on lists—you're inclusive, rather than nit-picking.

Nick Pollard: I am not trying to score any points on that. Whoever's name was in that Consulting Association bucket in some way, in my mind, was harmed, because their name should never have been there. I can only say sorry for that.

Q3889 Chair: I just wanted to clarify. You name-checked people at the Olympics; you accepted that in writing. I was under the impression that the Olympic authorities had tried to make sure that there was no blacklisting going on during the Olympics. My understanding is that you name-checked 12. None was refused employment, but the name-checking went on. The way we have been looking at it is that name-checking is in itself evidence of potential blacklisting. Can you clarify what seems to be a discrepancy between what you actually did and the assurances I understand you gave to the relevant Olympic authority?

Nick Pollard: I think it is very clear; it is exactly what you just said. In 2008, 12 names were checked in relation to the work we were doing at the Olympic park. The people were employed, which is not really the point. We should not have done that. I can only apologise to the ODA for that and to those individuals.

Q3890 Chair: How can such a thing happen? We are interested in going forward; we want to have better practices in the future. Here we have a situation where you as a company were

saying to the relevant Olympic authorities, “We are not going to be involved in blacklisting,” yet you were. What assurances can we take from any of you that we can trust in the future if in the one example that we have been able to identify it did not work?

Nick Pollard: I understand your point, and I think it is a very fair one. The future is different from the past. It is quite clear, it seems, that a small number of people were carrying out this form of checking in the business. That the left hand did not know what the right was doing is clear too, and it was wrong. Why I have confidence and why I can offer you assurances for the future is that since that time in 2009, a year after the 12 on the Olympics, the business woke up. I think the industry woke up, to be quite blunt about it. Certainly, our business woke up to the fact this was wrong and we needed to put in place policies, procedures, checks, balances, ethical helplines and all manner of things to make sure it cannot happen again, and that everyone understands that there must be no checking of employees through this kind of mechanism.

Q3891 Chair: Okay. I understand that. Can you confirm that Trevor Watchman, chairman of TCA between 2004 and 2005, was an employee of yours?

Nick Pollard: No, I can’t, I must admit.

Q3892 Chair: Could you come back to us on that?

Nick Pollard: I can come back to you later.

Q3893 Chair: Could you clarify for us what role he had in the company? Since you have not heard of him you cannot confirm it at the moment.

Nick Pollard: Just give me the name again.

Q3894 Chair: Trevor Watchman. Did he report to the board? Since you do not know what role he had and you have not heard of him, it is unreasonable to expect you to tell us.

Nick Pollard: His role and line manager, yes?

Q3895 Chair: Exactly. Could you confirm that Elaine Gallagher, Paul Raby, Armar Johnston, Ann Cownie, Vince James and Carolyn Williams—we will give you those names later—were all employees of companies within Balfour Beatty and acted as main contacts for TCA? I think we would want to have that confirmed as well. Can you confirm that Gerry Harvey was the main contact with TCA at the time of its closure in 2009?

Nick Pollard: Whether he was the main contact I am not clear, but I know that is one of the names involved with TCA.

Q3896 Chair: He has admitted in an employment tribunal that he attended TCA meetings. Does Balfour Beatty have any minutes, agendas or other documentation relating to these TCA meetings?

Nick Pollard: Not as far as I am aware, but I will check on it and come back to you.

Q3897 Chair: Fine. That would be helpful. That relates back to the question of the internal investigation, and whether or not you have any records. You have just said you will look at that and come back to us, but presumably that might very well be contained in the internal investigation that you are refusing to give us anything about, so you can understand why there seems to be a contradiction, can't you? Maybe you can come back to us in due course in writing, and then maybe you will return in person to discuss this further.

I turn to Mr Ridley-Barker—the same sort of things. You were founder members of TCA in 1993 and still involved at the end. I think we have covered that already. You paid £56,000, equating to approximately 33,000 name-checks. Could you clarify for us—admittedly not at the moment—whether or not these sorts of figures are generally accepted by yourselves?

Andrew Ridley-Barker: Similarly, I will confirm those numbers.

Q3898 Chair: Fine. Thanks. Similarly, did you name-check workers employed via agencies and subcontractors?

Andrew Ridley-Barker: Not that I am aware of.

Q3899 Chair: Could you check that?

Andrew Ridley-Barker: Yes.

Q3900 Chair: That would be helpful. Did you have any involvement in name-checking during the Olympics?

Andrew Ridley-Barker: No, we did not.

Q3901 Chair: Can you confirm that Alan Audley, who was a vice-chair of TCA at its closure, was an employee of VINCI?

Andrew Ridley-Barker: He was an employee of VINCI.

Q3902 Chair: What role did he have?

Andrew Ridley-Barker: He was the IR manager.

Q3903 Chair: Who did he report to?

Andrew Ridley-Barker: He reported to the then managing director.

Q3904 Chair: Did he ever report any of this at any stage?

Andrew Ridley-Barker: Not that I am aware of.

Q3905 Chair: Again, it is the same thing about internal investigations. Do I take it that for both of you so far—I think we have already covered this with yourself—nobody inside your company has ever got the belt, been punished, or anything has happened to them as a result of this? This is all simply obeying orders.

Andrew Ridley-Barker: All of those involved or working with Ian Kerr at TCA are no longer with the organisation.

Q3906 Chair: But as soon as this was discovered in 2009 nothing happened to them either.

Andrew Ridley-Barker: That is correct.

Q3907 Chair: On Laing O’Rourke, our information is that it paid £170,000 for accessing names and approximately 110,000 name-checks. Maybe you could check those figures for us.

Callum Tuckett: The figures that I have are radically different from that, but I presume that is because for us they will be post-2001. We have checked in a lot of detail what happened after 2001.

Q3908 Chair: Fine. You get somebody to do it and I will get somebody to do it. I just want to put it on the record. The general principle about whether or not you name-checked people via agencies and subcontractors is something we would want to clarify.

Callum Tuckett: I will clarify that. What I can confirm right now is that, from the investigations I have seen and from what I have read, it was on direct employees in Crown House Technologies and the Laing O’Rourke business—the existing employees I talked to you about—but I will confirm that in writing.

Q3909 Chair: We are particularly interested in that because the number of name-checks, if these figures are correct, seems to suggest that it might have gone wider than simply your own direct employees.

Callum Tuckett: I am quite sure those numbers relate to prior to 2001, but I will confirm that in writing. The numbers I have are radically different from that, and significantly smaller.

Q3910 Chair: The question of dates is important, because when you buy a company you buy all their assets and liabilities.

Callum Tuckett: Not always.

Q3911 Chair: Legal people will no doubt fight about that.

Callum Tuckett: I am not being smart about that. The only differentiation I am trying to make—I have acknowledged that it is embarrassing it took so long to discover it—is that that is not the way our company carries out business, but I will come back to you on the numbers.

Q3912 Chair: Can you confirm that Tony Jennings, who was chairman of TCA between 1996 and 1999, was an employee of yours?

Callum Tuckett: We had not acquired the company at that point, but he was employed by John Laing, and, yes, I can confirm he was the chairman.

Q3913 Chair: What was his role in the company?

Callum Tuckett: I am not entirely sure because he was not part of our company at the time. He would have been in IR.

Q3914 Chair: The same point. Who did he report to, and did he report to the board?

Callum Tuckett: We will give you that information.

Q3915 Chair: Who from the company attended TCA meetings? Do you or your predecessor companies have any minutes, agendas or other documentation?

Callum Tuckett: That will be in the information we will provide.

Chair: I did not ask Mr Ridley-Barker, but you as well—it is a standard set of questions that we want you to cover—

Q3916 Simon Reeve: Can I raise one name with Mr Tuckett? Mr Robinson—Roger Robinson.

Callum Tuckett: Yes.

Q3917 Simon Reeve: Who is he?

Callum Tuckett: Roger Robinson has now retired from the business, but he was most recently chief executive of our European hub business, so he was responsible for pretty much half of our business.

Q3918 Simon Reeve: Did you and he serve together on the same board of any of these companies?

Callum Tuckett: I served on the European board from 2010 until 2012.

Q3919 Simon Reeve: You were both on the same board.

Callum Tuckett: The board of the European hub.

Q3920 Simon Reeve: How many people are there on that board?

Callum Tuckett: At the time, there would have been—it was quite a large board because it was a management board—probably about 12 people on it.

Q3921 Simon Reeve: What was Mr Robinson's background? Where did he come from?

Callum Tuckett: Mr Robinson was on the main board of Carillion for a number of years. I do not know the exact date, but I think he left Carillion and came to us in 2009.

Q3922 Simon Reeve: When he was with Carillion was he part of their labour agency, NCS?

Callum Tuckett: I am not aware of that.

Q3923 Simon Reeve: Have you ever discussed this with Mr Robinson?

Callum Tuckett: Never.

Q3924 Simon Reeve: He has never discussed it with you?

Callum Tuckett: No.

Q3925 Simon Reeve: If he had been involved in an agency that was heavily involved in blacklisting, or whatever else we want to call it, and he sat on the same board as you and there were only a dozen of you, he never mentioned it and you never knew.

Callum Tuckett: No, absolutely not.

Q3926 Lindsay Roy: Gentlemen, my understanding is that there is a degree of embarrassment; you feel uncomfortable. There is a dearth of evidence about blacklisting in your companies, and there seems to have been some kind of covert operation that management did not know about. You are saying that there is now cultural change. Would that be correct for each of you?

Nick Pollard: I did not catch the last part of what you said, sorry.

Lindsay Roy: You are saying there has been some cultural change.

Nick Pollard: Yes. That is what we are driving absolutely. We are driving behavioural change through policies and procedures, and training and education.

Lindsay Roy: Just a short answer will do. Thank you.

Andrew Ridley-Barker: Absolutely. This type of behaviour has no place in our organisation.

Callum Tuckett: I absolutely agree. The only point I would make on the covert element of it is that I think it was historic practice. I do not think they were genuinely trying to disguise it from people; it just did not come to the surface, but I can absolutely confirm that it is not the culture of our business.

Q3927 Lindsay Roy: The acid test question is: how do you know that blacklisting is not continuing at the moment, or some nefarious practice is not going on in your companies? What evidence do you have? How can you instil some faith into us and people here that it is not happening?

Callum Tuckett: In 2009 when this came to light, as most companies do when something occurs that they are not comfortable with, we had a significant review of our policies, systems and procedures specifically around data protection. We have gone through quite a significant programme of education round data protection, allowing key staff members to understand the importance of that and the detail of it. We also drafted a code of conduct which every employee in the whole organisation now signs up to. It is not something they

can just sign at the bottom; it is reasonably well advanced technology where they have to go through a test. The time that they spend on that test is measured, so it's not something where you just tick the box; they actually have to read and think about what is there. We are trying to teach people about it, not force them to do that but to flush out people who do not think that way.

Nick Pollard: To give a similar response, Mr Roy, yes, we have provided a complete code of conduct for our people for a number of years. We have educated and trained people in that, so that expectations are really clear. It sets out very clearly that the kind of behaviour that went on before is completely unacceptable.

Q3928 Lindsay Roy: So you did not have a code of conduct before.

Nick Pollard: We did not have a code of conduct that covered this explicitly, as it does now; and our employment procedures did not cover this explicitly in the manner they should have. I have a copy for you here. I understand that a copy was provided to you during a preceding session by one of our colleagues from the unions. Perhaps I might leave this with you today, Chair. I will put it there, and perhaps we can pass it across afterwards. That policy is very clear about referencing checks. We have engaged a third-party management service provider, part of Capita, who are probably the most reputable group. They are the only people who carry out reference checks for any person we are employing. We have briefed this very strongly. I have stood up and spoken about this on umpteen occasions all round the land since I joined the company. Most recently, I sent out a questionnaire to 1,000 employees. We have had 800 anonymous responses, and no evidence at all has come back so far, that I am aware of, that there is anyone who has visibility that some kind of discrimination of this—what you are calling blacklisting—goes on anywhere. I've not got any sign or semblance at the moment that we are engaging in those practices, and we should not be.

I will continue to audit. I will continue to open conversations with employees. I will continue to operate an ethics helpline that they can dial into any time, or they can log on to a website completely anonymously. Those are the kind of avenues that, hopefully, will give us the merest hint that something is not right. We will continue to work incredibly hard on this, so it is through those vehicles that I offer you the assurance that we are working really hard. We can find no evidence that we are blacklisting, no evidence that we are using a TCA-style organisation, no evidence that we are behaving wrongly, and no evidence that we are wrongly taking up references. For any reference that is taken, not only does it come through a third party, but it is after the offer of employment has been made, so this is not going on at some early point to discriminate and remove people from the process, which is absolutely the suggestion in what was going on previously. We have taken a lot of steps and a lot of actions.

Lindsay Roy: Mr Ridley-Barker?

Andrew Ridley-Barker: For our part, I would be absolutely staggered to learn that any such activity was undertaken within our organisation at this time, for a number of reasons. First, all of our directors have been put on notice around the issues. There is a clear directive to all directors around this activity. We have set up a safe call system for all

employees and all those operating on our sites that, specifically around blacklisting, if they see any such activity taking place they can call in. I can confirm that there have been no calls made to that safe call line. Thirdly, of course all those who were involved in this activity are no longer with our organisation. I think I would know if such activity was taking place.

Q3929 Lindsay Roy: With all due respect, you can have the best vision, the best policy and the best practice guidelines in the world. How do you know it is not happening? How do you monitor and evaluate the system other than a tick-box which is a quantitative approach? I am looking for a qualitative answer.

Callum Tuckett: I would expect everybody would be the same. I talked about how our governance processes had changed and matured over the years, so we have a very clear audit process. That audit process would be applied through all of our systems, processes and policies in the business. Periodically, things like this will be checked through that process. Those audits then go to our audit committee. Although we are a private company and are not listed, we have non-executive directors who sit on that board, and they will review the information that comes in. That should—and I am saying “should,” because can I give you a cast-iron 100% guarantee? I think it would be foolhardy for anybody ever to give you a guarantee, but we are trying to put in place everything we can to safeguard against these things. The reason I am probably being so long-winded about this is that it is something that we absolutely want to flush out of the industry. It is not the right thing to be happening. We need to change the labour practices across our whole industry, and this is only part of it. Can I give you a cast-iron, 100% guarantee today? No, I cannot; I think it would be wrong to do that.

Q3930 Lindsay Roy: Can you give us a copy of your audit?

Callum Tuckett: The audit process that we go through? Absolutely; we can do that.

Q3931 Lindsay Roy: That would be very helpful, together with any interpersonal contact rather than a tick-box and filling in a form.

Callum Tuckett: One thing I can assure you about is that in any private organisation I work for tick-boxes are not our thing; it is much more about personal interaction.

Q3932 Lindsay Roy: I am glad to hear it.

Callum Tuckett: I have said this a number of times, and I apologise. We have 5,000 direct employees, so it is very difficult to contact absolutely everybody, but we work on the basis that employees who come into our company—new employees—are employed at site level through an office management function, and that is where I will get you the information on how we go through that process.

Q3933 Lindsay Roy: That is very helpful. Mr Ridley-Barker?

Andrew Ridley-Barker: Sorry, I beg your pardon?

Lindsay Roy: Same question.

Andrew Ridley-Barker: The confidence around—we are not currently running an audit programme through our systems to check specifically on this particular issue.

Q3934 Lindsay Roy: So how do you know the quality?

Andrew Ridley-Barker: It is a fair point, and it is something I will take away and look at and see what systems we can put in place. I will do that.

Q3935 Lindsay Roy: Without being over-critical, it seems to me rather lax that you have not got something in place.

Andrew Ridley-Barker: Yes, we should do it. I will look into making sure that we have a system that categorically confirms we are not undertaking such activities.

Q3936 Lindsay Roy: So it is not “should”; it is “will.”

Andrew Ridley-Barker: I will do that.

Q3937 Lindsay Roy: Mr Pollard?

Nick Pollard: I have already explained to you that we have an audit running and we have done surveys. I am more than happy to make available to you the results of those surveys and let you see exactly what I am seeing.

Q3938 Lindsay Roy: Can you tell us where you have looked for best practice in the industry, or beyond your industry?

Andrew Ridley-Barker: We have not looked beyond our own organisation on this issue.

Q3939 Lindsay Roy: Why not?

Andrew Ridley-Barker: We just do not believe that it is an issue that is taking place inside our organisation now. It is not something that we—

Q3940 Lindsay Roy: You do not have an audit procedure in your systems.

Andrew Ridley-Barker: As I mentioned, I will look at setting something up—absolutely.

Q3941 Lindsay Roy: Would it not be a good idea to seek out best practice and see how they operate?

Andrew Ridley-Barker: In the process of doing it I will do that.

Nick Pollard: I am very happy to share what we are doing across industry. I have no hang-up with that at all—I am not suggesting it's best practice.

Lindsay Roy: I think we can give an example of other businesses that have acknowledged best practice.

Q3942 Chair: We can certainly give an example of what we consider to be best practice from EDF at Hinkley Point, in which I think you are involved.

Nick Pollard: We are, yes.

Chair: We have quoted that in our reports as an example of best practice.

I think we have finished this section. Before we move on to the compensation scheme we are going to give you the opportunity for a comfort break, if you wish. I do not know whether you want to be macho and go on, or if you would rather have a break. Maybe it would be best if we just stopped for five minutes once Jim has had the chance to ask a question.

Q3943 Jim McGovern: Mr Pollard, to go back to the definition of blacklisting, you seemed to be saying that there was not a blacklist—it was vetting. You are probably right to say that it was not based solely on trade union activists or health and safety reps. I apologise to my colleagues on the Committee because they have heard this before, but there was a man in Dundee, Syd Scroggie, who was a decorated war veteran; he lost a leg and the sight in both eyes fighting for this country in the second world war. He found himself on the files of the Consulting Association. His crime was to write a letter to the local press in Dundee commending the council for buying an oil painting of Nelson Mandela. He is long since deceased, but nobody would ever convince that man that he was not on a blacklist. He was sure it was a blacklist.

Nick Pollard: I absolutely accept the sentiment of all of that. I can only say that.

Chair: On that note, maybe we can come back in five minutes. We will restart at 16.27, with the additional witnesses.

Sitting suspended.

On resuming—

Witnesses: **Richard Slaven**, Partner, Pinsent Masons, and **Richard Jukes**, Managing Director, Grayling Public Affairs, gave sworn evidence.

Q3944 Chair: Perhaps I may ask the two additional witnesses to introduce themselves and tell us who they are and why they are here.

Richard Slaven: My name is Richard Slaven. I am a solicitor and partner with the law firm Pinsent Masons. My firm, myself and my team have been working with the eight companies to conceptualise, design, develop and ultimately ensure implementation of the construction workers compensation scheme. During that process I have been heavily involved in all of the consultation process that has evolved over the last nine months. That is why I am here. I am here to answer any questions you have in relation to the scheme, and I am very happy to be here.

Richard Jukes: My name is Richard Jukes. I am the managing director of Grayling Public Affairs. Grayling as a company was appointed by the construction workers compensation scheme in June 2013 to advise on internal and external communications and, indeed, liaison with this Committee.

Q3945 Chair: Can we start off by asking the construction companies why you set up the construction workers compensation scheme? I am working in this context on the basis that the construction companies are the principals and the two people on the flanks are the expeditors, if that is a reasonable way of looking at it. Maybe you can tell us why you set up this compensation scheme.

Andrew Ridley-Barker: Fundamentally, we wanted to set the record straight. We were reacting to calls from this Committee and others that there should be actions put in place to make reparations for those who were affected by the activities of TCA. That has been our primary motivation. We are very keen to set the record straight, to apologise and make the necessary compensation available to those on the list of TCA.

Q3946 Chair: I take it the two others concur with that.

Nick Pollard: Yes, absolutely.

Chair: Nodding does not cut it with *Hansard*, so if you agree you have to say something so it is recorded.

Callum Tuckett: Yes.

Q3947 Lindsay Roy: If you were so keen, why was it reactive and not proactive?

Andrew Ridley-Barker: It takes time for us to get organised to come together. Such an activity is difficult; it takes a lot of time. Maybe we should have been quicker in coming together to do so. None the less, we are here now and we are keen to compensate those who have been affected.

Q3948 Lindsay Roy: Especially after the embarrassment that has come from the dearth of evidence—at least the dearth of concrete evidence—that you have been able to find, I would have thought you would be much keener to be proactive and take the initiative.

Andrew Ridley-Barker: We have certainly been very keen to participate in the construction workers compensation scheme.

Q3949 Chair: Can I clarify why you three in particular? When we asked your two advisers for the names of people to come forward to give evidence on behalf of the companies collectively, you three came forward. Why is it you three as distinct from any of the other eight?

Andrew Ridley-Barker: Just short notice and diary commitments. It's purely and simply that.

Q3950 Chair: It is not that one of you is the chair of the compensation scheme, and the others are—

Andrew Ridley-Barker: No, absolutely not.

Q3951 Chair: It could equally well have been anybody else. Is that it?

Andrew Ridley-Barker: Yes.

Q3952 Chair: Fine. I know some of my colleagues want to pick up on this, but I wonder if I could start off. The letter that you wrote to us about this includes within it: "Following eight months of discussions with unions and workers' representatives, the scheme has now been finalised." In the media announcement you also say: "The eight companies are confident that TCWCS meets the unions' stated objectives." We had the unions in on Monday, and I think it is fair to say that their enthusiasm for the scheme was less than total. Can you clarify for me how it can be that you can give us what seem to be clear assurances that this has been done in co-operation with the unions, yet the unions appear so unhappy? From my perspective, it also

has to do with our view that we wanted not to have a unilateral introduction of the compensation scheme, yet, as far as I understand it, that is effectively what we have.

Andrew Ridley-Barker: Can I ask Richard to respond? He was most involved in those discussions, so he is probably best able to provide the information.

Richard Slaven: We did consult extensively with the union group and other worker representatives for a period of eight and a half months. During that time there were a large number of exchanges and meetings with the union and the worker representative groups. We have listened very carefully to the issues raised. In my belief, we have changed the scheme in material ways to accommodate the wishes of the union group, and we have accommodated the vast bulk of the wishes that the union group and workers' representatives presented to us.

I must say I was very disappointed that we were not able to secure the agreement of the union group. We worked very hard to do so. It certainly was not through want of trying. We deferred the launch of the scheme on two or three occasions to ensure that the consultation period could run its full course. Ultimately, it became clear—I think you heard evidence to that effect on Monday—that it ran out of road. It became clear that we were not going to be able to satisfy every single demand or request of the union group, but I am satisfied that the scheme we now have has as much in it that the union group wanted that we started out with. I believe this has been a really thorough and genuine attempt to reach agreement, a genuine attempt to listen and a genuine attempt to change the scheme in the way the unions asked.

Q3953 Chair: To clarify the point that it was not for want of trying, clearly they had a number of points with which you disagreed and which you declined to accept. Clearly, you could have accepted them. You made a choice, I presume; there were some points they were putting forward with which you did not agree and you were not prepared to accept. It is not just a question of making more effort. An impasse was reached; you did not accept what they were saying and, therefore, resolved to proceed without them.

Richard Slaven: By way of illustration, you heard evidence on Monday about the issue of jobs—the issue of guaranteed jobs from the companies in any scheme. The position expressed to you on Monday, as far as I am concerned, was not an accurate description of what had taken place. It was suggested that, while it might have been wrong positively to discriminate, it was possible to take some positive action. We have advised the companies that potentially it is unlawful for them to do so. One of the unions we were consulting with made it an absolute precondition—a non-negotiable precondition—for their support of this scheme that the companies must offer guaranteed jobs on construction sites. We have advised the companies that they are unable to do so without the risk of unlawful action. In a sense, therefore, the companies were faced with a situation, in that respect, that either they acceded to the request of one of the union group and put themselves in a situation where they might have been acting unlawfully, or they simply said, “We cannot do that. What we will do is find a different way. We will try to ensure that we give training for upskilling and fairness in the way people are treated for employment applications, but what we couldn't do is accept something that potentially would have been unlawful.” When it was suggested that we ran out of road, actually a bit of a road block was put in our

way, because that was an absolute precondition. In that respect, it was not something we could have negotiated.

Q3954 Chair: That was one of the points we were going to turn to later, but since you have raised it, have you sought any third-party advice on that? As I understand it, you had a position and the union had a position. Was anybody invited to arbitrate on that, or see whether or not there was a way out of it?

Richard Slaven: It is probably the case that sometimes lawyers do not agree. The fact is that we have advised the clients that we think there is a significant risk of them acting unlawfully if they undertake the steps that were being suggested by one of the union group. As far as that is concerned, the companies have accepted the advice that we—Pinsent Masons—have given them on that.

Q3955 Chair: I think the answer to the question was no. I asked you whether or not you had sought third-party advice, and you're saying no.

Richard Slaven: That is correct.

Q3956 Simon Reeve: Do you have in front of you a copy of the letter of 4 July? Do you all have a copy?

Nick Pollard: I do not have a copy.

Richard Slaven: I do not have a copy.

Q3957 Simon Reeve: Let me pass you my copy. First, I would be interested to know who drafted the content.

Richard Jukes: I drafted the content.

Q3958 Simon Reeve: Have you seen it?

Richard Slaven: I am sure I have.

Simon Reeve: Have you three gentlemen seen it? Have a look. I will pass it to you.

Chair: Maybe we can get copies made for everybody.

Q3959 Simon Reeve: My first question is: was the letter sent to all Members of Parliament, or was there a distinction drawn between some Members of Parliament and others?

Richard Jukes: We wrote—I think on 3 July—to the Chair of this Committee, to the Ministers at BIS within whose portfolio this issue would arise, and to the two shadow Ministers, Chuka Umunna and Ian Murray, to say that we were going to be launching the scheme the following day. On 4 July we wrote to all other MPs.

Q3960 Simon Reeve: So every Member of Parliament has received, or should have received, a copy of the letter that you now have in front of you.

Richard Jukes: Yes.

Q3961 Simon Reeve: Would you have a look at paragraph 2 of that letter? For the purpose of the record, could whoever has a copy in front of him read paragraph 2?

Richard Slaven: “Following eight months of discussions with unions and workers’ representatives, the scheme has now been finalised and is open to applications immediately. It will remain open for two years.”

Q3962 Simon Reeve: First of all, is that paragraph factually accurate?

Richard Jukes: My understanding is that it is, yes.

Q3963 Simon Reeve: Secondly, what is the impression that it conveys?

Richard Jukes: It sought to convey that we had the discussions Mr Slaven has spoken of, and that we launched it on 4 July.

Q3964 Simon Reeve: Was it designed to indicate that you had got as far as you could with the trade unions but not agreed, and so you were launching the scheme unilaterally?

Richard Jukes: It was not designed to say that; it was designed to simply announce the fact that the scheme had been launched, and included with the letter was a copy of the press release, which went into more detail.

Q3965 Simon Reeve: We will come to the press release. I am asking about paragraph 2. You drafted it. What was the purpose of wording paragraph 2 in the way that you did?

Richard Jukes: As I say, it was to say that we had had discussions. It did not go into detail as to the precise conclusion of those discussions.

Q3966 Simon Reeve: It gives the clear impression that you have reached agreement, doesn't it?

Richard Jukes: It was not intended to mislead; it was simply intended to say—

Q3967 Simon Reeve: It gives the clear impression that you had reached agreement, doesn't it? If you want to disagree that that is the impression it gives, we will go through it word by word.

Richard Jukes: I accept that that is your view. It certainly was not the intention when it was written.

Q3968 Simon Reeve: What was the purpose of drafting it in that way?

Richard Jukes: To demonstrate that we had had discussions and indeed, as I am sure will become apparent, that there were a number of changes to the scheme made as a result of those discussions.

Q3969 Simon Reeve: How long have you been in public affairs?

Richard Jukes: Twenty-plus years.

Q3970 Simon Reeve: You are the chief executive of your company? The managing director?

Richard Jukes: No. I run the public affairs team within Grayling.

Q3971 Simon Reeve: So you are experienced in what you do.

Richard Jukes: I hope so.

Q3972 Simon Reeve: If you wrote a letter to Members of Parliament that created an entirely false impression, no doubt you would be deeply ashamed of your actions.

Richard Jukes: Indeed.

Q3973 Simon Reeve: Do you want to read out the second paragraph of that letter so that we can all consider the impression it gives?

Richard Jukes: I am happy to read it again.

Q3974 Simon Reeve: Let's have another listen for those who do not have it in front of them. Perhaps Mr Pollard, Mr Ridley-Barker and Mr Tuckett could bear in mind that this was done on their behalf.

Richard Jukes: "Following eight months of discussions with unions and workers' representatives, the scheme has now been finalised and will open tomorrow. It will remain open for two years."

Q3975 Simon Reeve: Mr Pollard, does that paragraph give you the impression that there is agreement with the union?

Nick Pollard: No, frankly. It states the facts.

Andrew Ridley-Barker: It was not my understanding of that paragraph at the time.

Q3976 Simon Reeve: That paragraph does not give you the impression that this was something the unions were happy with.

Andrew Ridley-Barker: No, because I was fully aware of the position that it was not.

Q3977 Simon Reeve: Mr Tuckett?

Callum Tuckett: Reading it now and listening to it now, no. In the context when I read it before and in the context of my understanding of what was done and the huge effort put in to try to get an agreement, I would have read it differently, but I accept your point reading it now.

Q3978 Simon Reeve: Could you tell me, when a Member of Parliament opens that letter and reads that paragraph, how on earth you expect them to read it as saying that there has been disagreement with the unions but we are launching this scheme anyway? Could you explain to me how they are to come to that conclusion? We will do it in turn, with Mr Tuckett first.

Callum Tuckett: I agree with your point.

Andrew Ridley-Barker: I agree, but it was not the intention—

Q3979 Simon Reeve: Mr Pollard?

Nick Pollard: They could not come to that conclusion from that sentence.

Q3980 Simon Reeve: Mr Jukes, either you have just gone off on some frolic of your own and, for the first time in 20 years, drafted something that is completely misleading and not meant to be, or some careful drafting went into this in order to create the impression in the minds of Members of Parliament that the unions were on board when you knew they were not. Which one?

Richard Jukes: It was certainly not intended to mislead. It was wording taken from the press release.

Q3981 Simon Reeve: Your company did the press release as well, so that does not really get us much further, does it?

Richard Jukes: The press release had been subject to a number of other companies clearing it as well, so it was not done in isolation.

Q3982 Simon Reeve: Looking at paragraph 2, can any of you point to anything that would allow someone to understand that there was still dispute between the unions and the companies over the terms of this scheme?

Callum Tuckett: I think the three of us have just agreed with your point. When you read it cold, it does read that way.

Q3983 Simon Reeve: This is being sent to 650 Members of Parliament.

Callum Tuckett: What I am trying to understand, as you are saying that, is what on earth would we gain by doing something like that? The intent is absolutely not to mislead anyone. The intent of all who are party to this was to provide something additional to the existing long-term routes that are available to anybody who has been adversely affected.

Q3984 Simon Reeve: Mr Tuckett, we are not talking about the scheme. Let's go back to the beginning. You retained a PR company.

Callum Tuckett: I have agreed with your point.

Q3985 Simon Reeve: Presumably, what you have to gain is good PR, and that is why the letter was written in those terms—so that people not familiar with the detail would think, “Those good guys at TCWCS have spent eight months discussing it with the unions; they

have put it together, and it is ready to fly.” That is the only purpose in sending it out like that, isn’t it? Or do you think there is another purpose in sending it out like that?

Callum Tuckett: I have agreed with your point about how it reads. When I read it, I read it in the context of what I knew about the negotiations that had gone on, and the exceptional effort that had gone in from all the parties to try to reach an agreement. I do not disagree with what you say, but I am reading it in a different context from you.

Q3986 Simon Reeve: So anyone who did not have your knowledge, as the chief exec of one of the companies involved in this, would be misled by it.

Callum Tuckett: For anybody who has looked at this and been around it, there has been a huge amount of negative and very destructive press coverage by the unions—we were all aware of that—and in many instances there were inaccurate representations of it. Most people reading this letter would have some context for it. Agreed, they would not have the context or input I had.

Q3987 Simon Reeve: So this was sent to Members of Parliament on the assumption that every Member of Parliament would understand the context, and would understand paragraph 2 to mean that, although they had tried to work with the unions, there was a disagreement, so it was being launched unilaterally.

Callum Tuckett: I did not say that the context was that every Member of Parliament—

Q3988 Simon Reeve: Mr Slaven, you were involved in the negotiations and you read the letter, so how did it get past you to 650 Members of Parliament?

Richard Slaven: My position on this is that it is a neutral statement. It does not say whether agreement was reached or not reached. This Committee has emphasised significantly the need for there to be a genuine attempt to have a real consultation. From my perspective, reading this, it was an attempt to convey that we had consulted extensively. It was a reference to the period of consultation and to explain in part why it was that we had not launched the scheme earlier, because originally the companies had said they were intending to launch this early in the new year. This was by way of explanation as to why perhaps it had not been launched earlier.

Q3989 Simon Reeve: Your evidence on oath is that that is a neutral paragraph and it is not meant to give the impression that there has been agreement prior to the scheme being launched.

Richard Slaven: That is absolutely my evidence on oath. I totally understand that. It was not, certainly from my perspective, intended to convey that at all.

Q3990 Simon Reeve: Now that your three clients all recognise that this would have been misleading to a Member of Parliament who received it, we are left with the question whether that is through incompetence or whether it is done deliberately as part of a PR exercise. There will be a large number of people in this building who will feel they have been actively misled. What are you going to do about that?

Richard Jukes: Perhaps I may answer that.

Q3991 Simon Reeve: You might have done enough. Let's see what you three are going to do about it.

Andrew Ridley-Barker: If there has been unfortunate misleading through the interpretation of that paragraph, we will have to write and put that right to clarify the status of the negotiations.

Q3992 Simon Reeve: I am happy to tell you, Mr Ridley-Barker, that I regard that paragraph as a deliberate attempt to mislead me. I know it was not drafted by you.

Callum Tuckett: Having an opportunity to share with people the chronological development of the discussions and to allow people to understand in detail factually each discussion that went on, the content of that discussion, the pursuance of discussions with the unions and the rejection of many of those discussions, certainly as an individual and from Laing O'Rourke's perspective, I would very much welcome that being in the public domain, and I would very much welcome the honesty and clarity around what is trying to be achieved.

Q3993 Simon Reeve: Why did you not do something about that when you read this letter? Why did you not say, "Where's the word 'despite,' or words like that?"

Callum Tuckett: I was clear a second ago that when I read the letter I was reading it in the context of what I knew. I read it after it was issued and I was reading it in the context of what I knew, and I read it differently. I agree with you. I absolutely agree with you; if you read that cold and you do not know any of the context, yes, you would take it in a different way. I accepted that, I am not trying to avoid that point. What I am saying is that I think we need to be open and honest. There has to be transparency around this. As an individual, I am finding it extremely frustrating, because I know from notes of meetings what has gone on, and the effort that has been put in to trying to resolve something and provide something additional to people to expedite some form of reparation for something none of us is comfortable about. I would like that information in the public domain.

Q3994 Simon Reeve: Good. We will leave you to talk to your PR people about that and make it clear to them.

Callum Tuckett: And I think we need the unions' agreement to do that as well.

Q3995 Simon Reeve: You are perfectly at liberty to set out your account of why this is not a joint scheme.

Callum Tuckett: Thank you.

Q3996 Simon Reeve: You have perhaps answered this already. Presumably, you launched it unilaterally out of frustration.

Richard Slaven: Perhaps I can answer that. First of all, the word “unilateral” suggests to me that it was done effectively by the companies without consultation. I am afraid that is just not the case.

Q3997 Simon Reeve: I said it was launched unilaterally.

Richard Slaven: I understand the word “launched,” but this is a voluntary scheme; it is a scheme wholly funded by the companies. It had to be launched by them, so in that sense it always was going to be launched in that way, but to suggest this was unilateral, I am afraid, from where I am sitting, that cannot be an accurate phrase, given the lengths we went to consult. Had we not consulted and had we not spent eight and a half months taking on board the views of the union group, changing the scheme materially on a number of occasions and deferring the scheme launch on a number of occasions, you would be absolutely right to say that we had unilaterally gone ahead with this without regard to anybody else. Was it agreed? Absolutely not.

Q3998 Simon Reeve: I haven’t said that. There are two groups of people involved in this, and you are one of the group. I simply asked you whether your group decided to launch this because you took the decision that there was no point in further negotiation.

Richard Slaven: That is absolutely right. The reason for launching it was that we had reached a point where we felt there was no further progress to be made. Can I say that the reason we launched it when we did was to ensure this Committee was sitting, so that it was not perceived to be an attempt to do it when this Committee had risen? It was also an attempt to launch before the summer holidays so that individuals would be able to see the effect of the launch and be able to join the scheme if they wanted to before they went on summer holidays. I absolutely agree with you that ultimately the companies took the decision that they should launch and the date when they should launch.

Q3999 Simon Reeve: Where did you get the figures for the amounts set out in the scheme for compensation?

Richard Slaven: In terms of this letter?

Q4000 Simon Reeve: No. In the letter and in the press release you talk about the two schemes. There is an upper limit of £100,000 for the more complicated scheme and a fast-track figure of £4,000 to £20,000. Where are those figures from?

Richard Slaven: Part of that is from the consultation process. I can talk about the genesis of the £100,000, if that helps.

Q4001 Simon Reeve: I want to know why it is £4,000 to £20,000 rather than £3,000 to £17,000, or £10,000 to £30,000. Where does £4,000 to £20,000 come from?

Richard Slaven: The starting point for us was that we wanted to ensure that individuals were properly compensated for the harm they would have suffered. In relation to individuals who are named only on a list, it is our advice to the companies that the likely award—there is legal precedent for this—for what would then effectively be a data protection breach would be in the region of £750.

Q4002 Simon Reeve: Data protection law was one source. What other sources did you go to?

Richard Slaven: Perhaps I can explain how that developed.

Q4003 Simon Reeve: Just tell us your sources. Data protection cases are one. Where else did you look?

Richard Slaven: We started with that. We then took a view as to the likely level of damages we thought an individual was likely to receive in the vast majority of cases, and we tried to create a range around that.

Q4004 Simon Reeve: What did you base that on?

Richard Slaven: Based upon 30 years of legal experience and 30 years of dispute experience of what we consider a court is likely to award for damages.

Q4005 Simon Reeve: I am not saying that you would not necessarily have a good hunch, but are we saying that these figures are a hunch about where the boundaries lie—where the parameters lie?

Richard Slaven: You certainly cannot have certainty around this issue, but what I can say to this Committee is that I am confident, that I believe in many cases the levels of compensation being provided here are greater than individuals would recover—not in every case.

Q4006 Simon Reeve: Can you point to anything? For example, if all of these people had broken their legs and you were saying, “We have a scheme that will offer you so much for a broken leg,” we can all look at the authorities, or at the Judicial Studies Board guidelines, and see what broken legs attract in terms of awards, and we can understand. Where should we look in order to understand whether your hunch about these figures is right?

Richard Slaven: I am not sure that for this sort of damage there is such an available script for you to be able to look at. What we can say is that, again starting with the entry level award, we considered and advised that a correct level of compensation, and one that is likely to be awarded by the court for those individuals who are on the list, but in respect of whom there is no further information, will be in the region of £750—if at all, actually. Therefore, what we have done through the consultation process is agree to increase that by 300% to £4,000. I cannot say, therefore, if £4,000 is a justifiable figure. My view is that it is a significantly higher figure.

Q4007 Simon Reeve: Where does the £100,000 come from?

Richard Slaven: The genesis of the £100,000 was, again, a view that we had taken as to what we thought was likely to be the upper level of awards.

Q4008 Simon Reeve: I appreciate you must have taken a view for that figure to exist, but why?

Richard Slaven: Because we have reviewed the authorities; we understand the way the courts will assess loss; we understand mitigation.

Q4009 Simon Reeve: What are the authorities you have looked at? What sort of cases did you look at when you decided that the upper limit should be £100,000?

Richard Slaven: I cannot name precise cases.

Q4010 Simon Reeve: Just in general terms, are you talking about employment cases, personal injury cases, data protection cases?

Richard Slaven: Certainly not personal injury cases, but tortious cases—the way in which courts will compensate individuals to put them in the position they would have been in had the harm not occurred. In that respect, you have to take a view as to the likelihood of a court making an award of loss of earnings. Principally, the scheme was designed round loss of earnings. That is absolutely right. I think that in its previous report the Committee focused on loss of earnings and, for that reason, so did our scheme. It is an assessment of the likelihood of what a court would award in the upper end in cases, taking into account

mitigation—the fact that individuals would obviously have an obligation to mitigate—and the fact they would, in likelihood, have received income from other sources. All of that created for us a figure in the region of £100,000.

When the original High Court claim was issued by the claimants represented by Guney, Clark & Ryan, I am pretty sure that there was also comment at that point by the claimant group that damages could be up to £100,000, which was consistent with the view that we had taken.

Q4011 Simon Reeve: But that is because of the information that people have to provide when they issue proceedings, isn't it? That is not an accurate statement of quantum at that stage. You know that.

Richard Slaven: I totally accept that this is an inexact science, and I am not trying to defend it on that basis. What I would say is that there came a point at which we took a view that £100,000 was a significant sum of money by way of compensation. Bearing in mind that the companies here are the primary benefit of this scheme, if you like, individuals who join it do not need to show that there was unlawful activity. I know that the Committee considers that what went on with the Consulting Association was entirely wrong, and the companies would agree with that, but whether it was unlawful is an entirely different issue. That is far from certain, and that is for the court to decide. The primary point about the scheme is that individuals are entitled to join it. They do not need to prove what they would need to prove in the High Court. The other primary obligation of the scheme was to make it simple—to make it easy to access and simple to use.

Q4012 Simon Reeve: Could I ask you about that? If somebody joins the scheme, they get an amount of money so they can get free independent legal advice.

Richard Slaven: Yes.

Q4013 Simon Reeve: How much do they get?

Richard Slaven: Between £250 and £400.

Q4014 Simon Reeve: In terms of the lowest charge-out rate for a fee-earner at your firm, how much time would that buy? I am not asking you; I am asking about the lowest rate in your firm. Would it be an hour and a half?

Richard Slaven: I would suggest probably about two hours.

Q4015 Simon Reeve: Somebody in two hours, who has never seen this scheme, has to be able to decide whether £100,000 is the right amount or not when the person who has devised

it says, “Well, it’s not science,” and, if I may say, is not exactly razor-sharp about where the £100,000 comes from. How is that fair on the individual?

Richard Slaven: The starting point is that it is not unusual for individuals who have substantial employment claims at the sort of level we are talking about to receive advice under a compromise agreement for the sort of fees we are talking about. This is not something outside an industry standard. Lots of law firms will do this on a fixed-price basis, in exactly the same way as many law firms will do conveyancing on a fixed-price basis.

Q4016 Simon Reeve: This is not quite selling a bungalow, is it?

Richard Slaven: No. I totally understand, but it is an industry standard—I think it is fair to say—that a level of fee around the figures we are talking about is used for giving advice to individuals who are giving up their rights under a compromise agreement.

The two firms that we have suggested, or at least put forward, have indicated that they can provide the advice that is required for that amount, given the number of individuals they might be dealing with. It would be wrong to say they are unfamiliar with the issues as employment lawyers. The two firms we have chosen have big geographical spread. They are satisfied that they can deliver the advice required. They have obligations to their clients to ensure—

Q4017 Simon Reeve: If they can do that, and if they can explain why an offer of anywhere between £20,000 and £100,000 might be right, why can’t you explain where these figures come from and how they would be arrived at?

Richard Slaven: I am sorry. I was in the process of doing so, but I accept we have to move on to something else. The reason why we as a group and why Pinsent Masons have given this advice in relation to a cut-off point of £100,000 is that, first, we consider that will compensate the vast majority of people. We totally accept that there may be individuals who consider they have suffered loss that is greater than that. This scheme is about providing a proper response to the vast majority of people and providing choice to everyone. In relation to the £100,000, the difficulty that arises from our scheme is that to suit the vast majority we wanted to make the process very simple. We wanted to ensure that we stripped out all of the difficulty, complexity, risk and uncertainty connected with the High Court to produce something entirely different. Once you get beyond £100,000, particularly in the context of the companies effectively saying that individuals do not need to prove liability, or that there was unlawful activity, the scheme simply does not have the tools that the High Court will have to assess forensically and test the evidence of individuals.

One of the key benefits of the scheme that we have is that an individual does not have to go through a process of cross-examination—to have the evidence they put before an adjudicator in the full review—and does not have to be tested at length in a very adversarial process in front of a High Court judge in a courtroom.

Q4018 Simon Reeve: Someone makes a claim because their name is on a list. What do you think they are going to be cross-examined on? They are not going to be cross-examined on the basis that their name was not on the list.

Richard Slaven: They will be cross-examined on the claim for loss that they are making. It would be the extent to which they received additional income during that period; the steps that they took to find alternative income—the mitigation, for example. People would be very substantially tested on that in open court, rigorously and continually. Under our scheme, for those who go into full review the companies and their lawyers do not have the ability, the right—if the adjudicator decides that there needs to be a meeting for him to extract further information from the applicant—directly to ask that individual anything. It is about the adjudicator, and we can make submissions. This is a really significant advantage.

Q4019 Simon Reeve: It is made to be as attractive as possible, isn't it, to someone contemplating entering the scheme?

Richard Slaven: Absolutely.

Q4020 Simon Reeve: What is the time scale for your High Court litigation coming to trial?

Richard Slaven: I am not involved in the High Court action. I heard the evidence given on Monday from the union group. The master suggested this would be tried by April 2016. I have not been involved in the litigation; I am not familiar with it.

Q4021 Simon Reeve: You are the partner of a large firm of solicitors. I am not saying that you are necessarily an expert in every type of case, but in terms of the litigation time scale you would recognise that is about right, wouldn't you?

Richard Slaven: Yes. I accept it could be longer.

Q4022 Simon Reeve: There is a closure point on this scheme, isn't there?

Richard Slaven: There is.

Q4023 Simon Reeve: How long?

Richard Slaven: It is July 2016, two years.

Q4024 Simon Reeve: Because the High Court litigation could take longer, would it not be better to extend the scheme so that if the awards made by the High Court are higher they are reflected in the awards the scheme makes? Otherwise, someone might go on your scheme because you made it so attractive and then think, “I wish I had not done that,” because a month later the High Court starts putting a value on these claims.

Richard Slaven: Can I just say where the two-year period came from? I heard the evidence given on Monday. It was originally proposed by us that it would be one year. I accept that. We did so on the basis that it was absolutely our intention to communicate this as widely and extensively as possible, and we had hoped to be able to write to as many of the affected individuals, where there were addresses, but representations were made by the union group that it should not be one year, that it was far too short.

Q4025 Simon Reeve: Shall we extend it a bit more? I think Mr Tuckett is nodding. I think he would quite like to extend it a bit.

Callum Tuckett: I think the point we are making—I am sure my colleagues will not object to this—is that the original intent was that there be some way of somebody having direct contact with all the individuals that had been affected by TCA. Although I have not been personally involved in the negotiations, one of the reasons their discussions with the unions broke down was that the unions were against any further access to those lists of names. Our time scale was based on people being able to get direct contact and making people aware of the scheme being available. The unions blocked that. That was another reason why we decided that we were just going to go on and—

Q4026 Simon Reeve: Shall we increase the time limit a bit?

Callum Tuckett: In the absence of that, maybe the need to extend that—

Q4027 Simon Reeve: We could decide that now. Everybody is here.

Callum Tuckett: We think there should be an element of review, and a date when that is reviewed. We have discussed it—not at length, but the three of us were—

Q4028 Simon Reeve: What about three years? You only launched it in this letter a few weeks ago.

Callum Tuckett: I don’t mean to be rude, but I would like to make a slightly different proposal. I think we would like to find some way to be much more proactive, to have some form of independent body that, however they do it—

Q4029 Simon Reeve: But that is the contact point. We are talking about the worry that people will go on the scheme before they know what the High Court might think in terms of damages. We can make that worry go away by crossing out the word “two” and writing in the word “three.” Is that something that finds favour with anybody?

Andrew Ridley-Barker: We would have to consider that, because we are three organisations from a group of eight and it would not be right for us to make such a decision without consultation with the others, but in principle what we are keen to do is get as many applicants as we possibly can.

Q4030 Simon Reeve: There is no point in doing this and having the PR people and everything else if every time you take a step forward it makes you look worse.

Andrew Ridley-Barker: We need to take it away and discuss it with the other members of our group.

Q4031 Chair: Perhaps I can come back to the general strategy in all of this. I very much regret having to spend so much of my time on this, and that the time of this Committee has been taken up with this. I wish it had been sorted out by yourselves and the unions a considerable time ago. I regard what has happened in terms of what I describe as blacklisting—you might not—as totally abhorrent, and so does the Committee. I think we made that absolutely clear. We want to make things right and we want to see some evidence of yourselves having repented, as it were, and made good in various ways. It is in that context that the question of the letter is so important.

Perhaps I can read to you an early-day motion submitted by some of my colleagues. Let me give you the exact wording. It was tabled by George Galloway and sponsored by Alan Meale, Michael Connarty, Kelvin Hopkins, Jim Dobbin and Mark Durkan, all of whom, it would be fair to say, would be seen as strongly supportive of trade unions. The EDM that was tabled says: “That this House welcomes the introduction of the Construction Workers Compensation scheme through which workers blacklisted by the far-right organisation the Economic League can claim a measure of recompense; notes that under the fast-track process, where compensation is up to £20,000, applicants do not have to prove actual loss but only that their names were registered by the Economic League; further notes that the full review process, with compensation up to £100,000, is where there is evidence that employers used the League’s register to actively blacklist; points out that the scheme has been agreed between trade unions and employers; and urges all workers who were unfairly and illicitly blacklisted to claim under the scheme, which is independently arbitrated by a former High Court judge.”

I think you can see that one phrase of particular significance is “that the scheme has been agreed between trade unions and employers.” It went on to be signed by 15 Members of Parliament in total, all of whom, looking at the list, would be among the most enthusiastic supporters of trade unions. I understand that the trade unions pointed out the nature of the reality to those involved, and the motion has now been withdrawn. In these circumstances,

can you understand why we feel that the letter sent out to Members of Parliament is evidence of bad faith, and is quite probably a deliberate attempt to deceive?

Andrew Ridley-Barker: Mr Chair, it was not an attempt to deceive deliberately.

Q4032 Chair: I did not ask you that. I asked you whether or not you could understand why we might arrive at that conclusion.

Nick Pollard: Yes, I can see how you would arrive at that conclusion. It is deeply regrettable that that conclusion is being drawn from what was a well-intentioned letter.

Q4033 Simon Reeve: I do not know that it was well-intentioned. To be fair to you, Mr Ridley-Barker, you did not draft it, so you cannot comment on its intention either.

Callum Tuckett: What we can do, though, is comment on the intent of the organisations. I would like to be absolutely clear—it sounds like I am going back to the same point and I apologise for that—that the intent of the organisations is to offer something that provides choice.

Q4034 Chair: I understand that. I want to come to the detail in a moment. The question of attempt to mislead is exceptionally important. I deliberately did not approach any of those who signed that motion, but I spoke to many of those who approached me. Their general line was that this was really good news, things had been settled and everybody was happy. I made it clear that it was not accepted by the unions. Can you understand why in that context we are therefore deeply cynical about some of the elements of the scheme itself? I accept that the scheme is much better than it was when it started, but we have quite understandably come to the conclusion that you have not been perhaps as regretful and full of repentance as you might be, when it is framed and introduced by the letter we have received.

Callum Tuckett: I am under oath, as is everybody else. I am trying to explain what the intent of the organisations is. I agree with the points you have made—absolutely. Reading it cold, I agree with that. It is very unfortunate. I was not aware of what you have just read. I am trying to clarify the intent of the organisations.

Q4035 Chair: We have heard that and I accept that.

Callum Tuckett: I know, but what you are saying is that there is a perception of bad faith. What I am saying to you is that there is no bad faith. The genuine intent of the organisations involved in this is actually to provide something that gives an alternative to expedite reasonable reparation for people. We have gone to exceptional lengths, we believe, to try to get agreement with the unions, and that has been blocked at every level. I absolutely welcome that detail being in the public domain, and not some of the things that have been leaked to the press that, quite frankly, are misleading.

Richard Jukes: I absolutely accept that people have misunderstood the letter. I can assure this Committee that at no point when I drafted this letter was there any intent to deceive. Throughout the process, Chair, we have sought to keep you informed of progress, and we have been open about that. Absolutely I must bear the brunt, rather than the scheme, if there has been a misunderstanding. I accept that.

Q4036 Simon Reeve: I do not think we have agreed that there has been a misunderstanding. Our position is that there is no misunderstanding at all, and we were deceived.

Richard Jukes: I can categorically, under oath, say there was no intent to deceive.

Q4037 Chair: Does your organisation have a monitoring unit which picked up this EDM?

Richard Jukes: Yes.

Q4038 Chair: When you saw it, presumably you read it. When you read it and saw that it was suggesting this had been agreed jointly with the trade unions, what steps did you take to correct that false impression?

Richard Jukes: I did not take any steps.

Q4039 Chair: Can you clarify for me why you didn't take any steps? Clearly, a false impression had been created. You would accept that; otherwise, presumably they would not have had the wrong thing in the EDM.

Richard Jukes: When the EDM was first published under Mr Galloway's name, I read it. I did not join the dots that he had drawn those conclusions from the letter. I accept that you will not accept that. But there had been categorically no attempt to give the impression that this was an agreed scheme, not least because it was clear that that palpably would not be the case and the unions would not—would make sure that they made that clear. I'm afraid it was—

Q4040 Jim McGovern: On the same topic, it is ironic that Mr Tuckett mentioned leaks to the press. This is not so much a leak; it is actually notes to editors, which we have just been given a copy of. If you count down to bullet point 10, it says: "GMB, Unite and UCATT have called for the development of a scheme to compensate construction workers whose names are held on TCA records. The eight companies are confident that TCWCS meets the unions' stated objectives for a compensation scheme." Is that not misleading?

Richard Jukes: I think, as we have said before, in terms of the key objectives, the compensation scheme did indeed seek to meet those objectives—

Q4041 Jim McGovern: But it does not say that it sought to meet the objectives; it says that you are confident it does.

Richard Slaven: Could I briefly step in, if that's okay? There is a report that was referred to by the representative for UCATT in submissions to this Committee on Monday—a very comprehensive report of 22 pages, with detailed consideration of all the issues around this point and, with it, a statement of what a compensation scheme should look like, what it should seek to achieve and the way in which that scheme should operate.

Q4042 Jim McGovern: But concentrate on that bullet point. Do you believe that is accurate inasmuch as it says it meets the objectives of the trade unions?

Richard Slaven: If you look at the context of that report and that union suggesting that is what they want to see happen, that is absolutely what it does. I would encourage this Committee to review that report, if you have not already done so. It is on the website. The scheme we now have bears a striking resemblance to the compensation levels—

Q4043 Jim McGovern: So you spoke to the general secretary of UCATT saying, “We’ve got a deal.”

Richard Slaven: It is on a report; it is the report that is advanced.

Q4044 Jim McGovern: He did not say on Monday that he agreed it. Are you saying he did?

Richard Slaven: Did what?

Q4045 Jim McGovern: Agreed that this was meeting the objectives of his members.

Richard Slaven: I am not saying that at all, but it is clear from the report and the way it is advanced that—

Q4046 Jim McGovern: It is similar.

Richard Slaven: Similarly, we hope that we have captured the intentions of this Committee as well. I am very clear as to the issues. We would certainly hope to have endeavoured to do so.

Q4047 Jim McGovern: You have misled this Committee; you have misled Parliament.

Richard Slaven: That certainly was not an intention.

Jim McGovern: I do not know whether it was intentional. My colleague here is better than me at probing these things, but it certainly seems to me that that was the intention.

Q4048 Simon Reeve: The whole tenor of this document—the letter and the press release—is to give the impression that the unions are on board with the scheme that is being launched.

Richard Slaven: I echo what Mr Tuckett was saying. It would be frankly ludicrous for us intentionally to do something when the unions are extremely active in saying what has or has not happened. We communicated to you, Chair, the night before that agreement had not been reached. It would have been ludicrous for us to have done something that was open—we are trying to be open and transparent. I am incredibly disappointed. I totally accept the points that you are raising. This is an incredibly disappointing start to the scheme, which we have high hopes for and we think is a really good scheme and the fact that we are being—

Q4049 Simon Reeve: You could make it better by saying, “We overstated our case. We wanted to create an impression; we should not have done it, and we are sorry.”

Richard Slaven: If the impression is given that we have overstated it, I absolutely accept that. There was never an intention to do so. We are looking at rafts of documents relating to the scheme and the scheme rules. At no point, and I can say this because I have been in meetings with everybody round this table, was there ever an intention to do that. I absolutely can see the point you are making. I actually accept that that might have been the effect, but it absolutely was not the intention. I have worked very hard on this scheme.

Q4050 Simon Reeve: What about the next point down? “Representatives for TCWCS have been engaging with the unions and workers’ representatives for eight months. During this period substantial changes to the terms of the originally proposed scheme have been made.” That is designed to create the impression that the unions are on board; it is not designed to give the impression that there have been modifications but the unions still don’t like it.

Richard Slaven: The unions are on record as saying that they don’t agree with the scheme—absolutely on record about that.

Q4051 Simon Reeve: I am talking about the press release—the wording of the press release. Mr Tuckett, you would accept the point.

Callum Tuckett: I think what we’ve got to do genuinely—and Richard has been very clear about his disappointment. I will say it again: there was no intent, certainly on the part—

Q4052 Simon Reeve: Don’t bother saying that because I do not think this Committee accepts it. There is a paragraph in the letter that is clear and there are two paragraphs in the

press release that go to the same point, so it is sheer incompetence or it is a deliberate attempt to mislead.

Callum Tuckett: Possibly it is incompetence. What I am being absolutely clear on is the intent of what we are doing.

Q4053 Simon Reeve: We are concerned about the intent of your correspondence.

Callum Tuckett: If you would let me finish the point—

Q4054 Simon Reeve: It is the same point you made to the Chair.

Callum Tuckett: We have been proactively trying to engage with the unions to move this forward, to provide something that is different, something that is additional—

Q4055 Simon Reeve: You have told us this.

Callum Tuckett: I know we have.

Q4056 Simon Reeve: We cannot square that with the content of this, unless you are saying that your PR people have gone further than you wanted them to.

Callum Tuckett: What I am offering—I have not got agreement from the other eight involved—is a chronological account of the engagement that we have attempted that the unions can respond to. Let's have in an open forum what has been attempted here, so people understand that we are actually trying to do something for the workers involved in this.

Q4057 Simon Reeve: Can we concentrate on whether your scheme has set out to mislead Members of Parliament? The second of the two comments in the press release we have just been through says: "Representatives for TCWCS have been engaging with the unions and workers' representatives for eight months. During this period substantial changes to the terms of the originally proposed scheme have been made." That gives the impression—

Callum Tuckett: Can I ask Richard to respond to that factually? There have been a number of factual changes to the scheme.

Q4058 Simon Reeve: Mr Tuckett, what we are talking about is the impression that that wording gives. The impression it gives is that there has been—

Callum Tuckett: The first point I agree with; it is the second point that I think—

Chair: We have made our points, and I think you have taken them on board. There are two particular points that, particularly in this context, we want to make sure are not omitted. We have not concentrated all that much on the media announcement, and I want to read out the two bits that I particularly object to: “The Construction Workers Compensation Scheme announced that, following eight months of discussions with unions and workers’ representatives, the scheme has now been finalised and is open to applications immediately.” The juxtaposition of negotiations and “finalised” gives the impression that it has been joint. On the third page: “The eight companies are confident that TCWCS meets the unions’ stated objectives.” Given that negotiations broke down on the question of re-employment, among other things, clearly that is one of their stated objectives that was not met. How you can possibly say, “The eight companies are confident that TCWCS meets the unions’ stated objectives” defies belief, doesn’t it? There is no point in flogging a dead horse, is there? I think we have adequately covered that.

Q4059 Jim McGovern: Chair, Mr Jukes has said he was responsible for drafting the letter. Were you also responsible for the notes to editors?

Richard Jukes: No, I was not.

Q4060 Jim McGovern: Who was?

Richard Jukes: It was my company; it was not me personally.

Q4061 Chair: You are here on behalf of the company, and therefore you have responsibility for it.

Richard Jukes: Absolutely.

Q4062 Pamela Nash: Mr Jukes, going back to the earlier point about the EDM, you confirmed to the Committee that you were aware of the EDM and that you read it at the time, and the reason you had not responded to it was that you had not connected it with the letter and press release. Can I put to you that the EDM very clearly states that Members of Parliament did think that trade unions had agreed to this unequivocally, so whether you thought it was because of the letter and press release or not, it misrepresented the compensation scheme. Can I ask you again why you did not feel it appropriate to take any action at that point, even if you did not connect it with the letter?

Richard Jukes: I should have done, and I will most certainly do that. I apologise that I did not at the time, but it was not a conscious decision not to respond to it. I read the EDM when it was first tabled and just accepted it. I should have given it further consideration and I did not.

Q4063 Pamela Nash: To me, that is the worst part, because there is absolute proof on the record. You confirmed that you thought at the time Members of Parliament did think at that point that the trade unions who were involved in those negotiations were agreeing to this. Can I ask the other witnesses whether they were aware of the EDM, or if they were aware before today that Members of Parliament did feel that they had been misrepresented?

Andrew Ridley-Barker: I was not aware.

Nick Pollard: No.

Q4064 Pamela Nash: This is the first time you have heard it.

Andrew Ridley-Barker: That is correct.

Chair: To be fair, I appreciate that life is too full for people to spend their time reading EDMs. I do not read all of them myself, so that is a plausible defence.

Pamela Nash: I just wanted to check.

Q4065 Lindsay Roy: What are you going to do to correct the false impression?

Andrew Ridley-Barker: I think we should write to Members and point out that our letter may well have misled them. It is not correct, and not our intention.

Lindsay Roy: And not change the letter at all.

Q4066 Chair: As I understand it, you will have to write and correct a whole number of things. We are not finished yet. Can I raise one thing? One of you said you believed that you had been proactively responding to this. We would take the view that, first, you would not have stopped using the Consulting Association scheme had you not been caught; and, secondly, you would not have done anything about compensation had there not been legal action taken by the trade unions and we ourselves started having hearings. What evidence is there that the companies started proactively taking steps before we got Cullum McAlpine, Ian Kerr and others in front of us?

Andrew Ridley-Barker: It is regrettable that we were part of TCA. I would really like to think that we would not be continuing with that activity.

Q4067 Chair: That is not the question I am asking you. The point was made that you proactively responded. I am suggesting that you did not, that you only reacted once we had pulled people in as witnesses.

Andrew Ridley-Barker: As I mentioned earlier, the motivation for our scheme came partly from this Committee calling for the construction industry to come together and establish a

compensation scheme. Eight organisations have—only eight—and we are representing the industry.

Q4068 Chair: We understand that. We will go after them in due course. It is fair to say that you were not proactive, but reactive.

Andrew Ridley-Barker: The motivation was partly from this.

Q4069 Chair: I understand that. Can I turn to the question of the compensation scheme itself and the merits thereof? As you will have seen—or if you have not, you should have been briefed on it—there were several things we wanted to see from this. The first was an apology—a clear and unequivocal apology. You are all nodding, which I take to mean (a) that you understand that is what we wanted, but (b) I am not quite sure whether or not you are apologising and, if so, what you are actually apologising for.

Andrew Ridley-Barker: Chair, I think we have apologised a number of times this afternoon for our use of TCA, for our membership of that organisation and for the harm that it caused individuals as a result. It is absolutely reprehensible. We should never have done it. We did, and now we want to set the record straight and put things right.

Q4070 Chair: I presume the two others agree with that.

Nick Pollard: Yes.

Callum Tuckett: Yes.

Q4071 Chair: In the media announcement, the fourth paragraph down says: “All eight companies recognise that the activities of TCA were unacceptable and regret their involvement. They are sorry that information was held about individuals, and for any hardship suffered as a result.” Can you clarify for me that the hardship did not result from the information simply being held? The hardship resulted from use being made of the information. Why did you not acknowledge in your statement, or, as far as I am able to see, at any stage during the entire process, that you yourselves accessed that information and used it to refuse employment to a number of workers? We have had disagreement or discussion about the numbers. Why does the statement not make that clear? It implies that the hardship flowed directly and simply from the holding of the information, yet there were other steps in between.

Nick Pollard: I think the harm flows from both, Chair. I do not think it was one or the other, and the scheme clearly recognises that. If the name is on the list, they might not have had physical hardship at the time but it was clearly an infringement and should not have been happening. I think it flows from both.

Q4072 Chair: But you do not mention anything resulting from the information being accessed, do you?

Nick Pollard: Where are you reading from, Chair?

Q4073 Chair: I was reading from the media announcement. I appreciate that you are in some difficulty, since this is a document that to all intents and purposes you have disowned, and I understand that, but you can see why we are unhappy with that as well. It seems to me that you have not taken full acknowledgment or full recognition of the consequences. It was not simply the information being held that caused the problem; it was the use being made of that information.

Andrew Ridley-Barker: Absolutely. We have no problem with that at all.

Q4074 Chair: Why do I have to drag that out of you?

Andrew Ridley-Barker: It is not intentional. I have said over the course of the afternoon that we regret the use of TCA and the harm that came from that.

Q4075 Chair: Having gone into this over a long period, our point is that the harm did not come as an act of God; it was deliberate action by yourselves and the other companies. If we are to be convinced that you are genuine in your repentance and ought not to be discriminated against in the award of public sector contracts, we have to be convinced that you are actually genuine in self-cleansing. It is areas like that that cause us anxiety, as I am sure you can appreciate.

Nick Pollard: I do appreciate it. It is desperately sad that so much of this afternoon has been taken up having to try to explain some inept drafting. I am so sorry for that. From our perspective, it is an unusual feature that in a very fragmented industry eight companies have come together, and committed and bound together legally to make reparation for the entire industry's sins. There is no nit-picking about whether this was a Balfour Beatty name or VINCI name if you were part of that infringement called the Consulting Association, or the use of it. The eight have stood in the shoes of 40-odd, and that is so unusual. If that does not indicate sincerity and lack of cheese-paring, I am not sure what does. If you couple that to the immense effort that has gone on inside our businesses to do what we described to Mr Roy earlier in terms of policies, education and standing in front of our people and apologising to them, and apologising, as we have this afternoon in public, to all the people harmed through this wrongful practice, it is desperately disappointing that we fail, because of some drafting, to convince you of the sincerity of those actions. I am so sorry.

Q4076 Chair: To be fair, it is not simply a question of drafting—I will come on to some other issues in a moment; it is a question of whether or not your actions, which I appreciate were commercially essential in the circumstances, because otherwise there would have been

unpalatable consequences, are genuine repentance or an attempt at damage limitation. That is the issue for us, because we are going to make recommendations in due course. We have moved forward a bit on the question of apologies. If you are to make apologies, it is going to be not only for the holding of the information but also for the use made of that information by yourselves and the submission of information to the Consulting Association by yourselves, without quibbling about whether it was predecessor companies and all the rest of it.

Nick Pollard: Absolutely.

Callum Tuckett: Do you feel we have been clear enough about that today, or are we some way away?

Q4077 Chair: Yes, I think you have been much clearer about that today, but we should not have had to drag it out of you.

Callum Tuckett: If sitting here is dragging it out, this is the first opportunity I personally have had, and I know Andrew has had, to talk to anybody openly about this in a public forum, and certainly under oath. Hopefully, we have demonstrated genuinely how our organisations and we personally feel about this. We all have influence in our organisations; we all sit at senior level, and we are going to make sure these things happen. There is nothing underhand about this.

Q4078 Chair: I would have preferred that it had not been necessary for us to have this hearing, or the hearing on Monday, because I would prefer to have had a solution come forward which was not introduced unilaterally but which had been agreed jointly and launched jointly. I do not accept the point that it had to be unilateral because it was the companies doing it. Had it been agreed, it would have been much stronger if it had been launched jointly so that it was quite clear that it was jointly accepted.

Could I turn to the question of compensation? Like my colleague, I am not clear how the figure of £100,000 has been arrived at. I am concerned that the £100,000 upper limit forms a ladder for subsequent cases, which pushes the ladder downwards below what it might otherwise have been. My concern is that the choice of a £100,000 upper limit is basically a cost-limiting measure. I look in particular at the media announcement where it says “compensation levels significantly higher than those through the High Court.” That is not true of every case, yet here it does not make any distinction between the vast majority of cases that might not get more through the High Court and those where the High Court might be the better route to pursue. Do you understand why again we have an anxiety about the financial element of this?

Richard Slaven: I understand that. In fact, when I saw the Committee session on Monday evening I saw your reference to that point. My immediate reaction to that was that it was very poorly worded. I completely agree with that. If it has given that impression, that is wrong. We have discussed it among the group and it has absolutely been the case that we believe, and the group believes, that in many cases the compensation available under the scheme will be better than that recoverable in court, and you do not have to prove all of the issues you have to go through. In fact, I would say that in the majority of cases, in a

larger number, it should be greater than an individual would recover at court, but I certainly never set out to say that this scheme is absolutely for everybody. This is about choice; it is about creating a scheme that is entirely different from the court process.

Q4079 Chair: I understand that. I accept your point, inasmuch as I understand these issues, that some of the elements of your scheme are better than what would be available through the High Court, and you deserve a degree of credit for that. However, a statement has come out which says “compensation levels significantly higher”—“significantly higher” being in darker print—“than those through the High Court.” That is wrong. Did you see this before it went out?

Richard Slaven: I cannot say whether I did or not. I have seen a welter of documentation. I am not trying to—

Chair: No, no.

Richard Slaven: My focus has been on the scheme rules and the amount of documentation around that. I certainly do not want to disown it. When I saw your comments on that, it certainly made me feel very uncomfortable. I raised with our comms people how that had happened. I think that it has not given the absolutely accurate—

Q4080 Simon Reeve: What was the answer?

Richard Slaven: I think it was accepted that it had not given a completely accurate picture. The intention again was right.

Q4081 Simon Reeve: When you said, “How did this happen?” what did they say?

Richard Slaven: It was in the space of five minutes. I was busy in one meeting and I went in to watch a bit of the session.

Q4082 Simon Reeve: We are all busy, but you thought it was sufficiently important that you raised it with them.

Richard Slaven: Exactly. I was concerned that this had happened and that I would need to deal with it at this Committee.

Q4083 Simon Reeve: You asked them how it happened. You told us that. You sought them out. You asked the question. Take a moment to think back. What was the answer you got back?

Richard Slaven: I am on oath. The answer I got from the one individual I spoke to was that this had been agreed or approved, so it had gone through an approval process.

Q4084 Simon Reeve: Who did you speak to?

Richard Slaven: One of the comms people from the company.

Q4085 Simon Reeve: What does that mean? Which company?

Richard Slaven: A comms company. Gosh, I am trying to think which one they belong to—Skanska.

Q4086 Simon Reeve: The person you spoke to, was their company working for you?

Richard Slaven: No.

Q4087 Simon Reeve: Who was their company working for?

Richard Slaven: This is an internal person.

Q4088 Simon Reeve: Someone at your firm.

Richard Slaven: Not at my firm, no.

Q4089 Simon Reeve: Is it a secret, or something?

Richard Slaven: Not at all, no. I am trying to understand what the question is.

Q4090 Simon Reeve: You went and spoke to a comms person.

Richard Slaven: I was in a meeting area.

Callum Tuckett: It was Skanska.

Richard Slaven: Yes, I said Skanska. To be fair, it was accepted that that form of wording, while intending to convey that what the scheme does is endeavour to compensate people, in many cases greater than they would receive in the High Court, was not well drafted. I totally accept that.

Q4091 Chair: Mr Jukes, did you see this?

Richard Jukes: I saw this after it had been agreed by the comms people, yes.

Q4092 Chair: Did you see it before it went out?

Richard Jukes: Yes.

Q4093 Chair: You saw it before it went out. Did you have enough knowledge to correct it?

Richard Jukes: I had assumed that it had been cleared both by the comms companies and—

Q4094 Chair: That is a no. You are saying that, no, you did not know this was incorrect. Either you knew it was incorrect or you didn't.

Richard Jukes: I did not know it was incorrect.

Q4095 Chair: That is a not unreasonable point. Would it surprise you to know that we have had a submission to us about some of the people involved in this, suggesting that in one case the individual would get six times as much money by going to court? There is a comparison about one chap who is a plater. Under the fast track maybe he would get £8,000; if he went to court, he could get £350,000. Somebody under TCWCS would get £20,000; others would get £50,000, £20,000 and £60,000; and £20,000 and or £210,000. I am not aware of the merit, or otherwise, of these figures, but you can see that there are people out there who would certainly not accept that this is accurate. Again, you can understand why we are a bit concerned.

Richard Slaven: I completely agree that that was not accurate.

Q4096 Chair: This is another back to the drawing board one, isn't it?

Richard Slaven: I cannot comment upon the points that you have just raised, but if an individual under our scheme is able to recover £20,000, that individual could have gone into full review and received compensation up to £100,000. The £20,000 limit is a matter of choice. An individual chooses to accept £20,000.

Q4097 Chair: Well, let's just be clear about this. This is at the heart of some of this, isn't it? There are two elements to your scheme about which I have reservations. One is the cut-off date where, as I understand it, because of the process of the legal action and the process of your scheme closing, people might have to make a choice to go into your scheme for fear of losing access to it before they know what the tariff is that has been established by the court. People will have to gamble. You are nodding, Mr Slaven. That is not recorded, but for the record let it just be said that you were nodding in agreement with that.

Richard Slaven: I was understanding the question.

Q4098 Chair: So you are not agreeing.

Richard Slaven: I will let you finish and then I will answer.

Q4099 Chair: Let me clarify then whether or not that is correct. Given the timing of the two activities, the scheme potentially could close before the legal case has come to a conclusion and tariffs are established. Somebody as they get towards the end of the scheme would then be faced with a dilemma: which will be better for me?

Richard Slaven: The position here is that we have tried to create a scheme that is entirely different and is a genuine alternative to the High Court.

Chair: I understand that.

Q4100 Simon Reeve: You have agreed to this point on oath earlier, if that helps you with your answer.

Richard Slaven: There are many individuals out there. The vast majority of individuals on this list have not joined any form of litigation. There may be a number of individuals who have joined litigation because it is the only route available to them. This is about giving people an alternative—a fast, speedy alternative. We do not see it running parallel. In fact, the design of this is around creating a scheme that is easily accessible and that is easy to use, and in relation to the High Court, people have a choice. They have a choice based on legal advice, and it is a unique feature of any compensation scheme I know of—and a really positive step, I think—that that the companies are paying for legal advice for individuals to decide whether to join the scheme. Now, it is an entirely transparent scheme: you know at the point at which you join—

Q4101 Simon Reeve: Do you not remember this conversation we had earlier, when we talked about running times for litigation and then we went on to say whether it should be three years or not? Do you remember all that?

Richard Slaven: I understand, yes.

Q4102 Simon Reeve: You remember during that point accepting that the danger with the two-year period is that you could well find yourself having to make a decision about whether you join the scheme before you know the view of the High Court on quantum.

Richard Slaven: I don't know whether I did or I didn't actually, in truth, but what I can say is that this is intended to be a genuine alternative.

Q4103 Simon Reeve: You must take lots of notes then, because, if your memory is not very good, it is very important that we are able to go back to points and you are not disadvantaged.

Richard Slaven: I am happy to go back to that point. This is intended to be a genuine alternative.

Q4104 Chair: You understand our anxiety about this question of closing dates, do you, and will you undertake to take that back and look at that again?

Andrew Ridley-Barker: We said we would and we will do exactly that.

Q4105 Chair: You remember this at least. That is helpful. Could I then turn to the third point, and that is the question of the making good, as it were? You welcome the fact that, as I understand it, you have undertaken to make training available to those employees who were disadvantaged by having been what we term blacklisted. I think it is fair to say that there is a clash here of legal opinions, and I understand why the firms have taken legal opinion that possibly suits them best. How can this be resolved in a way that gives people outside the confidence that you are being fair? Why not look at some form of arbitration? I have no idea what happens in these circumstances.

Simon Reeve: Why don't you take counsel's advice and why don't you share it then with the other side?

Richard Slaven: I am absolutely certain that won't be a problem.

Andrew Ridley-Barker: Yes.

Q4106 Chair: You have got to understand that we just want everybody to be happy.

Andrew Ridley-Barker: Absolutely, and it is not our intention to—

Callum Tuckett: Mr Chair, we have been desperately trying to demonstrate that we are trying to be open about this, despite the things—

Simon Reeve: I would have thought if you take counsel's advice—I am not just trying to generate work for barristers—they can do the same and you can both swap your advices; you can work out what the issues are and then you will be nine tenths of the way there. You are getting that for free.

Q4107 Chair: Can I turn to the two issues that we raised as well about going forward? We have spent a considerable amount of time on codes of practice and stuff like that. We will

want to look at what you have said and the codes that have been produced, and this will be an ongoing dialogue.

The one issue we were quite strong on was the whole question relating to the other issues as well about direct employment, and we have had evidence earlier this week about the abuses of umbrella companies and all the rest of it. We would take the view that this issue of blacklisting cannot be seen in isolation because it is indicative of an industry which seems to have a substantial number of, as it were, cowboy practices within it when it is dealing with employees. The whole way in which there are lots of people on zero hours, in umbrella companies or in bogus self-employment does not reflect well on the industry as a whole, does it? We have recommended that direct employment be the norm wherever possible. I think we recognise that there will always be circumstances where that is not appropriate, in a minority of cases.

To what extent have the group of you—the gang of eight, so to speak, or the virtuous eight, or whatever term we want to use; the less unvirtuous, perhaps, to compare you with those people who were not involved in blacklisting—looked at this issue of moving towards direct employment?

Andrew Ridley-Barker: As far as I am aware, and I have attended a number of meetings, I am not aware that TCWCS—the group of eight construction companies—have discussed or debated the use of umbrella companies or the like to which you refer. Our focus has been absolutely on making reparations, on making an apology and making right the wrongs of—

Q4108 Chair: What is appropriate? If that is not the appropriate forum, what is? In any forum there is, you would obviously be a part of that, wouldn't you?

Callum Tuckett: Chair, the UK Government have set out a 2025 vision for construction, and I don't mean anything trite in that. It is quite a clear vision. Through that vision, they have also established a construction leadership council. I think there are 30 members on that council. The majority of the major contractors and some others and client organisations are represented on that. That is probably an appropriate forum for this type of thing to be discussed. You may be aware they are trying to put the prompt payment charter through that. I put it to you that that is probably the appropriate forum to put it through. I cannot speak for the eight and I cannot speak for the panel, but, if you wish, I can explain what we are doing as a business.

Q4109 Chair: I think we want to raise the general point; we recognise that you are involved in Hinkley Point and we have identified that as an example of good practice and so on.

Callum Tuckett: I think there are others, Mr Chair, and they do involve the unions. So if you look at our organisations across the UK construction industry that do directly employ, I would put it to you that the majority of them comply with the working rule agreements, which are in essence agreed and negotiated with the unions. We as an organisation, and others in the eight, exceed those quite significantly in many, many aspects, and hopefully—hopefully—that can give people who are watching and listening to this, and to

the Committee, confidence that we are committed to trying to change this industry. We have said a number of times that what has happened in TCA is completely inappropriate and people have been wronged, but there are many other things that we need to establish and sort out in our industry. Focusing on direct employment is one way of doing it. There is very, very large utilisation of labour agencies, and possibly some legislation to try and clean up some of that area. I know as organisations we all have exactly the same policies around labour agencies, trying to get anybody who has access to data to sign up to the Data Protection Act and only employing them if they do that, and getting them to register with the ICO, but there is probably not enough, if we are honest with you.

Chair: We are getting fairly close to the end now. Could we try and sweep up some other questions that we had pre-prepared it, as it were? We have been taking things as they arose. Jim, could you pick up point 7?

Q4110 Jim McGovern: Thanks, Chair. What would the criteria be for determining whether or not the scheme is successful?

Andrew Ridley-Barker: Our discussions on that are that we would consider the scheme to be successful should we be able to reach nearly all, and, if not, as many of the names on the list of TCA. That would be our success guidance criteria.

Q4111 Jim McGovern: You would have to reach them or they would have to reach you.

Andrew Ridley-Barker: The scheme had compensated as many people, if not all of the names on the list. That would be our measure of success, yes.

Q4112 Chair: Can I clarify the list? Again, I want to emphasise or be absolutely clear about this. The list includes not only those on the cards but also those on the handwritten notes that were submitted.

Andrew Ridley-Barker: It is a subtlety I am not aware of. I am aware of 3,200 names. I am not aware of that subtlety, I am afraid.

Q4113 Chair: Again, it is a question of whether or not there is hair-splitting here. We want to be clear that, with regard to the names held by the Consulting Association, whatever form they were in, that were then seized, the intention is to open the compensation scheme to all of those and not to have a situation of, “Whose name was on this form? Therefore he is covered. His name is on another form and therefore he is not covered.”

Andrew Ridley-Barker: Our intent is that if your name was on a list with TCA you are eligible for compensation through the scheme. That is our intent.

Q4114 Chair: That is helpful, and you are speaking on behalf of the scheme.

Andrew Ridley-Barker: Yes, and it in the rules.

Q4115 Jim McGovern: The other questions that were allocated to me are probably covered, but there is one I would like to put to Mr Pollard. You mentioned earlier just five or 10 minutes ago that the eight companies represent the whole industry. Why are there only eight? Do you think more are going to join and, if more join, will there be greater compensation? Will the fact that there are only eight mean that what is available will be spread more thinly?

Nick Pollard: That is a good question. I cannot answer why there are only eight. We have worked pretty hard to try and make sure that others—

Q4116 Jim McGovern: We have got 43 on a list.

Nick Pollard: Yes; that is what I understand. I know that there has been a lot of work to try and persuade others to join. We are where we are. I think you would have to ask them why they have not joined.

Q4117 Simon Reeve: Would you be able to share with us the efforts you have made so that we understand the reluctance of other companies faced with what I am sure were persuasive arguments?

Nick Pollard: I certainly have no objection to that.

Andrew Ridley-Barker: There may be some confidentiality agreements which were reached with the individual organisations around those discussions, but, otherwise, I do not see a problem. The point is that you know who the organisations are. You have seen the listings there.

Q4118 Simon Reeve: It would be interesting perhaps to know whether someone has had a quick phone call and said no, or whether someone has really tried to twist their arm, and just what the dynamics of those refusals are.

Andrew Ridley-Barker: I think it is fair to assume that everyone has been contacted and invited to join the scheme.

Q4119 Simon Reeve: If you could share with us—

Andrew Ridley-Barker: We will check and see if there are confidentiality agreements.

Q4120 Chair: It would be helpful if you could let us know what you think you can tell us.

Andrew Ridley-Barker: Rest assured, we would like them all to join us—absolutely, of course we would.

Q4121 Jim McGovern: At the moment it is just pretty much a blunt refusal: “We’re not interested.”

Andrew Ridley-Barker: That is my understanding, yes.

Richard Slaven: I think it could be described as some have communicated and are waiting; there are one or two companies with whom we have had closer discussions. There are confidentiality issues around that, so I would not want to breach that at this stage. But I think it is fair to say that in the majority of cases—it is probably not 45 companies because consolidation and corporate failure has probably reduced the total number to 25, and therefore it is 17, or something like that. The Committee has written to them and you have had responses from a number of them. So that probably reflects their position better than anything else.

Chair: We will pursue that in due course, but we obviously wanted to raise this with you as well.

Q4122 Jim McGovern: If every company that is still in existence joined the scheme, would this sort of sliding scale of compensation be greater?

Richard Slaven: No. The way the scheme has been designed is focused very much on the individual so that we pay the right amount of compensation for the individual in the vast majority of cases. The figures that people would receive and the way that they receive compensation through the scheme are fixed in the scheme rules now. If other companies joined, it would not see an increase in the amount that individuals receive because we are confident that the figures that individuals will receive, given the lack of hurdles, is a very attractive sum already.

Callum Tuckett: I suppose one thing that we should be clear on is that there is no ultimate cap, so we have not said it is capped at £x million. It is not that type of thing. Essentially, although it sounds uncomfortable, the costs will be what they will be, and, hopefully, you will have confidence that the scale and the strength of the eight companies that are there is such that they can sustain that. There is no cap on it. It has not been capped.

Q4123 Jim McGovern: It is not a budget.

Callum Tuckett: No.

Q4124 Simon Reeve: Will it go to spouses or to next-of-kin in the event of someone having died since this happened?

Richard Slaven: It pays through the estate.

Q4125 Chair: It was raised with you and we welcome that. We saw that as being a positive element.

Richard Slaven: It was an issue that the Committee raised. It was an issue that the unions have raised. We are very happy to accede to that, and it is the right thing, unquestionably.

Jim McGovern: I think all my other points have been covered, Chair.

Q4126 Chair: One point that we have to raise with you is that the scheme has been described to us by unions and others as a cynical effort to try and keep yourselves out of court, where the damages awarded would be so much larger and might very well include a punitive element. How would you respond to that?

Andrew Ridley-Barker: If I can take that up, I do not think that is correct at all. The scheme is designed to reach as many of the names on the list as possible, as I mentioned. A High Court action is an option for, I should imagine, not a large number of those names. A High Court action is obviously lengthy and expensive, and it can be very stressful. What we have wanted to do is to set up a scheme which offers individuals choice. It is easy; it is quick and straightforward. It is robust and it is independent, and that is exactly what we want to do so that we can offer people choice. If they want to get a quick settlement and to get some reparation quickly, they absolutely can. If they feel they are entitled to more, we have a full review process which does just that. Of course if individuals believe that they are due more than what our scheme offers, they still have the option of going to the High Court, and we do not want to run away from that. So it is a scheme which we want to reach as many people as we possibly can.

Q4127 Chair: I am sure you are all aware of the concept of deferred gratification. There is a substantial number of building workers, who are working-class people, who would very much welcome the opportunity to have a slab of money now, rather than, perhaps, maybe aye, maybe no, a substantially larger sum of money later on. By dangling a small carrot in front of them, you are incentivising them to grab that and give up the opportunity of a much larger sum later. Why not proceed with your scheme and then agree, if the court judgments are such as to suggest that the scheme should have been recalibrated, to do so subsequently? That would be a gesture of good faith, because what you would be doing then is paying out according to your scheme, but nobody who accepted your scheme would then be disadvantaged as compared to waiting until the court came along.

Andrew Ridley-Barker: Chair, we have set the levels, as Richard has said, and stated that those are the levels that we have determined for our scheme. For any adjustment to that, we would need to consult with the other members of the compensation scheme.

Q4128 Simon Reeve: You could have a scheme where you pay interim damages, and you could pay those along the lines of your scheme, but the problem with that is that, if the High Court comes in with a higher award, you then have to top up what you have paid to the level of the court award. This is interim damages, but it stops people having the protection of the court ruling. So there is a huge advantage from your point of view, and I can understand why Mr Slaven will have put the scheme together rather than just saying, “Let’s go down the route of interim payments,” but there is a huge disadvantage to the people who take the scheme, because if it was interims they get the same amount of money, and if they were owed more money at the end they would get another cheque. Under your scheme, if they take the money and the High Court says it is worth all of this, they take the money.

Andrew Ridley-Barker: I agree. That is exactly the way the scheme is set up at the moment.

Q4129 Simon Reeve: There is an established way of doing what you want to do, which is to get money to people quickly, which is called interim damages, which does not have the disadvantage of locking somebody out of the final result.

Andrew Ridley-Barker: It is not something that we had anticipated, but we will certainly take it away and discuss it with the other members.

Q4130 Simon Reeve: All you would have to do is what the Chair suggested. You would just have to say, “We’ll put another rule at the bottom of our rules.” After you have crossed out 2 and written 3—there is not much work in this—you would have another rule which says that “awards are subject to,” and Mr Slaven can give you the wording.

Andrew Ridley-Barker: We understand what you are requesting. It is not something which we had anticipated, but we will discuss it with the group—absolutely.

Q4131 Simon Reeve: You can see the good faith that that would generate.

Andrew Ridley-Barker: Yes, I do.

Q4132 Chair: In terms of uptake, how many people have been in touch with you so far about the scheme? Can you tell us that?

Richard Slaven: I think, as of the back end of yesterday 1,100 people had been on the website. Nearly—

Chair: To be fair, I am one of them.

Richard Slaven: Oh yes; I totally accept that, and probably I have as well.

Chair: In fact, to be fair, I think I am three of them actually.

Richard Slaven: Approximately 200 of those have asked for an inquiry form—sorry, no, 200 or so have called the helpline, or 175, I think, have called the helpline. I think 175 have asked for an inquiry form, and about a third of those have been completed. That is within a 10-day period. That is the reaction at the moment, bearing in mind there was not huge publicity around this when it was launched. We have done some advertising subsequently, so the full effect of that probably has not come through. But that is where we are at, at the moment.

Chair: Okay; that is just about all the points that we have to make. We clearly want to have some responses from you on these points and then we will decide whether or not to have you back in again to discuss them more formally. We can maybe have our staff and yours correspond about what would be the appropriate time scale, but we would appreciate sooner rather than later. We don't want this to drag on, and we are particularly conscious that there will be people who have to take decisions under the existing rules, when our dialogue has been about possibly changing these. We want to avoid that degree of uncertainty as well. Pamela, you want to come in on a point.

Q4133 Pamela Nash: I just want to apologise if this was covered when I had to pop out for a few minutes, but, in terms of contacting those affected, is there any co-ordination with the Information Commissioner's Office?

Andrew Ridley-Barker: It is something which we are particularly keen to do but which at the moment we are not able to do. A request from us would be that if you are able to assist in that, not through ourselves but some other independent body so there is no issue, we would really welcome that. We would really welcome being able to get directly in contact through third parties with those affected, because we have found—and certainly this is the experience we have had from Richard in other schemes—that, whilst you might advertise and put out publicity announcements, actually writing to individuals affected is a much better way of getting a take-up on a scheme.

Q4134 Pamela Nash: To be clear, the only method of contacting people at the moment is through advertising?

Richard Slaven: Correct. This was an issue that we raised with the union group during our consultation period. We notified the unions that it was our intention to seek these addresses for the administrator only to use, and the union group effectively said they were not happy about that. They were not prepared to agree that we should have that or that the administrator should have that. But there is an alternative in the event that the administrator cannot have that information. In an ideal world, the administrator would for the purposes of contact only, because, as has just been explained, my knowledge of financial services-type redress schemes is that, if you contact people directly by name, you are far more likely to contact them. Sometimes you have to contact them more than twice. So we would really like the ability to utilise those records, which have been compiled between the ICO and the DWP.

Q4135 Pamela Nash: I take that on board, but I would not undertake to help with that until I know that this is the fairest outcome for my constituents who are affected by this. If it becomes apparent that it is not, then I would not be promoting that. However, whatever the fairest scheme is, I think there should be a way of contacting the individuals concerned and not just dependent on advertising.

Richard Slaven: It would be good to offer them some choice.

Q4136 Chair: Maybe I have picked this up wrongly, but my impression was that you had gone to court to try and get access to the ICO records, but the unions opposed that. Is that correct?

Richard Slaven: What had happened is that we had made it clear throughout the eight-month consultation period that the intention of the scheme was to utilise the Consulting Association records for the purposes of administering the scheme so that individuals would write in, they would be provided with their records and it would be a very streamlined system. We were very open about that for eight and a half months of consultation. The scheme rules expressly stated that that is what we were intending to do. As part of our development process, we went to court, giving notice to the unions that we were intending to ask the court to ratify that action. I am afraid the unions opposed that. We therefore have taken the view that, in the light of that opposition, we will go a different route and we will now ask the ICO to provide that. In relation to the addresses, we have made no court application at all.

Q4137 Chair: Can I be clear about that? The unions were opposed to you having access to all the addresses and the data because they thought then it was much more likely that if you had that you would just progress with a unilateral scheme, which you did anyway.

Richard Slaven: I don't know about that. We never asked the court—we were never intending to go to court at that stage—for the addresses. The unions objected to that. They had not previously objected over eight months to us utilising the records, which is different from contact. That is about administering the scheme in a process. They had not been objecting to that. We were completely surprised when there was an objection to that because it was about administration. For contact we have never made an application to the court. We would very much like to be able to contact those individuals. We believe that individuals should have an opportunity to make up their own minds about this scheme. It is about choice.

Q4138 Chair: Your case to get access to all that information would be greatly strengthened if it was a joint approach, would it not, if you had the support of the unions? I must say, in all the dialogue that we have had, it does not seem to me to be beyond the bounds of possibility that you reach some sort of agreement with those who are representing the workers involved.

Richard Slaven: I can give you a lot more detail if you would like. I am conscious of the time this is going on.

Q4139 Chair: Life is short; that's right. In terms of most of the big issues that we have touched on, it does seem to me that there is a way forward if there is good will on both sides.

Richard Slaven: The difficulty we have is that the union group were never in the same position. They were divided throughout. I think you asked the question, Chair, of the union representatives, "Did you put some alternative figures forward?" At no point were any alternative figures put forward, so we were flailing around a little bit in the dark.

Q4140 Chair: To be fair, I think that they are relying on the court judgments, aren't they, for figures?

Richard Slaven: No, but in terms of the level. There has been criticism of the £4,000 to £20,000, bearing in mind that that is payments that are made without any evidence of loss. So people may get that when they would have recovered nothing. Although in respect of those payments no alternatives were put forward, we were constantly increasing—but in a vacuum.

Q4141 Lindsay Roy: There is a distinct difference between consultation and negotiation. How much was consultation and how much was negotiation?

Richard Slaven: Again, we pressed consistently to have face-to-face meetings with the union group and their representatives, and I am afraid that almost at every stage we were met with, "You must communicate through our lawyers." When we delivered what we saw as the outline scheme on 1 November, we immediately suggested, "Can we now sit round the table with you and discuss this, and hear your views and take account of those views?" The response was, "We'll write to you." We did not get a response until two and a half months later—in part, my understanding was, because the group could not agree on their position. When we eventually did get a response, we got two different responses. It is quite difficult to hold a consultation or negotiation—however you define it, and I do not really define it in any particular way—when in fact the group that you are discussing things with does not have an agreed position.

So that was not easy; nor was it easy that we never got an alternative suggestion of a financial award and that we were for ever increasing the amounts, with nothing coming back in terms of what we should do, and I think that was again driven by the lack of agreement from the union group. So it was a really hard, uphill struggle. But we consistently asked for face-to-face meetings—I could give you chapter and verse on that—and we were consistently rejected, in effect, because the unions wanted to communicate to written effect through their lawyers. That, of course, is disappointing. It would have been much better—I think everybody in this room probably knows that if you sit round a table with people extensively for periods of time you achieve a lot more.

Chair: How enjoyable this has been. I am sure we have moved things further a great deal.

Q4142 Graeme Morrice: Indeed, Chair, very enjoyable. I just wanted to touch very quickly on the aspects of cost. I was going to raise some detailed questions on this, but obviously time does not allow that. I know we have touched on specific figures in terms of levels of compensation in relation to what people may be able to claim for or be eligible for, but I do not think we have touched on global figures. Have you got a figure or figures in mind in terms of what has been allocated to the scheme—what you think you may need to compensate people at the end of the day? You must have some estimates of that or some budget figures.

Andrew Ridley-Barker: As we said before, the scheme will cost what it will cost. It is very difficult for us actually—

Q4143 Graeme Morrice: Do you have any kind of rough ideas of how much it will cost?

Andrew Ridley-Barker: It has been suggested that it could be £15 million to £20 million. It could be way more than that.

Richard Slaven: The difficulty we have is that, of course, we do not know how many individuals will go into fast track, and, because the adjudicator is wholly independent and will make a decision, you could have 300 people getting £100,000 or you could get 200 people getting £40,000. There is a huge difference between that. It is really “stick a finger in the air and hope for the best.”

Q4144 Chair: £15 million to £20 million, compared with the size of your company, is peanuts, is it not?

Graeme Morrice: There is that view as well. If you look at the eight companies, do you know collectively what your turnover is in a year?

Callum Tuckett: We have seen some numbers published, but we don’t recognise them at all.

Q4145 Graeme Morrice: So the £34 billion is not a figure you would recognise.

Andrew Ridley-Barker: Not at all.

Q4146 Graeme Morrice: The pre-tax profits are £1.04 billion. You do not recognise that either.

Callum Tuckett: It is incorrect.

Q4147 Graeme Morrice: You are saying that the figures that we have been provided with as a Committee are incorrect.

Andrew Ridley-Barker: They are certainly not numbers that I recognise.

Q4148 Graeme Morrice: Is it more?

Andrew Ridley-Barker: No, it is less.

Q4149 Graeme Morrice: Well, tell them what is it?

Callum Tuckett: It is less but it is a very large number—

Q4150 Graeme Morrice: What is it?

Andrew Ridley-Barker: The numbers that were mentioned were £34 billion as the turnover. If you look in the *Construction News* for last year and the league tables that they produce, you will see that the eight companies on the list have a turnover in the order of about £16 billion. From that report, you will see that the profit associated with that is about £450 million.

Nick Pollard: Our profits last year, which is a publicly available figure, were about £32 million as a group.

Q4151 Graeme Morrice: Your companies' profits were £32 million.

Nick Pollard: It is a matter of record.

Q4152 Graeme Morrice: Is that pre-tax?

Nick Pollard: Post-tax.

Q4153 Graeme Morrice: What about your company, Mr Ridley-Barker?

Andrew Ridley-Barker: VINCI Construction UK's post-tax profits were £4.8 million last year.

Q4154 Graeme Morrice: Mr Tuckett?

Callum Tuckett: Our group profits, so that includes our Australian, Canadian and middle east business, were £40 million after tax.

Q4155 Graeme Morrice: They are still sizeable amounts.

Callum Tuckett: They are—very large amounts, yes.

Richard Slaven: I feel in a sense that I am responsible. The scheme has focused absolutely on the individual. The way that compensation is paid in our legal system is to focus on the harm suffered by the individual. It is not paid by reference to the size of the companies, because then you get different awards for the same injury or same type of harm. That is precisely the way we have followed this, and it is the way the court will do it as well. That is the reason why we have done it.

Q4156 Chair: I think we understand that. That has covered all of our points. Earlier on I said that, at the end, we would ask you whether or not there were any answers you had prepared to questions that we have not asked or anything that you feel you want to give us, either in consultation with your legal brain or from your own sources. Richard, you have some comments.

Richard Slaven: Can I go first, Chair? I thought you were going to ask me about a number of issues that were raised by the union group on Monday about their objections to the scheme. We have talked a lot today about things that might be misleading. I am absolutely certain it was not intentional, but there were things said that were inaccurate and misleading, and I would like to write to you about that and put the record straight on a number of those issues, if that is all right.

Chair: Yes.

Richard Slaven: Thank you.

Callum Tuckett: I have nothing to add, Mr Chair.

Q4157 Chair: You wanted to put the record straight on these issues.

Richard Slaven: Do you want me to do it now? It is a very long list.

Q4158 Chair: I think we will lose the building at 10 o'clock, but what sort of length are they, or do you want to put them in writing?

Richard Slaven: I am happy to put them in writing. I would just like it to be accurately reflected.

Q4159 Chair: Yes; give them to us in writing.

Richard Slaven: What was said to you—I totally accept that it was unintentional—was a very inaccurate reflection of how the scheme operates on a number of levels.

Q4160 Simon Reeve: You assert that it was unintentional. You don't totally accept it was unintentional.

Richard Slaven: I assert that it was unintentional. I am certainly not wishing to disparage anybody on this. I had some very constructive meetings with Justin Bowden of the GMB and we had a very productive number of discussions.

Q4161 Chair: That's him damned then, isn't it, in the eyes of some then, I would have thought?

Richard Slaven: Yes, I suppose that is probably right, but I did qualify it. He was the gentleman. I absolutely assert it was not intentional, but I would like to put the record straight.

Chair: Yes, fine.

Callum Tuckett: I have nothing to add, Mr Chair.

Andrew Ridley-Barker: Nothing from me.

Nick Pollard: Nothing from me, Chair.

Chair: Thanks very much for coming along. I think this has been a very informative session. We look forward to hearing from you in due course and then, potentially, seeing you again and possibly some of your colleagues in the group of eight.