

Joint Committee on Human Rights

Oral evidence: [Human Rights and Business](#),
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Written evidence from witnesses:

- [Daniel Blackburn](#), Director, International Centre for Trade Union Rights
- [Professor Keith Ewing](#), King's College London and President of the Institute of Employment Rights
- [Owen Tudor](#), Head of European Union and International Relations, Trade Union Congress

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Members present: Ms Harriet Harman (Chair), Ms Karen Buck, Baroness Hamwee, Lord Henley, Fiona Bruce, Baroness Lawrence of Clarendon, Mark Pritchard, Baroness Prosser, Amanda Solloway, and Lord Trimble.

Questions 11-24

Witnesses: **Daniel Blackburn**, Director, International Centre for Trade Union Rights, **Professor Keith Ewing**, King's College London and President of the Institute of Employment Rights, and **Owen Tudor**, Head of European Union and International Relations, Trade Union Congress gave evidence.

Q11 Ms Harriet Harman, (Chair): Thank you very much for joining us. This is only the second evidence session that we have had in this inquiry into human rights and business, so you can imprint your views on our still-unformed approach. We are very grateful to you for bringing all your wide experience and for your engagement with us on this. Mark Pritchard will ask the first question. As you will appreciate, we are a Joint Committee of Lords and Commons, which makes us better than the other committees that are just the Commons.

Mark Pritchard: We have you all on the list but it would be good to hear you introduce yourselves.

Owen Tudor: I am Owen Tudor, head of the European Union and international relations department at the TUC.

Professor Keith Ewing: I am Keith Ewing, I am a law professor at King's College, London, but I think I am here representing ICTUR, the International Centre for Trade Union Rights.

Daniel Blackburn: I am Daniel Blackburn, the director of the International Centre for Trade Union Rights.

Q12 Mark Pritchard: Thank you gentlemen, and welcome. What are the main human rights issues affecting UK businesses abroad? Can you give the Committee any examples of good and bad practice? What sectors are always flagged up within those good and bad practices?

Owen Tudor: It is always very difficult to give the good practice bits; I am not certain we have many examples, although I will mention a couple. The key thing that I want to suggest is that the main problem with labour rights is non-adherence to the core conventions of the International Labour Organisation. These are fundamental conventions that cover child labour, forced labour, freedom from discrimination, free collective bargaining and freedom of association—the right to join a trade union. It is required of all countries that belong to the ILO that they uphold those conventions, even if they have not ratified them.

Mark Pritchard: Forgive me, but I think that there are around 191 countries plus two states. How many are signed up to the conventions?

Owen Tudor: I think ILO membership is 166 countries, and by and large it is the very small islands that are not signed up. All the big countries are signed up to the conventions. Out of those, the main problem that affects business is lack of adherence. These are duties on countries, but obviously we also want good businesses to be abiding by the principles set out in those conventions, and in particular freedom of association—allowing people to join trade unions—because we think everything else flows from that. If you manage to deliver that, you can be certain you are delivering the other conventions.

In terms of countries and industries, we have a list of the 10 worst abusers of labour rights around the world. They are China, Colombia, Cambodia, Guatemala—I am not expecting people to be taking notes of these; we can supply them—India, Iran, Qatar, Turkey and the United Arab Emirates. The problem that we often experience is that there is not necessarily an enormous amount of British company involvement in some of those countries, so I will also identify Bangladesh and Burma as places of particular

concern where companies are involved—or are thinking of becoming involved, in the case of Burma.

Mark Pritchard: One example you gave, Turkey, is a member of the customs union of the European Union. Surely there were certain human rights hoops that they had to go through in order to join that customs union?

Owen Tudor: They are still negotiating certain elements of the European Community acquis, one of which is around freedom of association. So, no, they are not yet required to have adopted that. Except, of course, that as an ILO member, they are required to have adopted it anyway. So there are concerns there. I would probably identify China, Cambodia and Turkey, along with Bangladesh and Burma, as the main ones that affect British business, because those are the places where British business is quite likely to be active. We identify Qatar, in particular, because of the forthcoming World Cup and the construction work, in particular, that is being done by British companies in that country.

In terms of sectors, we spend an enormous amount of time trying to deal with problems around the textile sector, but construction is another one. Basically there is no area that is particularly good. New technology is a particular source of concern in the supply chain in places such as China.

As for good and bad examples, the good examples are things such as the accord in Bangladesh, which was set up after the Rana Plaza disaster, where unions and major companies, brands and global retailers signed an agreement to improve building and fire safety in Bangladesh. We think that that is working quite well and there is a similar kind of follow-on agreement between global trade unions and mostly textile companies, called ACT, which is attempting to improve collective bargaining in the textile industry around south and east Asia. Those are some of the better examples.

Mark Pritchard: Professor Ewing, do you think it is defensible for UK companies to have a different approach to human rights here in the UK from their approach when they are working in a similar industry with a similar product abroad? Secondly, and finally, relating to Mr Tudor's comments on the ILO, is there any sanction for breaches by ILO members that are signatories to these various conventions—and, if so, what are they and why are members still contravening their own agreed conventions?

Professor Keith Ewing: The answer to the first question is no; human rights are universal and they should be applied equally all over the world. When we are talking about the human rights standards we are talking principally about the four core ILO

principles, which are freedom of association, no discrimination, no child labour and no forced labour. I can see no justification whatever for a breach of any of these principles by any British company in any of its operations in any part of the world. The issue we have is that a number of companies—I am sure we will come on to this—have been pulled up in recent years in relation to some of these principles. Our concern about that is in relation to collective bargaining and freedom of association in particular.

On the second question, of whether there is any sanction, the ILO operates by a kind of shaming process. There is supervision by the ILO, by the supervisory bodies, of the extent to which member states comply with their obligations under the different conventions. The United Kingdom is subject to supervision by two supervisory committees; the committee of experts and the freedom of association committee. At the moment, the United Kingdom is being scrutinised in relation to the Trade Union Act of 2016. We have already had some negative conclusions from that committee earlier this year about aspects of what was then the Trade Union Bill—and one would expect a further response from the committee of experts in 2017.

The other thing I would say is that although it is a process of gentle persuasion, the other issue about the ILO conventions—this is why some businesses have become very anxious about the ILO process—is that the ILO conventions and the ILO jurisprudence of the supervisory bodies are beginning to have a hard edge, in the sense that they are being used by the European Court of Human Rights as a reference point for the interpretation of the European Convention on Human Rights, and in particular Article 4 on slavery and forced labour and Article 11 on freedom of association. So directly it is hard to enforce but indirectly it is beginning to have an impact.

Mark Pritchard: Sorry, I did say that that was the final question, and then that would be it, but what would be an example of an extant case?

Professor Keith Ewing: I will come back to your question about Turkey. One of the big cases recently was in 2008, called *Demir and Baykara v Turkey*, which was about the effective prohibition of collective bargaining in the public sector in Turkish law. In that case, a collective agreement had been negotiated but had been effectively annulled by the courts, which refused to accept it or to acknowledge the legality of the collective agreement. Turkish unions made a complaint to Strasbourg, and the European Court of Human Rights—in a 15 to nil decision, which is unusual—held that there had been a violation of Article 11 on freedom of association. How did they

get to that? By relying very heavily on ILO conventions 98 and 151, which deal with collective bargaining, and on Article 6 of the European Social Charter, which also deals with collective bargaining. It got to the stage where Turkey was held to be in breach of Article 11, with the court saying clearly and unequivocally that the right to freedom of association for the purposes of Article 11 of the convention includes the right to bargain collectively, as informed by the standards of the ILO.

Q13 Lord Trimble: Owen Tudor, you gave us a very interesting list of the worst countries, although that was a static viewpoint. Are there any areas, countries or sectors which are improving and are there any that are getting worse?

Owen Tudor: It is always difficult to say that there are areas that are improving, because then something happens tomorrow, and people say, “That Owen Tudor, he said it was all going to be fine in that country”. Let me put it a slightly different way: what we are finding is that some countries are getting more honest and more open about what is happening, and therefore it sometimes looks as if the situation is getting worse. This applies to quite a few countries in Latin America, for instance, where we are just finding out more now. But that means that things are beginning to improve, because the first thing that you find out is how bad things were in the first place. There are some signs of improvement, for instance, in areas of China. Very often it relates to labour-market tightening. We have seen an increase in wages in China in some of the industrial areas and things like that, partly as a result of the fact that they are finding it more and more difficult to find the skilled labour to do the jobs that they are trying to do. That has made a difference.

Industry initiatives like ACT suggest that the situation might be beginning to get better in places like Cambodia, where the Government have been increasing the minimum wage, often under pressure from not just domestic trade unions but international brands, which very often operate out of the UK. So there are some improvements happening there. You would not expect us to say that they have achieved the right level of minimum wage yet, but it is going up and heading in the right direction. So there are some signs there of improvement. There are also signs of some companies getting much better at identifying problems earlier and beginning to deal with them. As a result of my work in the TUC, I am a director of the ethical trading initiative, which is partly funded by the major multinationals that are involved in it and partly funded by government through the Department for International Development.

Over the last 10 years we can identify improvements, for instance in health and safety in the supply chains that we have been dealing with. Child labour has improved as well as an area. What we have not seen an improvement in is freedom of association, which means that all of the other improvements are subject to backsliding at a moment's notice. We have also seen a major increase in the amount of industry auditing that is going on. Multinational companies are spending enormous amounts of money on auditing. They accept that it does not work, but it persuades some of their customers that they are doing something about it. Rana Plaza, for instance, the factory that collapsed and killed more than 1,000 people, had been audited by several companies and found to be perfectly okay, which is another reason why I am wary of saying that things are getting better in places. We are trying to persuade them that auditing—which they know to be a waste of money—is far more expensive and less impactful than, for instance, recognising a trade union, which will have auditors on site every day who will know exactly what is going on because they will be trade union members.

So there are some areas where things are improving. Some of it is voluntary, and some of it is through measures such as the Modern Slavery Act and through requiring people to examine their operations. ETI co-operated with some academic research early on in the life of the Modern Slavery Act, which indicated that quite a lot of companies had started looking at their operations and finding out that, actually, yes, there was some worrying stuff in there that they needed to address. Again, it sometimes looks as though things are getting worse because they are discovering more cases, but actually all they are doing is discovering it.

Q14 Baroness Lawrence of Clarendon: What is your view on the update of the national action plan? What is good and what is flagging?

Owen Tudor: It is interesting at an international level that we are implementing the second national action plan at a time when other countries are just beginning the first action plan. One of the things that is good about the national action plan, as it is at the moment, is that it exists. I am not trying to downplay that; it is important. It was important that Britain was the first country to come up with a national action plan under the UN guiding principles. That is something to be praised. Our concern is that the problems identified with the first national action plan by those who the Government consulted about it were primarily around lack of access to remedy, which is the third pillar of the guiding principles, and that nothing much had been done in the

new plan about that perceived hole. That is one key issue; it is not good enough on remedy.

Secondly, from our point of view in particular, it is disappointing that there is so little in there about trade unions. We are not an extraneous tool that is outside these businesses; our people can be inside the businesses doing the day-to-day auditing that finds out what the problem is before it happens and makes sure that remedial action is not necessary because you have taken the action to prevent problems to start with. It is disappointing that it does not contain that.

One of the problems with the action plan that has led to this is the inadequate consultation that took place before it was delivered. There was, initially, quite a lot of consultation but then it just froze and we stopped being consulted—trade unions, NGOs or whatever. That has led to a slightly lacklustre second national action plan.

Chair: That leads on to Margaret's point, unless Keith and Daniel want to add anything.

Professor Keith Ewing: One point about the action plan is what happens next: what is the follow-up? An important report was published last month by the Australian Human Rights Commission, considering its civic society response to the Australian plans to implement the principles. One point that it made well and persuasively was that there needs to be some kind of ongoing stakeholder dialogue with the Government about the operation of the plan and the principles in the country in question. It recommended that there should be a multi-stakeholder group that engages with, liaises with, informs and advises the Government on a regular, standing basis. We do not have that. It recommended that the group should be drawn from businesses, NGOs, unions and various other sources. That seems to me to be an important initiative. It should have been taken earlier, but we could make up for it now by having perhaps a national joint advisory council that would perform this function.

The other problem with the action plan is that there is no assessment of what needs to be done to implement the principles, in the sense that it just takes for granted that we have ratified these conventions and are therefore complying with them. There is no sense of urgency or questioning of whether we are in fact acting in a way that is consistent with the international treaty obligations that we refer to in the action plan. There is no assessment of whether business is playing up to the mark in the way in which it treats human rights. There is simply a description of the type of things that the Government are doing without any sense of self-awareness or self-criticism about whether that is good enough. For those two reasons, I would have reservations.

On the remedies point, this was published shortly after the fees were introduced for employment tribunals, which seriously undermined the integrity of the remedies that domestic law currently makes available for workers who complain that their human rights have been violated.

Daniel Blackburn: I will add a few things on the UK business plan. There is an important recognition at paragraph 11 that the UK may choose to regulate the overseas activities of British multinationals. It is important that that is recognised. It should be seriously looked into and taken forward. It is a possibility that is often overlooked in these discussions. We often look at home regulation and overseas regulation, but here there is explicit recognition that we may choose to regulate overseas activities. That is a good thing. Paragraph 28 says that civil law remedies are available. I do not think that that is accurate. It overstates the case. There are very limited opportunities for civil law remedies to be sought where victims are employed by overseas subsidiaries or supply-chain members of UK companies. Where they suffer violations, there are very limited avenues for them to obtain redress against UK-based headquarters. That is an area that needs to be looked at. However, it is recognised at paragraph 30 that in UK law access to remedies is under review and needs review. It is good that that is being looked into.

Paragraph 24 talks about guidance to companies in reporting on modern slavery. I do not think that that has been very useful, in the light of research published in the last few days by the Business & Human Rights Resource Centre, which found that less than 6% of reports submitted by those companies had complied with the basic, simple reporting instructions of having the right person sign the document and having it go past the right committee. That suggests that there has been a real failure to see that through.

Q15 Chair: Can I follow up on your point about regulating overseas companies? If that was fully implemented in a way that you would like to see, with our Government regulating what British companies do when they are overseas, what would that look like?

Daniel Blackburn: There are rarely cases when we are dealing with direct employers and direct companies. The problems usually arise in supply chains or in subsidiary companies. The problems of corporate structures that recognise complete separation of legal personality and the limited liability that exists between them are long-overdue areas for reconsideration by the law. These were set up in the 19th century to establish

investment in building the railroads, when steam engines were new. It really is time that this was looked at. We live in a different world today.

Chair: But “looking at” is really just a process point. If we are going to regulate UK businesses that are both directly doing things and are sourcing stuff or have subsidiaries, what would you like to see in the national action plan? Is your ambition only that we should review it? We would like a sense of what you would like to see.

Daniel Blackburn: Law reform. It will not happen in the courts. They have been quite clear that the limited liability statute that exists is something that they would be reluctant to interfere with. New legislation is needed. The repeal of limited liability is politically untenable, but you could look at exceptions to it. I think that that would be the solution.

Chair: Can you just decode that? We need a bit of decoding here. Do not worry about what you think is politically tenable. We are trying to work out what we think is the right thing to do. You need to decode the issues about limited liability. What would you like to see in the UK national action plan that would directly impact on the end product, which is abuses of human rights abroad?

Daniel Blackburn: If I give you a specific case, which might make it clearer. Such a case was litigated in the courts here—Adams v Cape. It concerned US asbestos workers who sued the US company for damages to their health—obviously, working with asbestos is very dangerous. They won their case in the US but the US company had no money. It was a subsidiary of the UK company, so they sought to enforce that judgment in the UK courts, which said that they were bound by limited liability and corporate separate personality and could not enforce the judgment against the parent company.

Chair: So basically our limited liability and corporate legal framework are allowing people to evade their responsibilities for breaching human rights abroad.

Daniel Blackburn: Absolutely. Profits were flowing up that chain but responsibility was not.

Owen Tudor: Could I add examples of what could be in the national action plan that would help with this? Number one on our agenda would be the UK Government’s support for the ILO introducing a new instrument or convention that would police the way in which international companies operate in terms of their adherence to core labour standards. As I said, at the moment core labour standards apply to states but not to companies. If we could extend ILO governance to cover what companies are doing,

that would be a major change. There was a debate at the ILO conference this year about it. If the British Government were supportive of that, it would be very helpful.

Secondly—this will become increasingly important as the years go by—the UK Government could support enforceability of the sustainable development chapters in trade agreements, which cover labour standards. At the moment, in the agreement between Canada and the EU, the sustainable development chapter allows enforcement only in so far as, if someone alleges a breach of their labour rights as a result of trading arrangements, they can get a committee of experts to come up with a stiffly worded letter. This contrasts with what a company can do if it says that its rights have been abrogated by a trading relationship; they can go to an international court or an international tribunal and get multibillion dollar settlements. It would be useful to have some sort of enforceability in the sustainable development chapters.

Thirdly, relaxing the rules on legal aid would be particularly useful. The *Trafigura* case concerning contamination in western Africa, which has been back in the news recently, was originally taken under legal aid provisions. But as a result of changes to legal aid, it could no longer be taken, because it has become much more difficult to take cases under extraterritoriality. That would be another change there.

Baroness Prosser: You mentioned the ILO, Owen, which is a tripartite body. Flowing from that, or around that, are there any opportunities for the British Government to talk to the TUC about these things? What kind of relationship is there between the TUC and the Government when it comes to trying to get the bottom of some of these difficulties?

Owen Tudor: There are a number of structures and ways in which that discussion takes place. I would not say it is a formal engagement, but a regular meeting with the Government is organised by the Department for Work and Pensions, which holds the ring as the people who pay the subscription to the ILO. The DWP calls together the TUC and the CBI on a regular basis to discuss what is going on in terms of ILO discussions. That sort of thing does take place. The Government are required, for instance, when they are reporting to the ILO, to consult the social partners about the reports that they have made. I mention that because we are at precisely that point of the reporting cycle at the moment; the reports are due in by 1 September. We have had to submit some evidence directly to the ILO because the Government have not provided their reports—I do not think they are keeping them secret from us, but they have not submitted the reports about their own compliance with these measures to the ILO on time.

Baroness Prosser: Are you able to talk about the national action plan only via that mechanism? How does the trade union voice get into the debates on some of the difficulties that Keith has raised, for example?

Owen Tudor: When the first national action plan was established and the review took place, a number of meetings were held with civil society generally, which the TUC and I think the CBI took part in, to put views across. There was nothing of a formal tripartite nature, and I would not necessarily say there has to be—I do not want to be exclusionary in that sense. But as I said, the second set fizzled out at a certain stage, before submissions were made to Ministers, and they never happened again.

Q16 Baroness Prosser: On a slightly different tack, what is your view on the value of the national action plan and the issues which may arise around small and medium-sized business? Their issues are often much more difficult, or at least different.

Owen Tudor: Small businesses that operate abroad need a fair amount of guidance and advice, although it should not be voluminous guidance and advice. I have sympathy with quite a lot of small businesses, because it is quite like being a trade union rep in that they do not have the time to go through enormous amounts of information—so information is needed. This might sound a little surprising, but I am not as bothered about small firms in terms of their global operations as I am about large firms, partly because I am interested in low-hanging fruit and in actually making a difference. There are 50 global companies which have 116 million people in their supply chains. If those 50 companies were abiding by best practice in this area, it would make an enormous difference to the way this operated and would also spill out into what small firms were doing, because obviously quite a lot of those large firms are contracting through small firms and engaging with them. So I would be more interested in directing compliance work on global responsibilities at the large firms, rather than trying to do an enormous amount of work for comparatively little return in terms of small firms.

However, it has to be said that one of the virtues of the national action plan and the approach to the UNGP generally which has been adopted in the UK, concomitant with the sustainable development goals, is they apply domestically as well as internationally. Keith was asked earlier about whether a lower standard should be allowed in overseas operations than domestic operations. Sometimes, I am afraid to say, it is the other way around: quite a lot more effort is put unto the supply chains at global level than at domestic level. For example, the ethical trading initiative, which I

am a director of, has a base code which companies signing up agree to abide by and which requires those companies to pay a living wage. They are much better at paying a living wage in their supply operations in other countries than they are to the people on the checkouts or stacking the shelves of supermarkets domestically. This is partly because it is cheaper to pay the living wage in other countries than it is here.

Lord Henley: It varies across the world.

Owen Tudor: Indeed, absolutely—but the principle of paying a living wage should not be different in any of those countries. There, when you come to small firms, there is an issue around compliance in the domestic market, where it is actually worth doing some policing work and checking whether people are abiding by the rules of the game.

Amanda Solloway: I have a quick question following on from that. I am intrigued by this, but more about medium-sized enterprises than small businesses necessarily. Would there be any impact on their sustainability under the action plan? In other words, would the living wage have an impact on them? Could it make them vulnerable?

Owen Tudor: For small and medium-sized enterprises, the loss of reputation that you can suffer as a result of not abiding by these things could actually be fatal in a way that it probably is not for a large firm. Large firms manage, generally speaking, to survive even if something really terrible is discovered in their supply chains, but a medium-sized enterprise is probably more vulnerable to that, so it is more important that they make sure that they get it right, for their own survival. I would not say that it is more important generally, but it is for their own survival.

In terms of whether the requirements of the UNGP would impact on their sustainability, I would say that it is a positive rather than a negative, because it is more likely to make them more able to sustain their operations, because they would be able to survive shocks such as reputational damage and so on. For instance in China, if you are supplying into China and paying a very low wage, you may suddenly find that you cannot employ anybody anymore because wage levels generally have gone up. If you were paying a decent wage at the time, you could ride that out; if you were not paying a decent wage, you may suddenly find that your entire supply chain is disrupted. So it actually makes you more sustainable if you follow those requirements than otherwise. This is standard in terms of health and safety, for instance. If you abide by decent health and safety processes, your factory is not going to burn down or collapse, and therefore you are going to be able to continue to source goods; if you hope that your

factory is not going to collapse, you may suddenly find that it does and then you are left without any of your orders being filled.

Chair: Oliver, did you want to ask something or was it just about the living wage?

Lord Henley: No.

Chair: Before we go to Fiona, can I just loop back to a point that Margaret raised? You referred to this, Owen, but so that we do not just take it as read, how significant is the right to trade union membership and the ability of trade unions to act on behalf of their members to underpinning, guaranteeing and enforcing human rights and exposing breaches of them? We need you to say why trade unions are important in all of this, alongside all the action plans, the ILO and everything else.

Owen Tudor: They are important for two key reasons. I could go on for an enormously long time about the number of different reasons—

Chair: Do not!

Owen Tudor: But it is important to focus on the two key reasons. The first reason is that they are there all the time, if they have members in a workplace—hopefully not 24 hours a day, although it depends on the shift system. They are there when it is operating and will know everything about what has happened in the workplace. You can set up all sorts of whistleblowing systems, reporting systems and things like that, but you have to have people who are willing to tell an outside agency that something is going wrong, and unions are traditionally the best way we have found of doing that, as they are organisations that are controlled by the people in the workplace, who can therefore have trust in the organisation

Chair: So they are the canaries in the mine, in effect.

Owen Tudor: Yes. I am not sure how far I would want to pursue that analogy, but they are permanent. Part of it is understanding how the business operates, as well as just being there permanently. There is a fantastic example in the UK, which comes from health and safety, where a perfect system of disposing of an extremely toxic product had been chosen. The management had ensured that it was bagged up at the point of origin, taken through the factory, put into a secure unit and disposed of, so no one could be exposed to it. Then the workforce pointed out that there was wall between these two things, so they were pouring the toxic substance out of a bag through a hole in the wall into a bag on the other side of the wall. An audit system is not necessarily going to find that out, because according to the management plan, it worked perfectly. You need to talk to people who are doing the job to find out what is actually going

wrong at that point. So the two key things about trade unionism are, first, that its members are in the factory or workplace all the time and, secondly, that there is an independent, outside organisation that they can report to which can argue their case and tell people what is going wrong.

Q17 Fiona Bruce: Good afternoon, gentlemen. What additional work could be done to engage small businesses with the human rights framework? What would you define as a small business in terms of human rights obligations? There are various definitions. For example, a small or medium-sized business in this country is one with fewer than 50 employees, and of course over 95% of our businesses employ a handful or less. Under the Modern Slavery Act, the additional obligations for supply chain observance were imposed on companies with a turnover of over £60 million a year. Under the Californian Act, it is \$100 million in receipts. How would you classify a small business and how can government engage better with them?

Owen Tudor: I will answer the last bit first. In terms of engaging with them, a lot of it is about providing information. That is mostly where those corporations are falling down: they do not have that sort of information. If it is a large firm, you should not spend a lot of time informing them of what is going on, as they can arrange and pay for that themselves. Small firms will not necessarily have that expertise or knowledge, or those internal resources. The most important thing is to make sure that they are aware of what works, what it is important to do and what needs doing. As for what constitutes a small firm or a big firm, I have been working at the TUC for over 30 years, and it keeps going down and down. My own organisation has similarly been shrinking over that time, so that may be the perspective we are looking at this from. I do not think that there is a hard and fast limit. The numbers that were picked for the Modern Slavery Act were very much picked as, “Let’s bite off the big problems and larger organisations first and then see whether we can go further from that point”. As I said earlier, our main target at the moment is those 50 companies that have the 116 million workers in their supply chains. We would not be satisfied with having dealt with that, but it would be where we would start before going further.

I do not think there is a hard and fast rule as to what constitutes small or large. In many cases, the smaller you are, the more you need a structure and a system of regulation that tells you what to do. The larger you are, the more you can operate on the basis of assessing what the risks are and make your own decisions about how things work—a principle that unfortunately is sometimes undermined by the inability of even large companies to do very well.

Fiona Bruce: Thank you. Earlier on, you very accurately described this dilemma of small businesses often having very limited resources. Yet under the national action plan, which incorporates these UN guiding principles, the corporate responsibility duty is exactly the same as for big businesses—to act with due diligence to avoid infringing on human rights. Professor Ewing, you talked about these four core principles. Do you think there is scope for looking at a distinction in areas of liability for small businesses, or is that an impossible task? Obviously, any business should cover areas such as freedom of association, discrimination, no child labour and no forced labour. If you will bear with me a moment, Chair, I will give a small example. A market trader buys products from a local wholesaler, which has bought them from an international importer, which has bought them from a factory in China. In a sense, if they breach the regulations, that market trader, whose family might be surviving on his trade, is as much a victim if he closes down as the people he sells those clothes to. In fact, he suffers more because his business goes. Could I have your comments on whether it is right that the whole panoply of legal requirements is equal, whatever the size of the company?

Professor Keith Ewing: There have been two questions on small businesses, which surprised me a bit, because in a sense this is not where the game is. There are much bigger issues to worry about than the problem that you just raised. In our submission, we raised issues about Rana Plaza and about Marikana, where striking workers were killed. There are other issues involving British companies elsewhere in the world. These are the regulatory challenges that we face at the moment. In terms of small businesses, I am sitting here scratching my head metaphorically wondering what the regulatory issues are. What are the regulatory problems at the moment for small businesses in terms of the supply chain? The guiding principles are about encouragement, support and expectation. Given that that is what we are talking about, I cannot see why a small business should have any immunity from an expectation that it does its best to comply with these very basic obligations. That is the other point: we are talking about very, very basic obligations in terms of child labour, slavery, forced labour and discrimination. If you go into business, my view is that you go into business with responsibilities. A good business takes responsibility for the welfare of others.

Fiona Bruce: I do not dispute that, in terms of those core human rights principles that you expressed. But let us go back to the market trader principle. He is one man, scraping a living. Does he have to go further than ask his wholesaler where his wholesaler got his stock from?

Does he have to go right back to find the source in China? For that one man, this is an impossible task. Is he going to be legally liable?

Professor Keith Ewing: What is the legal liability? There is no legal liability. These are guiding principles. This is the softest law that you can have.

Fiona Bruce: Suppose there is a shampoo that causes blindness.

Professor Keith Ewing: I think that is unrelated to these questions about general principles. Given that he has that liability anyway, it would be in his interests to seek to comply with these obligations. They are there to help him to avoid these risks, which are there at the moment. It is a separate issue from the guiding principles.

Fiona Bruce: So you are saying that the small trader has to accept that they are under exactly the same obligations—which they appear to be under this plan—as Marks & Spencer.

Professor Keith Ewing: There is no obligation. There is a duty to respect human rights, and in his case, he has a duty to do the best he can to comply with these obligations. As a result of a failure to comply with these principles—which is what we are here to talk about today—I cannot see where there would be any legal liability in relation to them. Now, there may be other laws which apply to that individual and attach liability to the market trader, such as labour laws, consumer protection laws or others, but that is a completely separate question. I do not see why anyone who is in business should have any exemption from these responsibilities.

Fiona Bruce: I have one further question. Should the requirement on him of due diligence, for example to make inquiries, be less than the expectation on Marks & Spencer?

Professor Keith Ewing: He should undertake due diligence, as is appropriate, to the best of his ability in order to meet the expectation in the guiding principles.

Fiona Bruce: That is a very helpful reply, because you are saying that there is a distinction.

Owen Tudor: There is a proportionality test.

Professor Keith Ewing: Hold on. There is no distinction; the same obligation applies equally to everyone, whether you are a sole trader or a large corporation. It is really interesting that you are looking for exceptions, loopholes and avoidance, but here we are talking about human rights and the obligations on people in business to respect and honour the human rights of others, full stop. In that context, the bigger problem is with the big multinationals. That is where our focus should be. That is where the real problem is that we should be addressing. You raise an interesting question. The expectation applies to everybody in business, in my view.

Fiona Bruce: And that is my concern, because hard cases can make bad law. Can I ask Mr Tudor to comment, finally?

Owen Tudor: As Keith says, there are certain principles that everybody must be bound by and due diligence, for instance, is one. It is a key element of the UNGP processes. The key question is what you have to demonstrate that you have done to make it clear that you have conducted due diligence. If you are Marks & Spencer buying clothes from China, it would not be unreasonable to expect you to have inspected the actual factory where it is made and to have dealt with that sort of stuff. If you are a street trader who is buying stuff that comes originally from China, you are required—bluntly, the key question is, who do you trust? If you are buying goods as a sole trader from someone you do not trust, you would not really do it: you want to have some sort of trust.

One way of doing that is by—you would not expect me to argue anything else—joining a collective organisation to make sure that this is done. So, for instance, trade associations. You would rely on the trade association doing the due diligence. You can outsource some of the reporting requirements, in that sense. It is a bit like health and safety. Health and safety law requires everybody to assess the risks of their operation. It does not necessarily require everybody to keep the same records of what they did to assess the risks. You would expect a small trader to assess the risks of their operation; you would not necessarily expect them to write a 40-page report about it.

Lord Trimble: I was going to suggest that in deciding whether a person has exercised due diligence you have to take their capacity into account. That is the answer to it.

Q18 Fiona Bruce: That is what I was seeking to say. I have a separate question about monitoring, transparency and compliance. Aside from strengthening the reporting requirements in the Modern Slavery Act, what other steps can be taken to monitor compliance of business with labour rights or human rights? How can it be better promoted in the national action plan? I was very interested to note that you talked about auditing being inadequate. Mr Blackburn, you talked about less than 6% of reports actually complying with the requirements. What could be done to improve compliance monitoring?

Daniel Blackburn: I can say a bit more about the Modern Slavery Act and then move on to other forms. Essentially, the Modern Slavery Act is a very interesting template which I would like to see extended, expanded and rolled out to other areas of fundamental human rights, especially freedom of association and others like it. It is a good template. I would like to look at it—it needs expansion—but unfortunately, in

practice, we have had research in the last few days by the Business & Human Rights Resource Centre, which I stumbled upon by chance a couple of days ago. It found that of 540 submitted reports only 30 complied with the basic reporting criteria. We are talking about things like getting it signed by the right person, having the right notes, that it has been through the right board, or having a link to the report on their website. It is really basic stuff. That is 5.6%, they say, that had complied with those really basic criteria. That is unfortunate.

The resource centre continued: “Many companies appear not to have grasped the spirit of the Act, which pushes them to conduct meaningful due diligence to identify and mitigate risks of modern slavery in their supply chains and operations. Some statements appear to be based on a common template and use identical language. This persists despite guidance for companies on how they can report effectively under the Act ... A handful of statements provide some detailed information on companies’ supply chain structure and modern slavery risks”. So it is a promising legal template but, in practice, it is really poorly implemented, at least as far as we can see, according to that Business & Human Rights Resource Centre report—which, as I say, I just saw.

Chair: So what are the steps to sort that out?

Daniel Blackburn: We need more effective supervision of the companies in assessing compliance. I am not an expert on the Modern Slavery Act; I just added this to what I wanted to talk about after I saw the report two days ago.

Chair: Does anybody else want to answer Fiona’s question about the steps to be taken?

Professor Keith Ewing: You have two reporting obligations; the Modern Slavery Act and the provision within the Companies Act, which has a very vague human rights provision which lacks definition. I do not see why these big companies, given their size and the resources available to them—unlike the market trader—should not be required on an annual or every-two-year basis, to produce a human rights statement, in which they report not just their human rights policy but the way in which that policy has been implemented throughout the supply chain, and what steps they have taken to respond to any human rights issues that have arisen. Many companies have voluntary codes. We are simply taking these codes and putting them into statute.

Secondly, given the experience we have just heard about, if we are going to have this duty to report, there should be a duty to report on all four core obligations; not just slavery and forced labour but particularly freedom of association and collective bargaining and the relationships that companies have with trade unions throughout

their operations. That duty should be complied with in a way whereby trades unions are consulted about the content of the report in order to ensure that there is a level of veracity and reliability about the report. So the duty to report should be in consultation with trade unions and perhaps other key stakeholders.

Thirdly, there has to be a proper method of enforcement, which may be based on the criminal sanctions in the Companies Act or some other way, but it cannot be the procedure that we have in the Modern Slavery Act, which says that the sanction is a High Court injunction brought by the Secretary of State. We might as well have said that there is no sanction for breaching this obligation, because it is hard to see the circumstances in which the Secretary of State is going to bring an action in the High Court against a company in default. So there are things that could be done, including better reporting around these core human rights obligations, engaging stakeholders and trade unions and better enforcement to ensure that that obligation is met. If this was a criminal offence and this information was in the hands of trade unions, you had better believe that those trade unions would make it their business to ensure that these obligations were complied with. If we are serious about it, one thing we could start with would be better reporting.

Fiona Bruce: Thank you. I just say that I can foresee circumstances in which a High Court injunction could be brought. For example, if you had a situation like the Rana Plaza event, the Secretary of State might well take action. But I come back to my earlier point: you talk about the requirements falling on big companies, what would your definition of a big company be?

Professor Keith Ewing: I would be happy to start at the top and work our way down

Fiona Bruce: Thank you.

Q19 Lord Henley: I was going to ask about enforcement mechanisms, but Professor Ewing has set out, one, two and three, what recommendations you would like the Committee to come forward with. Those are very much recommendations that you are putting forward for us domestically. Could you put forward any recommendations about what we could do abroad to ensure greater compliance and greater transparency?

Professor Keith Ewing: This would apply to both.

Lord Henley: Obviously it applies to both.

Professor Keith Ewing: There are a number of things. This duty to report would be a duty to report on all your operations, on a global basis. So you would have to report on human rights, standards and compliance throughout the operation of the company—these four core ILO principles. This would have to be done in consultation, as I said,

with trade unions based here, and perhaps those elsewhere and where the company recognises trade unions.

The other issue which I think needs to be examined, because of the importance of collective bargaining and because of what happens when it is not there and trade unions are not present in the supply chain, as we saw with Rana Plaza, is that we have to take steps here to promote collective bargaining by our companies when they operate overseas. We cannot simply leave it as a voluntary undertaking which they do on a take-it-or-leave-it basis. We have to give much stronger guidance to British companies operating overseas about their obligations. ILO Convention 98 says that there is a duty to promote collective bargaining. That does not mean writing in an action plan that these provisions exist—there is a duty to promote, and you have to be proactive in promoting this obligation. I would like us in this country to do something along these lines. We already have an initiative called the international framework agreements, where trade unions globally enter into collective agreements with big corporations to regulate supply chain issues, and that needs a bit of support from Government, whether legally or by extra-legal efforts. There are a lot of things we could do.

Lord Henley: Daniel Blackburn talked about, I think, a figure of 5.6% of companies reporting at the moment. Was that right?

Daniel Blackburn: As I understand it, 540 reports have been submitted so far. I am not sure about the overall numbers.

Lord Henley: Where did I pick up that 5.6%?

Daniel Blackburn: Thirty of the 540 comply, which is 5.6% of those who have reported.

Lord Henley: You probably cannot answer this question, but of those 30, how many were big companies? In other words, are we just getting the low-hanging fruit?

Daniel Blackburn: I am sorry. I cannot answer that, as it is another organisation's report.

Professor Keith Ewing: They would all be within the Modern Slavery Act, which applies to companies with over £38 million in turnover, so a decent size.

Lord Henley: So they are all of a decent size, but we could not give an estimate on that 5.6%.

Owen Tudor: I am not sure whether the report contains within it an indication, which I think is what you are after, of a relationship between how well the reporting has been

done and the size of the company involved. It may be in the report, but I am not sure whether it is or not.

Lord Henley: If you discover any further and better particulars later on, you can let the Committee know. What I was asking Professor Ewing about was strictly for the past. In terms of what has happened so far, do you think the creation of the anti-slavery commissioner has added any value? Would you like to give an assessment of his stated priorities? I do not know who wants to answer.

Professor Keith Ewing: It is a great idea to take the issue of slavery as seriously as we are, although I think we are obliged to partly because of decisions of the European Court of Human Rights, so we should be careful about how heavily we pat ourselves on the back about this. There are certain obligations that we have to take seriously. It is good that we do take it seriously, and the idea that there is an offence, a commissioner and a reporting obligation is all to be welcomed. However, with respect, I cannot see how the reporting obligation is ever going to be enforced, so we have to look again at the enforcement provisions and who is monitoring compliance to ensure that the provisions are effectively enforced. The other issue is: why stop at slavery, important though it is? Why can we not roll this out into the other areas where human rights obligations are expected on the part of corporations? From my point of view, in particular, I would like to see something similar in relation to freedom of association.

Owen Tudor: It is early days for the anti-slavery commissioner, but we certainly think it was a good idea to establish one. A large part of how we should test the performance of the commissioner relates to one of the priorities that the commissioner has set out, which is about developing partnerships to make sure that the work is done effectively. We should be interested to see how those partnerships work out, because that is one of the key issues that gives you confidence in how our system is working in these areas. I have certainly not been approached yet—I do not think any of my staff at the TUC have been approached—about being partners in that process. I find that slightly strange, but it may just be that he is working through the list, starting with “T”—I do not know.

Chair: Amanda, we are taking forward the theme of remedies.

Q20 Amanda Solloway: Following on from that, looking at access to remedies and at what actually happens in the real world, I wonder what it is that is maybe stopping victims of human rights abuses by businesses having effective access to remedies, both domestically and internationally. I can see you nodding.

Owen Tudor: Resources are the key issue, and people do not have the resources. Often they lack resources about knowledge, in that they do not know what process to use. We found in a lot of the work that we did around global supply chains for the London Olympics, for instance, that one of the key problems was that the people who were at the fuzzy end of the lollipop of the supply chain did not know that the London Olympics had a really effective set of requirements in terms of what their rights were and how they should be enforced, so they did not know that they had a right to complain about what was going on. Secondly, they very often do not have the financial resources to make the complaint: that is one of the reasons why I mentioned access to legal aid in the Trafigura case. This is a key thing in terms of domestic enforcement of such rights, as is the problem of tribunal fees, when people do not have those resources. Sometimes, if they belong to a trade union, the trade union can provide those resources to push them through—although we are by no means flush with cash either, and we have problems with resources as well. But the fundamental problem when people are trying to enforce their rights to remedy is that they do not have the resources to do it.

Amanda Solloway: When you say “they”, you are talking about people where?

Owen Tudor: To be honest, anywhere in the supply chain. As I say, tribunal fees obviously apply primarily to people in the UK who have complaints about the way their rights are being abused in the workplace. We have seen, for instance, a massive expansion in the number of people who are unable to enforce their rights against unfair discrimination when pregnant, as a direct result of not being able to take cases to tribunals because of the cost involved. In terms of things like legal aid, I am talking about individuals further down the global supply chain in other countries, communities that have had their rights abused and so on. They will also lack the domestic resources to be able to raise an issue up a supply chain which crosses quite a lot of countries. As I say, an awful lot of people do not have the resources to fight a case in their own country, let alone to fight a case that eventually resides in a completely different jurisdiction.

Amanda Solloway: Do you think that people globally recognise that these are human rights issues?

Professor Keith Ewing: I think there is an increasing awareness about human rights globally, partly because of huge education programmes by the UN and others. What has been interesting over the last 20 years about the awareness of human rights is that

it was based on an expectation that human rights would be observed by states, to which many of these obligations are principally addressed, but there is now a growing expectation that companies will also comply with these human rights obligations, even though they are not party to the treaties by which they are created. The reason for that is the growing size and power of modern corporations. There was a fantastic study, way back in 2000, which looked at the top 100 economies in the world. At that stage, 51 were corporations rather than nation states. We are looking at organisations which have resources which are greater than the resources available to many of the countries in which they operate, and of course they must be bound by these obligations. There is an issue with small businesses, but we are not talking about small businesses here, we are talking about the power of multinational capital, which is vast, and to which a lot of these obligations must be addressed.

Amanda Solloway: Do you think something could be done for access to remedies through, say, employment tribunals? Should something be strengthened to help that process?

Professor Keith Ewing: There are two issues. One, which I think Owen has dealt with, is the access to remedies in this country, and the other is access to remedies in a developing country by a worker who is abused by a British company. Those are two quite separate issues, but in terms of workers in this country, there are two or three problems. One is, as Owen said, that the process has become very highly technical and legalised so people need access to lawyers and there is no legal aid available for employment law cases. So people are starting at a major disadvantage. Secondly, there is the problem of tribunal fees, which were introduced several years ago and which have been a major disincentive to many people bringing complaints, including complaints on what we would regard as human rights issues—such as freedom of association and discrimination, as we saw two weeks ago in the report of the Women and Equalities Committee. So there are barriers to remedies in our domestic law, but there are also huge barriers to remedies against British companies by workers in developing countries, problems of access to funds. How do you get access to a British company in British courts if you are someone struggling on a low income—even the living wage—in Bangladesh, Fiji, Colombia or wherever? So there are huge problems. That is an issue that I hope you will address: how do you empower a worker in Bangladesh to bring a case against a British company for a violation of her human rights in Bangladesh?

Chair: That is a question; we are trying to provide the answers. Could you turn it round and answer the questions, rather than asking us? That moves on to the point about multinational corporations. The size issue moves us smoothly on to the point which Karen is about to raise about trade agreements, especially in the post-Brexit scenario.

Q21 Ms Karen Buck: Indeed. In the environment we are now in, what do you think the new landscape should be, in terms of negotiating trade deals outside the EU? Should the current human rights standards within the EU trade agreements be carried across, or is there the scope or ability to strengthen those? If so, how? I particularly want to come back to the issue of workers' rights, maybe not doing that to start, but talking more generally first.

Professor Keith Ewing: The starting point is in the name: they are free trade agreements, not fair trade agreements. The question then is what will go into these free trade agreements. Obviously, we would want there to be labour clauses in these agreements, but the point is that not all free trade agreements have labour clauses. If we look at Australia and Singapore, there is a free trade agreement but there is no labour clause in it. Most free trade agreements have labour clauses in them, but the problem with free trade agreements, certainly compared to EU law, is that they are very, very basic; they deal only with minimum standards. So the Canada-EU free trade agreement, which is in the process of being signed off at the moment, deals with the four ILO principles. You would hope that neither we in this country nor the Canadians would need to be told that we should respect no discrimination, no forced labour, no child labour and freedom of association. If you are lucky, you might be able to go beyond these four core principles, as we have been able to do in the Canada-EU free trade agreement, but all it does is set aspirations. The aspirations are that we promote health and safety and acceptable minimum standards for wage earners, but that is a long way from the rights that people have under EU law at the moment and that can be enforced before our domestic courts and, ultimately, before the European Court of Justice. The best we will get are these very low standards that, as Owen said, are virtually unenforceable.

Ms Karen Buck: Tell us why you think it is inevitably the case that Britain, a major economy negotiating free trade arrangements, would accept or promote a starting point that is a lower standard than that within the EU's agreements.

Professor Keith Ewing: There are lots of these free trade agreements that have been negotiated globally. Take a social market economy like the EU, for example, negotiating TTIP with the US: the EU tried to impose higher standards but the answer

was “No thanks, we do not want this; these are not the standards we are prepared to accept in our system”. What the EU has been able to achieve with Korea and Canada, and what it is trying to negotiate with the United States, is minimum standards, because that is what the other side will accept. We may have ambitions to have fair trade agreements, but we are dealing with a global culture at the moment in which we have free trade agreements, in which there is only a nod in the direction of labour and sustainability. We enter into these agreements such as the Korea agreement, where we commit to—

Chair: Who is the “we” here?

Professor Keith Ewing: The European Union, which includes us as a signatory—I think David Cameron signed off on the agreement, along with all the other 27 heads of government—and Korea. We committed ourselves to the ILO principles on freedom of association. However, by the time we signed that agreement, John Hendy and I, in a study we did this year, had discovered that although we signed this agreement, and although all the EU countries have ratified the two ILO conventions, 22 of the 28 member states are in one way or another not in full compliance with either the ILO conventions or the comparable provisions in the European Social Charter. Korea has ratified only two of the eight core conventions, and has not ratified either of the freedom of association conventions. Korea has a terrible record on freedom of association, trade union rights and the right to strike in particular. What we do in these agreements, whether we like it or not, is to create a system of mutually assured non-compliance—MANC.

We have just entered into one of these agreements with Canada, and Canada is in breach of these principles on multiple grounds. Canada cannot control compliance, because labour law in Canada is a provincial not a federal matter, and Canada cannot control what the provincial governments do. We enter into these agreements—two parties, two sides—usually in breach of the obligations we have undertaken to comply with, and no one has any expectation that these obligations will ever be met. If this is the future, compared to the future we are about to leave, it is a very dismal future in terms of respect for human rights of workers.

Ms Karen Buck: I understand what you are saying, but in terms of our future scope for negotiating trade agreements, are you saying that this is a matter primarily of political will, or is it primarily a matter of our negotiating ability outside of the EU?

Professor Keith Ewing: I would say both.

Ms Karen Buck: Both, okay.

Q22 Chair: I want to ask a follow-up question on this, because we are in the world now that we are going to be in post-Brexit. We are not going to be party to the EU agreements that we have been party to, but we are going to negotiate agreements with everywhere else in the world. Leaving aside and stepping aside from your obvious pessimism about what is likely to happen from our Government, let alone the receiving Governments—we are more positive here—what ambition would you like to see from our Government in order that we can comply with the Human Rights Act and all of the human rights that all of us agree are important in free and fair trade agreements? You have given us a commentary on the difficulties, but we are at the outset of all this—

Professor Keith Ewing: Yes, okay.

Chair: Should we not have some ambition on this?

Professor Keith Ewing: We should have, yes.

Chair: What would be the shape of that ambition, as opposed to just reporting in advance that it is all going to the dogs?

Professor Keith Ewing: It is all going to go to the dogs. I have been optimistic; I have given an optimistic picture.

Owen Tudor: He supports Hibernian.

Professor Keith Ewing: Thanks for that—we won the cup this year. Bear in mind the leverage the EU has, compared to the leverage that we will have when we are negotiating these agreements.

Chair: So your first point is that leaving gives us less leverage to get human rights?

Professor Keith Ewing: Much less leverage.

Chair: And therefore, we are up against it?

Professor Keith Ewing: Secondly, you are dealing with Governments that might not be as progressive as this one, or the one negotiating the agreement. There are a lot of right-wing Governments out there. Why would the Australians want to expand their human rights obligations? At the moment they have a Liberal Government. What expectation can we possibly have of them being benevolent or sympathetic to a progressive workers' rights agenda in a free trade agreement? It is just not going to happen. If you look at the ILO website and look at all the free trade agreements that have been concluded, you will find that these free trade agreements are dealing with minimum core standards, which you would expect that we are already complying with. If you are pushing me to say what we should be asking for, we should be asking

for these core standards and, in particular, the one that will give us most difficulty will be freedom of association, because it is the one we are probably furthest behind on now. If we put that into the agreement and give workers the right to a judicial remedy to enforce a breach of the treaty, that would be something; but it ain't going to happen.

Ms Karen Buck: I am really keen to hear Owen on that, but does Daniel want to say anything in response to the central question that Harriet and I are asking: what could we or should we aspire to build into trade agreements that would maintain, if not possibly strengthen, existing human rights protections?

Daniel Blackburn: Like Keith, I think it is impossible to see it in any way replacing a system under which you had individually enforceable rights that people could actually rely on. In practice, these standards are only ever very vague and minimal. Only the US has ever had enforceable dispute settlement mechanisms and of those, only one case has ever gone to arbitration. That is the Guatemala case, which has taken six years so far and which excludes the massive problem in Guatemala of political violence against trade unionists. Even then, it is pursuing a very technical question about failure, supposedly, of Guatemala to enforce its own labour law, in a manner affecting trade between the parties. That is the best example that we have and, to me, it seems hopelessly inappropriate in assessing the freedom of association situation in Guatemala, which is dreadful. This is an opportunity to take a new approach, but for the reasons Keith has outlined, I think it is very unlikely to be realised.

Ms Karen Buck: And you would agree that leverage is an issue, as well as political choice?

Daniel Blackburn: Yes.

Owen Tudor: There is a trade agreement that has entirely enforceable labour rights in it and a mechanism for enforcing those labour rights, and that applies those labour rights equally across all the parties to the trade agreement. Unfortunately we have just voted to leave it. That is the gold standard, the system that currently operates inside the European Union. There is a set of labour standards required of all parties to the treaty and there is a mechanism for implementation through the European Court of Justice. If you want a gold standard for a trade agreement, that is it.

Chair: So are you saying that therefore, with any future trade agreements, whether it is with Australia or wherever else—bilateral ones that we are going to have to do—that should be our minimum starting point?

Owen Tudor: That would be what you would want as a gold standard with a country where you thought it was remotely possible to do that sort of deal. Australia would be one—

Chair: But hang on: a gold standard is not a minimum, is it? A gold standard is your aspiration; why are you suggesting that we should go out to negotiate, post-Brexit, with any presumption that we should go lower than we are currently? Surely you are saying to us that we go out with the starting point that it should be no lower than what we have already been party to in the EU?

Professor Keith Ewing: Are you talking about Australia or the rest of Europe?

Chair: Anywhere.

Owen Tudor: I am trying to navigate between pessimism of the intellect and optimism of the will. There are some countries with which it is extremely unlikely you will be able to manage a deal of the kind that we have with the rest of Europe at the moment. I would still describe that as the gold standard, because I do not think it will be achievable in all circumstances, even at the level of practicability and reasonable aspiration.

Chair: So we do not even mention it? I thought trade unions were a bit more optimistic than that and pushing for progress.

Owen Tudor: I am more optimistic than Professor Ewing, but I would say that in terms of global trading agreements, at the international level, the International Trade Union Confederation has come up with a model labour chapter to go into trade agreements which is set above the level of the ILO core conventions. Given the lack of compliance currently around the world with those core conventions, that is still on the optimistic side of what you are likely to get, but it is not as advanced as recreating the European Union. I would say in that context, by the way, that all the evidence is that although we have voted to leave the European Union, there has been no indication of a popular view that we should abandon the labour rights that came with membership of the European Union. Indeed, our polling shows that even among leavers, there is as much support as there is among remainers for those labour rights. There is a model chapter covering labour.

Chair: But it is less than the EU standard.

Owen Tudor: Which is less than the EU standard, yes.

Chair: Why should our Government, having been party to EU standards, advance upon the rest of the world with our opening offer being lower human rights standards? I do not understand this.

Owen Tudor: Because that is more likely to reach an agreement.

Lord Trimble: Chairman, you are leaving out the fact that the European Union has not managed to get its standards written into its own treaty agreements.

Owen Tudor: Absolutely, that is correct. The European Union's own internal trade agreement covers these issues, but its agreements with any other country fall short of that.

Lord Trimble: For the very simple reason: why would you impose your views on other countries if they do not want them?

Chair: I thought that we had looked at the EU's trade agreements with other countries—the EU with non-EU countries—and that there are various clauses in there.

Owen Tudor: There is traditionally a sustainable development chapter for those clauses, which is unenforceable.

Professor Keith Ewing: I have just read to you what is in the Canada one. In a sense, they are aspirational in terms of health and safety.

Ms Karen Buck: That is for a different reason, I think.

Professor Keith Ewing: Why would Canada negotiate a higher standard with us than it negotiated with the EU?

Ms Karen Buck: That is a slightly different point, but is not part of the reason that the Canadian system is unenforceable? You have just told us it is about the relationship between the federal Government and the provinces.

Owen Tudor: Keith is absolutely right about what the Canadian Government can say to its provinces about their labour laws. But on the other hand, Canada has a constitution which means that there are certain standards below which the provinces cannot fall when they are doing things.

Ms Karen Buck: But ultimately—and this picks up on what David said—why would other countries want to trade with us while accepting standards that they do not want to have to accept? Is not the answer to that, as we are told as part of the Brexit argument, that they will do so because they want to benefit from trading arrangements with us and that we will therefore be able to negotiate those higher standards?

Professor Keith Ewing: What are you going to impose on these other countries?

Lord Trimble: That does not work either.

Ms Karen Buck: I know it does not work—I am playing devil’s advocate.

Lord Trimble: You do not need an agreement to trade.

Owen Tudor: You do not, indeed. One of our criticisms of the current fetish for trade agreements is precisely that trade agreements do not produce the economic benefits claimed for them, because they do not always increase the amount of trade that goes on. It is the trade that increases human wealth, not the trade agreement. But there are things you can do in trade agreements which are beneficial. Trade agreements obviously are between Governments of sovereign states. However, all those Governments are under pressure from international obligations and also from their internal civil society. One of the problems that we have had with successive British Governments has been that we have not been able to persuade them, over a long period of time, to support enforceable labour rights in trade agreements. We have not been able to persuade Governments to press for that. The same arguments go on in other countries. In terms of agreements with the US, the American trade union movement is urging its Government to require the same sort of standards that we are urging our Government to impose. There is a dynamic process here; it is not simply that there is another Government out there who do not want to do what we want them to do. Their own room for manoeuvre is determined by their own internal political pressure. Sorry, that sounds like a lecture, and I know you know all that.

Ms Karen Buck: You end up being even more depressing, Professor Ewing.

Professor Keith Ewing: Here is the optimistic answer then. If you want to protect EU labour rights, the only way to do that is to have a Norwegian-style agreement with the EU, whereby we are bound by those rights, we have to give effect to them in our domestic law and have access to a court like the Court of Justice. But if we are to come out and start negotiating individually, country by country, just look at the genre of free trade agreements and ask why you think we can do something that no other country in the world has managed to do. Why are we so special that we can do that?

Chair: So are you saying that the trade terms in agreements between the EU and non-EU countries are not worth the paper they are written on because they are not enforceable?

Lord Trimble: They are not even written.

Owen Tudor: They are not as good as they could be by a long chalk, but, for instance, the EU-Korea agreement contains provision for a tripartite monitoring process that can enable the abuses of labour rights in Korea to be flagged up to the Commission so that

it could, theoretically, take action. This is not to be sniffed at, because you need a process for generating complaints.

Chair: Should not the starting point for human rights for this country when it embarks on a new set of agreements be that we do not want to drop below the example of what the EU has negotiated on our behalf in relation to Korea, if that is the best one?

Professor Keith Ewing: Then that is the best we will get. That is a problem. That is a long way short of EU law.

Owen Tudor: The ambition should be higher than that because we have been able to see through the Korean agreement that that process does not work.

Q23 Chair: Who is encapsulating and articulating what ought to be the UK Government's starting point for a respectable human rights position? If you were one of the three Secretaries of State going out to negotiate free trade agreements, or however it is being done, what would your starting point be for what we, the UK Government, believe should be in the agreement to make it fair trade as well as free trade? Who is bringing this together out there in this country?

Owen Tudor: I do not think anybody is on human rights, per se. On labour rights, I have on my list of things to do to write a letter to Liam Fox, saying, "In the trade agreement you will be negotiating, this is the ITUC's model labour clause that we would like you to insert".

Ms Karen Buck: Can you share that with the Committee?

Owen Tudor: Absolutely.

Lord Trimble: To be realistic, you will not be able to get any significant progress through negotiating trade agreements. Having an agreement is on a consensual basis: both parties agree. How will you compel a country to agree to something it does not want to agree to? I do not see you will make much progress by looking at trade agreements. The way you will make progress is through using the ILO machinery to deal with things and trying to reinforce what the ILO does.

Chair: It might be both/and, because we are about to embark on these trade agreements. That is a fact, and we know that the rest of the world is gagging to sign agreements with us; we have been told that by the Government. Therefore, bearing in mind that we are in this strong position with Brexit and being open for business, we can at least have some thoughts on what ought to be the human rights standards in these trade agreements, I would have thought.

Lord Trimble: People are hugely overstating the possibility of having agreements, because they are few and far between in the world. This goes back to the point that you do not need an agreement in order to trade.

Baroness Prosser: I think it is incumbent on this Committee to lay down the standards that we think are appropriate. Having listened to the evidence, I know that the scene is a very pessimistic one. But if we do not do it, who is going to do it? In times to come, perhaps when Governments around the world or here change, we can look back and say, “This is what we have demanded and this is what we are still looking for”.

Chair: Your evidence today has massively informed us and given us a perspective on what we should discuss next. We had the concept of this inquiry before Brexit, but Brexit has given it an added dimension. We are working with you to get your advice and experience on what the aspiration and ambition should be. As Margaret said, we will need to keep looking at that, but I would like to thank you very much for your evidence so far.

Q24 Baroness Lawrence of Clarendon: I have a final question on the national action plan. From how it was presented, it seems to me that what you think is missing might be an independent monitor who could see what is happening and advise. Is that something that you have thought about?

Owen Tudor: There are two things that the national action plan needs. One is a broad-based civil society advisory committee, which Keith mentioned. There is also a role for parliamentary bodies to scrutinise. In terms of being able to press government over the implementation of its action plan, it is Committees such as this that are most likely to be able to have that impact. An advisory committee is only ever going to be an advisory committee, although it will be able to shout about things like that. One of the things that is missing in the national action plan is effective parliamentary scrutiny of what government is doing to implement the plan.

Professor Keith Ewing: Could I just add an optimistic point on the last discussion? David Davis made the point that there will be no dilution of workers’ rights. The way to do that, of course, would be to freeze workers’ rights, as they come from the EU, at the date of Brexit.

Chair: You mean to shadow them.

Professor Keith Ewing: No, to say that they will remain in our law and that we will retain those provisions.

Chair: That is quite a conservative point—

Professor Keith Ewing: That is the point.

Chair: Would it not be that we agree to shadow it? If you freeze it, you would never make any progress.

Professor Keith Ewing: You are making the point that, if we do that, the laws would simply be frozen and that we need to shadow them. The other point is then that free trade agreements become much less significant.

Chair: This has been a really useful discussion, and obviously your experience is invaluable to us, and will be, I hope, as we progress through this inquiry. Thank you very much indeed.