

Work and Pensions Committee and Business, Energy and Industrial Strategy Committee

Oral evidence: Carillion, HC 769

Wednesday 21 March 2018

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Members present: [Frank Field](#) (Chair Panel 1); [Rachel Reeves](#) (Chair Panel 2); [Heidi Allen](#); [Ruth George](#); [Stephen Kerr](#); [Peter Kyle](#); [Nigel Mills](#); [Antoinette Sandbach](#), [Chris Stephens](#).

Questions 1210 - 1395

Witnesses

I: The Rt Hon Greg Clark MP, Secretary of State for Business, Energy and Industrial Strategy, The Rt Hon Esther McVey MP, Secretary of State for Work and Pensions, Charlotte Clark, Director, Private Pensions and Arm's Length Bodies, and Niall Mackenzie, Director, Infrastructure & Materials

II: Marissa Thomas, Partner, Head of Deals, PwC, David Kelly, Partner and Special Manager, PwC, and Gavin Stoner, Partner, Restructuring and Pensions, PwC



Examination of witnesses

The Rt Hon Greg Clark MP, The Rt Hon Esther McVey MP, Charlotte Clark and Niall Mackenzie

Q1210 **Chair:** Welcome, thank you for coming. Could we begin, Charlotte, by asking you to identify yourself, and then we will go down the row, for the sake of the recording so we know which voice belongs to which person.

Charlotte Clark: I am Charlotte Clark. I am the Director of Private Pensions and Arm's Length Bodies at the Department for Work and Pensions.

Esther McVey: I am Esther McVey, I am the Secretary of State in the Department for Work and Pensions.

Greg Clark: I am Greg Clark, I am the Secretary of State for Business, Energy and Industrial Strategy.

Niall Mackenzie: I am Niall Mackenzie, Director of Infrastructure and Materials in the Department for Business, Energy and Industrial Strategy.

Q1211 **Chair:** Esther, a nice easy one and I hope a short answer from you: you published a White Paper this week on pensions reform. We will, I am sure, in the House implement that White Paper for you. If that had been implemented, to what extent would Carillion not have occurred on the pension side?

Esther McVey: No one can sit here and categorically state what would or would not have happened with Carillion but what we do know is that in bringing this White Paper forward it will prevent, as best as possible, the protection of pension schemes and pensioners. Should anybody do anything to weaken or recklessly put their pension scheme into difficulties, then those people will get either penalties or, now, a criminal sanction for what they have done. This is about strengthening the regulator, it is about giving them powers to investigate more, it is about putting them on the front foot and also being able to enforce a funding standard. As I said, there will be a very clear message that should you not adhere to what you should be doing for your pensioners there will be sanctions and criminal prosecution.

Chair: Brilliant, thank you very much. The questions obviously vary in different degrees of relevance to both Secretaries of State, please do not feel both of you have to answer when the other one has answered. We will begin with you, Nigel.

Q1212 **Nigel Mills:** Greg, if we could start with you, could you just tell us when you and your Department became aware that Carillion had some pretty serious viability issues?

Greg Clark: The knowledge of Carillion was obviously known through its profit warnings that it issued July of the year before it went into insolvency. We were aware of that. We were also aware of the clear



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statements that were given by auditors and others that it was a going concern. So at the same time as the rest of markets.

Q1213 Nigel Mills: Esther, was that the same for your Department? Did you know there was a big issue coming in the middle of 2016? It is before your time, I know.

Esther McVey: Yes, it was before I was an MP, so it was before my time.

Q1214 Nigel Mills: When did your Department become aware there might be a big pensions problem coming up?

Charlotte Clark: Similarly, the profit warning, the public profit warning was when the regulator notified the Department that they were concerned about Carillion.

Q1215 Nigel Mills: Have you had any similar warnings about companies? Perhaps you should not necessarily give us their names but are you regularly watching the market for when large companies hit this kind of situation?

Greg Clark: Perhaps I can take that and Esther can come in. Every day on the news there will be trading updates. As the Business Department, there will be reports, certainly for those sectors that we sponsor, and we have Ministers that sponsor different sectors of the economy, that we take a particular interest in. In terms of the relationship with Government, obviously one of the features of Carillion was that it was a contractor to Government and that relationship is handled through the Cabinet Office. They have the particular relationship with the company.

Q1216 Nigel Mills: Do you have a watch list, Esther, so you know which big companies might have big pensions problems coming so you can work with the regulator?

Esther McVey: The regulator is an independent organisation but what it does do is work with us, and would be looking for notifications. What we are doing to strengthen the regulator is get greater oversight now of things that would be a notification on a big corporate transaction, which could highlight that there might be something coming along the way that could potentially have a say on the pension scheme. We are strengthening that and at any one time or at this moment the regulator would be looking at 191 cases. Again, we are strengthening the regulator so it will have more people there to be looking at more cases.

Q1217 Nigel Mills: As a Department you do not have a risk list of these five massive pension schemes where the sponsoring company is under threat. You just leave it completely to the regulator?

Esther McVey: Obviously when the Act came about in 2004 to set up this independent regulator it was very much to do that.

Charlotte Clark: There is an ability for the regulator to share case information with the Department if there is a wider interest. We have



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ongoing discussions with the regulator about different cases, usually when there is a broader economic or political interest.

Q1218 Chair: Charlotte, how many cases has the Pension Regulator shared with you currently? One a day?

Charlotte Clark: On DB specifically? Things like AE cases they may be discussing with us. I would guess at any one time we would probably have 10 cases that we are discussing with them.

Q1219 Chair: The Committee acted on BHS because we read it in the newspapers, then we found the regulator wrote it in the newspapers, and we were all acting late. That is our worry. You have 10 current cases that you are sharing with the Pensions Regulator and discuss with the Secretary of State?

Charlotte Clark: No, not necessarily. We would not necessarily discuss it with the Secretary of State unless there was a particular reason to raise it to her.

Q1220 Peter Kyle: Mr Clark, when Carillion got into trouble did you have any conversations internally about whether your Department or the Government should be propping it up or seeing it through or assisting in any way to keep the company solvent?

Greg Clark: No, the relationship was with the Cabinet Office and obviously the particular interest in terms of Government contracts was the continuity of those Government contracts. I do not know if you are taking evidence from our colleagues in the Cabinet Office around that. There was a major operation, as you are aware, to make sure that there was continuity of those contracts.

There were two areas in particular that my Department had responsibility for. We had two contracts with Carillion, one was for the NDA and the other was for the Land Registry. We obviously wanted to make sure that we had continuity there. As soon as the insolvency was announced, I put in place a task force to help support the consequences for the supply chain. As both Committees know, the construction sector in particular has a very long and complex supply chain with some quite small businesses there.

Q1221 Peter Kyle: There was never a conversation that one of the options to keep the contracts afloat and going was to keep the company solvent through Government assistance at any point?

Greg Clark: I think it is known that the then management of Carillion made various proposals to the Government, not to my Department but to its relationship in Government.

Q1222 Peter Kyle: Were you not involved in those conversations within Government about whether that option be taken up or not?



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Greg Clark: Through the normal cross-Government discussions but it was not a responsibility for my Department. Plans were made as to how to deal with the insolvency and that was a cross-Government response led by the—

Q1223 **Peter Kyle:** Just taking a step back then, do you think there are any circumstances where a company such as Carillion would qualify or it would be appropriate for Government to step in and keep it solvent for a period of time?

Greg Clark: It is difficult, and probably undesirable, to set a set of criteria for that. It is right that judgment should be made but we have a system in which we have companies that have shareholders and they bear the primary responsibility for any failure of those companies. I have sat here in front of the Treasury Select Committee looking at the lessons to be learned from the banking crisis and one of the lessons that Parliament took unanimously was that we should strengthen the acceptance and the knowledge that the Government was not there to step in to shield directors from the consequences of their actions. I think it would be the wrong thing to set out criteria.

Q1224 **Peter Kyle:** You have also said before us and shown with your deeds that you are quite an active Secretary of State. Are you saying that in certain circumstances you as a Secretary of State would be open to being quite interventionist if you felt that Government support would keep a company going in the best interests of the economy, its supply chain and other criteria?

Greg Clark: As you say, Mr Kyle, I am generally activist in seeking to get the best outcome for people employed in this country and for our economic future but I am always conscious that this has to be in a framework in which people draw inferences from decisions and wider actions. It would be the wrong inference to draw that there was some category of contractor in which people could reassure themselves that the taxpayer was going to be willing to step in. It would be wrong to do that.

Q1225 **Peter Kyle:** Finally, do you think the company itself felt it was too big to fail?

Greg Clark: I don't know. We have a number of investigations, as you know, one of those is by the Insolvency Service and they are looking in detail at the evidence for why directors took the decisions that they did. I have no information that I have seen that part of their consideration was a guess that the Government would step in and bail them out. That would be something that would have to be exposed by the evidence. It is important, and the Committees know, that on the day of the insolvency I asked for that investigation to take place and for it to apply to former directors as well as current directors at the time.

Q1226 **Chair:** Greg, you cite the Banking Commission but after the Banking Commission report nothing happened. None of the bankers were banged up for their heinous crimes. What Esther has announced in her White



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Paper and what she said to us this morning is a distinct change in Government policy, isn't it? The Government are going to go after people and if they get criminal records, they get criminal records. If they have acquired vast sums of money while running the company into the ground, they are going to lose the vast sums of money and maybe they will be banged up as well. It is very significant, isn't it?

Greg Clark: It is significant and it applies across the board. When it comes to our system of corporate governance, it is a system that has had a good reputation in the world. People generally feel, correctly, that the UK is a jurisdiction in which people can invest with confidence and that standards are high. The nature of that system of corporate governance is that it has been upgraded from time to time, often in response to a particular incident that exposed weaknesses in it.

The first thing is that the investigating authorities do have very significant powers already. If they were to find that the directors or the former directors had not acted in the interests of the company then they do have the ability to prosecute or to initiate a prosecution and to recover sums of money from them. In the consultation paper that I put forward yesterday, we look at some areas in which, in the light of recent incidents, I think there is a case for strengthening those powers and one of those is, for example, the sale by a company of a business in distress to a third party.

As both Committees know, the directors have a duty under section 172 of the Companies Act to a wide range of stakeholders as long as they are in ownership of assets and operations. There is, in my view, a loophole that by selling a company that is at risk of insolvency with the knowledge, the prospective knowledge that creditors and other stakeholders will be less-well served by that sale, nevertheless that discharges them of their responsibility. What we suggest in the paper is that that should not be the case and it should not be possible for directors knowingly to sell a company and be able to wash their hands of the consequences if they know that would be not in the interests of creditors and other stakeholders. That is an example of another big change. Shareholders traditionally have not had the responsibilities that directors have. That is a change that I think is right to make in response to recent experience.

Q1227 **Chair:** Esther, day after day we have no business in the House of any substance at all and we would be anxious for your White Paper to appear as a Bill so we can give you these extra powers. When we give you them, will they apply retrospectively to current cases?

Esther McVey: There are some fines that could apply retrospectively and also there are some codes and guidance that could come in from now. There are also strengthening powers that could come in now, but some things that would need primary legislation, statement of intent and getting a chair for the trustees, which some companies do already have, would obviously come in after we had had the time on the Floor.



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Q1228 Chair: What we asking is that those who may be affected by your White Paper surely now know the game has changed, that we will give you those powers as soon as possible and if companies are continuing to flout that, will you be seeking powers in that Bill to make it retrospective? I believe the House is in a mood to give you those powers.

Esther McVey: There are two things. First, we are already strengthening the actions that the regulator can take, so that is happening straightaway. There are some finer points that do need some more consultation to make sure we get it correct. As soon as we have time on the Floor to make that primary legislation, we will do it.

Q1229 Chair: Retrospective?

Esther McVey: As I said, some of the fines could be retrospective, we have agreed that, yes.

Q1230 Chris Stephens: Mr Clark, on procurement, could you just explain the role of the Crown representative to a Government supplier and should they be spotting the warning signs?

Greg Clark: As I said in response to the previous question, because for Carillion and other suppliers to Government there is a relationship, the Cabinet Office appoints representatives to, in effect, manage that relationship. That is the Government as a customer, as a commissioner of services, rather than something that is in my role as Business Secretary looking at the aspects of corporate governance and the consequences for other companies.

Q1231 Chris Stephens: We know that between August and November last year, Carillion did not have a Crown representative. Could you tell us, Mr Clark, what contact the Government had with Carillion during that period?

Greg Clark: That work is carried by the Cabinet Office; the Crown representatives are part of that. They have that responsibility for Government procurement. My understanding on that particular point was that when the original Crown representative left the service, it was the Government's chief commercial officer that stood in in her place. As I say, in terms of the conversations that were had, either in person or in writing, I can make sure that we get you chapter and verse on the contacts.

Rachel Reeves: That would be helpful, Greg, because we have written to the Cabinet Office to get some more clarity on these issues and we have not had a response. So anything you can do to persuade your colleagues to reply would be helpful as part of this inquiry.

Q1232 Chris Stephens: Would the Crown representative have a role in contingency planning,?

Greg Clark: Yes, obviously having that relationship, it is to know the company and to have oversight of the suite of Government contracts there. Obviously there is no private information that comes from that. A



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company has a duty to be fair to all of its clients. In terms of the operational aspect of that, as I say, I am very happy to cause evidence to be provided to you that might help you with what you are interested in.

Q1233 Chris Stephens: Thank you, Mr Clark. Turning to procurement in general terms, do you expect to see changes in how Government Departments procure services as a result of the collapse of Carillion?

Greg Clark: We should learn the lessons from every corporate failure, everything that goes wrong. Clearly when you had a company that went into insolvency you should learn the lessons from that. It is fair to point out, and the Chancellor of the Duchy of Lancaster appeared very frequently at the despatch box to set out the approach that was being taken by the Cabinet Office on behalf of the Government. From the outset there was a big concern to ensure the continuity, from the procurement point of view, of Government services. That was broadly achieved and a lot of work went into doing that. Although clearly an insolvency is not what anyone remotely wants and we should learn the lessons and both your Committees, the Public Administration Committee, and, I think, the PAC are looking at this and of course you want to learn the lessons from it. I do think a lot of focus was made by my colleagues in minimising the consequences for the public on that and that has had some success.

Q1234 Chris Stephens: Is it not the case that the current procurement environment is such that companies like Carillion are taking high-risk work with no margins and that there is pressure on companies like that to win contracts from the Government?

Greg Clark: That is a perfectly legitimate question and it requires forensic examination of what the consequences of a different kind of model would be. My view is that we should be completely open—procurement in this way has taken place through successive Governments, a lot of high quality services have been provided to members of the public through these contracts, value for money for the taxpayer has been achieved—but to look to see whether there are any changes to the model and what the consequences of any changes might be I think needs careful reflection. Let me give you an example of that, something I have been reading in recent days. CWU expressed that looking at the size of the balance sheet of a company might be something that is given greater prominence in procurement decisions. There is an obvious argument for that, as you can see, the more robust the balance sheet the more resilient it might be.

Q1235 Chair: Greg, that is very helpful but when you were replying to Rachel you said you would provide us with information. Might you provide us with when did the Crown representatives or the substitute give a note to Government saying, "This company is going over the cliff"? Could we have the audit because the Crown representative is the taxpayers' representative on this body and we are interested in how they work? Is that all right?



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Greg Clark: I will certainly use my best endeavours to get that information and quite understand why that would be helpful.

Q1236 **Antoinette Sandbach:** Carillion had formal payment terms of 120 days and it is arguable that the company was propped up by those terms from its suppliers. Given that they were signatories of the prompt payment code, how can suppliers have faith in that code?

Greg Clark: I agree with you, I think it is obvious that those payment terms were too long. The payment code has been a voluntary code. It has been buttressed now, as the Committees know, by a requirement for the current financial year for companies to report on their payment policy and their payment practice. That did not happen before and I think we have begun to see in other areas, such as on gender pay, the exposure of some of this information having quite an arresting effect. There are things in train but I agree with you that it is not adequate and one of the outcomes of the discussions, especially with small businesses through our taskforce in recent weeks, is to look at how we can strengthen those requirements.

Q1237 **Antoinette Sandbach:** Given that you expect to strengthen it, what are you looking at that you think will sufficiently incentivise larger companies to prioritise payments to their smaller suppliers?

Greg Clark: First of all, the required publication of what the policy of each company is and what their practice is I think is going to have a big effect in calling them to account. Whether it is through the regulatory measures that we have, the requirements on directors and the corporate governance code, there is a question to be asked as whether more of that should be required of companies.

Q1238 **Antoinette Sandbach:** You said it is a voluntary code. Is there any kind of sanction beyond the transparency because we are effectively relying on shame of publication to spur action? If someone has signed up to the code, why should there not be a sanction if they breach it?

Greg Clark: That is a perfectly reasonable question and as part of our response to what has happened, not just in Carillion but talking to small-business representative organisations, this is by no means a one-off, it applies to other companies, and we should strengthen the adherence to the practice.

Q1239 **Chair:** You will strengthen?

Greg Clark: I would like to strengthen. We need to make proposals as to how to do that and what we have talked about in the taskforce is how we can do precisely that. What are the options for strengthening better payment practice?

Q1240 **Antoinette Sandbach:** Has the BEIS Committee done an audit of its own supply chain to see whether or not the Government is paying its suppliers on terms that you would like the prompt payment code to apply



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to in the private sector?

Greg Clark: The BEIS Department is on the Committee. You might expect that I take an interest on that. I have the figures in front of me.

Antoinette Sandbach: Rather than go through them, I wonder if you could provide them to us in writing.

Greg Clark: I will.

Q1241 **Antoinette Sandbach:** Is every Department able to provide those figures, do you know?

Greg Clark: Every Government Department does. Can I say since I am proud of the figures, I do take an interest in this, 99.3% of our invoices are paid within five days and 99.9% within 30 days.

Antoinette Sandbach: That is fantastic.

Q1242 **Chair:** So there is room for improvement?

Greg Clark: There is always room for improvement.

Antoinette Sandbach: If it would be possible to co-ordinate the figures for other Government Departments—I am very pleased BEIS is doing so well—because maybe the others are not doing quite so well. We would like that light of transparency to shine on them too.

Q1243 **Rachel Reeves:** A few things on this, because it is a serious problem. The Federation of Small Businesses, as you know, Greg, said that Carillion were notorious for being late payers. After Carillion gave evidence to us where Emma Mercer, their most recent finance director, said that only 5% were paid after 120 days and 90% were paid within 60 days—which is not good enough—the FSB said it is certainly not good enough to point out to an early payment finance scheme as proof of good practice when a company has admitted operating informal payment terms up to 120 days.

Q1244 It is bad enough when companies do not pay their small suppliers on time, but when companies are getting money from Government to do Government work and are being paid as you say, Greg, within five days and settled within 30 days, and then do not pass on that money to people who are doing the work—

As well as tightening up the prompt payment code, are you also looking at how you will tighten up Government procurement to ensure the money goes? For a lot of small businesses who have built roads and hospitals and schools, they are never going to get paid for doing that work on behalf of us, the taxpayers.

Greg Clark: I completely agree. The practice has not been good enough, and where the Government have the greatest influence, they should use that influence for the good. I agree with the tenor of the questions that this is a moment in which we need to strengthen that. You will recall that the Chancellor in his spring statement said to the House what I have just



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said to the Committees, that this is a piece of work that we are going to do. We are going to bring it to fruition.

It very much came out of the discussions that we had through the task force. The task force includes representatives of many of the different sectoral organisations that include a lot of small businesses. They were very clear that we should use the opportunity to press this, so those reflections have resulted in this commitment, and I am sure your Committee, indeed both Committees will want to—

Q1245 Rachel Reeves: Do you have a timescale, Greg, for implementing changes? Carillion was not just a one-off. There are many companies who are not paying, including companies that get Government taxpayer money. Is there a timetable for making those sorts of changes?

Greg Clark: I do not have a particular timetable in terms of dates in the calendar, but you have my assurance—and I appear regularly before your Committees—that this is a priority. It needs to be urgent. We are getting on with it. Part of the reason that the Chancellor announced it in his spring statement was to make the point that this is not just a departmental issue; it is fundamental to the economy that in seeking as we do through the Industrial Strategy to encourage the creation of small businesses, they should be treated fairly.

Q1246 Antoinette Sandbach: Perhaps then, Greg, next time you come and give evidence to our Select Committee, you could give us a more detailed timetable on this.

One final thing on this from me. One of the things that is most frustrating is that Carillion paid £2.5 million to EY on 12 January for work that it had done on the viability of the company and whether it should go into liquidation and what was possible. It paid it £2.5 million the day before or two days before it became insolvent. Many companies have been waiting over 120 days for payment from Carillion. It just cannot be right that companies pay a big company for work on time but the small companies have been waiting much, much longer, and in my view are much more deserving of the money, and do not get paid. Would you agree with that? As part of the work that you are doing, will you look at what can be done to ensure that there is not a hierarchy where big businesses get paid on time for work and small businesses do not?

Greg Clark: I understand that. Any small business that has lost money and sees a much bigger business being paid money is right to feel anger about that. The Insolvency Service is looking at the payments that were made before the company went into insolvency, and I expect that it will look at that aspect in particular.

Q1247 Chair: Esther, we are not going to ask you about how payments of universal credit match up to the prompt payments because we are going to come on to pension shortly.



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Esther McVey: As you know now, Peter, when you get advances, it is quite—

Chair: I knew I would not be able to get one over you. Come on.

Q1248 **Peter Kyle:** Sticking with you, Mr Clark, for a little bit longer if that is okay, how would you rate the performance of the FRC in investigating companies such as Carillion?

Greg Clark: They have begun their investigation into Carillion so it is a bit early to rate their performance on that. If you look back at the timeliness and the record of some of the FRC's investigations, I know that these two Committees have been questioning as to whether it could have been more prompt and more vigorous.

Q1249 **Peter Kyle:** Do you think its monitoring operation is effective enough? Do you think its monitoring operation is leading to enough investigations that are preventing the kinds of things that have happened with Carillion?

Greg Clark: Its responsibility is to look at the application of audit standards and how they are discharged. It is not making an assessment of the performance of individual companies. It is looking at whether those who are employed to give confidence to shareholders and to the rest of the world are doing their jobs properly.

There is a strong case for reviewing the operations of the FRC, and that is something that I intend to require.

Q1250 **Peter Kyle:** To be specific on that, you know that the BEIS Select Committee made recommendations to you to extend the powers of the FRC. You rejected it at that time. Stephen Haddrill, when he gave evidence before us, said he wanted these powers. Now you have had a Select Committee report; you have had the chief executive of the FRC asking for more. Is now the time to give it more the powers, the powers that it wants, that we think it should have?

Greg Clark: The truth is that we did not reject that recommendation. What we said was that it was our view that those powers were available to the FRC because there are three fellow regulators. There is the FCA, the Insolvency Service and the FRC. For example, for the disqualification of a director that is not an accountant, then that is a matter for the Insolvency Service. Having discussed the matter with the Insolvency Service, there has been an agreement between all three of them to make sure that the powers that they already have can be used jointly. I do not agree with Mr Haddrill that there is something that is preventing vigorous action being taken, and my expectation is that they will work with their fellow regulators. It is important that we have a joined-up system here, and when we have, following what is given—

Q1251 **Peter Kyle:** Is it joined up? There are three different organisations. I know the new suggestion is that they have an MOU between them, but is it not just too complicated? If you have one regulator that is not even



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being assertive enough with the powers it has, then having three separate regulators somehow working together—are you suggesting that the culture between the three of them is going to be so joined up, it is going to be more assertive and less cautious? It sounds to me that the ambiguity between having three separate regulators with an MOU between them is going to lead to more caution, not more proactivity.

Greg Clark: I do not see why it should not be possible for the heads of three services to agree to make joint use of their powers when they need to without needing to wait or to go to Parliament for changes in those powers. I expect them to do so.

Q1252 **Peter Kyle:** You have just said there is one chief executive that is not using his powers, though.

Greg Clark: In the case of the FRC, I saw the evidence given to you that it needed a change to its powers in order to be, if I can put it this way, more vigorous. I do not agree with that. I think that they can work with the FCA and with the Insolvency Service now so that, completely in line with the tenor of the questions this morning, action can be taken against any individuals or practices that are found wanting using the full suite of powers that are available.

Q1253 **Peter Kyle:** Just one quick question on this. It is slightly broader. We had Ofgem come to us to say that it did not have the power to introduce the price cap. You said that it did. It was clearly not using the powers that you felt it had, and now we have the same with the FRC. Is there just a problem with the culture of regulation in our sector, whether it be energy or business, in the private sector at the moment? The regulators, according to your own analysis, are not using the powers that they have. Is there a problem with the culture of regulation in our country at the moment?

Greg Clark: In this particular case, those powers are available and they should be used. When it comes to Ofgem, I have been very clear that it, in my view, does have the powers. It should have used them. We have been obliged to take a Bill through Parliament to require it to use those powers. I think there is a mood for a greater—

Q1254 **Peter Kyle:** If you have to legislate to get a regulator to use the powers it has, something is wrong with the culture, surely.

Greg Clark: I think there is an expectation that the public has that those who have powers will use them assertively in the public interest.

Q1255 **Peter Kyle:** They are not.

Greg Clark: Across the economy, that message is becoming more clearly understood. When it comes to the FRC, going back to your first question, we should look at the operation of the FRC to see whether there are changes that are required. That should be done independently, and I am sure the Committees will want to play a role in examining that, but I do not think we should wait and absolve it from using the powers that it has,



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by discussing with them, whether it is the Insolvency Service or the FCA. The powers that they need are there if they do it jointly. That is what they should do.

Q1256 Rachel Reeves: One of the things that is of concern is about the relationship between the auditors, who are obviously regulated by the FRC, and the companies that they regulate. The Big Four took in fees over 10 years, £17.2 million from Carillion, and only about a third of that was for providing audit. The rest of it was for providing other services. Do you think it is right, and do you think that perhaps we should look again at separating out audit and other consultancy work?

Two other questions on that relationship. Do you think it is right that one firm should be able to provide audit for 20 years for a company? In the case of Carillion, KPMG provided the external audit function for 19 years and presumably would have provided it for another one if the company had not gone into insolvency after 19 years. Do you think that four companies effectively being able to offer audit to our biggest companies is enough? We have had an inquiry, as you know, Greg, and we have worked together on trying to introduce the price cap. Peter has already mentioned Ofgem, but we only have six big companies offering energy prices. You only have four energy products. You only have four big companies offering audit work. Is that enough? Is there enough competition in the market?

Greg Clark: There was a Competition Commission—now CMA—inquiry into this that reported—

Q1257 Rachel Reeves: There was into energy as well.

Greg Clark: Indeed. This reported in October 2013. The first thing to say is that there were some recommendations that were made, which in many respects addressed some of the points that you raise, so there were restrictions on the non-audit work that auditors can provide. There is a required re-tendering every 10 years. These are coming in for the financial years that begin on or after June 2016. That is faithfully implementing what the report of the Competition Commission set out.

In the case of energy, you will know and many members of the Committee will know, that I did not find its remedies sufficient to the scale of the detriment, but it has done a comprehensive report. At this point I think it would be wrong for me to say without properly studying the evidence, before some of the new powers are applied, whether they are sufficient, but, as I said right at the beginning, the history and the tradition of our corporate governance arrangements is that we improve things when we see that there are deficiencies. This question is a perfectly fair one that you ask as to whether there is enough competition.

Q1258 Rachel Reeves: You made a statement in the House yesterday, Greg, about corporate governance, and I do think one of the things that were missing in that was a discussions about these audit companies. I do think they are a big part of the problem, that there are so few of them, that



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they have such a cosy relationship, and they are earning big fees, not just from audit but from other work. That is something that these Committees would like you to look further at.

Greg Clark: I will. It is an important question. As I say, it has been looked at recently but I am not averse to looking at it again.

Rachel Reeves: 2013, but there has been plenty of evidence since then that I would suggest it is not really working.

Q1259 **Chair:** Are you in favour of breaking them up, Greg?

Greg Clark: I do not want to answer that without having considered advice on the consequences of that. In general, I agree with your fellow Chair that more competition tends to act in the interests of consumers and of innovation, I would say, and in general, when you have concentrated markets, that is not a good state of affairs. It would be proper to consider in your Joint Committee—and the BEIS Select Committee may well want to, as I will—take an interest in whether further reforms are needed, including the suggestion that you make.

Q1260 **Chair:** If I were your press secretary, writing so far what you have said, would it fair to say, "Secretary of State lambasts regulators"? They have failed the country, and you are going to give them a kick up their rear parts?

Greg Clark: I do not recall expressing myself in quite that way, Chairman.

Q1261 **Chair:** The country wants hope, Greg.

Greg Clark: We should be clear, it seems to me, that the standards that we set, generally, for most companies, have operated well. As all members of the two Committees know, we have a good reputation for corporate governance, but it requires improvement.

Q1262 **Chair:** I know, but for the people that are being pulled down by this, it is 100%. It is their lives. It is 100%; their lives.

Greg Clark: I agree. We should take the opportunity to improve matters continually, including in response to these events, in particular the subject before us, the gaps here.

Chair: Very good. I continue to write your press releases.

Q1263 **Antoinette Sandbach:** I just want to come back very briefly to the FRC before we move on. One of the big concerns that have been highlighted so far is around aggressive accounting and also the way that international rules have changed in relation to goodwill.

Mr Haddrill's evidence to us seemed to be that he did not think he could apply strict standards in the UK that would provide better protection in terms of UK shareholders, supply chain, pension interests and so on because he did not want to be out of step with the international standards. You have already said that he has the powers, so what have



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you done to talk to him about that, given the concern is that what was happening was that there was aggressive accounting and the change in treatment in goodwill meant that the company looked solvent but may well have been trading while insolvent?

Greg Clark: The point I made about the FRC was in having the ability to apply sanctions that might require co-ordination with some of the other regulators, including the Insolvency Service. As to whether there are technical limitations on their ability to apply different accounting rules, I do not know the answer to that, but you will be aware that in the paper that we published yesterday, one of the questions that we raised and we highlight is this question, for example, of the payment of dividends before insolvency. There are Institute of Chartered Accountants definitions of what are distributable profits for this purpose. We raised the question as to whether the definition is good enough, whether it is properly understood and whether it should be changed.

Q1264 Antoinette Sandbach: Can I ask, Secretary of State, that you look very carefully at the evidence that Stephen Haddrill gave to us, and indeed the evidence that we had from other witnesses that clearly indicated there are problems with aggressive accounting and indeed the changes to how goodwill is written down?

Greg Clark: I will certainly do it.

Q1265 Antoinette Sandbach: Thank you. It may help inform the response.

I wanted to move on to the remuneration issues. The evidence that we had from Murdo Murchison of Kiltarn Partners in effect said two or three things pointed to a remuneration framework that was not working for anybody, and effectively saying there was a complete disconnect between financial performance, which obviously is shareholders we are focused on, and remuneration.

If the major investors, so the major shareholders, and the Remuneration Committee could not prevent Carillion's board being more focused on their own remuneration than on addressing the issues in the company, what can the Government do? Should the Government be more interventionist, or should market forces be left alone?

Greg Clark: The first thing as implied by your question: shareholders have a responsibility to hold to account the directors that manage the company on their behalf, and it is important that they exercise those rights, and, working with the investment organisations, there are commitments on the part of institutional investors to be more active, especially in the field of remuneration.

Again, transparency is important here. One of the things that we are requiring is the publication of pay data, not just for the chief executive but for the workforce as a whole. Again, that will be reported in accounts annually so that people can see whether there is a consistency of treatment of executives and the workforce, and there will be an obligation on the part of Remuneration Committee to consider their pay



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policy for executives in the context of the company as a whole. There are some changes that we are making that are in that area.

Q1266 Antoinette Sandbach: We had evidence from responsible institutional investors who were concerned about the levels of pay and in fact had voted against the pay rise, but the vast majority of institutional investors did not engage with the company. Are you concerned about ownerless companies in the respect that many of these large shareholders are passive investors and not active investors?

Greg Clark: Yes. That is a concern. You want to see shareholder engagement. It is one of the reasons why, for example, the public register that we have required to be published or agreed should be published deals with a shareholder opposition at the threshold of 20%, reflecting the fact that the practice is that some shareholders do not exercise their rights, so a lower threshold than 50% should be the cause of attention and closer scrutiny.

Q1267 Antoinette Sandbach: There was a suggestion to us from the witness from BlackRock because one of the concerns was that the clawback clauses for the directors were changed in the March 2017 meeting. They restricted the circumstances in which performance-related bonuses could be clawed back, including making absolutely certain that they could cling on to their bonuses even if the results had to be restated. Do you agree with that idea from the institutional investors that there should be a standard legal language around clawbacks that is applicable to every single company, so you do not get that variation where, quite frankly, directors could cover their own interests before they covered the interests of their shareholders and indeed their staff?

Greg Clark: Yes. That is a very important matter and there are two things to be said about it. The first is that the Insolvency Service is looking at the decisions that were taken by directors in advance of the insolvency to see whether they were legitimate, and it will come to a view as to whether that was a proper thing to do or not.

The second thing: in the paper that I published yesterday, we talk about some of the consequences where investors change the rules in effect to advantage themselves or the new owners of a business that has been sold to put them ahead of other creditors. This should not happen, and if there are loopholes, they should be closed.

Q1268 Antoinette Sandbach: Have you read Deloitte's letter to the Committee—it forms part of our Committee evidence for today's session—which effectively pointed out, in terms of the clawback, that they did not advise on that actual change, but they noted that the new wording would not be out of line with the majority of market practice for FTSE 250 companies at the time? Are you concerned about that? If you are concerned about it, is that something that you could deal with quite quickly?



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Greg Clark: I have not seen the letter. I would be delighted if you would pass it to me at the end of the hearing.

Q1269 **Chair:** All right, and you will comment back to us.

Esther, might you take this question away because you appear to be more proactive? When you bring your Bill forward, might you think about overriding this protection the company has done so you can claw back funds for the pension scheme? Can I just leave it with you? I do not expect your—

Esther McVey: You can, and I will reply back on that. Equally, if I could give the example of British Home Stores, where we did use the anti-avoidance measures, and that then did enable the regulator to get £360 million back from Philip Green, and equally it is taking further prosecutions against David Chappell, of which we have seen a fine there and further prosecutions. They have managed to do that in a very proactive way, even though it was done afterwards.

Q1270 **Chair:** Great, Esther. Thanks.

Greg Clark: Can I just make one more comment on Antoinette Sandbach's point?

Q1271 **Chair:** Very, very brief.

Greg Clark: It will be very brief. I said I have not seen the letter, but this is absolutely our intention. They are referred to as antecedent recovery powers. They need to be updated to address the new changes that have become part of practice, and that is exactly what we are doing.

Q1272 **Chair:** They need to be used.

Greg Clark: Indeed.

Q1273 **Stephen Kerr:** Why have the Government published a new insolvency consultation now without waiting for the outcome of the various inquiries, including this one into Carillion, and have not yet even responded to their own 2016 consultation on this subject?

Greg Clark: Why take the opportunity to bring some of the questions raised by Carillion in scope? It seemed to me that if we were publishing a set of changes on insolvency, some of which the questions have arisen in the light of BHS and others, not to address some of the current concerns that businesses and members of the task force have on Carillion would be the wrong thing. If we are going to investigate and determine what we can do about this, then to look at questions such as the role of professional advisers, such as the role of the FRC, such as the role of complex group structures, I think we should not wait. I think we should get on and do that.

Q1274 **Stephen Kerr:** The Government have not yet responded to their own consultation from 2016. The view of insolvency practitioners is that the failure of the Government to act on the issues that were raised in the



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2016 consultation is causing the UK to be a less attractive place for corporate restructuring. Why have the Government not yet responded to their 2016 consultation?

Greg Clark: We have. Some of the proposals that we have made, that we published yesterday, are in response to that.

Q1275 **Stephen Kerr:** Yesterday's announcement is in response to the 2016 consultation?

Greg Clark: Yes. It is bringing up to date our insolvency processes.

Q1276 **Stephen Kerr:** Why, then, does yesterday's consultation not consider in any detail any new forms of restructuring that might be available to companies before they are forced into administration with insolvency? I am thinking specifically about versions of the US's Chapter 11.

Greg Clark: That is something that we are going to bring forward some proposals on. At this stage the full package is not ready to be released yet, but the Insolvency Service and our advisers are nearing completion of that. That will be a further addition to it that will come out shortly. Again, right in line with what you suggest, I think we should get on with the things that we are ready to proceed with and not hold them back waiting for the finalisation of those measures.

Q1277 **Stephen Kerr:** The Government themselves are going to bring forward specific proposals to create greater scope and range of options for companies that get into trouble?

Greg Clark: The recommendation was to look at the equivalent of Chapter 11-style things. We will be bringing out a set of proposals around that area.

Q1278 **Stephen Kerr:** Do you know when?

Greg Clark: Again, I am not going to give you a specific date, but shortly. Perhaps Niall, who has been able to be silent so far, might answer.

Niall Mackenzie: I think the aim, as the Secretary of State says, shortly, the thing we are aware of is whether we can get it out in time before the purdah period for local government elections.

Q1279 **Stephen Kerr:** It is as soon as that?

Niall Mackenzie: It may have to be after that.

Q1280 **Stephen Kerr:** It is the next few weeks?

Niall Mackenzie: If not immediately before the purdah period, shortly afterwards. Certainly well ahead of summer recess.

Q1281 **Stephen Kerr:** They also talked about—and I will just read a statement from it—"Whether and how a supply chain and other creditors can be better protected in the event of a major insolvency, while preserving the



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interests of the shareholders". What interests of the shareholders was that referring to, that statement? Would you like me to read it again? "Whether and how a supply chain and other creditors can be better protected in the event of a major insolvency, while preserving the interests of shareholders." What interests of shareholders is that referring to? Are you considering making a change to shareholders being last in the hierarchy of creditors?

Greg Clark: No. It is to—

Q1282 **Chair:** Where will your pensions be, then?

Greg Clark: The proposal is to look, as I was saying in earlier evidence, at some of the actions that some shareholders seem to have taken to advantage themselves over particular creditors. We do operate in a context in which shareholders are the owners of the company and they appoint the directors, but where there are novel abuses, you might say, of that, where the order is changed, we want to clamp down on it.

Q1283 **Stephen Kerr:** It is not your intention to change the hierarchy of creditors?

Greg Clark: No.

Q1284 **Chair:** Do you ever run through your department, screaming, "Is there anybody who is going to give me anything to announce?"

Greg Clark: If you reflect in this area of what we have set out just yesterday, these are some pretty important reforms. The proposal on the sale of subsidiaries, for example, is a very important proposal.

Chair: No, I was doing it as a joke.

Q1285 **Chris Stephens:** Ms McVey, coming back to the White Paper that the Chair had asked you about, obviously there are very new concerns that the Committees have in terms of Carillion's behaviour towards trustees, not meeting what we would see as its obligations to the pension scheme, that shareholders are given greater priority. How would your White Paper address those sorts of issues?

Esther McVey: First of all, the investigation, as you have been talking about it, is still going into Carillion and what happened. The Pensions Regulator is also working with the other bodies to see how the fortunes of the company turned around so sharply in the last year, so again looking to the auditor and the accountant as to what went on. Having taken a full timeline from when the Pensions Regulator was involved with Carillion, right the way through: what did it do? What could it have done? What now enforced powers does it have to make sure—because this is what we want to make sure of—that pensions are properly protected? You will see that back in 2013, when it gave its triannual review, the deficit had substantially reduced on six schemes, and the deficit was expected to be paid off within 12 years. That was the report that it got back. However, in 2014, it was still concerned that it did not know enough.



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Looking at what it could do now and what it did not do then, the regulator agrees, although the brand new regulator came in in 2015, it was not as proactive as it could have been, and there were some powers there that it could have asked for for evaluation. How we are strengthening it is to say we want the valuation, we want it quicker, we want it clearer, and we want actions taken. Yes, have the valuation. Yes, use your 231 to get a contribution. If you needed to put in an independent or get an independent valuation, you could do that too. Then, when you get what is the deficit, what is required, have greater ability to know, so long as you look at it—and this still has to be checked going into the finer detail of what is proportionate, what is appropriate and how to work it—how much needs to go in and what will that timeframe be, and really enforce that that standard is paid so we are getting on the front foot to make sure that we are protecting pensions as best as possible.

Q1286 Chair: When the finance director reports pensions are a waste of money, does that increase your resolve to use your clawback measures?

Esther McVey: Say that again.

Q1287 Chair: When the finance director came before us, of Carillion, the reports that we questioned him on were that he had gone around saying pensions are a waste of money. Does that increase your resolve to operate clawback on those people who are responsible for driving this company over the cliff?

Esther McVey: Pensions are incredibly important to those who are expecting to live off them in their retirement. That is why we are bringing forward not only strict penalties but also criminal sanctions for anybody who is wilfully neglectful of their pension schemes.

Q1288 Chair: They could apply to the Carillion group, your sanctions?

Esther McVey: Once you have understood what has gone on, they will be and could be using their anti-avoidance measures. As you saw with British Home Stores, it went retrospectively. That will come forward once we understand what has gone on.

Q1289 Nigel Mills: Carillion obviously purchased chunks of its pension deficit when it made various major acquisitions. Would the changes you have announced in the White Paper to the voluntary clearance regime have given the regulator more powers to intervene on those transactions at the time?

Esther McVey: What we are doing with the clearance is to get more information straight away. We are strengthening that. We want to know, should a transaction happen that could impact on the pension scheme? We want to know about it, so that is strengthening the notification, and then what actions you could take. It will be: explain what you are doing, explain how that will impact on pensions, then justify what you are doing and make sure the pensions are protected.



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Q1290 Nigel Mills: There is a slight problem, isn't there, in that there is a voluntary clearance scheme now, and almost nobody ever bothers to seek the clearance? What can we do to make sure that the new super clearance scheme will be used as part of transactions?

Esther McVey: Obviously, building on what the Work and Pensions Select Committee said in its report in 2016, we went to a full consultation in the Green Paper in 2017 to see what was the best way forward with that clearance scheme. A mandatory one was not deemed the best way forward when you have to balance up pension scheme and ongoing sustainability of the business, but it was thoroughly decided that it needed to be strengthened, and through what I have said: explaining what you are doing, making sure the pension scheme is given due regard. That was deemed as the best way forward to get this clearance working properly.

Q1291 Nigel Mills: I have had past experience of people seeking tax clearance when they do a major transaction, and there is a very good reason for doing that. You want to make sure you do not by mistake trigger a huge tax bill that makes you wish you had not done the whole transaction. Isn't the carrot or the stick on a pension clearance that if you do not get one, then the regulator could decide you need to make some significantly accelerated pension contributions to protect the pension scheme that you have just acquired? Isn't that the sort of stick we need here to say, "Either you do this properly, you disclose, you set out your plans, or you may well find yourself having to pay a whole load of cash out that you were not expecting to"? Isn't that the kind of incentive people need to do this properly?

Esther McVey: What we are getting is greater clarity on what is going on, explain what is happening, and then have a valuation on it—

Q1292 Chair: We are not getting greater action, Esther, are we? All of these, with Greg talking about his regulators, you with this regulator: you can give them all the powers in the world, but if they do not use them, nothing happens.

Esther McVey: What I will say is we do not know yet because the investigations are still going on with Carillion. What we do know for certain is, and putting it into context, the vast majority of businesses are doing what is right by their staff and then their future pensions, and that is right. What we are looking at is, where it does go wrong, how do we make sure as best as possible? Through greater clarity of what is going on, through the ability to then get involved, working with the trustees, working with the business, and then putting forward a payment scheme and a timescale of which it has to be paid by is what we are looking to do.

Charlotte Clark: Mr Mills' point is a good one. That is the current system. If you come for clearance, then you are protected going forward. If you do not come for clearance, then there is the possibility that the



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regulator will then chase you. The BHS case is a very good example of that.

Nigel Mills: It is a pretty unique one.

Q1293 **Chair:** It is a very good example because of the Committee. Esther earlier presented this brilliant thing about the Pensions Regulator getting them to sign up to all those millions. The Pensions Regulator was going to sign it off without something like £100 million, and this Committee, two Committees, would not let that go. That is the truth of it. We want a regulator where we do not have to do the work of the regulator.

Charlotte Clark: With respect, that is not my understanding of the case.

Q1294 **Rachel Reeves:** Can I ask about the issue of clearance? The Pensions Regulator has asked Melrose to refer itself to the Pensions Regulator to get clearance ahead of its hostile takeover for the company GKN. There is a substantial pensions deficit at GKN, and at the moment there are no post-offer undertakings that could be enforced from Melrose, and they refused, when they came to give evidence to the BEIS Select Committee, to refer themselves. They said it was not a legal requirement.

Unless these rules are strengthened, companies will not seek that clearance, and I just wonder whether perhaps there could be some strengthening, including in the areas of takeovers, where a company whose philosophy is to acquire a company and then sell it on within three to five years—quite a short-term approach—and whether more could be done to make those companies come in for clearance.

Esther McVey: That is one of the key things that are happening. Any notification like that, which would potentially trigger something that could impact on the pension scheme, would have to come forward, and then the regulator would work with the trustees and the companies to make sure due regard is given to pensions. What you have seen there is the trustees themselves being emboldened to say the pension scheme needs to be protected, and what we have just seen is the offer from Melrose because of this pressure from everybody is that its offer from £100 million now goes to £1 billion to protect the pension scheme. That would be it working properly. Obviously there could still be more negotiation there, but to see that increase because of that pressure has to be the right way forward for pensions.

Q1295 **Rachel Reeves:** Would you consider making it mandatory that they have to go to the TPR for clearance in future? Is that part of what you are looking at, Esther?

Esther McVey: When we took the consultation back, people had said, at the moment not mandatory, but what they did say is it needed strengthening. Rather than the ability for the regulator to say no, it was more about saying, how do we do it? What is right for that clearance? It was a different way of looking at it. Again, we will be working together. That is what was said in 2017. We have to make sure the strengthening works. As I said, that was what the consultation came back with.



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Q1296 **Chair:** Working together, has the Pensions Regulator told you what she is going to do on the clearance?

Esther McVey: Yes. The Pensions Regulator, as I said, who started I guess in 2015, a new one, has already done a transformation programme on how they become quicker and bolder. It already has extra money now to increase its staff by nearly 10% so it can be more proactive. It has had a 90% increase in the cases it is looking at. Equally, it has done work behind the scenes because I am looking—

Q1297 **Chair:** On Carillion, what has the Pensions Regulator told you?

Esther McVey: On the money it has managed to claw back from companies, from £2,000, it has been £1 billion to put in the fund. It is doing stuff, but you are right, it needs to do more.

Q1298 **Chair:** The £1 billion was announced at our two Joint Committees, but what is has the regulator told you she is doing on this whole matter?

Esther McVey: I think she agreed, and we have all agreed that it need to be more proactive. What she is saying is that the forces it has there, the legislation that is already there from 2004, has to be used, not as it has in previous years, looking at things, threatened. It has to be used. Again, she now has greater powers to work on that.

Q1299 **Chair:** She has told you that personally, she is going to be proactive, has she?

Esther McVey: Yes, I have had a meeting with her, and that was a key determinant of the meeting.

Q1300 **Nigel Mills:** I was going to ask if you think the regulator has enough resources to deal with a whole load of clearance applications. In my experience, they normally tell you how wonderful the transaction will be and how much better everyone is going to be if you let the transaction go through. They do not tend to tell you any of the downsides. It is not as if you can just read them and tick them. Presumably, you need some quite expert resource to understand what they really mean and what the implications are.

Esther McVey: What is happening is the resources for the staff are going up this year and next year, and it will be having nearly 10% more staff. As I said, it has increased by 90% the casework it has active at the moment.

Q1301 **Heidi Allen:** We have talked quite a bit already about your announcements yesterday and proposed changes to powers and the potential criminal offence and so on, and more resource, more funding for the regulator, but we have found it, as a Joint Committee, incredibly frustrating, what the regulator did not do throughout this entire saga.

Just to take 2013 for example, bearing in mind that the trustees were literally crying for help throughout this. This is not something that happened in the last couple of years. They were crying for help



throughout. 2013, four letters. "We are now considering the options available to the regulator." "We are giving serious consideration to." "We have no option other than to consider." Finally, in November 2013, "We are now considering engaging the powers".

My question is: great new resource, great new funding, great new criminal sanctions potentially, but did it really do enough? It had the power of section 231, and it became a joke, Peter crying wolf. It worries us that if the industry knows that Peter will only ever cry wolf, Lord knows who else there is out there, because they are absolutely toothless.

Esther McVey: I am not going to defend what they did not do, and I think it is important that if you do have powers, then you should use them. I know you cannot always judge what was happening in 2013 with what was happening in 2018, and there is always a very fine balance that I guess the regulator was seeking to strike between the ongoing sustainability of a business, because everybody would say the best way to protect your pension scheme going forward is to make sure you have a viable, strong business. However, that balance and those instances, you are right, they said they could have done more. Hindsight is a wonderful thing, but again, moving forward, they will need to do more, and they now have stronger powers to do more.

Q1302 **Heidi Allen:** We look at things quite simply. We look at the salary that somebody like the Pensions Regulator is on and do not feel particularly comfortable, with the powers that she had at the time, that she did her job. Do you have a view on that?

Esther McVey: In 2013 it was a different regulator, so in 2015 it is a new one. As I said, it is doing a transformation. It, like all of us, has seen what has gone on, so it does need to step up to the plate, and that is why the Select Committees are doing a very fine job ensuring that happens, and other departments have come out with those strengthened measures.

Q1303 **Heidi Allen:** I suppose it is just important going forward, reflecting on what Frank said, that it should not be our job to do this. It feels like it is happening too often.

My last point just on, as you mentioned, that fine balance, which we appreciate does exist: do you think there is anything in the Pensions Regulator's statutory responsibilities? It has four separate guiding principles, the objective set and statutory form: to protect members' benefits, to reduce the risk calls on the PPF, to promote and improve understanding of the good administration of work-based pension schemes, and also to minimise any adverse effect on the sustainable growth of an employer. Do you think those four objectives are right, or are they sufficiently muddled in terms of conflicts of interest that that is perhaps why the Pensions Regulator can never get that fine balance right? Do they need to change?



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Esther McVey: When it was set up in 2004 they were deemed correct, but now, as we are strengthening what they do, we have come forward saying it needed to be with greater clarity, quicker and tougher. In a way, we are looking at it now through the optics of being quicker, tougher and clearer.

Q1304 **Heidi Allen:** They cannot be all things to all people, and I suppose that is the point. Do you think it now is the time to look at those statutory objectives again? Whose side should the Pensions Regulator be on?

Esther McVey: It will always be a fine balance, but you are quite right. As it stands now, that focus on tougher, clearer, quicker is imperative. It is the key focus now.

Q1305 **Chair:** There is going to be change, is there not, Esther? That is what you are telling us. Yes. Thank you very much.

Esther McVey: Focusing the minds of the directors and employers, knowing, if they do not adhere, that there will be stronger penalties and a criminal penalty, too.

Q1306 **Ruth George:** Esther, if you could rate the Pensions Regulator at the moment on a scale of 0 to 10, what would you give it?

Esther McVey: What I have seen and what it has done on specifically the British Home Stores instance with, as you say, the spotlight from the media, yourselves and everybody else—and it is still ongoing, so there are still procedures ongoing—then they have done what would seem, I would say, a fair job there, wherever anybody would want to strike that balance on a number of 0 to 10. Going forward, what I can do—because I cannot change what has been before—is I want to push them up to 10. Do you know what? The regulator would like to be at number 10. That is why we are changing the focus and giving them stronger powers to be able to do that.

Q1307 **Ruth George:** Thank you. I expected such an answer. At the moment one of the main issues that the regulator has is issuing contribution notices, but that is an incredibly lengthy and litigious process. Has it asked and are you giving it more resources in order to fulfil this more proactive role?

Esther McVey: Yes. Again, if you look at the timeline, as you said, it could have used 231 on various instances from 2013. It did not. Now, it should and can, and yes, we are making it easier for it to use, and will, absolutely.

Q1308 **Ruth George:** It will have the resources to do that, will it?

Chair: That is the “will”.

Esther McVey: Yes. That is where it has increased already the money that is going into it as an organisation, and it is increasing up to 2019 as well, should it need be, and that is where an increase on the levy would go.



Q1309 Ruth George: Just finally, the White Paper says that legislation is unlikely to be before 2020. In light of other pension schemes, some of them in a worse state than Carillion, do you think that there is any scope for that timescale to be brought forward, which could give a massive saving to the taxpayer and to the Pension Protection Fund?

Esther McVey: I know there is some consultation work that we still have to do, but I will take that away, and I would certainly aim to see what we could do to bring it in before then.

Q1310 Chair: You are also going to do a transplant of will, are you not, Esther, to the Pensions Regulator, because you are determined you are going to be able to mark the cards and it is going to be 10 out of 10?

Esther McVey: That is what we aim to do, yes, and I personally, yes—

Chair: Great. Thank you.

Rachel Reeves: There have been some good announcements from both of your departments in the last few days on this, and I think you will see from the session today that there is a lot of cross-party consensus for reform both on the pension framework and also on corporate governance and insolvency framework as well. From my perspective—and obviously we will do our Select Committee report on this—there are still some gaps, I would say, particularly around the role of the audit companies: the conflicts of interest, the small number of them and how long they can work for one company, and, as well, some of the issues that Antoinette Sandbach raised around small business payments and enforcing the prompt payment code, and also Government using their strength and power as such a big procurer of services to ensure that that money gets to the people who do the work. I think some more work is going to be needed around that, Greg.

Peter raised the issue about holding regulators to account for using their powers. Not just in this inquiry but in other inquiries the Select Committee has done, there has been a lot of frustration particularly around the Pensions Regulator. You said rightly, Esther, in the answer to a question from me that GKN Melrose had upped its commitments for the pension fund for GKN because of pressure being put on it, but, frankly, that pressure has not been from the Pensions Regulator. The pressure has been from Parliament, trade unions and the media, and not from the Pensions Regulator. What needs to be done to ensure that the Pensions Regulator both has the powers and then uses them? That goes for the FRC as well. Perhaps those are things that you can reflect upon, because there is a lot of cross-party consensus for reform in these areas where we could work together to make changes quickly. As others have said, Carillion is not the only company that is guilty of some of these malpractices. Carillion was perhaps in a worse state than others, but I do not think anybody can honestly say that there is not another company that has problems of the same nature as Carillion. I do think there is some urgency to act, both to protect public services and also to protect pensions and people who work for those companies and the people who



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are subcontracted to do the work for them.

Q1311 **Chair:** Can we leave that with you, those points, and you will come back to us? Might I just say a quick couple of things, Greg? On the Big Four, might you also come back? They have 97% of the market. The market clearly is not working here. We would love to hear your views, if you could set them out for us.

Greg Clark: Yes.

Q1312 **Chair:** When BHS was going under, you replied to the Joint Committee to say that you would publish the insolvency report when you had it. It would be public. When do you think you will be in a position to publish that? Do you have it yet?

Greg Clark: I have not seen it, but I will of course discharge the commitment that I made to give it to the Committee as soon as it is published.

Q1313 **Chair:** Would you, again, give a similar promise to publish the insolvency report on Carillion?

Greg Clark: Yes, assuming that is legitimate to do so, and I will take advice, but I think it is important that we learn the lessons.

To the point that Rachel made, there is a lot of common ground here. We have had a good record of advancing things where there has been a cross-House consensus. The reason that—even at this early stage before any of these investigations have concluded—we have already made some proposals about lessons so far from Carillion underlines my determination to make sure that we move at speed to improve our standards of corporate governance.

Q1314 **Chair:** Will you give the Cabinet Secretary a push on our idea that the Committee's Draft Bill should be given legislative time?

Greg Clark: I will talk to him and other colleagues.

Chair: Thank you both for a really good session. Thank you very much.

Rachel Reeves took the Chair.

Examination of witnesses

Marissa Thomas, David Kelly, and Gavin Stoner

Q1315 **Chair:** We will get started straight away. Thank you, David Kelly, Marissa Thomas and Gavin Stoner from PwC for coming to give evidence. I think you were in the earlier session, so you would have heard the evidence there.

Q1316 **Heidi Allen:** Good morning, everybody. PwC has been involved with



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Carillion, from what we can make out, in every aspect of the organisation's passage. You initially worked for the company itself in terms of how the pension scheme should be funded and so on. You then moved over in the autumn of 2017 to work on behalf of the trustees. Then, you were appointed working with Government as a special manager to advise on the best way and how much money could be salvaged for the pension fund. To the outside world, that would look like a massive conflict of interest. Can you talk to us about how that could possibly better the interests of the pensioners involved, and talk to us about what safeguards you put in place to ensure, if you think we are wrong, that there were no conflicts of interest and that is all perfectly fine?

Marissa Thomas: Maybe I could start, Ms Allen. I lead the deals business that these two partners sit within, and the Carillion work is led from the part of the business that I lead.

Very broadly, in terms of identifications of potential conflicts, when we are acting for multiple parties, we are governed by the ICAEW code of conduct. The code is very clear on our ability to act for different clients in the same situation, provided we put appropriate safeguards in place, which is exactly what we did here during the Carillion situation.

Q1317 **Heidi Allen:** Talk to us about those safeguards.

Marissa Thomas: In terms of safeguards, what the code points us to do is firstly, each and every time when we and our business take on new clients, take on new roles, we go through a rigorous client acceptance and project acceptance procedure. We look to the ICAEW ethical code that tells us, where we are acting for more than one client in one situation, we need to consider if we can continue to act and protect our principles as accountants in terms of objectivity, for example, and confidentiality of data.

What we do is look to put safeguards in place, such as physical separation of teams, additional measures to protect the data that we use, and then we assess if those safeguards enable us to reduce any potential risk from us acting for more than one party, which is what happened in the Carillion situation.

David Kelly: If I could just supplement that, in relation to Carillion and the liquidation, it is the Official Receiver as liquidator who is the officeholder and who has responsibility for the overall conduct of the liquidation, including the ultimate agreement of the creditor claims. In relation to the pension scheme, that is a claim that the Official Receiver as liquidator will agree with the Pension Protection Fund, which will have the ultimate responsibility and custody for the scheme when it passes through into the Pension Protection Fund. Our role as special manager is in essence as agent for the liquidator, who has that overarching responsibility.



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Q1318 Heidi Allen: Maybe I am being too simplistic. If I am going for a job interview—I am trying to win a piece of work—the customer wants to hear that I know everything about the business and how my knowledge and my expertise and my skills are going to create the best possible outcome for that business. Can you honestly and truthfully say that whenever PwC—whichever different department of your organisation it was—was pitching for these various pieces of business, there were no internal conversations, there was no using knowledge that PwC already has because of its previous role? Talk to me about that. Where are the Chinese walls there when you are pitching for business?

Marissa Thomas: We do have a central risk and quality team that oversees all of the governance on offer, including our adherence to the ethical code, and ensuring that any ethical walls we put in place are adhered to and properly followed.

In terms of using client data we may have from different assignments, where we have full permission to do that, we will use the data. Where we do not have permission, we do not.

Heidi Allen: I do not how far you want me to press on this, Chair.

Chair: Just one last question.

Q1319 Heidi Allen: Take the middle piece of work, which is when you switched. That would be useful if you could confirm the exact dates when you stopped acting for Carillion, the organisation, and started working for the pension trustees, because I think there is a bit of confusion on the dates. If you could clarify that for starters, and then talk me through what Chinese walls. what physical, practical things did you put in place to ensure that when you stopped working for Carillion and you started working for the trustees, it was completely and utterly separate?

Marissa Thomas: I think what you are referring to for Carillion, the organisation, is the pension advisory work that we did for the company. The last piece of advice that we gave to the company was in November 2016. My colleague, Gavin, can talk to the details of when we started to advise the trustees, but it was some seven or eight months later.

We did, however, put ethical walls in place at that moment, including physical separation of teams when they are working on that relevant situation, lockdown of data, physical and digital, and also appointment of an ethical wall officer for the team as well.

Q1320 Ruth George: You took over advising the pension trustees in September, and the board minutes from 28 September note that you were concerned it had become clear it had proven impossible for all parties to carry out as much due diligence as they would have liked. In what respect were you looking to carry on your role or to have increased the amount of information available to you then?

Gavin Stoner: The challenge faced by the trustees at that point in time was to respond to the company's request for some short-term deferral of



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payments, and the context for that was that the company was clearly in need of additional liquidity. It had made that request of its lenders. There was a very real deadline to put that liquidity in place at the end of September, which was the point in time that the company needed to announce its results, including making a going concern opinion, for its auditor to do that and the directors to do that.

In order to make a clean going concern opinion, that additional liquidity was required. The decision for the trustee was time-bound within that constraint. It had been the case that the trustee was first asked by the company to consider deferring deficit recovery payments at the beginning of August. There had been contemplation of the issues and risks around that.

We became involved approximately 20 September, and in that window of time we undertook as much diligence of the situation as we reasonably could, but there was a lack of information because the business was still undertaking its business plan. That was the reference that was being made in those minutes.

Q1321 Ruth George: The next set of minutes from the trustee board say that, again, PwC felt that Carillion had provided it with insufficient information and that FTI, as advisers to the new lenders, had been provided with more access. Did you feel at that point that you were able to demand more information from the company?

Gavin Stoner: We did have access to the company and management to understand the situation. It is true that FTI, which was advising the lenders—the lenders were the providers of the £140 million of new money here—had been given a limited window of time to go into the company and to ascertain whether that was a sufficient amount of new money that was being asked for. We had interactions with FTI to understand its findings. We understood the limitations of that. To the extent that we made inquiries to understand as best we could the facts and circumstances, we were given co-operation and we were given access to FTI.

Q1322 Ruth George: When it came to preparing the entity priority model, then it ended up being Ernst & Young that was asked by the company to perform that role. Why do you think it was not Pricewaterhouse?

Gavin Stoner: It is a good question. There was a discussion and a debate at the time about that. One of the outcomes of the deferral agreement and the provision of new money, which was wrapped up into one negotiated agreement at the end of September, was that there would be a common platform of information provided to all financial creditors and the pension schemes. That was one of the important items that we secured as trustee.

It made no sense for that work to be duplicated. There had to be a decision as to who would do which aspects of that work. We did feel that



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it would be appropriate from the trustees' perspective for PwC to undertake that work. Ultimately, other creditors had an objection to that because it would potentially favour one of the creditors by their adviser doing that work. There was strong pushback, and the compromise was that the company's adviser, EY, would undertake the work, but the safeguards would be that we would monitor that work closely and interact with it and understand how it was being undertaken. In that way, it was safe to proceed.

The EY work came with a duty of care to the pension trustees as well as all of the financial creditors.

Q1323 Ruth George: Obviously, the balance did not quite work out for the pension trustees. Just finally, do you think that the new proposals under the Government's White Paper of more information being enabled to be required by pension trustees would have helped you in Carillion's case or would help you in other cases?

Gavin Stoner: The proposals are welcome because earlier information and better information is going to help trustees. The full impact of the proposals in the White Paper are clearly subject to, in some cases, further consultation, but directionally I think the changes are very welcome.

Q1324 Nigel Mills: Looking back from this distance, the agreement to defer the pension contributions was not a particularly clever one for the trustees, was it? Is that something you regret, with hindsight?

Gavin Stoner: No, it is not something that I regret and that I think the trustees should regret. The circumstances at the time were particularly difficult. The business at this point in time projected making less than £200 million of EBITDA, but when you stood back and looked at the obligations of the business, it had balance-sheet debt of £1.4 billion. It had off-balance-sheet debt of the pension scheme, which was a significant number. It also had an early payment facility, which was a further £400 million.

This was a very difficult ask of all of the financial creditors to support the business with imperfect information and with that mismatch between the value of the business and the obligations already owing. It could not be assumed at all that the other financial creditors would provide the new money being asked for. It was made a condition to the provision of that new money that the pension trustees participate. They did so only on the basis of robust protections.

In doing so, the scheme was able to preserve its position in a number of respects. It preserved its ranking in terms of the claim it has in insolvency, which has saved the pension scheme multiple millions of pounds because if that had been compromised they would have ranked behind that new money. Asks for additional deferrals were resisted, so approximately 50% of the ask was provided. Other asks were resisted as well around providing the new money for the scheme itself. There was



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robust protection, a seat at the table for the trustee going forward, and I think it was the right decision at the time.

Q1325 Nigel Mills: What about the decision to de-risk the pension scheme when the risk of insolvency was increasing? I accept that was fully consistent with the guidance that is out there, but I suppose that again has the habit of reducing the investment return and, therefore, increasing the deficit. Is that something that you think perhaps we should not have to do, or is that just what is the best thing you can do in these difficult situations?

Gavin Stoner: In this situation, the risk strategy, the investment strategy, was under review throughout the period. This was something that was a topic of debate. I was not advising on the investment strategy for the pension trustee, but we, together with other advisers, did engage in a number of conversations about when to observe, when to know that the position was deteriorating to such a level that it would be appropriate to de-risk further. It would be a reaction to the circumstances of the business itself.

Q1326 Frank Field: Gavin, in your first reply to Nigel you said you had nothing to regret. Could you tell how much you were paid not to regret anything?

Gavin Stoner: Our fees for our engagement from the end of September through to the middle of January were £1.4 million.

Q1327 Antoinette Sandbach: You have been appointed by the Official Receiver to act in relation to the insolvency, largely because the other big three of the four were seen to be conflicted. Do you think that is a healthy model of competition?

Marissa Thomas: I do not think that was the sole reason for our appointment. I think a key driver was that we were able to very quickly deploy a large number of very specialist resources to help the Official Receiver at a critical time and continue with public services.

Q1328 Antoinette Sandbach: You are saying that Ernst & Young, KPMG and Deloitte were not conflicted, despite the fact that they had all done extensive work for Carillion beforehand? That is the reason we have been given.

David Kelly: Maybe if I could just answer that question, ultimately the official receiver needed to make a decision in terms of who they wanted to act as special manager. This was a decision that they needed to make very quickly and because of the work that we had done in relation to the contingency planning in the period prior to the liquidation we had an understanding of the business and of some of the contracts, and we were considered by the official receiver to be best placed to support them with the requirement that they had in order to maintain essential public services. It was for that reason and for the reasons that Marissa has mentioned around resource and capability that the official receiver made



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that decision, which was ultimately sanctioned by the court. Our appointment as special manager is sanctioned and done by the court.

Q1329 Antoinette Sandbach: In relation to the work that you were doing in September for the Cabinet Office, were you doing some of cost/benefit analysis looking at whether Carillion should be allowed to fail versus providing them with financial support?

David Kelly: The work that we were doing for the Cabinet Office from September of last year was to help to support them as they were supporting the various Government Departments in relation to the contingency plans that those Government Departments were preparing. Our role in that phase was to provide the insolvency and the contingency planning experience to supplement what the Cabinet Office were doing in their role supporting the individual Departments to prepare their contingency plans to ensure that in the event of an insolvency of Carillion, they were able to ensure that there was continuity of those critical public services.

Q1330 Antoinette Sandbach: You do not feel that the work you did in September for the Cabinet Office, or in the run-up, conflicted you in your current role?

David Kelly: No.

Q1331 Antoinette Sandbach: Do you think it would have been better value for the taxpayer for you to be liquidators rather than special managers?

David Kelly: In terms of the current position, the official receiver is acting as liquidator and has the responsibility for delivering the liquidating strategy and realising the value of the assets for the benefit of the creditors. Our role is to support the official receiver. In terms of being able to maintain those essential public services, the only basis on which funding was able to be put into the situation to enable those essential public services to be maintained from Monday the 15th was through the official receiver acting as liquidator.

Q1332 Stephen Kerr: I would like to ask you a bit more about the work that you are doing now on behalf of the official receiver. How much is this costing, the work that you are doing?

David Kelly: In terms of the situation itself, this is the largest case of its kind. There has never been a compulsory liquidation of this size. There has never been a trading compulsory liquidation of this size either. In terms of what we were asked to do, we were given 12 hours' notification of the liquidation and we were given 12 hours' notification that we were to be appointed as special managers to support the official receiver to deliver those essential public services. In that 12-hour period we got 175 of our people to drop what they were doing, we briefed them, and then on that Monday morning they were there standing alongside the Carillion team to ensure that those essential public services were delivered.



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Q1333 **Stephen Kerr:** Yes. How much is this going to cost?

David Kelly: In terms of what it has cost in terms of our fees to date, the total cost for the first eight weeks is £20.4 million. In terms of our—

Q1334 **Stephen Kerr:** They only had £29 million in the bank when it went down the tubes and you have already spent £20 million. These fees are underwritten by who?

David Kelly: If I can just explain a couple of points in terms of the figure of the £29 million cash at bank, the cash that was in the bank, or the banks, I should say, at the date of the appointment of the liquidator has been offset against the balances that they were due. There was not £29 million in the bank available to the liquidator at the date of his appointment. In terms of our fees and indeed the costs of the liquidation process—the trading costs, the costs of paying the employees, the costs of paying the suppliers—they are paid out of the assets and the recoveries of each of the current 27 individual liquidation estates.

Q1335 **Stephen Kerr:** Is that where your fees will come from?

David Kelly: They will come from that. In terms of the fees, there are—

Q1336 **Stephen Kerr:** Are you at the head of the queue?

David Kelly: Our fees rank as expenses of the liquidation alongside the trading expenses, the wages, the salaries, all of the amounts that are due to the supply chain—

Q1337 **Stephen Kerr:** You are at the head of the queue.

David Kelly: We are one of the earlier payments to come out.

Q1338 **Stephen Kerr:** Indeed. How much will it cost in total? What is your estimate currently? Having spent £20 million already or having accrued £20 million in fees, how much more is this going to cost?

David Kelly: It is—

Q1339 **Stephen Kerr:** Some figures suggest into the hundreds of millions. If I am reading this correctly, at one point it was suggested it might be over £500 million. Is that possible?

David Kelly: I have no knowledge in terms of that number. In terms of the costs of the insolvency process, it is too early to say exactly what the ultimate costs will be given where we are in the process. As I mentioned, each individual insolvency—

Q1340 **Stephen Kerr:** Do you have any estimate as to how much this is going to cost?

David Kelly: There is no estimate at this stage because—

Q1341 **Stephen Kerr:** No estimate. What is your current daily cost?



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David Kelly: The daily cost or the weekly cost for PwC is currently around £1.4 million. However, we have the ongoing trading costs of Carillion that are being incurred in terms of the wages, the salaries and the trading costs of the process.

Q1342 **Stephen Kerr:** What do you estimate the current daily cost is?

David Kelly: I have no—

Q1343 **Stephen Kerr:** No idea?

David Kelly: Not at this current point in time because we have the costs across 27 individual legal entities.

Q1344 **Stephen Kerr:** How many people do you have working on this, day-to-day?

David Kelly: From a PwC perspective we have 112 people who were working on it last week. In terms of the first week, we had 257 people who were working on it. We have reduced the number of people working on it by 50%.

Q1345 **Stephen Kerr:** What are your KPIs? What are your performance targets on this? How would you describe them?

David Kelly: Our role is as agent of the official receiver as liquidator, to support him in the discharge of his duties in terms of realising the assets for creditors but also the dual responsibility of maintaining those critical and essential public services. In terms of KPIs, at the moment we are continuing to sustain and maintain those critical Government contracts and services as we have done every hour since the date of liquidation.

Marissa Thomas: It is just worth noting, Mr Kerr, that in the 250 people we deployed in week one and the just over 100 we have now there are all different skill sets. We had a cyber team onsite from day one securing the sensitive Government data that Carillion holds, we had technology people making sure that their systems were robust so that David and the team could access the information and we had health and safety teams to make sure the services would continue in the right and appropriate way, as well as all the other specialists you would probably expect us to have there, such as restructuring people, tax people—

Q1346 **Stephen Kerr:** The reason I am asking this question is because obviously I understand that you are at the head of the queue. You are going to get your money but there are many other people further down the queue who are probably not going to get anything. It is all about value for money. How does the official receiver decide that they are getting value for money from what you are doing? How is that measured?

David Kelly: The official receiver reviews our fees and our costs and there is a detailed analysis and summary in terms of the particular achievements across the 15 or 16 workstreams that we currently have that are provided to him. I think it is important to also add that ultimately



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our fees are reviewed, challenged and approved by the court in addition to the review, challenge and sanction of the official receiver.

Q1347 **Stephen Kerr:** It is important to note that you got this work understandably short-notice but without a tender process and you are not able to tell me how much you think it is going to cost in total. From my business background it sounds pretty incredible to me that you cannot even estimate how much it is going to cost but I guess that is what you say.

Q1348 **Chair:** Has the Government asked you how much this is all going to cost?

David Kelly: In terms of the entire—

Q1349 **Chair:** Regarding your fees, your total: as Stephen Kerr has said, when he was running a business or when I worked for a business, if I was going to ask somebody to do some work for me I would ask them how much it was going to cost. Has the Minister asked you? Has Sarah Albon asked you how much it is going to cost?

David Kelly: It is impossible to assess what it is going to cost because of where we are in the process. We have other 27 legal entities that we are—

Q1350 **Chair:** You have been there for eight weeks now, Mr Kelly.

David Kelly: We have been there for eight weeks. We have 27 legal entities scattered all throughout the 375 legal entities that comprise—

Q1351 **Chair:** If I had paid £20.4 million and they had been working for me for eight weeks, I would expect by now for them to have a grasp of how much this is going to cost and how long it might take.

David Kelly: The outcome for the liquidation depends on the asset realisation process, it depends on the pace at which we are able to migrate the existing—

Q1352 **Chair:** You are not a spectator to this, Mr Kelly. You are doing the work. You still do not, after eight weeks—when will you have an idea of how long this will take and how much it will cost?

David Kelly: We are supporting the official receiver in terms of the strategy. In terms of all the key issues that I have identified, it is very difficult to give an answer to that question. While we are supporting the official receiver, we are not the ones who are responsible for every single element that drives that outcome.

Q1353 **Chair:** I am not asking you to give us an idea of the total cost and the total length of time, I am asking about your total. You have done this before. It is not the first time you have been involved in an insolvency process, is it?

David Kelly: No, it is not, but there has not been an insolvency of this scale.



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Q1354 **Chair:** From your previous experience of doing this—you did it for Lehman, did you not? That was a pretty big case. By now I would guess you have an idea of how long these things take and how much they cost, do you not, Mr Kelly?

David Kelly: No, we do not have an idea at this stage because it does depend—

Q1355 **Chair:** At which stage will you have an idea, Mr Kelly?

David Kelly: I would anticipate somewhere around about June we will have that sort of view because by that stage we will have that clearer picture in terms of where—

Q1356 **Chair:** Do you expect your fees to carry on at about the same rate between now and June?

David Kelly: No, I would not.

Q1357 **Chair:** You would hope not?

David Kelly: No, I would not. That was a definite rather than a maybe.

Q1358 **Chair:** By June then, if they are definitely not going to be as high as they have been so far, how much do you think you would have earned in fees, Mr Kelly?

David Kelly: Again, I cannot give an answer to that question because it is back to the same issue in terms of the pace and speed at which we are able to migrate contracts over, the pace and speed at which we are able to realise some of the businesses that we are selling—

Q1359 **Chair:** If it carried on at the same rate, by the middle of June you would have been paid about £50 million. You are saying it is not going to continue at the same rate. Will it be £30 million? It will be between £20 million and £50 million because either you will charge nothing or you will carry on at the same rate. It will be somewhere between £20 million and £50 million. Closer to £30 million? £40 million?

David Kelly: It is impossible to give an answer for the reasons that I have outlined, the sheer complexity of the situation we are dealing with.

Q1360 **Chair:** In terms of your business planning then, Mr Kelly, you have 112 people working on this at the moment. Are they all going to be there next week and the week after? In terms of you planning your business and running your business, PwC, presumably you are going to want to know where your people are going to be over the next few weeks. In a couple of weeks' time, will you have 112 people working at PwC? Will it be more or less?

David Kelly: Sorry, 112 people from PwC working on the Carillion assignment? I would not expect so, no.

Q1361 **Chair:** How many in a couple of weeks' time? What are you thinking?



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David Kelly: I could not give you a specific answer to that. We are looking to roll people off as particular responsibilities have concluded and particular tasks are finished.

Marissa Thomas: Madam Chair, it is worth noting that to discharge our responsibilities we are very dependent on third parties transitioning those contracts, selling parts of the business and ensuring those services are continued. We are dependent on a huge number of external stakeholders to our organisation and Carillion.

Q1362 **Chair:** You have been working there for eight weeks, as we have already ascertained, and earned just over £20 million. That suggests that on a weekly basis you are getting over £2 million but you said at the moment your weekly fees are about £1.4 million and you have 112 people working there. Presumably you were being paid more than that £1.4 million per week in the earlier weeks of this contract.

David Kelly: We have not been paid anything at this current point in time. The fees—

Q1363 **Chair:** You have not been paid the £20 million.

David Kelly: No.

Q1364 **Chair:** What I mean then is that you were billing more in those early weeks compared to the most recent weeks.

David Kelly: If you look at the composition of that £20 million, it was probably north of about £3 million for the first two weeks as we were looking to stabilise and also to create a platform whereby those—

Q1365 **Chair:** It has fallen to £1.4 million in the most recent week and you have 112 people working there. I am not an accountant but I have a calculator and I divided £1.4 million by 112 people. That suggests, I think, that per person you are billing about £12,500 per week.

David Kelly: The analysis that we have shows a rate of around about £360 an hour for the work.

Q1366 **Frank Field:** An hour?

David Kelly: Yes.

Q1367 **Chair:** For a partner doing work on insolvency, how much would they be getting?

David Kelly: My charge-out rate is £865 an hour.

Q1368 **Chair:** What are you? A partner? A director? A superhuman?

David Kelly: I am a partner.

Q1369 **Chair:** OK. I have something here—I think it is from your website—that suggests the maximum that a partner can be paid charge-out is £1,119 an hour. Is that correct?



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Marissa Thomas: There are certain partners in our firm, not in the part of the business that is discharging the Carillion responsibility, that can charge that type of rate in the market, yes.

Q1370 **Frank Field:** You meet the National Living Wage then, do you not?

Marissa Thomas: Yes.

Chair: Okay. Thank you. We will move on.

Q1371 **Chris Stephens:** Can you tell us if there has been a provisional estimate of how much will be recovered from insolvency proceedings and how much of that will go to the PPF?

David Kelly: There has not been an assessment done in terms of the outcome or the amount to the PPF. It is back to the challenges that I was articulating five or 10 minutes ago. You have, at the moment, 27 legal entities that are very much buried within the entire Carillion organisation. Each of those 27 liquidations is its own community, as it were, and you have to go through each of those 27 legal entities and realise the assets in those legal entities. That then is what drives the ultimate return and recovery to the legal entities over which the Pension Protection Fund will be looking for a dividend.

Q1372 **Chris Stephens:** When will you be in a position to give us that information?

David Kelly: I would anticipate that would be around a similar time to the one I gave in terms of being more definitive around the total cost, which will be around June, because by that time we will have had the opportunity to have migrated and dealt with a number of our existing trading contracts and a number of the sale discussions that are going on at the moment will have been concluded. A number of those variable parts that are making that assessment challenging at the moment will have been addressed and dealt with.

Q1373 **Peter Kyle:** We have heard from multiple sources now that the record-keeping within Carillion was so poor that it has made it quite difficult to ascertain the organisational structure of Carillion. Does one of you want to say whether this is true and whether it has hampered your work in trying to figure out what kind of organisation it is we are dealing with here?

David Kelly: If I deal with that, Carillion was a very large organisation and, as you have heard from other sources, did grow via acquisitions and so on. There were one or two systems challenges. In terms of our ability to undertake our work as special manager on behalf of the liquidator, we have a very singular focus in terms of the business operations and realising the assets. From the work that we have been doing, because we have a slightly different lens, I do not think that has caused any particular challenges that we have not been able to overcome. However—

Q1374 **Peter Kyle:** None of the administrative legacy of Carillion has made your



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job difficult or presented challenges?

David Kelly: We have had IT specialists in from our team to help assess some of those challenges but in terms of the wider books and records that the company had maintained and sustained over time—as I think you have heard from the Insolvency Service—it is very much a key focus of the investigation the liquidator will be undertaking in terms of the causes of failure and so on.

Q1375 **Peter Kyle:** Is it your opinion, having watched the evidence that senior managers and directors have given to this Committee and in other areas as well, that they have given a full account of Carillion, the way it was run and the circumstances leading to its collapse?

David Kelly: I am not in the position to answer that question, based on the information we have to date. That will be the subject of the very detailed investigation that you have heard is being undertaken by the Insolvency Service. That is a very separate investigation to the work and the responsibilities we have.

Q1376 **Peter Kyle:** Okay. Finally from me, we heard that the Chief Executive of Carillion at the end was acting like a bailiff and that he was particularly trying to find this £200 million owed to Carillion from a Qatari company. The Qatari company felt that it was owed £200 million by Carillion. Do you have a view on this, having now spent eight weeks looking at the accounts? Did they owe £200 million or were they owed £200 million?

David Kelly: That particular contract, as you have previously heard, was a difficult one, a troublesome one and one where there was lots of detail. The contracting party has now terminated the contract and—

Q1377 **Peter Kyle:** I am not sure you heard my question correctly. You have now spent eight weeks looking at the company. £200 million is a lot of money. Surely you will know whether they owed the money or whether they were owed the money.

David Kelly: In terms of that particular contract, because it has been terminated there are set-off claims and other damages claims that the contracting party is looking to levy now against Carillion that need to be assessed. It is going to be a particular challenge to recover any money under that contract.

Q1378 **Peter Kyle:** Is there £200 million that it is possible to recover, in your opinion? Was it owed? Is it a debt or is it a credit?

David Kelly: The company were stating that they were owed the money. The counterparty—

Q1379 **Peter Kyle:** Now you have seen the books—

David Kelly: We have not undertaken a detailed investigation in terms of—

Q1380 **Peter Kyle:** You don't get much for the money, do you? Where does £20



million get you these days?

David Kelly: What the £20 million has got is that we have worked very hard to mitigate the impact on and the consequences for a number of the stakeholders that I know you have spoken about and referred to in your previous submissions. You have made reference to the impact on and the consequences for the supply chain and one of the things we have done, immediately on appointment, was to accelerate the payment terms on which the suppliers to the liquidation are getting paid. Now they are getting paid, there or thereabouts, within 30 days of invoice rather than the 120 days that you have heard. This is something we have done to try to minimise and mitigate the—

Q1381 **Peter Kyle:** All I am saying is that it surprises me. If I, even with my complete lack of experience, was doing your job and there was £200 million outstanding—that would go a long way in the job you have to do—I would start with the £200 million rather than the smaller amounts of money that are owing. You do not seem to know whether that money is even owed.

David Kelly: What I have said, though, is that it is a very complex and complicated construction project where there are multiple claims and counterclaims that are going to make it very challenging to recover value under that contract. In terms of priorities, we are trying to realise and recover value from other areas and other avenues. The focus will ultimately turn to that particular contract you are referring to.

Marissa Thomas: It is worth noting, Mr Kyle, that there has been a heavy focus on the provision of public services versus the private sector contracts. That was our objective number one, to make sure that those services continued.

Q1382 **Heidi Allen:** Speaking of stakeholders, how many Carillion employees have been made redundant? How many contracts are still waiting to find a buyer and how many jobs does that represent?

David Kelly: If I can answer that question in a slightly different sort of way—

Q1383 **Heidi Allen:** I just want you to answer how many people have been made redundant.

David Kelly: At the start of the liquidation there were 18,100 employees. We currently are continuing to employ 7,100 employees and 9,500 employees have found either alternative work outside of Carillion or have migrated with some of the contracts that have been sold or transitioned so far. Then 1,600 employees have been made redundant. For every 17 people we have been able to secure employment for, three have been made redundant. In terms of where we are with those 7,100 people who are continuing to support us to deliver those essential public services, they cut across approximately 70 contracts that we are still servicing and



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where there are ongoing discussions with the customers in terms of who they want to ultimately take over the service delivery.

Q1384 **Heidi Allen:** That is 70 public contracts that do not have buyers yet? Is that right?

David Kelly: Rather than use the phrase “buyers”, what we are doing is we are talking to the customer about who they want to continue to provide that service. The customers are saying, “We would like to transition the service provision from, say, Carillion to another party”. We are working with them to facilitate that transition process. It achieves the same objective in terms of the service being maintained and it is likely that the employees—

Q1385 **Heidi Allen:** From an employee’s point of view they are still in limbo because their management structure, the organisational structure around them, does not have a final home.

David Kelly: It does not have a final home. However, the service under those contracts is still required, is still being performed, and all of the Carillion employees are continuing to work and to service those contracts.

Q1386 **Heidi Allen:** I am just talking about public at the moment. Do you expect all of those contracts to find a home somewhere? Basically what I am after is: how many more redundancies is there a risk of?

David Kelly: In terms of the first question, “Do we anticipate finding homes for all of those 70 contracts?”, yes, we do. In terms of what the consequence of that is for the residual 7,100 employees, a very large number of those will transition with those contracts when the customer has found the new home for them. In terms of exactly how many of those people are required, again it is too early to say because those conversations are ongoing in terms of what—

Q1387 **Heidi Allen:** Do you have a best and worst-case scenario of where you think there might be risk?

David Kelly: No, I do not. Not at this stage.

Q1388 **Heidi Allen:** Okay. In terms of the practical mechanisms for people who are losing their jobs, there is obviously an element of statutory redundancy payments that they could be entitled to as well. Through the Committee, directly to ourselves and also through other MPs who have let us know, they are saying that some of their constituents who are employees still have not received all the information they need. Are you aware of that?

David Kelly: I am not aware of that. In relation to redundancies we have worked very hard with the Carillion HR team and with the Redundancy Payment Service to expedite payments to people who have been made redundant. The normal KPI for paying people who have been made redundant is four to six weeks. We now have that down to six days in terms of when people get paid after they are made redundant. There are



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also a number of other measures that we have put in place to support people who have been made redundant.

Q1389 **Heidi Allen:** There is a statutory angle as well. If we are hearing from constituents who say they have not had all the information they need, who should they contact?

David Kelly: There is a PwC e-mail address on the Carillion website for employees that they can write to. There is also—

Q1390 **Heidi Allen:** Can you give that to us now? It might be useful for the record.

David Kelly: I do not have the exact details but I can provide that information to your clerk once I get access to my phone. There is also a telephone helpline that employees can use and have been using. We are getting around about 90 calls to that each day, just to help people work through some of their queries. Also, one of the things that we—

Q1391 **Heidi Allen:** The comms are clearly not working terribly well if there are still people saying they do not know who to ask and they have not been contacted.

David Kelly: I do not recognise those issues and those challenges. If people are saying that, they by all means can get in touch with us. In terms of filling out the forms, we put a lot of work in with the Redundancy Payment Service to get them up to the Wolverhampton head office to go through the system that the company has. We are working with the Redundancy Payment Service so that they are using the company's records to calculate what people are owed.

Q1392 **Heidi Allen:** Could you please let us have that information? Certainly anything we can disseminate back through MPs to help their constituents would be helpful for everybody.

David Kelly: Of course.

Q1393 **Heidi Allen:** One final question. Again, this has come as feedback from constituents contacting their MPs and then through the Committee. Some employees have been made redundant while still in operating companies, without any consultation. What happens to them? Do they receive payment in lieu of that consultation? What will happen in those situations?

David Kelly: In terms of consultation, we started a consultation process on 26 January with employee representatives—

Q1394 **Heidi Allen:** What happens to the people who have not had a consultation? That is what I am interested in.

David Kelly: All the staff have been involved in the consultation process. The consultation that we started on 26 January was across the entire workforce. We went through and had a revisit of the location



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representatives and so on and we have been engaging with the trade unions on a regular basis.

Heidi Allen: OK. Thank you. That is all from me.

Q1395 **Chair:** Thank you very much, the three of you, for coming to give evidence to our Select Committee this morning. Thank you.