Economic Affairs Committee

Corrected oral evidence: Loan charge—follow-up

Thursday 15 July 2021

10 am

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Members present: Lord Forsyth of Drumlean (The Chair); Lord Bridges of Headley; Viscount Chandos; Lord Fox; Baroness Harding of Winscombe; Lord Haskel; Lord King of Lothbury; Baroness Kingsmill; Baroness Kramer; Lord Livingston of Parkhead; Lord Monks; Lord Skidelsky; Lord Stern of Brentford.

Evidence Session No. 1 Virtual Proceeding Questions 1 - 14

Witnesses

I: Jim Harra, First Permanent Secretary and Chief Executive Officer, HMRC; Mary Aiston, Director of Counter-Avoidance, HMRC.

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Examination of witnesses

Jim Harra and Mary Aiston.

Q1 **The Chair:** Welcome to this session of the Economic Affairs Committee. We are very pleased to have before us Jim Harra, who is the Chief Executive and Permanent Secretary at HMRC and Mary Aiston, the Director of Counter-Avoidance at HMRC. Welcome to both of you.

I will begin by asking the first question to you, Jim Harra. In a recent freedom of information disclosure, there was a comment from you saying that you had found it difficult to understand the basis for the HMRC position that loan schemes had never worked. If the Permanent Secretary of HMRC felt this, how would ordinary taxpayers be expected to know?

Jim Harra: Thank you, Lord Forsyth. I am aware of the email, which obviously has been released in a freedom of information release. I think that what I said in that email has been overplayed. I know that campaigners against our work on disguised remuneration are looking for new angles all the time for their campaign, but I will explain what I mean by that email.

As a Permanent Secretary, I have to speak frankly and honestly to colleagues if I feel that we need to do better. Of course I knew at the time that HMRC was clear about its legal arguments for taxing DR scheme users, and the Supreme Court had, after all, reached a decision in Rangers well over a year before my email, but I felt that we needed to be more proactive in refuting what was being said about HMRC and the basis for what we were doing.

At the time, I was frustrated that misinformation was going unchallenged and that HMRC's views were not cutting through in the public discourse about disguised remuneration. Specifically in relation to that email I felt that even before my appearance before the Treasury Select Committee I had not been given the briefing that I felt I needed to make those points. That is really what I was referring to.

The Chair: What about the answer to my question? If you felt this, how were ordinary taxpayers expected to know?

Jim Harra: In our casework with people, we set out our view of the law and why we feel that they are taxable. Any taxpayer who disagrees with that has the right to dispute it and ultimately for their case to be heard in tribunal, and there has been some litigation on the disguised remuneration cases. My concern was more that in addition to dealing with taxpayers on their cases, there was a public discourse going on in which claims were being made that I felt we were not adequately refuting at the time.

The Chair: Yes. Various commentators said that this email showed that you had overstated your case, and you basically reject the view of those who have disputed your interpretation of the Rangers case.

Jim Harra: Yes, we do. We believe that when we tax people we have worked very carefully through our inquiries and that we have a good basis for the decisions that we make. Of course we know that people may disagree with us. They have a right to do that and they have an ability to dispute it if they so wish. There are cases going through the tribunals and the courts at the moment.

If you look back to the early period of disguised remuneration, our approach was to try to litigate lead cases in order to establish the legal position. That took quite a long time, and it was not until the 2017 decision of the Supreme Court that we got that precedent in Rangers, which said that these payments are taxable and that these schemes do not work to avoid tax. But, of course, the schemes are very complex: they are not all the same; the facts of the cases are not all the same; and at different stages the law has been different, with different legislation applying. It is not a straightforward thing to explain. Nevertheless, I felt that we ought to be defending ourselves more in the discourse than we were at the time.

The Chair: Okay. Thank you for that.

Q2 **Lord Bridges of Headley:** Thank you for joining us, Mr Harra. I am sorry, but I am now very confused, because the email you sent on 31 January 2019 said, "In recent months"—I stress months—"I have repeatedly"—I stress repeatedly—"tried to obtain legal analysis to understand the strength of our claim, with very little success".

What I am hearing from all this is that an entire policy was created without clarity about the law, the legal basis you were acting on. Can you tell me why I am wrong?

Jim Harra: I do not think there is an issue with clarity. There is certainly an issue with complexity and, at various stages, with certainty. As I said, each case has to be looked at individually. We have to look at the circumstances of the scheme that has been used. You have to look at the facts of how it has been implemented and the legislation that was in force in the relevant years. There is no doubt that establishing the legal basis for challenging DR schemes has been a long and difficult process. It took several years of litigation for us to get a good precedent, and of course there is still litigation.

Lord Bridges of Headley: I am so sorry, Mr Harra, but let me just jump in there, because the Morse review said that the law was always clear. Are you saying that the Morse review is wrong and that the law was not always clear?

Jim Harra: I think what Lord Morse said in his review was that from December 2010 it has been clear that disguised remuneration does not work. That is why he recommended that the loan charge be amended to apply from that date and not from 1999, which was the original legislation.

I would accept that for a significant period the law was not clear. That is why we were litigating and why we are still litigating. HMRC was clear that we had a legal basis for challenging disguised remuneration schemes. As well as working through those case by case, I felt, at the time, that we ought to be doing a better job of setting out, in refutation of the comments that were being made, that we had a good approach. But I am not claiming that the law was always clear. It is a very complex area.

Lord Bridges of Headley: I hear that. Thank you for that answer. In another FOI email, of 12 July 2019, you said, "More worryingly, I fear that accepting a narrative that tax avoiders are innocent or naïve victims, and as a result should be excused from their tax bill, has wider implications for our counter-avoidance strategy". You have just said that the law was not clear before 2010, so why were they naive victims?

Jim Harra: What I was referring to there is that there is a narrative that is pushed by the campaigners that all users of disguised remuneration schemes are innocent unwitting victims of promoters and of HMRC, and that they could not have been expected to know that the schemes that they were entering into were schemes that we would challenge.

I do not accept that. I think there is a range of behaviour in the people who have used these schemes. I accept that many of them have been misled by people who have advised them. I accept that some have been unclear about what they have been entering into. On the other hand, there are people who have very knowingly and well advisedly entered into these schemes in an attempt to avoid tax.

I was saying in that email that the narrative that, "We didn't know that we weren't paying our tax and we didn't realise that you would challenge us", would have implications if we accepted it, because it is a fundamental tenet of our tax system that people are responsible for getting their tax affairs right.

Your knowledge is relevant, certainly, if we were trying to establish culpability, for example—if we were trying to charge penalties. But at a basic level what we are trying to do here is collect the tax that people owe. I felt it was important that we, again, cut through in the discourse to say that, actually, there is a whole range of awareness and behaviours among the users of these schemes. Having said that, I fully acknowledge that there are many users of DR schemes who will not have understood the full implications of what they were being led into.

Lord Bridges of Headley: Can you describe for me why you say that the loan charge has been a debacle?

Jim Harra: It is for the reasons that I have just described. We have had—

Lord Bridges of Headley: So it has been a debacle, has it?

Jim Harra: I used that term and I do not take it back. I can explain what I mean by it. Frankly, the most polite way of describing it is a no holds barred campaign against the recovery of this avoided tax, which has been very difficult for HMRC to deal with. Of course, I accept that scheme users find it painful to receive an inquiry and a tax bill from HMRC that they were not expecting, and I can understand the emotion involved.

But if you look at what has happened, we have had a campaign, frankly, of misinformation. We have had the targeting and harassing of HMRC officials, including, for example, photographs of an officer's home being published on social media. We have had false allegations being made about the honesty of senior officials, including me, and false evidence given about our actions. We have at times been slow-footed in responding to all that and in getting our views across, and I think we have found that challenging to deal with. That is what I meant by it being a debacle.

Lord Bridges of Headley: So you are you saying that the policy is good, but it is your handling that has been bad.

Jim Harra: The policy has been changed in response to an independent review, so I think the Government have accepted that the—

Lord Bridges of Headley: Sorry, so the policy was a debacle before it was changed. Is that what you are saying?

Jim Harra: I used that term—again, colourful language—within the department with colleagues. I am sure my leadership style can be called into question, but it is all about spurring people to do better in explaining our position, in engaging in the discourse, and in refuting false claims when they are being made. I also think that the way the campaign against disguised remuneration has been run is, frankly, very challenging for a department to deal with.

The Chair: I think probably the whole committee would agree with you, Mr Harra, that some of the stuff that has appeared on social media and so on is pretty disgraceful, and we have every sympathy for the attacks that you and some of your officials have had in carrying out your duties.

Q3 **Baroness Kramer:** Mr Harra, I want to go back to the legal basis and the Rangers case. I will give you a typical view. This is from Armadillo Support Limited, who are chartered tax advisers. What they are saying you will have heard many times from many different bodies. It basically takes the position that the Supreme Court in Rangers did not hold that the loans were themselves taxable as income—indeed, HMRC had dropped that very argument after it failed in earlier courts—but that the payments made by the employer to the offshore trust were redirected earnings on which the employer should have accounted for PAYE and NICs.

I read the Supreme Court decision again, and I have to say that I find myself very much in sympathy with Armadillo Support Limited. I assumed, clearly naively, that HMRC had legal opinions on which it was

basing a very different view that empowered it to go after not the employer but the individual contractors, including through the loan charge mechanism. That was why I was very disturbed by the FOI email that Lord Bridges read from, which said that, "In recent months I have repeatedly tried to obtain legal analysis to understand the strength of our claim with very little success".

So my question to you is this: do you have a legal opinion that provides the basis for the extrapolation from Rangers through to the actions that you feel it has been appropriate to take against individual contractors? If the answer is yes, please may we have a copy of it?

Jim Harra: First, on the Rangers case, it was quite a wide-ranging decision, and it was a very useful decision in terms of stating the law and in particular overturning two earlier decisions that had gone against HMRC and which had clouded things.

But you are right that one of the challenges with using litigation as a way of establishing things is that you get a judgment but it does not answer all the questions, because you have thousands and thousands of cases, each of which is unique. We have multiple pieces of advice and multiple analyses. In each case, we establish our legal basis for recovering tax, either from the employer or from the end user. I should say that our first preference is to recover from the employer if we possibly can, and that is where the bulk of the recoveries have come from. In any case, we will explain our legal arguments in detail to the taxpayer, if they wish. In any case, where they feel that we have got that wrong, they have a right to challenge it, and them exercising that right is not a problem. But we will stand ready to defend our legal arguments case by case.

Baroness Kramer: I do not understand from that whether or not there is essentially a legal opinion and one that you would then be willing to share with us, because obviously it would help to clarify this. It becomes important partly in this sense. You will know that the issue has been raised on the status of the agencies; nearly all contractors were recruited through agencies. There is a reading, which I think is undisputed, of Section 44 of the Income Tax (Earnings And Pensions) Act 2003, in which, where we are dealing with contractors, the agency is treated as the employer and has to operate PAYE and NICs.

I am not aware that you have been taking enforcement action against the agencies. Indeed, if it is the interpretation that the agency is in effect the employer, as applicable under Rangers, that would indeed change the whole status of the individual contractors and, as far as I can tell, remove their liability. So I am really keen to see the legal opinion that enables you to go from Rangers through to the individual contractor. I am not that suggesting you are acting without legal opinion, but I do not believe that we have ever seen it.

Jim Harra: I do not believe that there is a single, overarching opinion. As I have said, there is a multiplicity of schemes, a multiplicity of fact patterns, and a multiplicity of tax years in which different pieces of

legislation were in force. Case by case, we look at the legal basis for who is chargeable, if anyone, and those arguments. Of course we would share those with the taxpayer or their agent in the course of an inquiry, and we would present them to tribunal if the taxpayer disagreed with us and wished to dispute it. There is no single, overarching opinion, and I do not think there can be, to cover the multiplicity of cases.

I repeat that where there is someone who stands as the employer to whom we can go for the tax, that is our first port of call, and that is our preference. Indeed, most of the tax that we have recovered from disguised remuneration schemes—Mary can possibly give you more information on that—is from the employer rather than from the individual taxpayer. But in some cases we do seek tax from the individual taxpayer, either through the disapplication of Pay As You Earn, for which there is legislation, or, if the fact pattern or the nature of their scheme means that that is where the liability falls.

Baroness Kramer: I do hope you will provide us with the information on the agencies, because if this is the correct interpretation of ITEPA—I believe it is undisputed—presumably you would have been collecting from the agencies, and I am not aware of any instance in which that is happening. These are obviously both large and deep-pocket entities in many instances and they continue in their day-to-day activity. I am troubled by the lack of an overarching opinion on an issue like this, I have to say, because you must surely have had some basis for deciding how you were going to set up the scheme up, and that would not be on individual cases, surely.

The Chair: Baroness Kramer, perhaps Mary Aiston would like to respond.

Baroness Kramer: Yes, that would be helpful.

Mary Aiston: First, to assure the committee, we work hand in glove with our lawyers all the time. It is a very close partnership and the lawyers are involved in everything we do.

To pick up on Jim's point, we always consider the employer route first. To give the committee an idea, broadly speaking, of the cases where customers have settled with us, around 30% of the settlements are with employers, but that is accounting for about 80% of the tax that we have brought into charge through those settlements. That is just to underline that that is the approach we take.

It is also the case that the legislation gives HMRC the right to disapply PAYE, and that is also a piece of law that we have exercised. As you will appreciate, there is often quite a long string of employment intermediaries involved, and it is possible for a worker to be in disguised remuneration without the agency being aware of that, and we have used that discretion. I recognise that it is a discretion that some customers and advisers have contested and, as Jim says, it is always open to customers to contest our view of the law and take that through tribunals and courts.

My last point is on Rangers. Clearly the point at issue was whether the employer should have operated Pay As You Earn. But the judgment also brings out that these were emoluments or earnings of the employees—footballers in that case—and that something does not cease to be earnings and emoluments purely by being diverted through a third party, and that is a point of wider application.

Q4 **Baroness Kramer:** I would be glad if you could provide us with back-up information about the number of agencies that you have pursued in that employer category. I think that would be very helpful to us.

I want to go on to talk about umbrella companies. We have talked before and you know of the committee's concern about the multiplicity and growth of umbrella companies and have expressed similar concerns. I think it is probably fair to say, and I doubt you would disagree, that there is almost not a single contractor who entered into a loan scheme to which they were not introduced either by an umbrella company or by a promoter brought to them by an umbrella company. We have been extremely worried.

You will also be conscious that HMRC's steps in the off-payroll arena have led to basically what I think some people are calling now the creation of a whole new umbrella company industry on a scale that had never been known before. Companies both public and private are very anxious not to be responsible for trying to determine to whom IR35 applies, and therefore find that the umbrella company route gives them the buffer against HMRC that they wish for.

Given that umbrella companies have been so deeply implicated in much of the abuse, I am trying to get to the bottom of what you are doing. Do you recognise that the off-payroll consequences that are firing up this industry are essentially quite perilous now for contractors? I am trying to work out what protections you are putting in place to deal with that.

Mary Aiston: I think it is useful to start with a bit of context. Clearly, some contractors who have used disguised remuneration have accessed it through umbrella companies. Our estimate is that even in the freelance and contracting area, something like 2% to 2.5% of contractors have used disguised remuneration, so it is important to remember that vast numbers of people do not. Clearly some umbrella companies are implicated in disguised remuneration, but there are also a lot of compliant umbrella companies that provide a PAYE service, perhaps for workers who want to have a multiplicity of contracts but do not want to have the overheads of setting up their own companies.

The Government have recognised the advantage of more regulation in relation to umbrella companies and have committed to establishing a new single enforcement body in this area, and they will be bringing legislation through in an employment Bill in due course.

In the meantime—you asked what we were doing—there is a new requirement to provide something called a key information document, which started from April last year and is a legal obligation to set out

things like minimum pay levels, who will be paying you and how often. In April 2021, HMRC published more guidance for people who work under umbrella contracts to help them to understand their arrangements and, if they believe they are subject to incorrect deductions, how they challenge that.

You asked about off-payroll working. Our data so far shows that there has indeed been an increase in the number of people using umbrella companies, but, as I say, we need to recognise that there is a lot of compliant umbrella companies. Our early indications are that, on average, people working for umbrella companies are paying more tax now than they were last year. We have more work to do on the analysis, because we want to understand the interaction and how far there are people in disguised remuneration as a result. The analysis is complex for a number of reasons, but we are exploring how far we can answer that question ourselves.

Baroness Kramer: Do you accept that at the moment it is certainly not dampening misbehaviour? "File on Four" basically asserted that something like 48,000 mini umbrella companies have been created in the past five years—mini umbrella companies, as you will be very familiar with, that want to take advantage of the employment allowance and the flat rate scheme. That has raised a whole series of concerns.

I am also concerned about the employees, because these abusive and rogue companies are undoubtedly putting those contractors at risk over income tax and NICs. Will you tackle this by going after the umbrella companies, or do you intend to repeat the pattern of the loan charge and go after the individual contractors who have been caught up in these schemes as probably one of the few opportunities they have to get work?

Jim Harra: I will pick that up. First, on our overall approach to umbrella companies, they, as the employer, have tax obligations towards us. We take steps to make sure that to the extent that an umbrella company poses risks to the tax system, we tackle that. We look forward to the regulatory framework for that being strengthened, which the Government have said they will do, because that will help us in our task. In the meantime, our approach is to equip workers to understand whether they are being abused or misled and to enable them to contact us if they have any concerns.

On mini umbrella companies, you are absolutely right, but it is a slightly different issue. It is generally not an issue to do with disguised remuneration. They are often fraudulent schemes designed to fragment employment so that they can abuse the VAT flat rate scheme, as you said, and the employment allowance. We have recently made a number of arrests in relation to mini umbrella companies and taken steps to deny the right to recover input tax where we have established that a business elsewhere in the supply chain knew, or should have known, that they were engaged with fraudsters. I think that is an important tool for us in tackling this. There is a whole supply chain here and we need to implicate

the players in that supply chain in doing due diligence and make sure that they cannot simply shirk a responsibility by passing it off.

My view on umbrella companies overall is, as Mary mentioned, that they are a growing part of the market, and there is no doubt that the changes to off-payroll working rules have caused engagers to think about what model they want to have. Some of them have opted to engage people via agencies and umbrella companies, and they are within their rights to do that. We recognise that we need to stay on top of that risk, and the Government have recognised that regulation of this relatively new and fast-growing part of the labour market needs to be strengthened.

Baroness Kramer: I am slightly troubled, and then I will stop, by what I understand to be your fundamental approach. That is that the individual, who may well be a cleaner or somebody working for £10 an hour in a test centre or whatever, should have the sophistication to be able to understand the complexity of all these issues, which even HMRC struggles to grapple with, and if they get it wrong they are for the high jump. I guess I was hoping to hear something much more aggressive in providing protection for contractors who are finding themselves in this position because, thanks to the change in off-payroll working, there really is no other practical way in which they can put food on the table.

Jim Harra: I feel I have to come back on that. As Mary mentioned, the vast majority of the yield that we have collected from tackling disguised remuneration avoidance has come from us tackling employers, which is what the umbrella companies are. We have a multi-pronged approach. Our approach to workers, which you can see in the recent communications we have had, is to equip them to make sure that they know what questions they should be asking to protect themselves when they engage with umbrella companies, and to give them routes to get advice and assistance from us if they feel that they have been misled into something that they should not be in and that they need to get out of.

We have had hundreds of contacts from taxpayers, either alerting us to concerns they have about their umbrella company or asking us for help to make sure that they do not get tangled up in their tax affairs going wrong. We are working very hard to make people alert and to identify as quickly as we possibly can if anyone has got involved in a scheme that will cause them trouble. That is a learning from our experience with disguised remuneration where our previous strategy meant that people often built up tax bills over several years before we could resolve their use of the schemes.

Our approach is multi-pronged. I cannot absolve taxpayers from their responsibility for keeping their tax affairs in order, but we do go after the employers as the first port of call if we possibly can. We are very alive to the risks that bad umbrella companies pose to the tax system, and we understand that we have to focus on those umbrella companies to address that.

The Chair: I am listening to your answer and getting the impression that

what you are saying is, "Look, all we're interested in is getting the money that's due, and the fact that some people may have suffered hardship is down to them because they ought to have known better". I am looking at some of the examples that we have had—for example, a social worker who is told on a Friday that her job has disappeared but that she can come back as a contractor, and then years later, after she has retired, gets an enormous bill from you. Is there not an issue of fairness here?

On the point about the growth of the umbrella companies, that arises as a direct result of the changes you have made. You are turning around and saying, "We hope the Government will come forward with legislation to deal with this". We just get the impression that the little people who get smashed by it are incidental and that you are not taking any responsibility for the consequences of your own actions.

Jim Harra: It will not surprise you to know that I reject the claim, but I absolutely agree with the area of focus. One way in which the tax avoidance market has changed in recent years is that it has moved from a focus on relatively affluent taxpayers, who can afford to have professional advice and for whom, when we come along afterwards and say, "Your avoidance didn't work. Here's your tax bill", that might be a painful sting for them, but generally speaking it is not a life-changing event.

We recognise that the market has changed and that, today, the promoters are targeting employment-based schemes and middle earners and are increasingly moving down the earnings range. Those people are less equipped to get independent advice and understand what they need to do, and if they are presented with a big tax bill, that will be more than a painful sting; it will be a life-changing event and potentially distressing for them.

We absolutely recognise that and we have been changing our strategy towards tax avoidance to reflect that, in particular trying to identify where people have got caught up in avoidance as early as we possibly can and to help them to get out of it, and to equip people so that they will not get tangled up in the first place by communicating the things for them to watch out for.

However, as the tax authority, our remit is to sort out the tax. I recognise that there are wider worker protection issues involved here than simply getting tax right, and I think that is what the Government's commitment on regulation is about. In the meantime, the Government took the step last year to make sure that people get the key information documents that help them to focus on how they are being treated by the umbrella companies they are employed by. Hopefully, that will drive up standards in the interim.

The Chair: I think that was in response to the committee report. Lord Bridges, I see you want to come back in.

Q5 **Lord Bridges of Headley:** Yes, I am sorry, Mr Harra, I just want to

come back to this point about legal clarity. Morse says that the law has been clear since 2010, and you said you agree with that. You then went on to tell us that there are thousands of cases and each one is unique. In response to Baroness Kramer, you said that you cannot provide a simple legal position. Therefore, I hear from you that the law really is not that clear and it can never be that clear. Am I right?

Jim Harra: I will probably go over what I have said before.

The Chair: Please do not do that.

Jim Harra: I accept that the law in this area is complex, and how it applies to individual circumstances is complex. Lord Morse said in his review that following the introduction of the legislation, which is now in Part 7A of the Income Tax (Earnings and Pensions) Act 2003, in December 2010, it should have been clear to everyone that there was legislation in place that meant that they could not get this tax advantage, and therefore the Government were justified in having a loan charge that applied from that date. The implication of his finding is that prior to that it was not so clear, and therefore in his view the Government should accept that the loan charge did not apply.

Lord Bridges of Headley: I hear you, and I am so sorry to interrupt you. I know that we want to move on, but my point is that the law is not clear. You only have to look at the CEST tool, which says that one in five people using CEST get an undetermined response, to show that the law is not clear. That brings us straight back to the points that Lord Forsyth and Baroness Kramer have been making: that there are lots of people, many on low incomes, many who have very little awareness of how tax law operates, who are left quite simply not knowing what to do. So the law is not clear.

Jim Harra: To clarify the status of the CEST tool, that is nothing to do with disguised remuneration. CEST is about helping people to establish whether they are employees for tax purposes. The tool was developed by HMRC to assist people with that decision. Whether you are an employee or self-employed is a simple decision for the vast majority of people. Most of us are clear about that. But that tool helps people to determine it, and you are right that in I think about 80% to 85% of cases it gives a clear outcome. In the other cases, it says, "This is more complex and you need to get support and advice". But that is not about disguised remuneration; it is about whether you are an employee or are self-employed, effectively, for tax purposes.

Lord Bridges of Headley: All I am hearing from this is that we cannot be clear, and this was Baroness Kramer's point. You cannot provide us with a simple legal position to prove the point that Lord Morse is making.

Jim Harra: I think it is unrealistic to expect that when people enter into highly artificial and contrived arrangements there will be a simple position. I accept that the law is complex. That is why we had to go the whole way to the Supreme Court in 2017 to get the answer in Rangers.

There is a multiplicity of arguments that people can raise on both sides. We have always been clear that we have a legal basis for challenging these schemes, and that is why we do it. We are clear to taxpayers that we will set out for them the legal basis for us assessing them for tax, and obviously if they disagree with that, they have a way to dispute it.

The Chair: Okay. We have been going for 40 minutes. We have done only two questions, so although they were very important issues, I will move on now to Viscount Chandos.

Q6 **Viscount Chandos:** Thank you. The ruling of December 2010 was a sort of cut-off and led HMRC to accept the recommendation of the Morse review that taxpayers who had entered into voluntary settlements in respect of claims before that date should be eligible for repayment. You have told us that HMRC has received over 2,000 claims, but so far only 200 have been paid out and 300 are awaiting completion. How long do you expect it to take to clear the rest of those repayments, and how could this be speeded up?

Jim Harra: I will let Mary answer that question.

Mary Aiston: We expect to be working on refunds through to the end of the calendar year and to have completed the vast majority by then. It is possible that some of the more complex ones we will take through to the end of this financial year.

I appreciate that it is a slow process and we would love it to go faster, too. It takes time, though, because there are a number of steps we need to complete. In these circumstances, we are engaging with customers who settled with us and that means they reached a civil contract with us. This is not as simple as identifying the voluntary element of that and refunding it, because if we just did that it would breach the contract, and all tax and duties brought into charge would then be subject to being refunded[1]. Clearly that was not the intent of the policy or what Lord Morse recommended. We have to work through with the customer to agree on a new set of figures, reach a new civil contract, and then refund the voluntary restitution after that.

Unfortunately, that takes time, but we are working through those asquickly as possible and, as I say, we anticipate being able to make good progress. The 300 cases that you mentioned are ones where we are absolutely at the last step and all that needs to happen is for the customers to come back and hopefully agree with our figures, and then we can move forward with those.

I want to take the opportunity to say to anyone who has not yet applied and thinks they may be eligible to move ahead and do that. We wrote to

[1] On 17 August 2021, HMRC provided the following clarification: "This is not strictly the case. Identifying and refunding the voluntary element would leave the position of the parties under the original settlement unclear and risk customers asking for all the taxes to be refunded."

everyone we were aware of who might be entitled at the beginning of this, and where we have not had an application in we have written to those customers again to ensure that people take the opportunity where it is due.

It is complex, though, partly for the reason Jim outlined, which is that underneath the banner of disguised remuneration there are a lot of different schemes and different factors, and therefore the settlements are complex. They are absolutely not all the same. Working through and ensuring that we get this legally right so that people get the money they are entitled to, but also that the Exchequer retains the money it is entitled to for public services, is an important piece of work. We are very keen to ensure that we get it right first time, but I am sorry that it is taking the time it is.

Perhaps the last point is that when we do refund, customers receive interest, but I appreciate that they want their money as quickly as possible, and we are on the case.

Viscount Chandos: Thank you. As you have both said, there were different and varying schemes, but among those 2,000 claims I imagine there must be a lot of commonality to the schemes that people are reclaiming on. I know the devil is in the detail, but it feels like that after this length of time a sort of template for the unravelling of those voluntary settlement contracts should have enabled it to go faster already.

I suppose, more importantly with the numbers—1,500 out of the 2,000 are still at implicitly an early stage—the end of the calendar year is creeping closer and it feels that it could be or should be faster. Plus, there is a degree of caution on the part of any of us who are observers, let alone those who have made the claims, as to whether the deadlines that you set out will be met, based on the slow progress to date.

Mary Aiston: That is a fair question. We absolutely standardise this where we can. It is not in our interests for this to take any longer than it needs to. There are some complexities, because promoters of disguised remuneration constantly change their schemes. That was a deliberate act on their part to frustrate HMRC's efforts to tackle them and a deliberate response to follow-up notices. There is commonality at the strategic level, but when you get into the detail of these there is a huge number of different schemes.

We are going as quickly as we can. I am confident that we will speed up. It took us longer than we wanted to get going. The committee may recall that the first scheme we published when we came to use it in some of those complex arrangements did not work. It was not that it got the wrong answer; it just could not be applied. So we had to have a second go. I am sorry about that, because that held us up right at the beginning, but it means that we are working through now. You are right that increasingly as we hit a legal issue now it is one we have seen before and we know the answer.

We will progress absolutely as quickly as we can, but realistically I think it will be the end of the year before we get through the bulk of these. We have no interest in this taking longer than it needs to, and I appreciate that there is a customer at the end of every single one of these.

Viscount Chandos: We look forward to hearing the numbers at the end of the year.

Q7 **Lord Haskel:** The Finance Bill Sub-Committee heard evidence about your time to pay arrangements, and you have told us a little bit about your efforts to help people. What will you do about those who find the process too challenging? Will you force people to sell their homes and, if so, how many? Will you leave it to the bankruptcy practitioners to make people bankrupt? If so, again, how many?

Jim Harra: If I can pick up first on forcing people to sell their homes, we have made it clear, and we have published our policy, that we will not force anyone to sell their home or dip into their pension pot to pay either a disguised remuneration tax bill or the loan charge. We encourage people to engage with us so that we can sort out an affordable payment arrangement that does not involve that.

It is the case that if people end up in bankruptcy, how their assets are realised is not a matter for HMRC; it is a matter for insolvency practitioners. We have also said that we will do our utmost not to petition for bankruptcy in these cases. As far as I am aware, we have not petitioned for bankruptcy to recover a disguised remuneration or a loan charge bill. However, if people do not engage with us, or if we see evidence that they are trying to hide their assets from us, that is a step that we will consider taking. I recognise that once someone is bankrupt at the petition of HMRC or a creditor, or of their own volition, insolvency law kicks in and HMRC's collection policy does not apply. That is our policy and we stand by that. We have not forced anyone to sell their home and we will not do so.

From our perspective, time to pay is a very successful policy generally in debt collection. We have introduced during the course of DR simplified time to pay arrangements for people, but also bespoke arrangements for them. I am not precisely aware of the evidence that you heard in the Finance Bill Sub-Committee. If there is evidence of anyone having difficulty in engaging with us on a time to pay arrangement, I am very happy to look at it. From our perspective, it is part of our debt collection process, which runs very smoothly and very successfully.

Lord Haskel: If we come down to the amount of money involved, we have been told that the loan charge would produce £3.2 billion for the Exchequer. This came from the All-Party Parliamentary Loan Charge Group. We have also learned that this applies to all disguised remuneration. Is this not a misleading figure? What is the amount that you expect to receive from the loan charge exercise?

Jim Harra: I might ask Mary to come in in a moment on the details of the amounts, but there are two different aspects of the loan charge: there is how much is directly collected through people paying the loan charge, but there is also what the loan charge delivers in achieving its objective of encouraging people to come forward to settle their disguised remuneration bills. I think it is extremely difficult to unpick those impacts.

Between when the loan charge was announced in Budget 2016 and 30 September 2020, we have settled about 16,600 cases with employers and taxpayers, bringing in around £3 billion for the public purse. The loan charge will have played a part in spurring people to settle with us, so to some extent that yield can be attributed to the loan charge. There remain many cases to settle and cases where people now pay the loan charge itself, but £3 billion is what we have secured between Budget 2016 and the end of October 2020.

Mary Aiston: On the £3.2 billion that Lord Haskel mentioned, there is a published costing as to where that came from. It is a number that we revisit as part of the Budget and Finance Bill process and it is retested by our analysts, so it was their best estimate at the time of the legislation. The numbers are different. For example, the figure of how much we have brought into charge includes interest where tax is paid late and accelerated payment notices. The costing figure does not include accelerated payment notices, so there is quite a lot of technical differences in here.

Lord Haskel: Thank you. That will do on that point, Chair.

The Chair: Mary, I was left not knowing what the number was.

Mary Aiston: As I say, they are measuring different things. The £3.2 billion was the estimate at the time the legislation was brought in as to the additional return to the Exchequer, so that is the tax bit. The yield figures, the amount you bring into charge, includes interest, so they are measuring different things.

The Chair: What is the number that you have achieved?

Mary Aiston: The number we have brought into charge through settlements is, as Jim says, just over £3 billion so far.

The Chair: Thank you. Sorry, perhaps I was not listening properly.

Q8 **Lord Fox:** Thank you to our witnesses. I listened to your answer to Lord Haskel's question, Mr Harra, and what I heard was that you will not cause people to sell their houses, but if the debt management process does, so be it. I felt like that, because I was reading the FOI email dated 18 January 2019—email 26—and there is a line in there that says: "counter-avoidance will, working with stakeholders in debt management and wider CCG, develop a bespoke means-based settlement process. Further down in that process it is very clear that no negotiation on the value of the means-based calculation for the loan charge will be countenanced".

It seems to me that HMRC is simply washing its hands of the inevitable consequences that people will be made bankrupt by this, and probably quite a large number of them.

Jim Harra: I will let Mary pick up in a moment on the email exchange between counter-avoidance and our debt management team, but I did not say "so be it". HMRC has said that we will engage with debtors to put arrangements in place to recover their debts that are affordable, and in arriving at those arrangements we will not expect them to sell their home or to take money out of their pension pots early, and that is a policy that we abide by.

We have also said that we will strive to avoid causing bankruptcy, and we are doing that. However, the original impact note that was published in 2016 at the time of the loan charge acknowledges that because of resolving disguised remuneration cases and the loan charge, there may well be cases where people end up in bankruptcy, either at the petition of a creditor or by their own decision, because they feel that is the best thing for them. HMRC is striving to avoid petitioning for bankruptcy, and that should not happen to debtors who engage with us, are open about their assets and enter into affordable arrangements with us.

Lord Fox: Who signs off on forcing people to go into bankruptcy and selling their houses? Which department in HMRC signs off, or is it handed over to a debt management agency?

Jim Harra: We do not use any private sector companies for that purpose. We use debt collection agencies to supplement our desk-based resources for the early stages of debt collection, so contacting customers, but any decisions about enforcement action are taken by HMRC's debt management service and not by external suppliers or contractors. We have a specialist insolvency team that takes decisions about whether to petition for bankruptcy or to liquidate a company, which, relative to the number of debtors we deal with, we do in a very small number of cases. We are committed to making sure that in disguised remuneration cases we avoid that if at all possible, but it does require the taxpayers to engage with us.

I will pass over to Mary to pick up on your points about the email exchange.

Mary Aiston: The email exchange refers to means-based settlements. That discussion was to address a very specific issue. The committee will recall that, in the run-up to the loan charge taking effect in April 2019, customers had the opportunity to settle the tax owing with HMRC and by doing so not have to pay the loan charge.

We were conscious that there would be a small minority of people who wanted to settle with us but for means reasons were unable to do so, and in the unique circumstances of the loan charge were therefore in danger of having to pay the loan charge in some cases, which would be more money, purely because they did not have the means to settle with us.

That is an unusual set of circumstances. We were very keen to ensure that no customer was left in the position where they wanted to settle but were unable to. For that reason, we introduced what we referred to as a means-based settlement approach for that very small group of people. In fact, it is very much an effort to support customers not to get into a muddle and get into more difficulty than they already were.

On the point about not contemplating negotiation, to be clear this was a fact-based discussion and not some sort of horse-trading exercise where people could discuss with us how much they were up for paying. It was very much focused on the small minority who could not reach an affordable settlement with us even where we agreed to payment over a very long period. It was a specific issue for that particular group of customers.

Lord Fox: Perhaps you could clear up one issue, which is what is the mean tax under consideration figure across the constituency of about 50,000 people? I have seen numbers in the public domain that are massively lower than the number that appears in internal correspondence. Perhaps you could give me the number without the complicated qualifications around it.

Mary Aiston: I am afraid I may need to get back to the committee with the number, but what is worth bearing in mind is that there is a huge range of people in disguised remuneration.

Lord Fox: That is why I asked for the mean not the median. If you want to give me the median as well and the standard deviation, that would be very helpful.

Mary Aiston: I will talk to our analysts.

The Chair: I do not know that we can expect Mary to carry that around in her head, Lord Fox.

Lord Fox: No. I only asked that once she said she was writing, Chair. I do not want to be too mean.

Going back to the question on the pre-December 2010 people, I think you have told us that there are about 12,000 inquiry cases still open and only about 700 of those have contacted you, which leaves more than 11,000. I can do that sum. What is the target that you have for resolving those cases, and what is the timeline for clearing those up? As Mr Harra has said, there is a distinct line between those people and the rest. How are you going to clear them up?

Mary Aiston: We have written out to them this year. As you say, just over 700 have come back wishing to explore settlement, and we will pursue those. We continue to encourage the remaining customers to come and talk to us, because then we know whether they are interested in settling, whether they are confused, worried and need support, or whether they want to test our arguments in court and they would like to

litigate. We can support customers in all those positions, but it helps us if they tell us which camp they are in.

Lord Fox: We have already established that the law was uncertain before 2010. Are you saying, "Come and have a go if you think you're hard enough" here, or what? What is the process? Are you going to do litigation, having taken Mr Harra at his word that pre-December 2010 the law was not clear? How can you countenance legal recourse?

Mary Aiston: To finish that, we will see these cases through to a conclusion, and if that involves litigation we stand ready to do that.

Lord Fox: Even though the law is not clear?

Mary Aiston: The basic legal point here is that money you receive for doing your job remains your earnings, even if you divert it via a third party. We have always been confident that that was the correct legal position. What Mr Harra was taking us through is that there have been court cases on that and it was not until the Rangers case that the Supreme Court argued that. The basic proposition that you cannot be paid for doing your work and escape tax on it purely by sending it via an offshore trust is a view that we have taken consistently throughout.

From the customer's point of view, we do not expect our customers to be lawyers or tax experts, but we are encouraging them to step back to say, "If I arrange my affairs in this sort of way, where previously I used to receive my money direct and pay tax on it, and now by diverting it via a trust offshore I do not have to pay tax, is that a position I might reasonably expect HMRC to challenge?"

Lord Fox: Finally, to date, that encouraging process has only wheedled out a small percentage. What further encouragement do you plan before wielding the legal stick?

Mary Aiston: As I say, we have written to everybody. The opportunity to settle remains open. The offer of support for people who are struggling and for extended payment terms for those who need them stand all the way through this. During the rest of this financial year, our plan is to move towards issuing closure notices. I do not expect to get to that point for everybody this financial year, going back to the complexity of the underlying schemes and the importance of getting those closure notices right.

Lord Fox: Would those closure notices demand immediate payment?

Mary Aiston: Those closure notices give the customer something they can appeal against if they wish to litigate. The payments are a slightly different matter. We stand ready. If customers wish to test their case in court, that is their legal right. It will take time, just so we are clear. Where we need to go through further litigation, as the committee would expect, that will take time.

Lord Fox: I could go on, but I will give up at this point.

Q9 **Lord King of Lothbury:** I am afraid I will revert to the question of the legal basis for all this, because I am getting more confused as the session goes on. I thought at one stage we were told that there was a clear difference between pre-2010 and post-2010. The last answer seemed to me to confuse that and to make it clear there was no clear distinction between the two periods.

Mr Harra, the basic position you have given us, which I understood, was that you felt that now the law was clear in principle it was not a question of lack of legal clarity, but that each individual case was different, so there was a question about whether the law applied and what it meant in any individual case. That is why it was so complex. If that is the case, why did you repeatedly ask your staff for clarity on the legal basis? If the underlying principle was clear but it all depended on the individual circumstances, you could not possibly have asked your staff to send you a general basis for the legal basis for your procedures here. What were you looking for when you sent that email?

Jim Harra: First, I will try to address the 2010 point. In December 2010 the Government announced further anti-avoidance legislation, which is now in Part 7A of the Income Tax (Earnings and Pensions) Act for disguised remuneration schemes. In Lord Morse's finding, that should have put beyond doubt in anyone's mind that these schemes could not work to save tax. Therefore, he concluded that the Government were within their rights to subsequently apply a loan charge for loans that were entered into after 2010, because it should have been clear to anyone who entered into loans after 2010 that they could not have the tax benefit.

For the pre-2010 years, although HMRC had been arguing for a long time that those schemes also did not work, it was not until 2017 that the Supreme Court ruled in Rangers that they did not work. Lord Morse concluded that the Government should not apply the loan charge to those pre-2010 loan arrangements, because although HMRC was clear that we were challenging them and arguing that they did not work, there was no great overwhelming court decision that said so until 2017 when we got the Supreme Court decision in Rangers.

That was the decision that he made in his review, the Government accepted that, and the loan charge has been amended to apply only to loans from 2010. That means that for the pre-2010 years we must rely on applying the Rangers case and other legal arguments and that everyone has a right to challenge us if they disagree with us, as Mary mentioned.

On my email, I am afraid I will go back to what I said before. It was an internal email. It was intended to challenge my people to do better at getting HMRC's line to cut through in the public discourse. There was a lot of misinformation being flung around by campaigners, including that we did not have a legal basis for what we were doing. It was an expression of my frustration that we did not seem to be able to get our line to cut through in that discourse. It was not questioning whether we did have a legal basis for what we were doing, because I know that many experts

have applied themselves to it over the years. I think it was a sense that that is okay, but that as well as working the cases we must refute the misinformation. That was not happening.

Lord King of Lothbury: If the legal position was as clear as you suggest it is, it should not have been difficult to have written a short note explaining that, referring to previous rulings. Why were your staff so incapable of coming up with a credible explanation to you of why the legal position was not clear?

Jim Harra: First, as I have said, we are clear that we have strong legal arguments that we stand by and which we believe will be successful in the cases that we are working, but it is not straightforward to express that in general terms because there is a multiplicity of different schemes and fact patterns. The basic law is clear, which Rangers reaffirmed, which is that this is employment income and employment income is taxable on the employee. The basic law is clear that employers are supposed to operate Pay As You Earn, but there are circumstances in which HMRC can disapply Pay As You Earn or refuse a credit for Pay As You Earn to employees. That is the basis upon which we have been proceeding.

What the committee is doing and what the campaigners are doing is taking one internal email that I sent to my people, probably with a sense of frustration, urging them to do better in cutting through on our line, and overplaying its meaning and significance.

Lord King of Lothbury: Having worked in a large bureaucracy in the government field myself, I understand that expression of concern and frustration on your part. My experience suggests that it also reflects a genuine lack of credible response from the organisation that it was not quite as clear as you might have wished it to be. Thank you very much for your answer.

Jim Harra: It was certainly not as clear as I wished it would be. There is no doubt about that.

The Chair: While we are on the subject of the emails, Lord Fox wants to ask a question.

Q10 **Lord Fox:** One of the problems with email, as I am sure you must know, is that they are FOI and one of the phrases that was knowingly put in an email on your part was the words "elephant in the room". Perhaps you can use this platform to explain what the elephant was and which room you were referring to.[2]

Jim Harra: Sorry, you will have to tell me what the email says, because I do not recognise that.

[2] The email in question was drafted by a member of staff in HMRC's Solicitor's Office and Legal Services area. Please see this letter from Lord Fox to Jim Harra (19 July 2021): https://committees.parliament.uk/publications/6968/documents/72782/default/ and this letter from Jim Harra to Lord Fox (22 July 2021): https://committees.parliament.uk/publications/6969/documents/72783/default/

Lord Fox: I do not have the words in front of me, but there is a response and you say, "We all know what the elephant in the room is." It seems to me to be a strange phrase to use in an email that you know can be made public, unless you wanted to obscure something from being put in that email otherwise. I am sure you would want to disabuse us of that if you are able.

Jim Harra: First, I can assure you that when I send emails I do not have regard to them being made public, so there is no wording in them that is couched in terms because of any concern that they will be made public. I am probably well known within this department for my candour in my emails, hence the comments earlier. I am afraid I cannot—

Lord Fox: I recall that it is to do with contractors, and identified contractors and possibly contractors that were working for HMRC.

The Chair: Perhaps, Lord Fox, we can let Mr Harra go on the elephant hunt and write to us to answer the question.

Lord Fox: It looks to be in the area of HMRC contractors. That might be a starting point.

Q11 **Lord Monks:** The off-payroll reforms and changes that have been made started last April. We understand that there are large numbers of people entering into them. Are we in a situation where there will be potential victims piled up, where new people will be in the difficulties that we have been having, or do you have measures in place that can avoid that problem?

Jim Harra: Again, I will let Mary come in with more detail about our approach, but you are right that we see a continuing market focused on employment-based schemes with people continuing to get involved in them. The position we are now in is that the tax lost to avoidance has reduced significantly in recent years from, I think, £3.7 billion in 2005-06 to £1.7 billion in 2018-19. To that extent, we have had a great success in driving down avoidance, but there are now more people involved in avoidance than there were just a few years ago. That is because the promoters have increasingly moved to a mass market which they are targeting in employment-based schemes. It is the case that people continue to get involved every day.

We have a three-pronged strategy to that. One is to tackle the promoters, and we have recently been given more powers to do that, but the promoters that we are left with now in the avoidance market are the hardcore and they are adept at hiding behind front companies and hiding offshore. They are really difficult to tackle.

That is one of the approaches in our strategy. Another is to communicate both generally and specifically with the taxpayers concerned to alert them to the dangers so that they can stay away from these schemes or, if they do get into them, that we find out as early as we possibly can and contact them specifically to offer them support to get out of it.

The third approach is that we will continue to take action against cases where we have lost tax to recover it. Mary can perhaps elaborate on that.

Mary Aiston: I think it is also important to remind ourselves that it is quite possible to comply with the off-payroll working rules and not get into tax avoidance, but I recognise the risk that you describe. Our communications campaign has been running since the autumn with a message about tax avoidance under the banner of "Don't get caught out", and we are continuing that through the summer. We are indebted to the Low Incomes Tax Reform Group, which has been a great help to us in giving its feedback on what messages cut through for its client group, who are people on low incomes.

We will be adding to our messaging this year with messages about the importance of checking your payslip and understanding your tax affairs. That will continue to run through, and we are taking every opportunity to share that—for instance, including targeting websites that are often visited by contractors, as well as getting articles into things like *Nursing Times* and other areas where we can reach out to customers who are most at risk. As we mentioned, we also issued a communication in April 2021 to explain and support workers in umbrella companies to understand how that operates so that they can be better informed.

As Jim mentioned, we write to people whenever we can spot, using our Pay As You Earn data, that we think they are in avoidance to give them the opportunity and the support to come straight back out. Some take us up on that and some do not. We are also working to engage with people like employment agencies so that they can spot the warning signs and do not use umbrella companies that are selling this sort of thing, and of course we are tackling promoters.

It is an ongoing piece of work to tackle avoidance, which is why it is important that we tackle all aspects of it, including of course the promoters, getting the communications out to the customers, and resolving matters for people who have used avoidance schemes and have therefore not paid the tax that is legally due.

Lord Monks: You mentioned promoters. Is it not the case that the penalties for promoters will only take place prospectively? Is that fair when individuals have been pursued retrospectively for payment?

Mary Aiston: Picking up on individuals, we seek the tax that was due for the year that it was avoided. For promoters, the new legislation that is coming in the Finance Act 2021 is prospective, but that is a build on legislation that already existed, and we remain keen to take any legal avenue open to us to tackle and disrupt promoters. The Finance Act 2021 legislation will enable us to do that more effectively and quickly. As it was passing through Parliament we have been doing intensive work to make sure that we are ready to use it.

I am realistic that over the same timeframe the promoters will have been doing intensive work to see if they can find a way round it or a loophole

in it, or how they will try to dodge it, because those are the people we are dealing with. They are very determined, but so are we.

Lord Monks: We understand that loans subject to the loan charge have been sold on and almost have a secondary market developing in this area, and that the new owners are seeking the repayments of amounts of tax from you. Is this something that you can avoid? Is this something that we can stop? Does this have to continue? It seems wrong to me.

Mary Aiston: It seems very wrong to me too, so this is a developing area. From what we know, typically this is happening where a promoter has sold its loan book on to a third party, typically offshore. From what we understand so far, they are then seeking to recover usually part of the loan, the original loan to the customer, and we are aware that that is going on.

We recognise that risks serious financial pressures for customers and all the emotional distress that goes with that. We recommend to customers that they check their paperwork and that they seek legal advice on this. The Low Incomes Tax Reform Group has put out some good advice for customers in this position, and we also hope to get some advice out very soon.

Q12 **Baroness Kramer:** Can I come in on this point, Chair? I think it is important. I have understood it slightly differently. The basis of action under the loan charge has always been on the principle that these were not genuine loans; that they were essentially disguised remuneration.

The argument on the other side has been that they are legitimate loans. When they are sold on and when they are collected, you would have thought that that is a characteristic of a legitimate loan. Something cannot be both disguised remuneration and a legitimate loan so that you pay taxes on it as if it was income and then you pay it back to someone because of its characteristics as a loan.

I am trying to understand how you deal with conflict. We now have people who say that they have always argued that this was a legitimate loan, and here they are paying it back, but HMRC has come in and said that that is not a legitimate loan and they need to pay tax on it. We are getting people crunched between both those worlds. Are you repaying the tax in circumstances where the loan is demonstrably being repaid, or how are we dealing with that to get a properly fair outcome?

Jim Harra: Generally speaking, we have not relied on arguing that these were not loans. In fact, the basis of the loan charge, I think, was a recognition that there are loans here. The loan charge legislation says that unless you have repaid your loan by a certain date the loan charge will apply to the balance that is outstanding at that date. It anticipated that repaying loans may be something that people do. Whether or not users of these schemes are liable to repay the loans to the people who have bought these loan books is under dispute. I understand that there are two class legal actions being taken by people who argue that these

are not repayable. That is a matter for them, and we will have to see how that plays out.

From our point of view, while there have been some cases—I think there was a decided case called Boyle—that in some limited circumstances loans simply were not genuinely loans. But by and large when it comes to our arguments that this is remuneration, we have not argued that they are not loans and we have not relied on that.

I fear that this was one of the risky features of these schemes from the point of view of their users: that they involve setting up loans. There was always a risk that someone was going to come along later and say, "Well, in that case I'd like that money" and, as I understand it, users often relied on a promise that that would not happen.

That is why I think the Low Incomes Tax Reform Group is saying to any users who are now receiving demands for repayment of their loan to check their paperwork, to check who advised them, because they may find that they have arguments that it is not repayable or that someone did not advise them correctly, and therefore they have recourse. As I say, I believe that there are two group actions disputing that.

Ultimately, HMRC was not party to these loans. It is a matter between the user of the scheme and the person who now claims that they have title to that loan and wish it to be repaid, but we recognise that in resolving the use of disguised remuneration and getting people back into a state of equilibrium, this is another thing that they must deal with and they need advice, support and assistance on that.

We very much welcome what the Low Incomes Tax Reform Group has put out to help people. As Mary says, we hope to put out some advice to people about what they should do if someone argues that they should repay their loan. HMRC is not a party to what is now happening with these.

Baroness Kramer: I am sorry, but I struggle to understand how the principle of fairness is being applied if it is a loan that must be repaid but it will be taxed as if it was a non-repayable distribution of income. I am struggling with that, and that clearly is the position that HMRC is taking. I am quite troubled.

Jim Harra: I can well understand why you would struggle with that. It is a new thing that these users must grapple with, but it is a consequence of the arrangements that they have entered into, which are not arrangements that HMRC is a party to. They will have to do what LITRG have advised them, which is look into whether in fact they can withstand or reject these demands. As I say, I understand that two large groups of users are doing just that.

The Chair: Mr Harra, are you not doing a bit of a Pontius Pilate here? Do you think it is fair to retain the tax paid on a loan if that loan is subsequently being repaid?

Jim Harra: First, I am not doing a Pontius Pilate. We did not—

The Chair: You are. You are saying that they need advice and it is not a matter for HMRC, but the fact is you took money from people in tax on that loan on the basis that it was not a loan. Now, if the loan is subsequently repaid, why should they not get the tax back?

Jim Harra: HMRC did not invite or encourage anyone to take part in these schemes.

The Chair: That is not the point.

Jim Harra: Having done so, they are now facing this issue, which they must deal with. If you take the loan charge, it was envisaged that if loans were not repaid by a certain date, that was when the loan charge crystallised. There is no provision that if something then happens after that date, anything changes.

The Chair: But it was your action that has created that difficulty.

Jim Harra: Absent the loan charge, our recoveries in disguised remuneration do not rely on us arguing that these were not genuine loans. We have never taken that position as the basis for the taxation.

Q13 **The Chair:** Okay, fine. I think Lord Fox has one last question, but I have one question that has been running through my mind throughout this discussion. Why do you call the people whose tax affairs you are dealing with customers?

Jim Harra: As a general rule in HMRC, the people who we deal with we call customers.

The Chair: Why?

Jim Harra: There are a number of reasons for that. First, it can become quite convoluted to call them other things, because there are a variety of people. There are taxpayers, there are tax credit claimants, there are child benefit claimants, so it is a term that fits all. Also, it is to send a message internally to colleagues that we are providing a service to people. We must give them a service, we have to support them, we have to enable them to meet their obligations. Therefore, thinking of us as providing a service to customers is part of the culture.

The Chair: I was brought up to believe that the customer was always right. Lord Fox, you get the final word.

Q14 **Lord Fox:** It is whether Mr Harra can give us assurance that HMRC has not employed contractors who are covered by tax avoidance schemes of this nature. Can he give us 100% assurance that is the case? If not, what has HMRC done about it?

Jim Harra: We have gone into quite a bit of detail on this in the past and we have published a document that sets out the experience of our own contractors. We most certainly do not, as an engager, get involved in tax

avoidance schemes. We have discovered that a small number of our contractors have been involved in these schemes without our knowledge. When we find those people and they are still working for us, we immediately terminate their engagement, or if they are working for one of our suppliers we tell the supplier that they must be taken off our contract. In addition, we treat them in the same way as any other taxpayer.

There have been about 15 contractors working in HMRC who we have discovered have used schemes while they have been working for us. We periodically rerun the exercise based on the latest information we have about the taxpayer. We take the information that we have about who is working for us as contractors and we mash that together with the data that we have about taxpayers and identify whether there is an overlap. If there is and that means that they have been using an avoidance scheme, we step in to terminate that straightaway. The last two times we ran that exercise, we did not find any.

Lord Fox: Have you rolled this out across all Whitehall, so that all the other departments are doing a similar process to yours?

Jim Harra: If a department is using a Crown commercial framework, there are tax compliance obligations built into the contractual terms with the supplier of contractors or the supplier—

Lord Fox: But that framework is not universally applied, is it?

Jim Harra: No. A department can choose whether to use one of the framework contracts or not. The additional steps that we take of mashing the taxpayer data together with our commercial data is something that only HMRC is in a position to do. We do not share that taxpayer data.

The Chair: We have to draw a line now and thank Jim Harra and Mary Aiston for answering our questions. We ought to note that the sub-committee and the main committee are very grateful for the way in which HMRC has responded to some of our recommendations, including providing more information, help and support, and for the efforts that have been made to respond to some of our recommendations and, indeed, your success in collecting tax from people who were deliberately avoiding tax and from whom tax payments should have been made to HMRC. However, we are concerned about the group that you have identified also, which is one of the reasons why we wanted to hold this further session. Thank you for spending an hour and a half with us, and I thank members of the committee.