



Treasury Committee

Oral evidence: [HM Revenue and Customs and HSBC, HC 1071](#)

Wednesday 25 February 2015

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Members present: Mr Andrew Tyrie (Chair); Rushanara Ali, Steve Baker, Mark Garnier, Stewart Hosie, Mike Kane, Mr Andrew Love, John Mann, Jesse Norman, Teresa Pearce, Mr David Ruffley, Alok Sharma, John Thurso

Questions 1 - 300

Witnesses: **Douglas Flint**, Group Chairman, HSBC Holdings plc, and **Stuart Gulliver**, Group Chief Executive, HSBC Holdings plc, gave evidence.

Q1 Chair: Thank you very much for coming to give evidence to us this afternoon. There is quite a lot to get through and some quite extraordinary developments that we have had over recent days and weeks that relate directly to HSBC. I would like to begin with some questions to you, Mr Gulliver. Why did you feel the need to put in place such extraordinary arrangements for your tax affairs, with a Panamanian company being used as well as Hong Kong remuneration being channelled through Switzerland?

Stuart Gulliver: Thank you, Mr Chairman. I welcome the chance to explain that situation but first, if I may, I would like to put on the record an apology from both myself and from Douglas for the unacceptable events that took place at our private bank in Switzerland in the mid-2000s, which is clearly an apology we would like to make to you all, to our customers, our shareholders and the public at large. It clearly was unacceptable. We very much regret this and it has damaged HSBC's reputation.

Q2 Chair: Just to be clear, what are you apologising for?

Stuart Gulliver: The lack of controls and the practices that now judged with the benefit of hindsight we would not be at all comfortable with if they were happening today and that have clearly resulted in damage to trust and confidence in HSBC, have created further

reputational damage to our firm and have therefore hurt clients, customers, shareholders, our staff and people at large.

Q3 Chair: Who is doing the apologising here?

Stuart Gulliver: I am, as the Group CEO of HSBC.

Q4 Chair: Personally. So you feel personally responsible for this?

Stuart Gulliver: I have been the Group Chief Executive since 2011. I have a collective responsibility for the operations of the group. I have been in the group for 35 years.

Chair: I was asking about personal responsibility.

Stuart Gulliver: I am responsible for cleaning it up so I have made substantial changes, which hopefully we will get the chance to explain to you all in the course of this afternoon's events. I was not running the private bank at that particular point in time but I have spent 35 years with HSBC so there is a proximity issue but I have not worked for any other company.

Q5 Chair: You have said that you are trying to clean everything up, but some years ago you were certainly muddying the waters with these extraordinary tax arrangements, weren't you?

Stuart Gulliver: Let me just explain this, if I may. I can understand how people find these arrangements kind of unusual. I grew up in Plymouth, I went to a state school, so I can understand how the public would find them unfamiliar and rather strange. I left the UK in 1980 to join HSBC's international staff with the intention of a 30 to 40-year career overseas. I have worked in several global locations but for the majority of that time I have been based in Hong Kong and it is my home. I have property in Hong Kong, a home in Hong Kong, and I will return to Hong Kong at the completion of my assignment here. My wife and I are both permanent residents and have right of abode in Hong Kong and that is where I will be living post this assignment here in the UK. I am therefore a Hong Kong-domiciled person and if you look at HMRC's guidelines on this, which were published in October 2013, on page 32 you can see how that can be achieved.

Q6 Chair: My question was why you felt the need as a Hong Kong-domiciled person to create a Panamanian company.

Stuart Gulliver: First of all, there was no tax advantage or purpose whatsoever to the Panamanian company. As a matter of fact, there was no tax purpose to it. It was a Panamanian nominee entity constructed purely to give me privacy.

Q7 Chair: I am asking you why you did create it.

Stuart Gulliver: Purely to give me privacy within my own company.

Q8 Chair: Why did you need privacy in your company?

Stuart Gulliver: At that point, 1998, I was working in Hong Kong and my compensation was not a matter of public record. Once I became a director of HSBC in 2008 my compensation was then public. That structure, that Panamanian entity, was wound up in 2009 because I was then a director of HSBC and all of my compensation was published. So it was purely about privacy from colleagues in Hong Kong and Switzerland and it had no tax purpose whatsoever.

Q9 Chair: Why did you need privacy from your colleagues in Hong Kong?

Stuart Gulliver: First of all, in Hong Kong we had a computer system back in the day that enabled everybody to inquire on staff accounts.

Q10 Chair: This was not the consequence of a glitch, as has been reported in the press?

Stuart Gulliver: No, it is not a computer glitch at all. It was the way the system in those days was designed.

Q11 Chair: The system was arranged so that everybody could see everybody else's pay. Why should you be exempt from that?

Stuart Gulliver: I was among the highest paid people and I wished to preserve my privacy from colleagues, nothing more than that. There was no tax purpose to it. My tax in Hong Kong was deducted at source.

Q12 Chair: It is quite a lot, isn't it? In large institutions such as HSBC a high level of transparency about remuneration is generally required and, as you say, you were subsequently promoted and then your remuneration became a matter of public record in the accounts.

Stuart Gulliver: Absolutely, but this was 10 years earlier than that.

Q13 Chair: Yes, it may have been but the point that I am making and I am asking you is what exactly led you to feel such a great need to conceal your remuneration from your colleagues at that time?

Stuart Gulliver: Nothing beyond the desire for privacy and for people to be unaware, other than the bank, the human resources department and the board of the day, as to what my compensation was. There was no tax purpose to the Panamanian nominee entity at all, none.

Q14 Chair: Why go to Panama? Aren't there a few other watering holes you could have chosen?

Stuart Gulliver: Looking back on it from 15 years later, clearly Panama looks quite strange but it was simply a nominee entity. I did not choose Panama; it was a nominee entity that was obviously the sort of structure that at that particular time our Swiss private bank was putting in place.

Q15 Chair: You do understand how this looks today, do you?

Stuart Gulliver: I understand that it looks puzzling to people and it looks difficult and suggests that there might have been other reasons related to tax, but there were not. I have been a UK tax resident since 2003; I have paid UK tax on my worldwide earnings for HSBC.

Q16 Chair: Does that include shares and the capital gains on any shares?

Stuart Gulliver: Correct. I have paid UK tax on my HSBC dividends; I have paid UK capital gains tax on any shares that I have sold; I have paid UK tax on any UK situs assets. If you look in the annual report and accounts and look at the fixed and variable incentive compensation, I have paid the marginal UK tax rate throughout that time on those numbers and I have also paid the remittance-based charge, £30,000 a year, which is clearly directed by HMRC to cover any overseas investment income that stays overseas. So I have paid UK tax on my worldwide earnings for HSBC, all my HSBC dividends, all shares that I have sold.

Q17 Chair: Mr Flint, would you agree that as Chairman you have suffered some reputational damage as a consequence of the disclosure of your Chief Executive's former tax arrangements?

Douglas Flint: Yes.

Q18 Chair: As finance director, you will have been aware of these arrangements, won't you?

Douglas Flint: I was not aware of the private arrangements. I was aware that up until probably a decade or so ago what people got paid, apart from the top five, I think it was, under the Hong Kong listing rules was a private matter. So I would not have known ahead that Stuart was among the five highest. Once the Hong Kong rules required that to be disclosed, they did not require the identity of the individual but, given his role, I guess there was fairly open speculation or understanding that he would have been one of the top five, but before that what people got paid was a private matter.

Q19 Chair: The board will have a risk committee.

Douglas Flint: It does.

Chair: And you have suffered some reputational damage. Has that risk committee examined the confidentiality arrangements for remuneration of your senior staff?

Douglas Flint: It has looked at this specifically because of the press articles in recent weeks. We are about the most transparent bank company today in relation to remuneration. We publish what used to be the table required under the UK's Companies Act.

Q20 Chair: It is true you do have quite a high level of transparency, Mr Flint, but I am just trying to get at whether you have in place arrangements to handle this specific risk at board level. Damage has been done to your bank and one would hope that a risk committee would pick this sort of thing up by asking senior executives whether there is anything about their current or past tax arrangements that could do some damage or disclosure arrangements.

Douglas Flint: Maybe we should look to see whether we should do more, but we pay our staff very simply now into their bank accounts that we require them to have with the group and thereafter it is their own affairs what they do.

Q21 Chair: So the answer is no, this committee has not looked at it?

Douglas Flint: Not specifically, no. Can I make one point though, if I may?

Chair: Briefly, if you will, because a lot of colleagues will want to come in.

Douglas Flint: Very briefly. When Stuart became Chief Executive he was living in the UK; he was running global banking and markets; he was the chief executive of Europe. When he took on the larger responsibility covering the group he had a principal office in Hong Kong. He became the chairman of the Hong Kong and Shanghai Banking Corporation. At that time Stuart quite openly agreed—and it was indeed what the board wanted but Stuart volunteered—that he would be fully taxable in the UK, so he did not seek to take his office to Hong Kong, he did not seek to have a split contract. He simply said, “I am going to be the chief executive of the group. The group is headquartered in the UK. It will avoid any obligations that I have to count days. I will be fully tax resident in the UK and tax resident in Hong Kong on that income”.

Chair: I think that point has already been in the media.

Q22 Jesse Norman: Mr Gulliver, you have cast yourself as the new broom sweeping out the Augean stables at the HSBC. You have said that the purpose of your tax arrangements with a

Swiss bank account registered to a Panama subsidiary was purely to avoid disclosure. Why didn't you use a UK nominee company to avoid disclosure?

Stuart Gulliver: The account is in Switzerland. The nominee structure is not relevant in the sense that the account is actually in Switzerland. Yes, to create privacy there would have been a number of other ways to create privacy.

Q23 Jesse Norman: Why not hold the account in England in that case?

Stuart Gulliver: Because I am living in Hong Kong, I am Hong Kong-domiciled and I am non-resident at that point in time.

Q24 Jesse Norman: Why not hold the account somewhere that does not have a favourable tax regime?

Stuart Gulliver: As I say, at the time this account was opened I was working in Hong Kong, living in Hong Kong, was non-resident and had paid Hong Kong tax on those amounts.

Q25 Jesse Norman: A Hong Kong nominee company presumably could have done the job for you.

Stuart Gulliver: Yes, any nominee company. The point is not actually the nominee company. The point is the fact that at that time I was non-resident and I am now resident and non-domiciled, because it is the Hong Kong and Shanghai Banking Corporation and for 35-year veterans to be Hong Kong-domiciled is not that unusual.

Q26 Jesse Norman: Did HSBC or any part of it advise you to use the Panamanian-Swiss structure that you adopted?

Stuart Gulliver: No one gave me advice. It was simply a process that took place.

Q27 Jesse Norman: Thanks. How long were you paid via a split contract?

Stuart Gulliver: I have not been ever paid by a split contract.

Q28 Jesse Norman: So it is only a single contract paid with money into it?

Stuart Gulliver: Correct. I am taxed globally on my worldwide activities for HSBC. I do not have a split contract.

Q29 Jesse Norman: Did you receive any tax advantage from your non-domiciled status?

Stuart Gulliver: I have the same tax advantage that any non-dom has, which is my overseas assets are taxed on a remittance basis and I therefore pay the £30,000 remittance basis charge each year.

Q30 Jesse Norman: Well, only since 2010. Before that you would have paid nothing. You would have had a non-domiciled status. What tax arrangement would that have conferred for you for the previous 30 years?

Stuart Gulliver: For most of the previous 30 years I was living in Hong Kong and so was non-resident, and I have followed absolutely the letter of the law of the non-domiciled rules that are published under the fiscal laws of this country.

Q31 Jesse Norman: To be clear, the difference would have been the tax difference between the marginal tax rates in this country and the marginal tax rates in Hong Kong over those 30 years.

Stuart Gulliver: Not over those 30 years because I have not been in the UK for those 30 years.

Q32 Jesse Norman: Right. It is a rather difficult thing to be non-dom. You have to have a parent who is non-domiciled or you have to adopt it by choice, and you seem to have adopted by choice. Is that right?

Stuart Gulliver: That is correct. I have permanently made my home in Hong Kong and I left in 1980.

Q33 Jesse Norman: You don't have any other ties with this country: you don't own property; your children don't go to school here or haven't?

Stuart Gulliver: My children don't go to school here. My children have gone to school here. They have been boarding here, but I have made a choice to be domiciled in Hong Kong and meet the criteria that are set out quite clearly on page 32 of that tax advice document.

Q34 Jesse Norman: You have renounced all ties with this country as part of that process?

Stuart Gulliver: I have been posted back here by HSBC and I will return to Hong Kong.

Q35 Jesse Norman: How long have you been in this country as a non-dom?

Stuart Gulliver: I have been back here since 2003.

Q36 Jesse Norman: So that is 12 years. How long do you expect to continue to be here under your current posting?

Stuart Gulliver: Until such time as I retire from this job.

Q37 Jesse Norman: So it could be 20 years or it could be longer?

Stuart Gulliver: Until such time as I retire from this job.

Q38 Jesse Norman: The anomaly is that you could have worked for a UK head office bank for 50-odd years, you could have lived in this country for 20 years and yet you could still be registered as a non-domicile for tax purposes?

Stuart Gulliver: But the important point is that I have paid UK tax on my worldwide earnings for HSBC, my dividends on my HSBC shares and the capital gains tax on my HSBC shares during that entire period. The amount of tax I have paid is the fair and appropriate amount of tax because the absolute lion's share of my earnings has been taxed at UK marginal tax rates.

Douglas Flint: The Hong Kong and Shanghai Banking Corporation was not a UK company until a holding company was put on top of it when it came to the UK in 1992 and acquired Midland.

Q39 Jesse Norman: Until that time from your point of view, Mr Gulliver, you had successfully taken yourself offshore for tax purposes.

Stuart Gulliver: I was working in Hong Kong, in Japan, in the United Arab Emirates, in Malaysia for the bulk of my working life until I was posted back here, so I have spent as much time of my adult life living in Hong Kong as I have in the UK.

Q40 Rushanara Ali: Mr Gulliver, you recently said that, "It seems to me that we are holding large corporations to higher standards than the military, the church or the civil service". What is the basis of these comparisons?

Stuart Gulliver: I think that that probably didn't land particularly well so I appreciate the opportunity to clarify it. When I made that comment, what I was trying to convey is the challenge that any leader encounters when they are not in the same place as all their employees all the time. What matters in running a company that is in 70 countries, has 257,000 people and 52 million clients is that you hire the best people; you put in place rigorous controls, processes; you have a values system. There is accountability for breaches of those values. You have a robust compliance function and you structure the

company in a way that you can control it, and we have done a lot of that. Douglas and I have massively restructured this firm since 2011: we have sold 77 businesses, we have cut the headcount from 310,000 to 257,000. The point I was making is no system will ever be totally infallible and no leader of any organisation could ever guarantee that it would be, but what I was trying to say—

Q41 Rushanara Ali: But Mr Gulliver, no other institution that you have used as a comparison has presided over the kind of controversy and scale of what has happened with the Swiss example.

Stuart Gulliver: I completely agree that the comparisons were wrong. What I was merely trying to illustrate is I was answering a question that said, “Could you 100% guarantee this could never happen again?”. What I was really saying is, “We have put in place systems, processes, controls, people and consequences and a values network to reduce to a very minimal level. It is not possible to give 100% guarantee but we absolutely believe we are now capable of meeting all of our stakeholders’ expectations”. I agree the comparisons were not right.

Q42 Rushanara Ali: Let’s just for argument’s sake accept that you are making genuine attempts to correct what went wrong in past, but in the light of the evidence you were giving to my fellow member earlier where all sorts of rather complex measures seem to have taken place in your own affairs, do you really believe that the public will have trust in your management and leadership in the light of what has happened?

Stuart Gulliver: I think you have to look at the track record of what I have done since I have been the Group CEO of HSBC. I took charge of the company on 1 January 2011 and I have completely restructured it. We used to be run as 88 separate countries, reporting into the CEO. We used to be run basically with individual country fiefdoms. I have changed that from a federal structure to a unitary structure; I have sold 77 businesses; I have substantially reduced the headcount of the firm. We will talk later about what we have done to improve the controls in the private bank. So I think if you look at the track record of what I have done, what I would hope the British public could see is that the action steps I have taken leave HSBC in a better place today than it was five years ago.

Q43 Rushanara Ali: Thank you. Can I turn to Mr Flint? You have been on board for a considerable length of time, since 1995 is my understanding. When and how were the risks arising from HSBC’s Mexican and Swiss acquisitions and the subsequent operations debated by the board?

Douglas Flint: Can I just say in opening that I share the comments that Stuart made at the beginning about the shame we feel with what happened in Switzerland and I take my share of responsibility? In relation to the acquisitions, one of the most challenging aspects of considering any acquisition of scale, and it is a reflection that—

Q44 Rushanara Ali: Sorry, was this debated at all?

Douglas Flint: Yes, it was. What I am saying is that one of the most difficult aspects of any acquisition is looking at the execution risk that takes place when you incorporate an organisation in a different country, potentially with a different culture based on nationality or whatever.

Q45 Rushanara Ali: But Swiss bank accounts, it is famous for—I don't understand your answer. Could you just answer my question, sir: when was this debated in the board?

Douglas Flint: As the acquisitions were considered, our ability to integrate them and control them was discussed before we made a commitment to acquire Mexico or the banks that we acquired, of which the Swiss private bank was a subsidiary.

Q46 Rushanara Ali: What sort of risk assessments were made, if any?

Douglas Flint: A huge amount of integration planning was done. We did the due diligence that we were able to do on every acquisition. It depended on whether it was a public company or not as to whether we could get access to the really detailed information. If it were a public company, there is a very limited amount of information that one can get access to. But the most important thing is in every acquisition of any size there is a 100-day integration plan that looks at every single step that will be taken across every aspect of the business, to get in there, to understand the risk, to understand the control system and begin to embed a control system that fits our standards if we believe that that is necessary. All of the acquisitions that you have mentioned came with a significant challenge of integration and that was part of the decision metrics as to whether we could do that, whether we had the human resources, the technology resources and the risk appetite for that integration, and that was part of the decision-making process. Then we had to execute.

Q47 Rushanara Ali: What is not clear to us is how much action was taken to mitigate the risk and how much complicity there was, unwittingly or wittingly, in turning a blind eye? I am not really clear about that and perhaps the Chairman will be able to pick up on this point.

Can I finish off with a couple of questions about the safeguards that, Mr Gulliver, you have mentioned, the changes that you have put in place? You have alluded in your comments recently, and today as well, to the fact that there are not sufficient guarantees. How confident do you feel as a board and as a senior management team that this won't happen again, given what you are saying about some of the gaps?

Stuart Gulliver: That is a very fair question. I would say that we feel confident that we have made considerable changes to our Swiss private bank. We have reduced the number of clients that we have in the Swiss private bank from 30,000 to 10,000. We have reduced the assets under management by 42% from 118 billion to 68 billion. We have reduced the number of countries in which we will actually bank clients from 150, aiming to get it down to 38. We have a tax transparency policy in place. We did a special programme on

UK res non-dom clients requiring certification from their lawyers. We have a cash handling policy in place now, some of which caused a bit of a storm in the UK last year because we applied the same restrictions on cash everywhere. We have ended hold mail accounts and bearer share accounts. We put in place what we call global standards but it is a policy on money laundering and sanctions, which is what we had to do after our deferred prosecution agreement. We have exited external assets manager. It is very significant.

Q48 Rushanara Ali: You mentioned some of the things that you have done. One of the concerns that the public has—partly because they are not party to the decision-making process you go through when you withdraw bank accounts from certain parties and not others—is it has been demonstrated that one of your subsidiary banks has gone out of its way and is complicit in tax evasion; in other cases there are complaints about legitimate bank holders who have had bank accounts withdrawn. How is the public to trust you when there is such lack of transparency that you are doing the right thing in the light of what has happened? In particular the process of derisking has exposed this, where banks are withdrawing from legitimate account holders, but in this case you have bent over backwards to facilitate what is avoidance and evasion in the case of the Swiss bank accounts.

Stuart Gulliver: My honest straightforward answer to that is that these were different times. The times you are talking about where clearly the practices that we have seen taking place in the Swiss private bank, which we absolutely do not support in any way, shape or form, were in the period in the mid-2000s. The things that went on in Mexico were in the same period in the mid-2000s. The sanctions were in the same period, the mid-2000s. We are now derisking the firm and that is where you get the financial exclusion problem that you are referring to of accounts being closed. The same process of sorting out the Swiss private bank creates this feeling of unfairness when we basically decide to close certain accounts, oftentimes because of fears around either money laundering or sanctions risks.

Q49 Rushanara Ali: Yes, but who would trust you, given what has happened? Why should the public trust banks now when there is no accountability, no transparency for the individuals whose bank accounts are withdrawn? Why should banks be trusted when you have admitted yourself that there have been failures but also the clandestine, complex ways in which things have been disguised? Why should the public trust you?

Can I ask one other point, which is that since 2010 there were 56 meetings between HSBC and Ministers. Were these issues about the Swiss case discussed in any of those meetings?

Stuart Gulliver: There were possibly two or three meetings that Douglas and I had with HMRC. Most of the other meetings were quite routine. We have 48,000 staff here in the UK so 56 meetings with the Treasury is not an unusually large number over such a period. For example, I was involved with the Chancellor in launching London's RMB market in the meetings when Li Keqiang came over, and indeed I went to Beijing with the Chancellor.

Q50 Rushanara Ali: Was the Swiss case discussed with anyone else?

Stuart Gulliver: Certainly I did not discuss the Swiss case with anyone in Treasury.

Douglas Flint: I don't believe so. I think all of our discussions were with HMRC.

Q51 **Chair:** You said "different times" in answer to one of the questions, Mr Gulliver, which is basically saying, "We are part of the clean-up operation and in those days events were taking place that were condoned or worse". Is that right?

Stuart Gulliver: I am saying that Douglas and I, and about 2,000 people within HSBC, have been working tirelessly for the last four and a half years to change HSBC and make it fit for purpose.

Q52 **Chair:** Yes, to make it fit for purpose and it was not fit for purpose before, was it?

Stuart Gulliver: I think it was evident from the fact that we have been in front of you before about Mexico and now we are in front of you about the Swiss private bank.

Q53 **Chair:** So you were not fit for purpose before and you are cleaning it up.

Stuart Gulliver: Fit for purpose is possibly—

Chair: I am using your phrase.

Stuart Gulliver: You are using my phrase. Better controlled and more able to do the right type of business. It is about controlling the firm.

Q54 **Chair:** Mr Flint, I am going to come to you. This is as a consequence of this heap of acquisitions that took place in the late 1990s and you were very much involved in those, weren't you, because you were finance director for a lot of that period?

Douglas Flint: Yes.

Chair: Who is directly responsible, personally responsible, for having put such a heap of awful stuff on to the balance sheet: the Mexican acquisition, Safra, all this stuff that has gone sour?

Douglas Flint: I think a great deal of good acquisitions were made at the same time. The management team at the time, of which I was clearly part, and indeed the board, made the decisions on all of those acquisitions.

Q55 **Chair:** It was collective responsibility again. You were a strong supporter of the Parliamentary Commission on Banking Standards' proposals for the identification of

individual responsibility. What I want to know is who you think, when things go seriously wrong in this case, should be carrying the can?

Douglas Flint: I am a great supporter of individual responsibility, but I think in terms of strategic decisions it would be very dangerous for a single individual to be responsible because the decision to take on a major avenue of new business or a major area of the world should not be a decision to a single individual. It should be a shared decision with the board. Ultimately it gets approved by shareholders if it is large enough, and most of these were, and indeed such a decision gets regulatory oversight as well, but the responsibility rests with the board.

Q56 Chair: Of course legally it does. That is not what the Banking Commission was looking at and what is now, at least in part, being implemented in regulations. What we need to know is which individuals should have known at the time, had the right regulatory structure been in place, that their bonus, their remuneration, their career was directly on the line. If we have collective board responsibility for everything, we will never get to that point. The question I am asking you is who was directly responsible or should have been at that time?

Douglas Flint: At that time we did not have the very much improved system we have today where—

Q57 Chair: Was it Lord Green, was it Bond, was it Geoghegan? Who was it?

Douglas Flint: At the time, on the basis of the information that was presented to the board, I am very confident the decisions that were made were right. If subsequent information came to light or circumstances changed, in today's world you would go back and say: were you inadequate in terms of gathering the right information and who would be accountable for that? Was it someone who did the due diligence, the financial analysis, or was it the strategic—

Q58 Chair: Who did do the due diligence? Who was in overall charge of that?

Douglas Flint: At the time it was a mixture of what was called group planning and internal audit.

Q59 Chair: But it wasn't the finance director, Douglas Flint?

Douglas Flint: No.

Q60 Chair: You can see the concern that there will be among so many people who feel that a key problem in banking is that individuals even now are not going to be seen to be responsible for very serious banking failures and misdemeanours. The list that this bank has

got involved in now is pretty long. I know it is a very large bank so there is plenty of scope. If I get any of these wrong, by the way, do correct me. This is the list of regulatory problems that you have on the go at the moment: interest rate derivatives misselling; LIBOR manipulation; you are under investigation by the European Commission on EURIBOR manipulation; misselling of mortgage-related bonds to Fannie Mae and Freddie Mac; forex manipulation; violation of international sanctions; weaknesses in money laundering controls; credit default swaps. You are under investigation by the US Department of Justice and the Commodity Futures Trading Commission for rigging gold, silver, platinum and palladium markets. You are facing class action lawsuits relating to similar things, class action lawsuits over complicity in the Bernie Madoff fraud. Are any of those wrong?

Douglas Flint: I think the only one that is not quite right is that we never faced any penalties or sanctions on LIBOR.

Q61 Chair: It is not a very happy list, is it?

Douglas Flint: It is a terrible list. Coming back to an earlier question, it was the aggregation of these issues that led the board to contemplate a—one of the most humbling things that has happened in my career is the recognition of all the things you did not know and you go and say, “What could I have known or should I have known?” Back to a point that Stuart made, historically the organisation was more like a federation. It had a kind of federal structure and the scheme of control was there was a baseline level of standards and then we applied the local standards. I think what these instances have illustrated or brought to the fore is that allowing interpretation at 88 countries, as it was at the time, was the wrong way to go and we should centralise control. When Stuart took over as Chief Executive and I had got there a month before him as Chairman, the first decision was to change the complete organisation of the firm away from a regional bias to four lines of business, 11 functions and then the five regions on top of that to centralise control.

Q62 Chair: That regional bias was the responsibility of an individual who preceded you, wasn't it? So I am asking you who that is. That is the question I just posed to you about three or four minutes ago.

Douglas Flint: It probably was set in 1865 and has gone on from thereafter.

Chair: Oh, come on.

Douglas Flint: Each chief executive decides the organisational structure that he thinks best fits the control environment of the firm. I think that the regional structure worked very well until it clearly didn't work and now it has been changed.

Q63 Chair: Is it all sorted out now?

Douglas Flint: It is in the process of being sorted out.

Q64 **Chair:** So it has not yet resolved all these problems?

Douglas Flint: It is a Forth Road type of job. It keeps going and then you start at the beginning again because circumstances change.

Q65 **Chair:** Are you halfway through this restructuring?

Stuart Gulliver: I would say we—

Chair: Hang on, I am asking the Chairman.

Douglas Flint: I would say that in some respects we are more than halfway through. The management team, led by Stuart, has sold or closed something like 77 businesses.

Q66 **Chair:** What are the prospects of another bit of rotten HSBC popping out of the woodwork, as HSBC Switzerland did?

Douglas Flint: In relation to not having line of sight to what is happening at lower levels in the organisation, I think the control environment, because of the progressive implementation of a single set of standards, is very much stronger than it was in the past. The simplification that has been going on is in eliminating countries where it is not possible to get the control information necessary to understand what is happening, simply because it does not exist in certain countries, and sadly also in relation to certain cohorts of customers where in fact the information may not exist to enable us to risk assess whether we can deal with those customers safely in accordance with the regulatory standards that are put in place, so we have come out of—

Q67 **Chair:** You are more than halfway through but there is more downsizing to do?

Douglas Flint: The environment is evolving all the time. One of the—

Chair: I must bring in colleagues. I have the answer, which is that you have not yet reached the steady state on all of this.

Douglas Flint: I think it will always be ongoing.

Chair: I might come back to you on that.

Q68 **Teresa Pearce:** Mr Gulliver, just to take you back to what you said about your remuneration being paid into a Panama account and you said it was not for tax purposes, it was for privacy. Privacy from whom?

Stuart Gulliver: Privacy from colleagues within HSBC.

Q69 Teresa Pearce: So you did not believe that your bank account would remain private?

Stuart Gulliver: No, because I was a staff member and a high profile staff member. That does not suggest that external customers had anything similar in terms of a risk.

Q70 Teresa Pearce: No. You also said earlier about leading a large organisation. Would you agree that culture starts from the top?

Stuart Gulliver: Yes, I would agree, but there was no—

Q71 Teresa Pearce: What does it say about the culture that at the top you don't believe that bank accounts are kept private within HSBC and that your colleagues would pry into your bank account? Isn't that an odd sort of culture to have about the people you believe to be the best that you employ?

Stuart Gulliver: I can see why you would think that but I would respectfully point out we are talking about 1998. My financial affairs are completely public since I became—

Teresa Pearce: They are now.

Stuart Gulliver: They are very public now, but since I became an executive director my compensation has been a matter of public record, so it is a very old arrangement.

Q72 Teresa Pearce: Could I take you back to another thing? You were asked if HSBC had advised you to set up that arrangement and you said not, and you have also described how you are a non-dom and your worldwide income and all of that. Do you complete your own tax return or do you have an accountant?

Stuart Gulliver: No, I don't complete my own tax return. I have a lawyer that completes my tax return.

Q73 Teresa Pearce: Are the fees for that paid for as part of your remuneration by HSBC?

Stuart Gulliver: No, I pay them myself.

Q74 Teresa Pearce: You pay them yourself. Okay, thank you. You also mentioned that hold mail accounts were stopped. When was that stopped?

Stuart Gulliver: That was stopped in about 2012, 2013, and this in private banks around the world.

Q75 Teresa Pearce: Could you explain, just for anyone who does not understand, why someone would have a hold mail account?

Stuart Gulliver: The suspicion around a hold mail account is—

Teresa Pearce: No, could you explain why you believe someone would request to have an account where no one ever writes to them about their account?

Stuart Gulliver: Because they do not wish the post to arrive in the place they live.

Teresa Pearce: Because they are being private from their wife or their husband or the taxman?

Stuart Gulliver: I have no idea, but the control that we are putting in place is the taxman.

Q76 Teresa Pearce: Do you not think that that is suspicious? Would the fact that somebody sets up an account with you and says, “Don’t ever write to me about it, don’t ever tell me about it”—

Stuart Gulliver: Yes, but we won’t allow that now.

Q77 Teresa Pearce: But did you—

Stuart Gulliver: Did I have a hold mail account? No.

Teresa Pearce: Did they complete suspicious transaction reports about people who wanted hold mail on their accounts?

Stuart Gulliver: We have now stopped hold mail accounts.

Q78 Teresa Pearce: Before you stopped it, was that viewed as suspicious by HSBC?

Stuart Gulliver: In Switzerland it would not have been seen as suspicious. Remember suspicious activity reports are set by the legislation of the countries, which has also changed over time. So here in the UK suspicious activity reports are tax evasion, sanctions, money laundering. In Switzerland at that time that would not have been a cause for a suspicious activity report, which is why as a matter of policy we won’t do hold mail accounts.

Teresa Pearce: Anymore. Quite recently.

Stuart Gulliver: Anymore, absolutely, part of the change in the private bank that we have been leading.

Q79 Teresa Pearce: Mr Flint, it has been widely reported, I think it was in *The Guardian*, that some HSBC customers travelled to Switzerland to withdraw large amounts of cash rather

than having that money wired to them. Why do you think someone might do that? Do you think that is suspicious?

Douglas Flint: Against today's standards, absolutely. There are a number of clients who like to have a large amount of cash for legitimate purposes. I think it is an absolute red flag today in terms of asking further questions.

Q80 Teresa Pearce: At what point do you think it would have become a red flag? It is a red flag today but how many years ago would that have been red flagged?

Douglas Flint: In Switzerland it was quite common for people to carry cash or withdraw cash and deposit cash.

Teresa Pearce: I am sure it was very common in Switzerland.

Douglas Flint: In our bank the relationship managers were charged with the responsibility of understanding their client and why that would be the case. Our manuals from the earliest days said that it was prohibited to assist clients in tax evasion, so our relationship managers were supposed to understand a client's affairs and act accordingly.

Q81 Teresa Pearce: So somebody opens a Swiss bank account. They say, "Don't ever write to me about it, don't ever tell me about it. I don't want anything in writing" and then they appear in Switzerland and take large amounts of cash out and nobody flags that up. Is that what you are telling me?

Douglas Flint: At that time it would not necessarily have been—

Teresa Pearce: At which time? Which time are we talking about?

Douglas Flint: In the early 2000s.

Q82 Teresa Pearce: We are talking about the Swiss bank accounts and people getting money out. What about how the money got there in the first place? What review have HSBC done of the UK suspense account system where people have put money previously, not currently, through the suspense account system in the UK to arrive in a Swiss bank account without a footprint in this country? Have you done any due diligence, any risk assessment, any reviews at all on that?

Douglas Flint: When the data was stolen and when the UK Inland Revenue got hold of the data, we co-operated from day one with them and we did a significant number of tests around the UK customer base as to whether it was possible for cash to move from Switzerland into the UK or the other way. We did a lot of testing around the branches to see—

Q83 Teresa Pearce: How far back did that testing go? Did it go pre-2007 and the money laundering regulations?

Douglas Flint: I can't remember the specific period that was covered. It was probably more around 2009-10 when we did the testing because you were testing what you could see. I think it would be quite difficult to go back and see what happened five years prior.

Q84 Teresa Pearce: How long is the data in the UK kept? If HMRC were going to investigate, they can go back 20 years, they can go back longer. How old is some of the data you have? Is it only going back six years?

Douglas Flint: We will have customer records going back until—

Q85 Teresa Pearce: So it could be done?

Douglas Flint: I guess it could have been. We co-operated with Inland Revenue in relation to everything they asked for that we could do.

Teresa Pearce: We will have questions for them afterwards. Thank you.

Douglas Flint: I am sure. Can I say one other thing?

Chair: Only very briefly, if you would, because other colleagues want to come in, or you could put it in writing.

Douglas Flint: The vast majority of our clients in Switzerland are not UK. We reckon it is a very small part of our customer base.

Teresa Pearce: But UK tax are not—

Douglas Flint: No, but we reckon we have something like a 2% share of UK citizens who have money offshore.

Q86 John Thurso: Mr Flint, can I come to you? In evidence to me in 2008, Chris Meares, who was at that point in charge of the Swiss operation, stated that, "If we get any hint that there is tax evasion we would deal with it" and that, "we prohibit our bankers from encouraging or being involved in tax evasion". That was in 2008. We now know that 3,200 accounts were in the information given to HMRC. Of those, HMRC decided there was a case to answer for 1,100. This is based on evidence to the Public Accounts Committee. So a third of the total accounts had a case to answer. Of those, 500 have settled, were invited to settle and did so, I believe, and another 150 were referred for criminal prosecution. Clearly, that fact and his statement do not align easily. Was he ignorant of the facts, incompetent or just deceiving me?

Douglas Flint: I hope none of those.

John Thurso: He sure was not being straight.

Douglas Flint: I would need to refresh my memory. I thought the question that you asked him was in relation to the private bank in the UK not in relation to Switzerland.

Q87 **John Thurso:** I am asking you about the accounts that were given by the gentleman who took the data that were handed to the French and the French authorities, Christine Lagarde, handed it to HMRC. Those are the numbers that HMRC gave in evidence to the Public Accounts Committee, which is that a third of the accounts had a case to answer, 500 were invited to settle and 150 were referred to the Crown Prosecution Service. I don't think that accords with a competent manager stopping tax evasion and I am trying to reconcile the two statements.

Douglas Flint: I can understand what you are saying. He was talking about facilitating. Part of the reconciliation would be these accounts could have been opened a long number of years ago and lain not doing very much in between or money not coming back to the UK. So it is possible that it was a stop rather than a flow issue in relation to the accounts, but I understand clearly what you are saying.

Q88 **John Thurso:** I remember the many, might I say, fruitful exchanges that we had in the Banking Commission around culture. The point that I am trying to get at is if that was happening then—and we can assume it is either because processes were not in place, as has been stated, to find it out and/or there was a culture that sought to facilitate what clients wanted to do, which was at least avoid if not actually evade what they owed, both of which actions you now would not permit—how do we know that that culture is not so embedded that you are still not getting to root it out? That is what I am asking.

Douglas Flint: I think part of it is what we have done and part of it is what you and others have done, in the sense that if you go back 20 years there was no tax information exchange. It started in 1996. Very gradually there was information exchange on request, which was totally ineffective because you had to specify the individual, the account number and give a reason, so it did not work. We are moving today towards common reporting standards, so all the major tax jurisdictions in the world, and indeed many of the smaller jurisdictions, have agreed full transparency. I think it is 98 countries and there is really nowhere for anyone who wishes to be non-transparent in their affairs to go and they are facilitated. Banks who want to be totally transparent are going to their customer bases and saying, "The only way we will deal with you is if you are fully declared". To open an account or to remain an account holder today, you have to show your residence, your domicile, you have to prove that either with a lawyer or an accountant, and you have to demonstrate on an annual basis that your affairs are up to date. If you are unable to do so or choose not to do so you can't have an account. That was not the case 20 years ago or even 10 years ago.

We have gone through a process of KYC, know your customer, over the last three years and gone through a process of tax transparency so that the private bank globally has that information in respect of those that are in it today. That is why you can be assured or have much greater assurance than you would have had historically.

Q89 John Thurso: I am sure you understand the deep frustration that many individuals, and particularly small businesses, in this country feel. There is a very strong view that good corporate citizens in this country and individuals who pay their tax, because they are small will get hammered by HMRC but if they know a big bank like yours they can avoid it in a foreign country. What are you going to do to ensure that the right tax is paid by the right corporate or individual entity in the country in which it is earned, not least to ensure that in some third world countries they actually get the tax that is due on activities that happen there and it is not laundered out?

Douglas Flint: I totally understand. I think that one of the fundamental premises of banking is rule of law because we rely on it to enforce contracts. Rule of law depends upon equality before the law and therefore it is completely unacceptable that some people obey the law and others don't. I pay all my tax and I find it abhorrent that others don't. Today if you are banking outside the country where you live you have to be fully tax transparent.

Q90 John Thurso: The last question, and I have to be quick because we are running out of time: as the Chairman set out, there are a whole litany of problems, which many banks have had but you have certainly suffered from a few of them. We all want to draw a line under this. How do we do that? Are there any other offences that you would like to put before the court, as it were? What else do you want to plead to? We can't go on with a situation where every year somebody somewhere in banking comes out with another one. How do we know that we have actually put a full stop and cleaned it up?

Douglas Flint: That is a question the board asks quite reasonably on a regular basis. We know what we know. As investigations take place in other banks and other countries, it is always possible that something will be uncovered somewhere else where people will say, "We need to look at this more broadly". I sincerely hope there are no more skeletons.

Chair: So do we.

Q91 Mr Love: Mr Flint, can I turn to aggressive tax avoidance schemes? Has HSBC been involved in promoting or actively assisting its customers with aggressive tax avoidance schemes?

Douglas Flint: I believe not. We signed up to the bank tax charter in 2010. We have made no filings under that. We had a very restricted appetite in terms of corporate tax structuring. We were quite involved in aircraft leasing, which has a tax angle to it but is a commercial arrangement. I believe that there were isolated instances of a number of things that are being challenged but I believe we had a very limited portfolio. We did not have a tax structuring team in the way that some other banks have had described.

Q92 **Mr Love:** I noticed you talked about 2010. I think we are talking about slightly before that. Would you associate the comments you made about what happened before 2010?

Douglas Flint: Yes, I would. I was finance director.

Q93 **Mr Love:** Let me suggest to you that HSBC was involved in Eclipse 35 that was recently in the Court of Appeal that ruled that, “The scheme was not commercially trading with a view to making a profit and as such constituted a tax avoidance scheme”. Would you characterise that as aggressive tax avoidance?

Douglas Flint: I am not able to comment on the complexity of that scheme.

Mr Love: How about Goldcrest?

Douglas Flint: Film financing is an area of activity that—

Mr Love: Eclipse 35, which is only one of these schemes, would have cost the taxpayer £625 million and Goldcrest, a minnow by comparison, would only have cost the taxpayer £17 million, but they are aggressive and they have been outlawed and HSBC was involved with them. How do you respond to that? Are you concerned?

Douglas Flint: We would not do them today. We stopped in 2009. It is the one area, as I look back, where I think we would not do it today. There is nothing else that I am aware of.

Q94 **Mr Love:** How do you respond to the fact that criminal charges are being issued against you in Belgium and there is a criminal investigation in France on the allegation that, “HSBC knowingly promoted serious and organised tax fraud”? That is a very serious allegation to be made. How do you respond to that?

Douglas Flint: We have been responding to that for the last five years. These allegations, these charges arise out of the data that was stolen in 2006-07 and has been shared in the first instance with multiple tax authorities who have launched their own investigations, in some cases in conjunction with public prosecutors. We have been co-operating with the tax authorities in these countries and with the prosecutors over the last five years and they will take their course.

Q95 **Mr Love:** I want to come back to the question that the Chairman asked about who was ultimately responsible. As you are well aware, Lord Green was the chief executive officer during almost all of this time, and you mentioned each chief executive changes the structure to suit what they want to achieve at HSBC. He said that what he wanted to achieve was to oversee the controls of the business through compliance and audit and the direction of the business through strategy. Should compliance and audit have picked up on these things? Is he responsible?

Douglas Flint: Compliance and audit certainly has a role as what we call the third line of defence. The first line of defence is the customers that you have, the second line of defence is the control mechanisms within the business, and then the audit department sweeps up behind. We have significantly increased the complement and the quality, the experience of our audit teams progressively over the last five years.

Q96 **Chair:** Andy's question is: he was in charge, was he responsible?

Douglas Flint: He was responsible along with the rest of the management team for the control environment at the time, yes.

Q97 **Mr Love:** I can't find my quote just at the moment but I can suggest to you that some would consider that you were responsible because you took part in the due diligence on the takeover of the New York bank that held the Swiss private bank as part of its portfolio. You were also finance director and therefore responsible for compliance and audit, all of which should have picked up these things when they were considering takeover. Why didn't they pick those up? How responsible do you feel for what has happened to the bank as a result of that?

Douglas Flint: I certainly share responsibility as part of the team. I was not responsible for compliance and audit. They reported separately at that time. I was the finance director. If I can say in relation to the UK acquisition—

Mr Love: I have now found the quote.

Chair: I think we are going to have to move on, Andy, I am afraid, because we are going to run out of time with a Division at 4.00 pm.

Mr Love: Let me finish this one point, because you have been tolerant with others.

Chair: Extremely quick.

Q98 **Mr Love:** It says here, "As finance director, he signed off on all of these acquisitions". Aren't you therefore ultimately responsible? You signed off on this acquisition of the Swiss private bank.

Chair: I think we are going to get the answer, "No, but collectively responsible". Is that right?

Douglas Flint: Yes, I signed off. Everyone in the management team signed off on these acquisitions.

Chair: We are not going to get any further than that.

Q99 Stewart Hosie: The question is about aggressive tax avoidance, but there is a real issue about illegality in dealing with people who were frankly criminals. Prior to the compliance reforms you have been describing, in what way did the Swiss private bank's policies in dealing with people at risk from money laundering or criminal activity fall below the standard you have now set? What was it they did or how remiss were they? Can you describe that for us?

Douglas Flint: They had a robust system of client screening to ensure that they did not accept clients that would inflict reputational damage. They had a system of monitoring clients. I think it is fair to say that it was not as good as it would be today, that the tools and techniques and systems are a league different from what they were 15 years ago. The amount of information we have available to us is very different from what it was, but they certainly had a system of screening clients. That does not mean it is foolproof but they certainly had a system and no desire to associate the bank with any reputational damage.

Q100 Stewart Hosie: You described that initially as robust, which allowed Arturo del Tiempo Marques, a Spanish property developer operating in the Dominican Republic, to withdraw €55,000 in cash in May 2005, another \$50,000 in cash two weeks later, another few bricks totalling €60,000 two months after that. Mr Gulliver described earlier how some of this stuff would not have been suspicious in Switzerland at that time technically. It is not really robust, is it, where a man subsequently convicted of importing a tonne of cocaine in some building materials is taking out big wads of cash? I would not describe that as robust in the slightest and neither would any ordinary person watching this.

Douglas Flint: Of course they wouldn't and neither would I. We cannot talk about individual accounts, but if I can make a few contextual remarks. One of the challenges that we face in responding to this data that was stolen is paradoxically it was stolen through a systems upgrade to try to enhance control. There was a system migration, so the data was moving from a number of systems on to a system that would improve control. There were many problems with the migration and during that time this individual stole the data, subsequently tried to sell it, and then the rest is history. He stole the data at various points in time, so some of the revelations that have been made are accurate but there is not a timeline. The accounts that have been mentioned clearly were within the data so you would be entitled to believe they had an account at some point in time. In one of the cases the account was closed in 1991. The vast majority of all accounts that have been disclosed were closed, most of them a very long time ago. Some were closed even before we bought the bank that became a major part of our private banking operation. A lot of the other accounts were closed before we did and a lot of the other accounts were closed in a short period after we bought it. In a great number of cases, because we have gone back and looked, any evidence of criminality or being put on the world checklist that was used to check for political exposure, criminality, allegations of bad behaviour, those entries were made after the account was long gone. There are other ones where there are serious questions to be asked and no doubt will be asked, but there is not a timeline.

You have a bunch of accounts that were in the bank at some point and evidence that some of those people had very difficult records. The question is did they have those records when they were taken on and were their accounts closed before those records were established? I don't know the answer to all of that.

Q101 Stewart Hosie: No, we can't know the answer to all the specifics. The point I made with that one case is that it was self-evident something was going wrong. The question I want to ask, notwithstanding the defence you are making, is in the Swiss private bank in terms of its anti-money laundering compliance responsibilities, did the bank take them seriously or were they simply a hurdle to get past in order to service a client?

Douglas Flint: We are suffering from horrible reputational damage. A bank lives on its reputation. No bank wants to associate itself with activities, behaviours or clients that will do it damage, no bank of any size. They had systems of control. We may say with hindsight they were not as effective but, as I said, some of those accounts were closed a long time before the individuals were identified as having deficiencies in their character or criminal allegations made against them or even charged. Also in a number of cases the accounts that were opened for people—in fact we still have accounts opened—have been blocked by prosecutors who want to hold the money until they have prosecuted the individual in accordance with the law.

Q102 Stewart Hosie: I understand that. Let me ask this question a third way, and this will be the final question. You began to make serious changes to the way this was managed in 2011 but there were anti-money laundering rules in place as early as 1994, which predated your appointment in 1995. Why did it take so long from the old rules in 1994 to the changes you only started putting in place a couple of years ago, given what we now know and I assume many inside the bank at a high level knew within the last three or four years?

Douglas Flint: The enhancement to our know your customer and anti-money laundering procedures and controls started way back in 2000 after we brought together what were 13 or 14 disparate businesses within HSBC with the bank that we had acquired because it was individually larger than the other pieces that were brought together to form what we call group private banking today. So there has been a programme of continuous upgrade of our capabilities. It is also the case that the rules changed. Today tax evasion is a predicate of money laundering; that is a very recent addition to the screening that was done. The screening that we were required to do—and we talked about this when we were before you on Mexico—historically was much more passive than it is required to be today. Today we have to go into much more detail and not only know our customer but know our customer's business more intimately and know our customer's customers more intimately than we were ever required to be.

Chair: Many of us are quite familiar with this. It is helpful evidence but we are short of time today.

Q103 Mark Garnier: Mr Flint, you were the group finance director taken on in 1995 and then in 2010 your responsibilities enlarged to that of executive director of risk and regulations. In 2008, I think it was, Mr Falciani is arrested, presumably for stealing this data. Were you aware at the time, as part of the board, that he had been arrested?

Douglas Flint: Yes.

Mark Garnier: So as part of being group finance director, you knew what was going on. I think it is fair to say that as CFO you are not necessarily going to want to take an interest specifically into conduct problems, are you? But as the director of risk and regulation presumably that would come under your remit. In 2010 when you were appointed as group regulation and risk, what action did you take then to find out what was going on in the Swiss bank?

Douglas Flint: I was part of the board, part of the management team in 2008 so I was already involved. Collectively we were massively engaged. The first major exercise that was done was to identify the system's weakness that had allowed the data to be extracted. We did a significant exercise in Switzerland looking at data privacy and data security, because that clearly had fundamentally failed, and we extended that to other places that we thought might be at risk of that as well. At that time we were simply not aware of what had been stolen. The first indication we were given, because the first indication that Falciani gave to the French authorities was I think he showed them seven accounts. We did not know whether he had seven accounts or what turned out to be almost the entirety of a segment. At that point in time we started with data security.

Q104 **Mark Garnier:** When you took over specific responsibility for risk and regulation, this would absolutely come under your remit then. As a CFO not necessarily that specifically interested, but now you take personal responsibility, presumably, as the risk and regulation director. Following on from John Thurso's questions, what contact did you then have with Chris Meares and Clive Bannister, who were specifically running the private bank? Obviously we brought in the Banking Reform Act and this has a senior manager's regime. What I am keen on here is to try to understand how it did not work then and how it has changed under the senior manager's regime now. Going back five years, what conversations did you have with Chris Meares and Clive Bannister, as the director of risk and regulation, to find out, as your outlier running that thing, what they were doing about it?

Douglas Flint: Two things. In 2010 when the then CEO decided to reorganise management accountabilities it was agreed that risk should be represented on the board, and therefore risk was added to my responsibilities and also regulation, which is kind of what I did as finance director anyway. Within the audit committee throughout the period of the 2000s the private bank got a significant amount of attention because the integration challenges in bringing together what were 13 or 14 pieces of HSBC, with the pieces that had been acquired from CCF, Trinkaus & Burkhart and Safra Republic, was a major challenge. It was slower in terms of its integration than we had hoped, largely because there were blockages around getting a culture that was around individual relationship managers into a much more controlled environment. That was coming to the audit committee. It was also coming to the management committee and the risk management meeting of the bank. Chris Meares, and Clive Bannister before him were appearing at all those committees and the audit committee of the board to explain progress and to be given targets.

Q105 **Mark Garnier:** I am running out of time, but Chris Meares and Clive Bannister would have been paid bonuses during these periods. I am not necessarily asking you to justify their

bonuses at the time, but in retrospect can you see any way that they were being incentivised that may well have resulted in less than ideal decisions being made in terms of the running of the business?

Douglas Flint: I don't believe so, no. I do not believe that remuneration would have played an impact because in fact they were also being held for their integration progress, which was nothing to do with the profitability of the business. All of our remuneration for all individuals is discretionary, so it is not linked to performance per se.

Q106 Mark Garnier: Point taken. When you come in front of this Committee I always ask you the same question and I will ask it to you again: what discussions are the board of HSBC having about moving the domicile out of the UK?

Douglas Flint: We have had no discussions about moving the domicile out of the UK.

Q107 Mark Garnier: You are committed to the UK?

Douglas Flint: We are committed to being in the best place for HSBC.

Mark Garnier: Is that the UK?

Douglas Flint: It is today.

Chair: That has always been the reply.

Q108 Mr Ruffley: Mr Flint, do you accept that the public expect atonement for these transgressions?

Douglas Flint: Totally.

Q109 Mr Ruffley: Do you not think that atonement should take the form of individuals accepting individual and personal responsibility? You have not given us much comfort in that respect. What is the answer?

Douglas Flint: I believe in personal accountability and I do believe people should be held responsible for what they have direct oversight over when they have failed, yes.

Q110 Mr Ruffley: Mr Meares and Mr Bannister were the heads of the Swiss private bank.

Douglas Flint: The head of group private banking globally, much more than just Switzerland.

Q111 **Mr Ruffley:** Yes, but they were ultimately overseeing. Should those two individuals be held responsible?

Douglas Flint: They certainly bear fairly direct responsibility for what went on in the private bank during their stewardship, yes.

Q112 **Mr Ruffley:** Were their bonuses linked to the revenues and the profits generated at the Swiss private bank?

Douglas Flint: No.

Mr Ruffley: They were not?

Douglas Flint: No.

Q113 **Mr Ruffley:** If there are individuals who are responsible for the Swiss private bank shambles, who do you think they are?

Douglas Flint: I think most accountable are the management in Switzerland. I feel uncomfortable saying this because I know the follow-up question. It is very difficult for people outside of Switzerland to get any access to the detailed account level information in Switzerland. That is something that only the management on the ground can have access to, for all the privacy and secrecy reasons. The individuals that I think are most accountable both for the data theft, the weakness that allowed that to happen, and for behaviour that was unacceptable in relation to our standards are the management on the ground in Switzerland. Looking deeper than that, I think we were all let down and the most culpable people are the relationship managers who did what they did, but clearly there was a failure to governance them as well as they should have been.

Q114 **Mr Ruffley:** Are there any provisions that you are actively seeking to trigger to claw back any of the bonuses?

Douglas Flint: This is so long ago a claw back did not exist and all remuneration for those individuals has long gone. What I should say is that there is a very small number of people who were around at that time still in the bank. Most of the people left either with clients or we closed parts of the business, so that they no longer work for us.

Q115 **Mr Ruffley:** How many of those at the Swiss private bank are still employees of your group?

Douglas Flint: In terms of the relationship managers, about 30% of those were around in 2006.

Q116 Mr Ruffley: So 70% were fired or let go?

Douglas Flint: Well, left one way or the other. Those who have stayed have been vetted, screened, managed, to ensure that they are, so far as we can see, adopting our policies and rules and behaving in an appropriate way.

Q117 Mr Ruffley: You have used the word “ashamed” in the course of your testimony and I just want to ask this final question: is it not right to say that the profits generated by the Swiss private bank contributed to the group’s profits?

Douglas Flint: Less than 2%.

Q118 Mr Ruffley: But they contributed and, having been on the board since 1995, you have said you accept shared responsibility. Do you not think, in the light of this shameful set of acts that have been exposed, you should forfeit any of your past bonuses?

Douglas Flint: The last time I got a bonus was 2010. As finance director, none of the bonuses, by design, were linked to the performance of the firm because that would be a massive conflict. I think three times in my career I have waived my bonus because I felt sufficient accountability, the most recent one being 2009 when we did a rights issue. I do not feel that proximate to what was happening in the private bank.

Q119 Mike Kane: Mr Gulliver, in the public apology letter you said all the tax evasion issues dated back eight years to 2007. That is correct?

Stuart Gulliver: That is correct.

Q120 Mike Kane: But in the HSBC annual report from 2007 it says there were three HSBC main directors on the board of HSBC Private Bank (Suisse). They were Stephen Green, who was the chairman for the Swiss subsidiary, plus a Mr Filippini, who was a HSBC non-exec, and yourself. Your fingerprints are all over this, in management terms and in operational terms, at the start of this process.

Stuart Gulliver: I joined the Swiss private bank board in September 2007, not in an operational role. I went on to the Swiss private bank board because in 2006 I had been given responsibility for global banking and markets worldwide, except the Swiss private bank because of the secrecy laws. The Swiss private bank had a substantial balance sheet and was taking interest rate risk on that balance sheet. I joined that board in order to oversee that interest rate risk. I was not on its audit or risk committee. I was not involved in its day-to-day management.

Q121 Mike Kane: But you were involved in that aspect of the business.

Stuart Gulliver: I sat on its board and you will see from 2008 onwards we started to restructure that private bank. For example, we started to exit US clients in 2008 because that was the time at which UBS had its whistle-blower and LGT had its data theft.

Q122 **Mike Kane:** So you and Mr Green were sat in Canary Wharf oblivious to what was going on in 2007?

Stuart Gulliver: Well, 2007 predates when I joined the board. These instances we are talking about here predate the third quarter of 2007 when I joined.

Q123 **Mike Kane:** No operational control about what was going on in Switzerland at the time?

Stuart Gulliver: No, I was running global banking and markets globally. At that time either Chris Meares or Clive Bannister was running the private bank.

Q124 **Mike Kane:** Do you not think it is grossly negligent as directors that you were turning a blind eye for at least a year in that instance?

Stuart Gulliver: We would not have been turning a blind eye. There would have been audit reports and board reports, none of which surface individual client activities.

Q125 **Mike Kane:** We are saying that nobody is going to be punished for this. You yourself, with your own tax affairs, look like you are at the outer limits of aggressive tax avoidance. Do you think you have moral authority to carry on this change process in HSBC?

Stuart Gulliver: I do not think that the non-dom laws, which are quite clear, would represent aggressive tax avoidance and I believe the changes that I have made to the firm clearly demonstrate the sincerity of my desire to improve HSBC.

Q126 **Mike Kane:** Would you consider yourselves fat cats?

Stuart Gulliver: You would have to define “fat cat” for me for me to be able to comment more meaningfully on that.

Q127 **Mike Kane:** Have you ever met anybody who has had their benefits sanctioned because they had a second job that they did not declare to the benefits agency?

Stuart Gulliver: No, I have not.

Mike Kane: You have not? Okay. Thank you, Mr Gulliver. Thank you, Mr Flint.

Q128 Alok Sharma: A number of colleagues have pressed on this point with regard to taking personal responsibility for what went wrong in Switzerland. Mr Gulliver, you told us that you were on the board; Mr Flint, you were the finance director. Could I just put it to you once more: will you tell us whether you are prepared to take any personal responsibility for the problems that took place in your Swiss organisation?

Douglas Flint: I said, and I think Stuart has as well, we share responsibility as part of the management team.

Q129 Alok Sharma: You are not prepared to take personal responsibility for your part as finance director, as a member of the board? I have to say to you that people watching this in the court of public opinion, our constituents, your customers, will find you quite wanting in not being willing to take personal responsibility. I just say that to you. I will ask you one more time. Are you prepared to take personal responsibility for the part you played in what happened in your Swiss operations?

Douglas Flint: I am sorry. I think saying that I have shared responsibility does accept personal responsibility, but it does not say I am responsible for everything that happened in a subsidiary that represented somewhere between 0.5% and 1% of our business. I do not have that line of sight. I am ashamed of what happened and I was part of the management structure during that time. So I have a shared responsibility, which I accept.

Q130 Alok Sharma: Generally, in most organisations, when you are at the top the buck stops with you and in your cases you are saying the buck does not with you.

Stuart Gulliver: If I may, the buck clearly stops with me from 2011 when I became group CEO and the buck clearly stopped with me the whole time I was running global banking and markets, which is why the board deducted £1.75 million from my compensation in respect of foreign exchange.

Q131 Alok Sharma: You said you have had a clean-up. You said there was some start of the clean-up in 2008 and then I think from 2011 the phrase “complete overhaul” has been used. Could I just ask you to reflect on Sue Shelley, who is a former head of compliance in Luxembourg at your private bank? She said she was “fired for pointing out compliance failures as recently as 2013”. Would you like to comment on that?

Douglas Flint: Sue Shelley was the area compliance officer in Luxembourg. Her job was to escalate concerns when she considered that they were not being dealt with in a timely manner or she had pushed back. She escalated them both to local management and to her functional heads in London. We have investigated the escalations that she made and they were appropriately dealt with. She did her job. She escalated concerns. She was supported locally and she was supported in London.

Q132 Alok Sharma: If that is what she did, Mr Flint, why was she fired for pointing out—she says herself she was fired for pointing out compliance failures. The point I am trying to get to is that you have come here, you are not prepared to take personal responsibility, you are telling us you are going through a clean-up, but at the end of the day, two years after the start of that complete overhaul, you have senior members of staff in part of your private banking—okay, it is in Luxembourg—saying that they are being fired for trying to basically whistle-blow. That is unacceptable, is it not?

Douglas Flint: It would be unacceptable but that is not my understanding of the facts. That is not what happened.

Stuart Gulliver: She was not fired because she was a whistle-blower and I think, to respect her privacy, perhaps we could suggest we write to the Committee and explain why she left HSBC.

Q133 Alok Sharma: Fine. Can I ask you one final question, which is to do with what happens in Swiss private banking? Do you think part of the reason that your Swiss private banking operation carried on the way it did is because it was just normal to do that in Switzerland or are you some sort of outlier and everybody else did things the right way and HSBC were the ones who did it the wrong way?

Douglas Flint: I certainly do not think we are an outlier. As I said, one of the massive improvements in tax transparency over the last 15 years has been the move towards common reporting standards. When the Swiss agreement was put in place between the UK and Switzerland, we paid \$27 million under that agreement. The agreement collected \$1.1 billion, so you can see our share of that agreement. We are about 2%.

Q134 Alok Sharma: I know we are pressed for time. What you are saying is that HSBC private bank in Switzerland behaved no differently to any other Swiss bank doing private banking in Switzerland. Is that correct or not?

Douglas Flint: On the basis of the disclosures that have been made under the Swiss agreement and the amount of money that has been collected and our share of it, there must have been many others making declarations.

Chair: From the UK taxpayer information, we know 30% have either paid back money or have found themselves being investigated for fraud, very serious indeed.

Q135 John Mann: How many suspicious transaction reports have you reported to the authorities in the last seven years, Mr Flint?

Douglas Flint: Globally or—tens of thousands.

Stuart Gulliver: Probably hundreds of thousands.

Douglas Flint: Hundreds of thousands, yes.

Q136 **John Mann:** The October 2013 Swiss regulator fine for money laundering from Tunisia, was that for activities before or after 2010?

Douglas Flint: Which one?

John Mann: The October 2013 fine by the Swiss authorities on your bank?

Douglas Flint: I would need to brief myself on that, I am sorry.

Q137 **John Mann:** You do not know about it. All right, let me give you an easier one then. The court papers that were filed in New York last week in relation to ISDA, is that activities before or after 2010?

Stuart Gulliver: It will be both.

Q138 **John Mann:** The gold fixing, is that before or after 2010?

Stuart Gulliver: The gold fixing we were with 10 banks and that is current.

Q139 **John Mann:** The ISDA is current as well. That is before the courts. When the CFTC commented in a judgment last October, they said that your bank had failed to adequately assess risks and lacked internal controls to detect and to deter misconduct. Am I correct, Mr Flint?

Douglas Flint: Yes.

Q140 **John Mann:** Yet I have just identified a series of things that have happened since 2010 in relation to your bank on misconduct that are ongoing, separate to the Swiss bank scandal—that is correct—and yet about 20 minutes ago you used the phrase “data theft”.

Douglas Flint: Yes.

Q141 **John Mann:** How dare you use the phrase “data theft”?

Douglas Flint: In what regard?

John Mann: You used the phrase “data theft” in relation to Switzerland.

Douglas Flint: Yes, our data was stolen.

Q142 **John Mann:** Yes. Is that not a good thing—

Douglas Flint: No, I do not think it is good thing.

John Mann: —that the public can find out, we can find out, regulators can find out things that you failed to look after and that you failed to report in?

Douglas Flint: We should have a system that does not rely on data theft. We should have a system with the controls within institutions—

Q143 **John Mann:** Did you make any transactions reports on any of those more than 1,000 cases where there is suggested criminality in relation to Switzerland?

Douglas Flint: I know we made suspicious activity reports in Switzerland. I would not know whether they apply to which particular customers.

Q144 **John Mann:** Mr Gulliver, with your Panamanian set up, was Mossack Fonseca involved either directly or indirectly with that?

Stuart Gulliver: I have no idea and that structure no longer exists.

Q145 **John Mann:** Coming back to you, Mr Flint. You are the insider's insider here. You have been there all the way through. You have not apologised for anything other than Switzerland and yet the Chairman gave you a whole range of other criminalities that, under your watch, the bank has been involved in, including 2010, and you moan about data theft and bringing this forward. Why have you not sacked Mr Gulliver?

Douglas Flint: Because I think he is doing an excellent job. We were both invited by the board to take our current positions.

Q146 **John Mann:** In that case, why have you not resigned yourself? If Mr Gulliver is not responsible, you are responsible.

Douglas Flint: In 2010-11 we were invited by the board to take our respective positions, after the worst financial crisis since the 1930s, to embark upon a period of massive regulatory reform and restructuring of the bank and that is an activity we continue to prosecute with all our endeavour and with all the hours we have in the day and it is a job we want to finish.

Q147 **John Mann:** But you come here, you call whistle-blowing that exposes major criminality data theft instead of whistle-blowing. You have a whole series of other criminalities within your bank. There is a whole heap of dodgy characters that are banking through you, from major drug cartels to people defrauding Tunisia and other states across the world, all choosing HSBC. Has your share value in the last few weeks gone up or gone down and has your profitability in the last year gone up or gone down?

Douglas Flint: Our profitability in the last year has gone down, in part because of the significant incremental cost, about \$700 million or \$800 million in the last year, in enhancing compliance and control. We have not put profitability anywhere in the way of enhancing the control environment. We are spending a huge amount of money.

Q148 **John Mann:** A final question to you, Mr Flint, because it is in your power to either get rid of Mr Gulliver or go yourself. Let me put this statement from Mr Gulliver to you, “It seems to me we are holding large corporations to higher than standards than the military, the church or the civil service”. If there were this level of criminality in the Church of England, would the Archbishop of Canterbury be in his job or would he be in a monastery praying for forgiveness? If there was such criminality in the armed services, do you think that everyone in the top brass in the military would be keeping their job or do you think someone would be apologising and resigning for presiding over it? Therefore, why are you not resigning or sacking Mr Gulliver?

Douglas Flint: I think Mr Gulliver is doing an outstanding job and I have absolutely every confidence in him, as does the board. Many of the things you have talked about are not criminality. They become so, but they are wide-ranging investigations with many industry parties. I think it is beyond the facts today to say that those are evidence of criminal activity. They are evidence of regulatory investigation.

Q149 **Steve Baker:** Mr Flint, I think you said earlier that a bank lives on its reputation.

Douglas Flint: Yes.

Steve Baker: Do you think that is felt most acutely among your international staff?

Douglas Flint: I think it is felt acutely among all of our staff and I can tell you over the last few weeks it is felt acutely among our customers, but also our staff’s families. They do not recognise what is being said in the paper. It is not the organisation they have devoted their careers to and we need to have an organisation they are proud to work for. It has been devastating for HSBC and, therefore, we have a huge challenge to repair.

Q150 **Steve Baker:** That could not be clearer and you would, therefore, expect Mr Gulliver to defend that reputation.

Douglas Flint: Absolutely.

Q151 **Steve Baker:** Mr Gulliver, how much does HSBC spend advertising in *The Telegraph*?

Stuart Gulliver: Advertising in the UK in the media we spend £31 million a year, of which only 15%, £4.6 million, is spent on print media. The top five newspapers that we advertise in are *The Metro*, *The Evening Standard*, *The Telegraph*, *The Times* and *The Daily Mail*.

Q152 Steve Baker: You are saying *The Telegraph* is the third biggest newspaper in the UK out of the £4.6 million print budget?

Stuart Gulliver: It is the third biggest that we spend money on advertising in and then we also spend a chunk of money advertising on digital, of which the biggest one that we advertise with is *The Guardian* and the second biggest is *The Independent*. Decisions around advertising are made by our marketing department and the buying decisions are then made by WPP.

Q153 Steve Baker: Has HSBC ever removed or halted advertising as a result of the newspaper publishing negative stories?

Stuart Gulliver: There is one incident that you are aware of, which is when *The Telegraph* wrote about the data theft in Jersey where we did not pull but simply postponed some advertising in *The Telegraph*. The money was contractually paid over and when the advertisements were run was delayed. The decision was a commercial decision. Remember, I am running a global business where advertising is about getting to sell more products and services. We felt that nobody in their right mind was going to buy an HSBC mortgage or credit card with the juxtaposition of our adverts with that coverage. That was postponed by a matter of months but there was no financial change whatsoever. The money had already been committed by contract to *The Telegraph*.

Q154 Steve Baker: Apart from postponed, which you have just explained was for commercial reasons, has any pressure ever been applied to *The Telegraph*?

Stuart Gulliver: No, because we realised that having a free and vibrant press creates the very body of those publications that supports our advertising and therefore makes them credible for our clients.

Q155 Steve Baker: Have you personally ever been in touch with a major newspaper in order to express a view about the bank's reputation?

Douglas Flint: No, I have not.

Steve Baker: You have not personally been in touch with them?

Douglas Flint:

Stuart Gulliver: No, I have not.

Q156 Steve Baker: Peter Osborne also said that Murdoch MacLennan, the chief executive of *The Telegraph* was "determined not to allow any criticism" of HSBC in the newspaper. Can you explain why it is that he should take that view? Is it anything to do with the £250 million

loan that *The Telegraph* has with HSBC, and have you ever used that loan as leverage over *The Telegraph*?

Stuart Gulliver: It is very difficult for me under banking confidentiality to talk about a client, but we do not lend any money to *The Telegraph* at all.

Q157 Steve Baker: That is very interesting and it stands in contrast to the brief. What steps will you now be taking in relation to the media to help rebuild your reputation?

Stuart Gulliver: The advertising budget, and 40% is spent on TV, is controlled by the marketing department. It is not controlled by the lending bankers and not controlled by the executives.

Chair: Thank you very much for coming to give evidence. It is just possible we may not have exhausted all the questions we want to ask but we have today and there is another session starting immediately after this division. Let us hope these controls you are putting in place are effective, the ones you said on which we should be able to rely in your institution. It certainly seems that whistle-blowing, which you want to see rewarded and celebrated, is not yet appearing sufficient of the heavy lifting in your organisation. It is work in process sorting out HSBC by the sounds of it. Thank you very much for giving evidence to us this afternoon.

Examination of Witnesses

Witnesses: **Lin Homer**, Chief Executive and Permanent Secretary, HM Revenue and Customs, **Edward Troup**, Second Permanent Secretary and Tax Assurance Commissioner, HM Revenue and Customs, and **Jennie Granger**, Director General, Enforcement and Compliance, HM Revenue and Customs, gave evidence.

Q158 Chair: The data that was obtained from the French authorities, came under heavy restrictions, didn't it, and to what extent has that cramped your style?

Lin Homer: Chair, thank you. Yes, the data that we received from the French in April 2010 came under very strict international treaty conditions, which limited its use to tax purposes only and prevented us from sharing the data with other law enforcement authorities for investigating potential other offences. I have to say I am pleased to say that on 23 February, so earlier this week—

Q159 Chair: I wonder if I can have an answer to the question and then we will come on to any good news you might have. What I would like to know is how that cramped your style.

Lin Homer: What that meant is that we could use the data for the purposes of tax crimes and tax issues. We could not share it with our colleagues in wider law enforcement and we could not use it, for instance, for wider offences such as money laundering and we couldn't, therefore, triage it against other people's data to see whether what we could see and what others could see would make a more comprehensive picture put together.

Q160 Chair: So you could not share it with any other UK body?

Lin Homer: No, other than the CPS I should mention because obviously they are a prosecuting authority, so clearly the data that we discuss with them to consider individual prosecutions that is in their function and progressing our tax—

Q161 Chair: We are now five years down the road. I want to get clarity about what you would have been doing in those five years had you been given a free rein.

Lin Homer: We are increasingly—

Chair: What have we missed out on?

Lin Homer: What we have missed out on potentially are wider offences and the ability to interrogate the data with colleagues and, as I say—

Chair: I am terribly sorry but what do you mean by that “interrogate the data with colleagues”?

Lin Homer: I might invite Jenny to explain but essentially, if you are gaining data from more than one source you have the opportunity to enrich the data that you have. One of the big challenges for us with the Swiss data is it was poor quality data; it was stolen from another jurisdiction. That Government and that institution were not in any way collaborating with us to improve the quality of the data and, therefore, it proved of limited value in a number of our investigations.

Q162 Chair: There are rumours that there is good news afoot. Have we finally, five years later, got a bit of good news to tell from France on this?

Lin Homer: Yes. We do, and I should say we were incredibly grateful for the data. We have £120 million of tax and about £15 million of penalties in from what we have, which is we think the tax was due. But on 23 February the French have formally confirmed to us that we can share the stolen HSBC Swiss data with our law enforcement agencies and regulators for the purpose of pursuing wider offences. We have arranged our first multi-agency meeting to discuss what we do with that data next week under Jenny's teams.

Q163 Chair: So five years later we are finally going to get on with some of the things that you have said that you would like to have done much earlier. If it had been the French

authorities asking the British authorities for this information, how long would it have taken them to get it?

Lin Homer: It does depend on what the request is for but—

Chair: Well, I am asking for a reciprocal case.

Lin Homer: Yes. I think we are keen to collaborate internationally and we do so. You know that HMRC has strict rules so we need a legal gateway, but I think we are more able through our Legal Gateways to share with the whole of Government, whereas one of the things the French do is they like to share department to department, so this was tax authority to us—you know, to tax authority—not tax authority to British Government.

Q164 **Chair:** I am sorry to press you but in a reciprocal case how quickly might the French have got hold of this?

Lin Homer: We will share data in a matter of days on some events. I am bound to bring someone out of the closet who will tell me that we took longer, but I think it has been—

Q165 **Chair:** So are we talking about weeks or months rather than five years?

Lin Homer: We would certainly strive to be as helpful as we could as quickly as we can, and, yes, I think it has taken us a long time to get to this point. I would want to emphasise that we have achieved a great deal with the data the French gave us.

Q166 **Chair:** You have already mentioned that and no doubt you will have more opportunities to do so, but what we are illustrating with this is that we could have—

Lin Homer: Is that we had serious limitations.

Q167 **Chair:** Yes, you had serious limitations. It would have been helpful to have had this data much earlier. We would supply it to the equivalent authority—in this case the French—much earlier and it is telling us, bearing in mind we are trying to track down tax evaders here, we are trying to track down criminal activity. We need a good deal more international co-operation in this field, don't we, to deal with tax evasion?

Lin Homer: I am sure if we get the chance—and I think you have heard a little bit this afternoon. I think the landscape has changed dramatically and we have some substantially greater powers now.

Chair: Yes, but not in France.

Lin Homer: No, in France as well because they have been part of the international work to create a common reporting standard.

Q168 **Chair:** That is as may be but it hasn't helped them deliver this any quicker, has it?

Lin Homer: With regard to this particular data it hasn't but—

Q169 **Chair:** No, so it would have been much more helpful if we could have had it earlier from the French. I will let Ms Granger in who has been itching to say something for some time.

Jennie Granger: I have, Chair.

Lin Homer: I am not sure Jennie has appeared in front of the TSC before. I think this might be the first occasion you have met.

Jennie Granger: It is indeed.

Chair: Well, welcome aboard.

Jennie Granger: Thank you.

Chair: We are all ears now for this thought.

Jennie Granger: Thank you. I did want to say something about how we do share data now, because I think it might be reassuring for the Committee, and indeed work a lot more internationally together. We have very good collaboration with the French and, indeed, other European authorities. Probably what is most in the news is tobacco smuggling and other areas, but I would want to emphasise I think these days we do much better.

In terms of sharing it more broadly here in the UK, we quite routinely these days see Legal Gateways work with the National Crime Agency, DWP and others, so it is often a huge advantage to us to be able to compare our data, to be able to, for example, help them detect organised criminals, so there are lots of reasons why we would want to be able to share this data more broadly.

Chair: Thank you very much.

Q170 **Steve Baker:** Is simplicity the key to fighting tax avoidance?

Lin Homer: I think that is a bit of a simplistic statement, I am afraid, Mr Baker. Obviously if there is great clarity and good evidence it is easier to pursue, particularly in criminal proceedings, but I think what I would say is the most important aspects of a successful prosecution for us will be both the quality of the evidence and, in particular, the evidence chain and then collaboration between us and other agencies, which might be other law enforcement agencies or other countries but might also be other institutions, so it is not always simplicity, no.

Q171 Steve Baker: If I may, I will put it a different way. I know that I am not conversant with the entire tax code. It is way too long and I am pretty sure—I am sure some colleague here will correct me—that no Member of Parliament in this great august body, which legitimises that tax code, no other Member of Parliament is familiar with that tax code from one end to the other. Are any of you familiar with the tax code from one end to the other?

Lin Homer: I am certainly not. Both my colleagues are tax experts and I would be disappointed if they did not know every piece of legislation inside out. No, of course we accept that our tax system is incredibly complex. What I would say is that our approach to dealing with people takes into account their circumstances and, throughout, whether this is offshore evasion, whether this is activity onshore, if people come to us and disclose and say, “I’m not sure what I’m doing here” we will always treat them with greater support than if we have to go and find them. Because we do understand that there is complexity, so one very good example of that at the moment—and it has been so for the last three years—we have about 700,000 time-to-pay arrangements, mainly with small businesses and individuals where they are behind. Some of that will be error as well as straight inability to pay and we give them time to sort out. I would love our tax system to be simpler. I am not holding my breath for it to be so.

Q172 Steve Baker: So is the HMRC committed to a simpler tax system?

Lin Homer: We take all the opportunities we can but I think we are committed to making it easier to understand, even if legislatively it remains more complex.

Q173 Steve Baker: Of course I led with avoidance there. A similar question with evasion. When it comes to: does that behaviour comply with the law or not, to what extent would a simpler tax code assist on the question of evasion?

Lin Homer: I might ask Edward to try to define these things.

Edward Troup: I think if you are looking at criminal evasion and criminal prosecutions, then we are mainly relying on common law offences of cheating the Revenue, conspiring to cheat the Revenue, fraudulent under-declaration and the complexity of the underlying law is not really the question. It is the evidential question of whether someone had the intention and did actually cheat the Revenue. So the issue of evasion and simplicity are not so closely linked as the issue of avoidance, where complexity of the tax rules do give rise to opportunities of avoidance, which are addressed in a number of ways through targeted anti-avoidance rules and by attempts, whether through the Office of Tax Simplification or otherwise, to simplify the tax rules.

Q174 Steve Baker: One of the reasons I asked about your role as HMRC, and indeed the Office of Tax Simplification—and perhaps you could say a word in a moment about your relationship with them—is that I am quite sceptical now of Parliament’s ability to simplify the tax code because of the practical business of not understanding it. So I have been in a committee room just like this one and I have opposed tax breaks for film schemes. I have

done that because, as Mr Troup's smile I think gives away, we all know that film schemes have been one of the great sources of controversy and aggressive avoidance. It seems to me that it is nonsense that Parliament is still incentivising investment in films when one of the highest profile, at least, activities in relation to aggressive avoidance is in relation to film schemes. Could you help me untie what is going on?

Edward Troup: I think that is in a sense fair but also unfair because I think, you are absolutely right, we have a huge amount of historic avoidance with film tax relief dating back to the early days of the tax relief right through the 2000s. But the film tax relief was dramatically reformed—and I am sorry I do not have the exact year, I think it was 2007 or 2008, and it is now working very much in the way that Parliament intended and is giving tax relief to incentivise genuine investment in films and, as you know, is being extended to theatre tax relief. But I think the historical aspect of that is a very good illustration of what you say. The original film tax relief in a sense was both too generous, and probably not thought through fully by our colleagues, and did allow for a degree of avoidance that we still have to tackle.

Q175 Steve Baker: I pick on that example because I have been on the Statutory Instrument Committee, which has brought forward the measure, and I have opposed it but I cannot help wondering how many other areas where you are active in combating tax avoidance or possibly evasion. The activity that originally began the process was possibly even incentivised by Parliament as it has been in the case of film schemes. Could you give me some idea of the scale to which people's behaviour begins with a Government incentive to invest in a certain way?

Lin Homer: I think the film relief example is quite a good one, both because Government's intention was clear and in the revised film relief we think has been delivered. So I think every country in the world uses tax reliefs to a degree to incentivise types of behaviour or disincentivise types of behaviour, but it can be a challenge to persuade people to keep within the confines of what Parliament intended.

We have had 42 changes of the law that help clarify and close down attempts to broaden Parliament's intention but more recently we have also brought in a couple of things, which I might just ask Jennie to mention, both in the way that we work, a counter avoidance team. But also some new approaches, the most important one of which I think is what we call accelerated payments, which change the balance of benefit from tax avoidance. People knew generally that by the time we got to tribunal we won most of our cases, but it was sometimes worth taking the risk simply for the delay and perhaps if Jennie gives you a sentence or two about that you will understand how we think we are very successfully challenging this kind of gaming that could happen in the tax avoidance space.

Jennie Granger: Accelerated payments means that once we issue a notice that you are required to pay upfront, what we were finding, as Lin said, was the time value of having the money was sufficient to be in these artificial schemes. So far we have issued about 5,000 that has a value of—just so we understand the scale of this—£1.3 billion. That is the value on that and already over £200 million has been paid.

To go to your other point, we also recognise that people need some health warnings about what we are concerned about as well. We know we win about 80% of these cases and we think people are riding too much on the 20%, so we do a range of things now. We issue warnings called spotlights that say, “This is one we have looked at that we are concerned about”. We publicise much more clearly now the results of litigation and we—

Lin Homer: Punish high risk promoters.

Jennie Granger: Yes, so there is a range of—

Q176 Steve Baker: I am sorry to interrupt; forgive me, forgive me, I am sorry to interrupt. I am very conscious of time and I have allowed the conversation to go on to the broader issue. I just wanted to touch on that in order to ask you: how does all of this issue of tax simplification feed into the specific context of HSBC in the current scandal? Has a complex tax code fed into creating the set of circumstances that we have seen in relation to HSBC’s Swiss branches?

Lin Homer: I think it is important to repeat what Edward said that I do not think in relation to hard edged evasion it is much of an issue here. Evasion is criminal; has been and will remain so. People who knowingly try to do something illegal are committing a crime and if we can get the evidence to prosecute them we will seek to do so. What I think has happened—and I think you heard some of this in the evidence earlier today—is that there was definitely a culture in the mid-2000s when banks and other institutions were aggressively marketing avoidance schemes, and I think that has created an environment that we were not happy with. The code of practice, which I think was introduced in 2009 was a very specific response to that to say, “This type of behaviour is not acceptable and we will expect more of you” and we think that has been quite significant.

Steve Baker: I am going to try to keep it on HSBC because I am aware that the Chairman will tell me I am out of time any moment.

Chair: Yes, I am. Yes.

Q177 Steve Baker: On the UK-Swiss tax agreement it states that the UK Government “will not actively seek to acquire customer data stolen from Swiss banks”. To what extent has this agreement limited your interaction with the French authorities when you have been seeking to secure these prosecutions?

Lin Homer: Not at all.

Edward Troup: Sorry, shall I give a little bit of context to the Swiss agreement? Because I think quite a lot of the commentary has confused the issue of the Swiss agreement with the issues that have been going on with HSBC and the Swiss data. The Swiss agreement, which was entered into at a particular point in time at the end of 2011, was there to address the fact that at that time banking secrecy in Switzerland meant that we knew that there were accounts in Switzerland that we did not have information on. It was a ground-breaking agreement, which has allowed us to get already £1.2 billion with nearly £2

billion in total in prospect. It was done with the Swiss at that point. It is time limited. It was done at a point where we knew about the HSBC Swiss data and those people whose names are on the HSBC Swiss data list are absolutely excluded from the Swiss agreement. So it is entirely separate.

As I say, under that agreement we are getting nearly £2 billion. It was a difficult negotiation and it was negotiated during the course of 2010/11 and as part of the negotiations the Swiss who at that time were extremely sensitive about the fact that the data had been stolen asked us to agree that we would not actively seek to effectively encourage others to steal Swiss data, and that was the limitation of the restriction there.

Q178 Steve Baker: On very much that point, in the previous session Mr Mann highlighted that—he did not quite put it this way—one person’s data theft will be a another person’s whistle-blowing. Is this a phenomenon that you recognise and are you adequately equipped with powers should somebody decide to whistle-blow on a Swiss bank?

Lin Homer: Yes.

Jennie Granger: First of all, there is nothing in that agreement that would stop us accepting data from a whistle-blower regardless of the source. It merely restates some of the more general policy and that most revenue authorities have. We should not be encouraging people to steal wherever they are. That is simply the point it is making.

In terms of us being able to get that level of co-operation from the Swiss, one of the things that we are very pleased about is not just the agreement that Edward has mentioned but also the Swiss have announced they are going to join the Common Reporting Standard from 2018. The Common Reporting Standard—90 countries are now prepared to report to each other banking information on their nationals—is a dramatic step change in what we will all be able to do here and, frankly, it is the thing that is most going to close down people using tax havens with bank secrecy to deliberately hide income and assets offshore.

Q179 Steve Baker: Do you track and record all the whistle-blowing that comes to you?

Jennie Granger: Yes, we do. We have about 100,000 calls to our tax prime line. We track them. We use it. Some of them become sources to us and we have very strict health and safety requirements around confidential informants. Obviously we do not want to go into detail but we can.

Steve Baker: Thank you. You have answered the question I was going to ask next.

Q180 Mr Ruffley: Ms Homer, just going back to our friends the intransigent French. HMRC put out a press statement that said records show that since 2010 HMRC asked the French on several occasions for permission to use the data for purposes wider than tax collection. Can you tell us: were those requests in terms of waiving the restrictions in the international agreement?

Lin Homer: They were requests to expand our rights to use the data. So, to go back to where I started with the Chair, we received the data from the French. We had strict requirements to use that for tax purposes. We had a series of discussions with them about utilising it more widely. I should be clear, we have not just said, “Please?” and they have said, “No”. They have wanted us to do it in a very sort of particular way, “If you bring us an individual case and you tell us which law enforcement agency might be interested in it, then we will consider that by handing it over to the relevant department”. So the difficulty for us is when you are looking at 6,800 lines of data—

Q181 Mr Ruffley: But did you proffer any cases?

Lin Homer: It is very difficult because if you cannot share the data with a law enforcement agency you do not know whether they want to know more about it, so we have been pushing to say, “Look, this is in places very rough data. It is very incomplete. We need to do some data matching with our colleagues. We need permission to share everything we have with our law enforcement colleagues” and it is that permission that they have now given us. So, yes, we have had lots of discussion with them.

I would not use the word “intransigent”. I just think they have different requirements, constitutional and cultural, and they were not prepared to budge on those until more recently, and I suspect not the least because they can see that much of the data that they have has now been placed in the public domain in other ways. So those have been ongoing conversations from when we first received the data.

If it is possible, Chair, I would like to make the simple point that we got a lot of data. We identified about 3,200 people from that data. We pretty quickly identified that two-thirds of those people were compliant, and I think it is really important to say that not every line of data we got showed us people who owed us tax. I know there has been some debate about, “Why would you ever have a Swiss account if you were not trying to cheat the taxman?” but there are reasons. On those people we believed owed us tax I think we set about checking and validating that and getting the tax in very diligently. So to suggest that we have done—we have some really strong benefits from this data already, including £135 million in the exchequer, which there would not have been. What has been much more difficult, and I am sure we will talk about it, is pursuing prosecutions particularly against organisations in different jurisdictions on the back of the partial incomplete and stolen data that we had with no corroborating evidence, and when you get corroborating evidence sometimes that is the final bit that will allow you to make a prosecution stick.

Q182 Mr Ruffley: Understood. In terms of the unpaid tax that you have got back under the Liechtenstein Disclosure Facility, it has been reported that the penalties—so there is the repayment, there is interest on that payment and then there is a penalty on top—could be as low as 10%. It has been commented that you do have maximum penalties that you can impose of up to 200% of the sum in question. Why is this so low, 10%, in I am assuming these cases relating to the stolen files?

Lin Homer: Let me get Jennie to answer that.

Jennie Granger: First of all, there are two tiers of penalties under the Liechtenstein Disclosure Facility. For the tax years that go up to 2009 it was 10% and for tax years going forward from that it was 20% to 30%, so it escalated from that period. While it is on the lower range it is not out of step with a lot of international practice, so if I can use one against my own home country Australia, who ran a disclosure facility earlier this year, it was a 10% rate for them. Spain is 10%. Some, like Canada, have experimented with 0% for early disclosure and then a sharp escalation. I think it is true to say, certainly for us, that later disclosure facilities in later years, we have tightened this up more. The reason we have done that is—

Mr Ruffley: Sorry, “tighten up more” what do you mean?

Jennie Granger: We started to put higher penalties in relation to that more recently.

Q183 Mr Ruffley: What level? Higher to what level?

Jennie Granger: Well, for example, the Crown Dependency Disclosure Facility, which is running for a very limited period, is 20% and under the Swiss agreement it was between 20% and 40% of the account balance¹ basically in the formula. What you are seeing is as our ability to be able to gain data, to be able to find out from other means and knowing, as I said, the Common Reporting Standard is coming as well, we have been able to make this tougher and we will continue to do that.

At the time that Liechtenstein was agreed, Revenue authorities really did not have much ability to be able to flush out the data that would help them tackle actual evasion, so it was basically to encourage as many people as possible to come and disclose but, as I said, as time has gone on we have been able to escalate these and make them tougher.

Q184 Mr Ruffley: Would you accept that the Liechtenstein agreement will be essentially applied to cases where the taxpayer is sophisticated, if I can put it that way? It isn't Mrs Miggins with her income tax. It is people who are attempting to gain the system.

Lin Homer: No, but if you look at our domestic disclosure, we have a very similar approach, which is basically that if you come and tell us about something early under your own steam we will apply a smaller penalty. It will ramp up, if either we have to search harder to find you or if you tell us an untruth that we then discover to be an untruth. So for the people that have signed up through Liechtenstein, and indeed through the Lagarde List, they have all certified to us that they have told us everything. If we go back subsequently and discover in another investigation that to be untrue then the penalties take that into account.

So this is the system we apply across the piece of encouragement to people to sort out their affairs, and it is because we are there to get the money in and of course we are also there to change behaviours and to change those as people go forward. So this is not a one-off and

¹Note by witness: 21% to 41%— The amount taken out of the account balance under the UK Swiss Agreement represents tax, interest and penalties.

then you can return to what you used to do. This is, “Confirm you will then stay compliant”, and the third is to deter. We will do that by a range of penalties up to and including prosecution. That is our system and has been for about 40 or 50 years across the piece at home and abroad.

Mr Ruffley: That is helpful.

Lin Homer: Abroad it is much harder to get the evidence. That is the difference.

Q185 **Mr Ruffley:** Of course. Mr Troup, did you want to chip in?

Edward Troup: Only just to say that that is codified in the Finance Act 2007 and what we have under these offshore disclosure facilities is completely in line with the penalties set out in statute and the range of penalties for all disclosures and all offences.

Q186 **Mr Ruffley:** Staying with you, Mr Troup, have you read the former DPP Lord Macdonald’s opinion?

Edward Troup: I have seen reference to it in the press.

Q187 **Mr Ruffley:** Right. He makes a criticism of HMRC where he says that evidence already publicly available suggests that HSBC should be prosecuted under the 1977 Criminal Law Act for its part in systemic operation to deprive HMRC of revenue. Is that something you are worried about?

Edward Troup: I will pass across to Jennie, but the reference to evidence is clearly interesting. If he has something more than he has read in the papers obviously we would like to see it but—

Q188 **Mr Ruffley:** He said evidence already publicly available.

Edward Troup: I think Jennie might want to say about the quality of the evidence that is in the papers.

Mr Ruffley: Jennie, can you just—

Jennie Granger: Yes, so a number of things. First of all, we are talking about HSBC Swiss and, as you would appreciate, there are issues about: it is domiciled in another country. What we had was intelligence not evidence. We had stolen data. It was broken. It was old, so its quality was not particularly good. Of course we talked to the Crown Prosecution Service about what was needed. We had our very best criminal investigators working these cases to see what we could prove and what we couldn’t. But it is very difficult. We are also dealing with a jurisdiction that would not co-operate on stolen data to give us corroborating evidence.

Q189 **Mr Ruffley:** Understood. I just want to touché on the UK-Swiss tax agreement. You are allowed to make 500 requests per year, aren't you, to the Swiss authorities on named UK taxpayers?

Jennie Granger: Yes.

Q190 **Mr Ruffley:** How many requests did HMRC make in 2014?

Edward Troup: We did the full 500 for the two years, so in calendar 2014 we did 1,000.

Q191 **Mr Ruffley:** How many of these were successful in identifying tax owed to HMRC?

Edward Troup: There are a number within that that we are taking forward investigations on. I don't know whether—

Lin Homer: 13%², around 65 of those cases was a hit.

Q192 **Mr Ruffley:** A final question: the number of requests HMRC is allowed to make depends on the proportion of its previous attempts that are successful, as I understand it. What is the rationale for that on a performance-related allowance? Why did you sign up to that?

Edward Troup: As I said, the Swiss agreement was a ground-breaking deal. We got an upfront payment of £340 million from the Swiss banks. Indeed, you heard HSBC referring to their share of it. It was a difficult negotiation. I was not part of it but I heard of the difficulty with negotiation. We were very insistent on the ability to make name requests. Initially the agreement provided for between 100³ and 500. I personally went over and met Swiss counterparts in 2013 of 2014 and got them to agree to put that at the maximum end of 500, but it was a difficult negotiation. We also wanted to maintain the flexibility that if in fact we got a very high hit rate from that 500—because their view was that with named requests we would not get a high hit rate because their assertion that they were compliant and the Swiss agreement was picking up people, that they gave us the flexibility to go back and talk to them to allow for an increased number of requests in future years. We will be having discussions with them in 2016. It is not realistic to have that before then because it does take time for us to work through the 65 and anymore that we get, which Lin has referred to, but I would also add that the Swiss agreement is coming to the end of its life because as we move into the Common Reporting Standard, and the Swiss have signed up to that in 2018, we will and we have already initiated discussions with the Swiss as to how we transition from the Swiss agreement to the Common Reporting Standard in three years' time.

² Note by witness: Of the requests relating to 2013.

³ Note by witness: the low hundreds

Mr Ruffley: That is very helpful, thanks.

Q193 Mr Love: Ms Homer, you indicated earlier on that you had collected £135 million from the Swiss HSBC list but that was in tax interest and penalties. Can you give us a breakdown of all three of those?

Lin Homer: Broadly, sorry, I tried to do that. Around £120 million of that is the tax and interest and about £15 million of that are penalties, but that is broad. Most of this, as Mr Ruffley said, was through disclosure facilities. As you heard, pretty much all of this is pre-2008 and, therefore, it is at that lower end of the penalties through the disclosure facility.

Q194 Mr Love: You didn't disaggregate the interest from the tax, to give us a pure taxation figure.

Lin Homer: No, because it is just a question of how many years that tax covered rolled up. So in a sense it generates exactly the same figure as the tax would have if it had been paid at the right time.

Q195 Mr Love: Can you give us any estimate of the amount of tax uncollected?

Lin Homer: We have about 100 cases from the Lagarde List still outstanding and we think a few more million to come from that, and we think we have the tax that was due. What we have not tried to estimate, because it is a little bit more difficult to say, is what level of ongoing tax we are going to receive as a result of these people now being compliant for the future, but I would estimate that there are many 10s of millions in that category as well. We have a little bit more to do but we have pursued everybody that we believe owes us tax.

Q196 Mr Love: What I have been trying to get at, and you have probably worked this out, is some percentage of the tax that was due that had not been paid until this list came to us. That is a percentage of the total tax. Sorry, I have confused you. What I was looking for was the amount of tax collected as a percentage of what you thought was the overall tax that was due to be paid.

Lin Homer: We broadly think we have it all apart from the 100 cases we still have to do. We do not have a view that we have lost any significant amount. I am not going to say that down to the nearest pound but I have said in a number of Select Committees we go after the taxes due. We think we have the taxes due. We do not do deals on this kind of thing, so once we were in a disclosure environment, and we knew what the assets were, and then we charged the tax that was due and that is our approach.

Jennie Granger: If I can add to that also, in this case we believed from the evidence we saw that about two-thirds of the people we looked at—

Mr Love: Were compliant.

Jennie Granger: Were compliant. However we continue to monitor—

Lin Homer: Yes.

Jennie Granger: —and they are aware of that. So if indeed—

Lin Homer: So if we have missed anything we will be back.

Jennie Granger: Yes.

Q197 **Mr Love:** In the figures given to us—I think you announced to the Public Accounts Committee—there were 130 cases. I think you would call it just over 100.

Lin Homer: Yes, there are about 100.

Mr Love: Cases still to be dealt with.

Lin Homer: Exactly.

Q198 **Mr Love:** Can you give us some idea of what you mean by “being dealt with”?

Lin Homer: We are still working out how much tax is due before we agree a settlement. They are underway. This was a lot of data. It wasn't in very good shape. It took us probably the first half of 2010 to set ourselves up to do it, but the bulk of this money had been banked by mid-2012. Almost inevitably the final bits are the bits where perhaps the data is even less clear and it takes you a little bit longer to work out what you are looking at and to reach agreement. So this is just the finishing off in a sense of the final cases.

I think this is an approach that is very similar to that that our colleagues have pursued. I think the French have themselves said that they believe they now have most of the money in. They have almost done it the other way round from us and they are now considering around 50 prosecutions. We looked at around 150 cases and ended up actually three going to the CPS and one being successful. But I imagine that they now similarly think they are down to their last 50 or so, so I think we are in about the same position.

Q199 **Mr Love:** Obviously your primary focus here is getting the taxation in, but what priority are you giving to prosecutions or other actions?

Lin Homer: Yes. I had a good look at the governance around what we called Project Solace. So this was an operational project. It was under Jennie's predecessor, Mike Eland, who I have no doubt will have appeared in front of you. I have to say I am impressed by how they went about this. They put together a strong team. They were made up of significantly well experienced people, largely criminal investigators. They had very strong data management. We have some of the best data analytics in tax administration in the

world, and there was very strong governance of the cases. So it was a strong governance board.

They set about dividing the cases into those they thought were most serious. So we looked at the cases we thought were most likely to be criminal and we put those in the hands of our most experienced investigators. Now, I have looked—

Q200 Mr Love: Is this a preparation for telling us that you do not think there will be any more successful prosecutions?

Lin Homer: No, I do not think there will be many, of individuals, because I have looked at what they in and about 1,200 of the cases. So in the end slightly more than the number we think owed us tax was reviewed within our criminal and special investigation. I actually got one of the criminal investigators to come to talk to me about how she did that. She has 20 years' experience. She takes criminal cases all the time. That is what she does. Jennie's team have done around 3,000 over the last couple of years. There were specific criteria, our normal criteria backed up by some particular criteria for this project. Each of those cases was looked at by an experienced CI person. Having looked at all 1,200 they identified 150—

Mr Love: You are beginning to depress me because I think you are leading to a conclusion.

Lin Homer: Because the evidence for prosecution is very high.

Q201 Mr Love: I understand that, but let me put to you a back of a fag packet calculation I made. You took 20 cases of which we have had one successful prosecution.

Lin Homer: Yes.

Mr Love: But there were 130 other cases that you are now looking at. If you work out that one in 20 cases have been successful, then you should have a success rate of six or seven for the prosecution but it doesn't sound to me as if that is going to happen in this instance.

Lin Homer: No, because it is actually one out of 20 that were the strongest cases not—

Mr Love: So the other 130 are much weaker?

Lin Homer: They are part of the general 1,000, not part of the 150 we thought were most likely to be criminal. That is absolutely right.

Q202 Mr Love: Let me ask you the obvious question that arises: is this because of weaknesses in the law or weaknesses in the data with which you were provided?

Lin Homer: It is because of weaknesses in the evidence. Just to put this into context, we have a strong success rate of prosecuting generally. About 80% of the cases we take we get a prosecution. So I am confident that my criminal investigators before interaction with

CPS know the standard of evidence they need to get a case across the line. If you have gaps in the evidence, if you have an inability to get third party evidence to support data that you cannot audit back to a key source, then you will not succeed.

Q203 Mr Love: Well, let me ask you the very obvious question that arises from that. You are telling us that there is now a much firmer international regime that will allow you to be able to prosecute more successfully. What attempts have you made and how much resistance are you receiving from the French and Swiss authorities to provide some of the greater evidence necessary to carry through prosecutions?

Lin Homer: I think in relation to the Swiss authorities they were clear they were not going to collaborate on stolen data, and the Swiss banks are operating under laws that allow for secrecy. So there was no jurisdictional space for us to get or expect collaboration in that quarter. We certainly did look for third party data. You may recently have read about a French case that is before the courts at the moment where part of the information for the prosecution comes from the Lagarde List, just as our prosecution did, but where there is third party corroboration; in that case wire tapping.

What I think we needed in the individual cases is we needed supporting evidence to back up, as Jennie has put it, kind of indications of criminality that we got from the Lagarde data and that was simply not there in many cases. Of the three we presented to CPS—so we were hopeful of three—their view was only two⁴ of those reached the standard.

Q204 Mr Love: A final question. In a sense it is a statement, but have you made it clear to the Swiss authorities just how appalled the British public is that there has only been one successful prosecution out of 1,100 possible prosecutions, and that the secrecy in the Swiss banking system reflects very badly on them and our ability to hold people to account for tax evasion?

Lin Homer: I think our Government has been at the forefront of the international conversations about stronger international collaboration. So I do not think there is any doubt about that. But what I would say is we have also made it clear to other partners that we are willing to work with them. It is not simply the Swiss secrecy, it is always a question of having a good evidential trail and certainly, as a lawyer myself, I have to say I am happy that we live within an environment where the standards for criminal prosecution do set a very high bar for evidential requirements. But it is one of the reasons why we have broadened our civil penalties, so we are not in a position where if we cannot get a prosecution we stop.

I talked with other Member of Parliament about the sense that you have to deter. Of course you have to deter but over recent years we believe we have added significantly to our ability to deter. So there are cash penalties. We do now name people who have breached our rules. We have set up systems that make it much, much more punitive for you if you do not come clean early on.

⁴ Note by witness: one

Our view is that a law enforcement agency will always want a range of civil and criminal procedures at their beck and call; because you will never meet the threshold you want for all of the people that break the law. The police don't, and what you need to be able to do is to pragmatically cover the ground and in this case we believe we have done that. People have paid the tax that was due.

Q205 Mr Love: Can you be confident with this Committee, and indeed with Parliament generally, that all of these new abilities, civil regime, strengthening the law, giving you new powers and new international agreements, will mean that, when you come before committees or before Parliament in the future, you will be able to present a much more positive picture about taking action against those that evade paying their taxes?

Lin Homer: I am very confident that the powers we have been given are already allowing us to be much more successful. So, let's be clear, our ability to bear down on avoidance and our ability to bear down on evasion are stronger now than they were even a few years ago. I am confident that with some of the new powers we have recently been given, and indeed with our stronger resources in Jennie's area, we have around about 30,000 people in our business who spend their time pursuing compliance and I think we are already in a strong position and I am confident we can strengthen that further.

Q206 Mark Garnier: Ms Homer, can I talk to you about your relationship with the Treasury in terms of what your remit is in terms of what you are trying to achieve. The first thing is you are not a ministerial department so you do not have the same relationship with Ministers as I understand all other departments have. Can you expand on that?

Lin Homer: Yes. We are a non-ministerial department and the reason for that is I think this mirrors the arrangements for our legacy departments, for decades, probably centuries for at least Customs. What that means is our operational obligations are our responsibility—mine as accounting officer and my colleagues as commissioners. We are also operationally bound to maintain taxpayer confidentiality. That arrangement is so that people can be assured that their individual tax arrangements are not interfered with in any way by the Government of the day.

Nonetheless, we do get a remit letter from the Chancellor of the day and that generally obliges us to deliver in areas that are important for the country. So in recent times that has covered increasing yield and reducing the tax gap. It has covered bearing down on offshore evasion, which is one of these areas. So there will be flavours but the issue about how we do that and the operational decisions is entirely for us. I think and hope that that is what successive Governments think is the right balance.

Q207 Mark Garnier: I would certainly agree with that. To that end then we are looking at the difference between tax yield and prosecutions and all this kind of stuff. So what at the moment is your main remit? Is it to maximise tax yield or is it to—

Lin Homer: Yes, so there is a kind of core remit for a tax administration, which is to get the money in and it would be odd if it wasn't. But an aspect of our remit letters over the last five years has been about bearing down on avoidance and evasion, and so we received specific investment to increase the number of prosecutions. I suspect Jennie can probably more rapidly give you the figures than I can, and we have.

Q208 Mark Garnier: So this is criminal prosecutions or civil?

Lin Homer: Criminal prosecutions have increased fivefold over the period of this Government.

Jennie Granger: Yes.

Lin Homer: We get to decide which cases we take, and you will understand—

Q209 Mark Garnier: Let me be absolutely clear about this. There would never ever be a case where a Minister would identify a specific case to be prosecuted?

Lin Homer: No.

Q210 Mark Garnier: So they would say—

Lin Homer: Do more.

Mark Garnier: —“Do more prosecutions” and they have done.

Lin Homer: And then Jennie's criminal investigators are the people that will decide within a published strategy what we are trying to achieve, and that is a mixture of tax yield and deterrents and it would always be so.

Jennie Granger: Just to be very, very clear, they are specialists, they are certified, and it is their decision to refer that through to the Crown Prosecutor who basically then makes the final decisions obviously whether to charge someone or not. The Crown Prosecutor does it on the basis of both meeting the evidential bar and public interest as you would know. But it is a limited delegation to specialist criminal investigation experts. Not me, they work for me and they work within our guidance.

Mark Garnier: So again you are delegating further down the line?

Lin Homer: Yes, Jennie doesn't get to say to them, “Do that one and not that one”.

Q211 Mark Garnier: That is very interesting and very helpful. The other thing I wanted to look at was this idea of yield taking precedence over prosecution but let me unpack that question. What is the best interest of the British taxpayer in terms of gathering in tax? Because on the one hand it seems that you have the ability, potentially, if there is £1 of

evaded tax to turn that into £3 worth of yield by exercising the maximum penalty or the Liechtenstein Disclosure Facility, which has been used in this case, which obviously has a much lower penalty, or you have the choice to take through a prosecution. But presumably, if that does not work then the person effectively gets off scot-free because you cannot then go back again and do a civil prosecution, so how does that work? So what are you trying to achieve when you are assessing this bundle of wrongdoers?

Lin Homer: There will be a balance. We are trying to get the tax in. As I say, it would be fairly silly to have a tax administration that did not do that. We are trying, however, to impact on behaviours now and in the future, and a significant amount of the work that we do, again, both onshore and offshore, is about enhancing people's understanding of what they are required to do—back to Mr Baker's point about simplicity—but also getting them to understand the consequences of what they do. The full range of that activity will be from what Jennie's people will call our “nudge” activity. So we will write letters out to people saying, “People like you—this might be a medic or this might be a small business person—normally pay their tax. You look like you are not being as compliant as your peers” and we have hard evidence that nudge letters change behaviour. So we do that because if we can increase the voluntary compliance; the vast majority of our tax comes in voluntarily or almost voluntarily with just a little bit of a nudge. But as we go along that line if we have to shove more fiercely we will shove.

One of the things that we have to work out is how much is enough to make people think that we are close enough to catching them to act as a deterrent. So you will have hopefully seen our campaigns on your trains, of our eyes looking at you. You will recently have seen them suggesting to you that our use of data will mean that we are watching you. So just over the last year we have acquired the right to match what we call “merchant acquirer data” and so we can say to a small business person, “What you are telling us does not line up with the information we are getting from other sources, including your credit card receipts”. So we use the whole gamut to bring the money in, deter people from choosing to be non-compliant and nudge them back into compliance and punishing them in a variety of ways if they are not.

We think you have to keep a balance, including in a way your spotlight moving. So our campaigns will tend to be focused on particular sectors or particular sorts of behaviour, so that people have a sense, as our posters say, that “We know you well. We know where you are. We are coming to ensure that you do things properly”.

Q212 Mark Garnier: One of the things that have come out of this is that a lot of people have been angry over the fact there has only been this one prosecution.

Lin Homer: Understandably, we like people to pay their tax.

Mark Garnier: Of course you do. There have been potentially civil prosecutions, which is an interesting debate: do you go for the full 200% fine or do you run the risk of not getting it at all. Clearly it sounds like, when you are going through a prosecution, although it takes 44 months a lot of that is to do with deterring other people. In the case of this Swiss one, because it is such a big story and people are looking at it, it almost comes over as, “Well, actually, it has gone completely the other way. You can have an offshore bank account. You can not declare it and, generally

speaking, you have one in 1,100 chance of being prosecuted”. Now, from what you are telling me that is not the case. Do you want to respond to that?

Lin Homer: We can certainly give you some more examples. We have 48 million taxpayers at any one time; 4.5 million small business people. I have told you that we have significantly increased the number of our prosecutions. I could give you examples of small businesses as well as wealthy people that we have prosecuted, but that is not the only way that we persuade people to pay their tax, and we certainly have found that naming people who have defaulted, naming schemes that we regard—

Mark Garnier: Can you name them under a civil prosecution?

Lin Homer: Yes.

Mark Garnier: You can, okay.

Lin Homer: Naming schemes we regard to be high risk and you will have seen that we think there has been a reaction to that and that, for instance, aggressively marketed avoidance has moved from mainstream advisers to boutique advisers. I think earlier you heard representatives of one bank, and we have seen others, moving out of fields that back in the 2000s they were all in. So we think we are seeing significant changes in behaviour and definitely we are seeing the tax gap trend downwards.

Now what I think we have to keep deciding is where do we need to put our focus on compliance? But we would much prefer to try to help people be compliant than prosecute everybody, so if we can get people by system, by advice. We have some stats that show that if we help small businesses get well established in their first three months they are hugely more likely to stay tax compliant. So part of this for us would be the tax webinars we do with small businesses. We talk to thousands of small businesses about how to set their business up, ideally to keep them in that space not to have to chase them into a prosecution.

Q213 Mark Garnier: Just to be absolutely clear, these are decisions that you make given the overall remit that is passed to you by the Chancellor who says, “Maximise tax receipts”?

Lin Homer: Absolutely, and taken by experienced people who know what makes a difference to bringing the money in.

Mark Garnier: Fantastic. Thank you very much.

Q214 Jesse Norman: Thank you for coming in. Ms Homer, you persisted in adopting HSBC and other organisations’ language about this information being stolen. Do you really think that it is stolen in the sense that—

Lin Homer: It definitely was stolen but, as Jennie has said, we will use data from whatever source.

Q215 Jesse Norman: It is not stolen in the sense of you are trafficking in stolen data?

Lin Homer: We did not pay someone to go and steal the data and that is what we rightly are saying we would not do.

Q216 Jesse Norman: But you are not prepared to make the move to say, “Actually, this is rather valuable public service”. You want people to be spilling the beans on this aggressive tax avoidance—

Lin Homer: To be honest, we would prefer big organisations to give us better data.

Jesse Norman: Yes, that is avoiding the question of course. We know that. That is what Mr Flint said. He said, “We would like to do it better ourselves”. That is now what we are asking you. We are asking you: you get information, do you want to encourage it or not? You do, surely.

Lin Homer: We have taken it and we have used it. Jennie has mentioned we get over 100,000 bits of information and, let’s be clear—

Jesse Norman: I understand all that. That is fine. We are rehearsing ancient history.

Lin Homer: —all of that comes with a variety of circumstances.

Q217 Jesse Norman: You have now signed this agreement on 23 February, this French agreement.

Lin Homer: Yes.

Jesse Norman: Could that have been prompted by the public outcry over tax avoidance or was that purely coincidental?

Lin Homer: I have described that we talk to them regularly. I have a personal view that there is a degree to which they now can see much of this information in the public domain from other sources, and that may cause them to feel that they should think again. But Edward may want to emphasise. They do have strong laws in place in France about how data is held.

Q218 Jesse Norman: The difference was not that the law changed. It was that the public context; the politics changed.

Lin Homer: It was their rules.

Edward Troup: No, the politics is the wider circumstance. It became known publicly that this information was in the public domain. It has not been shared in the sense that I cannot download it on the internet, but it became known it was out there. The international committee—

Q219 Jesse Norman: But, Mr Troup, it has been known to be in the public domain for some time before 23 February.

Edward Troup: No, the fact that it had been stolen was in the public domain. What happened a few weeks ago was that the actual data started being leaked into the public domain, and I think if you were asking the direct question: did this have an influence on our discussions with the French and their willingness to give us the agreement that we have been seeking? I think it did. But I did not say, “Why have you suddenly agreed?” We were delighted having had a lot of engagement that they agreed.

Q220 Jesse Norman: I understand. When you got the original information why didn’t you tell us at that time about the restrictions under which this was operating, the way in which your hands were tied, the fact that it was of poor quality and the fact that it was gappy? Why didn’t we hear all about that at the time? Why did you allow public expectations about the value of this information to run ahead in the way that they did?

Lin Homer: I have done a little bit of looking back at what we said and where we said it and I think we were fairly clear about this in all the discussions. So the amount of money that we have got in I don’t think in any sense has been significantly out of kilter of our expectations. When colleagues from HMRC talked about this—

Q221 Jesse Norman: You always thought it was £150 million to £250 million or that kind of number?

Lin Homer: I cannot find an estimate, which might be the more sensible way to go about these things but there is no suggestion that we had a significantly different expectation.

In the early discussions before Select Committees—I think including this one—there was always reference to 6,000 lines of data. I think we fairly rapidly moved to discussing that we thought that was around 3,000, 3,200 people. I think very early on we talked about prosecutions and said we were looking at around 150. I think it was also said very clearly early on that we expected a significant number of people—

Q222 Jesse Norman: You did not mention the restrictions as I recall. I do not recall a—

Lin Homer: I think we did. I think we were clear that we had this for the purposes of being a tax authority.

Edward Troup: If I can come in because, Mr Norman, I think you are suggesting that we should have said there were restrictions, some of the data was scrappy, it is not very good. I am not sure, coming back to the previous discussion, that if we want to deter people we want them to fess up voluntarily, going out and saying, “Well, we have some information but it’s not very good” is the right way to do that. So I cannot recall whether we did mention the restrictions—

Q223 Jesse Norman: It is not absolutely clear. I am not sure that is true because of course you do not know whether you had good information or bad information, so what you know is information is in the domain and the Revenue are pretty picky about what constitutes good quality information.

Edward Troup: But I do think we have to be careful not to share in the public domain everything we have, and although there has been a lot of focus on this data, there are a lot of other sets of data that we have had that we are using.

Q224 Jesse Norman: That is a reasonable position. Ms Homer, you have talked just now in response to Mr Garnier about the efforts you have made to crack down on aggressive avoidance. Now did you see the previous session?

Lin Homer: I listened to it, yes.

Q225 Jesse Norman: All right, so we do not need to personalise this to Mr Gulliver but it is perfectly clear that Mr Gulliver is an example of a certain kind of posture, which my colleague Mr Kane described as being at the outer limits of aggressive tax avoidance. That is to say someone who is able to pursue his life in this country for 12 or 13 years so far, potentially 20 years or more in total, able to enjoy the benefits of living in this country, able to use a house, kids go to school here, all the benefits of that, and yet be resident in Hong Kong, non-domed in Hong Kong by the end of that time for 40 plus years. So my question is this: how on earth can this have been allowed to happen? Why isn't this a tremendous indictment of the non-dom rules that you have? How is someone like Mr Gulliver able to achieve this status of being essentially offshore to everywhere except the lowest tax domain that they choose to pay tax in?

Lin Homer: Chair, you know well that my first comment is going to be that we will not discuss individuals.

Jesse Norman: Someone like Mr Gulliver. I am not asking you to discuss Mr Gulliver, just someone in that situation.

Lin Homer: Yes, I know, I always I am afraid will preface that. The second—

Chair: I think it is a question about the non-dom status.

Lin Homer: Yes. So the second thing I will say is that as tax administration we apply the rules that Parliament sets and, if those rules apply, then we collect the tax that is due. I cannot collect the tax that people wish was due and that is not my job. Our rules around non-dom and many of our tax relief rules are well understood and we think are well applied.

Q226 Jesse Norman: But we can be rationally certain that your people will have gone back, closely interrogated someone in that position's situation and that if in fact you now subsequently discover, as you go back and look at it, that it was not compliant, their entire tax position would then unravel, would it not?

Lin Homer: We have many specialists. We have talked about Jennie's specialists. In specialist personal tax we have a group called the high net worth group. They customer-relationship manage our most wealthy people in the same way that large business tax customer-relationship with the big multinationals. Some of the most significant cases with individuals are effectively man-marked in just the same way our multinationals are, and they have some of our most experienced tax professionals alongside. We have seen more work in those areas in the last few years than we traditionally did, as we have received extra resources, and we have seen more yield from those areas than we did. One of the things that I have said, and am quite happy to say again, is that I do think individuals need to take responsibility for their own decision-making, but some of the things that we do in the counter-avoidance space is making it harder and harder for people to say, "I didn't realise what I was doing". I am confident that we exercise our responsibilities in that space very well.

Q227 Jesse Norman: Let me ask a final question, if I may. Of the 3,600 entities that came out of HSBC Suisse 2,000 of them were found to be compliant with the tax rules?

Lin Homer: Yes.

Q228 Jesse Norman: How many of those people were compliant because they had non-domiciled status?

Lin Homer: I do not know. There will be a whole variety of reasons why those people were compliant and it is not an issue—

Q229 Jesse Norman: Of that whole variety, how many—

Lin Homer: It is not an issue for me and it is not something I would feel I needed to share with you, I am afraid.

Q230 Jesse Norman: Sorry, you are suggesting we do not have a right to know what percentage of that number was non-domiciled? Why would that be?

Lin Homer: I think the policy of non-domiciled, there is general information about the numbers of people subject to those rules in the public domain and we would—

Q231 **Jesse Norman:** But this is not specific information about individuals. We just want to know. You have told us it is 3,600 and 2,000. How many of them are non-domiciled?

Lin Homer: I do not think it is necessarily information that we would have gathered and so I suspect that if you ask—

Q232 **Jesse Norman:** Why have you not gathered it? I think you should gather it, and I think you should write to us with a number.

Lin Homer: Because I do not think it is relevant to our decision about whether they owed tax.

Q233 **Jesse Norman:** No, but it is relevant to your judgment about whether or not non-domiciled status is being abused or the extent of it. You are not—

Lin Homer: My judgment is whether or not I am seeing abuse. If I am seeing our tax laws properly applied and those are discussed and debated in Parliament and put into effect then I do not think it is for me to answer a question about whether a certain level of usage of that in relation to this data indicates abuse.

Q234 **Jesse Norman:** If I may say so, I do not think it is necessary for you to substitute your judgment about what Parliament should be inquiring into, when these matters are general matters that relate to policy to set in Parliament.

Lin Homer: We publish information about non-domiciles.

Q235 **Jesse Norman:** No, I am asking you to add to that information here as to how many of those people are non-doms.

Lin Homer: I do not think that is available within our systems without me going back and reviewing the 2,000 cases.

Q236 **Jesse Norman:** Right, so I am asking you to do that. Why can't you do that?

Edward Troup: Can I come in? I think that the simplistic question, "Is someone compliant because they are a non-dom?" is not really capable of being answered. In relation to a particular individual there will be a whole lot of circumstances: their residence, their non-dom status, where they have held their money, whether they have remitted it to the UK. I have not looked at any of these cases, but I imagine that among the compliant ones there will be some non-doms, but they will be compliant not just because they are a non-dom but because they have also earned their income in particular places and they have paid tax on their income in particular places. Equally I am sure that among the non-compliant ones that we have settled with there will be ones who are non-doms who are entitled to claim

effectively exemption from tax on money until it is remitted, but may have remitted it without declaring it to us. The question comes very close to asking for a breakdown of the individual circumstances of the 3,000 people—

Lin Homer: Or the 2,000.

Edward Troup: —that I genuinely think would be both difficult to do and—

Lin Homer: Dangerously close to breaching the Act.

Edward Troup: —inappropriate for us to disclose.

Q237 **Chair:** There are two grounds that you are giving for not providing it. One is appropriateness and the other is practical.

Edward Troup: That are linked.

Lin Homer: But I am happy to remind you where we publish information on this.

Chair: I think it might be helpful if you drop us a line expanding in some detail on the point that you both made, particularly the last point, because that is really the heart of the matter on which we as Parliament will need to form a judgment.

Lin Homer: I am happy to do so.

Q238 **Jesse Norman:** Could I add just one sentence? To that letter I would be grateful if you would add the justification as to why you are able to take the view, Ms Homer, that it is not for Parliament to make this inquiry. That is a different matter. You can say it is hard to get this information. I want to be sure that that is included in your letter.

Chair: I think you have heard what was said there and in due course we will get some correspondence.

Lin Homer: Yes, I will try to be clear.

Q239 **Chair:** I want to take you back to an earlier point that Mr Norman made, Ms Homer, about the treatment of whistle-blowers who themselves use criminal activity in order to engage in whistle-blowing, that is to steal data in this case. What is an individual in a bank, for example, supposed to do if he or she is confident that he will be sacked if he blows the whistle? Should he see what he considers to be uncollected and probably evaded tax?

Lin Homer: I think this will depend on the jurisdiction. Many countries, including the UK, will have specific provisions and protection for whistle-blowers and certainly in the case of the UK those protections are clear and well written down.

Q240 **Chair:** What about the Swiss jurisdiction?

Lin Homer: It is difficult, because obviously it is in the public domain that Mr Falciani was being pursued by the Swiss. He did not whistle-blow to us.

Jesse Norman: That is not true—

Chair: Jesse, really. You must allow the witness to speak.

Lin Homer: He was, I think, originally arrested by the French on request from the Swiss with regard to a desire to see him extradited and I think a judgment was made not to follow up on that because the nature of the data was felt to warrant further investigation. I think that illustrates that the overarching rules of Switzerland did not lead to the outcome that they desired.

Q241 **Chair:** It sounds as if this issue, the issue of some safe haven for whistle-blowing across jurisdictions, must form an essential part of negotiations to try to secure uncollected tax.

Lin Homer: I think the common reporting standards in a sense try to oblige everybody to follow a more appropriate standard of disclosure.

Chair: Perhaps you might like to come back to us on the specific whistle-blowing point in the different context. The Commission on Banking Standards also developed a new set of rules, some of which are being implemented.

Q242 **Rushanara Ali:** Can I just follow up on a couple of points that were raised earlier on? You had an extensive discussion about non-dom status, the broader point, and my question to you is, given you are alluding to the fact that there are some sensitivities about disclosing data, what part of it is to do with the legislation and what part of it is to do with other matters, confidentiality and so on, in light of Jesse's comment? What powers would be needed? If it is in the public interest for us to know how many people are non-doms who are part of this number, what powers do you think Parliament should be giving you in addition in order to fulfil that action?

Lin Homer: We have significant statutory limitations on our ability to share data and obligations to maintain confidentiality, which are longstanding and that would need legislative change. What we have been doing in recent years is seeking and getting support for changes in our legislative basis that allow some naming in increasing circumstances.

Q243 **Rushanara Ali:** So there should not be anything stopping you, given that you are already able to name some people, to give the exact numbers in that case?

Lin Homer: We have specific powers in specific circumstances to name deliberate defaulters, to name high risk promoters. Obviously when people go before a tribunal,

either in civil proceedings or criminal, their details become known, so in a sense they make that judgment when they take the final decision of going to court.

We have recently, just the week before last, put up a crime map product, so we list our prosecutions.

Q244 Rushanara Ali: So there is nothing to stop you. If you are able to name individuals there should not be in principle anything stopping you from giving us the numbers?

Lin Homer: No, we have to have a statutory right to do so, and I will write that to Mr Norman. The point is what we do not do is list compliant taxpayers, and what Mr Norman was asking was a question about compliant taxpayers, not non-compliant taxpayers. I just want to make the distinction. I wait to be told by Parliament.

Rushanara Ali: Do you know on his previous question how many of the non-doms were non-compliant and how many are compliant then in that group of numbers?

Lin Homer: I think I do because I think the question was clear. We believe two-thirds of these people to be compliant.

Rushanara Ali: No, I meant the non-doms, how many were compliant?

Lin Homer: The question was about how many of the 2,000—

Rushanara Ali: My question is—

Lin Homer: Well, you asked me about Mr Norman's question and I do not think Parliament is close to asking us to share details about compliant taxpayers, so I just want to be very clear about that.

On non-compliant taxpayers, even in that space we have to have a specific right to publicise and we do not publicise the many occasions when we reach a settlement with an individual taxpayer that says they owe us tax. I think my experience since I have been involved in the organisation is that Parliament wants and expects to see a good reason for doing that, and the reason that we would normally have is to have that talk, as I described earlier, and to be able to show that there are risks to the behaviour that is being undertaken.

We do think about and we have been expanding the spaces in which we can put the details of non-compliant people in the public domain. I suspect that will continue.

Q245 Rushanara Ali: Okay. You have talked quite a lot about behavioural change and you have explained very extensively, and I think, rightly, about getting people to voluntarily give information and pay up voluntarily, and the nudge effect. Do you not think that the public, given what has happened with the HSBC scandal, the behavioural change for very wealthy individuals who have found ways of avoiding and evading tax, tax dodging, illegal activity as well, feels that there is one rule for very wealthy people who can afford to find ways to bend the rules, and have been supported in that case by HSBC, and that regardless of all the good work you and your organisation has been doing they do not feel that your organisation treats

them in the same way? That is a perception and people feel genuinely enough effort is not going into going after people who are avoiding and evading paying large amounts of money.

Lin Homer: I do worry that that is the perception, yes, and I think one of the challenges—

Q246 Rushanara Ali: Do you say it is a reality as well, the disproportionate effect of the taxman going after ordinary individuals?

Lin Homer: I am absolutely sure it is not a reality.

Rushanara Ali: Well, let me give you an example.

Lin Homer: I would quite like to answer your last question first. The position that we are in is that there is quite a lot of not very well-informed debate about what we do, how we do it and about what other people do. One of the things that we have been trying to do over the last couple of years particularly is talk more about what we do. The reason for putting more of our information into the public domain is to say as strongly and clearly as we can that, first of all, we treat all taxpayers fairly and, secondly, that the approach we take is consistent across the rich individual, the less well off individual, the small company, the big company.

What I do think tends to happen is that that story gets overwhelmed by some of the media and other reporting and I am not sure people realise that in relation to the Lagarde list that we believe we have got all the tax in. I think it has been quite hard to get that message over. It is a perception, I think it is—

Rushanara Ali: So you have got all the taxes in and there is nothing further to—

Lin Homer: Well, other than the 100 cases I talked about, absolutely. I think it is a real problem for us if that perception is allowed to go unchallenged, which is why I am being quite forceful. People have a right to know that we treat all tax avoidance and tax evasion seriously.

Q247 Rushanara Ali: Do you think you would be able to provide some evidence of the proportion of time that staff spend going after these kinds of cases, versus high amounts of money that are under investigation versus individual cases, because that is a genuine problem. Many of us will have examples. My most recent example, which is in the press, so I can share it with you, was an ex-serviceman—

Lin Homer: We put some information on—

Rushanara Ali: —who the taxman was going after because he had a part-time job. He provided the information, but there was some miscommunication along the way. He was on the verge of being made homeless. The taxman or woman rightly goes after people, ordinary people, where they have done something wrong, but there seems to be an over-zealous attempt at ordinary people, but people do not feel that is shared with wealthy individuals. That is a perception that needs to be corrected, so if you could give the facts about how much resource went into which group.

Lin Homer: I absolutely accept the real risk of that being a perception. I completely refute that that is the case and we have put—

Q248 **Rushanara Ali:** Do you think you would be able to provide some evidence?

Lin Homer: We have put information up on gov.uk last weekend, significantly because of my concern that if people only read the headlines, they do not get the information. Since April 2010, we have secured £100 billion more in compliance revenues than otherwise.

Rushanara Ali: Yes, I have seen that, Ms Homer.

Lin Homer: We have £31 billion—

Chair: That is not quite the question that Rushanara is asking.

Rushanara Ali: My question was the resourcing.

Lin Homer: —of that out of large business compliance—

Rushanara Ali: No, but that was not my question.

Lin Homer: —£2 billion of that from offshore evasion—

Rushanara Ali: I have read your notes on that, Ms Homer.

Chair: Hang on, Ms Homer, can I take you back to the question that—

Lin Homer: —£852 million from the richest—

Chair: Ms Ali, could you possibly go back to the question?

Q249 **Rushanara Ali:** My question, Ms Homer—and if you cannot answer it here, I would be very pleased if your officials or you could provide me the numbers later—what proportion of your staff allocation goes into going after high value, high net worth individuals who are dodging, evading, avoiding or accused of avoiding or evading tax and what proportion goes to others? You can do that, break it down by income; if we can have that.

Lin Homer: Yes, we can do it by behaviour. Yes, we can do it by behaviour. We publish it in the tax gap—

Q250 **Rushanara Ali:** Because you understand that is how we can build public confidence, and if there is an issue about resource allocation, then perhaps we can make the case to the Government—

Lin Homer: I am very happy to point you to our—

Rushanara Ali: —that you should have more resources to go after rich individuals who are not paying their fair share of tax. That is not everybody, but there are examples here that are deeply concerning to the public, so it should be taken seriously.

Lin Homer: If it is—

Chair: Hang on, Ms Homer. Have you finished asking questions?

Rushanara Ali: Yes.

Lin Homer: I am very happy to point you to our published information. We distinguish in the tax gap publication by type of behaviour as well as by some other criteria and we can point you to that. I think what I did want to say is that it is a perception that, as you have just rather repeated—

Rushanara Ali: You have not answered my question.

Lin Homer: —that avoidance and evasion is either only done by the wealthy and the big companies or only chased. I just need to be very clear—

Rushanara Ali: But my question was—

Lin Homer: —there was not a question there.

Q251 **Rushanara Ali:** There was a question there. With respect, there was a question. My question was about staffing.

Lin Homer: Well, I would ask you to put the question to me. I can tell you that we put the vast majority of the resources in Jennie's part of the business, which is by far and away the biggest part of our business goes on evasion and avoidance. It is pretty much all of it. What I cannot do, because it is not true, is tell you that only rich people do evasion and avoidance. That is not true.

Q252 **Rushanara Ali:** No, but the purpose of this investigation on the HSBC case was there are significant high net—you mentioned high net worth individuals.

Lin Homer: I can give the figure on offshore if you would like me to answer that question.

Rushanara Ali: No, my question was about high net worth individuals and what percentage, what proportion of time goes into investigating those that are of concern. I think that it is a legitimate question to ask in the light of the issues at hand here.

Lin Homer: Yes. Maybe if I could tell you the amount we collect from the 6,000 richest people, our extra work on them has secured an extra £852 million. We can give you details of the numbers in that unit, but I want to just say again that all of Jennie's people spend their time doing evasion and avoidance. That is what Enforcement and Compliance is.

Rushanara Ali: Ms Granger, did you want to add anything?

Jennie Granger: Certainly we can write to you about it, but one thing I would like you to think about in that is it is not just a question of how we divide up the resources across HMRC. In terms of the ratio of staff to taxpayers, so the number of large businesses, the number of staff, it is a much higher proportion, so it is one to one in Jim Harra's area to the large companies, whereas in the—

Lin Homer: Small business, it is one to many.

Jennie Granger: —small business end, it is one to many. That is why in the mass market in particular we do a lot of nudge and other work as well. In fact, the answer you are going to get—

Lin Homer: Is the other way round.

Jennie Granger: —is the other way around, that there is a much heavier weighting and a much higher level of expertise in those that are looking at wealthy taxpayers.

Chair: Let us wait for the written answer in due course, because I think it is—

Lin Homer: We will give you the breakdown. We are happy to give you the breakdown.

Q253 **Rushanara Ali:** But do you see where I am getting at with this, because your answer—

Jennie Granger: I absolutely do understand.

Rushanara Ali: —Ms Granger, your explanation is helpful for the public to know that you are giving—

Jennie Granger: Exactly. The perception does worry us, you are absolutely right.

Rushanara Ali: Yes, and it is going to affect your agency. Ultimately it is going to be damaging for HMRC if we do not correct those perceptions and where there are problems if we do not address them.

Lin Homer: We look forward to you helping us do that.

Jennie Granger: Thank you. If I just come back to one more, which is one that I quite often try to get out as well, in my area we also have debt collection. I suspect the case you are telling me is a little bit in that space as well. Our time to pay arrangements are almost exclusively small businesses—

Lin Homer: And individuals.

Jennie Granger: —and it has been a quite helpful strategy, particularly in difficult times, to help them tide that over. But it is very difficult to get that message out, because as you rightly point out, people will point out the case where we did not get it right.

Chair: Perhaps you had better set that out in a bit more detail in writing as well when you come back.

Jennie Granger: We would be very happy to do so. Thank you.

Q254 Teresa Pearce: Ms Homer, can I take you back? You made a comment that HMRC had not been contacted by the whistle-blower, yet published in *Le Monde* was a copy of the e-mail that he says he sent to the general enquiries address. Could you just tell us what you have done to try to find that e-mail?

Lin Homer: Yes, of course. Sorry, I was trying to be clear that the initial contact with Mr Falciani by a state was with France. We received our data from them. Our understanding is that they have everything he had. Indeed, the BBC has recently confirmed to me they do not believe Falciani holds any of the data any more. It has been suggested to us that an e-mail was sent. It was sent from the *Le Monde* copy, which is obviously all I have to go on. It was sent to two addresses, in the FCO and one in HMRC, neither of which are live any longer. The one in HMRC was a regional VAT enquiry line and it was closed down a number of years ago. We have checked back as thoroughly as we can.

The procedure that would have applied to misdirected human information, which is what we loosely call this, would have been to move it to Jennie's criminal team, who deal with all the receipts of information. We can find no evidence of it either being received or transferred, but I am conscious I am kind of giving you a negative there. We have also checked with the FCO. They can also find no evidence of it having been received. In that case, it was the previous Secretary of State's private office address, and of course that is a much smaller thing, but there is also no evidence, and FCO are clear with me that had it been received by them, they would have expected to have transferred it to us, and there is no evidence of that transfer either.

So I am afraid that I cannot give you certainty, but what I would say is that what that would done—I am not sure what that would have done, because what the BBC have also confirmed, which has been very helpful, is that they do not believe that Falciani ever told them he had tried to contact us. What they have said is he commented in his first programme with them that we had never contacted him, which is true, but it is a more recent suggestion via *Le Monde* that he contacted us, and I have just not been able to chase that down. By the time that e-mail was sent, if it was, I think the French already had the data and were signalling to a number of us that they were beginning to do things. I suspect we would probably have relied on the government-to-government staff anyway, but I cannot assert that that is the case, because obviously if it had come in and been dealt with, a different view might have been reached.

Q255 Teresa Pearce: Ms Homer, ordinary taxpayers, if they do not pay, they get automatic penalty notices if their returns are late, they get chased, because it is easy to chase someone who is compliant and does pay normally because they are there, and it is harder to chase people who are not there. Do you not accept that the public perception—and I know what you say about the media, we all suffer at the hands of the media—is that they cannot get away with these things and other people do? Therefore, what they want is for people to be held accountable. You said recently that to take a case through the Crown Prosecution Service—and I understand it is the CPS who decides whether there is criminal activity there—it takes

on average 44 months to get to a point where the CPS considers charging. Can you describe why it would take 44 months?

Lin Homer: Yes. Let me say again, we completely share your concern that the public would feel unfairly treated. We do think it is a perception, not a reality. I do think there is more we can do to help overcome that and so, for instance, in your example of people feeling that the first time they make a mistake we get them, we currently have a consultation out about changing our penalty approach so that it is not wholly automated and takes into account behaviours.

Q256 Teresa Pearce: Automation is a real problem. 31 January is the cut-off date for late submission—

Lin Homer: Yes, and lots of people leave it until quite near the end and then they get into difficulty.

Teresa Pearce: —and I am aware of a number of people who were sent notifications on 22 January to tell them they had incurred a £100 penalty for not filing when the date was not even up, generated by a computer.

Lin Homer: You should send those to me, because that should not happen.

Teresa Pearce: No, it should not happen, but it just makes—

Lin Homer: But part of the changing the perception is the current consultation, which is saying we should give a stronger message to people that we do, as we always have done, take into account behaviours. We have set up in the last year a new service for vulnerable people. This means people who might be in a serious muddle, might have health difficulties, mental health difficulties, face bereavement, where we try to make sure we give them the very best support at the earliest point to get them back to where they need to be. That is what we are doing at the positive end to try to make sure people understand that we recognise that people need help.

On the question of people then expecting us to do more, can I just assure you, Jennie's criminal investigators like prosecuting people. We have done thousands of prosecutions. Even in relation to the Lagarde list, offshore prosecution is a difficult area. We are still, I believe, one of only two countries that has done any, and I am firmly of the view, having looked at Project Solace, that if they could have banged a few more people up, they would have done so quite happily. There is no question about us driving for prosecutions in the right cases, but our threshold for evidence for criminal cases will always, I think necessarily, be higher, and so we do use civil penalties as well.

Q257 Teresa Pearce: You have a history of voluntary disclosure, you have encouraged voluntary disclosure for people who hold things offshore.

Lin Homer: We have.

Teresa Pearce: If you were provided with a list of people who did have offshore accounts, who had previously had a voluntary disclosure and that they had not declared this other account that comes to light, would you immediately prosecute?

Lin Homer: I think Jennie has prosecuted around 11 other people outside Lagarde in very similar circumstances now.

Q258 Teresa Pearce: Because that would surely be a clear-cut case where someone has said voluntarily, “I am going to tell you everything” and it is like perjury.

Lin Homer: Then we can prove they have not, yes, if we can prove it.

Q259 Teresa Pearce: Would they be definitely prosecuted?

Jennie Granger: Yes. As Lin said, we have 11 cases where we have been successful over that period. We have 50 under investigation right now, of which I think there is roughly around 19 that are—

Q260 Teresa Pearce: Is there an average cost to each court case?

Jennie Granger: I do not have an average cost, but the point I was going to make is that one of the things that we absolutely do want to do and have in that mix of that 50 is anyone who has defaulted that we have discovered has lied to us on voluntary disclosure, then they get prosecuted for making a false statement. That is in fact what happened with the—

Q261 Teresa Pearce: That would be an easier prosecution, in effect?

Lin Homer: Yes, absolutely.

Jennie Granger: Indeed, it is one of the ways. We are serious about, “You get this one chance, come clean, and if you do not, then that is where we go”.

Q262 Teresa Pearce: Ms Granger, I understand it was before your time at HMRC, but in about 2006, 2007, there was a great big hoo-ha about information powers, section 28A notices made to financial institutions, just to find exactly this sort of information. What happened? Nothing much seemed to happen. It is all voluntary disclosure, voluntary disclosure.

Lin Homer: No, I think there has been a significant movement. You will not have seen the impact of it yet, but the movement towards common reporting standards in a sense had its feet in the early work on offshore disclosures. Over a decade, this area is changing markedly and it allows you to be progressively tougher and tougher and tougher. But I

think you heard earlier of an era when the culture and the approach to this kind of activity, whether aggressive tax avoidance or evasion, was felt to be more acceptable. I think some of the early work around finding data, including setting up disclosures, is what has changed the scenery. By 2017, we think it will be markedly different, don't we?

Jennie Granger: It will be markedly different, but I also want to make one thing clear. I do know about that particular case, because we tried to copy it in Australia because we thought it was very clear—

Teresa Pearce: Yes, it was very good.

Jennie Granger: —because they got it out of the client relationship management systems of the banks, then it was onshore data.

Teresa Pearce: Exactly.

Jennie Granger: If we think there is onshore data, we will go after it to corroborate. Let me be really clear on that point: one of the things Lin mentioned earlier that also is changing the landscape is other forms of data. You will have seen that we look at things such as luxury boat registrations, we look at credit card data, which gives us cross-border activity now, so there are a range of things. But the big game-changer is 90 countries starting to give banking information to each other. We will look at that not just for individual cases—and our message is, “Give it up now” —but we will pattern it also, so if we see patterns of behaviour around subsidiaries of banks, then that is something we can take forward.

Q263 **Teresa Pearce:** Going back to public perception and why they might have this perception, the Isle of Man disclosure facility that is currently in operation, I will not name the particular accountancy firm, but one of the big four—they are probably all exactly the same—when advising their clients about the main characteristics of this, one of the things they say is that they have a bespoke service provided by HMRC for firms such as them providing disclosure. I do not get a bespoke service. Why do the big four get a bespoke service or do they not?

Lin Homer: Do send us the advert. I have said before not everything you read in the marketing blurb of firms is true. One of the things we would always say to people is do not take the advice particularly in the bespoke area—

Q264 **Teresa Pearce:** But you can see how that feels to an ordinary person—

Lin Homer: I totally agree.

Teresa Pearce: —to my constituent, who worked for a big company, took his retirement pension but carried on working for a year and HMRC decided—he did not send in a P45—he must have ceased his job. He never told them that and he ended up owing a lot of tax and yet people who can afford big firms get a bespoke service. If that is not true, I would like you to take it up with that particular firm.

Lin Homer: We will take that away, yes.

Q265 Teresa Pearce: Two more things. One is staff numbers: do you have sufficient staff? How many staff do you have?

Lin Homer: Do you want to give the details of Enforcement and Compliance staff, Jennie?

Jennie Granger: In Enforcement and Compliance we have about 28,000 staff. I am—

Q266 Teresa Pearce: What is the churn?

Jennie Granger: More recently we have had quite a few promotions and recruitments in because we have been expanding. We had a big investment of almost £1 billion over the SR10 period and that has meant we have expanded out from what was around 26,000, I guess, in headcount terms, so individual people. That has meant quite a lot of expansion, but I think what you are asking me is about how many we are losing from the organisation.

Teresa Pearce: Yes.

Jennie Granger: It has been roughly around 5% or so. One of the things that I am both blessed with but challenged with is that I have got an older population in Enforcement and Compliance, so we have been using this recruitment to start to bring on some of our new and young experts, particularly in the areas of data analytics, so the challenge for us has been more around starting to build up their expertise rather than concerns about losing people.

Q267 Teresa Pearce: Just the last part of this question is it would be accepted that any organisation is only as good as its staff, so good staff relations, high morale is important. Often in any organisation, to get that morale, you need liaison between the employer and the employees, which is often done through trade unions. I was very surprised that HMRC has decided to withdraw the ability of all trade union members within HMRC to pay their subs through their payroll. Even though the union pays £28,000 to HMRC for that service, it has been decided not to allow that to continue; check-off is what it is called. I believe that was your decision, Ms Homer.

Lin Homer: Yes. This is the—

Teresa Pearce: How does that help?

Lin Homer: The PCS have made a policy decision to encourage people to be members via direct debit, and that is because a number of the other major departments have moved to finish check-off. I have taken the view that if they are going to have that as their policy objective, it would be better for us similarly to be in the same position, so how—

Q268 Teresa Pearce: You are saying it is PCS' decision, not yours?

Lin Homer: They have been actively campaigning with staff for them to move on to direct debit and it is their preferred approach going forward—

Teresa Pearce: All right, thank you. That clarifies it.

Lin Homer: —so how we intend to ensure that our staff are not disadvantaged by that is we are working very closely with the union to ensure that they get regular information about how to do it. We are giving the union the ability to communicate clearly directly with staff to say, “This is what you need to do” and I think the important thing is ensuring people do. What I will say is it is up to individuals as to whether that change of process causes them to make a change of decision, but we will ensure that there is no complexity or anything put in their way about doing that.

Q269 Teresa Pearce: But just for clarity—

Chair: Make this the last question.

Teresa Pearce: —you are saying this was a decision of the union, not your initiative?

Lin Homer: The union's policy, their written policy. I have stood alongside them—

Teresa Pearce: No, that is fine.

Lin Homer: —seeing them hand out leaflets to our staff. They have a lottery, giving people a £1,200 prize as a sort of lottery draw for changing to direct debt.

Teresa Pearce: I will chase it up then, thank you.

Q270 John Mann: Ms Grange, you came in October 2012. The systems for dealing with the Swiss banks and HSBC there, were they working well at that time? The systems in which you came into, were they significantly problematic or were they basically in place and working?

Jennie Granger: Sorry, are you talking about HSBC?

Lin Homer: The Swiss agreement or Lagarde?

John Mann: No, no, HSBC.

Jennie Granger: In relation to HSBC. I am not trying to duck it, but that is more a question for my colleague, Jim Harra, who has the large business relationship. He works with the major corporates, including the banks, about their governance systems as well as their tax advice.

Q271 John Mann: No, but in terms of the work you have been doing in relation—

Jennie Granger: I should also say of course that I would not be able to comment specifically on a taxpayer.

John Mann: No, no, but in relation to the systems that were in place for dealing with this problem that has now emerged. You arrived in 2012 as well, Mr Troup.

Lin Homer: The Lagarde data, the Solace Project, Jennie and I have both looked at this and I have to say, yes, I think it bears scrutiny. It was a really well-managed project, it has delivered results.

Q272 **John Mann:** Everything was reasonably well in place at the time?

Lin Homer: Yes.

Q273 **John Mann:** Mr David Hartnett left at the end of 2012 and in January 2013 joined HSBC. In doing so, you have to give approval to it, based on the fact that there was no commercially valuable or sensitive information about any competitor and that any information relating to developments in Government policy that may affect the prospective employer was also not known. Mr Hartnett basically helped set up the systems in place; they were in place, as you have just confirmed. He moves to HSBC. None of the rest know about this problem until very recently. You do, he does, HSBC does and he moves from you to them. Who signed off the agreement for him to go at that time to HSBC and why?

Lin Homer: Project Solace was not under Dave Hartnett's line management. I mentioned earlier this work was done by Jennie's predecessor, Mike Eland. He was responsible for the line management of the staff, the operational decisions and for the putting into effect of the results that we have described and indeed therefore deserves the credit for the success of it. I just want to say that. In relation to any member of staff who leaves, there is a Civil Service-wide process for them asking or telling us—

Q274 **John Mann:** Yes, we know that. I am asking who signed it off and why.

Lin Homer: I sign off that the information is correct and then that is the—

John Mann: So you signed it off?

Lin Homer: And the information was correct.

John Mann: Why?

Lin Homer: Because the information was correct.

Q275 **John Mann:** He has insider information.

Lin Homer: I do not agree with that.

John Mann: No, the rest of the world does not know about this problem.

Lin Homer: Which problem?

John Mann: The problem with the Swiss banks and HSBC. He is moving to HSBC. He has been sat in front of us in your position previously and no one seems to have thought, “Oh, that is a bit odd”.

Lin Homer: I think he told you.

Q276 **John Mann:** Why was he not required to wait for a period of time?

Lin Homer: I think you did know. I think he told you about it on 25 February—no, sorry, that is not the day, on 12 September 2011. I think you had quite a long conversation with him about it.

John Mann: No, this stuff is—

Lin Homer: With Mike Eland as well, so—

John Mann: No, this stuff has come out into the public domain recently. He has—

Lin Homer: No, I disagree with that. That is just not true. What has come out into the public domain recently is the details of individuals. As we have discussed earlier, I think that is not something we would ever have given and it is not something any member of staff who leaves would be at liberty to share with any future employer, but is also not something Dave Hartnett would have had. He would not have had the 6,800 lines of data. The information came to us via the French—

Q277 **John Mann:** No, he would have the strategy.

Chair: Let the witness answer.

Lin Homer: The information came to us via the French. It has been managed in accordance with evidential requirements throughout within Enforcement and Compliance. I will say again I do not believe that there was anything that was wrong in the governance of this project, nor anything that I put in my confirmation of that application that was wrong.

Q278 **John Mann:** HSBC just told us that they had hundreds of thousands of suspicious transactions over the last seven years, which they have reported. How many each year on average are reported to yourself by HSBC?

Lin Homer: I will have to give you a note on that. I am afraid we did not absolutely have a line all of the time.

John Mann: No, that would be perfectly acceptable.

Lin Homer: I am not entirely sure, was that a reference to worldwide?

John Mann: Yes.

Lin Homer: That will not all be with us.

Q279 **John Mann:** Yes, we are interested to know—

Lin Homer: Yes, we are happy to give you a note.

John Mann: —how many they have done to yourselves. Why didn't you refer matters to the FCO?

Lin Homer: I already explained at the beginning of this that the data that we held under the Lagarde list we were not at liberty to share with other regulators or law enforcers. We are now, from 23 February, but what I will say is that from our perspective, we would always want to work with our other agencies in any data-sharing that we can.

Q280 **John Mann:** You are saying that the French were prohibiting you from sharing this with the regulator?

Lin Homer: Yes.

Q281 **John Mann:** Could we have the written exchanges between you and the French over that period of time, please?

Lin Homer: I will give consideration to that. I think there is a variety, and I would need, I think, to check with the French. What I am happy to do—and I think will have done by the time we get out of here—is to give a full account of what the French have now given us.

Q282 **John Mann:** But that is now. I am interested in the interactions between you and the French over that period of time to see what you were asking and what their response was.

Lin Homer: Yes, we understand all that.

Edward Troup: I think we understand the question.

Q283 **Chair:** I think what Mr Mann is seeking is, as much as possible, as is reasonably possible, given the need to continue to operate on a confidential basis with the French—

Lin Homer: That is why I am saying we will take that away.

Chair: Just hold on a moment: of the evidential base that can support the statement that you were not permitted to share this more widely.

Jennie Granger: If we could just add we will need to think about it, because there is treaty considerations, but perhaps there is some description we can give, and that is what Ms Homer is alluding to.

Q284 **John Mann:** Did you escalate matters to a Minister for them to be raising the issue with their French counterparts?

Lin Homer: I do not think we did, no. As I said earlier—

Q285 **John Mann:** Why didn't you? The FCO are responsible for significant issues and they were not informed of it because you believe that you were not allowed to do so by the French, but you did not escalate it to a Minister for their consideration of whether a Minister should attempt to raise this issue with their French counterpart.

Lin Homer: It is a treaty to treaty arrangement, so in that sense it has been signed off by previous governments. The treaty to treaty arrangement requires us to abide by the terms in which it is given. We had regular discussion about that, and as we have described earlier, the French have constitutional and cultural approaches that they hold very dearly. This is not unique to this arrangement, this is true across the piece and we would generally expect to keep to a treaty. It is a kind of basic deal.

Q286 **John Mann:** No, but it is about interpretation.

Lin Homer: No, it is not about interpretation at all, not at all.

Q287 **John Mann:** Or of course it can be. We do not know, because you are not giving us the information. Perhaps we will get something that will allow us to make a bigger judgment, but you previously today, Ms Homer, told us that because—and you are hiding behind the fact—the French would not allow you—

Lin Homer: I am not hiding behind them.

John Mann: —to share data and therefore you could not properly investigate, therefore there could not be prosecutions. That is what you have said.

Lin Homer: No, that is not what I have said. If the Chair will allow me, I will say what I have said again. We have done a great deal with this data. We now have a wider opportunity to share the data, but let me be clear: that opens up some other areas of activity. I do not think it alters at all the decisions we made on the individuals within the Lagarde list. We had the domain, with the assistance of our prosecutor, the CPS, and the numbers of individuals we were able to prosecute was about the quality of the evidential trail and it was nothing to do with the restrictions of the French. The issue about pursuing organisations and in particular HSBC Swiss was more limited and more contained because of that restriction. I am delighted that we will be able to look at that again, but I have not

suggested that our performance is anything to do with this restriction and I will say again—

Q288 John Mann: Are there any cases that would have been prosecuted potentially if you would have been able and chosen then to share that information with other agencies?

Lin Homer: We are open-minded about that, but I do not think we will see a waterfall of cases in these individuals where our ability to share the data will change our mind about the ability to prosecute, no.

Q289 John Mann: When you say, “We are open-minded” you mean that is your legal opinion internally?

Lin Homer: I have given you an example earlier: when we can wash data through another agency, you sometimes get corroborating information. Corroborating information is the single most likely thing to be able to allow us to land a prosecution in an area like this, where our base information is incomplete, old, partial, stolen. For instance, one of the cases involves an account in the name of Harry Potter. We do not believe he is a tax evader, so if I could wash that data—

Q290 John Mann: Therefore when you did not escalate it to a ministerial level, there are potential implications from that?

Lin Homer: No, there are not. You are putting words in my mouth—

John Mann: No, I am not. I am stating the facts.

Lin Homer: —and I am trying to answer your question as clearly and truthfully as I can. We welcome the opportunity to look more widely at a wider range of offences, but the decision about what we could do in relation to the tax issues in relation to the individuals, the data we received from the French was sufficient. The bar to prosecutions was the evidential bar and nothing else. There was nothing therefore that ministerial escalation could have done in relation to that.

Q291 John Mann: When you make your legal decisions on whether to refer to—

Lin Homer: CPS makes the final decision.

John Mann: When you make your legal decisions to refer a case to CPS for their consideration, what peer group review is there of the decision made and who makes that decision on these cases, on whether to refer to CPS?

Lin Homer: I described this process earlier. I am happy to describe it again. Project Solace had a governance arrangement whereby the individual criminal investigators were looking at each file individually. They were assessing that against our published criteria for

criminal prosecutions. They were putting forward cases to a project steering board for consideration of whether or not they could be prosecuted and the strongest of those cases were the cases that went forward to the CPS. Those decisions are entirely operational and they are made by our experienced criminal investigators.

Q292 John Mann: What prior discussions are there with CPS on whether a case might be appropriate for referral to them?

Lin Homer: Quite simply, we take the cases to them we think they are most likely agree and if we reached a position where, bluntly, we were taking cases and we won 100% of the cases, we would probably ask for a review about whether we were being too cautious.

Q293 John Mann: You do not have a system where there is any prior discussion with CPS?

Lin Homer: Yes, we do. Indeed, we have regular opportunities for discussion, but what—

Q294 John Mann: On individual cases?

Lin Homer: CPS expects us, because we have professional criminal investigators, to present cases to them that we think are capable of being prosecuted. The general rule is that they prosecute less than we take to them. I am not sure what the suggestion is. Internal staff, they are all professionally trained, they are certified. They know the standards that CPS will apply and CPS' expectation is that the cases that we take are the most likely to be prosecutable.

Jennie Granger: If I could just add to Lin's answer, it is not unusual for us to be discussing cases that are referred or even to have conversations with CPS, both to brief them on a project that is coming or to talk to them about individual cases. It is not a stand-off relationship in that sense.

Lin Homer: It is very collaborative.

Q295 John Mann: No, but in the same way that the police would have discussions over what threshold for prosecution will be and what is likely to succeed in court, that is an active, ongoing sometimes tension and dialogue.

Lin Homer: Absolutely.

John Mann: I am trying to see how you do that, whether you do it, whether there is a peer group review of the decisions you make or is it entirely within HMRC that those decisions are being made?

Chair: I think it might be helpful if that too is set down in as much detail as you can because I think that is—

Lin Homer: We can write that all down, very happy to do so.

Q296 **John Mann:** You claim, Ms Homer, you have back the full money.

Lin Homer: Other than 100 or so cases that are outstanding.

John Mann: Doing some calculations, that does seem an extraordinary statement, because what you are asking us to believe is that people are put money into this specific Swiss account, paying a significant fee to do so because HSBC is a commercial entity charging—let us call them—reasonable fees, yet if we look at the amount of money in the accounts and the amount you have had back, the people doing it must be doing it at a loss, because the amount you are getting back per case is going to be probably less than they are paying in fees for the arrangements to be set up. Why would someone put their money into Switzerland, not in order to avoid taxes, because relatively so little tax is being avoided, if you are right, that all that tax has been recovered?

Lin Homer: I am sure that not all of them expected to pay that tax when they put it into Switzerland, so they may not have made the judgment about the level of fee or the outcome.

Q297 **John Mann:** Of course people will make a rational decision, one must assume; I presume you in the HMRC assume. Someone who is putting money into an account to avoid tax, whether legal or illegal, in whatever way, whether it is avoidance or evasion, is doing so to pay less tax, but they pay—

Lin Homer: But they did not succeed.

John Mann: —a good fee in order for such arrangements to be made. The amount that you have had back in tax relative to the amounts of money is so low it is inconceivable.

Chair: Mr Troup wants to say something.

Edward Troup: I was just going to do some arithmetic on this. From around 1,000 cases, we have over £100 million. That says to me that that is an average of over £100,000 per case. I have no idea what fees you pay for a bank account in Switzerland, but it sounds to me, Mr Mann, as if you think that you pay more than £100,000 to put your money in a bank account in Switzerland. I do not know, I have no idea, but that sounds quite high. I would be surprised if it costs £100,000 to just put money in a bank account in Switzerland in order to conceal it.

Q298 **John Mann:** I have looked, for example, at a particular Panamanian company where people can buy off the shelf accounts in order to take money from Hong Kong and put it in there, and yes, that is the kind of rates one is talking about straight away, without lawyer's fees. Therefore, it is the case, is it not—

Chair: We are making points now rather than asking questions.

John Mann: No, my question is this: on what basis are you determining that that is the full amount of money?

Lin Homer: Our experts are looking at the value of the asset, the tax that is due under English law, British law, and they are assessing the full tax that is due. We are only allowing movement into the disclosure facility on payment of that sum, so I do not mind if they have paid more than they expected to.

Chair: I think I am going to bring—

John Mann: I have just two final questions.

Lin Homer: I do not mind if they have paid more than they expected to.

Chair: This had better be one final question, John. This really is the very last question.

Q299 John Mann: If there were any parliamentarians avoiding tax or evading tax, either, in the Swiss operation that you have looked at, would you feel it an appropriate duty to refer that information to the relevant Lords or Commons Parliamentary Commissioner for Standards for their investigation?

Lin Homer: I have to work within the law and I would need to satisfy myself—I am sorry, I cannot off the top of my head—about whether I had either an obligation or an ability to refer any individual, but you have my assurance that in circumstances where people are holding positions of responsibility, we will prosecute if we meet the threshold, because we do believe that it is important that people in positions of responsibility are seen to take those seriously. In recent times, within the last year or so, we have taken—certainly to my knowledge—a senior barrister to court, I think he may have been jailed, and we have taken a magistrate to court. You have my assurance that people's status would not discourage us from prosecuting where the evidence was right. It is a slightly more complex issue about whether I would have a right to refer them and I would need a specific statutory duty or protection to do that, I think.

Edward Troup: I was going to say, our published policy makes it very clear that we will put the weight in favour of criminal prosecutions in relation to people who hold positions of responsibility.

Lin Homer: Positions of responsibility.

Q300 Chair: We have been going just over two hours and I think that is an appropriate moment to bring proceedings to a close. Thank you very much for giving evidence this afternoon.

Lin Homer: We will make sure we send you the notes quickly.

Chair: We have asked for a number of detailed pieces of information, some of which may take a moment for you to prepare, a day or two. We would be grateful if you could send those to the Committee. Thank you for coming to give evidence.

