

Public Accounts Committee

Oral evidence: Tax avoidance and evasion: HSBC, HC 1095

Monday 23 March 2015

Ordered by the House of Commons to be published on 23 March 2015

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Members present: Margaret Hodge (Chair); Mr Richard Bacon; Mr David Burrowes; Stephen Hammond; Meg Hillier; Mr Stewart Jackson; Dame Anne McGuire; Austin Mitchell; Nick Smith

Sir Amyas Morse, Comptroller and Auditor General, Gabrielle Cohen, Assistant Auditor General, Marius Gallaher, Alternate Treasury Officer of Accounts, and Rob Prideaux, Director, National Audit Office, were in attendance.

Witness: Dave Hartnett, former Permanent Secretary for Tax, Her Majesty's Revenue and Customs, gave evidence.

Q242 Chair: I am going to start with some sad goodbyes that I want to put on the public record—I hope that you will bear with me on that. In particular, the Committee wants put on record its thanks to Gaby Cohen, who, after 20 years of absolutely consistent attendance in this Committee Room, I cannot believe will not be here. From all of the Committee, thanks for the fantastic work that you have done down the years, Gaby, and lots and lots of luck and good fortune for the future.

Gabrielle Cohen: Thank you.

Chair: I also want to say goodbye to two of our Members who are voluntarily departing. Austin, who has been a member of the Committee for—we have been trying to work out how long—about 10 years—

Austin Mitchell: 10 years.

Chair: And Anne, who has been a fantastic member of the Committee. She left us, but loved us so much that she came back. Again, both of you have been really effective, great Members of Parliament and it will be sad for us to lose you. All the best to both of you for the future.

Dame Anne McGuire: Thank you.

Q243 Chair: Right. This is the last hearing—can you believe it? Mr Hartnett, I do not believe everything I read in the papers, but I did read a statement from you about the HSBC Falciani leaks and the information contained therein. This is an opportunity to say whether this is true: you are quoted as saying, “I did not then”—presumably when you were at HMRC—“or at any other time, get involved in decisions about HSBC investigations. You are therefore wrong to associate me with accountability for performance in this area.” Is that true?

Dave Hartnett: Yes.

Q244 Chair: So are you really saying that, when you were head of tax and the leaks came in from the French authorities, you never got involved in any way in any discussions about how they should be treated, what they contained or anything at all? That is very hard to believe, if I am honest, because you were head of tax at the time.

Dave Hartnett: Madam Chair, let me explain. I got involved in these ways: I had several discussions with the French before the disc was ever available; and I had some meetings with senior people in HSBC; but I did not get involved at all in how the material on the disc should be treated or how it was treated. There is a simple reason for that. There was an incredibly important separation of roles between the director general for enforcement and compliance and me and other director generals in the Department to preserve the integrity of the investigations that were taking place.

Q245 Austin Mitchell: What were your discussions with HSBC about?

Dave Hartnett: Mr Mitchell, I cannot say much more than Lin Homer said. I saw them on 10 February 2010 to say—

Q246 Chair: Did you discuss the Falciani leaks?

Dave Hartnett: I was just about to say, Madam Chair, that I saw them on 10 February 2010 to say that we were aware, from the media and from the French, that there was leaked data which Mr Falciani had taken and that we were interested in it, and we tried to find out a bit more about the relationship between the UK and HSBC Suisse.

Q247 Chair: Go on. Explain that a bit more.

Dave Hartnett: I don't think I can, Madam Chair, because Lin Homer has made it very clear she is not prepared to go into detail about that note and I am therefore restricted in exactly the same way.

Q248 Meg Hillier: Can you give us a flavour, then, of how much of that information fell within the jurisdiction of the UK tax authorities? Are you able to give us any more?

Dave Hartnett: Ms Hillier, I'm going right to the edge of what I can say. I came away from the meeting with an impression that this was entirely an HSBC Suisse issue which HSBC UK would be trying to clean up.

Q249 Chair: I've seen some of the material in those leaks, and if you say you didn't see it, your staff will have done, because it was passed to them in April, won't they?

Dave Hartnett: I'm sorry; I couldn't hear you.

Q250 Chair: Your staff would have seen it. I have seen the material in the leaks. You say you never saw that material.

Dave Hartnett: Absolutely right.

Q251 Chair: But your staff would have done.

Dave Hartnett: Those involved in criminal and civil investigations who were part of Project Solace would have.

Q252 Chair: We'll come to the issue about individuals. I want to distinguish between the individuals and the bank, because what stares out at me pretty quickly—I'm not a tax inspector and neither am I a lawyer in any way, but with an ounce of common sense—is that the bank itself was heavily involved and heavily engaged in advising its clients on both evasion and avoidance. Indeed, the bank was probably involved, as you will have seen in some of the cases in the press, actively in money laundering. If your staff—those staff that you say were responsible for enforcement—had read them in the simple way I had, they would have sussed that, and they must have come to you, as the head of tax, to discuss not the individual prosecutions, not the prosecution of individuals who had accounts in the Swiss bank, but the issue of the bank's own complicity in helping, aiding and abetting, individuals to avoid paying their UK tax.

Dave Hartnett: Nobody came to talk to me about that. That would have been contained within Project Solace. If they wanted to talk to a board member about that, they would have talked to the director general for enforcement and compliance.

Q253 Chair: Then why on earth did you go and talk to HSBC in the first instance about it?

Dave Hartnett: Well, because I was really interested in all things Swiss at that time, if I can put it that way. Towards the end of the summer of 2009, I had completed the work I had led on the Liechtenstein agreement, and Liechtenstein had provided us, or the working towards the agreement, an enormous amount of information about Swiss banking in general. I had then approached the Swiss banking association later that year to see whether we could do something similar in Switzerland to what we had done with Liechtenstein. The Swiss banking association—if I can put this slightly colourfully—was shoulder-charged aside by the Swiss Government, and I was then heavily involved in discussions with the Swiss Government. I had hoped that the discussion on 10 February might provide further insight into Swiss banking. That was my purpose.

Q254 Chair: Mr Hartnett, what is just incredible to me is that you get involved in a discussion that leads to an Anglo-Swiss agreement, which we will come to in a little while, that you know that there is data in the Department for which—

Dave Hartnett: Not at that time, Madam Chairman.

Q255 Chair: You did know. The data came in in April.

Dave Hartnett: Yes, and I had the meeting in February.

Q256 Chair: You had one meeting? You had several meetings.

Dave Hartnett: Over a long period of time.

Q257 Chair: Lin Homer talked about half a dozen meetings. She talked about half a dozen meetings, not one—

Dave Hartnett: Okay.

258 Chair: So it wasn't just the February meeting; it was half a dozen meetings down the line. You had meetings with HSBC. You knew about that. You were negotiating an Anglo-Swiss agreement. I find it hard to believe that you didn't discuss the details of what was in those leaks with the Swiss—with the bank, with HSBC. But even if that's true, you would have needed to have known the content of that to make a sensible agreement in the taxpayer's interest in your negotiations on an Anglo-Swiss agreement. You needed that knowledge to be able to define the parameters and the clauses of that agreement, surely.

Dave Hartnett: No, Madam Chair, I did not need that agreement. We had a great deal of knowledge about Swiss banking by the start of our negotiations with the Swiss. HSBC Suisse was not the only Swiss bank that HMRC had become interested in, and there was a long history of obtaining information about individual Swiss accounts and the behaviour of individual Swiss banks. I can think of two or three other Swiss banks that, in the previous five years, I had led discussions with, rather than had personally, over their behaviour and performance.

Q259 Austin Mitchell: But when we talked to you in October 2011 and the Chair asked why there was a difference between the tough way you treat single parent tax credit receivers whom we overpay and the way you treat rich people, you said: “We know the people who have been overpaid tax credits and can address that, but we do not know the identity of people in Switzerland and we cannot establish who they are.” The Chair then said that that was your justification, and you gave the very smart reply that it was a “pragmatic solution to a long-standing difficulty.” A smart reply.

Dave Hartnett: Thank you.

Q260 Austin Mitchell: But you are then presented with a goldmine of names, addresses and information about all these people who are rooking the tax system by having Swiss accounts handled through HSBC, and you do nothing about it. It’s incredible.

Dave Hartnett: But it wasn’t for me to do anything about it, Mr Mitchell. There was a team in Project Solace dealing with that. I am nearly three years out of all this, so I am having to work from memory. As I recall it, there were tens of thousands of UK residents with bank accounts in Switzerland. If we got data—we did get data; HSBC Suisse data and other lumps of data, if I can put it that way—it still got nowhere near the totality of the information. That is what the Swiss agreement was trying to address.

Q261 Austin Mitchell: Yes, but you have a lot of information that you can proceed on here.

Dave Hartnett: But they were doing that. Project Solace was actually doing that, case by case.

Q262 Chair: I have to say that if you were negotiating the terms of an agreement on how they are going to release information to you about the tens of thousands or however many Swiss bank accounts there are, you would not have been doing your job properly, Mr Hartnett, if you had not had regard to the nature of the data you knew about from the leaks when determining the clauses in the agreement. It is incredible to me. If you did not know, you should have known. I think you did know, and it should have influenced you.

Dave Hartnett: No, I'm really sorry—I did not know the detail. What we were trying to do—

Q263 Chair: What do you mean by “detail”?

Dave Hartnett: The detail of the Falciani information.

Q264 Chair: Did you know that extensive advice was being given by the bank in Switzerland on how to avoid the European savings directive? Did you know that?

Dave Hartnett: I did not know—

Q265 Chair: Extensive advice, to more than one client—many clients.

Dave Hartnett: I did not know for certain, but—

Q266 Chair: You did not know for certain. That's a bit of a—

Dave Hartnett: No, let me explain. I did not know for certain. I knew that banks in Switzerland were, in a sort of wholesale way, trying to take their clients around the European savings directive. Why did I know? Because there had been lots of discussions in Europe about this, and one of the things that was really important to us when we were negotiating with the Swiss was that we did not do anything that repeated the colander-like approach in the European savings directive. We needed something secure.

If I can just go back to something you said earlier—we were not trying to get individual pieces of data from Switzerland. Even the Swiss President engaged with us to tell us we could not have a disclosure of individual data. We were trying to negotiate an agreement that brought us the money without the data, because we could not get the data.

Q267 Chair: There are two areas where I personally find it difficult to believe and understand your action. First, you claim that you did not know anything. Let us go back to the HSBC meetings. Lin Homer has refused to give us detailed information on what occurred in those meetings because they were “operational”. One understands that those meetings talked about the Falciani leaks and how they were going to be dealt with. What else is meant by “operational”?

Dave Hartnett: I do not know. You will have to ask Mrs Homer.

Q268 Chair: You have got to answer that question, Mr Hartnett. In those meetings, did you in any way discuss the Falciani leaks? Did you or didn't you? This is nothing to do with undermining the confidentiality of an individual taxpayer's interest. It helps Parliament make sure that we get an efficient and effective HMRC that brings the money in that is due. Did you or did you not talk about the Falciani leaks?

Dave Hartnett: I did not personally discuss any data from the Falciani leaks.

Q269 Chair: Did you talk about the generality of the Falciani leaks?

Dave Hartnett: One of my colleagues, who was with me, let it be known that he would want a separate discussion with HSBC about the data, because he was one of the directors leading Project Solace.

Q270 Chair: Did you not have any understanding at all of what was in those Falciani leaks?

Dave Hartnett: No detailed understanding.

Q271 Chair: But what understanding did you have? "No detailed understanding"—you are hiding behind weaselly words, if I may say so.

Dave Hartnett: I am not trying to. HMRC—I am sorry; I will probably get the initials muddled up more than once here—had set up a project team of 300 people to deal with the Falciani data. Initially, I seem to recall, it looked like 6,000 names. As it was refined, because there were problems with the data, the numbers came down. This had to be significant. I could not recall HMRC or the predecessor Departments setting up a project on that scale before, but I did not need to know the detail. Nor did I seek to know the detail.

Q272 Meg Hillier: I can understand that there would be Chinese walls in the Department. As you were dealing with the policy on this, which was important and it was a big achievement to get that agreement, were the discussions about the policy areas this threw up that might be helpful for you in negotiating that agreement? We have had all this stuff from HSBC. There are some big holes here that we need to make sure we plug.

Dave Hartnett: Ms Hillier, one of the big policy areas was clearly to learn generally because we knew a lot about it from the weaknesses in the European savings directive. Even the Swiss wanted it improved because it leaked so much. So that was one. Another was that, because of the sheer scale of Operation Solace, we were determined, through the agreement with the Swiss, to get some specific disclosures going forward. We got, I think, 500 a year on a sort of ratchet arrangement. If it dropped below a certain figure, we would get less the next year. If it went above a certain figure, we would get more. We were

determined to break down the Swiss resistance to specific information. Those are the sorts of policy areas, but, as you will recognise, they were big general policy areas. They involved—what is the right word?—fraught discussions with the Swiss to get movement there.

Q273 Meg Hillier: Did you have senior board level discussions at HMRC about the work you were doing on the Anglo-Swiss agreement, so that other colleagues could pile in with their thoughts from their areas of expertise around the Department?

Dave Hartnett: We had one or two relatively brief board-level discussions. I had a governance board, which I set up and chaired, which involved the Treasury as well, because these were important issues.

Q274 Meg Hillier: How often did the governance board meet?

Dave Hartnett: Once we were relatively confident that we would have a chance of getting an agreement, we were meeting something like fortnightly, I think.

Q275 Meg Hillier: Who was there?

Dave Hartnett: I cannot remember the names, but I can tell you the roles. There was me chairing it. There was the director general from enforcement and compliance. There were the directors who had been involved in negotiating the detail of the Swiss agreement. There was the tax director from the Treasury. Sometimes, I think, there was a second person from the Treasury—

Meg Hillier: The Treasury always do that.

Dave Hartnett: There were others who had a compliance focus to their work. It was a big group, of about 16.

Q276 Stephen Hammond: In response to Ms Hillier's earlier questions, you said that right at the margin of what you could say was that you had the impression that HSBC Suisse was the problem. On that basis, what conversations did you have about whether or not HMRC had had conversations with Mr Meares, who was the global head of private banking?

Dave Hartnett: I am sorry, but I haven't understood the question.

Q277 Stephen Hammond: Mr Meares was directly in charge of HSBC Suisse for HSBC—I presume you are going to tell me that that was on a Project Solace basis.

Dave Hartnett: I am afraid I am.

Q278 Stephen Hammond: Okay. If it was a Project Solace basis, then, touching on Ms Hillier's second set of questions, a lot of what you would have understood from that feeling would be policy areas, and to inform your discussions about policy, it would equally have been right to have called Mr Meares to come before you to explain how, as the global head of private banking and in direct control of HSBC Suisse, he had allowed this policy to exist.

Dave Hartnett: I am afraid I am going to follow Lin Homer again. I can neither confirm nor deny, Mr Hammond, that Mr Meares was at any of the meetings with the senior management of HSBC. That is the position I find myself in.

Q279 Chair: Who was at the meeting?

Dave Hartnett: Madam Chair, I can't say that.

Q280 Chair: Why?

Dave Hartnett: Because I have been told that Lin Homer has said as much as she can about those meetings. I can't go in a different direction—I am bound by what she has said.

Q281 Chair: Ridiculous. I cannot, for the life of me, see how that has anything to do with protecting the taxpayers' interest. Can you—anyone around the room? I think what it has to do with is not telling us the truth and the whole truth.

Dave Hartnett: I am sorry, I am telling you the truth and the whole truth. I wouldn't come here and say anything else.

Q282 Stephen Hammond: You can understand our frustration.

Dave Hartnett: Indeed I can.

Stephen Hammond: We are not actually asking you to disclose the detail of the conversation; this is a specific question about who was there. That clearly cannot impinge, surely, on any of the confidentiality or commerciality of what was said. It is a simple question of who was in the room at the time.

Q283 Mr Burrowes: The frustration all the way through is the lack of accountability of individuals. That is particularly felt on the part of the taxpayer, who has lost millions.

Dave Hartnett: My understanding—I will check it as soon as I can—is that Mrs Homer has declined to name who was at the meetings, either here or at the TSC. I will check that.

Chair: I don't think anyone has actually asked her, to be fair. We asked her what was discussed, but I don't think we asked her who was there.

Q284 Stephen Hammond: Perhaps we should accept Mr Hartnett's offer to check and perhaps write to the Committee, confirming one way or the other, and preferably disclosing who was at those meetings from HSBC.

Dave Hartnett: Of course. I will do that as soon as I can.

Q285 Chair: You'll have to do it before Parliament dissolves.

Dave Hartnett: I will have to get hold of Mrs Homer first.

Chair: I think you should probably get hold of her, then.

Q286 Mr Burrowes: You mentioned the European Union savings directive, and described it as being leaky.

Dave Hartnett: Very.

Q287 Mr Burrowes: Very leaky. Back in 2008, Mr Meares said that, in terms of his tax clients, he didn't see "any real impact". Why do you think he said that, in the light of disclosures?

Dave Hartnett: I would guess that because he, like many other bankers, had clients who were skirting around the directive. Let me say this, which may help. I was shocked when, in the context of the Swiss-UK negotiations, I found how little the UK was getting from the European savings directive. That really encouraged us still further to make the Swiss agreement as tight as we could.

Q288 Chair: How did you find that out, Mr Hartnett?

Dave Hartnett: I asked.

Q289 Chair: Who did you ask?

Dave Hartnett: I think I got that information from the Treasury.

Q290 Chair: The Treasury knew how much we were getting from the Swiss banks?

Dave Hartnett: No, through the savings directive.

Q291 Mr Burrowes: Would you put the lack of impact on those tax clients down to any particular custom and practice at HSBC, or would you put it down to what Lin Homer described as “a culture in the mid-2000s when banks and other institutions were aggressively marketing avoidance schemes”?

Dave Hartnett: I would put it down to a general approach by banks, particularly in Switzerland, that found the savings directive provisions so full of holes that they could just walk through them.

Q292 Mr Burrowes: Would you include HSBC in that description of banks?

Dave Hartnett: I don’t know, other than from what I have read in the newspapers and what was said in front of the Committees. It seems to have been.

Q293 Mr Burrowes: Obviously, you were in your position at HMRC—

Dave Hartnett: But I didn’t deal with the detail, Mr Burrowes. I worked on the assumption, when dealing with the Swiss agreement, that all banks were trying to take their clients through or around the savings directive. It was regularly in the media, how weak the savings directive was.

Q294 Mr Burrowes: Just coming back to your response in 2011 about a pragmatic solution, in term of the difference between targeting tax credit receivers and these other avoiders, would you like to change that previous response, now that there is disclosure of individuals. You seemed to be saying it was pragmatic, because of the lack of individuals being identified. That is what you said previously.

Dave Hartnett: Yes.

Q295 Mr Burrowes: Now that there has been an identification of individuals, how do you justify that previous response? I still don’t get it.

Dave Hartnett: As part of having a pragmatic solution and getting the money, as it were, we said we wanted some disclosure. What we actually wanted was full automatic disclosure of the sort that will come in in 2018, I think, in Switzerland through common reporting standards. That is what we wanted and couldn’t get.

Q296 Mr Burrowes: And with the identification of individuals, do you still think it is justified to go through the disclosure agreements process?

Dave Hartnett: I haven't understood—

Q297 Mr Burrowes: With individuals being identified, is it still appropriate to follow through the disclosure facilities?

Dave Hartnett: The Swiss-UK agreement will become completely redundant when common reporting standards comes in. The disclosure process that we achieved was for just 500, when there were tens of thousands.

Q298 Mr Burrowes: You said in 2011 that people on the HSBC list could face penalties of up to 200%.

Dave Hartnett: Yes.

Q299 Mr Burrowes: Have any been subject to penalties of 200%?

Dave Hartnett: I retired at the end of July 2012, Mr Burrowes. I don't know.

Q300 Chair: By 2012, had any?

Dave Hartnett: No, because the cases were under way then, rather than being completed.

Q301 Chair: Which cases?

Dave Hartnett: The cases that HMRC was investigating from the HSBC—

Q302 Chair: The one case that went to court?

Dave Hartnett: One went to prosecution. There were lots of civil cases.

Q303 Chair: There is a note—maybe Rob can show me—that HMRC put out in your name, where you talk about 500 cases.

Rob Prideaux: Page 26.

Chair: This was 13 October 2011. You were in charge; I think it is in your name. It says at the top, “HMRC has already begun criminal and serious fraud investigations into more than 500 individuals and organisations holding these accounts.” Then later on it says, “If they do not come forward, HMRC will begin an investigation into their affairs, which could include a criminal investigation or result in penalties, in certain circumstances, of up to 200 per cent.” That was 2011. You were there after that, for another nine months.

Dave Hartnett: Yes.

Q304 Chair: We now know that there was only one case.

Dave Hartnett: Well, that was the position on 13 October 2011 as I understood it to be. It was important to be as transparent as we could about what was happening, because in that way we hoped people would come forward.

Q305 Mr Burrowes: You said, “The net is closing on offshore evaders.” Do you think the net closed quickly and firmly enough?

Dave Hartnett: Can I answer by looking back over a few years? It certainly has closed pretty quickly over a few years. The tax world for offshore has changed dramatically. One of the conversations that I used to have with this Committee and the TSC when I appeared before it in the past was about the speed or lack of speed in bringing cases to conclusion, particularly criminal cases. I think Mrs Homer said that on average it takes 44 months to get a case to the CPS. That has sort of gone in the opposite direction. I was, if I can put it this way, in the last century a criminal investigator and a manager of criminal investigators. The world was completely different: people pleaded guilty and took their punishment. That does not happen in tax any more. We used to get through cases in 18 months. That has changed in another direction. Like the Committee, I would like to see criminal cases brought forward and resolved quickly.

Q306 Chair: Why, under your stewardship, were there not more cases relating to this issue? You had the names. You told the Committee that the failure regarding identification prevented you from taking action, yet under your watch there was only ever one case.

Dave Hartnett: Madam Chair, you keep saying it was under my watch. I was not the accounting officer and I did not have an accountability for enforcement and compliance, so it wasn't my watch. I don't want that to sound like weaselly words, but that is the truth.

Q307 Mr Burrowes: You said in a statement: “The net is closing on offshore evaders”. It was still under your watch nine months after that statement and you should still be held to account for the progress made.

Dave Hartnett: I am really sorry, Mr Burrowes, but perhaps I am missing something. I was not controlling the cases. The investigators had their own governance arrangements with the director general of enforcement and compliance, not with me. He reported to the chief executive, not to me. That was the accountability line. I am not here to try to get off the hook; I am afraid I was never on the hook for this.

Q308 Chair: Out of interest, when did Lesley Strathie go off sick? You were responsible, Mr Hartnett.

Dave Hartnett: October 2011.

Q309 Chair: Quite, and between then and when you left in July 2012—

Dave Hartnett: No, no, no. Between then and Mrs Homer arriving, I was the accounting officer—

Q310 Chair: Which was when? July 2012.

Dave Hartnett: No, no, no, January 2012. I was the accounting officer for about 10 weeks. Because I had to do my own job, I shared the responsibilities with the chairman, and the chairman was the person who took most interest. I was technically the accounting officer and I don't want to try to get out from underneath that, but the chairman was the one who looked after enforcement and compliance, not me. My big interest was personal taxation.

Q311 Chair: Then why on earth were you the person who negotiated the Anglo-Swiss agreement? If you had no responsibility in this area, why did it fall to you to negotiate? You had no responsibility, no knowledge—nothing except what you read in the papers—and yet you negotiated it.

Dave Hartnett: That's just not right. My responsibility was at a high level for negotiating an agreement with Switzerland. I had the experience to do that.

Q312 Chair: Why? You had no knowledge. You've said that you pushed yourself out of the knowledge base, so you were negotiating an agreement without any knowledge.

Dave Hartnett: I had certainly seen before—I have said this this afternoon—plenty of examples of problems with Swiss banks and fraud through Swiss banks. On more than one occasion we tried really hard to extradite people from Switzerland, and I think we managed it twice.

Q313 Chair: But you didn't know anything about it, Mr Hartnett. It wasn't in your job.

Dave Hartnett: No, I've not said that at all. I am really sorry but I have not said that.

Q314 Chair: You said that you didn't take enforcement actions against individuals, it was not in your job, and it was another directorate. Now you are saying, "I knew all this and that was what informed how I negotiated the Anglo-Swiss agreement." You can't have it both ways.

Dave Hartnett: I'm afraid I am not seeking to have it both ways. I am explaining what I knew about the Falciani data—

Chair: You are seeking to have it both ways.

Dave Hartnett: And I am explaining what I knew about Switzerland. As Ms Hillier has picked up, the Swiss stuff was very substantially policy oriented.

Q315 Chair: Yes, but policy based on what?

Dave Hartnett: Policy based on wanting to open up Switzerland—

Chair: On what? On what evidence?

Dave Hartnett: —as we had opened up Lichtenstein, and we had learned—

Q316 Chair: Yes, but on what evidence, Mr Hartnett? Either you had the evidence, and therefore you knew what was in data such as the Falciani data, or you did not have the evidence, in which case you are not competent to have done the agreement.

Dave Hartnett: I am really sorry: I have to refute both of those.

Q317 Chair: So you did have the data.

Dave Hartnett: I did not know the Falciani data in detail. I had the relevant experience. I had led on Liechtenstein, and I had led on discussions. Let me give you a different example, Madam Chair, if I may.

Chair: No, you've got to have a policy based on practice.

Dave Hartnett: I had led on other things. I had tried to open up a double taxation agreement with Panama, because we were very worried about the beneficial ownership of

Panamanian corporations owning land and real property in London. I started it. It was a policy-driven issue. I did not need to know the detail of Panamanian companies. You could go to the Registrar of Companies or the Land Registry and see the issue without knowing what was behind it; but I knew what had to be done. I went to Panama, I engaged with the Panamanian Government, and then I passed it on to others.

Chair: I am aghast.

Q318 Austin Mitchell: I am not aghast yet, but I am learning so much about Switzerland that I shall probably have to yodel my questions if this learning process goes on. As part of the agreement with Switzerland there is a clause—an appendix, which is a kind of comfort appendix—saying that it “it is highly unlikely...that professional advisers, Swiss paying agents and their employees will be subject to a criminal investigation by HMRC.” You put that in. I think you agreed to that.

Dave Hartnett: Yes.

Q319 Austin Mitchell: Did that affect or influence the decision you made that nobody from HSBC was to be prosecuted?

Dave Hartnett: I did not make any decision like that and I am not aware that HMRC made any decision like that; but let me explain why it was there. This was a huge red line for the Swiss: they did not want their paying agents and others prosecuted. It was a red line for us as well: we wanted to be able to prosecute paying agents and the like from Switzerland, if we could get the evidence. Nobody at that stage—and we had data from other banks—had seen evidence of a quality that would have enabled us to prosecute Swiss paying agents. We might have been able to prosecute UK paying agents, but not Swiss paying agents. And that is why—

Q320 Austin Mitchell: If you wanted to prosecute, why include that clause?

Dave Hartnett: Because we knew we were not going to get there, Mr Mitchell, at that time. We knew we were not going to get there.

Q321 Austin Mitchell: Well, on the point we have just been making, about penalties, at the time it was decided, HMRC announced—this is October 2011—that it would begin an investigation into their affairs, which could include a criminal investigation or result in penalties, in certain circumstances, of up to 200%. You said “This is not an amnesty. There are no special rates of penalty or interest”. In fact, they were given special rates, weren’t they? They were given the rates under the Liechtenstein agreement, which was less than they’d rooked you for.

Dave Hartnett: If they could get within the Liechtenstein agreement. Can I put it this way, Mr Mitchell?

Q322 Austin Mitchell: Were any charged at 200%?

Dave Hartnett: I don't know. Let me put it this way, because this is important. You raise an important point, if I may say so. One of the things that worried HMRC a lot on getting the so-called Falciani data was whether everyone would be able to come within the Liechtenstein disclosure facility, and no penalties, or very few penalties, would be paid and there might be problems in other ways as well. That is one of the reasons why there was a sort of challenge letter issued to a large number of people in relation to the Falciani data. That would have meant that they were under inquiry and, if they were under inquiry already, they couldn't go into the Liechtenstein disclosure—

Chair: They couldn't?

Dave Hartnett: They could not.

Q323 Chair: Was that a board decision?

Dave Hartnett: No. I think it is in the detail of the Liechtenstein agreement.

Q324 Chair: So was there a board discussion of whether the people who had been revealed under the Falciani list to be avoiding or evading tax could take advantage of the Liechtenstein agreement? Was that a board decision?

Dave Hartnett: I don't think it was a board decision, because—

Q325 Chair: Were you involved in that decision?

Dave Hartnett: No, I don't think it was. I was involved in the creation of the Liechtenstein disclosure facility that prevented people under investigation in the UK from going into the facility.

Q326 Chair: Were you involved at all? One of the interesting things when Lin Homer gave us evidence—we will check it when Edward Troup comes before us—was that up to 1,000 people took advantage of the Liechtenstein agreement to get out of any action over

avoiding or evading taxation. I am interested in whether you were aware of that, whether you knew that, whether you were involved in discussions about whether that was—

Dave Hartnett: I do not recognise what you are saying.

Chair: What does that mean?

Dave Hartnett: It means that I do not remember having any discussions about that.

Q327 Chair: If you think of the number of people and the amount of money involved, would you not have thought that the knowledge that people could get around it by exploiting the Liechtenstein agreement might have been something that you as head of tax—on a policy matter, if nothing else—would be involved in?

Dave Hartnett: Let me have another go at explaining, if I may. We designed the Liechtenstein disclosure facility so that people under investigation in the UK could not take advantage of it at any stage. The challenge for Project Solace was to be able to say that the people for whom they had data were under investigation and therefore could not go into the Liechtenstein disclosure facility. Some did—

Chair: Many did.

Dave Hartnett: I don't know. Some did.

Chair: If you had read the evidence, you would see that many did.

Dave Hartnett: Well, my knowledge is that some did. But that was why there was a bulk issue of letters to people for whom there was Falciani data, so Project Solace could say that they were under investigation and therefore that they could not use the Liechtenstein disclosure facility.

Q328 Chair: So why did so many use it?

Dave Hartnett: I do not know the numbers, I am afraid. I am sorry.

Chair: Well, it is up to 1,000—it is a bit unclear, but it is between 500 and 1,000.

Dave Hartnett: I did not know that.

Q329 Chair: There must at some point in the Department have been a discussion about that, because you are talking about hundreds of millions of pounds. I cannot believe that at some point there was not a discussion about it in which you were engaged.

Dave Hartnett: Madam Chair, there are only two things that I can say about that: I do not remember a discussion like that; and I did retire almost three years ago, and there has been a lot of activity since then.

Chair: We are looking back at matters from 2008—the list was only leaked recently but it was in your hands, or the Department’s hands, in 2010.

Q330 Dame Anne McGuire: Can you imagine how a small business in my constituency sitting listening to this must wonder where the even-handedness is in the treatment of small business—with the particular one that I am thinking about just now, HMRC acted pretty unreasonably, pushing it into bankruptcy with additional liquidation fees, etc.—and the way in which we are talking about these big, wealthy individuals or companies? Can you imagine what sort of impression that gives about our tax collection and pursuance within the UK?

Dave Hartnett: I’m afraid I can. I have dealt with small businesses that have got into real difficulty. I think the answer is that with both the Liechtenstein agreement and the Swiss-UK agreement we were getting money that we would not otherwise have got. That is the crucial issue. I think that it must be dreadful for someone struggling every day to keep a business going to hear about these vast amounts of money, but the vast amounts of money were an honest attempt to bring in money that we could not get in any other way. Other countries call these arrangements groundbreaking and some have followed them.

Q331 Dame Anne McGuire: Would you also accept that we have heard quite a bit today about Chinese walls and it is quite difficult to understand that within one department, essentially—HMRC—the Chinese walls were so solid that some of the information, frankly, that other parts of Europe might have been talking about somehow did not penetrate those Chinese walls? It is probably one of the few places where there were not also Chinese whispers, as well as Chinese walls.

Dave Hartnett: Chinese whispers about individual investigation cases from the Falciani list did not reach me. I didn’t want to know. I have been a criminal investigator; I knew the importance of avoiding any challenge in court where the investigator is asked, “Did you come under pressure to do this, that and the other?” I had nothing to do with them.

Q332 Dame Anne McGuire: My third point is that given where we are just now, given the mess that we have seen over the last few years, and given that you were previously a gamekeeper, what would you have done differently to prevent us getting to the situation in which this is your third, fourth or—I can’t remember how many appearances you have had in front of this Committee—

Dave Hartnett: Many.

Q333 Dame Anne McGuire: Many, on this particular subject, as well as your former colleagues. What could or should have been done differently, with the benefit of hindsight, which always gives you 20:20 vision?

Dave Hartnett: Indeed it does. Whether it could or should have been done differently, the one thing that would have made a huge change is if bodies like the OECD had moved in much faster to bring in things like common reporting standards.

Q334 Chair: That is a nonsense. The OECD has been working on this since the 1980s. We visited them twice. In the end, the OECD can provide the evidence to Governments such as ours, and it is up to us and other Governments to respond to what they have done. We didn't, and you—representing us in forums such as the OECD—could have been a mover and shaker in getting stuff managed more quickly. You weren't.

Dave Hartnett: I'm sorry, Chair, I have to disagree with you. We didn't have the evidence, and what has emerged in the last few years is evidence of a quality that has moved the world.

Q335 Chair: What evidence didn't you have? Mr Hartnett, just be consistent. You told us a minute ago that actually, you didn't need the detailed evidence that was in the Falciani leaks to be able to negotiate the Anglo-Swiss agreement because you knew there was a load of stuff going on and that money was leaking out of the European—you didn't need the evidence. Now you are telling us, actually, you didn't have the evidence, so you could not have put pressure on the OECD, which I know—they told us; this Committee visited them—have been working on these issues of rewriting international rules to make them consistent with globalisation since the 1980s.

Dave Hartnett: I think the UK can take some credit for agreements like the Lichtenstein agreement, which broke open Lichtenstein. All their banks signed up to it, and their Government signed up to it. I think I have said to this Committee before that had I been asked whether I ever thought something would happen in Lichtenstein in my lifetime—never mind in my career—I would have said that it would be the last place. These events have moved countries on. The discussions that have taken place in the OECD forum on tax administration—

Chair: Don't attack the OECD, Mr Hartnett. It is just unfair. It was this Government and others who did not respond to the initiatives being taken by the OECD—at least have the grace to admit that.

Q336 Dame Anne McGuire: Could I bring you back to what more could have been done to investigate the issues once you had been aware—not necessarily in detail, but in the generality—of the information from the leaked data? Do you have any comment about what could have been done differently, or any advice that you could give to your now colleagues there about how we should have handled it? It is one thing pinpointing an issue, but another thing learning from the experience. As you were in the middle of all this, it would be helpful if you could share your learning experiences about how this could have been dealt with differently.

Dave Hartnett: I would like to understand—and I don't, as I sit here—why there were not more criminal prosecutions. I had always expected there to be more. I am three years out of it, so I don't have the information. I would like to understand what difference would have been made had more resources been applied to the Falciani data.

Q337 Dame Anne McGuire: This would have been Solace's responsibility?

Dave Hartnett: Yes, absolutely.

Q338 Dame Anne McGuire: So you think they could have been more vigorous in their pursuit?

Dave Hartnett: I don't know the answer. I'd like to know. If you look round the world, I think only Ireland and the UK have prosecuted anyone from the Falciani list. That looks like a relatively miserable result; it will be down to legal issues, like the problems of proving evidence. But I think—I hope Mrs Homer doesn't get upset with me for this—someone should have a really good look at whether any of that could have been done differently.

Q339 Dame Anne McGuire: In your experience, gathered over a long time in the Department—and the breadth of your experience—do you have a gut feeling that they should have been more vigorous? I do not necessarily want you to upset Ms Homer, but she might be there to be upset.

Dave Hartnett: No. A criminal investigator in HMRC, and in the two Departments before it, wants to succeed—they want to take the case to court. It is out of their hands when it gets there, but they want to do the best job they can and present the case in the best way they can. But as I was saying to Mr Burrowes, the one thing I notice more than anything—I have noticed it for, probably, 15 years—is that taxpayers tend not to plead guilty these days. There are judicial reviews of the evidence before the criminal trial starts, and things really get dragged out—the world has changed to an extent. But I just think that HMRC and other tax administrations should give some thought as to whether it would have been possible to move faster. I don't know.

Q340 Mr Bacon: You may have said this earlier, so forgive me if you did, but are you saying that that change of climate meant it was rational to worry less about prosecutions and more about getting the money, because there was a lower liability and a lower burden of proof, given it was a civil matter, and that although that approach was therefore more likely to succeed—indeed, that is what happened—you are none the less mildly surprised that there were so few prosecutions? Of the 6,000 accounts, two thirds were found to have no tax due anyway, but we are still talking about 2,000 where there was tax due. You are saying that you are surprised that, out of those 2,000, there were not more prosecutions in total?

Dave Hartnett: More than one, definitely.

Q341 Mr Bacon: This is, I know, sticking a finger in the air, but what would be a reasonable percentage? I don't know whether it is 10% or 1%—even 1% would be 20. What would be an unsurprising percentage?

Dave Hartnett: I don't know the answer, Mr Bacon, but I am going to answer you in a different way, if I may. People with money hidden in Switzerland had a tendency, although I don't know to what extent, to feel confident—certainly, in Liechtenstein, people felt this way—that their money would never be uncovered and that they would never be identified. Some of them will have been investigated before, and some of them will have signed certificates of disclosure. The approach of the UK tax administrations in the past was always to prosecute those cases, as long as they were above a financial threshold. I am surprised there were only one, two or three who got into that position, but that's personal surprise.

Q342 Mr Bacon: I met a major insurance company recently—this is a slightly different domain, but the point is the same—that was taking a policy decision to prosecute cases of insurance fraud in relation to whiplash injuries and so on—cash for crash, as it is called—even where the amount at stake was less than the legal costs. It was doing that to make a point very forcefully—as a deterrent. For many years, we have asked HMRC, “Isn't there more you could do by way of deterrent than you are currently doing?” Do you think that that is an accurate statement? Is there more that HMRC should be doing by way of deterrent than it is currently doing?

Dave Hartnett: I think that there certainly is more today, because something else which has changed is the nation. If I may say so, this Committee and others have woken up the country to the issue of tax fraud. The nation is now interested in this issue. If I go back 20 years, I can remember having terrible battles to get my media people to place the story of a successful prosecution with a sentence of more than three years with any newspaper at all, because tax was boring. It was a struggle, but thankfully it is so no longer.

Q343 Mr Bacon: I have one more question, because I think the CAG wants to come in. I'm sure that the fact that some of the cases involve celebrities and some of them involve very famous high street brands helped, and I hope that this Committee helped a bit as well. The Office of Tax Simplification studied tax reliefs, and a total of 155 came under its gaze. It recommended that 47 of those should be abolished and 43 actually were abolished, but the Government also chose to introduce another 134 new tax reliefs. This is straying dangerously close to the edge of the remit of this Committee—in fact, if you answer the question fulsomely, it will be well beyond it—but then I am not responsible for your answers. Since you are no longer a Government official, you can say whatever you like.

Dave Hartnett: Not quite.

Q344 Mr Bacon: As long as it does not breach confidentiality. Broadly speaking, if we were to have a much, much simpler tax system, so that we did not see the phenomenon that I have just described, do you think that the benefits of that would outweigh the motives that lead people to want to introduce new tax reliefs?

Dave Hartnett: I want to give you a half-hour long answer.

Mr Bacon: I know.

Dave Hartnett: Let me try to answer very succinctly. I have no doubt that the shorter and more coherent the tax code, the higher the level of compliance. As the Chair knows, I have just come back from working in a country which has a tax code that is really quite short. If the UK's is large, that country's is small. Unfortunately, even if the tax code is small, it can be complex and people do not understand it. People need to be able to understand the tax code in order to have faith in it. I'm with you that a simpler tax code would aid compliance.

Q345 Mr Bacon: This is my last question, I'm sorry. Is it possible—I think it is, but I would be interested in the view of a tax expert—in a large, complex, mature, internationally traded economy such as ours, to achieve anything like the desirable level of simplicity if there is enough political will to do it? Or is the world simply too complex?

Dave Hartnett: I am despondent. I think the world is too complex.

Q346 Mr Burrowes: You described a change of culture and people not pleading guilty. I share your frustration. I am a criminal defence solicitor, and in the magistrates court you will still see the same culture of people pleading guilty. There is still that deterrence on the small guys, but what you are talking about is a change of culture with the big guys or girls, the big fish or whatever you want to call them. It is that culture. People are still pleading guilty at the low end in the magistrates court. That is still continuing. The big frustration is at the other end.

Dave Hartnett: It is in the Crown court. I don't know whether they're big fish or small fish, but I was responsible a long time ago for 20 prosecutions, of which there were 19 guilty pleas and one contested trial. Some of the guilty pleas were big conspiracies.

Sir Amyas Morse: As I looked over the agreement, I saw that you had talked about money laundering. Looking at these transactions, it strikes me that they involve very large amounts of money—cash money—being deposited and withdrawn from bank accounts, with a cloak of confidentiality over individual transactions. Did anybody consider running an investigation on money laundering which was parallel to the one that you were doing on tax? Were any officials involved in looking at money laundering? Is that where the information came out? It is really an information question. It is obviously not your responsibility. Given that you put it in the agreement and specifically kept people in liability to money laundering, I am interested to know if that got planned out? The rules are pretty stringent, after all.

Dave Hartnett: They are. Sir Amyas, I don't know the answer. Having said that, the governance body that I was describing to Ms Hillier earlier have a couple of HMRC money laundering specialists in there.

Q347 Chair: Just to pursue that one a little. I think the whole point is that in the Anglo-Swiss agreement, which you have taken responsibility for, you made special provisions for advisers. I am assuming banks would come in as advisers, would they, under the definition?

Dave Hartnett: Yes, pay and collecting agents would be in banks.

Q348 Chair: But they would count as advisers in your definition in the agreement?

Dave Hartnett: Yes.

Q349 Chair: Okay. What you then say, you did not say we couldn't do. If I read the extract, it says: "Swiss paying agencies and their employees will need to comply with their legal obligations in respect of money laundering" which is interesting enough. It goes on: "Whilst it is never possible to provide an absolute assurance against criminal investigation"—this is the interesting point—"it is highly unlikely to be in the public interest of the United Kingdom that professional advisers, Swiss paying agents and their employees will be subject to criminal investigation by HMRC". The words used are "highly unlikely to be in the public interest of the United Kingdom". What on earth brought that to you knowing that you had the Falciani leaks?

Dave Hartnett: That was really about what I was saying to Ms Hillier earlier on. The Swiss were determined there would be no prosecutions of Swiss bankers. We were determined that if we caught a Swiss banker within the scope of UK law doing something

bad and we had evidence, we were determined that the Swiss agreement would not get them off the hook. Lawyers pawed over this for weeks.

Q350 Chair: But it does get them off the hook. It says: “Whilst it is never possible to provide an absolute assurance”—that might be your “off the hook” bit—“it is highly unlikely to be in the public interest of the United Kingdom”. That is nothing to do with the Swiss interest—“the public interest of the United Kingdom that professional advisers, Swiss paying agents and their employees, will be subject to a criminal investigation by HMRC”. I cannot see how that was in the UK public interest.

Dave Hartnett: I don’t remember the detail of the negotiation, but part of the thinking was that we were never going to get these guys. We were never going to get the quality of evidence together.

Q351 Chair: I can understand that, but it is still nothing to do with the UK public interest. It is not the UK public interest.

Dave Hartnett: Things go into agreements when you are negotiating them that might not look perfect afterwards.

Q352 Austin Mitchell: Let’s move on. In 2013, with the approval of the Advisory Committee on Business Appointments, you went on to work for HSBC. To me, this looks like a conflict of interest. Here is HMRC investigating wrongdoing by the bank’s employees and clients. Here is the former head of HMRC taking a job with that same bank. That looks odd and, in the view of my constituency in Grimsby, it might well stink. Why did you do it?

Dave Hartnett: For this reason. I was approached. I was approached by many people with offers of work after I retired. I was approached to join a committee that was looking to make the bank secure for the future after its difficulties in Mexico and Switzerland. I have to say the idea of helping make a huge bank secure for the future appealed a lot to me and working with the various people who are also advisers that I now work with. I believed in Mr Gulliver’s vision of sorting out the bank and making it one of the best in the world. I understood that the challenge was enormous, and I was prepared to be part of that. I followed the rules for taking appointments outside the civil service for permanent secretaries and other senior figures to the letter. Ms Homer checked it, colleagues checked it, the Cabinet Office checked it, the Committee checked it and it went to the Prime Minister. The Financial Conduct Authority also had to approve my appointment.

Q353 Austin Mitchell: I accept all that, but you cannot tell me that you sit there in the bank’s canteen—

Dave Hartnett: I haven’t been in the canteen.

Q354 Austin Mitchell: Well, whether you go there or not, you cannot tell me that people do not come along and say, “Look, Dave, we are in this mess. What do we do about this?”

Dave Hartnett: That is about protecting the future. It is about using my—

Q355 Austin Mitchell: No, they say, “We have got this problem with HMRC. You know all about HMRC. What are we going to do?”

Dave Hartnett: That doesn’t happen, Mr Mitchell. That would offend my integrity. I don’t do that.

Q356 Chair: What I find really odd about it is that you yourself said that you had the choice. A lot of people were after you, and you could have gone to lots of banks, and yet you chose to go to the one bank where there were substantial leaks, where you knew there was an investigation and where there are allegations of money laundering and tax evasion. Why? Why not choose one that, at least at this point, looks a bit cleaner than HSBC?

Dave Hartnett: Because it was not the past of the bank that attracted me; it was trying to make it right for the future.

Q357 Chair: But the past of the bank tells you something about the character of the bank, doesn’t it?

Dave Hartnett: Well, it does, but—

Q358 Chair: Or did you believe that they were all into money laundering and tax evasion?

Dave Hartnett: Not at all, Madam Chair. The other thing that told me something about the bank was the fact that the leadership of the bank were determined to put things right, and I believed them.

Q359 Austin Mitchell: I remember some years ago when you came before us and I was quite surprised, as a raw young socialist—with the emphasis on “young”—that you said that your job was not to prosecute and intimidate the banks, and not to be as tough as the American tax authorities, but to cultivate relationships. You said that on that relationship basis, they would become better payers than if it was a hostile relationship. Was that Dave Hartnett’s policy, or was that a policy dictated or suggested to you by Government: “We want to attract all these big bastards and wealthy people to come and invest in this country,

so don't be hard on them, Dave; cultivate a relationship as their friend"? Whose policy was it?

Dave Hartnett: In 2001, Mr Mitchell, I was asked to do a study for Government on the relationship between the UK tax administration and big business. Big business said that the relationship was broken. They said it very quietly, but they clearly got through to Government Ministers, and we made a number of changes on the back of that. We never went soft. In 2005 or 2006—forgive me, I will get the year wrong—we repeated the study to do things as well. Some of the changes that happened involved changes of law, but it was a new approach that Government took note of.

Austin Mitchell: Thank you.

Dave Hartnett: May I go back in time, just for a second? Mr Bacon said that I could now do what I liked. I want to go back to an earlier hearing where you told me you were going to run a nail bar and something alongside it. I will not push it any further.

Q360 Chair: My final question to you is this. It is quite appropriate that our final hearing of this Parliament is with you, because it was our first hearing with you that started us on our journey as a Committee on the whole issue of tax avoidance, which I think is an issue that will be taken on in future Parliaments. Whether it is fair or not, you are associated personally—more than probably any other individual in Government—with the old culture of doing things that people now regard as completely unacceptable. What is your biggest regret?

Dave Hartnett: I think my biggest regret is probably around the process for settling large cases with big business. I should have thought more about the process. I was confident that the substance was right, and Sir Amyas with Sir Andrew Park confirmed that, but I wish that I had got the process better organised. I understand that it has changed since.

Chair: Okay. Thanks very much.

Q361 Mr Bacon: If you want to come back in next time, those of us who are here can try and arrange that, if you feel strongly about it.

Dave Hartnett: I'm getting a bit old for this.

Examination of Witnesses

Witnesses: Edward Troup, Second Permanent Secretary and Tax Assurance Commissioner, HMRC, and Megan Ormson, Assistant Private Secretary to Edward Troup, gave evidence.

Q362 Chair: Can I start by apologising for keeping you waiting a week ago, or whenever it was? Had you appeared at our original hearing, this hearing might not have been necessary, so my apologies for wasting your afternoon that day.

It is difficult to know where to start, but I want to start with the issue of what this episode with HSBC teaches us about other banks, and what action you're taking. When we had evidence from Mr Gulliver he said that, looking at the UK-Swiss bank agreement, HSBC was responsible for \$27 million of the moneys that were revealed in that, or which came back into HMRC. Is that right?

Edward Troup: Sorry?

Chair: Out of the Swiss bank agreement. When Stuart Gulliver gave us evidence, he said that "HSBC paid \$27 million out of the \$1.1 billion" which HMRC received on the back of the UK-Swiss bank agreement. Is that correct?

Edward Troup: I think he said that that was their contribution to the up-front payment which was made by the Swiss banks under the terms of the agreement.

Q363 Chair: What I am really getting at is that they are only one player, and a pretty small one, in what might be a very much bigger problem. What I really want to hear about from you is this. As we learn more about this, we learn that this isn't just an issue of aggressive tax avoidance. There is tax evasion involved here on quite a large scale, and one assumes that it's not contained to just one bank. I want to know what you and HMRC are doing in relation to the probability that this is occurring in other banks in Switzerland with UK citizens as holders.

Edward Troup: I understand the question. The interesting thing about this whole business is how it covers a period of time in which things changed absolutely dramatically. The period at the beginning of that—the early 2000s, the period to which the Falciani data relate—was one when banking secrecy seemed to be impregnable in Switzerland and elsewhere. As I think you have heard from Mr Hartnett, although I didn't catch all of it, the negotiation of the Swiss agreement was made against that backdrop. At that point, as recently as less than five years ago, the idea that Swiss banking secrecy might be breached seemed unthinkable although, as I think Mr Hartnett said, there is also provision under the Swiss agreement to get up to 500 disclosures a year from Switzerland on request.

What has happened since then, led very much by the UK and others, is that the common reporting standard has effectively breached the principle of Swiss banking secrecy. From 2018 we will get information automatically and not just on demand about account holders in Swiss banks. It is difficult to overstate what a change that is in the climate and how much it eliminates the ability of citizens of any country—although you are obviously interested in the UK—to hide their money in Swiss bank accounts. The action that has been taken and continues to be in relation to the past, whether against the individuals or the banks, is necessarily different from the action we will take in future.

Q364 Chair: That is 2018, Mr Troup.

Edward Troup: 2018.

Chair: Okay, if we're lucky.

Edward Troup: No. That is an agreement the Swiss have signed up to.

Q365 Chair: Okay. We're in 2015. What action are you taking now, given what we have all uncovered? Various members of the bank who gave evidence said they were shocked. I was pretty taken aback to see that what we were talking about was not aggressive tax avoidance, which I am getting used to seeing—much as I hate it—but actual tax evasion.

Edward Troup: This was tax evasion. I am not going to go into operational details.

Q366 Chair: I want policy; I want information. Hiding behind this stuff drives us completely mad in this Committee.

Edward Troup: I was going to give a plug for the Chief Secretary's document that he put out on the day after the Budget on reducing tax evasion and avoidance. The Budget announcements make it clear that in relation to the disclosure facilities, which you have heard about and discussed in this Committee, we will bring them to an end early. From 2018 we will be using the information under the common reporting standard.

There is a significant amount of money scored in the Budget for what we expect to get under the common reporting standard. Between the early closure of the disclosure facilities and 2018, there will be a new, tougher penalized disclosure facility, very much making it clear, "This is your last chance, on payment of a higher penalty than you get under the existing disclosure facilities, to come forward and pay up, pay the tax and the interest and penalties." That is the policy and the strategy to exploit what we have achieved through the common reporting standard.

Q367 Chair: One of the slight frustrations about these hearings has been the muddling between individuals and institutions. I want to talk about the institutions; we may come back to the individuals. We are talking about the banks. What was clear from my reading of the leaks, as much as I have seen, is that it was systemic in the bank. It was institutional; it was not about one bad apple or one bad employee, and it was not about one wicked person holding one account. It was absolutely systemic and institutional. Given that HSBC themselves said, "We are a tiny player in this field," let me take another player, Coutts.

Coutts, a bank owned by RBS—owned by us, as the taxpayer—is under investigation for tax evasion in Germany and the USA. I have read reports in the papers that money has been set aside to cover the potential hit from the USA. Until as late as 2009-10, they were offering in their brochures the hold mail accounts that some of our Members talked about at the previous hearing. That was certainly after 2008, so it was when they were already in public ownership.

I can hear and understand all these movements and steps being taken in future. How can it be right now that Coutts, which is essentially owned by us, the taxpayer, is allowed to get away with selling tax-evasion schemes?

Edward Troup: I am sorry, Madam Chair, I am not going to be able to help you on operational matters, referring to an individual bank.

Q368 Chair: I take it as an example. The only comfort you have given me, the reason that it is particularly awful, is that we own it.

Edward Troup: Somebody owns all of the banks and it is pretty awful for them, too.

Chair: No, but we own it; the taxpayer owns this at great expense.

Edward Troup: I understand that but I cannot comment on an individual bank. I don't have details, obviously, and I wouldn't share them even if I did have them, which I would not. I go back to the policies for the future.

Q369 Chair: It is always the future. I am interested in the now. This has been happening for a long time. The reason I used the Coutts example is that it's owned by us, and I think that makes it particularly awful. You can't just wait for future action to give us comfort that you're ensuring that banks owned by the taxpayer aren't involved in tax evasion.

Edward Troup: You challenged Lin Homer and Jennie Granger last month on this and they gave you some explanations as to what powers we have, where we can apply criminal sanctions and what we are doing to follow up on individual cases.

Q370 Chair: That was only in relation to HSBC and suddenly, miraculously, after our hearing you got the commission.

Edward Troup: I think that was before your hearing.

Q371 Chair: No, it wasn't, it was after. That was only in relation to HSBC. I am not talking about HSBC. I started this by saying these are other banks. HSBC told us they were a small player. I use the example of Coutts because it is owned by us.

Edward Troup: I'm not clear what the question is.

Chair: Action should be taken in relation to banks that are specifically selling tax evasion schemes to their clients in Switzerland.

Edward Troup: In terms of the policy I again refer you to the Chief Secretary's announcement.

Q372 Chair: No, that is the future, Mr Troup. This is evasion now.

Edward Troup: If any person or body conspires to evade tax, that is a criminal offence. Obviously, we have to prove it to the standards of criminal liability, but the tax liability, first and foremost, remains on the taxpayer. Offences of secondary liability are few and far between for tax evasion, until the announcements this week by the Chief Secretary, and would have to be proved to a criminal standard for conspiring to evade tax. If those offences can be shown to exist, I have no doubt that my operational colleagues will pursue them. As you know, we have quintupled the number of prosecutions for tax evasion over the past five years.

Q373 Chair: For tax evasion?

Edward Troup: We have quintupled, multiplied by five, the number.

Chair: Tax evasion, or are these people on tax credit? Are they big companies or small companies?

Edward Troup: They are the whole range. This is about tax, not tax credits.

Q374 Chair: Do we know how many of them are actually tax credit cases?

Edward Troup: No, that is tax prosecutions, not tax credit.

Q375 Chair: Do we know how many of them are small businesses?

Edward Troup: I don't have those figures in front of me.

Q376 Chair: Do you have them?

Edward Troup: There have been some very significant prosecutions.

Chair: Do you have them?

Edward Troup: There was a penalty endorsed last week, a criminal penalty of £1.2 million.

Chair: Do you have them, Mr Troup?

Edward Troup: I don't have them in front of me.

Q377 Chair: I was told that you don't analyse the data in that way.

Edward Troup: Well, I am sorry, in that case we don't, but obviously we have individual figures.

Q378 Chair: We are interested in equality of treatment in front of the law and that SMEs are treated in the same way.

Edward Troup: We have had, over the past five years, 11 prosecutions for offshore evasion. I think Jennie has told you that we have another 50 offshore evasion prosecutions pending.

Q379 Chair: Is this individuals or institutions?

Edward Troup: I assume that's individuals rather than institutions.

Q380 Austin Mitchell: You are investigating clients, not banks?

Edward Troup: Yes, because that's who the taxes—

Q381 Austin Mitchell: Do you investigate banks?

Edward Troup: As I've said, we can only investigate where there is an offence.

Austin Mitchell: Do you investigate banks?

Edward Troup: If a bank, or any other person, has committed an offence, or is perceived to have committed an offence, we will, in accordance with our guidelines, investigate, and, if appropriate—

Q382 Chair: How many banks or bankers are currently under investigation?

Edward Troup: I can't answer that question.

Q383 Chair: Why?

Edward Troup: It is an operational matter; I don't have the details in front of me.

Chair: No, no—I'm not asking for any identity, just how many banks or bankers are currently under investigation.

Q384 Mr Bacon: I don't understand why you can't answer that. I remember asking the chairman of Customs and Excise, I think it was, back in the early 2000s, before the merger, how many members of Customs and Excise staff were facing criminal investigation. He answered straight out: 13, he said. So what's changed between then and now, that you can't talk about numbers?

Edward Troup: I can't speculate, but if members of our staff are subject to criminal investigation, that would be an extremely serious matter which I would expect Lin Homer, as chief executive, to know quite a lot more details about than she would about an individual prosecution.

Chair: Just explain to me in a very common sense way what is the danger of our knowing the number of banks? How does that in any way damage taxpayer confidentiality? David Burrowes is a lawyer and may be able to help me on this. I am not a lawyer but I can't understand how it can in any way damage taxpayer confidentiality. I just don't get it.

Q385 Mr Burrowes: It is an issue of severity. Mr Troup was saying it would be very serious if it was an internal prosecution, but—

Edward Troup: I wasn't saying it wouldn't be serious. I would not be surprised if the chairman of Customs and Excise in 2000, or whenever it was, knew the number of individuals.

Q386 Mr Bacon: What is the problem with talking about the fact that investigations are going on? I don't think anybody would expect you to point the finger and say, "It is Fred Jones at Bloggs plc who is under investigation." Of course not, but that is not the question. What I am trying to understand is what prevents you from saying, "In total, across our domain, we have 26 criminal investigations and 3,412 civil investigations." What stops you saying that? I was making up the numbers.

Edward Troup: We can and have made statements like that. Can I pick up what the Chair said?

Mr Bacon: What is the answer to the question?

Austin Mitchell: Can you tell us?

Edward Troup: No. I don't have the figures in front of me. Can I just say why—

Q387 Chair: Can somebody behind you get them before the end of this session?

Edward Troup: I very much doubt it, but I will see if they can.

Q388 Chair: Why not?

Edward Troup: Can I just make a point? The Chair said that the reason we couldn't share information was taxpayer confidentiality. That is true in part, but it is not the whole story. Very often there is operational information within figures and information for which you might ask us that would either prejudice our operations or prejudice potential criminal trials.

Q389 Chair: Mr Troup, just give us a little bit. All we are asking for is numbers. All we are asking for is some feeling. It is nothing to do with undermining any action that you want to take. All we want is a very simple answer, and I cannot for the life of me see anything out of the—

Edward Troup: I understand the question. I will see whether colleagues can answer it, but I very much doubt it.

Q390 Chair: Okay. How many banks and how many bankers are currently under investigation for conspiracy to cheat the Revenue?

Mr Bacon: And the reason why that is a particularly pertinent question—I would have hoped that the Revenue or HMRC could find some sort of answer—is that we have just listened to the former permanent secretary for tax, the former acting chairman and the former everything, because Mr Hartnett has been around for so long, say that he was surprised, in relation to the Falciani case, that there have been so few prosecutions. That is the background to this question. It would be helpful to know to what extent bankers and others are under criminal investigation. We are asking not who they are, not which banks and not what names, but whether there is any activity going on.

Edward Troup: Let me take it away, but I am not—

Q391 Chair: No, we'd like an answer this afternoon. If the person sitting behind you could go out and use the telephone, it would be really helpful.

Edward Troup: I cannot promise to give that. Can I just make a comment? Mr Hartnett himself pointed out on a number of occasions that he left the Department more

than three years ago. I was quite surprised to hear him make that statement about his views on the number of prosecutions, because both Jennie Granger and Lin Homer were asked about it, and I gave you quite a clear explanation of what had happened and how diligent we had been in pursuing individuals on the Falciani list. That is all on the record. I don't think there is anything there that suggests that we have not been diligent. As Lin Homer told you, we have collected £135 million, and we believe that we have collected all the tax, all the interest and a significant amount of penalties due from those individuals. I don't think that I quite see where Mr Hartnett's statement came from.

Q392 Mr Burrowes: We heard previously that, alongside Ireland, we have carried out the only prosecutions to come forward. How would you describe the number of prosecutions? Would you say it is satisfactory? Is it not good enough?

Edward Troup: I am not going to get drawn into commenting on the performance of operational colleagues. They have made it very clear that they think that they have done the best job within the law, within the constraints and within the burdens of evidence at the time, and I believe they have. I believe that my colleagues are extraordinarily diligent. As Mr Hartnett said, and I agree with this statement, criminal investigators want to be successful. They want criminal prosecutions, and since 2010, as I have said, we have multiplied by five the number of prosecutions we have brought.

Q393 Chair: Can we ask about the Swiss bank accounts? You talk tough a lot of the time. A lot of literature and a lot of statements come out that talk tough, and then it seems to us that you act soft or weak. Let's test you on the Swiss bank accounts. You have collected £135 million.

Edward Troup: Are we talking about Solace and the HSBC Swiss accounts?

Chair: Yes. You are absolutely right. How much of that £135 million is penalties?

Edward Troup: I think you asked Ms Homer exactly the same question, or was it the Treasury Select Committee? I think she said around £10 million or 10%.

Q394 Chair: Only 10%?

Edward Troup: It would be better to check.

Q395 Chair: On the 200% penalty that Mr Hartnett talked about, the press statement that I read to him said, "If they do not come forward, HMRC will begin an investigation into their affairs, which could include a criminal investigation or result in penalties, in certain circumstances, of up to 200 per cent." Have you ever, in any case, given a 200% penalty?

Edward Troup: As you know, the Falciani data relate to periods up to 2007, or even earlier, when the data were stolen. The 200% penalty was introduced, I think, by this Government, or it might have been just at the end of the last Government, so in around 2009-10. We can obviously only apply penalties as set out by the law at the time the offence was committed. So the 200% penalty was not, as I recall, enforced for any of the periods to which this data relate. But yes, we have used that penalty regime in cases since it was introduced.

Q396 Nick Smith: How many times?

Edward Troup: I don't know, I'm afraid.

Q397 Nick Smith: Can you tell us?

Edward Troup: I can find that data.

Q398 Chair: Are you now investigating the bank, since you got permission from the French?

Edward Troup: I cannot give information on operations.

Q399 Chair: Lin Homer told us that she could not take any action on money laundering in relation to the bank, because she was not permitted to use the data for that purpose. That is my understanding of what she said at the hearing and what she then said in subsequent correspondence with us. You have since had permission from the French, surprisingly, to use the data for other purposes to aid investigations of money laundering and evasion. Are you using the data for that purpose? Are you investigating HSBC?

Edward Troup: We have had permission, as you have reminded me, since February.

Chair: 28 February.

Edward Troup: Yes. We have had permission to share the data with other agencies for the purposes of criminal prosecutions. Obviously, as soon as we had that permission, we started to take steps to speak to the other agencies, but I am not going to—I am not able to, and I do not have access to operational information—say what action has or will be taken.

Q400 Chair: There was a big multi-agency meeting with FCA, CPS, National Crime Agency, Serious Fraud Office, City of London Police, and Eurojust. Are you able to tell us anything that occurred in that meeting?

Edward Troup: No, I am not, because, just as Mr Hartnett explained how operational matters were left to the Director General for Enforcement and Compliance, I would say exactly the same thing. Jennie Granger is responsible for that. I suspect that if she was sitting here she would also say that that is operational information that it would be inappropriate to share.

Q401 Chair: What criminal offences are you looking at?

Edward Troup: Sorry, I get confused between these hearings, but I think I explained to the Treasury Select Committee that the criminal offences that relate to tax—

Q402 Chair: No, in relation to after 28 February, what criminal offences are you now able to investigate, which I assume you are investigating operationally?

Edward Troup: HMRC is responsible for tax, so those are the criminal prosecutions that we would pursue. Indeed, we were always free to pursue prosecutions and investigations in relation to tax. It is for other agencies to determine what criminal offences they could investigate on the basis of the data, once they have had it.

Q403 Chair: And we are waiting to see what you are doing on institutions, because you are not prepared to tell us that. Are we expecting to see more prosecutions off the Lagarde list?

Edward Troup: As I think has been explained to you, there are a small number of individuals for whom we have not concluded the investigations—around 100 of the 1,100. I cannot say anything about what is happening with those until they are taken forward or resolved.

Q404 Nick Smith: Can I ask about that? You said “a small number” and then you said “100 of the 1,100”. So are you still looking into 100 or a subset?

Edward Troup: There are 130 left from the original Lagarde list, who we have not yet finalised our investigations into.

Q405 Nick Smith: So there may yet be prosecutions from that list of 130?

Edward Troup: There may be prosecutions, and I am sure there will be tax collected.

Q406 Chair: If we go back to the £1.1 billion that you have received from the Anglo-Swiss agreement—I am on to the HSBC bit—from which bank did most of that come?

Edward Troup: Can I just remind the Committee about the Swiss agreement? First, the agreement postdates the Solace data. Anybody whose name was on the Solace data cannot take advantage of the Swiss agreement. They are effectively, expressly excluded, because anyone in respect of whom we had opened inquiries could not take advantage of the Swiss agreement. As I said at the beginning of this hearing, the terms of the Swiss agreement were entered into at a time when there was banking secrecy and they gave UK residents with bank accounts two choices. They could either seek to maintain that secrecy, which with the benefit of five years' hindsight was probably rather foolish, and in respect of their accounts a lump sum payment would then be made by the banks to us, or they could choose to have their names disclosed to us, as 25,000 have chosen to do. The 25,000 have produced a significant amount of money, and that is not from banks; it is from individuals. The lump sum payments were pooled by the Swiss Government—the Swiss revenue—and passed to us as a single lump sum, so we do not know which banks they come from.

Q407 Chair: You do not know?

Edward Troup: We do not know under existing provisions of the Swiss agreement. But as I have said repeatedly, come 2018 we are going to have, and we are already getting from the disclosures we have requested under the 500 a year, considerably more information about where money is held in Switzerland and by whom.

Q408 Nick Smith: Have you asked if you could have that information?

Edward Troup: Yes, we have asked. We have made several—well, not several requests. We have asked the banks—the Swiss—for more information and we have not obtained it.

Q409 Nick Smith: You have not obtained it?

Edward Troup: Sorry, let me correct that. I visited my counterparts in Switzerland last year, or it may have been the year before, to talk about the working of the agreement. That was primarily to get their agreement to the 500 disclosures a year. I am not sure whether there has been any operational contact since then for further information.

Q410 Nick Smith: What reason did they give you for not providing more information?

Edward Troup: That the agreement was the agreement and they were abiding by its terms.

Q411 Nick Smith: And they were not prepared to open it up at all?

Edward Troup: Yes, but as I say, that was a little while ago. We continue in dialogue with the Swiss. The most productive part of that dialogue has been that they have signed up to the common reporting standards.

Q412 Nick Smith: When was the last time you asked them for that information?

Edward Troup: I am sorry, I cannot recall. But I know we discussed it at the meeting I had with them, which was about 15 months ago.

Q413 Nick Smith: About 15 months ago—could you confirm that later?

Edward Troup: Yes.

Q414 Chair: One of the issues that came out in the hearings with us was the non-dom status, which enables people to take advantage. Correct me if I am wrong on this one. Once you have your non-dom status, you can then take advantage of the Liechtenstein agreement. Is that about right?

Edward Troup: No. That is not quite right. The non-dom status has existed since 1799, when the Bourbons came across here and did not want to be taxed on all their income.

Chair: To get people not to contribute to English wars.

Edward Troup: The arrangements effectively said that if you can show you have a domicile overseas, you only pay tax on income you earn in the UK or income and gains that you bring to the UK. That is the advantage—the so-called remittance basis. That has been watered down by successive Governments. If you have been here for more than a certain period of time and have more than a certain income, you now have to effectively pay an annual charge in order to continue to benefit from that.

A lot of non-doms do not actually claim the remittance basis. They effectively just accept that they are going to pay tax on their worldwide income, like I or any other UK-domiciled person would do. There is no specific relevance for the Liechtenstein disclosure facility, other than that a non-dom is less likely to have undisclosed offshore income because he or she would not have had to pay tax on it if they did not remit it to the UK.

Q415 Chair: So what limits are there on non-dom status? When can you challenge? When do you ever challenge if someone chooses to call themselves a non-dom although they are born here, educated here, have their children educated here, own a house here, have worked here for 12 or 15 years, speak English, have a British passport—I am trying to think what else they do.

Mr Bacon: Go to the opera, like you.

Chair: Go to the opera, like me. And they still call themselves a non-dom. Interestingly, I probably do qualify for non-dom status because I was not born here, but I have never thought about that.

Dame Anne McGuire: Don't complicate matters.

Q416 Chair: What are the limits? Where do you limit it?

Edward Troup: I am not sure whether the question is about when we ask the questions or what the legal limits are.

Q417 Chair: When do you challenge it? It seems to me that anybody can call themselves a non-dom by buying a property elsewhere.

Edward Troup: Anybody could put in their tax return that they have £1,000 of deductible expenses from going to the opera. We would challenge that because it would look unlikely and non-deductible. Self-assessment returns—a non-dom would almost certainly be filling in a self-assessment return if they wanted to claim it—contain a whole lot of information and facts, and effectively, have a whole lot of claims. Like all of our other business, these will be risk-assessed according to a number of judgments about what is on there, what the facts are, and whether they look as though they merit some investigation. A very significant number of the non-doms will be handled by the high net worth unit, or the affluent unit, and they get a much higher level of scrutiny than you or me—certainly me, though I am not sure about you—about their tax affairs, and they will be scrutinised in the normal way. A non-dom who has been here for a number of years is probably more likely to be asked questions about their status than someone who has arrived and is in their fifth or sixth year in the UK.

Q418 Austin Mitchell: I feel sorry for them. How many are there?

Edward Troup: In total, there are around 114,000 non-doms in the UK, roughly, but only 47,000 of those claim the remittance basis. The rest—and Madam Chair, I was not aware that you are a non-dom, but if you are a non-dom, then don't claim the remittance basis.

Q419 Austin Mitchell: The question was how many you have challenged about that status.

Edward Troup: I don't know the answer to that question, and I am not sure that we hold it centrally, any more than I can say exactly how many individual self-assessment

returners we have challenged on the amount of their opera ticket expenses, or their agricultural property relief, or whatever. But we do have a risk-based method of investigation and assessment, which is vindicated by the yield we have. As you know, we were on target to get £26 million of yield this year, and that is based on a good, risk-based assessment investigation process.

Q420 Chair: So how long should they have lived in the country, for example, for you to think, “Oh my goodness, that doesn’t sound like a non-dom to me.”?

Edward Troup: You lose your domicile of origin and become domiciled in the UK once you have given up any evidence of wanting to return to your original home, to your domicile of origin. You could do that the day after you arrived. It is possible that somebody arrives in the UK, non-dommed, and it becomes perfectly clear from the moment that he or she arrives that they have no intention of returning home, and that they have given up their domicile of origin. We would challenge somebody like that more or less straight away.

Q421 Chair: Would it be your view, Mr Troup, that the definition is being used for a purpose that Parliament did not really intend, even way back in 17-whatever?

Edward Troup: 1799. The question of what Parliament intended is probably more for you and your fellow parliamentarians than it is for me.

Q422 Chair: I am asking you for the evidence. It is a bit like all the tax reliefs, isn’t it? When the film tax relief was used for purpose that wasn’t intended, you set about advising how to tighten up the legislation.

Edward Troup: It is more that this is so lost in the mists of time. The question for Parliament is more: given that this is what the non-dom status allows, do you think this is still the right policy for the 21st century? There are obviously views that there should be a different policy, but it is quite difficult to pose that in relation to the question of what Parliament intended, simply because it was so long ago.

Q423 Chair: It was so long ago. It seems to me that it is being used by people with extreme wealth to avoid being treated equally under the tax law, as Parliament intended.

Edward Troup: If you are making the case for wealthy people not benefiting so much from the non-dom rules, in a sense, that has partly been responded to by the policy changes, which increase from April this year the annual remittance charge to £90,000, if you have been here more than 17 years—

Q424 Chair: It still may not be what you would pay.

Edward Troup: No, it may not be.

Q425 Chair: For the extremely wealthy, it may just be worth their while paying it, because they still get away with having a lot of money that is not taxed at the UK rate, although they live here, work here, have British passports and their children go to school here.

Edward Troup: And there are some policy choices for the next Administration.

Q426 Austin Mitchell: How many of the other countries have this exalted status for non-doms?

Edward Troup: Most countries have some basis of allowing temporary residents to have a treatment that recognises that the mere fact you set foot in the country—

Q427 Austin Mitchell: Not many have a recognised status like this.

Edward Troup: Not many have something based on the English principle of domicile, no. One of the disadvantages of having one of the oldest tax systems in the world is that we have some of the oldest bits of rules, and this is clearly quite a venerable one.

Q428 Nick Smith: So you said about 50,000 of them take advantage of that status. How many of these types of people were there, say, 10 years ago?

Edward Troup: I do not have historical information. I suspect that it has grown, but I would not have thought it has grown dramatically.

Q429 Nick Smith: Could you let us have some information, how these numbers have gone up in the last year—or 30 years, or every five years?

Edward Troup: I can do—

Q430 Mr Bacon: Every year I think.

Edward Troup: I do not have so much confidence in our historical data to promise you everything, but there may be some published records.

Q431 Dame Anne McGuire: Don't you have to keep it for seven years though, like everybody else?

Edward Troup: We do but it's whether we actually extract it—

Q432 Dame Anne McGuire: It was only a cheap point, sorry. We are at the end of five years and I think that it's fair to say that the tax system over the past five years has been pretty well exposed for its inadequacies, whether it be major companies either avoiding or evading tax—and I choose my words carefully—or major, established accountancy firms apparently encouraging some ways in which people can avoid tax on an industrial scale—or, in the Chancellor's words, aggressive tax avoidance. Yet the ordinary person out there watching this must be pretty demoralised when they are subject to rules and regulations that allow them little wriggle room. Is it the tax system that is the problem or is it that HMRC can no longer cope?

Edward Troup: It sounds like that is a question with no very easy answer. I accept the perception that the tax system is not always even-handed and my appointment as Tax Assurance Commissioner, was motivated, as the Chair knows, in very large part by the importance of overcoming that and establishing a sense of confidence in both Parliament and among the public in the even-handedness with which we work. But I think that this is more perception than reality. The Solace data that we have been talking about—no one has been let off anything, everybody has paid tax and interest and some penalties. I can absolutely see that the individual, who we quite rightly pursue because they haven't paid their tax, is concerned that we are not pursuing with equal vigour those who manage to hide their tax off-shore.

As I said at the beginning of this hearing, the record of this Government and of HMRC over the last few years has shown that we have put a lot of resources in, we have multiplied the number of prosecutions by five, and we have with the Treasury had success in getting information out of foreign banks, so I hope that what you describe is a diminishing perception. In answer to your question, I do not think that it is the fault of Parliament and I certainly do not recognise that we are not seeking to do the best we can for taxpayers large and small. We are putting proportionately more resources into chasing the big evaders than we are having to chase small businesses.

Q433 Dame Anne McGuire: I don't think that it is just about prosecutions, I think it is also about relationships. As constituency MPs, all of us would have examples where HMRC's relationship with the small and medium enterprise—who we are always told is the foundation stone of our economic growth—is not as good as it appears to be and certainly, from the revelations that we have seen over the past five years, as it is with the big boys. By that I mean the big boys in terms of the companies supported by the big boys in terms of accountancy, talking to the big boys in HMRC, when the smaller companies do not get that level of service. Indeed, Jim Harra admitted a few weeks ago that the relationship with small

and medium companies was not as good as it was with the larger organisations. So how can people feel that it is even-handed out there?

Edward Troup: First, I absolutely recognise that there is more that we can do to improve relations at a taxpayer to HMRC level with small and medium-sized businesses. I would defend it against the suggestion that the relationship that we have with large businesses is in any way a comfortable one. We get a huge amount of yield from large businesses, because they pay the largest amount of tax. The attention they get is the attention to make sure that they are paying the right amount of tax and that is demonstrated by the amount of yield that we get. It would be nice, in a sense, to give as much attention to small businesses, if we had the resources, and they might feel more comfortable—or they might feel less comfortable—if we did that, but it is a conscious decision. It is reflected in our performance and the amount of money that we recover, but I acknowledge the point that Jim acknowledged: there is work to do to improve our relationships with small business at a business to taxpayer level so that they can get something that—if not actually personalised—feels like a personalised service and like we are actually helping them.

Q434 Dame Anne McGuire: But how do you deal with how it sometimes looks from the outside? You might be amazed, but people actually watch this Committee and they can tell you what has been discussed. It feels as though there is a network of people supporting one another. I take your point that big companies pay lots of tax and all the rest of it, but it appears sometimes that a small group of people at the top—in Government or HMRC, companies and the big accountancy firms—are doing the deals when companies in my constituency are being pushed to the wall by HMRC, sometimes quite unreasonably.

Edward Troup: If that is a perception, we must find more ways of dispelling it. As Tax Assurance Commissioner, I sit with two other commissioners and sign off settlement of our large disputes. I publish a report each year. I recommend it to you. It is not brilliantly readable but it has some good facts about what we do. If there are more ways that we can communicate what we are doing and the even-handedness, which really is my job to deliver to your constituents, I would be happy to discuss them.

Q435 Mr Bacon: I am surprised by your earlier answer, Mr Troup because I share Dame Anne's concern. What impresses me is not so much what I read in the newspapers or what I see by way of demonstrations. What impresses me is when I get a tax accountant whose job is to audit the books of lots of small and medium-sized businesses coming to my constituency surgery to say—he is a tax expert and an accountant—that he has noticed that for his clients, which include retailers, small manufacturing firms, a fish and chip shop, the heat has been dialled up by HMRC over the past few years in an environment in which we see a lot of what Dame Anne called deals being cut with large corporates.

It is not merely a perception issue. There is an asymmetry between the way that HMRC treats one group and the way it treats another. I am sure that you will say that the

reason there is an asymmetry is because large corporates have more activities in more jurisdictions and more opportunities to engage in things that will result in them saving tax in a way that a small manufacturing company in my constituency, employing 25 or 30 people, does not. I am sure that you will say that you would treat all large corporates in the same way, and that if this manufacturing company of mine employing 25 or 30 people only had the wit to have an enormous balance sheet and borrowings in lots of different jurisdictions, it would be treated in exactly the same way as these large corporates are treated.

The fact is that the system creates opportunities for large players, which are out of all proportion to the opportunities that it creates for small players. In fact, the reverse is true. If you are a small manufacturing business, a fish and chip shop or a retailer, your main concern is to ensure that you are not on the bank's radar for a negative reason. You might very well want to ensure that you keep your balance sheet as strong as you reasonably can and that you do not have any debt, if you can possibly avoid it. If you can show that you are making a profit to reassure your banks, you will. Then you come along and thwack them with the corporation tax rate of whatever it is—we know it has been going down slightly. Whereas, if you are an enormous enterprise, you have opportunities to structure things as debt, rather than equity, and then you get tax relief. These things are simply not available to smaller enterprises.

It is not merely a perception. It is a fact that the way that small enterprises are treated is very different in practice from the way that large ones are. That is the reason that, over the past four years, the activities of this Committee have had so much traction and generated so much public anguish. For you to say that it is mainly a matter of perception rather than reality, I fear makes you look rather out of touch, to be honest.

Edward Troup: Can I respond to a couple of points? I am not sure whether that was a question but let me answer what I think the question is. You said that the system allows them to do that and I completely accept that. The system in terms of the UK tax rules and the interaction with the tax rules of other jurisdictions does give companies operating in a number of jurisdictions opportunities that are not available to businesses here, which is precisely why, both operationally and through policy change, through the OECD, the BEPS initiative and everything else, the UK and HMRC—

Q436 Mr Bacon: Can you say what that is?

Edward Troup: It is base erosion and profit shifting.

Q437 Mr Bacon: That is BEPS.

Edward Troup: That is BEPS, and the initiative is seeking to address some of those issues and differences in the system. But those differences in the system are both a function of rules and a function of different sides to the business. You also talked about the asymmetry of treatment. I would put it another way; I'd say that it is an appropriate

treatment. Of course we are not going to put transfer pricing specialists and debt equity specialists on to your small manufacturing business, because they should be addressed to those large businesses who are playing games with them. So there is, in your words, an asymmetry. But I'd also say that we cannot neglect the small businesses.

I turn to the figures on the tax gap, and while the large businesses account for £9.3 billion—27% of the tax gap—SMEs account for £15.1 billion, or 44% of the tax gap. It is right that we use our resources, which we must do carefully, and we definitely should assume that small businesses are trying to do the right thing and not the wrong thing; but we must put some resources into tackling SMEs and the tax gap, precisely because they represent £15.1 billion of uncollected tax. I am sure that this Committee would be down on me, Jennie Grainger and Jim Harra, were we not doing a proportionate and appropriate amount in the space of tackling small businesses.

What we have got to get right is making sure that the way we interact with small businesses helps those who want to comply—that is the whole of our digital transformation strategy—and making sure that we put our resources into those who, despite help, despite the nudge, despite the best systems, are not prepared to comply and are still contributing to that tax gap. But that is not an easy challenge.

Q438 Mr Bacon: To return briefly to the subject of non-doms, can you now be a non-dom without regard to the number of days you spend in this country? Or is there a limit on the number of days that you can spend in this country, and if you exceed that limit would you lose your non-dom status?

Edward Troup: I am sorry to go back on a bit more history. Tax treatment is determined by residence and domicile, which are separate concepts. Residence is determined by the number of days you spend in a year and the first question you ask is, is an individual resident? I am afraid I am not familiar with exactly where the rules have got to now, but in some cases that does involve counting days.

Q439 Dame Anne McGuire: Is it 90 days?

Edward Troup: It used to be 90, but we now have a statutory residence test and it is a bit more complicated—well, it's not complicated; it is supposed to be simpler. When you have established that you are resident, then you can look at the question, "Am I non-domiciled?", which is a question determined by your origins, by where you have come from.

Q440 Mr Bacon: So it would be perfectly possible for somebody to be resident here and a non-dom for tax purposes?

Edward Troup: Normally when we talk about non-doms—

Mr Bacon: Is that correct?

Edward Troup: That is shorthand for UK resident—

Mr Bacon: I am just defining it.

Edward Troup: You are defining the term.

Q441 Mr Bacon: So you could easily spend 75% or 85% of your time in the UK because you are resident here—

Edward Troup: Or 100%.

Mr Bacon: Or 100%, but be a non-dom. No wonder people are pissed off, frankly. Under both Governments—the last one and this one. It is extraordinary, frankly. You wonder why people—

Edward Troup: It is a policy issue.

Mr Bacon: I know it's a policy issue. It is nothing to do with you—you are just the bloke in charge. I realise that. In all honesty, you are surprised that people think there is one set of rules for rich people, and one set of rules for someone else, when you've just told us that that's exactly what there is. No wonder people are pissed off.

Q442 Chair: Is there somebody behind you who can get the person back, so they can answer the question? I don't know how many advisers you have got behind you.

Edward Troup: We will find out whether we've got the answer to the question, but I am not holding out—

Mr Bacon: It wasn't a question, by the way.

Q443 Austin Mitchell: I am just surprised that, when the parties were dredging round for arguments against Scottish home rule, they didn't bring up the fact that Scottish home rule would lead to thousands of non-dom Scots coming down to count the bawbees in London. However, that is just a passing remark—and has not produced a reaction.

Dame Anne McGuire: We wouldn't use "bawbees" anymore.

Austin Mitchell: They will use euros.

The code of conduct for the banks has been in place since 2009. Mr Harra told us, "We expect a standard of behaviour of the banks that is higher than simply not breaking the criminal law." That is since 2009—I don't know what they expected before that, but they

expect a higher standard of behaviour and clearly, the banks must have a naughty step. What are the sanctions if they break the rules?

Edward Troup: Can I step back a bit, because it is slightly related to the earlier questions? The point about something stronger, above not breaking the law, was a reflection of the fact that banks could promote avoidance—not evasion—quite legally, and if we found that avoidance and successfully challenged it, they could say, “We are not breaking the law.” That was not felt to be a good position.

The code of practice was introduced in 2009 and 95% of banks have now signed up to it. Effectively, the banks said, “We will not promote avoidance, we will not undertake avoidance ourselves,” and we have seen a real shift in behaviour. When it was introduced, it did not have an actual sanction. It was quite difficult to impose a sanction on behaviour simply because there is no definition of behaviour: it is different in the eye of one beholder from another. But we do now have a measure which comes in from this year which effectively allows naming—I do not like to use the phrase “naming and shaming”—of those banks who do not comply with the code of governance.

Q444 Austin Mitchell: For all banks? That must terrify them.

Edward Troup: Actually, the reputational risk of being named effectively as not complying with a code of practice on good tax governance has alarmed the banks and—

Q445 Chair: Have you got that power, or are you getting it?

Edward Troup: We have got it.

Q446 Chair: Have you used it?

Edward Troup: We have not used it, because—

Q447 Chair: When did you get it?

Edward Troup: The first year it applies is the year that is about to end on 31 March, and then there will be a report written, effectively giving—

Q448 Austin Mitchell: But there is no other sanction.

Edward Troup: There is no other sanction, but again it is open to Parliament to impose a further sanction if it wishes to.

Q449 Austin Mitchell: So they won't get a nasty letter from the Bank of England. You are going to start reporting on the code of practice, so in those reports will you include an analysis of what has gone on at HSBC?

Edward Troup: It is a report for the year ending 31 March 2015, which we are just about to end, because that is the first year for which the reports apply. It will report, for that year, the behaviour of any banks who have not complied with the code of practice. It is published, so you can see what—

Q450 Austin Mitchell: In the last year.

Edward Troup: Yes. It is not retrospective.

Chair: So they avoid it.

Q451 Mr Bacon: Can you clarify what the behaviour is that you had trouble defining?

Edward Troup: That they have complied with the spirit of the law as well as the letter, that they have not promoted avoidance and that they have a good relationship and are trying to promote a good relationship with us. In particular, I am not saying that complying with the spirit of the law and not promoting avoidance is not capable of definition; indeed, the code of practice does describe them. But—

Q452 Mr Bacon: I don't see what the problem is. We have plenty of statute defining what kind of behaviour is allowed in relation to, for example, race relations or hate crimes. If you wanted to define not promoting in statute law, that would not be that difficult to do.

Edward Troup: I think it would be possible and the public mood has moved on. Under the next Parliament, it may well be that Parliament will wish to have a go at doing that.

Q453 Chair: I will ask you two questions. One is on prosecutions, which you said that you have increased. In written evidence in answer to a question that Mr Bacon asked at the previous session on the effectiveness of advertising in deterring non-compliance, your research demonstrated that the chances of prosecution do have an impact on behaviour. It says, "Approximately three quarters of SMEs and just over a third of individuals said that the chances of prosecution were sufficient to deter businesses and individuals from regularly evading tax. For individuals the figure marks a significant increase from 2012." It continued, "Among those who were aware of prosecutions for tax evasion, deterrent effects were assumed to be strongest among people who were considering evading what were only small amounts as they were liable to fear humiliation of detection and to hold broadly compliant views." Your own evidence demonstrates the potency of prosecution as a deterrent. In her

evidence to us when we looked at the HSBC issue, Lin Homer said—and I think this is where you are, really—“prosecution is one end of the toolkit, and it is an expensive end.” I wonder whether you are deterred from prosecution, particularly of high net-worth individuals or big multinational corporations, because of the expense—whether that influences your approach—and you don’t have sufficient regard to the deterrence effect that your own research tells you works.

Edward Troup: There are a number of things on that. First of all—I’m sorry I keep repeating this statement—we have multiplied the number of prosecutions by five. We are doing more advertising. We are doing research to see whether it has a deterrent effect. If you met colleagues in HMRC who deal with criminal prosecution, I don’t think you would think that they were being deterred from pursuing cases. If the suggestion is that there are cases where we say, “Oh well—we could prosecute that but it is all too expensive,” I don’t believe for one moment that that is correct.

Q454 Chair: We are looking at the evidence of the Falciani leaks, for example, where you have ended up with one prosecution. That is just an example, actually.

Edward Troup: But I don’t think—and again, I refer you back to Lin Homer’s evidence—that there is any suggestion that that was anything to do with resource. It was to do with our published criminal investigation policy and the desire to recover as much money as possible for the Exchequer, consistent with the criminal investigation policy and with the standards that are needed by the Crown Prosecution Service to bring prosecutions.

Q455 Chair: But to be clear, you have just said to us that the desire to maximise income for HMRC was more important to you than the success of prosecution and the impact that would have as a deterrent. Isn’t that what you’ve just said to me?

Edward Troup: I was attempting to paraphrase the published criminal investigation policy, which has been endorsed by Governments for many years and says: “Criminal Investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate.” That statement makes it very clear that the criminal investigation policy, as Lin described, is just one of the tools in our toolkit for our task of collecting and managing taxes.

Q456 Mr Burrowes: On the other tool, penalties, you inherited the statement from Mr Hartnett, on the Swiss bank accounts, that those involved could face penalties of up to 200%. Have any faced such a penalty?

Edward Troup: I think I was asked a question by Mr Smith about how many penalties we had applied under the new regime. I will undertake to provide an answer to that.

Q457 Chair: Can I just ask, finally, have you had contact with Mr Falciani to see whether he can be of any further assistance to you?

Edward Troup: I think that question was asked of Lin Homer.

Chair: You hadn't, at that point. I am asking you.

Edward Troup: Not as far as I know, but that is an operational question for Jennie Granger. I wouldn't know even if there had been contact, so I cannot answer that question.

Q458 Chair: Do you know whether the Swiss bank has helped you in providing corroborative data so that you can take prosecutions? Has HSBC co-operated with you in providing the data you require to take some of the cases through to prosecution?

Edward Troup: I feel I keep pleading the first amendment, or whatever it is—the fifth amendment. That is an operational matter and I wouldn't have that information.

Q459 Chair: Would they be able, if they so wished, to co-operate with you and provide you with corroborative information?

Edward Troup: I simply do not know. These matters are complex issues of banking law, international law—

Q460 Chair: And as your official has arrived behind you and is not in the corridor, do you have information now to tell us how many banks and bankers are currently under investigation?

Megan Ormson: I am afraid that we don't have the time to get that before the end of the hearing.

Chair: The information or the—

Edward Troup: We will answer the question. We will write to you. I cannot say that we will provide exact numbers. If there is only one bank, for instance—I don't know—we might find it very difficult to say that because it would send commentators on a hunt for who that bank was. I don't know whether we will be able to say but we will write to you.

Q461 Chair: And you will do that before Parliament prorogues?

Edward Troup: We will write to you before Parliament prorogues.

Chair: So we can publish the information.

Edward Troup: We will write to you as soon as we can.

Chair: Thank you very much.

Edward Troup: Thank you. It has been a pleasure being your last witness of the Parliament. I hope you have a good election campaign.