House of Commons

Business, Energy and Industrial Strategy and Work and Pensions Committees

Oral evidence: Taylor review of modern working practices, HC 352

Wednesday 25 October 2017

Ordered by the House of Commons to be published on 25 October 2017.

Watch the meeting

Members present:

Business, Energy and Industrial Strategy Committee: Rachel Reeves (Chair), Vernon Coaker, Stephen Kerr, Peter Kyle, Mr Ian Liddell-Grainger, Rachel Maclean, Mark Pawsey, Antoinette Sandbach

Work and Pensions Committee: Frank Field, Heidi Allen; Andrew Bowie, Jack Brereton, Alex Burghart, Neil Coyle, Emma Dent Coad, Ruth George, Chris Green, Chris Stephens

Questions 245-299

Witnesses

Examination of witness

Witness: Professor Sir David Metcalf CBE

Q245 **Chair:** Thank you very much, Sir David, for coming in today to give evidence to our two Committees—the Business, Energy and Industrial Strategy and Work and Pensions Committees—in your role as the Director of Labour Market Enforcement. You can see there is a lot of interest in what you have to say; very many members are here to ask you questions in relation to the work we are doing together as Committees on the Taylor Review. We are going to start with Alex Burghart who is going to ask the first questions.

Alex Burghart: Thank you, Chair. Sir David, good morning. I wonder if you could tell the Committee a little bit about the problem that your role has been created to solve. What is it that you do?

Sir David Metcalf: Absolutely. Let me preface it by saying that the issue is non-compliance with various labour market regulations and probably the growth of non-compliance with the regulations. About three years ago there was a combining of the regulatory agencies. It was then held that things would probably grind to a halt for about two or three years while they were put together as a proper labour market inspectorate, so this role was created as a sort of quarter-way house to a fully fledged labour inspectorate.

Over and above the non-compliance, there was a feeling—which still exists to some extent—that the regulatory agencies work in silos and that we need more joint intelligence sharing and certainly, on occasions, some joint working.

How do I go about this in terms of the job? According to the legislation, the Immigration Act last year, we had to produce an initial strategy, which we did for March, and then we have had a major consultation over the last three months. It has just ended. I have probably had 60 meetings with stakeholders over the last six weeks or so, and then we have had 70 pieces of evidence in.

After we have distilled all of that, my role is then to produce—it is an overused word but in this case it is a correct word—a strategy for the three enforcement bodies: HMRC for income tax, EAS for the employment agencies, and the Gangmasters and Labour Abuse Authority for gangmasters, but they also have new police powers.

The key thing is it then gets signed off in principle by both the Home Secretary and the BEIS Secretary. Those two Departments do not always see eye to eye, so it will be quite interesting to see if I can get it signed off. Essentially, once it has been signed off—it is not a question that the three enforcement bodies have to do what is in it—it has the ministerial imprimatur.

To take one example, HMRC works for BEIS under a service level agreement, enforcing the minimum wage. Assuming that it gets signed off, what is in the strategy will then form the basis for the service level agreement and HMRC will act accordingly.

It is very important to note that this is an iterative process. I think one or two people have great expectations at the beginning. It is nice that they have, but it is iterative. It is a long run process. Just to finish, I produce an annual report post-strategy to say, "This is where we are, given the strategy".

Q246 **Alex Burghart:** If you were to be sitting here in a couple of years' time, what would you have hoped to achieve? How will we know whether you are doing a good job or not?

Sir David Metcalf: That is a good question. First of all, on more joint intelligence sharing and joint working, I would hope in two years' time that we could confirm that there would be much greater compliance and I think, ideally, that the work that I do that then informs the three agencies really has a proper deterrent effect. It is not the mere existence of saying, "Oh, HMRC has taken so many cases"; it is the symbolism of those cases in making sure that it has a deterrent effect in order to get compliance across the board.

Q247 **Alex Burghart:** Thank you. That is very interesting. Do you see it as your role to, for example, help ensure that businesses in the gig economy are not exploiting the law and workers? They undercut traditional models. Do you see that as part of your brief?

Sir David Metcalf: That is an interesting question. It isn't my job to protect traditional working methods against innovation. It is my job to try to ensure that the law is enforced. For example, if it were to be found that the gig economy workers are not self-employed but are workers—which was the previous recommendation of the Work and Pensions Committee—then you would want to make sure that you enforce the law to ensure that they get the minimum wage. But I do not see it as my role, in some sense, to protect the traditional method of work.

Q248 **Frank Field:** David, if you were appearing before us in five years' time—as I hope you will—what do you think the shape of your office would be? How different would you conceive the evolution of the role that you have?

Sir David Metcalf: That is a difficult question, not least because I do think it is plausible that, if this works reasonably well, there may be a call again for some merging of the bodies and some form of—let's call it—labour market inspectorate, although you would need the Health and Safety Executive included in that as well. I am not in any sense an empire builder and it wouldn't be me who would be doing that, but I can quite see that if the work goes well people will say, "Maybe we could start thinking about merging some of these".

The one area where I think the actual office will change is in the budget. We have money to develop a so-called intelligence hub, but so far it has only been embryonic. We haven't had the resources to be able to do this at this stage, but we do have resources to develop IT and so on. That would be a more major component, so taking intelligence from the three bodies, local authorities, the Insolvency Service, the Pensions Regulator—all sorts of bodies—and trying to put it together to get a better picture of the more hidden economy. We can then use that to help direct the proactive rather than the reactive compliance work.

Q249 **Frank Field:** A more immediate reform then, waiting for this to emerge, is to bring Health and Safety under your umbrella as well.

Sir David Metcalf: Not yet. Truly, I have more than enough to do with the three agencies. Also, Health and Safety have by far the biggest resources. The resources that they have dwarf the three agencies, so it would be a major innovation. As it happens—there is an interesting thing that we may get to later—Health and Safety are responsible for holiday pay and that is simply not enforced.

Q250 **Frank Field:** Do they feed into your hub on information gathering?

Sir David Metcalf: Yes, in principle. As I say, the hub is only in an embryonic state but in principle, yes, and we have had very constructive meetings. I have had a constructive meeting, but also the man who runs the intelligence hub has had very constructive meetings with them.

Q251 **Neil Coyle:** In your answer to Alex's question you made a point about court cases. Under your system, would Uber have ended up in court losing their renewal licence for not being fit and proper, or would you have supported them to avoid ending up in court?

Sir David Metcalf: The question for me would be: whatever status Uber has is not for me to decide, but it is important that the law gets enforced.

Q252 **Neil Coyle:** It would be test cases that you would be seeking to take?

Sir David Metcalf: No, I would not be seeking to take test cases. I accept the law as it is. It may very well be that there will be legislation to define employment status. The way the test cases seem to be going at present suggests that the Uber-type people are going to be defined as workers—that is the direction of travel in the test cases—in which case, for better or worse, they must get the minimum wage.

Q253 **Jack Brereton:** Could you expand a bit further on the points that you addressed to Frank's question about the three separate organisations? You mentioned that there is somewhat of a silo mentality. Is it a problem that there are these three separate organisations, and what benefits would there be of bringing these organisations together to work more collaboratively?

Sir David Metcalf: First of all, the catalyst of having a Director of Enforcement has encouraged the bodies to work together a bit more. In my office we have set up a co-ordinating group for them, but also for the National Crime Agency and so on, which meets on a monthly basis. There is now more intelligence sharing and they plan some joint operations under that regime. Gradually the silo mentality is becoming much less severe, which I think is all to the good. I would wish—

Q254 **Jack Brereton:** Is that enough to just have separate organisations working collaboratively, or would you see a merger as beneficial?

Sir David Metcalf: We are where we are. In a way what you are calling a merger could, in due course, almost develop organically. I will give you an example. I was up in Leicester where the elected mayor called a summit on the garment trade. There is a lot of onshoring now because of fast fashion. The Nexts and the ASOS's of this world are very worried because they think they may get tarred with a non-compliance brush, even though they are compliant. Non-compliance is absolutely rife in the garment trade in Leicester. It seems to me that would be a very good example of where the three bodies should be working together, together with the local authority, probably the police and probably Health and Safety. I know they have to have intelligence. They cannot go fishing, as it were.

I went to the old Imperial typewriter factory, which is now all divided up into garments. You could look around and see there are problems. That is a good example of a joint operation. It may very well be that in due course people will say, "Maybe we could get the agencies to come together", but I think at this stage, if I may say, that is premature.

Q255 **Chair:** Thank you very much. That is an interesting point. Presumably the three agencies that you are the director for all have their individual heads, do they?

Sir David Metcalf: Yes.

Q256 **Chair:** You sit above, but there is a lot of management of the work that sits below?

Sir David Metcalf: No, Madam Chair, I don't see it like that, if I may say so, and I would not say I sit above. I will be providing certain themes in the strategy. As and when it gets signed off, these themes—for example, to do with penalties, awareness raising, how to make a complaint, joint liability, licensing and so on—will then abide by the themes, but I won't be interfering in the slightest in their day-to-day operations.

We have an important new law called Undertakings and Orders where essentially HMRC goes in and, if it is a recidivist firm, can say, "We have come to you three or four times. You are not complying with the law. If you do not comply we will take you to court". Essentially it is aggravated exploitation. I will not say to HMRC, "Look, I want you to take 10 cases next year", but in the strategy it will say, "The three bodies will wish to make use of this new law".

Q257 **Chair:** You said before in your answer to Jack Brereton's question that non-compliance is rife in the garment sector in Leicester. I don't want to pick on one sector in one part of the country but, if non-compliance is rife in that sector in that city, how many cases have been taken against the garment sector in Leicester in the last year?

Sir David Metcalf: Not very many. The short answer to that—I don't know the exact number—is not very many. That is why I use it as an example of a potentially very fruitful joint operation.

Q258 **Chair:** Yes. Do the bodies that you oversee have sufficient resources and powers to protect workers effectively?

Sir David Metcalf: This is a tricky question. I have enough resources at present. Everybody wants more resources, but we have a small team of eight people who are of very good quality, which for me is the most important thing.

HMRC has had a doubling of its enforcement resources in the last two years, up to £25 million. That is in anticipation of the Living Wage coming in because the minimum wage was only covering about 5% of the workforce. It is estimated that by 2020 the Living Wage will be covering 14% of the workforce, so you are bound to get more complaints.

So HMRC has had a major increase in its resources. The GLAA, the Gangmasters, has had a £2.5 million increase, up to £7 million, because it has had new police powers. The employment agencies' body is very much the Cinderella and we will be looking at the resources there. They only have a £0.5 million budget. They have 11 staff, only nine inspectors, and there are 18,000 employment agencies. I am not going to come in calling for more resources just like that, but there is a trade-off. If you don't have enough enforcement resources, then the punishments should be larger; the punishments at present, let's say for the minimum wage—can I extend this a bit?

Chair: Please do.

Sir David Metcalf: If you take HMRC and the minimum wage, there are 1.3 million firms with employees. They took 2,600 cases last year. That means the average firm can expect an investigation once every 500 years. That is hardly an incentive to comply. In that case the fines should be large, but presently the maximum fine is twice the wage arrears. Last year the average wage arrears per worker were £110, so the fine is £220. Everybody wants more resources but, if you don't have the resources to take more cases, the penalties have to be higher.

That is why I alluded to this new two-year jail sentence law: presently for modern slavery we have 10 years, but down the other end of the spectrum we only have the civil penalties that are almost trivial—not necessarily completely but almost, so having something in the middle of the spectrum is potentially very important.

Q259 **Chair:** Is that something that Government would need to legislate for or is that something that could be done in a different way? Why don't you have higher fines and penalties for non-compliance today? What is the barrier to that?

Sir David Metcalf: One of the two Departments that I report to, BEIS, not surprisingly has been reasonably hostile to extra regulation. They want to be supportive to business, as indeed I want to do. I want it to be a level playing field.

Q260 **Chair:** It is not supportive to business to allow them to not comply with legislation, because all that ends up doing is not only exploiting workers but undercutting businesses that are doing the right thing. You could argue quite strongly that it would be pro-business to ensure compliance.

Sir David Metcalf: That is the argument I am making as well. Often times when I have been talking with, say, Sainsbury's or the British Retail Consortium, they concur exactly with that you have just said.

To be fair, BEIS did act—it wasn't on me—on this recently because the fines previously had only been 100% of the wage arrears. So they have at least doubled, but in my view it is still too small.

Q261 **Frank Field:** As we are hoping, as joint committees, to move towards legislation, we are interested in what needs primary and what can be done by statutory instrument. Do you know, if BEIS was minded to increase the penalties significantly, would that require primary or would it be statutory instrument stuff?

Sir David Metcalf: It is statutory instrument, yes.

Q262 **Frank Field:** It is very easy to do?

Sir David Metcalf: Yes.

Frank Field: Thank you.

Q263 **Antoinette Sandbach:** You spoke about the growth of non-compliance in the labour market. To what extent are you reliant on whistleblowers for enforcement action?

Sir David Metcalf: Whistleblowers, no, not at all. In a sense the bodies are reliant on complaints and intelligence. A whistleblower, for example, for HMRC, they would not take it because they don't take third-party complaints. They would file it away as intelligence but they would not act on a third party complaint. The policy of all three agencies is: we follow up all complaints and then it is intelligence led.

That itself raises an interesting question, because the intelligence-led then becomes the residual if you follow up all complaints. I am not sure that is the right way to do this. We will be addressing this in the strategy because I do think we need more intelligence-led proactive investigations.

Q264 **Antoinette Sandbach:** Speaking of being proactive, do you think a statement of worker rights or a clear statement in employment terms for each worker would help better communication of that, and help in allowing an employee or a worker to judge when to make a complaint?

Sir David Metcalf: I could not agree more. That is a Matthew Taylor suggestion that I entirely concur with. You have it on day one. Employment agency workers are supposed to get this already and I think extending that is very important indeed. In a sense I don't know why we do not have it already.

For example, workers at present do not have a right to a payslip. An employee does have a right but a worker does not have a right, so I think they should have a right to a payslip. The payslip should have hours on it so a woman can work out whether she is getting the minimum wage or not. There are plenty of things like that that sound quite modest but would have a very important effect.

Q265 **Antoinette Sandbach:** You have already spoken a little bit about the low level of fines and that you would like to see higher fines. Would you like to see a sliding scale, for example, for repeated offences?

Sir David Metcalf: Yes, that is a very good point. There is also an element to do with the naming and shaming as well. For example, there might be a case of relating fines to the turnover of the company. I am rather in favour of naming and shaming, but it is blunt and some of the non-compliance is inadvertent. I don’t buy the BEIS or HMRC line that it is as much as 80%. Some of it is for sure but, if it isn’t clear whether it was inadvertent and it has been corrected, then the company should not have its reputation traduced. So I think some of it should be via education but some of it via naming and shaming, yes.

Q266 **Antoinette Sandbach:** Effectively, your evidence is that you believe that higher fines would act as a deterrent to breaches?

Sir David Metcalf: Yes, I do. Or you could have more resources devoted so they can have more investigations. You could have both but in a sense it is a trade-off between the two.

Q267 **Rachel Maclean:** You report to two Departments. One is BEIS. Please remind us which is the other one?

Sir David Metcalf: The Home Office.

Rachel Maclean: Thank you.

Sir David Metcalf: The reason for that is that the Home Office is responsible for the GLAA, the Gangmasters and Labour Abuse Authority.

Q268 **Chair:** I want to come back very quickly to the point Antoinette was making—and you were making as well, Sir David—about naming and shaming. You spoke earlier about companies like Next and ASOS and the garment sector. One of the things we were discussing with Matthew

Taylor, when he gave evidence the week before last, was what we could do about the whole supply chain. If you have non-compliance somewhere in the supply chain but, ultimately, it is answerable to a big company, can you make that clear when naming and shaming? I know that much of the non-compliance is small businesses—a hairdresser in my constituency, for example—but if you have someone that is supplying one of these bigger businesses, whether that be in garments or cleaning or catering, would that be possible? Could that be done more?

Sir David Metcalf: Yes. One of the themes of my strategy will be to do with supply chains. You put your finger on the point. The major retailers, for example, or the major building firms are by and large compliant. They do not want their reputations damaged. They want to obey the law. But further down the supply chain—they cannot be expected to police it entirely—there is a tendency perhaps sometimes to rather wash their hands of what goes on down the supply chain.

In some countries, in parts of Europe, in Australia and Canada, the head of the supply chain, the brand, can be held jointly liable for what goes on further down. I know Matthew alluded to this in his evidence, I read the transcript. We think that something along those lines would be very useful here. I don't want it to be sort of with hobnail boots, so what we have in mind is: say HMRC were to find a minimum wage problem in the third layer of the supply chain, it would tell that company, "Get your act together". It would also go to supermarket X and say, "You have a problem at the third layer down the supply chain"—they would do this privately not publicly—"so go and talk with them, get it fixed. We will be back in a couple of months and if you don't get it fixed then we may well name you". There is no point in fining them, because the fines are too small, but naming them might be quite good. At this stage we have not worked out the details but I think, in principle, it would have potential.

Can I just add something to this?

Chair: Yes, you can.

Sir David Metcalf: Going back to the garment trade, in America—where there are real problems in the supply chain—the equivalent of HMRC embargoes the goods. You have fast fashion and the retailer would say, "Where is my fast fashion? I need these things in the shop right now." If HMRC puts an embargo on it, the retailer would have a very strong incentive to make sure the supply chain was compliant, and so we will almost certainly be recommending that.

Then the third thing you could do on the supply chain is actually use public procurement rules more strongly. Interestingly, the public procurement rules include various things about paying income tax, discrimination and so on, but they are silent about making sure that the supply chain of the person getting the public money is compliant. We will be recommending that we add that to the template.

Q269 **Ruth George:** Thank you, Sir David. In response to Rachel about whistleblowers, you said that you do not act on third-party complaints. Do you sometimes have problems where individual employees are not prepared to come forward and make personal complaints themselves, in areas where you have intelligence that there are problems and that that can prevent you from acting?

Sir David Metcalf: Yes. To be clear, it is not me not acting. HMRC do not act on the third-party complaints. We occasionally do get a complaint in through to the office, which we then pass on directly to the bodies. But the point that you are making is absolutely right. There are many vulnerable workers, who are either not aware of their rights or who are rather frightened of complaining. Therefore, it is part of my job to try to protect those vulnerable workers and to get greater compliance, but this is something that will only happen over the longer run. I would hope that would be an outcome two or three years down the line of the job.

There is a major issue in raising awareness here. Where I have had the meetings, all of the stakeholders have pretty much said both firms and workers are very patchily aware of what their rights are. On the question whether we should have a statement on day one of the employment conditions I think that would go a long way. You could put quite a lot of this on payslips, even electronic ones. Trying to raise awareness so that workers know what they are entitled to and can then make complaints is a very important issue, yes.

Q270 **Heidi Allen:** I was just reflecting on you describing different carrots and different sticks for different industries. Embargoing products would not matter to somebody if their business was not a fast turnover so fines might be better. Does your Department have the dexterity and the flexibility to offer such bespoke enforcement tools, and do you have the powers to do that? This is very bespoke, isn't it?

Sir David Metcalf: Yes. That is a really good point and the short answer is: not at this stage. That is why I have said that the initial strategy, when we publish it, will be more themes: the penalties and the enforcement, some discussion of licensing, some discussion of supply chains. We just have not had the time or the resources to do a deep dive by sector. We are well aware of particular sectors and the intention is to do exactly that next year because, you are quite right, a one-size-fits-all is not necessarily going to be the right thing.

By coming forward with some proposals on the supply chains—there is a particular issue to do with holiday pay, for example—we will begin to get things right. There are questions about extending licensing as well, which would be to some particular sectors, but once we finish the initial strategy we will try to do some deeper analysis, say, in the care sector and possibly construction. There are issues in cleaning—there are three Cs—and you add car washes into that now as well, and probably one or two other sectors but we have not had the resources to do that at this stage.

Q271 **Emma Dent Coad:** We have been hearing that businesses have to have responsibility to check their supply chains, particularly in the fashion business. I wonder if we should universalise the duty under the Modern Slavery Act for employers to have evidence that they have actually done that work on their staff on the supply chain of where their employees have come from.

Sir David Metcalf: Yes. We have to make a statement on the Modern Slavery Act. The only thing I would say is that most of the firms—especially the major firms—do try to be compliant. There are some that don't for sure, and it just raises the question whether or not we are then adding to the burdens. That is why I said that in a sense it is not a question of punishing supermarket X because there is something down the supply chain that isn't right. That is why I say initially you do it privately.

Certainly, on the public procurement rules, for example, you could add that in if supermarket X has some money for supplying the hospitals or something. So you could do that, yes. To the extent that this has been reasonably successful under the Modern Slavery Act, this is something that we will want to consider.

Q272 **Chris Stephens:** Sir David, I think you touched on some of this earlier, but I just want to ask you about the Taylor report and whether you believe new legislation will be required to take forward some of the recommendations and where you think the focus should be.

Sir David Metcalf: That is a big question. I notice that Matthew was very keen to point out to you two weeks ago that some of his recommendations did not need legislation, but of course some do. It is not to say that they are not welcome. From my point of view, the question about the written statement, that would require amending an Act, for example. Moving the tax and national insurance more closely together for the self-employed and employed, I strongly support that. The IFS figures on that are quite stunning. That requires legislation in the Finance Act.

He also recommended—I completely concur with this—extending the remit of the employment agencies' body to deal with, for example, umbrella companies, payroll intermediaries. That would require legislation. The main things that Matthew was talking about meant—he talked about softer things to do with Low Pay Commission, good work and so on, but the main things would indeed require legislation.

I have deliberately not touched on the question of status because frankly I am agnostic about this. Clearly, if there was a question of wanting to define the three statuses in the way that he did, or if there was a question of defining status in the way that the Work and Pension Committee suggested recently, then that would require legislation as well, yes. The labour lawyers are completely divided on this and I find it hard to take a view at this stage.

Q273 **Chris Stephens:** If the Government was to ask you to pick one where you think that the effort should go to, what would you suggest?

Sir David Metcalf: Given my remit, I would think that extending the Employment Agency Standards Inspectorate to do umbrella companies at base recruitment and so on would be important, but the one I think would make the most difference is the written statement on day one.

Q274 **Ruth George:** You have mentioned several times, Sir David, that there is a problem about holiday pay and enforcement of holiday pay. Do you believe that that should be included within HMRC's task of enforcing the minimum wage?

Sir David Metcalf: The short answer is yes. First of all, let me record that there is some academic work and also some assertions by a compliant director of an employment agency that non-payment of holiday pay is a bigger problem than non-compliance with the minimum wage. Therefore, there is clearly a major issue here. Holiday pay is a health and safety matter because it comes under the Working Time Regulations. It is all very well saying it is a health and safety matter, but the Health and Safety Executive do not do anything about it. In order to get your holiday pay you have to then go to a tribunal. Obviously, in principle with the fees going soon, there may be more people going to the tribunal, but you could quite see why nobody would go to a tribunal and pay the £100 or whatever it would cost upfront in order to get back.

My own view is that it should be within HMRC's remit and when they are doing a simultaneous investigation they can check for holiday pay. Much as we love them, the labour lawyers will say, "Oh no, it is all too difficult because we don't know what normal work is. A normal work week is what you get your holiday pay on, so what do you do about commission? What do you do about piece rates and things?" My view is, no, you cannot say that. There is a real big problem here and so, in a sense, it is up to the labour lawyers to come up with a definition of normal work and then get HMRC to properly enforce it. So I do think it should be under HMRC's remit, yes.

Q275 **Ruth George:** Are there any other monetary benefits, such as sick pay and paid parental leave, that would be useful to include within that remit when HMRC are calculating wage entitlement?

Sir David Metcalf: I have not looked at that so much. I noticed that Matthew was very keen on both of those. It could make sense for HMRC to do it. The only thing is—especially when it is quite a big investigation—they have to trawl through the books quite carefully and it may be that would be putting too much of a burden on them without giving them substantially more resources and there is always going to be the resource issue. I am very clear in my own mind it should be holiday pay. At this stage I have not thought deeply about the other two but I can quite see there may very well be a case for it, yes.

Ruth George: That has probably answered my last question, which was going to be about resourcing for those additional factors. Thank you.

Q276 **Vernon Coaker:** Sir David, you mentioned employment tribunals. How do they fit into all of this and is there any need for us to change that? Do they act as a deterrent, the fact that individuals can go there or, given the fact that it costs so much, that they cannot? Where does that fit in?

Sir David Metcalf: The employment tribunals are outside my remit. That is about the individual. Of course, they will also be going for unfair dismissal and discrimination cases and so on. It is not just non-payment of the minimum wage. Those individual cases are complementary to the state taking on the role, in this case via the three agencies. There is an important role for both the tribunals and the agencies.

I do not have a strong view about the fees, but it isn't clear whether they have been entirely got rid of yet, but the consequence of the fees being made much smaller—possibly down to zero—will be that that will encourage people to take cases. Let's hope there are not many vexatious cases. I think that is all to the good.

Q277 **Chris Stephens:** Sir David, according to written answers, 25% of the staffing complement at the HMRC's minimum wage compliance unit is vacant posts. How can the minimum wage be enforced adequately if the number of vacant posts in that unit is at 25%?

Sir David Metcalf: Well, I did not know that. The figures that I got in preparation for this meeting put their staffing complement at 400 and then the figure was 399. I don't know whether that is including the vacancies. I assume not. I assume that is the employees.

What I would say is that I have been up to Salford, which is where they have a major operational regime. They took us through. They start off with a nudge letter, then they do triaging and then they do actual visits. Then they are getting pretty serious and then there is serious organised crime. They took us through the layering of this. There was no suggestion on their part that they did not have the resources for dealing with things but, as a consequence of what you have just said, we will go back to them and ask them that.

Q278 **Chris Stephens:** If you could, because I am concerned that the National Audit Office is talking about 200,000 workers not being paid the national minimum wage and I wonder if the vacancies at the compliance unit are a reason for that.

Sir David Metcalf: Yes. The 200,000 figure is interesting because the official figure that BEIS uses a lot, which comes from the official survey of earnings, which is a 1% sample, puts it at about 360,000, which is 1% or so. That of course does not include the hidden economy, so there are many more people than that.

You are right. They have had this big increase in resources but, if they are not properly staffed up, they will not be able to take as many investigations as they otherwise would be able to. First of all, that is getting compliance but if they are not doing this it is not having the correct deterrent effect. So, no, I did not know what you just said, so I will go back and check with them and see what the state of play is.

Chris Stephens: That would be helpful for us all. Thank you, Sir David.

Q279 **Mark Pawsey:** Sir David, I wonder if I could ask you some questions in a bit more detail on the extent of the problem that your office is seeking to deal with. You told us on the one hand that major firms are largely compliant, but that non-compliance is rife in one particular trade in Leicester. You also told us that there are some areas where holiday pay is a big issue, but that non-payment of the minimum wage is not. How big a problem do you have?

Sir David Metcalf: If I may, I did not say that non-compliance with the minimum wage is not a problem. What I said—

Q280 **Mark Pawsey:** It is less of a problem?

Sir David Metcalf: It is a big problem, but it is smaller than the extent of non-compliance with holiday pay.

Q281 **Mark Pawsey:** In its entirety, how big is the problem you are seeking to deal with?

Sir David Metcalf: That is a very good question. We hope that in due course we will be able to get proper evidence on this but, for example, that is why I said that the official figures say 1.3% of people are not getting the minimum wage—300,000-odd are not. If you do it as a fraction of the wage bill—holiday pay and non-compliance with the minimum wage—it comes out at about 4% of the bottom third. That is where most of the non-compliance will be. That is quite a substantial amount of money for those workers. It is of the order of £400 for all of the 6 million workers.

It is a big problem. I suspect it is rather bigger than that because Nick Clark from Middlesex University, the academic who did this very careful study, had very conservative assumptions. Almost certainly he will not have got a lot of the hidden economy. To the extent that you have things going on in the hidden economy—for example, in the garment trade in Leicester—almost certainly that will not show up in those figures. The ballpark figure would probably be 5% of the wage bill of the bottom third of the distribution, but it could well be higher than that.

Q282 **Mark Pawsey:** Do you have an assessment of the industry sectors and the geographical parts of the country where the problems may be more acute than others?

Sir David Metcalf: That is the aspiration for next year. I am sorry we do not have it at this stage. I can tell you that there are issues in cleaning. There are some issues in construction. There are issues in car washes. There are some issues in hospitality. There are definitely issues in employment agencies. I can list them off but to stand that up and say, "Well, what is the priority?" is going to be quite tricky at this stage. That is why, in due course, we are going to have to get down at sector level and do some proper deep sector work, so I should have mentioned care as well.

Q283 **Mark Pawsey:** Are there any tools that you can use to identify the areas where problems exist? What can you use and what can Government help provide you with?

Sir David Metcalf: No, to be fair, the agencies themselves provide very good information. HMRC has detailed sector breakdowns. The Gangmasters have been doing horticulture and food manufacture through licensing gangmasters, but now they are getting very good intelligence through their new police powers. The women are called LAPOs—labour abuse prevention officers. I think they already have 30 of those in place. They are mostly ex-police officers, so they will be well versed in intelligence.

When it gets up and running, that sort of intelligence will feed into my intelligence hub and, in due course, it will be possible to get—along the lines you say—priority sectors and possibly geographic areas. I can rehearse Leicester because I have seen it with my own eyes, but it is not fair to pick on the one city. We will be able to do this in a bit more detail and I will be happy to come back this time next year and exposit.

Q284 **Mark Pawsey:** Okay. On the mechanisms that you have to deal with those, one thing you spoke about was naming and shaming. Can I ask you about firms that fail to pay awards from tribunals? Is that a big problem and would naming and shaming help in that instance?

Sir David Metcalf: Yes, it probably would. There is no data on this, though. They do not collect data on the firms that don't pay the tribunal awards.

Q285 **Mark Pawsey:** We don't know the extent of the problem there?

Sir David Metcalf: No, so the first thing to do would be to get the MOJ to make sure we get all the data on the tribunals.

The naming and shaming is quite interesting. If I may say so, we need a proper research study, particularly with the major companies, on what happens to the share prices. As the Chair said, it may just be the local hairdresser, but sometimes it is major companies. What is the impact of naming and shaming on the share price of those companies? We have looked at a couple of examples, but you need a proper research study and that would tell you whether the naming and shaming works.

What I would rehearse is that when I have met the major firms and the retail consortium, the CBI and so on, they are very apprehensive about naming and shaming, so one's intuition is that it does work because these firms are jealous of their reputation. Therefore, I think it would have some impact, yes.

Frank Field: It would work with MPs.

Q286 **Emma Dent Coad:** Could you tell me if your remit covers apprenticeships? Anecdotally, I know in particular trades apprenticeships are rife with abuse, particularly the construction trade where apprenticeships are moved around and are continually starting on another six months and another six months, and it seems to be pretty unregulated.

Sir David Metcalf: Yes, my remit does include that, in the sense that apprentices would come under HMRC as well. For instance, apprentices have the minimum wage. As it happens, the Government's own evidence is that one in five apprentices is not getting the minimum wage. Therefore, there is a task for HMRC to be doing there. On the employment status and whether the employment status is, as you said, "Follow on, follow on, follow on," that is less under my remit, but it would certainly be something that HMRC would have been looking at when it was checking whether or not the apprentices were getting the minimum wage.

Q287 **Andrew Bowie:** Sir David, I think you have already said in answer to a couple of other questions this morning that you are agnostic about employment and worker status. I was wondering why employment status shouldn't be better defined in legislation.

Sir David Metcalf: Why shouldn't it be?

Andrew Bowie: Yes, why shouldn't it be? Do you think it needs to be?

Sir David Metcalf: The answer is: I don't know. First of all, it seems to me it would be quite tricky to decide what the status is. At a minimum, the labour lawyers are completely divided on this. I recognise it is up to MPs to make the final decision. It would certainly be very helpful but, whether you do it through the courts or whether you do it via legislation, the key thing is you should have clarity and right now we do not have clarity. Once the Government has responded to Matthew Taylor and you have done your report, I may have a small role to play in this but I think it is a rather minor one because I am only dealing with enforcement. But I would wish that, after the Taylor report, any consultation and your Committees' investigations, we would then have clarity about employment status. Just take the gig economy: if it was decided that they were workers, well, okay, that is decided and then they get the minimum wage.

Q288 **Andrew Bowie:** I think you have answered my second question so, in relation to that, do you think that the Swedish derogation should continue to apply and that workers can opt out of equal pay if they are forced to do so?

Sir David Metcalf: This is something that the employment agencies' body should now have in their remit. We are going to be recommending that—I noted that Matthew did—and my answer is: either we enforce it or we abolish it. It is not enforced at present. Basically workers sign their rights away but they never get the pay between assignments, so there is an element of what the Americans call "wage theft" in that. Therefore, we will be recommending that the Employment Agency Standards Inspectorate take on monitoring the Swedish derogation.

Q289 **Andrew Bowie:** Do they have the resource to do that at present?

Sir David Metcalf: No, they don't but in their case we will be asking for more resources. They do a very good job on a budget of £0.5 million and they are looking at 18,000 employment agencies.

Q290 **Rachel Maclean:** We have talked already about how we should treat companies at the top of the supply chain and how they are treating those agencies that they procure their services from. As you have already alluded to, we are clearly going to have a larger problem that is developing when we bring in the National Living Wage. Do you think that we need more regulatory powers, if that was an approach that we decide to take? Do you also think that corporate governance needs to change as well to enable this to be enforced more effectively?

Sir David Metcalf: Yes. I know you have had a previous report on corporate governance. To the extent that we can get fuller reporting and so on, I think this is all to the good. I am not sure that we do need more powers. What we need to try to make sure we do is enforce the existing law, and I guess the reason my role was set up is there was a strong feeling that we were not enforcing the existing law. What I am hoping is that we will gradually have a fuller enforcement effort. I make this point again that it is not just the time you do the visit and maybe the fine; it is that it has a deterrent effect so that it percolates right throughout the system.

The American and Australian literature—and we have talked to people who have been the equivalent of HMRC in both of those countries—does say that, by operating on the top of the supply chain, that is the way you get the leverage further down the supply chain. That is why we will be recommending something along these lines but we have not worked out the detail at this stage.

Rachel Maclean: Okay. May I ask a quick supplementary?

Chair: Yes, please.

Q291 **Rachel Maclean:** How do we compare globally with this issue in terms of how we enforce these workers' rights, if there was such a scale? I don't know if one exists.

Sir David Metcalf: For example, Canada has a fully fledged labour inspectorate. Australia has what I think is called a Fair Work Ombudsman, which is a de facto inspectorate. In a sense, our bodies are more fragmented and, for good reasons, Health and Safety is not under my remit at this stage and there is no special reason why it would be.

If I may put it like this, I think we are a very law abiding nation and we are mainly compliant, but there is a tail—and possibly a long tail—of firms who are using a business model that turns on non-compliance. In a sense that is where we have to put our resources.

Q292 **Peter Kyle:** Sir David, what is your view of Matthew Taylor's recommendation that non-guaranteed labour has a premium on the minimum wage/National Living Wage?

Sir David Metcalf: I thought you might ask that. I did the minimum wage for 10 years. When I did it there were only two rates, so people knew what they were. There was an adult rate and a youth rate. There are five rates now and with Matthew's suggestion there will probably be 10 rates, because you would have 1.2 times the five. I must say it does seem to me it is already too complicated having five rates, but to go to 10 rates would probably be over-egging the pudding, but I can quite see why Matthew recommended it. He recommended it to incentivise firms to give more guaranteed work.

The only thing I would say is that my recollection from the Office for National Statistics is that over half of the zero-hours workers—maybe two thirds—are content with their hours. It does not automatically follow that they are looking for more hours. Some will be looking for more hours. I can see Matthew's logic but, having done the minimum wage for 10 years, in my humble view it worked very well with two rates. I do think it has become over-complicated.

Q293 **Peter Kyle:** Are you saying that it is unimplementable then?

Sir David Metcalf: No, it is not unimplementable. You would just set the equivalent of an overtime premium, I suppose—let's say 1.2 or 1.25 times the normal hours—and say that any hours over guaranteed hours should be paid at that.

Q294 **Peter Kyle:** So why mention that there are lots of different rates then? Clearly, the implication is that the more rates, the more challenges there are and the less implementable it becomes.

Sir David Metcalf: Yes, that is a fair way of putting it, but it is not that it is not implementable. It is just that the normal work is, say, 16 hours and if she then gets three extra hours you pay that at 1.25 or whatever. She has to know what the composition of her wage packet is and, frankly, I think that that becomes quite difficult. But it is not that it is not implementable. It is implementable.

Q295 **Peter Kyle:** Just to flip the question then, if the Committee was to recommend this and to back Matthew Taylor's proposition, based on your experience, what advice would you have to make implementation more effective?

Sir David Metcalf: To do it, like I say, via making it equivalent to an overtime rate and to try to make sure that we don't suddenly go from five to 10 de facto minimum wage rates.

Q296 **Peter Kyle:** Do you think that the gig economy is making it more difficult to implement the National Living Wage?

Sir David Metcalf: That turns mainly on whether or not the courts decide that, say, the Uber workers are workers or self-employed—or, indeed, if you, the MPs, decide to define the status. If they are deemed to be workers then they would get the minimum wage but, if they are not deemed to be workers and they are deemed to be self-employed, it would depend on when they work. I know Matthew had quite a convoluted argument that I am not sure I can rehearse completely, by—

Frank Field: Effectively, you did not understand it.

Peter Kyle: Matthew is very good at convoluted arguments.

Frank Field: Please join the club.

Q297 **Peter Kyle:** Do you want me to try to exposit?

Chair: No, no.

Frank Field: We were very clear what it meant.

Chair: We just did not agree with it.

Q298 **Peter Kyle:** Let me move the question on then. Do you think that existing piece rate legislation does enough to ensure that workers are paid above the minimum wage?

Sir David Metcalf: Yes, because the firm has to go through the proper thing to make sure that—what is it?—an average worker working at average speed can get 1.2 times the minimum wage. That seems to me very good.

I should say that this is a change from my time of doing the minimum wage. I remember vividly workers in a clothes factory in Northern Ireland. Basically, they had quite a lot of workers who they were employing altruistically. That was before the minimum wage came in. They were paying them very small amounts of money because they worked so slowly. In fact, when I did the minimum wage they had to get rid of those workers because you had to pay them the minimum wage, so the way it is being done now seems to me very reasonable.

Q299 **Ruth George:** In my time working for the shop workers' union, before coming to Parliament in June, we saw that increases, particularly in the Living Wage, were seeing firms seeking to reduce hours of work. It is not just zero-hours workers who have a problem with insufficient work. There are obviously 5 million part-time workers as well who feel that they are subject to underemployment. Do you feel that Matthew Taylor's proposal would be most effective to tackle that problem of underemployment, particularly as we are moving into an era of Universal Credit when people can vary their hours and the state ends up subsidising people on very low hours?

Sir David Metcalf: Which of Matthew's proposals?

Ruth George: The proposal that my colleague Peter was talking about: the rate for people working extra hours in addition to their contracted hours to encourage higher hours of work.

Sir David Metcalf: Yes, it may very well do, in the sense that the firm has an incentive then to be able to offer more hours not at the overtime rate. Of course, the argument will then turn on whether or not the firm wants the flexibility of it.

I remember when we did the minimum wage and we went to some of the supermarkets and it is exactly what you said. A lot of the staffing is based on last week's turnover now, for example, so there obviously is an issue about the flexibility. The question would be whether by having a penalty rate when they need the flexibility, that will incentivise them to give fuller contracts. It probably will but not in every case.

Chair: Sir David, thank you very much for coming in to give evidence to our Committees today.