HOUSE OF COMMONS

Digital, Culture, Media and Sport Committee

Oral evidence: BBC Pay, HC 732

Tuesday 20 March 2018

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Watch the meeting

Members present: Damian Collins (Chair); Julie Elliott; Simon Hart; Julian Knight; Ian C Lucas; Christian Matheson; Rebecca Pow; Jo Stevens; Giles Watling.

Questions 252 - 341

Witnesses

I: Liz Kershaw, Radio Broadcaster with BBC 6 Music, Kirsty Lang, BBC Journalist and Broadcaster, Paul Lewis, BBC Journalist and Broadcaster, and Stuart Linnell MBE, Radio Broadcaster with BBC Radio Northampton.

II: Jolyon Maugham QC, tax lawyer, Devereux Chambers.

Written evidence from witnesses:

- Liz Kershaw
- BBC presenters

Examination of witnesses

Witnesses: Liz Kershaw, Kirsty Lang, Paul Lewis, and Stuart Linnell MBE.

Q252 **Chair:** Good morning. Welcome to this further session of the Digital, Culture, Media and Sport Select Committee looking at the issue of BBC pay. Today we are focusing on the role of Personal Service Companies and the requirement of the BBC that employees establish Personal Service Companies as a means of working with the BBC. This issue has affected a number of different people who work for the BBC in different ways, because of the different contractual arrangements they have for doing so. We are delighted to welcome all the members of the panel who have different perspectives, some personal and some with oversight of a number of different cases. This is an incredibly serious issue and I think all members of the Committee have been concerned to read about the personal predicament people have been placed in and the effect that that has had on them and their families.

Could I turn to Paul Lewis first? Perhaps you can give us an overview of the different ways in which this has affected people, depending on their different employment status with the BBC.

Paul Lewis: Yes. Can I say first, Mr Collins, this is not the story of well-paid presenters trading through companies to avoid tax? This is the story of the BBC forcing, as your evidence has shown, hundreds of presenters to form companies and treat them as freelancers, because that gave the BBC flexibility. I quote, "It protected licence fee payers." That was a quote from a press release last night. It protected them because, again, in the words of the BBC, "Until last year it was the responsibility of the people who had formed a Personal Service Company to ensure they paid the correct tax." In other words, if the person was wrongly classified as a freelance and was in fact employed then the BBC was not liable for that error, it was the presenter. The effect of doing that meant the BBC paid less National Insurance contributions. That was guaranteed. It says that was not its purpose and we accept that, but it did have that effect. That saved it probably millions of pounds a year. The BBC obviously avoided other employment costs, which we are all familiar with, sickness payments, maternity pay, pensions—a big issue—and so on, and, of course, it could get rid of any of us on a whim. There were no employment rights in that sense.

The price was paid by presenters who were exposed to the risk that one day the HMRC would come to them and decide they were not freelances but were employed and claim back taxes, including employers' National Insurance. That risk has become real for a small group of TV presenters in court next week, hundreds of others now fear the brown envelope and there are a hundred or so for whom that is already beginning.

It was April last year that the law changed, and—this is an important point—the position I have described was as it was if you formed a Personal Service Company; you were responsible for your tax and

National Insurance, not the BBC. The BBC became liable from April last year under the new law that was passed and, since it took on that liability, it decided it would not take the risks that it had forced presenters to take for more than a decade. It decided that it would act to change people's status. So probably end up under the present way of doing things 90%-odd will not trading through a PSC but employed for tax purposes, which is what the BBC like to call it. So PAYE is deducted at source before you see the money.

I have to say that it was done in such a cack-handed way that many people have been faced with financial difficulties such as double taxation, no pay, and threats of no work, and that has led to that dossier of despair, shall I call it, which was presented to you. It is sad to us that it took the publication of that to arouse the BBC to say what it was saying late last night about an inquiry.

Also, isn't it shaming that a story in the press about how the BBC treats its presenters should have to have a warning at the bottom and the Samaritans' number? I think that really is a shocking indictment. I must stress again these are not highly paid people. They are miles away from the £150,000 list or the £320,000 maximum for presenters that the BBC presented. These are local radio, Radio 3, and Radio 4 presenters, treated by the BBC as flexible, disposable workers when they took the risk, but as soon as that risk was moved to the BBC, it decided to change their status.

That is the background, and if you want more technicality about IR35 or how things work now I am very glad to give you it at some stage and also the tax question and who might have saved what. Really, the people here, my colleagues, are the ones who can give personal witness to what has affected them and how they have been treated.

Q253 **Chair:** Mr Lewis, you declined to set up a Personal Service Company, is that correct?

Paul Lewis: It was more than declined. I said, a bit like the BBC's ultimatum, that you either have one and you work or you do not have one and you don't work. I just said I would not under any circumstances have one and I went to HMRC. My circumstances are a bit different, because most of my money does not come from the BBC. I am a sole trader. I have multiple clients, 20 maybe this year, of which the BBC is one. I was in the position where I could go to HMRC, let them look at everything I did and at the time, in fact on two occasions, 2005 and 2012, HMRC agreed with the BBC that I should continue to be a freelance sole trader. I am rare but not unique. There are other people in our group who are sole traders and, since all this has started happening, quite a number have abolished their companies, wound up their companies and become sole traders. I was in a unique position, I think.

Q254 **Chair:** I understand that you have been trying to give help and advice from your experience to a whole range of people at the BBC who have

been affected in this way. This was not just about freelance workers being asked to set up a Personal Service Company but people who were on staff contracts who were told to do so as well.

Paul Lewis: That is my understanding. You will hear some of that evidence this morning, and it is in the evidence we have presented. People on staff contracts, in some cases, they were made to be self-employed and then they were made to form a Personal Service Company, but certainly it was not just freelancers who were forced to form companies. It was also staff members, and of course they then lost all the rights that came with that—including, at the time, a very good pension scheme, but my colleagues can talk about that.

Q255 **Chair:** A strong sense comes from the dossier that the Committee published yesterday of people feeling they were being compelled to do this even if they did not want to. Is that a fair reflection, in your view?

Paul Lewis: It is a reflection of how they felt. I think the BBC's view—and I am sorry that I have to put it as they are not here—is that no one was forced, but they do feel that and the evidence is that if you did not do it you did not work. So that was being forced, in my view, and people certainly felt that they had no choice but to agree to form a PSC.

Chair: Liz Kershaw—

Liz Kershaw: I am not making a phone call—I just looked up last night in several different dictionaries the definition of "force" because I thought let's get that one out of the way. Force: to compel, coerce, oblige, impel, pressurise, push. Coerce, to compel by force, intimidation or authority especially without regard for individual desire or volition, eg, "They coerced him into signing the documents." We all know what we mean by forced.

Q256 **Chair:** Were you coerced into signing documents, Liz Kershaw?

Liz Kershaw: Yes, I was initially. The first I heard about this, having been a BBC national presenter since 1987 and being registered as self-employed, Schedule D taxation, totally freelance, absolutely no benefits of employment at the BBC, had a great time but you just grit your teeth and take that as the terms, no alternative. Then suddenly at the end of 2009 I received a letter, which I have supplied to the Committee, which was very clear that I could not continue like that and that I would have to set up a company. You have several examples from my email exchanges.

I think it also demonstrates that the BBC was trying to claim in that email exchange with me that it was an HMRC stipulation. At the same time the BBC's Chief Financial Officer, Zarin Patel, was blogging on the BBC website to staff—not us but staff—that it was HMRC, it was worked out with HMRC, the suggestion of putting people on Personal Service Contracts was HMRC-approved. All this stuff was going on and I was not convinced but I consulted my accountant and he said he was very doubtful that it was an HMRC stipulation. I also have a friend who is a

barrister in employment law and she said it was highly suspicious and she felt in my case that they were trying to distance themselves from giving me any employment rights after 20-odd years. So I said I was not doing it.

There was also absolutely no advantage, I did not think. To me it was a faff to set up a company, I hate paperwork, and to pay tax twice, as far as I was concerned, 18% corporation tax on the gross and then maybe up to 40% tax on whatever I paid myself. I just thought it was a nightmare and that I was not doing it. Anyway, I did, and I did it once from 1 April 2010 to 31 March 2012. Should I say why I gave in that time?

Chair: Yes.

Liz Kershaw: I gave in that time because another bright idea of the BBC board under the leadership of Mark Thompson was to close down 6 Music, its most distinctive radio station, the first one in 35 years which was supporting British talents and creativity, creative arts around the globe. With the internet, anybody in the world can listen now, and I thought if I am out of a contract and out of the door, it would be much harder for me. What platform do I have, with the press, for example? I have no status. I am not a BBC presenter, so I decided to sign up and make sure that I was still gainfully employed in the building.

We did save 6 Music and then in the meantime I became aware of press activity blogs by Zarin Patel, and appearances at the Public Accounts Committee. I just sat at home and I was absolutely shocked and disgusted that I knew that what was being said to Parliament and to the press and the public was completely not the same as what I was being told by the BBC in writing and verbally. So, I thought that when this came up again I was not doing it. When it came around again, we had the same old rigmarole, and I received more emails and letters saying, "You have to set up a company or else we cannot engage you as a BBC presenter except maybe one programme that week and maybe one the next month, but not with a regular show." So I just said, "Okay, I'm not doing it, so what are you going to do?" The contract ran out on 31 March 2012. I went until August without any status in the building, without a contract, with no legal right to be in the building, and no pay. I just kept going in every Saturday and doing my show and nobody seemed to notice.

Q257 **Chair:** So you worked for the best part of six months without being paid?

Liz Kershaw: Yes, without any contracts, without being engaged in any way by the BBC. I just turned up. The people on the shop floor did not know anything about what was going on, because I did not say anything, so I just went in. Probably even the head of the station didn't know what was going on between me and the legal department.

Q258 **Chair:** Did you receive any pay?

Liz Kershaw: Not a penny. Then I saw the Public Accounts Committee in July 2012, the surrounding press coverage and then these blogs on the BBC website that I have provided the Committee with, and I just felt emboldened by that. I felt I knew that I had the truth on my side and I was absolutely not continuing with this company lark. I closed down the company and I sent an invoice for a five-figure sum to the comptroller of Radio 2 and 6 Music and then it was like, "What the hell is this?" and I said, "Well, that is what you owe me since March" and then a meeting was convened and the head honcho of the legal affairs department was brought in and then I got my sole trader freelance contract.

Q259 **Chair:** They paid you what they owed you?

Liz Kershaw: They paid me. I received a nice cheque. Fortunately, I had savings, so I could be awkward about it.

Q260 **Chair:** So I am clear, they let you work for six months without paying you and this only ended when you confronted them with it?

Liz Kershaw: Yes, with an invoice. Basically, one arm of the BBC doesn't have a clue what the other one is doing. The other thing I would say is I was being a bit mischievous signing up with this Personal Service Company for two years, because also in my mind I was thinking the Director-General had just announced that he was closing down this radio station and they had just offered me another two years' money and contracts and a job. I thought what a shambles they were, so I just exploited that.

Q261 **Jo Stevens:** A quick follow-up, so you put the invoice in, and that provoked the meeting and you being paid. In the previous couple of years when the company was running how did the invoicing arrangements work? Would you put one in and that would be paid, or would they just pay you?

Liz Kershaw: No, other people might be different but I think this is standard, when you do sign a long-term contract, say for two years, a fee per show is agreed and then that is divided by 12 or 24. The total amount is divided by 24 months, if it is a two-year contract, and then each month you get, once you have signed the contract, that paid into the bank. At the end of the year it is all reconciled, did you do enough programmes, did you do more programmes than were in the contract, and then the balance is sorted out.

Q262 **Chair:** I might ask if Kirsty Lang and Stuart Linnell could say a little bit about their experience then we will bring in other members of the Committee.

Kirsty Lang: I have worked for the BBC on and off for 33 years. I was at Channel 4 News, but I rejoined in the BBC in 2002. At the time they offered me a short-term contract, non-staff, not freelance. They headhunted me from Channel 4 and I said no, I wanted a full staff job with a final salary pension scheme. That was quite a battle but I got it,

and it was very important for me to be on staff and to be in the pension scheme and to receive sick pay. I did not wish to be freelance.

However, in 2013 my son started having very bad problems at school. I did two jobs at the time for the BBC. I read the news on "BBC World" in the evening and I presented "Front Row" two nights a week, so I worked pretty much every night of the week and I was not at home and my husband was travelling. So I asked if I could go part-time and just do "Front Row" and not the news. They said, "In that case you will have to leave your staff job because if you are just doing a Radio 4 presenter's job then that is freelance, they are all freelance" and I said, "How do I do that?" They said I could set up a PSC, everybody else has done it.

There were two other presenters on the show at the time and that is how they were paid. So I did not really feel that I had a choice because of my family situation and I kind of understood that it is true that in news people tend to have staff jobs. You are on call and you are being sent abroad, and fair enough. I was moving to an arts show, that is the way I saw it. I certainly did not say to myself, "Oh, great, this is a way to avoid tax." In fact, I was quite frightened. I was frightened of getting sick and I was worried about the pension. There was no way I could even begin to match what I got on the final salary pension. It was a very good scheme, but no way—and any financial adviser will tell you that. I would have to put my entire fee from all the programmes in it.

Anyway, sure enough all my worst fears came true. Not long after I went freelance my stepdaughter died suddenly. I was unable to take bereavement leave. In fact, I went back and did my first show even before her funeral, because I had to get some money in. Then two years after that I was diagnosed with cancer. I had surgery, radiotherapy, chemotherapy, hormone therapy. I worked the whole way through. Well, I took one month off at the end of chemotherapy, but again I had set money aside. I had gone to a financial adviser. I just want to make it clear that I was not making any more money. In fact, I was probably making less than I was when I was on staff.

Normally I get a contract every year. I am contracted to do a certain amount of programmes for a sum. If I do more, I invoice them more at the end of the year; if I do less I don't get paid. That is how it works. You can imagine my horror when about a year ago in April I was told that I was going to get PAYE and I was going to be employed for tax purposes. My very first response was to write to Contracts and ask, "Does that mean I will get sick pay?" I had only four months finished chemotherapy, so I was thinking, "Well, okay, PAYE, fine, it is not going to make that much difference tax-wise, expenses and so on, but now I am going to be employed." "No, you will not get any sick pay and you will not get any holiday pay." I am still, incidentally, without a contract, and have been now for a year. I get deductions but I have no idea how much they are deducting and for what—rather, I know how much they are deducting, but, as for what reason, I do not get a payslip, despite repeated requests.

Like Paul, I would like to stress that none of us take pleasure in being here. I would have rather sorted this out with the BBC. I entered into this whole arrangement in good faith. I trusted the BBC. I was proud to be part of the BBC. I feel like I have been hung out to dry, and betrayed, and I ask where is their duty of care towards me and my colleagues? I speak for many people in this situation. I have seen many women presenters being deprived of maternity leave. I have seen many colleagues being deprived of sick pay and we keep on doing it because we love the job. That is the other thing. Where else am I going to go when they said, "Well, if you don't want to work here on a PSC—"? There is only one Radio 4 and I love my job. I love "Front Row" and LBC does not do an arts show, as far as I know. I did not really have much choice.

Q263 **Chair:** I think many people who do not work for the BBC would find it odd that a presenter presenting a regular programme is treated the same way as someone who might be coming in, you can imagine someone coming in to work on a short-run programme that is commissioned on an ad hoc basis and therefore might not be given a staff contract—but if you are producing a regular format, well-established show I think many people would find it strange that you would not be offered the employment rights to do that.

Kirsty Lang: Yes, I agree. I wish I was on staff. I wish I had never left staff. I certainly really wish I had never left the final salary pension scheme, because I am 55 now and those things loom quite high in my mind.

Chair: Before we move on to Stuart, Julie, do you have a quick question for Kirsty?

Q264 **Julie Elliott:** I want to come back on something you were saying there, Kirsty, because in law you have a right to request a variance to your contract if you want a proper, full-time or part-time contract, particularly for the types of reasons you have mentioned. You have a right to request a variance in hours, shifts or whatever. Your employer has to respond to you in writing if they cannot do it with the reasons why they cannot do it. Was that ever mentioned to you at all by the BBC? Did they ever offer that?

Kirsty Lang: No. It is difficult because I was doing an evening show and I asked if I could do a show earlier in the day. Well, I couldn't because there were other presenters doing it. It is not easy when you are talent, and I appreciate that the BBC needs that flexibility. It is not like other jobs in that sense.

Q265 **Julie Elliott:** No, but if you are employed you still have employment rights, unlike when you are in these, I would call them, weird and wonderful, situations. You in effect want to go from full-time to part-time work and that is a right to request. You do not have a right to get it but you do have the right to request it and the company has to come back and give you the written reasons why. For instance, often in call centres

people might be working full-time and then they want to go part-time. There have been successful cases against large organisations when large employers, like the big call centre employers, say that business needs do not allow it. Clearly, if you employ 10,000 people business needs do allow it. That was never put to you at all or suggested?

Kirsty Lang: No. It was explained to me that my staff contract was with news and that Radio 4 paid, if you like, news for my services but if I wanted to just go part-time with Radio 4 no, I absolutely could not be on a part-time staff contract. I never had anything in writing. It was all done verbally, there was no discussion about it. It was, "If you want to do it, this is what you do". Otherwise, I think many times I have it had repeated to me: "There are plenty of other people, Kirsty, who would happily step into your shoes."

Liz Kershaw: Can I just help? One of the problems for all of us is about who you go to. Your producer is not interested. They are just interested in getting the content and the programme out, job done, well done. If you went to your line manager, executive producer or head of station, and said, "Oh, I don't deal in money or stuff like that." HR, you do not belong to them, they do not want to know. I have been to see HR three times in the last year to discuss issues like this. I first went to see somebody in 2003 and said, "Presenters need a presenters' guru who is there for us, watching our back, who we can go to and they will find the right person in the BBC." I have been banging on about this for 15 years. There is nobody to go to. Every so often when your contract is up these people come out of the shadows from the legal affairs department and then disappear again. I found out the other day there are 20,000-odd BBC staff, it has been reduced drastically, and 5,000 of them work in that area. Is that right? We are just the people who make programmes, Julie.

Q266 **Chair:** I thought Mr Lewis was the presenters' guru.

Liz Kershaw: He is now. He has a new role coming to him.

Q267 **Julie Elliott:** Is the general feeling that HR was not really hands on and proactive in doing any of this? That came out in the evidence in the last session. Is that your feeling, that they are just administrative?

Liz Kershaw: We do not belong to HR.

Paul Lewis: Because people are freelancers, it is not like being an employee. I have had so many messages that I have collected together. Another one said, "They forced me off staff to sole trader then two years later they made me set up a PSC." "I was bullied into creating an expensive PSC I couldn't afford." People have nowhere to go at all because, as Liz has explained very well, HR are not that interested because you are not an employee. The BBC want you to be employed for tax purposes now, but it is not at all clear at this moment what, if any, rights will accrue with that. We just do not know, because it has not been made public. One of the points that we have been making to them is that if we are going to be employed for tax purposes, what are our rights?

Q268 **Chair:** Thank you. If I can just ask Stuart to say something and then we will go on to the rest of the Committee. Stuart?

Stuart Linnell: Thank you, Chairman. There are 40 BBC local radio stations across the country. There are eight BBC national regional stations across the country. If you take a conservative figure and say there are two presenters in each station who are affected by this that is getting on for 100 people. There are more than that. Obviously some presenters are staff. It is not just presenters. There are some journalists who are also required to form a Personal Service Company. The things that matter to people are being paid, and not everybody is when they should be. There is no explanation when that does not happen. Not just being paid, but understanding what the deductions are. The word "payslip" I think has already been mentioned. We have not received payslips, as such, proper payslips, since I cannot remember when. When they produce what we do have, which is some form of slip online, and we call somebody in whatever department we eventually end up in—because you phone one department in the BBC—they say, "No, you must phone somebody else, you must phone somebody else." When you eventually get somebody who will speak to you they say, "Well, that is not a payslip" and you have told them, "Well, I know that but this is all I have."

So, point number one is being paid and understanding what the payment is about. Point number two is about the business of the BBC insisting that you would form a Personal Service Company. I was a sole trader and I stood up against forming a PSC for about six months. You have to discuss it with other members of your family. It is not just you that is affected by all these things, and has to take on board, as the BBC required us to, the advice of your accountant, which costs money—and not everybody at the time had an accountant. As it happens, I did, because of how I was operating as a sole trader. I stood out for six months. Eventually I did form a PSC and I thought, as did many of my colleagues who I have spoken to in recent months, that I had nothing in writing to prove that this was the case. I have found it over this last weekend, two letters—and I will quote the phrase: "For the avoidance of doubt if any further contracts are renewed in the future you will be required to have a limited company as this is the policy we are seeking from all of our presenters." That was in 2009. A similar letter from 2011 says the same thing.

There is also the issue that has not yet been mentioned of recoupment and the BBC paying a sum of money in April last year to cover the tax that they felt they had to cover, unless they got in trouble with HMRC. Many of us have been placed in incredible trouble because our accountants are trying to work out what we did pay, whether or not we should be repaying it to the BBC and whether that is lawful. Paul may well touch on that later.

The key thing, which I think Kirsty and Liz have both mentioned so far, and I think Paul did earlier as well, is that the people in this situation—they are people, not cans of beans that some people in the various rights

and contracts departments seem to regard them as—trusted the BBC. The last thing they expected was to find themselves in this situation working for the most trusted broadcaster in the world, a broadcaster that they are proud to say they work for. They go out into their communities, the local radio presenters, they will go on the park run with somebody next door, they will meet them at the local fete, wherever. They are in their communities all the time and people recognise them not as stars, not as overpaid presenters—because they are certainly not that and they are certainly not tax dodgers either, as they have been presented in some cases. They are perhaps stars to the local community, but they are not in the sense that it has been portrayed in some sections of the media. They trust the BBC because it is the BBC. They trust it to look after them and the BBC has done anything but that.

Q269 **Julian Knight:** You just touched on accountancy and this is a question for Kirsty, Liz and Stuart. Did you receive any advice from the BBC on tax compliance when you were asked to set up a PSC?

Stuart Linnell: Just told to go and talk to my accountant.

Kirsty Lang: Same with me, "Take advice from an accountant."

Liz Kershaw: There was so little choice in the matter. It was not as though the suggestion was, "You can go and talk to your accountant and if he advises you it is not a good idea, Liz, you can come back and tell us that and that's fine, we will let you off." It was, "You cannot work for us unless you set up a company." I did take advice from my accountant, as I said. He was very doubtful. He did not see that a PSC was any good for me at all and he said he doubted very much that it was really an HMRC requirement, as the BBC were claiming back then. So I trusted that, and that gave me resolve not to co-operate.

Q270 **Julian Knight:** So effectively their idea of saying, "Go and talk to an accountant" meant sorting out the mechanics, rather than getting independent advice?

Liz Kershaw: It is a phrase they have quoted a lot now and they have done subsequently, "Well, we did tell them to go and get financial advice from an accountant." It is like a get-out clause for them.

Q271 **Julian Knight:** Yes, they say they always told people to take independent advice.

Liz Kershaw: Yes, as well as they never forced us, also they were caring enough to tell us to take independent financial advice. Both of those statements are disingenuous.

Stuart Linnell: Can I just add something at this point? When you ask anybody now to explain why they did that, and why they insisted we form PSCs—I asked this question when one of their road shows to explain all this came to Birmingham recently—and the answer we get back, which they keep repeating, is this, "It was before our time. We weren't in post

at the time so we cannot answer that question", which is just unacceptable.

Q272 **Julian Knight:** Sorry, who said this to you?

Stuart Linnell: The head of tax at the BBC and the head of contracts, the person trying to sort out the new levels of contracts.

Q273 **Julian Knight:** It is good to know that they are putting BBC Birmingham to some use finally, I have to say, but okay. How do you feel the BBC has handled the tax investigations into employees by HMRC?

Liz Kershaw: I am sure we all have something to say.

Paul Lewis: There are two sorts of investigation. There are the investigations into individuals, where I think the BBC generally takes the view, and it certainly has in the court cases so far, "That is a matter between you and HMRC. It is not something we want to intervene in." If you are talking about how the BBC has interpreted HMRC's rules, I think it has in a way just done what HMRC has told it. I know it has had many discussions but I do not think they have made much progress.

There is something called a CEST test, Check Employment Status For Tax test, which HMRC have begun insisting on people using. It is an impossible test for a presenter to answer, I have to say. It is multiple choice and very often none of the choices seem the correct answer, but there is no "none of the above" box and you cannot progress without answering it. I think the CEST test is at the heart of a lot of these problems. Many advisers think it excludes a lot of things. I was talking about earlier that I have many clients. It does not take any account of that, and other employment law matters are not really in that CEST test.

The BBC's view seems to be, "Well, if the CEST test comes out as employed and I am told by someone senior in the BBC it has done that in 97% of the cases, then that is it, we have no choice." The latest information is that it is being relooked at, but to what extent the BBC will stand up to HMRC I do not know.

I think our feeling is that if only the BBC had come to us and said, "Look, we have this problem with HMRC. Let us all get together and see if we can work something out. We are on your side," rather than being on, as we see it, rightly or wrongly, HMRC's side and saying to presenters, "We have to do what has been imposed on us by HMRC."

Liz Kershaw: In a nutshell, to distil all this, I have spoken to people here today, and my friend Christa Ackroyd—who I have known for 35 years, since we worked together in Leeds at Radio Aire in 1981, or longer now, I cannot do the maths—and this started for her a long time ago. For somebody else I was speaking to, it started in 2003. I became aware of it in 2008, so I can only speak in those terms.

Here is the question. The BBC told us—the presenters, freelance presenters or staff who they wanted to make Public Service Companies—"You have to do this. This is new. It is because HMRC demands this." I have that in a letter from the BBC. "HMRC says the way ahead is for you to no longer be a sole trader. You will have to be engaged through a Personal Service Company." That is the first thing. The next thing I hear—so then there is a gap of a few years—the BBC comes to me and says, "You cannot have a Personal Service Company anymore." I said, "I do not have one." "Oh, have you not? Right, well, fill this in to say you have. We will put that right. You cannot be self-employed anymore because HMRC have ruled that all this self-employment is a bit dodgy. They want to get everybody on the books, PAYE." My question is did HMRC tell the BBC in the last decade or if not then the BBC was lying about that. Has HMRC now simply changed its mind and put the BBC in a fix? Parliament needs to find out which arm of Government, the taxman or the public broadcaster, is telling the truth here, because they both cannot be.

Paul Lewis: Can I add something there, Chairman? My understanding is that in 2004, I think, HMRC did come to the BBC and say, "We are not very happy about all these people who are self-employed presenters" and it said they should be employees or they can do it as an employee of a PSC. In a sense my understanding, and again it would be nice if the BBC was here to confirm this, is that the BBC had that choice and it went for PSCs because that gave it that flexibility that it wanted, and, you might say, the tax saving, but certainly the flexibility.

Liz Kershaw: So they were being disingenuous to give us only one alternative.

Paul Lewis: Possibly. I mean, that is my understanding.

Q274 **Julian Knight:** Previously you were on the other alternative anyway, weren't you? Basically what they have done is they have shifted you from self-employed on to PSCs.

Liz Kershaw: From 1988 to 2010 I was a self-employed sole trader. From 2010 to 2012 I had a PSC. The funny thing is that earlier on I said I was going in and I was not being paid. The current situation, since 1 April last year, is that I have no contract but they have paid me. It is just a mess.

Paul Lewis: But this is because as a contract ends legally it is extended so long as both sides are happy.

Kirsty Lang: We were told in April of last year that there was this change to IR35 and Paul mentioned the so-called CEST test. I took it to my accountant and we did it together. We did it about two or three times, and I must say the CEST test is not fit for purpose. It absolutely does not apply to the kind of jobs that we do. My accountant thinks that I should be freelance because, like Paul, I only work part-time for the BBC. I do

"Front Row" no more than twice a week, and so I do other jobs. I do a lot of my preparation for "Front Row" out of the office. It is an arts show. I am not even there. If I am reading a book for an author, I am doing it at home. If I am seeing a film, I go to the theatre. To present the show, because it is live, I go into a studio and it seemed to be on that basis that they therefore said, "Well, you are employed for tax purposes."

Anyway, I went through it with my accountant several times and it came out "indeterminate". I think a lot of people had this experience with the multiple choice and the BBC took the decision that if it was indeterminate, if there was any doubt, then you should be employed for tax purposes.

Q275 **Julian Knight:** That is only since April?

Kirsty Lang: This is since April. I just wanted to clarify the situation where we are now, which is why all this has started. They did not start doing PAYE on me until January, but I do not know now whether I am going to have to pay tax, whether they are going to try to recoup that from April to January. It is possible, and I have no means of paying that, if they do, because I have done my accounts because I was a PSC. My PSC is also my husband's and it makes it really complicated, as he is also a freelance journalist. It is a mess.

Q276 **Julian Knight:** The changes to the IR35 and so on did not come out from the blue. That has been rumoured for many years in that respect, so I wonder what you think about the BBC effectively shunting people on to these PSCs at a time when it was common knowledge that the IR35 landscape could change quite markedly. What are your views on that?

Liz Kershaw: This all started and came to a head and then was left during the tenure of Mark Thompson and I feel sorry, in a way, for the current board because this was all driven through in that management style of the time, which is oligarchical—a rich elite of maybe 10 or 12 people. You cannot even read the minutes of the executive board meetings during that time. They are supposed to be available online and all they are is an agenda with nothing underneath the topics. It changes immediately when you get to George Entwistle, who sadly only lasted one meeting in October 2013, but at that meeting he brings up the subject of, "Where are we up to with these Public Service Companies?" so it seems quite likely that this was being driven through by the board prior to his tenure. Then it has all hit the fan and I think perhaps some very earnest people are now realising what has been going on. We have been trying to tell them but it has not got to the top.

Stuart Linnell: I think there is a situation though that since April last year they have been making it up as they go along, because they really have not been across it. They were not across it by April 2017. They expected our accountants to be, and our accountants were obviously following the information that they had and advising us accordingly, but with no concern about where we were going. The accountants' advice was

apparently sound and we were going forward on that basis, then suddenly we get hit with the changes that we are being told are being made to the CEST test and so on. People across the country became aware of this, thought they were ploughing their own solo furrow and trying to work it through by themselves. As time went by, because we are journalists, we eventually start to work things out, and we start to share information with one another, there is now a significant group of people who are across all of this and realise the mess that we are in, thanks to the BBC's mismanagement of this. It is mismanagement, at the end of the day.

Let me add as well the dossier of despair, as Paul called it earlier, that has been in the press this morning. We presented a similar dossier to the Director-General and his senior staff back in November and they listened very intently for an hour in New Broadcasting House and they read what we had sent to them. We went away and there were further meetings, Paul and others attended, and we assumed that they were taking it seriously and that they understood the stress and the pressures that a lot of people, particularly in local radio, were facing.

We now get to a point on the eve of this meeting where the BBC decides to take some sort of mollifying action and come out with some very nice words. I am sorry, but nice words do not heal broken minds. They do not heal broken people, and that is what the BBC is dealing with and must face up to.

Liz Kershaw: This is an organisation that in recent years, following the Savile revelations, spent millions on the Pollard report on why the "Newsnight" investigation was scrapped, the Dame Janet Smith review of the culture of the BBC, the Dinah Rose review into how the BBC deals with harassment and bullying, and the Good Company review into how whistleblowers are treated. They have spent millions on these reports. What happens to them if they cannot implement the recommendations, which are to treat people well, listen to them, give them dignity, show them respect? What are they for?

Paul Lewis: Can I just add that there was a document—I am looking for it and I could not find it—that gave the film, television and presentation company guidelines, published in 2012? In there, there is a specific warning to engagers, like the BBC, that they should make sure that any contract they sign with a PSC is properly done, so that the individual who is coming is genuinely not employed before they sign it. I think it is number 5. I will send it to the Committee. I have it with me but it is in my bag and I do not want to disrupt—

Chair: I would be grateful for that, and we might request those board papers that have not been published from the BBC as well.

Liz Kershaw: Have you requested them?

Chair: No, we will do; it would be appropriate.

Liz Kershaw: I gave you the highlights, did I not? Yes.

Q277 **Julian Knight:** Very briefly, just to finalise my bit, can I touch on pensions? Kirsty, you mentioned pensions before, and the anxiety that you now feel. I imagine that is echoed with you, Stuart, and Liz as well. What, do you think, are the implications in terms of the BBC pension scheme in all this? What should the BBC do when it comes to ensuring that those who are fundamentally employed have access to the correct pension payments going forwards?

Paul Lewis: There is certainly a very strong feeling among the presenters group that we are from that, if it does turn out people have been employed going back several years, they should also get pension rights, and other rights, as employed people, whether as workers or employees. Making someone leave a final salary pension scheme—and at that time, as Kirsty said, the BBC's was very good—that is a major step. You could argue—and I am sure the people in the group could argue—for compensation for that loss.

Q278 **Julian Knight:** It is tantamount to misselling, is it not, to make an individual give up pensions rights that they could justifiably expect to have?

Paul Lewis: Yes. I am not quite sure what they were selling, but I do know what you mean. If a financial adviser suggested it, you may well look at them. I have to say, some lawyers have said to me, "Well, maybe accountants gave people bad advice at this time", and it was certainly not Liz, who was advised against it, but other people may have been encouraged to do this by accountants once the BBC put them onto their accountant.

Q279 **Julian Knight:** The implications could be for tens of millions of pounds, presumably, because you can go back six years in terms of back payment in that respect. The implications for the BBC pension scheme could be absolutely enormous.

Liz Kershaw: Yes. All of us would say that we have always, as Kirsty said, been proud to have worked for the BBC—I totally believe in the BBC—but I really feel strongly that they have, in a roundabout way, libelled us. My picture, for example, over the last few days has ended up under headlines about, "Overpaid, tax-dodging employees", and, "The licence payer will now have to pay their tax bills". That is not fair, and I am the last person—I always think, "Who do I work for? I work for the person who has to pay £150 a year". I work for them; I do not work for Lord Hall, or anybody. That is really upsetting for me and, I am sure, for my colleagues here. It is a tragedy that this mismanagement will lead to millions of pounds possibly being taken out of the coffers to rightfully compensate people who have been taken out of a pension scheme, or gone through hell, to the point of nearly taking their own life, or been loaded with a tax bill. It is not something I want to be a poster girl for,

"Let us take the money off the licence payer". I really resent that, because none of this is of our making.

Paul Lewis: No. When the BBC encouraged, or forced, people to form PSCs it did have a duty of care to say to them at the time, "These are the implications. You may have to come out of the pension scheme", or, if they were on the staff, "You will have to come out of the pension scheme. You may find at some point that IR35 is imposed on you by a slightly more avaricious Revenue than we have at the moment". Those warnings were not given; it was all, "Go and talk to your independent adviser", which generally meant an accountant. That duty of care was missing from the process of moving people to PSCs.

Stuart Linnell: There are also some presenters at the moment had PSCs, and they now have either wound them up or are in the process of doing so. They are being paid in some sort of weird limbo arrangement contractually where they are neither an employee nor a freelancer; they are employed, "For tax purposes only". Paul referred to that phrase earlier. Not all, but many of them would like now to become staff employees, with the benefits that then follow, including being part of the pension scheme, sick pay, holiday pay, and all of those things. At the moment they are not, and they are very worried about their futures. They have families, mortgages, homes, and all the usual bills to pay. They are really not clear where their future lies.

Paul Lewis: The new pension scheme is a lot worse than the one they left in the past.

Ian C. Lucas: They would have to rejoin that, yes.

Q280 **Chair:** In general, a lot of people would be quite shocked by what you have said, but also would feel this is well below the standard you would expect of the BBC. Some people might think we were talking about some rogue corporation with poor employment rights rather than our national broadcaster.

Stuart Linnell: Could I come in on that and just say those of us who are, or have been, freelance are working alongside people who are staff employees? The BBC generally is very fair, good and generous with their staff employees, and they look after them very well. We have to work alongside them, and we do so more than willingly, and happily, to make our programmes. We are part of a team and, yet, this issue is in danger of driving a wedge between those of us who are not staff and those who are.

Chair: Unsurprisingly, quite a lot of people want to come in. I will try to take people in the order they indicated to me. Ian, Simon, Julie, Giles.

Q281 **Ian C. Lucas:** Yes. Mine is just a brief point. Liz, I am looking at the very useful letter to you dated 3 December 2009, which quotes, "A modus operandi has then been issued by the Inland Revenue, which is to apply throughout the industry to radio presenters and DJs". This was about

creating the PSCs. They were therefore saying, "The Inland Revenue have told us to do this".

Liz Kershaw: I have that here, "Radio industry listed grades where self-employment is accepted".

Ian C. Lucas: You, commendably, told them to get stuffed and then sent them—

Liz Kershaw: I know I am a northerner, but—

Q282 **Ian C. Lucas:** Yes, me too. You then sent them an invoice, and they paid it, and you continued for quite a period on a self-employed basis. During that period, presumably you dealt with the Inland Revenue as purely a self-employed person, as a freelancer. Is that correct?

Liz Kershaw: Just to repeat again: I was a self-employed person from 1988 to 2010. Then, for two years, I had this company which had to submit its accounts that were taxed corporation tax. I paid myself money and then I was taxed on that. There was no advantage to me at all. Then I went back to being a self-employed sole trader from 1 April—

Q283 **Ian C. Lucas:** The Inland Revenue did not have a problem with that. You dealt with—

Liz Kershaw: I have never had that queried by them.

Q284 **Ian C. Lucas:** Yes. What the BBC has said to you in this letter was not correct, because the Inland Revenue continued as they always have done.

Liz Kershaw: I never got a letter saying, "Why have you closed down this company? You are supposed to have a company". That has never happened, no.

Ian C. Lucas: Thank you very much.

Q285 **Simon Hart:** A couple of quick ones, hopefully. Going back to the question of coercion, which you have all mentioned in your own particular way, can I just try to explore in what form that was expressed? Whether it was the BBC attempting to give you friendly advice or to say, "Look, sign here or take a walk". Which of those two was it?

Liz Kershaw: This is an email, 20 April 2012, that says clearly, "We can only offer the 6 Music freelance role via a partnership or company". There is another one here, "We can only offer the 6 Music freelance role via a company or partnership. This policy has been applied consistently to all our freelance presenters, so we cannot agree to any exceptions, as that would not be fair".

Q286 **Simon Hart:** I should note: that came from who?

Liz Kershaw: The lawyer, Talent and Rights Negotiation group, in all circumstances. I have emails, letters, and they are all—

Q287 **Simon Hart:** Is that a similar experience?

Stuart Linnell: My letter, which I quoted earlier, is "From the Talent and Rights Group". I will just quote the last part of the sentence, "You will be required to have a limited company as this is the policy that we are seeking from all of our presenters". It was presented verbally, "You do this or you do not work for us".

Kirsty Lang: Mine was slightly different; it did come as friendly advice. They said, "Look, we are really sorry, we cannot change your hours". They said, "But you can apply for redundancy from your news job, so you can get some money for that"—it was not that much—"and you can then not work for the BBC for a few months and come back as a freelance. That is the only way you will be able to work for Radio 4. If you want to work for Radio 4, that is what you will have to do", and with a PSC. It was not done in a threatening way, it was just like, "That is the way it is. I am sorry".

Paul Lewis: I have had any number of comments about this from people, and some of it was verbal; not all of it was in writing, but we have plenty of evidence in writing. One local presenter said, "I was bullied into creating an expensive PSC I could not afford. It was never a choice. We are presenters, not accountants. They misled us and now they are abandoning us". People felt they were forced into it, and now they are paying the cost of it.

Q288 **Simon Hart:** It should not necessarily have been necessary—and it may be, as individuals, you might not want to be a member of a trade union anyway—but where was the union movement in all of this? I completely understand the arguments you have put and the circumstances that you were in, and for so many different people working across different areas. Surely, if ever there was a requirement for a substantial union kickback on it, it was around this time? Did we miss that? Did the BBC treat the unions in the same ways that they were treating individuals? What have we missed?

Liz Kershaw: There is no DJs union; there is the NUJ, if you are doing that kind of work and have been a member of the NUJ in the past, but if you are playing records, there is no—

Simon Hart: You are on your own.

Liz Kershaw: You are on your own, and it is divide and rule.

Q289 **Simon Hart:** News presenters, arguably, are in a different place.

Stuart Linnell: Indeed. You will find in the last six months or so, the membership of the NUJ has increased significantly. Just lately, the NUJ has taken steps to address this with the BBC, and we are getting some comment from them in their negotiations in that.

Paul Lewis: My understanding is that, although individual members were in the National Union of Journalists, the BBC, with presenters, would say,

"We do not have a collective bargaining agreement with you, so the NUJ cannot represent you". That is what I have been told; I never tried it myself.

Kirsty Lang: Yes. That is the BBC line, "The NUJ cannot negotiate for freelancers".

Simon Hart: My question was not intended to be a criticism of the union, it is just was there a union presence throughout this and, if not, why not. You have explained that.

Paul Lewis: It is because they were freelancers the union could not represent them.

Liz Kershaw: For the avoidance of doubt, can I just read you this one, our document, which has not been published? This is another one, "Dear Liz, in 2008, the Inland Revenue carried out a review of radio presenters and how they were employed. Following that review, a new modus operandi was agreed between the Revenue and the BBC. The BBC needs to make sure that, if someone has been employed on a freelance contract, that they really are a freelancer. Therefore, the BBC, in agreement with the Inland Revenue, now requires freelance radio presenters, when contracted on a long-term basis, to be contracted via a service company. This ensures that the freelancer has a business in their own right. I understand this has been explained to you before—", blah, blah, blah.

Q290 **Simon Hart:** My last point is this, and we have received evidence from the BBC setting out how it is addressing these problems, and recognising some of them and explaining the context about them. Do you think the BBC has got the message? Do you think it is beginning to realise that it is the end of the road for this kind of relationship and that they are beginning to recognise that things have to change?

Paul Lewis: I do feel that, yes. This whole process has been managed by Compliance and Finance previously, and now it is moving to what they like to call, "Talent Rights and Human Resources", insofar as that affects us. The BBC has realised it needs the trust of the people who are its faces and voices on air, and that is very important, and that it has to resolve it. How that will be progressed, and how quickly, and how it will help alleviate the dreadful circumstances some people are in, in that dossier—both financial and emotional, and in terms of health—I do not know. I do think there has been a change in acceptance of that in the very recent past.

Liz Kershaw: The success has been, with Paul and this group, and co-ordinating it, and Reverend Richard Coles and everything, that people have been given a voice and they have been given confidence. It has got into the public domain and people have been confident to co-operate and speak out with this Committee or the press. We have bypassed a layer of management and it is now hit the top. What was happening in the past

is, I think, they believed what they were being told. So when, for instance, the chief financial officer is saying nobody was forced into this, and he was going to the Public Accounts Committee and saying that, and suing *The Daily Mail* and *The Daily Star* for suggesting that anybody had been forced into this, paid for by the BBC board, by the licence payer, all the legal fees paid with the backing of, as she calls it, first of all Mark Byford, who was the deputy DG, and her partner in crime, Caroline Thomson—that phrase might be regretted now—the chief operating officer, they are all thinking, "This is rubbish, nobody forced—", they do not know what is going on. Now they do because, I think—it was very tactical last night to come out with this statement, for the BBC, but I think they realised what evidence was coming out today or what may come out today. Maybe they had had a sudden insight, a road to Damascus experience, but they have completely changed their tune and that is disgusting.

I am making jokes today but there are people who have nearly died because of this—the hell that they have been through—and nobody has listened to them.

Stuart Linnell: To answer your question directly, it is the old cliché of the ocean tanker being turned. It is a big organisation, the BBC, and it has taken it a long time to get the message and the problem within it, given that it is the world's greatest broadcaster, and greatest communicator, is that its internal communications are laughable. The local management, I can tell you, does its best. It is working very hard at all the local stations that we mentioned across the country to keep the staff morale going, to make creative programmes, to serve their communities—not just when it snows but every day of the week as well for local radio. Yet we are finding things out by sharing our circumstances well in advance of local management's knowing what is going on. There is a lot still to be done, in answer to your question.

Liz Kershaw: Can you imagine being—and I have done the job—the presenter of a local radio breakfast show, getting up at 4.00 in the morning and driving to work, doing all your briefs and then putting truth to power, grilling your local MP, when you have not been paid for six months or you do not know if you are going to lose your house or your health is suffering, and you cannot look your wife in the eye? It does not give you confidence, does it, to operate properly?

Stuart Linnell: Last autumn I went through three months where I was not paid because I refused to sign a contract that had a clause inserted in it, which was far stronger, about indemnifying the BBC about anything to do with tax whatsoever, which, by implication would—for example, if I ever accused them of forcing me to form a PSC, they would have been able to deny it under that clause because I had signed to accept it. I refused to accept that.

Three months went by without them paying me because I would not sign a contract. Eventually, in discussion, we agreed that they would revert me back to sole-trader status, which I had been before I formed the PSC. Even though IR35 does not affect sole traders, they are now paying me with deductions as if it did and that applies not just to me but to lots of people right across the network.

Paul Lewis: Following on that, every day you will see and hear presenters here, all our group, performing coolly, professionally, doing their jobs, so that no one listening would know the turmoil that was going on within. The charter says our purpose is to show creative, high quality and distinctive output. The presenters continue to do that despite this but the way they have been treated does not do that.

Q291 **Julie Elliott:** What my colleague has been asking questions on is exactly where I want to go. Liz, you gave a few descriptions at the beginning, but I think coercion is bullying. I think what we are hearing about here is a bullying employer, whether by design or as a result of strange management practices. As for what we have heard about trade unions, the very nature of these employments is that trade unions cannot represent people. I think the BBC has known that all along because they can only represent individuals in grievance and disciplinaries and that is not what we are talking about. It would be a good idea for you all to get together or join a trade union because there are lots of general trade unions who represent DJs, for instance, including my former employer, the GMB.

Anyway, the coercion or the bullying that I am going to talk about, obviously you were all quite senior people in your careers and we have to put on record our thanks for you putting your head above the parapet and coming here and talking to us because that is not an easy thing to do and it cannot be underestimated. What I want to get at is not just your own cases. From what we understand, from what we have read and what we have heard, this is going right down to the lowest paid, most junior member of staff in the organisation. Am I right in thinking that?

Kirsty Lang: Yes.

Paul Lewis: Yes.

Q292 **Julie Elliott:** Obviously you are here, you can explain to us some of the things they are having to put up with, when they cannot afford not to be paid for six months, or not even six days probably, and what kinds of things they are experiencing. You have mentioned things to do with the stress and people's mental health and all of these horrific things that come out of this kind of appalling employment practice. Without breaking confidences of who said it, can you give us a flavour of some of the things that are going on down the line?

Paul Lewis: Yes. These are not members of staff in a sense, these are presenters. They are freelance or work through a Personal Service Company but I still think the BBC has a duty towards them and we

certainly have accounting here of people, "I don't know if I am going to be able to pay my mortgage". There are people who have had to move and they cannot remortgage because they have this complete uncertainty in what their finances will be. There are people who have not been paid for months, like Liz, but they are people who have not been paid, not voluntarily like Liz, but just have not been paid. There are people who have had double tax taken off them through this process of recoupment, of trying to claim the tax back to April.

Q293 **Julie Elliott:** When that happens, do they get any support from the BBC to put that right?

Paul Lewis: Not really, no. Recoupment has been paused because, as a group, we have taken legal advice and we believe it to be unlawful and we have had a solicitor's letter, which I can share with the Committee, telling the BBC to cease and desist recoupment. It is on pause but there are still people paying it who agreed it before that process so people are paying double tax. If somebody is paid a lump sum on a weekly basis, although it should be a monthly basis, HMRC assumes they are paid a great deal more and takes more tax off them.

If the BBC applies some back tax to their account, which it has been doing, HMRC think, "Oh, they must have been paid a lot of money" and it starts taxing them more heavily. So people do not have a clue what their take home will be. It is not just their fee minus tax and National Insurance, it is minus all sorts of other things that they do not understand and that is real hardship.

Liz Kershaw: I have seen messages on the group that we have, really heart-breaking, "Oh joy, it is Friday night. I have just opened my pay slip online or whatever. I am a single mum. I have nil pay after all the deductions." That has happened more than once. "My pay this month is nil. How am I supposed to feed my children? Thank you, BBC. Have a nice weekend." It is dreadful, yes.

Julie Elliott: It is dreadful.

Kirsty Lang: When you asked whether there is any support I think the point is that it is a bit like we have been sort of outsourced. They do not have any responsibility to us. I know that will seem very strange to listeners because they think you are the BBC but as far as management is concerned, we are just a company that they bring in to do this service. So, no, there is absolutely no advice or care and attention in that sense.

Q294 **Julie Elliott:** Like that single parent who ended up in that dreadful situation, if she had gone to the BBC that night and said, "I can't pay my mortgage. I can't." In a big company, if a crisis happened suddenly and you had no money, people would go to their employer and ask for money upfront to help them through that crisis. Does that ever happen with the BBC?

Liz Kershaw: Staff maybe. I never think it would happen with a freelance, would you?

Paul Lewis: I think the BBC would say to you that they have a helpline. They do help people in financial difficulties. Whether it would be open at 5.00 pm on a Friday when you got your pay slip I do not know.

Stuart Linnell: And how quickly it moves as well.

Paul Lewis: And how quickly it moves and that is the point. I cannot imagine anybody would get an emergency payment to cover that although there have been cases where people have said, "I have been without money" and BBC has rushed around, when we have raised it with them and said, "Oh, well, the money will be there on Monday or Tuesday". I think they try to help but I think the bureaucracy sometimes gets in the way.

Kirsty Lang: I think that is the point. It is not like a normal company whereby, say for instance, I have an editor on my programme who is responsible for editorial decisions and so on but when it comes to my employment, she has nothing to do with that. That is all done with contracts, a department called "contracts" and literally they do contracts because I am a contractor.

Q295 **Julie Elliott:** Yes. It is all in silos.

Kirsty Lang: Yes. I have never met the people in contracts. I only ever have—there is an HR helpline but I think they would say, "Well, we would have to refer that back". It is quite complex and bureaucratic.

Paul Lewis: There was a special IR35 helpline, they called it, when we first had our meeting with Lord Hall and they did set that up—it was already there but they then staffed it with people who could help and they did help individuals in hardship cases but there are far more than the people who rang them and far more—you cannot solve anxiety. Even if you make a payment you are still anxious about it. It still affects your finances.

I think the BBC has tried, to be fair to them, but I do think that it goes way beyond that and what people want is a sensible system so they do not have this hardship and have to apply for money.

Q296 **Julie Elliott:** Are there any cases where people have become ill with their mental health through this and gone off? Do they get any support from the BBC when that happens or are they just left?

Kirsty Lang: They would not get any sick pay.

Q297 **Julie Elliott:** They would not get any sick pay?

Kirsty Lang: No. If you do not go in, you do not get paid.

Stuart Linnell: One of my colleagues at a local radio station used to work for me at another station some years before. Around autumn time when this started to come to a head, his mental health was so severe he was put into hospital for two months with very little support from anybody other than his friends and family.

Liz Kershaw: I think it is a question of pride as well. I have had a message this morning from somebody I would never have expected to be following this story and that is somebody who is high profile and well paid. Obviously they are suffering in some way but they will not get any sympathy so they probably decided to keep their head down.

Similarly I have had people come up to me in doorways around the BBC and say, "Well done. Thanks. You are like a shop steward." Scared stiff of putting their own name in the frame. People stopping me in the street and going, "It is right what you are saying". "Well, are you going to speak up then?" "Oh, no, I can't."

Stuart Linnell: I think it is a very valid point. There are two or three people that I am aware of personally who are very anxious about what we are doing today, about the very fact that this is becoming public knowledge at all because they are just nervous about their futures and the whole issue.

Q298 **Julie Elliott:** But you expose bullying and that is how you tackle it, so you are doing the right thing.

Finally, it is slightly off on a tangent but our last session was very much about the equal pay issue. Do the things that we are hearing here affect women more than men or men more than women or it is just universal; does this affect everybody?

Stuart Linnell: I think it affects everybody.

Paul Lewis: It is said by the women's group that more women were forced to have PSCs than men. I do not have the evidence for that but they do say that strongly. If you take the Christa Ackroyd case, the one we have talked about, where it was in court, she formed a PSC and the court records indicate she was encouraged to form a PSC whereas her male co-presenter was on the staff.

Liz Kershaw: That is because she was recruited from ITV and he was already—

Paul Lewis: There are reasons for it.

Liz Kershaw: It is not because she was a woman. I think Christa would be the last person to say—

Q299 **Julie Elliott:** Perhaps when the BBC agree to come, which they refuse to do today, we can ask them that question.

Paul Lewis: Can I just read this? "I have just had a text from my bank to inform me I am about to hit my overdraft limit and face charges. No sign of the money owed. Thanks, BBC. It is not good enough. It is 30 days since I submitted invoice, it is getting worse." That was 15 March, so every recently.

Q300 **Giles Watling:** Very impressive witnesses but I expected nothing less. Thank you. I have to declare a slight interest inasmuch I was involved—

Chair: You can tell all politicians are performers to one extent or another but Giles is the only one who has done it professionally.

Giles Watling: I was involved with a case, which was actors versus BBC, ITV—all sorts of things, years ago. This has been bubbling on for far longer, I think, Paul, than you mentioned since the late 1990s, early 2000s. In my personal experience it was bubbling along in the mid-1980s, late 1980s. We had an issue then but the fog that I still have not passed through yet and I would like to clear up is how much of this is HMRC or Inland Revenue and how much is the BBC and perhaps other companies, although we are talking about the BBC today. At that time it was definitely sold to us as a group, and we were all members of a union, that it was HMRC insisting that this be regularised and we should all be on PAYE. We were all sole traders and what I still do not quite get is is HMRC applying pressure to the BBC or is HMRC applying pressure to the individuals?

Liz Kershaw: That is my question. Did the HMRC say to the BBC, "These people have to set up Personal Service Companies" or not? If they did not the BBC lied. If they did say it then, the HMRC, why are they coming after it now and saying, "You cannot operate in this way"?

Q301 **Giles Watling:** It would be good to get to the bottom of that one.

Liz Kershaw: Somebody has to find out what the truth was, when, and how this conflict can possibly ever have occurred.

Q302 **Giles Watling:** You do understand though that there has to be some flexibility because fundamentally if you are an entertainer, presenter, whatever, you are casual labourer. You go and give of your labour. You get paid for that work. It is very difficult to put a sort of staff contract over that.

Kirsty Lang: Yes, I think you are right and I think a lot of people would like to remain as sole traders and freelancers. This is not "Let's all go on staff". I would quite like to, because I am worried about sick pay because I have been ill. I think most of my colleagues in our WhatsApp group would like to remain freelancers and sole traders and not have these ridiculous employed-for-tax-purposes. I do think that HMRC holds a lot of responsibility for this. I do not think this should all on the BBC.

I think one of the reasons that this has been bubbling along for so long is because it is quite an intractable problem. We must look at the big picture and see that the BBC is under huge financial pressure, since it

was forced to take on the World Service, the over-75s. In the context of this you are right, they are very worried about what it is going to cost them to put all these people on staff. This is not an easy problem to solve and the practicalities—

Q303 **Giles Watling:** The practicalities are so huge.

Kirsty Lang: We sympathise with that. I do not think that the HMRC has shown enough flexibility to the way we work and I feel rather bitter that the tax office is going after modestly paid journalists and presenters. When I read things such as, in *The Financial Times* only recently, that over the past 10 years multinationals have paid considerably less tax in this country and I think, "Well, why are they going after us then?"

Liz Kershaw: Because of that. Low-hanging fruits.

Giles Watling: Probably because you are well-known.

Stuart Linnell: In an answer to your question, I think the view within our presenters' group is that HMRC has been very clumsy in all of this. They have tried to treat everybody the same, one size fits all, when clearly it does not. Having said that, the BBC's approach to it and the way it has managed through this has been lamentable and that is being kind.

Q304 **Giles Watling:** So that is where the fog lies.

Liz Kershaw: Some of it. Kirsty mentioned, I think Paul did, I think this CEST test, for example, which is now to be applied to us. I went in to this 5th floor place I have never been to before and sat down in this room with two men and they went through this CEST test. It is multiple choice. I kept saying, "None of those fit me" but they said, "They have to. They have to. This is the test that HMRC—"

Q305 **Giles Watling:** They are trying to fit a square peg in a round hole.

Liz Kershaw: They said, "It is the same test as they would use if you were a plumber or a builder, whatever". "Right, okay. There is nothing specific to this industry." "No." We come to a question—this is how ridiculous it is—question 7, "Do you supply any equipment that you cannot claim the expense from the BBC?" something like that and I said, "Oh, yes. Albums, CDs, tickets for gigs and so on." "No, they do not mean that here." "Well, what do they mean?" He said this with a straight face, "Have you ever had to buy any capital plant or machinery?" I said, "Well, does a CD player count?" "No." "So if I came to Broadcasting House next Saturday in a brand new JCB would that qualify me for self-employment?" He said, "I don't think so". Question 8—it is just ridiculous.

Q306 **Giles Watling:** So they asked silly questions and had no sense of humour about it?

Liz Kershaw: There is no answer you can tick.

Paul Lewis: It is devised for the construction industry. There is a question that says, "What does the worker have to provide that they cannot claim as an expense?"

Liz Kershaw: That is it.

Paul Lewis: There is one that says, "Materials. Items that form a lasting part of the work or bought for the work and left behind when the worker leaves." My view is, we all supply our intellectual property and we do leave it behind because the BBC owns it in perpetuity but, no, because then it says, "Oh, by the way that does not include stationery and is most likely to be relevant to substantial purchases in the construction industry".

Liz Kershaw: That is it. That is my JCB.

Paul Lewis: So you cannot say your intellectual property. A JCB, I think that is a good idea.

Q307 **Giles Watling:** This is drawn up by the Inland Revenue.

Paul Lewis: It is drawn up by HMRC. It is called the CEST test and it has been gone through—

Giles Watling: It is one size fits all then.

Paul Lewis: It goes through many revisions and I know that the BBC has been trying to get it changed and they have had very limited success and they tend to say, "Well, you take that and whichever comes out unless it is indeterminable—"

Q308 **Giles Watling:** Would it be fair to say that nothing has changed in 30 years and it is about time the Inland Revenue got its act together?

Liz Kershaw: Yes.

Paul Lewis: I think the Revenue is behind this because we have had this change in the liability. IR35 was introduced in 1999. It has been trying to stop people misusing it and I think it is catching a lot of people who are not misusing it at all and I think that is the essential bit.

Q309 **Jo Stevens:** I think it is a real shame the BBC refused our request to come along today because I think there are lots of things that have come out of your evidence, which it would have been very helpful for them to clarify with us. I take a very simplistic approach to this, which is you are either self-employed or you are employed and I do not understand why there need to be all these shades of grey in-between. I do not know if any of you can help me with this. The policy decision, which the BBC obviously took to move people on to PSCs, do we think that was made at board level?

Liz Kershaw: It was made at board level and I found reference to it in executive board meetings. It must have been made some time before

2012 and it is referred to for the first time or more extensively in October 2013, when George Entwistle became the Director-General. It is the first question he asked, "How are we getting on with these Public Service Companies?" Not, "How we getting on with engaging our presenters through the self-employment mode?" It is specifically—then the next one is like a discussion: "Zarin Patel updated us on the progression of service companies". It was discussed at board level.

The policy, I believe, having done this research, came about between 2007 and 2012 at board level, then it was delegated to the chief financial officer to implement it through the contracts and legal affairs departments.

Stuart Linnell: What you get now is either a denial or "It's before our time".

Q310 **Jo Stevens:** Yes. So in the evidence that I have read for today, the BBC's line currently seems to be, "Well, we were told to do that, someone else did that". They effectively have a bit of a hospital pass that they have to sort out, haven't they?

Paul, perhaps you can help me with this. Obviously, there are advantages to the BBC of these PSCs because we know that the people who have to take them out have no employment rights, they get no sick pay, holiday pay, maternity pay, paternity pay, pension—and I have seen somewhere in the papers a reference to possibly a 25% saving to the on-cost to the labour line that we can see. Is that right? Would you—

Paul Lewis: It is very hard to work out and you will see different figures ranging up to 65%, but I think from the figures I have worked out—I have a little spreadsheet here inevitably—it was about 30% but there is this absolutely clear saving that they do not pay employers' National Insurance, which is 13.8%. Then the other things, it depends, you have to average it out. Holiday pay, sick pay and that kind of thing—it is very hard to work it out but I have seen figures of about 30%. It is considerable. They do make those savings but the cash saving is employers' National Insurance. Again, it is hard to know how many people were involved, what they were paid but I would reckon it is of the order of £10 million a year just on National Insurance contributions not being paid and then you have the on-costs as well.

In the past when there was a very good BBC final salary pension scheme, which has now been watered down and for new entrants does not exist, then that was an incredibly valuable right but it would be hard to put a price on I think.

Q311 **Jo Stevens:** Sure, and my experience is pensions are always the easy one and get picked off. We can see it now with the universities dispute.

Stuart Linnell: There have been some presenters where they have said, "I now want to go on to staff please with all the benefits that will come

with that", the ones you have mentioned. "Okay, but your fee will be reduced by X% to pay for those."

Q312 **Jo Stevens:** Yes. The Government last year published a review by Matthew Taylor on modern working practices in which I was hoping to see some clarity and simplification rather than making this even more complicated. One of the recommendations in that is to have yet another definition of a worker, which creates yet more problems. It just seems to me that we are going in completely the wrong direction.

On the PAYE issue, you have no clarity at the moment, have you? I noted that the radio presenters group, there are 184 in that group who have given us evidence. I will just read an extract from that, "Forcing people into unacceptable contracts that the BBC describes as employed for tax purposes, deducting PAYE and National Insurance contributions but not giving presenters any staff benefits", which is a point that you are making, including things such as holiday leave or sick pay. "These contracts contain unacceptable clauses that allow the corporation to deduct employers and ICSEs in the future as well as make further deductions for benefit so that the entire exercise is cost neutral to the BBC."

Liz Kershaw: I cannot see how it is legal for somebody to be made staff for the purposes of taxation. I really cannot see how that is legal. If it is, then the law is wrong because you must pay your tax before you even have your pay packet. It is taken off and all that; fine, but if you are ill you still do not get paid. If you have a baby, you have to come back within a month. Somebody in your family dies, you can take time off but you will not get any compassionate—"Oh, no, you do not get any pension and by the way we are not renewing your contract so after next month that is it. Thank you." You cannot have it both ways morally.

My grandparents and great-grandparents were Irish immigrants, worked in the mills, really got involved with the trade union movements and the labour movement, Labour party, fought for proper employment rights and here is me in 2018—100 years more or less. I might as well be standing on the side of the dock with them going, "Yes, we will have you today. No, we do not want you next week". I have already been told for example—and I am not moaning, this is what I would expect after 30-odd years—but I have just a message today, "Oh, by the way we do not want you on Saturday, 26 May because we are doing this festival life in Belfast so do not—", so that means I do not get paid that week. That is fine. You have a notion of that and you roll along, but what sort of carry on is that in 2018? It is like being on a zero-hours contract.

Kirsty Lang: I would agree because I just arbitrarily had my number of shows cut in September. Because I am freelance I have no comeback. "By the way, Kirsty, we are trying out fresh voices".

Liz Kershaw: To some extent we accept that flexibility however, we do have to stand on our own two feet. So you go and work at Sky News as

well, or you do something that has nothing to do with broadcasting to ensure your family's financial security, but do not turn round to me then and say, "We give you two hours a week in this building, employment, and we have all your taxation." As I said to them when I went to sit this test, "You have no idea in this building, at the BBC. You have no idea how much I earn elsewhere, what percentage what you pay me is of my total income. How much tax are you going to take off me?" "Oh, we will get a tax code for you." I said, "Well, how am I going to get my £11,500 allowance out of this, or at 20%, or are you going to just take 40% of all of this and hope I will get my allowance somewhere else?" It is a mess.

Q313 **Jo Stevens:** On your point, Kirsty, about pensions—your concern about pensions—of course you do not qualify for auto-enrolment pension payments either, so it is not just the staff contract and the occupational scheme that obviously has changed. There is no auto-enrolment pension payment made either.

Paul Lewis: The BBC is looking at contracts and looking at what rights people will have. Lawyers will argue about whether you can be employed for tax purposes and not for Employment Act purposes. I think the only rational way to do it is to say there are self-employed people, they are employees. In the middle there are workers, which is a legal term. Workers have fewer rights but they have some rights. They certainly have a right to an auto-enrolment pension. They would have sick pay, holiday pay and possibly maternity pay if they qualified. I think the BBC will have to move to that kind of model for all its people.

I think one of the things though, as my colleagues have mentioned, is that you can just be taken off programmes at a whim because you have no employment rights as a worker. There is also the question of pay rises, which I think most presenters will tell you we have not had for a very long time. They have been very low at the BBC. They have been 1% or thereabout but we certainly have not had them.

I think at the same time as the BBC saves money through PSCs you have to say that there have not been that many savings at the management level. That is certainly our feeling, although I think the BBC may tell you a different story. There are a lot of very well paid people in management and, as we have heard the evidence today, we do not think all of them are doing a very good job.

Q314 **Jo Stevens:** None of whom are employed on PSCs.

My final question is about the overall picture of the impact of not having those benefits and there was reference earlier to whether or not women feel that they have been discriminated against. It seems to me, and I do not know if you would agree with this, that because of the maternity benefits and maternity pay and leave being among the things that you lose, women will have been discriminated against as a result of this board policy to put people on—

Liz Kershaw: Yes, and in that sense—yes. For instance, when I had two children, the last one being 23 years ago, I worked until five days before and then—

Jo Stevens: You slacker.

Liz Kershaw: I know. The only way I could be sure to get the five days was that I was having planned caesareans, otherwise I could have been in the studio still. But anyway, I was able to say, "Excuse me, I am having this baby on Saturday morning at 8.30 so I'll do my show on Sunday and then I'll be taking a couple of weeks off", okay?" Both times I had to go back, after caesareans, after six weeks, first, because I could not afford not to get paid and secondly, because it was about, "Well, if you don't come back somebody else is queueing up to do it so you better get back here if you want to keep your slot". That is the extent of pressure on women to—I cannot describe how hard that was physically, and to be separated from a baby for hours at work at that stage. The child suffers. The mother suffers.

Paul Lewis: Your listeners would not know.

Liz Kershaw: They would not know.

Kirsty Lang: When I was on staff in "BBC World News" I worked alongside another female newsreader and she worked four days a week. She was a PSC and during that time she had two children and the second time round when she was pregnant I said, "You know this is illegal. Under European legislation you have been employed by this company for the BBC for X amount of time. I would go and see an employment lawyer because this is wrong. You should be entitled to maternity benefits." She confided in me that she was very worried about money. She went to see an employment lawyer and the employment lawyer said, "Yes, you have a good case" but she did not quite have the stomach to go through the tribunal. She just felt she was pregnant and she was the principal earner in the household and I do not blame her for that. That person was then, later, put on a staff contract—about two years ago—when I think the BBC realised that that situation was untenable, but it was a not terribly good staff contract and nothing like the one that I enjoyed.

You get a lot of that. We get a lot of people—as Stuart said, if you are on staff they do treat you very well and you get great maternity benefits and so on. You are really looked after and there is this twin system, which is unfair.

Q315 **Rebecca Pow:** A huge apology for arriving late. I want to ask, because I could not resist it, to Paul Lewis, of your marvellous programme "Money Box Live", were you ever tempted or have you dealt with this subject? If you did would you give personal views or get other members of staff in to be interviewed or would the BBC let you do it?

Paul Lewis: We have certainly covered the issue in the National Health Service where it is also affecting people. In fact I had this discussion with

my editor and if "Money Box" were to do it I think just as many people, as many women were not allowed to do interviews on the equal pay issue, I think I would—I am not saying I would not be allowed to. I am saying that I would not do it because it would be hard for me to say I was being impartial. You have heard me today. I am not impartial about this issue and I do not think I could do the job of being an impartial presenter on this subject. I have many colleagues who could do it in my place.

Q316 **Rebecca Pow:** Do you think by not covering the subject, or the BBC not covering the subject, they are trying to cover it up?

Paul Lewis: No, I absolutely do not. I think it is about one employer. It is about our employer, except of course we are not employed. Let me just stress that. I think it would be a bit inward looking to do it. The BBC covered the women's equal pay issues. I think they had a broader appeal and there is a very clear legal case there, whereas as with ours there is a different case. I do not think the BBC is trying to cover it up at all, no.

Liz Kershaw: I saw something really weird. On 16 February 2012, I wrote to Peter Rippon, the then editor of "Newsnight", and said, "Hello Peter, I saw 'Newsnight' with the latest from *The Guardian* about the public sector workers being paid through companies. Do you know that the BBC forces all of us to do this?" Then I set it out why I thought it was strange that the BBC should be attacking the NHS and stuff on its flagship news programme while probably most of its presenters and journalists, indeed its viewers, were experiencing exactly the same treatment from the BBC. He wrote back, "You are not the first BBC presenter to bend my ear about this" and so on. That is the flip side of it.

Paul Lewis: It is fair to say that when we have covered this in a general sense with the NHS I have said at the end that I am self-employed and this could affect me in the future and that is as far as we have gone. I have made that kind of disclosure but whether I could present impartially on it—I would like to think I could but I think the public may not see it that way.

Stuart Linnell: That goes to all of the issues that we were talking about earlier on with presenters who want to remain anonymous or are not happy that we are even here talking about this today because there are people who are very concerned about this coming out into the open because inevitably not everybody reads beyond the headline and they instantly label you as a tax dodger and that is not the case and I hope we have been able to present that today. That is not the case with the majority of people in this situation. In fact very few, I would suggest, if anybody, caught up with this from the BBC has set out to dodge tax as such. People are very concerned about being seen to be fairly treated and that is what this is all about at the end of the day.

Chair: Thank you. On behalf of the Committee, I thank you all very much for your evidence today. It has been an important session and we also understand how it is often very difficult to speak out in public in the way

that you have. But it has been invaluable to us and I am sure to many other people that you have done so. Thank you.

Liz Kershaw: Thank you.

Kirsty Lang: Thank you for listening.

Liz Kershaw: Yes, thanks for giving us a platform.

Examination of witnesses

Witness: Jolyon Maugham QC

Q317 **Chair:** Thank you very much and good afternoon. We will start the second panel now. We are delighted to welcome Jolyon Maugham QC to this session. You have had the chance to hear all of the evidence we have just heard from the BBC presenters. I suppose the key question, as Liz Kershaw put it, was what was the truth, when? It was a good way of summing up this quite complex issue. We are trying to understand what advice the BBC received from HMRC at the time it enforced these contracts and why that advice seemed to change. We would be interested in your point of view going back to the origins of this period and these changes in policy. Do you believe it was the consequence of a directive from HMRC or was it due to the way the BBC interpreted it? Indeed, would the BBC have had much latitude in the way they could have interpreted the advice they were given at the time?

Jolyon Maugham: Never say never in this world but the notion that the BBC could have received a directive from HMRC to engage people through Personal Service Companies strikes me as being implausible to the point of impossible.

HMRC has no incentive to seek to secure that those who are self-employed are engaged through Personal Service Companies. If anything, HMRC has an incentive to secure that those who are self-employed are engaged directly and there are a number of reasons why that is so. In particular one of the reasons why the IR35 regime has failed is that it is impossible for HMRC in practice to collect any tax that is found to be due from Personal Service Companies. Personal Service Companies are very often poorly capitalised and if they face large tax demands just go under. That is certainly not true of the BBC.

It is also the case that if you are only looking at the situation of one engager of presenters rather than hearing the more than 3,000 engagers of presenters your job as the tax collecting authority is that much easier.

I cannot deny that it is possible that there was such a letter but nothing about it at all makes any sense to me.

Q318 **Chair:** What do you believe were the advantages for the BBC in paying presenters in this way?

Jolyon Maugham: There is a whole raft of advantages and you can categorise those broadly into two camps. There is the employment rights camp and then there is the tax camp. So looking at employment rights first, almost all situations where a Personal Service Company is interposed between a presenter on the one hand and her engager here, the BBC on the other, will have as a consequence that the engager here, the BBC, no longer has an obligation to offer any type of employment rights or workers' rights to reflect a worker's desire for flexible working, as Ms Elliott was talking about earlier. No employment rights at all are available to somebody where they are engaged through an intermediary. Those rights, including very valuable rights like pension rights, deliver to the BBC a very considerable cost saving. If you look at the dossier of doom, as I think it was put earlier on, you can see evidence of the BBC valuing those rights at perhaps 25% of the value of the pay.

Then there is a whole raft of other advantages that fall into the tax camp. Sometimes—it is technically possible—that you can just avoid a 13.8% liability to employers NICs by interposing a Personal Service Company.

While we were listening to the evidence, I did some back of the envelope calculations. There were about 3,200 Personal Service Companies in 2012. If you were to assume that 2,000 of those were caught by IR35 and you were to assume that the revenue are going to go back six years, which is typically the period they would look to go back, and you were to assume an average salary, an average payment to presenters, of £100,000 per annum, 13.8% of that gross sum represents about £170 million. That is very significant number. I am certainly not saying that the BBC avoided that amount of National Insurance contributions. The amount of National Insurance contributions that they will have avoided will be much smaller than that but that gives you the size of the envelope that we are talking about.

Alongside that, if you, as the BBC, are facing competition from other broadcasters for the talent that you are seeking to engage, you have to take into account that Personal Service Companies can deliver the opportunity for tax planning to presenters. Purely illustratively, if ITV were to offer a presenter £100,000 on a Personal Service Company and the BBC were to offer that presenter £100,000 but on staff, the presenter would have the opportunity to be financially and materially better off by going with the ITV offer. That creates a genuine difficulty for the BBC in circumstances where it addresses its mind to the question, is this person really self-employed. Either it pays more than ITV would pay and is accused in the media of overpaying for talent or it recognises that it has to compete with ITV and so it has to offer a Personal Service Company as well, then after the fact is accused by the media of facilitating tax avoidance.

It is important to recognise that the BBC does have a genuinely difficult task here. That is not the same as saying the BBC always has it right. It certainly has not.

Q319 **Chair:** The changes with people moving from staff contracts to Personal Service Companies, the distinction or the benefits might be for both that individual or the BBC in particular—the individual maybe in terms of their direct income—but obviously there is a loss in other benefits that they would accrue as a member of staff. What is the significance of asking people who work on a freelance basis to set up a Personal Service Company? Why would that change be made?

Jolyon Maugham: There is a significance for the BBC and there is also a significance for the presenter. The significance for the BBC is that the effect of interposing a Personal Service Company means that if after the event it is found that that individual was an employee the tax liability does not rest with the BBC, it instead rests with the Personal Service Company, so it switches where the tax risk lies. It moves from the BBC to the Personal Service Company.

That has the consequence—and you can see evidence of this here—that the BBC becomes less interested in the correct tax status of an individual. They think to themselves, "Well, if there is a tax risk here it is not our problem, it is the Personal Service Company's problem. So the Personal Service Company can worry about it and we need not concern ourselves with it" as much as the BBC ought to have done.

So far as the presenter is concerned, the interposition of a Personal Service Company gives the presenter the opportunity to embark on tax planning that can materially improve their post-tax income. It also very often leads to the presenter receiving a higher amount of money than they would have received had they been engaged in pre-tax terms. Very often the way these arrangements work is that the engager says, "Look, if you want to be on staff we will pay you £100, but if you want to go freelance we will pay you £140; that £40 representing the cost to us of delivering all of the employment right-type protections that you would be entitled to if you were our employee".

Sometimes, and in some industries very often, the individual in question would much rather have the extra £40 and self-insure than they would have the benefit of the employment protections. Looking at it in purely contractual terms, and just leaving aside the legislative picture, that is the dynamic that predominates.

Q320 **Chair:** That is very interesting. What you said initially, there seems to be quite a big incentive—the BBC in this case—to make freelance workers set up PSCs because then if the Revenue come along, as they have done, and says, "This person is an employee" the liability for the unpaid tax lies not on the employer, which would have been the BBC.

Jolyon Maugham: That is right. If you look at it purely legally, technically if you are not concerned with the moral quality or the reputational consequence of your actions, then you always insist upon the interposition of a Personal Service Company. If you bring into that equation what corporate social responsibility looks like, what reputational concerns look like, then the equation gets a little more complex. As the Committee will know, this is a field in which I work so I have advised broadcasters, I have advised presenters, I have also advised those outside of this broadcast industry. I have always advised that people have very considerable regard to the non-tax, non-financial, reputational, moral consequences of taking advantage of a loophole in the law, created by Parliament, to shuffle tax risk on to another person.

Q321 **Chair:** It is even worse in some ways for an individual who was on a staff contract who is then told to set up a Personal Service Company because with that comes the knowledge that if they made any mistake in the way that was set up or they fail to pay the correct tax, or the Revenue just simply regarded them as being a BBC employee because that was their only commercial relationship, all the liability for those mistakes rests entirely on the individual and not for the BBC itself.

Jolyon Maugham: Sort of. For me the foundational issue, which I have not heard explored in the evidence yet is this: if you assume the BBC is paying an existing staff member £80 and it says to that staff member, "We need you to be engaged freelance and we want you to be engaged through a Personal Service Company, we are going to pay you £100", a reasonable illustration of what may well have happened, it is open to that individual to use the £100 that is paid to the Personal Service Company to pay themselves as a member of staff employed by their Personal Service Company.

If they do use that £100, they should find themselves in the same position as when they were engaged directly by the BBC as an employee being paid £80. They are in the same tax position and they have a little bit left in the post to self-insure against the consequences of losing the employment protections that otherwise are available to them, if they are directly employed. It may be that some of the BBC presenters did that, they took all of the money that was paid to the Personal Service Company and they paid that to themselves from the Personal Service Company and they applied PAYE. That is what Parliament mandated in appropriate cases when it introduced the IR35 regime.

When you are looking around and you are asking yourself the question: where did it all go wrong here, you must not fail to look at the responsibility that tax advisers have to ensure that their clients—here the presenters—are applying the correct tax treatment and are cognisant of the risks of not applying the correct tax treatment.

Forgive me for digressing for a second. The situation you have heard about this morning is a very common and repeating situation. I wrote extensively a couple of years ago about the plight of footballers. Very,

very highly paid often, not as a group financially sophisticated, who were missold bad tax advice—that may be a fair description of what has happened here—and find themselves in awful situations years later that they bear no real moral responsibility for. The wrongdoers in that situation are the advisers to those individuals who took their large fees, made their money and then walked away. The victims—there the footballers, here are the presenters—that feels to me to be a good and very familiar analogy.

It may be remarkable to the Select Committee—it certainly continues to be remarkable to me—that if you are a dental nurse you are regulated. If you are a tax adviser, you are not regulated. There is no statutory, parliamentary control on the delivery of tax advice. There are lots of instances in the recent past in which those in the media industry have suffered awful consequences in following poor quality tax advice.

Q322 **Julian Knight:** It was interesting you focus on tax advisers but surely the issue is the BBC effectively said to presenters, "You should go and seek out advice but when you come back you should have one of these PSCs in place". Effectively it is already deciding what the advice is before the individual goes off. They are all saying this is a mechanical issue rather than what the normal interaction would be between a client and a tax adviser, which is what is best for me and what is compliant?

Jolyon Maugham: The fact of interposing a Personal Service Company does not create a tax problem. What creates a tax problem is interposing a Personal Service Company and then treating yourself as self-employed. The fact that the BBC insisted on Personal Service Companies being used here is not of itself what led to the difficulties that individuals now face. What led to those difficulties is the fact that they then treated themselves as self-employed. They could have taken all of the money that was paid to the Personal Service Company, paid themselves all of that money as employees and they would not now face any tax difficulty at all. It is that part of the equation that, with respect, the Select Committee should focus on, as well as the conduct of the BBC.

Q323 **Julian Knight:** Would you say then that the individuals who set up a Personal Service Company have incurred a net financial benefit by so doing?

Jolyon Maugham: It is difficult to speak in generalities but despite doing so very often the answer is yes. I would expect that they would have received a larger sum of money in consequence of being engaged on a freelance basis, larger than they would have received had they been engaged on an employed basis. The fact of a Personal Service Company being interposed creates opportunities for tax planning that are not available to the employees. The law in this field is in a terrible state, as everybody who knows anything about it, recognises. It is just something that Parliament keeps putting in the too difficult pile.

Julian Knight: The Exchequer has lost out?

Jolyon Maugham: Yes. The Exchequer has undoubtedly lost out and likely lost out to the tune of low billions.

Julian Knight: In just this instance?

Jolyon Maugham: Of tax through the use of Personal Service Companies across the board. I imagine that the loss of tax around the BBC is certainly much smaller. If I was forced to put a finger in the air, you might say upper tens of millions.

Q324 **Julian Knight:** Is that just from the perspective of those who have set up the Personal Service Companies or is that in the round? Is that the BBC's?

Jolyon Maugham: That represents the tax, the NIC saving to the BBC, the employee's NIC saving to individuals, to sometimes lower rates of tax applying to dividend income because very often income is stripped out of Personal Service Companies by way of dividends, and the more generous expenses regime that is available to the self-employed. There are a few other factors as well. The upper tens of millions is aggregating all of those factors, but specifically for the BBC.

Q325 **Julian Knight:** In terms of the percentage of salary, or what we would perceive as a salary, may have been saved as a result of putting people on to these contracts, of making them take out Personal Service Companies. Is it closer to the 30% figure that was mentioned or is it the 65% figure we heard earlier on? What do you think is a fairer figure, bearing in mind of course the very generous BBC pension scheme?

Jolyon Maugham: There is evidence before the Committee in the package of emails that the Committee released last night. It seems that the BBC values that at about 25%. It is not clear exactly what that figure represents but if that figure were to represent the value of the employment rights that the BBC no longer offers when it engages somebody through a Personal Service Company, that would not surprise me especially.

Julian Knight: That is on top of NICs?

Jolyon Maugham: Then I would expect, if NICs were included, the figure might go up to £40.

Q326 **Jo Stevens:** Can I take you back just to what you were talking about earlier about tax risk and the PSCs? They are effectively a mitigation strategy, are they not, as you described it? But what was the level of risk? I am not clear that there was a huge risk, which then necessitated putting this strategy in place. What is your view on that?

Jolyon Maugham: There is an inevitable risk and there is a chosen risk as well. The inevitable risk is modest. The inevitable risk is the risk that arises from the fact that evaluating whether somebody is employed or self-employed is genuinely difficult. It is a complex evaluation of a large number of facts. I work in the field. I continue to find it difficult. That risk

is embedded into the fact that we have the notion of employment status that we do.

But here there is also another risk. There is a chosen risk. As I put it earlier, looking at the evidence, that what the BBC has chosen to do here is not address its mind to the question whether people are self-employed or whether IR35 applies to them. They have averted their eyes from that question because they know that the tax risk rests with the Personal Service Company rather than with them.

Let me just put a slight gloss on that. The period prior to 2012, the period addressed by the Deloitte report, looks to me from the Deloitte report to be characterised by bad behaviour by the BBC. If the BBC followed the very sensible recommendations issued by Deloitte in that report then most of what I have described as that chosen risk will have disappeared. There will be left only the much more modest structural risk. It may be appropriate for the BBC to put that structural risk on a Personal Service Company rather than taking it itself.

Q327 **Jo Stevens:** Going back to that period, what the BBC told the Public Accounts Committee in 2012 was that they were using PSCs for flexibility and to respond quickly to changes in programming need rather than any financial reason. Do you think the BBC needed to do that to achieve those aims?

Jolyon Maugham: It is one of those things that sounds splendid until you stop to think about it. Then it does not make sense because there is absolutely nothing at all about the use of a Personal Service Company that can even sensibly be said or argued to enhance creative flexibility.

I would go further than that, I do not think there is anything about self-employed status that enhances creative flexibility. You need to start at a different place. You need to start by asking yourself, "What is the right relationship for the BBC and the presenter? What is the relationship that gives to the presenter what the presenter needs to be a good presenter and gives to the BBC the flexibility it needs to be an efficient and public service broadcaster?" You characterise that relationship either as being one of employment or self-employment. You cannot start by saying that it is necessary to have self-employment to deliver creative flexibility. That is looking through the telescope from the wrong end.

Q328 **Chair:** What would be wrong with the BBC characterising this work as part-time work? We have people who work short hours and there are plenty of businesses where people are employed as part-time workers or workers on flexible contract or flexible hours. Many people might look at this and feel that would have been a fairer way for people to be employed.

Jolyon Maugham: They would be right. If you are a zero-hours worker, working in a SportsDirect warehouse for £7.50 an hour, you usually will be an employee, despite the fact that you only have a zero-hours

contract. The notion that there is something inimical to flexibility in employment status just does not bear examination. It is a nice way to explain other less attractive features of your conduct, but when I try to unpack it I just do not find that it makes sense.

Q329 **Chair:** There would be no good reason, given we have heard people said they did not want to be employed in this way, that the BBC should give them an option of offering some sort of part-time staff work or devising a part-time contract, which will allow them to do that.

Jolyon Maugham: If you look at the emails that are before you, and the correspondence with Ms Kershaw, what you see is the BBC was saying to people, "Look, you can either work on an ad hoc basis, in which case we are content for you to continue to be engaged directly, but if you want the security of a two-year term you will have to be engaged through a Personal Service Company". In effect, she is being presented with a choice, and all of us who have children and mortgages to pay will understand why the notion of receiving ad hoc engagements was not terribly attractive to her.

In that situation the BBC ought to have asked itself the question, "Given that we are going to engage her for a two-year term, does that make her an employee or does that make her self-employed?" It ought to have asked itself that question rather than averting its eyes to that question by insisting she go through a Personal Service Company.

Q330 **Chair:** Do you believe, as the presenter said this morning, that people were coerced into signing these contracts?

Jolyon Maugham: That is probably a fair description but I do take issue with how the consequences of that coercion are characterised. It is always open to somebody who is paid through a Personal Service Company to treat themselves as an employee of that Personal Service Company and pay themselves on PAYE all of the money that the Personal Service Company receives. If they do that, they do not now have a tax problem.

The question that is in my mind is: why does that not happen? The answer that I suggest is that it is because people were poorly advised. It is a little bit more complicated than that because there are two other features in the landscape as well.

People would have thought if the BBC is telling me this and the BBC has the place in our society that it does, it is probably all right. Advisers would have been looking around at perhaps a decade, perhaps a little bit less, of complete inaction by HMRC in this sphere and thinking to themselves, "If HMRC are not taking any action in relation to arrangements involving broadcasters perhaps our advice in the past has been too conservative".

I understand and sympathise with how advisers may have taken their cue from HMRC's inaction and presenters may also have taken a cue from the

fact that these arrangements were being pushed or even forced upon them by the BBC.

Q331 **Chair:** Do you think the BBC is different from other media companies in the way that it—there are some similarities—seeks to engage people? If you are working on the production of a new drama series often someone is engaged on a freelance basis, it is a project, it has a finite end, there is no certainty the project will be recommissioned or whether your services will be needed. That is a very different sort of employer than someone working as a presenter on a regular programme, which has been running for very many years. I characterise that relationship as more likely the relationship between an employer of an employee.

Jolyon Maugham: What we know from the Deloitte report in 2012 is that the use of Personal Service Companies was particular to the BBC. As I recall, the Deloitte report suggests that other broadcasters are not using Personal Service Companies like the BBC is.

You also put a different question, which is: is the tax situation of a presenter the same as the tax situation of an actor where both are engaged through Personal Service Companies? The answer to that question is no. Not impossible to imagine circumstances in which IR35 might apply to an actor, but quite difficult. Even for presenters the analysis is complex. If you are a newsreader, you are more likely to be caught by IR35 than if you are a DJ.

In two years' time this Committee is going to be looking at a different question, which is whether the BBC and the NHS were right to force everybody to be taxed as employees in circumstances where the case law has shown after the fact that very often those people were properly taxed as self-employed.

What is happening now in the public sector in consequence of the changes that the Government announced in 2015, is that the NHS, Government Departments engaging IT contractors, the BBC, are all adopting very low risk approaches to those engaged on freelance contracts through Personal Service Companies. They are saying everybody is an employee in circumstances where the law does not support that conclusion. You heard evidence of that as well.

You heard evidence that individuals who are doing the status test and arriving at an inconclusive result are being told by the BBC that they have to be taxed under PAYE, even in circumstances where that result is, in some cases, just wrong.

Q332 **Chair:** What do you think HMRC was trying to achieve in issuing this advice to the broadcasting sector?

Jolyon Maugham: By "advice", do you mean the status test?

Chair: Yes.

Jolyon Maugham: HMRC has an obligation as part of the exercise of its care and management of the tax system—that is how it is put in the legislation—to help engagers of labour engage that labour on the correct basis. The problem that HMRC faces is the employment status test is impossibly difficult even within an industry to derive to invent a status tool that applies to the construction industry, applies to IT contractors, applies to actors, applies to presenters, and applies to barristers is beyond the technology that we presently have available. These are difficult complex exercises.

Q333 **Chair:** Going back to the first question we asked you: in that case it would be almost impossible to see how HMRC could have mandated the BBC change in this way because they could not possibly have understood or even sought to have understood the different relationships they have with their different employees.

Jolyon Maugham: I would be surprised if HMRC did mandate it. Parliament required that everyone who is a public sector engager of labour ask itself the question whether that labour is employed labour for tax purposes. What HMRC has tried to do is help the public sector engagers answer that very difficult question. What Parliament did in respect of public sector engagers in the second 2015 budget was require public sector engagers as a matter of law to do what morally, reputationally, they ought to have been doing anyway but had not been.

Q334 **Julian Knight:** Mr Linnell mentioned during his evidence he was presented with a new contract with a clause exonerating the BBC for any tax liability under a PSC arrangement. What do you think of that type of approach?

Jolyon Maugham: If I had been advising him I would have advised him not to sign it or to sign it under duress. It does not seem to me at all appropriate a use of the BBC's bargaining power for it to force people to give up legitimate claims they may have against the BBC as the price of continuing to work for the BBC. That is not behaviour that would be attractive by a sheet metal workshop. It is certainly not behaviour that the BBC should engage with. It does not properly reflect the BBC's responsibilities to presenters.

Julian Knight: Do you think any such clause would be enforceable?

Jolyon Maugham: That is a genuinely difficult question. The courts tend to enforce clauses like that unless there are very compelling reasons for them not to. That does not make it right however for the BBC to do it.

Q335 **Julian Knight:** It would be interesting to know exactly how many other presenters have had a contract like this put before them. This could be a means by which the BBC has had to just cauterise this issue.

Jolyon Maugham: Yes. It is right just to look at the chronology of events since the start of this tax year when this new legislation brought the issue to a head for the BBC. My perception of how the BBC is

approaching it in technical tax terms is that it is doing well. In media terms, the BBC has made some quite abysmal statements to the media about the situation in the past; positively misleading. I was genuinely quite shocked at statements that were made to the *Mail on Sunday* earlier this month. The statement the BBC made yesterday is much better. It does not deal with all of the problems and it does not recognise all of the difficulties but it is certainly—just looking at it on its face—is a major step in a better direction.

I echo comments that were made by the previous witnesses about the issue having been moved to a higher institutional level in the BBC are now being addressed on a much more responsible basis.

Q336 **Julian Knight:** I do not expect you to particularly comment on this, but this is a regular theme that we are having with the BBC over issues like gender pay. The first instinct seems to be basically to attack those who bring the claims. There was a very sharp focus with Carrie Gracie and it seems to be that that was the initial approach to the BBC, in this instance. They seem to imagine somehow that basically if they can kneejerk that will make the issue go away, but it does not. It just makes it far worse.

Finally, just on the timeline of all this, do you share with me the grave disquiet that effectively the BBC was shunting people on to these PSCs at a time when it was becoming much more apparent to the accounts industry, and those who were writing in the space, that this was an area that was going to cause issues down the line? What are your thoughts on that?

Jolyon Maugham: The period we are talking about is the period from 2009-10 to 2012. Those numbers assume that Deloitte is right when it says in its report that it was in 2009-10 that the BBC began to insist seriously on the use of Personal Service Companies. It also assumes that the BBC implemented the results of that very good Deloitte report.

Looking at matters during that period: if the BBC had cared about the issue, if the BBC had asked itself the question, "Are we doing the right thing here?" it would have behaved very differently. I have no real doubt about that. My guess is that it simply persuaded itself that because the tax risk was somebody else's it did not need to worry about these questions. I find it difficult to come up with any alternative explanation to that.

Q337 **Jo Stevens:** How can it be sorted out? There are two elements to this. There is the tax element and you have said the tax law is in a complete mess. But there is also employment legislation, which is also in a complete mess because there are all these differing versions of an employee, a worker. I mentioned the Taylor review earlier. There was an ideal opportunity there to just say, "Enact section 23 of the Employment Relations Act 1999", problem solved. What do you think should happen?

Jolyon Maugham: I share your frustration with the Taylor report. It is a rather unambitious piece of work. It probably reflected, if I was speaking in its defence, his expectation of what the Government might be willing to do. There are two foundational issues here. There is one in the employment sphere and there is one in the tax sphere. In the employment sphere, the question is one of the difficulty of applying the employment status test. It is more than that. The employment status test dates back to the start of the 20th century—very early in the 20th century—and fundamentally it is asking the question: when is it right to impose the burden of providing a safety net on the engager of labour? The answer to that question in 1906 might be very different to the answer to that question now, when the labour market in the course of the superseding 112 years has changed profoundly.

I do not think that judges can or should be drawing that dividing line. Parliament should do it. If Parliament were to do it then Parliament would also find it was able to trim that test, as the world changes around us, and ask a much more sharply focused question—the question I put a couple of moments ago—about when is it right to impose that burden of providing a safety net on the engager of labour. That is the foundational issue.

If Parliament were to legislate you would achieve both a better test and a test that it was possible to apply in practice. Those are the important questions in the employment sphere.

In the tax sphere, the foundational question is this: why are there these profound differences of treatment—these incentives—to self-employed individuals? Why do we incentivise through the tax system that particular status? Sometimes people argue that we should support entrepreneurial activity through the tax system but it is quite difficult to see that the presenters that we were hearing from earlier today are engaged in the entrepreneurial activity that the tax system should promote.

Again, that is a question for Parliament. Parliament needs to address its mind to the question: how much do we want to support self-employment through the tax system and also where should we draw the line between the type of self-employment we want to promote through the tax system and the type of self-employment we do not? It is a striking irony to me that through the tax system we incentivise engagers of labour to shed the burden of providing employment protections.

We say to people, "If you shuffle these burdens on to the state or the individual by making them self-employed we will reward you by not obliging you to pay employers' National Insurance contributions". This may not be parliamentary language; that is bananas.

Q338 **Chair:** Finally, for the record, you mentioned comments the BBC has made earlier in the month, particularly in the *Mail on Sunday*, which you took exception to. Could you tell us what those statements were and why you took exception?

Jolyon Maugham: I will just find the date on this *Mail on Sunday* piece. It is 4 March. It is quite short. I will just read it into the record, "A BBC spokeswoman said, 'The BBC has always engaged a large number of freelancers on a flexible basis, altering roles or hours at short notice. In almost all cases there has been little HMRC guidance to help clarify the tax status of such roles in the media industry. The use of Personal Service Companies is legal, complies with tax legislation and should not result in any avoidance of the tax or NIC due to the Exchequer. The BBC's use of Personal Service Companies was reviewed independently by Deloitte in 2012, which found no evidence of tax avoidance or individuals being forced to move from staff contracts on to PSCs'. The corporation added that accountants 'should have been advising them' on the implications of tax legislation". Substantially every single one of those statements is wrong and sometimes deliberately misleading.

We know, and the BBC's statement yesterday admits, there is HMRC guidance in relation to this tax status of roles in the media industry. There is guidance in relation to radio presenters, I believe. There is certainly guidance in relation to those working in the media industry who work behind the camera or away from the microphone.

"The use of Personal Service Companies is legal." Again that begs the question—what the tribunal found in the case of Christa Ackroyd is that the use of Personal Service Companies was not legal, at least it was not legal in the sense of delivering the tax consequences that she had understood it to deliver. You have to remember that this statement is made in a world in which these tax arrangements are being challenged, made in the aftermath of the decision in Christa Ackroyd's case where a tribunal has found that they do not work.

To say that the use of Personal Service Companies complies with tax legislation is also to beg the question. Sometimes it will and sometimes it will not and this debate is happening in a world in which the tribunal has found that it does not.

"Should not result in any avoidance of the tax or NIC due to the Exchequer." Usually the core purpose of the use of Personal Service Companies is to avoid tax or NIC due to the Exchequer.

"The BBC's use of Personal Service Companies was reviewed independently by Deloitte in 2012, which found no evidence of tax avoidance." I take issue with that. Deloitte's report, although very good, does what you might expect for its paying client. It spares its blushes. If you read between the lines it is clear that Deloitte did think that much of the behaviour was motivated by a desire to shift tax liabilities that would otherwise rest on the BBC on to Personal Service Companies.

The BBC's use of Personal Service Companies was reviewed and Deloitte found no evidence of individuals being forced to move from staff contracts on to PSCs. That is certainly not what the Deloitte report finds

and it is also entirely inconsistent with the evidence that the tribunal has heard this morning.

That is poor from our national broadcaster.

Q339 **Chair:** Thank you. That is an excellent summary to end on. Sadly, you are right to question what Deloitte delivered for their client because we have seen other reports from the BBC, which again made certain generalisations in regards to the BBC's behaviour and conduct, but often have failed to consider individual cases. Certainly there was no opportunity for individuals to present counter-facts or examples as part of the report.

Jolyon Maugham: The Deloitte report does two things. It sits as judge in relation to the BBC's conduct up until 2012. That bit of the report is one where Deloitte is mindful of the position of its client, if I can put it politely.

I should say, as a matter of public record, that I am instructed by Deloitte in various matters.

Looking at the position going forward, the recommendations that Deloitte made are good and sensible and if they had been delivered by the BBC after 2012, should have meant that these problems stop in 2012.

Chair: Thank you very much on behalf of the Committee.