

Treasury Committee

Oral evidence: Tax enquiries and resolution of tax disputes, HC 1914

Wednesday 30 January 2019

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Members present: Nicky Morgan (Chair); Rushanara Ali; Colin Clark; Charlie Elphicke; Stewart Hosie; Wes Streeting.

Questions 1-66

Witnesses

I: Jim Harra, Second Permanent Secretary and Tax Assurance Commissioner, HMRC; Penny Ciniewicz, Director General, Customer Compliance, HMRC; Mary Aiston, Director, Counter-Avoidance, HMRC.

Examination of witnesses

Witnesses: Jim Harra, Penny Ciniewicz and Mary Aiston.

Q1 **Chair:** Good afternoon. Thank you very much to our witnesses for being here. I will ask you to introduce yourselves briefly for people who are not in the room but who are watching. We are taking evidence this afternoon on tax enquiries and disputes, and the handling thereof by HMRC. Perhaps I can start with Mr Harra.

Jim Harra: I am Jim Harra, and I am the Tax Assurance Commissioner and Deputy Chief Executive of HMRC.

Penny Ciniewicz: I am Penny Ciniewicz, and I am the Director General for customer compliance.

Mary Aiston: I am Mary Aiston. I am the Director of HMRC's counter-avoidance team.

Q2 **Chair:** Thank you very much indeed. We have a few slightly different but all related, enquiries. There has been ongoing coverage, particularly recently, about disputes around the national minimum wage and national living wage. The first question, probably directed to you, Mr Harra, but others may want to chip in, is about whether HMRC's Litigation and Settlement Strategy applies to disputes over the national minimum wage and national living wage?

Jim Harra: In principle, yes. The strategy is that we try to avoid getting into disputes if we can, and if we do get into a dispute that we have a co-operative approach to resolving it. We litigate if we cannot reach agreement with the taxpayer or, in this case, the employer. In principle, that is the way we would approach the national minimum wage, but obviously it is different from tax in the sense that it is another Department's policy. We have part but not all of the role that we would have with tax. Penny's team do the work.

Q3 **Chair:** I was going to ask you, Ms Ciniewicz, about governance and quality control. How does that work around the conduct of these disputes?

Penny Ciniewicz: We would have several different what we would call lines of defence around all our work in HMRC. The first line is at manager level: the assurance of cases by the managers of teams. The second line would be central quality assurance checks. The third line would be internal audit, external audit or assurance bodies that would look at the quality of the work. That is the way pretty much all of HMRC's work is undertaken.

Q4 **Chair:** The recent reports were around Iceland and the staff savings schemes, but we have also heard about difficulties with employers who have helped staff with football season tickets in instalments or providing cheap petrol and helping with childcare costs. There is a concern that the



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national minimum wage rules are discouraging employers from providing benefits that are quite helpful for employees and that, overall, do not leave them out of pocket. You mentioned, Mr Harra, at the start, that you were policing another Department's policy area. When you identify issues like that, which either perhaps seem unclear or the rules perhaps do not seem well designed to cope with these situations, do you feed that back to the BEIS Department?

Penny Ciniewicz: We have a very close working relationship with policy officials and Ministers in BEIS. We meet regularly and we share operational feedback all the time on how we are working within the rules and the legislation. BEIS are quite clear on how they wanted the policy to work and the effect of that. We continue to share with them the experience, and they are close to us in terms of getting feedback.

Q5 **Chair:** Do they ever come to you and say, "Actually, we are getting feedback that something is not working"? That could be from MPs or from public correspondence. Is this something that you have seen in practice?

Penny Ciniewicz: We obviously take note of MPs' views. If MPs are asking questions about the enforcement of the minimum wage, clearly we would be responding with input to those. The question of the policy and the intent of the policy is one for BEIS. We work within those legislative frameworks, but there is an open dialogue, absolutely.

Q6 **Chair:** From the outside, it would seem that common sense is not always working in this area. On one hand, the policy intent is to make sure that people are paid properly and that employers are not trying to avoid that responsibility, but, equally, it is helping people to save for in this case Christmas, or with instalments over a large expenditure, as that seems to make some sense as well. Do you think this is one of those areas where the rules or law say one thing but common sense and the ordinary person in the street might see it through another lens?

Penny Ciniewicz: The main principle of the national minimum wage is that you cannot make deductions prior to the salary being paid that take the worker below the national minimum wage. That is a fairly clear and straightforward principle, and there is guidance available on gov.uk about how to run salary sacrifice schemes in ways that do not conflict with the purpose of the national minimum wage legislation. To the degree that people want to set up those kinds of savings schemes, it is possible within the rules of the national minimum wage legislation, and the legislation is designed that way in order to ensure that workers—vulnerable workers in particular—cannot have employers put them in a position where they cannot refuse to make those deductions. There is, however, a policy consultation going on in BEIS on salary sacrifice schemes at the moment. I am sure people who have concerns about it can contribute to that conversation.

Q7 **Chair:** Take me through the thinking, if you can, on something like the Christmas savings scheme, where people have decided that they are



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happy, or they have agreed, and they have signalled their agreement that a portion of the money will be set aside for 11 months of the year and, as I understand it, put in a different bank account, and not something that can be accessed by the employer. Within the current rules, just talk me through why that could be a cause for concern.

Penny Ciniewicz: It comes back to that fundamental principle, which is that you cannot make salary deductions that take the wage that is paid to the employee below that of the national minimum wage.

Chair: The wage that actually hits the employee's bank account.

Penny Ciniewicz: The wage that hits the employee's bank account has to be equivalent to the national minimum wage or higher, and that is the nub of the legislation. Of course, it is possible for people to set up savings schemes where they seek the consent of the employee. They can set up a direct debit. There are many different ways that employees can then choose to save, but they need to be ones where the employee is making that decision, and it cannot hit the bottom line of the salary and it cannot take it below the national minimum wage.

Q8 **Chair:** One of the ways that could be, therefore, in compliance with the rules, you are saying, is for the amount of money above the national minimum wage to reach the employee's bank account and then they decide that they are going to make a deduction, potentially back to a bank account run by the employer.

Penny Ciniewicz: That is one way of doing it. If people look on gov.uk, there are clear explanations of the ways in which those schemes can work.

Q9 **Chair:** Assuming that it does create an underpayment for national minimum wage and national living wage purposes, why is it not treated as a self-correction when the savings are paid out to the employees? Overall the amount of money that the employee is getting remains the same; they have obviously received less in their bank account over the course of 11 months, but then, if you added it over the 12 months, they actually get all that money in the end.

Penny Ciniewicz: I am not an expert on that particular policy. That is more of a policy question, but in essence the answer would be that that money is not being paid through their salary. It is being paid back a different way. It comes back to that fundamental red line, which is if you are taking money that takes the salary below the national minimum wage, that falls foul of the national minimum wage legislation.

Q10 **Chair:** Just before I hand over to Charlie to move on, part of this issue about tax enquiries and tax disputes is about how employers and taxpayers are able to liaise with yourselves, and obviously BEIS can look after themselves for that purpose. If somebody has a concern about the way this is operating or the way it is being interpreted, then what is the best way for the employer to challenge or to understand where HMRC is



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coming from on this?

Penny Ciniewicz: We would expect to have, as we would in any tax dispute, an open conversation with anyone who we were engaging with over activity related to the national minimum wage. We would expect them to have the opportunity to talk to caseworkers, if they were unhappy, to complain about the handling of their case in the same way as in any other form of engagement with HMRC. I would expect there to be an open conversation between the caseworkers and the companies or organisations that we were working with.

Q11 **Charlie Elphicke:** Good afternoon. Can I start by asking a couple of questions about self-assessment? You may know that the deadline is coming up for self-assessment at the end of this month.

Chair: Tomorrow.

Charlie Elphicke: Tomorrow. What do you have to say to the person who last year filed their self-assessment online and then this year suddenly finds that they are asked to go and get a new self-assessment login, and it is going to take them seven days to get their letter in the post with the login details, so they will end up with a fine? Are you going to give assurances to those people that they will not be fined and that a sensible position will be taken?

Jim Harra: I cannot explain the particular circumstances that you describe. Certainly for the vast majority of taxpayers, once they have set up a self-assessment account they can use it year-on-year, but there may have been something that affected the account that you describe. If people take the necessary steps and then find that there is not sufficient time for them to complete it because of something like that, they can contact us and, of course, in those circumstances we would not normally penalise people.

One of the issues with the way the penalties for late filing of returns work is that, as far as we are concerned, a return was due and was not received. We do not know at that point what the reason for that was, so we automatically issue penalties, but we do urge people to contact us if they had a good reason why they were late. In the vast majority of cases that can be handled informally by our caseworkers. They have a set of guidance that they can follow and they can cancel the penalty if in fact there was a reasonable excuse. In all circumstances, if we do not cancel a penalty and the taxpayer feels that we should, then they have a formal route that they can go down as well. In the vast majority of cases, those are resolved to the satisfaction of HMRC and the taxpayer.

Q12 **Charlie Elphicke:** The Litigation and Settlement Strategy states that HMRC should resolve tax disputes in accordance with the law and should operate within a sensible framework for handling and resolving disputes. However, we have heard from other witnesses that this is sometimes applied too rigidly and HMRC is not always willing to resolve disputes in a proportionate or sensible manner. What do you have to say?



Jim Harra: As you would expect, I would not agree with that evidence.

Chair: You surprise us.

Jim Harra: The key thing is to look at what the facts show. The facts show that for the vast majority of taxpayers, we do not get into dispute with them at all. Penny's area did about 475,000 compliance checks last year, and in some of those we will accept that there was nothing wrong and we will resolve them for nil. In others we will say, "No, we think you have your tax affairs wrong and you owe us money". The vast majority of those are settled by agreement with the taxpayer. Only a very small proportion go through either to a statutory review or to an appeal hearing.

Where they go through to a statutory review, there is an independent team within HMRC who review the case, and they can confirm, vary or cancel the outcome. In those types of cases, about 74% get confirmed and about 26% get either varied or cancelled. In any event, the taxpayer also can go to tribunal, where we have a very high litigation success rate. The facts tell me that, first of all, there is access for taxpayers if they feel that we are not settling on the correct basis, but also the results show that, in the case of the statutory reviews, we change or cancel them where we think we have got them wrong. In the cases that we pursue to tribunal, the litigation success rate that we have indicates to me that we are taking the right cases to tribunal and not taking cases unduly to tribunal.

We work closely with the tax profession to make sure that we are getting that right. There are some people who would like us to be more flexible in the deals that we strike. It is a basic principle of the Litigation and Settlement Strategy that, while we want to settle by agreement, we will only settle for the amount that we believe is legally due and not for some other horse-traded amount.

Q13 **Charlie Elphicke:** It also says in the commentary to the settlement strategy that "where discretion is properly exercised under HMRC's legal powers of collection and management not to pursue an amount of tax, then the outcome is consistent with the law". What scope does HMRC actually have to exercise discretion?

Jim Harra: The Commissioners for Revenue and Customs Act 2005 provides for collection and management of tax to rest with commissioners of revenue and customs, and that gives us a certain amount of discretion around the margins. It does not give us discretion not to collect tax that people are due to pay, or alternatively to collect taxes that people are not due to pay, but, for example, if we met a case of extreme hardship, we have the discretion not to take enforcement action. That would be one example of how we exercise our discretion. Around the margins, if we find areas where there is a need for concessionary treatment, then we can do that. We publish a certain number of extra-statutory concessions that are all under our discretion.



Q14 Charlie Elphicke: Are you happy, overall, with the tax dispute work that is done? Do you think it is all fine?

Jim Harra: Do I think it is all fine? No, there is always room for improvement. What we have is a very good system in place, which Penny described, of the three lines of defence, which give us good management information about the quality of the work that is done on disputes and where we need to improve. We also have good governance of the decision-making in disputes so that we ensure that we have both correct and consistent decisions. I personally get involved in the governance of the largest and most sensitive disputes, but Penny has boards and management teams that cover them all. We have a good process in place to make us aware of how we are doing.

There are always areas where we want to improve all the time. We have improved, first of all, the targeting of disputes. If you look at our figures, year on year Penny's people have been picking up a smaller number of disputes and that is because we have got better at targeting it at where the risks are, so fewer taxpayers are being bothered with a dispute where actually they would be better left alone. Despite doing a smaller number of disputes, we are getting more and more compliance yield, and that is because we are getting our targeting better all the time.

Q15 Charlie Elphicke: You sound generally quite happy. The reason I ask that is because I was an eagle-eyed reader of the Tax Assurance Commissioner's 2016–17 report and the excellent foreword in which you wrote that you had directed work to be done to improve HMRC's tax dispute work. Was that aimed at anything in particular or just a general search for extra quality?

Jim Harra: Yes, that comes out of the results of the quality reviews and those three lines of assurance that we mentioned. About once a quarter Penny and I sit down with a team of people and go through what the results of those assurance reviews are, and we identify where there are any concerns. My report, at page 94, sets out the four areas where we felt that the assurance reviews identified areas where we have not fully adhered to best practice and where we would like to improve.

Some of those are around just making sure that governance is followed and i's are dotted and t's are crossed, so they do not necessarily affect the taxpayer but some of them clearly do—for example, delays we find in some cases that we need to address. The four areas that I have set out—penalties and settlements sometimes not being correctly authorised in accordance with our governance processes; assessments or penalties at the wrong levels; sometimes things not being recorded correctly on our internal systems; or delays—are the four themes that I directed and where I would like to see improvement.

Q16 Charlie Elphicke: As an avid reader of the National Audit Office's reports on the HMRC from time to time, they seem to spend a lot of time castigating you for not doing prosecutions, certainly not prosecutions of



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the rich and the powerful, and more taking small businesses to task. What is the current situation on that?

Jim Harra: I will let Penny update you on where we are with criminal investigations, both the policy for when we do them and what the current results are.

Penny Ciniewicz: Yes, last year we put forward over 1,000 cases to the Crown Prosecution Service or its equivalent in Northern Ireland in terms of prosecutions, and we had over 800 successful prosecutions. The point about how we use our prosecutory powers is that we reserve them for cases where we think that criminal prosecution is the best approach. We have lots of serious civil powers, and using those we took around 43,000 cases last year where we used our most serious civil powers. We are doing a really strong job of tackling the most serious forms of tax evasion, and we are really cracking down on criminals and others who seek to exploit the tax system for their own ends.

Jim Harra: If I could just bust a myth around our treatment of small businesses, in any given year fewer than 1% of small businesses are subject to any form of compliance check, and, as I have said, the vast majority of those are settled by agreement, without any criminal or civil litigation action.

Q17 **Charlie Elphicke:** The Litigation and Settlement Strategy was revised in October 2017. Can you explain what the main changes were and why they were made? Also, with the staff members in this section, how is their morale? What are the staff attitude survey outcomes?

Jim Harra: I will let Penny pick up the second part of that, if I just address the first. We did refresh and update the Litigation and Settlement Strategy. There was no substantive change. There are two documents. There is the Litigation and Settlement Strategy itself, and then there is a commentary to that, which expands on it, and we updated that, for example, around our approach to alternative dispute resolution, which is a relatively new way of, from our point of view, addressing disputes where we get stuck with a taxpayer. Rather than automatically going to litigation, we look at those cases, if the taxpayer wishes, and think: "Can we mediate an outcome?" We have updated it for more modern techniques of trying to resolve disputes, but there is no fundamental change to the policy, which is that we try to settle by agreement. However, we only settle for what we believe is legally due and we litigate if we cannot settle on that basis.

Penny Ciniewicz: On staff morale I would say two things. First, my experience of staff morale when I am out in the business is that it is very high. Our people feel passionately about the work that they do and about the contribution it makes. They strongly value the professional approach that they take to tackling tax enquiries. I find morale in general across the business is high; people are committed. Our survey results do not quite reflect that, and that is a conundrum that we seek to get under the



skin of, through talking to our people constantly about what it is that drives their sense of satisfaction. Some of those things are harder and longer term to tackle, and some of those things, hopefully, we can get to grips with in a fairly short timeframe and make sure that we respond to people's concerns. The tax professionals in HMRC are tremendously passionate about what they do and produce tremendous results, in my view.

Q18 Charlie Elphicke: Can you write to the Committee about the staff survey results and the action plan that is in place to make changes?

Penny Ciniewicz: Absolutely.

Q19 Charlie Elphicke: Can you also write about the diversity and salary policies and whether they are meeting the Chair's stringent advocacy targets?

Penny Ciniewicz: I will.

Q20 Chair: Thank you very much. I am going to bring in Stewart in a moment, but I wanted to ask, staying on the issue of the strategy, particularly about vulnerable and unrepresented taxpayers. I am not sure who is best placed to answer this, but the Low Incomes Tax Reform Group told us about the experience of unrepresented and sometimes vulnerable people in disputes with HMRC. I am interested to know how your governance processes pick up on the needs of vulnerable customers and ensure that the necessary links are made by frontline HMRC officials with the Needs Enhanced Support service. We have already had some evidence on that, but if there is anything else you wanted to add for the record—we are doing a separate inquiry on vulnerable customers' access to financial services, so there may be some parallels that it would be interesting to draw from that.

Penny Ciniewicz: Clearly, we read the evidence that the Low Incomes Tax Reform Group gave with lot of interest, and, as a result of that, very much went back to see what the experience of those customers was in our business, and whether or not we had sufficient safeguards around their experience. What we found was there is a lot in place. We do make sure that each customer receives information at the outset of the check that asks them to tell us if they are suffering from any form of vulnerability or they need more help. Our leaflets are written in plain English. We try to give them a clear view of their rights and their opportunities to appeal, as well as information about why we are running a check.

Obviously, it is in the nature of a compliance check that you are talking, usually, directly to a compliance officer, so you can ask questions directly of that officer and they should be making sure that unrepresented customers, for instance, are given a clear and straightforward explanation of the issues that we are dealing with. However, we did think there was more we could do and, taking LITRG's evidence, we have begun a programme of work within my area of the business to look at what more



we can do to build on that. Most importantly, LITRG's main request was that we could do more to build a link to the Needs Enhanced Support service, which I know they think is very positive and we are very proud of, from the compliance part of the business. We have started a pilot to do that, which we hope to report by the end of this financial year, with the intention that that should become a route that is available to compliance officers if they feel they need to support a customer in that way.

Chair: I am sure LITRG will be delighted to hear that their evidence has been read so closely. That is very good.

Q21 **Stewart Hosie:** Mr Harra, just before I ask the questions, you mentioned the compliance checks—less than 1% chance of that happening. Are these compliance checks random? Are they intelligence led? Are they sectoral or geographic? How do you decide who gets the knock on the door?

Penny Ciniewicz: The vast majority of our compliance checks are risk based, which means we use the information we gather to come up with a risk-based assessment of where we think tax may not be being paid correctly. Our strategy is to promote tax compliance, to prevent non-compliance and to respond to non-compliance where we find it. We also do work to prevent non-compliance, and that may involve campaigns in certain sectors where we see evidence that people may not understand their responsibilities. Sometimes we do One to Many campaigns, writing to taxpayers, asking them to check that they have complied correctly. Equally, we will do risk-based, focused campaigns or indeed interventions with individual taxpayers based on the intelligence and information that we collect and use through our Connect system, which is our major risking system.

Jim Harra: I will just add that we do, in addition to that, have a random enquiry programme, so that we can measure non-compliance for the purposes of understanding the tax gap, and so that we can gain assurance that our risk assessment is picking up cases. That is a very small proportion of the compliance checks that are carried out.

Q22 **Stewart Hosie:** That would presumably explain why taxi drivers or barbershops that rent out chairs, where cash money is involved, tend to be more of a focus of this than other sorts of businesses.

Penny Ciniewicz: We would focus on a range of sectors where we think there may be issues with compliance. We would do that geographically sometimes. We also have tools that will help us to look at compliance in a geographical sense, as well as in the sense of a sector or a particular type of employment risk or, indeed, a particular risk within a particular kind of tax head.

Q23 **Stewart Hosie:** Is it true that HMRC is more aggressive now in pursuing penalties and that you start from the presumption that there has been a deliberate default?



Penny Ciniewicz: No, I do not think this is true. Our guidance is very clear and our compliance officers, as far as I know, abide by that guidance, but it is true to say that, in the way that Jim described, we are improving all the time our ability to target our work to the highest risks. Part of that work is tackling, particularly, the hidden economy, and we have seen an increase in the work that we have done to tackle that. Proportionately, that means that more of the contact that we are having with taxpayers may very well be in the area where a deliberate penalty is being charged, because that is the nature of the non-compliance that we discover.

Q24 **Stewart Hosie:** Just on that, in terms of the hidden economy, none of us are naive and we know that some people will work in the hidden economy for a long time. It does strike me that that is a disproportionate effort to tackle somebody who is earning a few quid cash in hand, and other sorts of tax evasion goes un-dealt with?

Penny Ciniewicz: Tax evasion certainly does not go un-dealt with. We do a huge amount to tackle tax evasion, but the hidden economy is a significant proportion of the tax gap. We strive to be fair and even-handed in the way we proportionately tackle risk across the tax system, but it would be inappropriate for us to ignore the risks from the hidden economy.

Q25 **Stewart Hosie:** I appreciate that, but going back to the penalties, can you explain what governance is exercised over the decisions to charge a penalty, maintain a penalty once a taxpayer has objected and then defend an appeal against a penalty in front of a tax tribunal? What are the governance arrangements around that?

Jim Harra: First of all, broadly speaking, there are three types of penalties, and there are different arrangements for the different types. The largest number of penalties that we issue are those for late filing or late payment. As I said earlier, those are issued automatically if we do not receive a return or a payment by the due date. At that point, we do not know whether the taxpayer has some good, reasonable excuse for the lateness. We have quite an informal approach to cancelling those penalties when the taxpayer then comes forward and explains the reasons. The other two types of penalties are more in Penny's area of work. They are penalties for careless or deliberate inaccuracies in your return or for failing to comply with some regulatory rules, and they are much more behaviour based.

They are not issued routinely and automatically. They are only issued as a considered decision after a compliance check. The vast majority of them are agreed with the taxpayer and paid as part of an agreed settlement. In any case where we cannot reach agreement, we can charge those penalties. First of all, the lines of governance are the same as Penny mentioned in settlements, so managers with the caseworkers for the smallest cases, but we do have penalties boards that assess our entitlement to charge a penalty and the consistency of the penalty that



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we are charging for more serious cases. In all circumstances, there is a right of appeal against any penalty.

- Q26 **Stewart Hosie:** The Low Incomes Tax Reform Group drew our attention to the plight of unrepresented taxpayers who find themselves subject to late filing penalties for thousands of pounds, even though no tax is due. I can understand, in the first instance, an automatic penalty for a late filing, but no tax is due. How does the Revenue monitor how many late filing penalties have been issued in those circumstances?

Jim Harra: It is the case that the way the law works is that there is a penalty for filing late even if, when you file, there is no tax due. That is a change that was made in the law a few years ago, and that is because we do need those tax returns and we waste resources chasing tax returns. The penalty is there to encourage people, if we have asked them to make a tax return, to do so on time. The same rules apply to those as to any other late filing penalty, which is that if you had a reasonable excuse for the lateness, then we will cancel that penalty. Otherwise, the fact that there is no tax due is not a material consideration. I do not have figures for how many of the late filing penalties that we charge are in those cases and how many are in cases where tax is payable, because it is not relevant to the charge of the penalty.

- Q27 **Stewart Hosie:** We have also seen cases involving vulnerable and unrepresented people where the Revenue has sought unsuccessfully to maintain penalties in front of tax tribunals. Let me ask about this specific case. There was a case that involved a woman suffering from paranoid schizophrenia, and where the judge concluded that "the appellant was not capable of properly managing her affairs, submitting correct tax returns on time, and/or instructing a representative to act on her behalf ... because of her severe and enduring mental illness". How on earth did that make it through the HMRC's governance process, that you were defending a position against someone in that set of circumstances?

Jim Harra: I am not aware of that particular case, so I cannot describe how that happened. It is sometimes the case, however, that we will not know until we are in tribunal what the circumstances are that give the reasonable excuse to the taxpayer. Clearly, if we can find out about the vulnerability at an earlier stage, in circumstances like that it would be our policy to cancel a penalty because we would accept a reasonable excuse. It may be that we did not know in advance.

Stewart Hosie: We can certainly give you the details of that case.

Jim Harra: Please do.

- Q28 **Stewart Hosie:** What you have just said would suggest that the actions of the Revenue were not in accordance with the Litigation and Settlement Strategy.

Jim Harra: Obviously, the tribunal is the line of defence for a taxpayer if they believe that we have made an incorrect decision. That is what it is there for and we do not win every case that we take to tribunal. In the



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case of late filing penalties, as I said, we have very little information in our systems to explain why something is late. We simply know it is late. It is an engagement with the taxpayer that tells us the reason why and gives us an opportunity to cancel the penalty if there is a reasonable excuse. In the vast majority of cases we do that informally, without the taxpayer having to go through any appeal process.

Normally, I would only want to go to tribunal in a case where there is a line I think we need to argue. From what you describe, that is not the kind of case I would want to take, but it is possible for a taxpayer to go straight to the tribunal and say, "I wish to appeal this penalty", and not engage with HMRC along the way. I do not know whether that is what happened in that case, but it is possible.

Q29 Stewart Hosie: This leads me to the two final questions, which relate to this. You said you did not recognise that case, and that is fine, but when a case like that occurs, how does the Revenue learn lessons from that?

Jim Harra: Penny can describe how she applies that in her area of work, but the assurance checks that I ensure are carried out, plus a review of complaints and appeals, all feed into the areas for improvement that I asked for.

Q30 Stewart Hosie: That is helpful. Just before you answer the second question, the final question that follows from that is this: would you then flag up on that individual's tax record that they are vulnerable in some way, so that this person does not get into exactly the same position in the following year?

Jim Harra: Yes, we do.

Penny Ciniewicz: For taxpayers at the moment who use our Needs Enhanced Support service, we are capable of putting an indicator on their tax records through that service that would mean that we would have a record of the support that they required. At the moment, in compliance checks, that is not so straightforward, and that is part of the work that we are doing to try to work out how we can do that more effectively on the records.

To go back to your question about how we learn lessons, we learn lessons at all levels of the organisation. We work very closely with the Solicitor's Office. They support us in tribunal hearings, in particular, and they provide feedback. That feedback is provided in cases where we lose or we have some other aspects of the case that we think we need to learn lessons from. That is provided both directly to the case team and to senior management in regular reports. We do learning from those cases, and we would seek to extract, from cases where we think we should not have done something, every ounce of learning to make sure that our caseworkers understand that and we do not do that again.

Chair: We are going to move on to some questions now about the disguised remuneration loan charge, you will not be surprised to hear.



Q31 **Colin Clark:** My question is to Mary Aiston. What is a settlement opportunity, and why are they used?

Mary Aiston: A settlement opportunity is used in circumstances where we think that there are a large number of taxpayers who have outstanding enquiries on an issue in common and where we want to encourage them to come forward to settle their affairs. It is a way of setting out, in what are sometimes quite complex circumstances, HMRC's approach to each aspect of those open enquiries, and they are used to provide a prompt and an encouragement. It is important to say that they are not the only way that somebody can settle their tax affairs, and it is always open to any taxpayer to come and say to us, "I would like to settle this year, this case", and to do so on a strict statutory basis.

Q32 **Colin Clark:** Is the loan charge meant to be another tool in your toolbox to incentivise people to concede that their schemes do not work, and to help you close some of the large backlog of cases? Is this a way of dealing with tens of thousands of outstanding cases?

Mary Aiston: The purpose of the loan charge is to draw a line under disguised remuneration as a form of avoidance and to ensure that people who have gotten into disguised remuneration avoidance—as you say, tens of thousands of people and sometimes over a number of years—pay their fair share. Is it a prompt to settle? I hope so. What the loan charge does is give taxpayers three choices, effectively: they can repay the loans that they took out; they can settle the tax due; or, if they do not want to do those two things, then they can pay the loan charge on balances that are outstanding in April. It is our hope that lots of people will take this as a prompt and an opportunity to come in and settle and get out of their disguised remuneration once and for all.

Q33 **Colin Clark:** My constituency is an oil and gas constituency, and a great many contractors got involved in schemes, many of them would argue naively. One constituent wrote to me concerned that he would fall foul of IR35. He was advised to close his company and to work for Peak Performance contractors, one of the schemes, thus avoiding invoicing and national insurance. Now, what he is asking me is why HMRC is not asking umbrella companies, such as Peak Performance contractors, for the loan charge, as opposed to asking him.

Mary Aiston: HMRC is going to employers for the loan charge. Where there is an employer that still exists and is in the UK and that we can contact and engage with, that is who we are engaging with. We estimate that about 75% of the tax yield that will come in on the loan charge will come from employers. Where we can, that is our starting point. However, the legislation does provide that where that employer is offshore and no longer exists—in some of these schemes, the employer was purely an offshore construct set up as part of the avoidance scheme—in those sorts of circumstances, the legislation allows us to go to the individual who benefited from the scheme. We will always start with the employer if we can.



Q34 Colin Clark: I understand from the legislation that once you have pursued the employer you can give them up to 30 days and then you pursue the individual. How do I explain to the constituent that it is fair, if he was advised to go into that scheme?

Mary Aiston: I appreciate that a number of people went into these schemes based on advice, and part of our challenge is about how we encourage taxpayers to think and consider advice in these sorts of circumstances. The short version of that advice really is that, if it sounds too good to be true, it may well be. I am keen that more and more people actually think about this before they sign up. Ultimately, individuals are accountable for their own tax affairs.

What I would say is in these circumstances as with your contractor, we are talking about skilled people taking on a role that involves skilled work and signing up to a set of arrangements. Some of their remuneration comes in the form of a very small salary—usually enough to give them a national insurance contribution record—and the rest comes to them via an offshore trust in the Cayman Islands, or somewhere like that, in the form of a loan that gets bigger and bigger but they have no expectation of ever repaying. I am not suggesting everybody needs to be an expert in tax legislation to spot that we might come to ask some questions about that.

Q35 Colin Clark: A second constituent, in his 70s, put it to me that the Finance Act 2017 restricts claims to after 6 April 2017. Tax law sets out time limits, obviously. The Chair wrote to Jon Thompson in December 2018 regarding the loan charge and the fact that it could go back as far as 20 years and it may bypass normal taxpayer protection. Is the loan charge scheme just a way of bumping people into waiving their rights?

Mary Aiston: The intention of the loan charge is to ensure that these people who have gotten into disguised remuneration avoidance pay their fair share. It is a charge that applies to all loan balances outstanding at April 2019. It is correct to say that those loan balances could result from loans that were made as far back as 1999. Our data suggests that the vast majority are more recent than that. That is the purpose of it. That is not conditional on the status of tax enquiries or other work that has been done in the past. The condition is that the loan is outstanding and the tax has not been paid.

Q36 Colin Clark: Considering how historic it could have been, does HMRC take that into account when they claim tax back, if it does go back to 1999, and people believed they were getting the advice and it was legal? Is that taken into account, or is it indiscriminate with regard to how old it is?

Mary Aiston: The loan charge applies irrespective of how long ago that loan was made. It does not take it into account in that sense. As I say, I appreciate that people will feel they followed advice that, with the benefit of hindsight, probably was not very good advice to get into these



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schemes. We do not introduce special relaxations based on how old the loan was. What I would say, though, is that our aim here is to support people to settle their outstanding disguised remuneration. I appreciate that some customers in this position are facing some big bills, and we are keen to support them to find a way to settle these schemes that they can manage. That is in our interests as well as theirs.

For example, we have already said that if somebody is currently earning, say, less than £50,000 a year, they can have up to five years to settle their disguised remuneration without going into any more detail about their income and expenses. I can also now add to that and say that where people's current income is less than £30,000, they can have seven years to settle their bill if they need it, without questions asked. I would stress that where that does not meet people circumstances, we can discuss other options. The most important thing is that people come forward.

Q37 Colin Clark: Unfortunately, I have constituents who are coming forward who are facing financial ruin, and while they may reflect it was bad advice before, they are still facing that situation, and most of them are now either in retirement or heading into retirement. How many people have now actually taken up the contractor loan settlement opportunity as opposed to expressing an interest in it and asking HMRC for a computation of the tax? It was recently reported in the paper that people are waiting a very long time to find out what the computation would actually be. Are you catching up with that?

Mary Aiston: We have settled about 6,000 cases, bringing in about £1 billion worth of tax.

Q38 Colin Clark: How many are there?

Mary Aiston: There are about 50,000. There are a lot more to go. In terms of getting calculations out to people, we have issued 9,000, and 7,000 of those are still due to come back. Our past experience with settlement opportunities is that around 75% of those will come back and people will settle. There is a lot more work to do. We always expected that there would be a peak of people coming in February and March. We know from the self-assessment profile that it is human nature; people will sometimes delay. It is also true that this group of customers are people who have had previous opportunities to settle and not done so, so we understand that they may be people who really will be leaving it a bit late.

What I want to say, just to reassure people, is that if they come forward with the serious intent to settle before 5 April, they will not be disadvantaged if it takes us a bit of time after that to finalise that settlement. Nobody will be out of pocket as a result of any need for us to discuss that settlement with them. The important thing is that people come forward before 5 April.



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Q39 **Chair:** "Settled" does not mean "paid everything"; it depends on the arrangement.

Mary Aiston: Yes.

Chair: If somebody does owe a life-changing amount of money, which will involve selling property or whatever it is, it is a question of, having come forward and agreed a sum and potentially a payment, not actually having to pay everything at that point.

Mary Aiston: That is correct. It is perhaps useful if I say something about your point on selling property here. I know there have been a lot of reports and people being concerned about whether they would have to sell their home. HMRC is not going to make people sell their homes to pay their disguised remuneration tax bills. We will explore with people what the best way is and what the right timeframe is. It is possible that, for some people, we might say, "You need to take a loan out if you have equity in your property," if that is the right answer and people can manage the repayments. We might sometimes put a charge on somebody's property. However, we will not make people sell their homes to pay their disguised remuneration tax bills.

Q40 **Chair:** Is that a confirmed policy?

Mary Aiston: Yes.

Q41 **Chair:** You are putting that on the record here. There are lots of people watching this session for that reason.

Mary Aiston: Yes. The reason it is important to me is that my concern is that, where people are understandably anxious about that sort of thing, it puts them off coming forward and settling when that is the best thing to do.

Q42 **Colin Clark:** Can I ask one last question? I want to personalise this because I have had a number of constituents come forward. One told me that he regretted filling in the settlement pack offered by HMRC. His words: "HMRC coerced contractors by threatening us with Armageddon if we did not declare". I thank you for clarifying your point about the property. Many people feel that this is going back retrospectively. We know that the contractor loan settlement opportunity speaks about not protected years. Why is it necessary to go back into not protected years? People feel deeply aggrieved. You said that people want to come forward and settle but the reason that many of the people I have spoken to are running scared from this is because these are life-changing amounts of money and they just cannot see a way out. It is easy for me, in the comfort of a surgery, to say, "Did you not see this coming?" but it might have been 10 or 15 years ago and the sums are absolutely enormous, particularly in the oil and gas industry where a lot of them were working offshore and making very significant amounts of money and their circumstances now are very changed. One of them earns £12,000 here driving a delivery van for Tesco. The chap is facing complete ruin.



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Mary Aiston: I appreciate people are facing some big bills. We have shared some numbers with the Committee. It is worth saying that the average is a bit skewed by some very big settlements. We think that the typical settlement that an individual is facing is somewhere in the order of £13,000, which is a lot of money, but for some people it is a lot more than that, and obviously for some it is less.

I will talk about unprotected years in a minute. I just want to touch on where people's circumstances have changed. Our colleagues who are lined up and there to support people to get out of disguised remuneration understand that people's circumstances might have changed, and that is why we are keen to talk to people about what type of settlement is manageable for them. As I say, that has to be the right answer for the customer but it is also the right answer for us. There is no benefit to us in people signing up to something where they are then not able to stick with that commitment. We recognise that people's circumstances will have changed.

On unprotected years, I will first of all explain what an unprotected year is so that we are all on the same page. When HMRC is doing enquiries, there are a number of time limits, for example, for opening the enquiry and then in particular for raising assessments. Normally, in an ordinary case where there has been a full disclosure, that will typically be four years. Where a taxpayer has been careless and that is why there is a problem, it can be six years. Where there is deliberate action on the part of the taxpayer that means the tax is wrong, it can go back as far as 20 years.

When we are talking about unprotected years, we are talking about the exceptions. Normally, we have raised thousands of enquiries and assessments in relation to disguised remuneration. We have a good level of coverage. An unprotected year is a more exceptional circumstance where, for whatever reason, HMRC has failed to get an assessment done on time.

Why are we including them in the settlement offer? The point to bear in mind here is that the loan charge applies to all outstanding loans where people have not paid their tax. That is not dependent on the status of any enquiries or the status of assessments for previous years. When we were designing the settlement opportunity, we thought it was important to encourage taxpayers to settle all years where they have an outstanding loan to get them out of disguised remuneration so that they would not have to pay that loan charge.

It is always open to somebody if they want to settle one year in isolation and not settle their unprotected years, but the problem then is that they will still have to pay the loan charge for those years, and we thought it was better to encourage people to settle everything in one go rather than settle some years and then face the loan charge for the others.

Colin Clark: I thank you for your answers and I thank you for your



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clarification earlier. I have a lot of constituents with huge bills and I am afraid it will be cold comfort, but thank you.

- Q43 **Rushanara Ali:** Good afternoon. I just wanted to pick up particularly on the issue of settlements. Similarly, I have certainly come across constituents in situations with very large bills. Just to start off with, you mentioned that there are opportunities to settle for over five years, and then you mentioned seven years. I have two constituents who came to me, and each of them have something in the order of between £120,000 and £150,000, going back to 1999. What would happen in a situation like that? Their businesses are likely to go under. They will probably have to sell any property they have. What, in that situation, can you do to help people like that when it is such a large sum of money?

Mary Aiston: I can understand that, in those circumstances, five years, for instance, might well not be sufficient. What we would do is talk to that taxpayer about their particular circumstances and work through it. As I said, we have a commitment that we will not be forcing people to sell their homes.

I know there has been a concern about insolvency and I just want to explain why, for us, insolvency is very much a last resort. There are only two circumstances where we would pursue that as a route for taxpayers such as the ones you have described. The first one is that we would consider insolvency where people already have a tax debt that they cannot manage and are carrying out some sort of activity that means that the problem is only going to get bigger and bigger and therefore worse for them and worse for us. We will consider it in that circumstance. That is not likely to apply to this group of customers, and the reason for that is because settling your disguised remuneration, or indeed paying a loan charge, is a one-off tax bill. That reason for insolvency is very unlikely to apply to this group of customers.

The other reason why we would ever consider insolvency is that, in any group of customers, the vast majority are wanting to sort things out and they are talking to us because they want to pay. There may well be a tiny, small minority who are determined not to. In those circumstances, we feel it is right that we retain the right to consider insolvency out of fairness to the people who are trying to settle.

For customers who are of good intent and want to settle, but where the bills are as big as you say and that is a big stretch, we can be very flexible about the terms we reach with them to find something that is going to work.

- Q44 **Rushanara Ali:** For up to how many years can you be on such a large sum of money? Even if they are earning reasonably good incomes, it is going to be difficult to do it within five to seven years, potentially. What is the maximum period?

Mary Aiston: We do not have a maximum period.



Rushanara Ali: That is part of the problem.

Mary Aiston: We talk to people about what works for them, and I would see from a customer's point of view there is a balance. I respect the fact that people do not want debts hanging over them for very long periods of time but, equally, if they do not have income that means they can pay it off more quickly, they need to explore options.

Q45 **Rushanara Ali:** One of the problems from what I have heard so far—I do not know if other colleagues would agree—is that there seems to be quite a few things that are quite discretionary because of the circumstances that people are in and so on. Today you mentioned five years and seven years. It would be helpful to get some clarity about where people might stand depending on those sorts of scenarios. You may already have it. It would be helpful for us to get a bit more information on that. When people come to see us in our surgeries, it is quite hard to make head or tail of what they can do. I have certainly read out the rulebook to those that come to me about tax avoidance and the rest of it; nobody here is suggesting we should be lenient on people who are consciously avoiding tax, but this is a different set of circumstances.

What I would like to see is some clarity on the guidance and what people can expect in these sorts of different circumstances, because they can then at least see a line of sight about how they might go about making the repayments. Certainly, in the cases that I have seen, there was a willingness to settle but there were some complications about how to do that in a way that was not going to make life even more difficult.

Apologies for my ignorance because this is a new area that we are all trying to get our heads around, but why is it that you did not spot this problem? Why did you not deal with it back in 1999? You are saying that people should be able to see that, if it is too good to be true, it is too good to be true. Why did a state agency not see a pattern back in 1999 or 2000 or 2005—years back—that it is too good to be true and that there could be a hell of a problem coming your way with tens of thousands of people in this situation? Did somebody see it?

Mary Aiston: HMRC has been tackling disguised remuneration schemes since the late 1990s. From that time onwards, it has been opening hundreds and thousands of enquiries and raising assessments as well as preparing cases to litigate. We have never thought that these schemes worked and have been actively challenging them since then. We appreciate that, at that time, our strategy meant that we were not telling taxpayers enough about what we were doing on their case, so we will have had an open enquiry or an assessment, but we recognise that at that time our strategy meant that we were not communicating regularly enough to keep them in the picture. Subsequent to that, we have changed our strategy to include much more regular communication.

Q46 **Rushanara Ali:** With respect, if you spotted a problem eight, nine or 10 years ago, you could have flagged this up to people to say, "You are in a scheme that you really should not be in", and they could have sorted it



out. Is that something you did?

Mary Aiston: Yes.

Q47 **Rushanara Ali:** My second question is about whether any of you are aware of any cases where taxpayers contacted you to say, "I have been asked to join this scheme and I would like to know if this scheme is compliant with the tax authorities or if it is too good to be true". It does not have to be in those words but do you have correspondence in your organisation over the last 10 years where any member of the public has written to you asking for advice or sought advice, and what was your advice?

Mary Aiston: Let me talk about what we tell people, because this quite a long period of time and quite a lot of different things have happened in that time. First, when we open an enquiry or raise an assessment, we are writing to people at that point and explaining that we think there is a problem. As far back as 2004, there was then a written ministerial statement setting it out clearly—the then Paymaster General spoke about this type of tax avoidance and the determination of the Government to tackle it, but was also clear that it was always HMRC's view that it did not work.

From 2009 onwards, we have put out a whole series of publications, I accept targeted at tax agents—we estimate that about 70% of this group of customers have a tax agent—making really clear HMRC's view that these schemes did not work. We have then had a number of settlement opportunities.

Q48 **Rushanara Ali:** What about individuals?

Mary Aiston: Absolutely; it is a very fair question. Between 2011 and 2015, we ran a settlement opportunity particularly directed at employers. As we were saying, they are a big part of this story. At that time we wrote to 5,000 employers, again setting out our view and encouraging them to settle. In 2014-15, we ran another contractor loan settlement opportunity. At that time we wrote to 11,000 individuals again setting out our position and encouraging people to settle. Following the Budget announcement in 2016 that brought in the loan charge, we introduced the most recent settlement opportunity, and on the back of that we have written to nearly 50,000 people alerting them to this and encouraging them to settle.

We have done other things, as I hope you would expect, including attending conferences for sectors that we know have a lot of people in this, articles for newsletters, some social media and so on.

Q49 **Rushanara Ali:** Is the thrust of what you are saying that people knew and they just were not prepared to settle and the employers knew and they were not prepared to settle, and you are now using enhanced powers to make them pay? Is that a fair summary? We just need to get to the bottom of who is responsible for what. Is that what you are



saying?

Jim Harra: Going back to 1999, which is when the loan charge applies, obviously people were aware that they were signing up for these schemes because they had to sign up to be employed by certain organisations and to receive payment by loan. In many cases, as Mr Clark mentioned, these were people who, in the early days, got caught up in IR35 compliance, and new schemes were devised to try to continue sheltering their income from taxation when the IR35 rules were introduced to block disguised employment. They had to acknowledge their engagement but now they were trying to disguise the income. There was certainly a level of knowledge about that.

In terms of knowledge about whether this works for tax purposes, Mary has described the mounting communication on our part starting in about 2004. In terms of transparency to HMRC and our ability to see what was going on, it was not until 2004 that the disclosure of tax avoidance schemes regime came in, which required promoters to notify us and to notify users of their schemes that this was a tax avoidance scheme and for those details to go on tax returns. Before 2004, we were trying to find cases but it was not transparent to us.

Since 2004, there has been a mounting series of legal changes to give us more powers to tackle the whole supply chain of avoidance, but in the early days, for example, we had very limited powers to tackle promoters and the tax advisers who were involved in this. It was really the employers and the individuals who used them if we had some transparency.

We also have an approach to casework that meant that, whilst we might open enquiries in lots of cases, we would then select a lead case to work. In those days, we were not as communicative as we would be today to the follower cases to keep them informed that, "There is still an open enquiry into your affairs. We are still working this case. You have entered into an avoidance scheme. We will be turning to you". Our approach has evolved over time and the transparency of the information has evolved.

Q50 **Rushanara Ali:** I have two questions. One is related to this point, which is that you are saying that pre-2004 you had less information and less disclosure. In terms of my earlier question, it is partly the case that some people have just not co-operated and they need to pay. We need to find a way to make sure that happens in a way that is acceptable to both sides. Is that not where we need to focus our attention? Are you saying that it is an evolving picture for you, HMRC, with all your resources and your powers and your might, post 2004? Would it be fair to say that pre 2004, between 1999 and 2004, our constituents, sometimes by necessity or forced by their employers, in cases where they were given a fait accompli—we have lots of cases like that—found themselves signing up to something that they were not fully aware of because there was not much transparency and awareness of what was going on? You were not prompting them because you did not have the information to be able to



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say, "Actually, you should not be doing this", and all of the information package and the awareness-raising you were doing and the tax agents were not able to fulfil those duties.

There should be a different arrangement for that period, because one of the things that people are grappling with is the retrospective application even though this is an evolving picture where you, HMRC, have had to increase your powers and get those powers and learn quickly and pick up on how these systems and highly sophisticated tax avoidance schemes have been set up by middle-men and middle-women. Certainly in my case, with those two constituents, it was a middle organisation that enabled this to happen. It would be helpful if you could just take that point away to think about whether it is right or fair to expect people to have been able to pick up on this when you are saying that you had an evolving picture and an evolving issue that you were dealing with post-2004.

Jim Harra: We will certainly take away the Committee's findings and deliberations. What I would say is that what evolved over time was our ability to get transparency over what was going on in cases and the powers that we have to tackle tax avoidance. What was always there was the obligation on taxpayers to correctly complete their tax returns and to enter income on their tax returns. Our view is that this was always income that should have been put on tax returns.

Rushanara Ali: Could we also get some information about the backlog of people waiting to hear from you and what you are doing to deal with it? I understand that there is some backlog.

Q51 **Chair:** Is there any information? Do you have any figures you could share now with where you are on that?

Mary Aiston: I will just tell you a little bit about what we are doing. We have already brought in an increased number of colleagues to work in this area and got them trained up, and we are bringing in more colleagues as of next month—so that will be the end of this week—to add to that. We are committed to getting back to people who have already been in touch as quickly as possible. I recognise this is stressful for people and, if we can improve getting back to people quickly, that will help.

Q52 **Chair:** Do you have a target timescale for that?

Mary Aiston: Our aim is that, where people have already been in touch, we would see through to settlement, if we can, by 5 April, as already set out.

Q53 **Chair:** When somebody gets in touch, it is a big thing, as Colin said. You realise you should do this, it could be a life-changing sum of money and you come forward; how quickly can someone expect the first response from HMRC, which is, "We have your paperwork" or "You have come forward and this is where we think we are at but we have to refine this"? I have a constituent who has been waiting quite a long time to hear.



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Mary Aiston: I recognise that people have been waiting too long and I am sorry about that.

Rushanara Ali: There is an understaffing issue, is there not?

Q54 **Chair:** Is that going to be solved by the people you have brought in now?

Mary Aiston: Yes, our ambition is to solve that by bringing in extra people, as planned, to improve those turnaround times so that people are not waiting so long.

Q55 **Chair:** What do you think is acceptable? Are we talking two weeks? As we know, 29 March is not very far away. 5 April is also not very far away.

Mary Aiston: No, I agree. HMRC's target turnaround for post is 15 days but that is for all types of post. This is complex and what we want to do is ensure that, when we go back with numbers, they are right. Four weeks is going to be more realistic but I am absolutely committed that we do this as quickly as possible. It is also why it is important to reassure people that, if they have not heard from us but they have been in touch with the serious intent to settle, they are not going to be disadvantaged by that. That is important.

Q56 **Chair:** I just want to go back to one very practical point that Rushanara raised, which is that, as well as coming forward to yourselves, what people will do is come forward to their MP. Have you issued any guidance to Members of Parliament about how we address this in our constituency surgeries? If you have, then I apologise, because I have missed it. In terms of the practical points that you have put today about property, insolvency and timescales, is that something that you would be able to put in guidance to Members of Parliament? "This is where you tell your constituent to go to. This is what we have said. This is how long you can expect the first contact to be when you have contacted HMRC". I do not know how other colleagues feel; I think that would be very helpful.

Mary Aiston: We have done some communication with MPs but that is a good idea and I am happy to take that forward.

Chair: We are getting a lot of panic-stricken people coming forward.

Q57 **Wes Streeting:** What we did get is a rapid response to signing an Early Day Motion telling us why HMRC was absolutely in the right but we have not had any practical information from HMRC to protect our constituents. That really underpins the attitudinal problem at HMRC, which is covering HMRC's backsides but not doing enough practically to help people who are actually on the brink of financial ruin. Sir Jon Thompson explained to this Committee that the loan charge was not retrospective because people had three years to get their affairs in order before it kicked in and, if they did so, they would not have to pay the loan charge. Does it not feel very retrospective if getting their affairs in order means people having to pay tax for years that would otherwise be time-barred as was referred to earlier—so-called "years that are not protected"? How is that justified?



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Mary Aiston: In answer to the first part of your question, I have a whole team of very committed professionals who are keen to support people through the process of settling. That is their reason for coming into work and they are keen that people get in touch so they can do that.

- Q58 **Wes Streeting:** To be clear, I am not blaming overstretched civil servants working in Departments that are under-resourced. I am saying the cultural attitude of HMRC, its leadership and the communications it prioritises with MPs says rather a lot about HMRC's focus on this. Do not hide behind attacks on civil servants. I am not having any of that. I have a lot of time for HMRC officials who are doing a very difficult job in very difficult circumstances.

Mary Aiston: I am very happy to give MPs the further support that they need in tackling and answering concerns and questions from their constituents.

In answer to your question about retrospection, the legislation is not retrospective because it taxes outstanding loan balances as of 5 April 2019. We recognise that these are loans that people took out back over previous years. That legislation is not dependent on the status of the enquiries, which comes to your point about unprotected years. It was felt that it was fair to ensure that everybody who has been in disguised remuneration pays their fair share regardless of the state of underlying enquiries. That is the position on unprotected years.

- Q59 **Wes Streeting:** Is it true to say that HMRC needed a legal power to tax loans made as far back as 1999 because of its own failures to open enquiries or raise assessments at that time?

Mary Aiston: HMRC raised thousands and thousands of enquiries and assessments. It has litigated cases. It has more cases ready to litigate. HMRC has been very active in this area. It is true, as we explained earlier, that there are a small number of cases where enquiries and assessments were not made in due time.

The loan charge is an example of HMRC looking at all tools and options available to us in closing down tax avoidance. As I say, we have done lots of investigation enquiries and litigation. We have encouraged people to settle. Back in 2016 when the loan charge was introduced, our opportunities had encouraged some people to settle but we knew that there were still a lot of people not settling. We were always clear that these schemes did not work but there were still people trying to argue the alternative. Most concerning, there were still people selling new forms of these schemes—it kept morphing—and therefore our suggestion was that using a policy tool would be appropriate to try to close down disguised remuneration avoidance once and for all.

- Q60 **Wes Streeting:** You should come down like a tonne of bricks on those tax advisers and so should their professional bodies, but can you assure the Committee that, where people properly disclosed on their tax returns



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that they had used a loan scheme, HMRC raised all the necessary tax assessments to protect tax that HMRC maintains is due and advised people at the time when they were putting their tax returns and they were reviewed that they were doing something wrong so that they could change their behaviour? Can you make that commitment to the Committee—that HMRC did that?

Mary Aiston: When we talk about unprotected years, what we are saying is that in the vast majority of cases where somebody made that full disclosure, absolutely; we open the enquiry and we explain to people that we did not agree with their tax return and what our position was. An unprotected year is where, for whatever reason, we did not get the enquiry open or make the assessments in time. The reason that we are including those unprotected years in the settlement opportunity is because the loan charge applies to them, and we feel it is better to encourage people to settle all their years that the loan charge applies in one go.

Q61 Wes Streeting: I am afraid this is the rub of the issue, as far as I am concerned. Basically what you are saying is that, because HMRC did not do its job properly at the time, it is now knocking at the door, stretching as far back as 1999 because of failures at the time. What I found most outrageous and egregious about the letter to the Committee is that in that letter HMRC made clear that it cannot tell us how many people would have to pay tax where you would have no legal rights were it not for the loan charge to require them to do so, and you cannot say how much tax is at stake in that situation. Basically, HMRC did not do the job at the time. HMRC still cannot tell us how much money would be involved were it not for the powers that were given to it, and yet HMRC has seen fit to advise Ministers to drive a coach and horses through very proper protections for individual citizens from excessive and unreasonable behaviour by tax authorities. That is what has happened. HMRC did not do the job at the time. You still cannot tell us how much tax would have been due and yet Ministers have been duped, and Parliament has been duped, into giving HMRC an unreasonable degree of punitive powers over people, some of whom have behaved totally recklessly and irresponsibly and deserve to be taken to task by HMRC, and others who behaved in what they thought was a proper way and have been duped by tax advisers.

The rub of it is that, whether they are what I would describe as victims of bad tax advice or people who take advantage of aggressive tax avoidance, they are being treated unfairly universally and, if there are wrongdoers who are caught up in this because of your incompetence as an organisation at the time—not you individually, I should emphasise—that is their good luck, but why should people who have done what they think is right, have taken the advice, followed the rules and submitted their tax returns now face tax bills in excess of £100,000 or £200,000?

By the way, when you say “big bills”, I think of big bills as accidentally leaving the heating on when you go on holiday and coming back and



finding your heating bill is too high or a big bill being “I forgot to pay the gas and electric and now I have a big lump sum to pay”. I do not think of £200,000 big bill territory, which is where some of our constituents are.

Jim Harra: Clearly, I reject your assertions.

Wes Streeting: You can but you do have to justify your rejection of the assertions.

Jim Harra: Which I will now do. First of all, there was always an obligation on these taxpayers to enter the correct income on their tax returns. Secondly, while there will be cases where we have not opened an enquiry into a year in which a user has used these schemes, more usually what will have happened is that we will open an enquiry, we will find that the user has used the scheme, we will then find that it has been used in earlier years as well and we will not have acted timeously in every year in the case. It would be extremely unusual to find a case where there has been full disclosure to HMRC and we have taken no action at all because, as Mary says, we opened hundreds and thousands of enquiries into these schemes.

In terms of the information that we can give the Committee, what we find is that there will be lots of cases where we believe there has not been adequate disclosure that gave us enough information to open an enquiry or make an assessment, but the taxpayer will undoubtedly dispute that because there is partial disclosure—there is disclosure by one party in the scheme but not the other parties. It is therefore not possible without going through these case by case and indeed arguing and disputing the taxpayers to come up with a reliable estimate of how much is protected and how much is unprotected. That is the nature of the situation we are in with 50,000 open cases for a large number of years.

We believe that the proposition that we have put forward is a reasonable and fair way of bringing disguised remuneration avoidance to an end and resolving the open cases in a way that is quick and efficient for everyone concerned, with due sympathy and due discretion used for those people who are going to find these bills hard to pay, to make sure that we spread that payment over a reasonable amount of time and we take everybody’s individual circumstances into account. I suspect we are not going to agree on that but that is HMRC’s position.

Q62 **Wes Streeting:** No, we are not going to agree on it. You talk about “quick” and “efficient” and “sympathetic”; that is just not the experience of our constituents. It is all very well having laudable goals but that is not how it is applying in practice. I appreciate what has been said this afternoon—that HMRC does not want to take people’s homes and all the rest of it—and that will help to deal with some of the anxiety, but ultimately, when it comes to determining affordability, how much someone can manage every month and whether or not someone should take out a loan against their homes, who is making this decision about what is affordable?



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Jim Harra: That is something for us to reach agreement on with the taxpayer and their agent, if they have one, and, as Mary said, about 70% do so. We have announced two payment offers, which means that there is just an automatic right to five years' or seven years' payment, depending on the current level of income, without the need to negotiate individually case by case with us the present circumstances. If anyone has a larger income, which means they fall outside of the terms of that or if they have an income that means they are within the terms of it but they feel that that is still not affordable to them, we can look at them case by case.

Q63 **Wes Streeting:** What if I am a very difficult taxpayer and I am saying, "I am not finding this affordable and I am not going to reach an agreement with you. I do not think you are right"?

Jim Harra: My Department have an excellent track record of agreeing time to pay arrangements with taxpayers. We currently have 700,000 of them in place and, in 90% of those, there is excellent payment, which means that we have come up with terms that the taxpayer can live with, and that is something that we will apply in these cases but it does require dialogue between HMRC and taxpayers.

Q64 **Wes Streeting:** How much interest are you stinging me with?

Jim Harra: There is statutory interest on those payments, as you would expect, because taxpayers who have paid their tax on time would expect us to recover interest from those who have not.

Wes Streeting: Okay; fair enough. I should say that when I say, "How much are you stinging me with?" I have never been involved in any of these disguised remuneration schemes.

Chair: It is on the record there.

Q65 **Wes Streeting:** Yes, that is for the benefit of the tape, and HMRC coming knocking on my door for giving them a hard time. I have two fundamental points or fundamental questions to ask. The first is: why do we have normal taxpayer protections in terms of time limits that HMRC applies on investigation? Why do we do that?

Chair: What is the philosophy?

Wes Streeting: Yes, what is the thinking behind it?

Jim Harra: The rationale for it is that we want people to have certainty and there are limits on the length of time you want people to be expected to keep information so taxpayers can be certain that, after a period of time has passed and they have not heard from HMRC and they have disclosed everything that they should have disclosed to HMRC, they can dispose of their records and they can treat that year as complete. There are exceptions to the time limits. If anyone has acted carelessly or has deliberately made an inaccurate return, we can have extended time limits. Some of those extended time limits can go back 20 years but in those circumstances we have to demonstrate that the behaviour went



along with the inaccuracy. They are useful for us from an administrative point of view because we can treat years as closed and they are useful for taxpayers in terms of the amount of information that they have to retain over long periods of time.

- Q66 **Wes Streeting:** That is very helpful. As you have anticipated, we are not going to agree on this occasion that that principle should not apply, but I wonder if you could help me get my head around the cognitive dissonance between HMRC's behaviour on these types of cases and, say, the decision to seek an overt extended 20-year time limit for assessing tax on offshore bank accounts. When I look at lots of the cases that I have seen, either through my own casework or talking to colleagues across Parliament, the types of people these are, I have to say that lots of people who are caught up in this will quite rightly be saying, "As usual, it is HMRC coming after us, the small business people. It is HMRC coming after us, the people who try to do the right thing—we took tax advice that was wrongly sold—and yet here I am and I am going to be faced with real financial hardships. Meanwhile, the big multinational corporations—the people who stash their money away in tax havens—are not having their tax records pored over back more than 20 years". Is it just that we go after the little guys because they are easier and they do not have as much resource at their disposal to withstand HMRC?

Chair: We have almost been saved by the bell. If you keep your answer short, we will end the session.

Jim Harra: First of all, in terms of large taxpayers, at any given time 50% of multinationals are under investigation, often from multiple risks, and 1% of small businesses are under investigation. Second, for offshore evasion, we have recently sought and been given an extended time limit to go back 12 years, and that is because the nature of that evasion means that it can take us longer to detect it and collect it. We are definitely going after offshore evasion and indeed have the extended time limits to do so.

Chair: That was the final question, was it, Wes?

Wes Streeting: It is now.

Chair: Thank you very much to our witnesses for being here this afternoon. If there is anything after the session that you want to write to us about—there are a few things anyway—we look forward to hearing from you. Thank you.