

Public Accounts Committee

Oral evidence: [HMRC: Progress Review](#), HC 1969

Monday 4 March 2019

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Members present: Meg Hillier (Chair); Sir Geoffrey Clifton-Brown; Caroline Flint; Nigel Mills; Anne Marie Morris; Lee Rowley.

Sir Amyas Morse, Comptroller and Auditor General; Adrian Jenner, Director of Parliamentary Relations, National Audit Office; Leena Mathew, Director, NAO; and Richard Brown, Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-141

Witnesses

I: Sir Jonathan Thompson, Chief Executive and Permanent Secretary, HM Revenue and Customs; Jim Harra, Second Permanent Secretary, HMRC; Karen Wheeler, Director General Border Co-ordination, HMRC; and Kevin Franklin, Director of Customs Transformation, HMRC.

Reports by the Comptroller and Auditor General
The UK border: preparedness for EU exit (HC 1619)

Examination of witnesses

Witnesses: Sir Jonathan Thompson, Jim Harra, Karen Wheeler and Kevin Franklin.

Chair: Welcome to the Public Accounts Committee on Monday 4 March 2019. We are here to look at the National Audit Office's memorandum, "The UK border: preparedness for EU exit update". The Committee has been looking at the subject consistently over the last couple of years. Obviously, it is a really critical time, with 25 days to go before the Brexit date; whether or not it will happen, only time will tell, but there are some significant challenges and risks, and you are very much on the frontline.

We have HMRC in front of us. We want to look at a number of issues that we have raised before—I will not list them all—but we also want to talk a bit about what has happened at the BBC, following on from our hearing with the BBC about tax issues relating to some of their staff, particularly presenters. I will ask Caroline Flint to kick off.

Q1 **Caroline Flint:** Mr Harra, why did HMRC insist on going ahead with the change in responsibilities for determining the employment status for tax purposes of people hired through PSCs, despite concerns about the timescale?

Jim Harra: We listened to representations from public sector bodies, and obviously we were one of the public sector bodies that had to get ready. We had to balance their desire to have longer with the fact that the Exchequer was losing about £700 million a year to non-compliance with IR35. The conclusion that the Government reached was that it would introduce the new measures from April 2017. Our experience is that the public sector coped pretty admirably with that, and we have seen significant increases in yield as a result: about £500 million in the first 12 months of operation, we believe. From our point of view, it was the right decision to take for the public sector as a whole and for the Exchequer.

Q2 **Caroline Flint:** So why did you subsequently agree to a longer implementation period for private sector users of PSCs?

Jim Harra: That, again, is a matter for the Government. The Government listened to representations from the private sector about the complexity of the task facing it. There are also some policy questions that have to be answered for the private sector; for example, which small organisations should be exempted from the measure? There has to be a consultation in



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order to arrive at those policy decisions, so it is not simply a matter of taking the template that we rolled out for the public sector and applying it to the private sector. The decision was taken to give until April 2020 for that.

- Q3 **Caroline Flint:** Why did you give the BBC and other public sector bodies less than two months to test the CEST before the April 2017 change in IR35 responsibilities?

Jim Harra: We had been engaging with public sector bodies for some considerable time about that, including the tool in various draft iterations on our guidance. It was about two months before go live, where, following the feedback we had received, we had the tool in a position where we were satisfied that it could go into a beta product with results that we could live with. We therefore said that if public sector bodies wished to start using the tool from that date in order to get ready, we would stand by the results that it gave. For the vast bulk of the public sector, that proved to be adequate. We backed that up with a lot of support for public sector bodies—including the BBC, as the NAO Report acknowledges—to make sure that they could use the tool effectively in their own areas of responsibility.

- Q4 **Caroline Flint:** Between August 2017 and June 2018, the BBC assessed 663 on-air freelancers using CEST, 92% of whom received an “employed for tax purposes” determination. That contrasts with the situation before April 2017, when the BBC assessed the majority of on-air freelancers as self-employed, using either its own assessment test or the radio industry guidelines. Why does there seem to be such a disconnect between the two systems, given that the BBC has been in conversation with HMRC for many years about the status of its staff?

Jim Harra: As the National Audit Office Report shows, we had concerns about the tax treatment of some BBC presenters for some considerable time before the 2017 changes came in—going right back to about 2004, when we started that engagement. The fact is that both the radio industry guidelines and the CEST tool will give the same result if you apply them correctly. From our point of view, although the tool was there to assist public sector bodies to make decisions, it did not alter the test in any way.

- Q5 **Caroline Flint:** Mr Harra, that is very interesting. Who is to blame for this, given that you are saying that they should have achieved the same results if they were applied correctly?

Jim Harra: It is not for me to apportion blame. We are satisfied that the CEST tool is a high-quality tool that gives the correct answers when used correctly. The radio industry guidance, which is also still in force as a set of guidance, also gives the right answer if used correctly. As the National Audit Office Report makes clear, we raised our concerns with the BBC about how some of their presenters were being treated for tax purposes over a number of years. During the implementation of the 2017 measures, we engaged with the BBC to help them use the tool better, which pushed up the response rate.



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Q6 **Caroline Flint:** Did you anticipate that there would be so many anomalies between the use of one tool and CEST?

Jim Harra: As I say, we don't believe that there are any anomalies between the two. The radio industry guidance remains in place. If someone chose not—

Q7 **Caroline Flint:** Are you surprised, Mr Harra, that there is such a disconnect between the application of the tools?

Jim Harra: I am not sure we were surprised. Different bodies have taken different approaches. The way that the BBC approached the use of personal service companies for its own risk-management purposes is well publicised through the National Audit Office Report. Ultimately, until 2017, the risk in relation to compliance fell on the personal service companies, not on the BBC, but the 2017 change was made more difficult for the BBC by the fact that its practices before then had been a bit adrift.

Q8 **Caroline Flint:** A bit—sorry, I didn't catch that last part.

Jim Harra: A bit adrift.

Q9 **Caroline Flint:** Their employment practices had been quite adrift?

Jim Harra: In terms of the results that the guidance gave.

Q10 **Caroline Flint:** That seems to be suggesting that the BBC's HR or tax department was not on top of applying the test prior to CEST.

Jim Harra: From HMRC's point of view, it was not responsible for doing so where there was a personal service company in place. Until 2017, the obligation fell on the personal service company to apply the test, not on the BBC or any other engager. We did not have obligations in relation to the BBC that we had to enforce before that date. What changed in 2017 is that the responsibility for assessing whether a relationship was an employment one fell on the engager.

Q11 **Caroline Flint:** Did other public sector hirers of freelancers experience similar levels of "unable to determine" results?

Jim Harra: The average rate of response for "unable to determine" results is about 15% from CEST. Once we had engaged with the BBC, I believe that it got its response rate up to 100%, so it got a better response rate from that tool than some other public sector bodies. We engaged with all the bodies as they needed to make sure they had the support to apply the tool correctly. We obviously monitored the feedback on the use of the tool, and we are committed to making improvements to it over time to try to push the response rate that it gives up as high as possible. If the tool does not give you an answer, we have a set of guidance and other support routes available to bodies so they can work with us to get the answer that they need.

Q12 **Caroline Flint:** I presume that you have had a look of the transcript of our session with the BBC. Lord Hall made an apology—he had already apologised before—for the way in which its staff were treated. We have



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had a huge amount of evidence to suggest that many members of staff in broadcasting, TV and radio were basically told that they had to go on these PSC contracts in order to continue their work. Do you acknowledge that?

Jim Harra: I have seen the transcript, and I am aware that the BBC has acknowledged that that was its practice. From HMRC's point of view, we don't regulate or control the use of personal service companies. It is a matter for contractors and engagers whether they use them. There are some non-fiscal reasons why you would. The key thing since 2000, when the off-payroll working rules first came in, is that for tax purposes it is relatively transparent whether you do or do not use a PSC. If the nature of your relationship is one of employment, it shouldn't really make a material difference to your tax affairs. Our responsibility is to ensure that, if a PSC is used, those rules are complied with. Our experience between 2000 and 2017 was that there was a very high rate of non-compliance by PSCs—hence the reason for the 2017 changes. Indeed, some of the issues that the BBC has had, for which it has apologised to its workers, relate not to the introduction of the 2017 changes but to the tax bills that people have been landed with for the year before that.

Q13 **Caroline Flint:** So would you acknowledge that in good faith individual employees of the BBC, some of whom were on staff contracts, were basically told to go on to—if not coerced into accepting—a PSC in order to keep their job?

Jim Harra: My understanding is that the BBC has acknowledged that it required people to use PSCs in order to be engaged. From our point of view, if that is what happened, then the PSC up until 2017 had the primary compliance obligation for tax purposes, and the people running those PSCs needed to comply with the off-payroll working rules.

Q14 **Caroline Flint:** Everybody needs to pay their tax, and their status is important to that. That is not in dispute by any of us here today, but don't you think it seems a bit harsh to go after individuals who were forced on to those PSCs and in good faith followed that process, only to have their employment status questioned down the road—in some cases where they gave up full benefits as full staff employees at the BBC? It does appear that there has been quite a long-term battle between HMRC and the BBC over the status of staff. Don't you think it is a bit harsh to go after these individuals?

Jim Harra: No, I don't. I think whatever the contractual relationship you have with your engager, you have to pay your tax. When I was given my contract, I am not sure that I had much of an opportunity to negotiate many of the terms of it. The reality is that while the BBC's practice of requiring PSCs transferred a risk from the BBC to its workers, in terms of tax compliance, the PSC did have a responsibility then to pay the tax, which they would have paid had they been employed.

Q15 **Caroline Flint:** They did pay the tax in the PSC. It was only down the road, when a new tool came along to determine their employee status, that they were then told they were actually employees of the BBC. Wasn't



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that the case?

Jim Harra: No, that is not the case. If you look at the facts as shown by the NAO Report, we had over 100 presenters under investigation long before the 2017 changes came in, because those changes don't alter the liability for tax. They merely alter the person in the chain who has the responsibility for ensuring compliance. Going back years before 2017, we had already been investigating PSCs contracted with the BBC for non-compliance.

Q16 **Caroline Flint:** But, again, it goes to the heart of what you said earlier—that there had been many years of the BBC being somewhat adrift, in your own words, when it came to determining the employment status of its staff.

Jim Harra: I think this was our experience with off-payroll working generally—that despite a policy solution having been put in place in 2000, there were very high levels of non-compliance with that. So we were left to chase PSCs and try and get them to comply—very large numbers of them—and that is why from an administrative point of view and a compliance point of view the changes that were introduced in 2017 and that are going to be introduced in 2020 will be, I am sure, much more effective in ensuring compliance on an ongoing basis.

Q17 **Caroline Flint:** Looking back over the weekend at the transcript of our last session, I noted that representatives of the BBC indicated that while they were looking at forming some sort of mediation service to work with individuals, they were looking to a more global—I think that was the term—way forward whereby individuals, the BBC and HMRC would try to resolve this situation. What is the status of those discussions?

Jim Harra: I am not able to disclose the status of our discussions with the taxpayer, but I can say that in general we are open to reaching a settlement, provided that we collect the tax that is due under the law. It is convenient for us if we can reach a global settlement for a large group of taxpayers, in administrative terms, but it is essential that any settlement complies with our policy, set out in our litigation and settlement strategy, which requires that the correct amount of tax is paid in that settlement.

Q18 **Caroline Flint:** Are you holding talks with the BBC to sort out pre-2017 cases, when before 2017 PSCs were responsible for paying the correct amount of tax and national insurance?

Jim Harra: Prior to 2017, the responsibility obviously fell on the PSCs, but I think the National Audit Report says that the BBC is interested in helping those people to settle and making financial provision for them. We are open to engaging on behalf of PSCs with anyone who can sort out their compliance and tax bills. There is no reason why we couldn't reach a global settlement with the BBC or any other engager in those circumstances, but I can't disclose the state of things with the BBC, because it is entitled to confidentiality.

Q19 **Caroline Flint:** But it is not impossible that a global settlement would be resolved?



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Jim Harra: No.

Q20 **Caroline Flint:** Thank you. When the director general of the BBC, Lord Hall, gave evidence to the Committee last month, he said, "There has never been enough clarity between HMRC and ourselves about the nature of the employment status" of some of the BBC's freelance presenters. To what extent do you accept his implication that HMRC is to blame for some of this lack of clarity?

Jim Harra: Again, if you look at the National Audit Report it shows that there was extensive engagement between HMRC and the BBC over a number of years to provide guidance, including specific guidance for the media industry. Of necessity, our guidance tends to be of general application, because there are a whole range of sectors, employers and contract models out there and we cannot have bespoke guidance for every taxpayer in the country, but we have worked with the media, and the BBC in particular, to provide guidance that is relevant to the media. I know that the BBC would undoubtedly like more of that. For example, we have had discussions about the future of the radio industry guide, and whether it is maintained as a standalone guide or discontinued. That is something we will continue engagement on.

Q21 **Caroline Flint:** In the testimonies that the Committee received from BBC presenters who have used PSCs, a number of them describe being pursued very aggressively by their employer to go on to PSCs, but a number of them also said they had been pursued aggressively by HMRC. Some of them received many text messages telling them to get in touch or the bailiffs would be coming round. Has the way in which HMRC has pursued this been reasonable, when it is the result of a much wider problem at the BBC?

Jim Harra: I don't recognise those text messages, and I don't recognise the idea that HMRC uses bailiffs, either. It is the case that we require personal service companies to comply. There has been a high level of non-compliance by them, and we rightly pursue them and insist that they meet their obligations. That includes taking them to tribunal if they won't comply. We do that.

Q22 **Chair:** In the case of the text messages, we have some written evidence, which we can make sure is anonymised. We will send that to you.

Jim Harra: Please do. Where we have unpaid tax, we certainly send people messages saying that they must pay their tax, but I am not aware that HMRC uses bailiff firms.

Q23 **Caroline Flint:** If the individuals are happy to provide some of that anonymised information, we will do so. Mr Harra, I am taking from this that first, HMRC thinks that the BBC has been "adrift" in terms of its application of employment status, vis-à-vis people's tax, for a number of years; and, secondly, that there are active discussions between HMRC and the BBC to try to resolve this matter. Does that indicate that although individuals obviously have to be part of this discussion as well, HMRC and the BBC are absolutely the centre point in trying to resolve



this matter and sort it out?

Jim Harra: Yes. I think the most convenient way is if a body that represents a large number of people can bring them together and reach a global position with us. Obviously, we are committed to making sure that settlements are correct in law, making sure that people can afford to pay them and, if necessary, putting in place payment arrangements that people can cope with.

Q24 **Caroline Flint:** My final question is this: there was a lot of concern from individuals that this was taking a very long time—it could be years, and there could be tribunals—and people were paying for accountants and lawyers, which was just ratcheting up the costs for individuals who did not know what the outcome would be down the road. It is a matter of urgency, in terms of timescale, to resolve this matter.

Jim Harra: Obviously, we want it resolved as well. In particular, with the 2017 and 2020 rules coming in, we want to look forward to a better level of compliance through new mechanisms with the off-payroll working. We don't want to spend large amounts of resource and large amounts of time having to sort out the past, so the sooner we can do that, the better. Obviously, it is not all within HMRC's control. If any PSC wishes to challenge our view, they have a perfect right to appeal to the tribunal, and then litigation takes its course—and takes its time, unfortunately.

Q25 **Sir Geoffrey Clifton-Brown:** Mr Harra, would you agree that tax compliance matters should be investigated promptly by you?

Jim Harra: Yes.

Q26 **Sir Geoffrey Clifton-Brown:** You changed the rules in 2000. You became aware in 2004 that there was wide-scale non-compliance among PSCs, and yet it took you till 2017 to make the employer ultimately responsible. Would it not have been much better if you had acted quicker? You would have saved a lot of heartache for people setting up PSCs and not paying the total amount of tax due.

Jim Harra: Unfortunately, HMRC does not get to decide who is made responsible for these matters—

Sir Geoffrey Clifton-Brown: That's not the issue, is it?

Jim Harra: But since 2000, HMRC has worked hard and investigated many, many PSCs to try to make the 2000 measures work. If you look back to the proposals in 2000, you can see that they were not, as enacted, what HMRC would have wanted at the time, but that is what we were left with and we had to spend a considerable number of years trying to make them work in the face of widespread non-compliance by PSCs and their advisers. We eventually made the case to Government that £700 million a year in 2016-17, climbing to an estimated £1.3 billion in subsequent years, was too much for the Exchequer to bear and that we had a different administrative way of applying those rules that would significantly reduce that gap. Ministers and Parliament listened to us and passed the legislation.



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Q27 Sir Geoffrey Clifton-Brown: Clearly, the amount was rising each year, because the number of PSCs was rising each year, and the amount of money being put into them was presumably rising each year as the BBC paid them more. If you became aware of the problem in 2004 but did not really crack down on it until 2017—13 years later—isn't that actually not acting in the best interests of the taxpayer?

Jim Harra: As some of the evidence in the NAO Report—for example, the hundreds of cases that we were investigating and the cases that we have taken to tribunal and won so far—shows, we have been pursuing this throughout the time since 2000. It was a policy change in 2017 in relation to the public sector, and we believe it will make a material difference to the gap in a way that does not involve us having to investigate many hundreds—thousands—of personal service companies. That, in our view, is a more efficient way of applying these rules, but it required some time to convince successive Governments and Parliament that they should change the way Parliament had decided in 2000 it wanted this done.

Q28 Lee Rowley: I want to follow up on your discussion with Ms Flint. You said very clearly about 15 minutes ago that you would stand by the results that CEST gave. How do you know they are correct?

Jim Harra: We thoroughly test CEST, and we have tested it with a set of stakeholders against court decisions and tribunal decisions about employment status, to make sure that when you pour the relevant facts into CEST, it gives the answer that employment law or the employment status decisions have given. The point about using it is that while it is not mandatory to use it, we have given an assurance to engagers that if you use this tool and use it correctly, you can rely on its results; we will not challenge or question the result that you have obtained from it. So it gives them a level of certainty.

Q29 Chair: So you have to keep a documentary record of the questions and answers in order to prove that.

Jim Harra: Yes, but one of the things we do is to test that—the answer that the tool gives is only as good as the quality of the input to it.

Chair: It's a simple question, though. You have to keep a record—

Jim Harra: Yes, you—

Chair: Of the questions you have asked, to give yourself cover with HMRC.

Q30 Lee Rowley: How do people find out your interpretation of any definitions within that, in order to align with your assessment of correctness?

Jim Harra: What we have done since the 2017 rules came in, for example, is to go out and audit a number of public sector bodies to find out how they have used the tool and whether the result that they have got from using it is based on good-quality input.

Q31 Lee Rowley: But that is an audit that is retrospective, or after the event. What should the average public sector body—large, small and medium—



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do to make sure that its interpretations of wording are correct? You are telling me that they have to write down on a piece of paper how they are interpreting a certain semantic word in the tool.

Jim Harra: No, our approach in implementing the 2017 changes was to have a lot of dialogue and direct engagement with public sector bodies, so that we could understand how they were going about the one-off task of bringing their existing contractors through the tool and how they were then planning to use it on an ongoing basis.

We supported them to make sure that they could use it effectively from the outset, as well as auditing after the event. An example of the kind of thing that we did was: if a central HR team just takes the contracts and enters details of the contracts into the tool, they might get a different answer from the one they would have got if they had gone out to the frontline and found out how the contract was actually being applied in practice.

Q32 **Lee Rowley:** You are explaining a model scenario. I am asking you what the average public sector body should do, in terms of record keeping, in order to be clear about their interpretation of certain words in the tool.

Jim Harra: They need to have systems and processes in place that will withstand our scrutiny. It is not a matter of keeping lots of detailed records, case by case. When we come out, we will look at: what is the process that you follow internally to make sure that you are putting the true facts into this tool? We will look at, for example: is this being done by a central team? Are they engaging with the frontline to find out exactly how these contractors are managed in practice? Are you learning from the results and applying sufficient rigour to what you are doing? Ideally, we do that in advance.

Q33 **Lee Rowley:** So as long as they have a process to interpret, if their interpretation is wrong you would let them off.

Jim Harra: If we are satisfied that an engager has a good process in place for using the tool, and the tool has given them the answer that someone is or is not an employee, we will accept the outcome that the tool gives them, and they will not find themselves liable for past liabilities if they have used the tool correctly.

Q34 **Lee Rowley:** What is your definition of "thoroughly tested"? That is a phrase you used a moment ago, in answer to one of my questions.

Jim Harra: We have thoroughly tested the tool. It is an ongoing process. For example, last summer, with a set of expert stakeholders, we worked through a number of scenarios and a number of test cases based on litigation outcomes to check that the tool gives the correct answer that you would expect a tribunal to give if the facts had been put before them. We continually update the tool as new tribunal and court decisions are made about employment status, as well as continually increasing its scope so that it can respond to more and more types of cases, and give a lower and lower non-response rate. It is an ongoing, unending process.



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Q35 **Lee Rowley:** How many changes have you made to the tool in the last 12 months based on that testing?

Jim Harra: I couldn't tell you offhand.

Chair: Could you write to us?

Q36 **Lee Rowley:** Have you made any? Is it more than zero?

Jim Harra: I am sure we have, because there have been decisions, and we have committed to making further changes to it before the 2020 measures come into force, so that it applies to a wider range of engagements than it currently gives answers to.

Q37 **Lee Rowley:** What about the initial testing that you did? How much testing did you do before you released it?

Jim Harra: We tested it with stakeholders in a test format before February 2017, when we concluded that it was giving good enough results that we would stand by the results that it was giving.

Q38 **Lee Rowley:** What do you mean by good enough results? What were your KPIs?

Jim Harra: Results that our experts regarded as accurate results that they would have given if they had worked the cases manually, rather than using the tool.

Q39 **Lee Rowley:** Who were your experts?

Jim Harra: We have employment status teams in HMRC who work cases—for example, cases that are in dispute, cases that might be going to tribunal or cases that fall outside the tool. Of course, the tool supersedes an earlier online tool called the employment status indicator, which we already had for a number of years. We have that expert team, whose job it is to put the decision making into this tool from the books and from their head. We then test that with external stakeholders as well.

Q40 **Lee Rowley:** How many thousands of scripts did you develop in order to verify its correctness?

Jim Harra: I can't tell you offhand, but I can give you details of the testing that we have done.

Q41 **Lee Rowley:** You could write to us with that. What was the threshold it had to pass for accuracy, percentage-wise?

Jim Harra: We believe it gives the correct answer—

Lee Rowley: What was the percentage threshold it had to pass before you released it?

Jim Harra: There is no question of us releasing a tool that we believe gives incorrect answers.

Lee Rowley: What was the percentage threshold?



Jim Harra: There is no threshold of incorrect answers that we tolerate.

Q42 **Lee Rowley:** You must have had a sign-off process in order to get this tool out, so you must have had a threshold.

Jim Harra: There is no threshold of incorrect answers that we tolerate. What we have tolerated is a threshold of cases where the tool will not give you an answer. When we released it, it did not give an answer in about 15% of cases. We are committed to expanding it so that it gives answers in more cases.

Q43 **Lee Rowley:** So your success criteria were 100%, and you will write to us to explain how many thousands of scripts you assessed that 100% on.

Jim Harra: I will write to you to describe the process that we have gone through to continually test that.

Q44 **Chair:** Can I ask something about this? One of the issues that has been raised with me—particularly on tech and IT—is that the way people work in certain sectors means that they will be paid more to work on a personal service company arrangement, because there will never be a full-time employment role in that and they will hop around. However, even if it were possible for them to be paid as an employee, they would be paid less, so the argument has been put to me that the tax take would be pretty much balanced. Have you done a detailed analysis of the tax take differences by applying the tool—particularly for the roll-out in 2020?

Jim Harra: The CEST tool is not a liability-assessing tool, so it does not tell you how much tax you owe.

Q45 **Chair:** Exactly. Have you done some assessment of that elsewhere in HMRC? This is a bit different from the public sector, where whole types of business and methods of doing business have grown up, rightly or wrongly, because the economy is currently very international, particularly in sectors such as tech and IT. Have you done any analysis of individual sectors—those ones or others—to show what you would get if all those staff were employed on lower salaries than they would earn through this route?

Jim Harra: I am not aware that we have. The changes that we introduced in 2017 and will introduce in 2020 do not alter the ability to use personal service companies, if that is what people want to do, for other reasons. They merely apply the 2000 tax rules, which say that regardless of which of these two models you use, the tax outturn must be equivalent.

Q46 **Chair:** We might pursue that with you offline, because it is not quite the direct point of today's session. When Ms Flint was questioning you, you said that you were looking at people who were avoiding tax, and that is one of the reasons you pursued this. We have very clear evidence, and Lord Hall has now acknowledged, that BBC presenters were asked or told to go on to personal service companies. They were not deliberately choosing to do that to avoid tax; they were told, "If you don't do this, you will lose your job." Do you think it is appropriate to use that tax



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avoidance pursuance route—five years to a tribunal, huge costs and so on—as a solution? Let us be clear that none of us is saying that people should not pay the tax they owe, but is that approach the best way when they are all trying to reach a settlement, too?

Jim Harra: I am not aware that I described it as tax avoidance; if I did, I apologise. The use of a personal service company is not a contrived tax avoidance scheme—

Q47 **Chair:** Sorry; perhaps I misphrased that. They avoided tax by using a PSC, even if it was not a tax avoidance vehicle.

Jim Harra: Since 2000, people have not been able to escape employment taxes by using a personal service company, because those tax rules said that regardless of whether you use a PSC or not, the same tax applies if the nature of the underlying relationship is equivalent to employment. We found that when we placed that compliance obligation on to PSCs, there was a very high level of non-compliance by them for a variety of reasons, from ignorance or carelessness through to deliberate non-compliance. We are not applying avoidance measures to tackle this; in fact, the measure that applies—the tax level—is exactly the same as it was in 2000. All that we have done is to say that apart from the PSC, there are people in the supply chain who ought to have obligations in this space, particularly the engagers.

Q48 **Chair:** What timeline do you aim for? In an ideal world, how long would you expect a tax investigation to be open on somebody before it goes to a tribunal? From some of the evidence that we have had privately, we hear that five years is common. Do you think that is an acceptable time?

Jim Harra: I think it varies considerably, depending on the point that is at issue and whether we can settle by agreement or the dispute ends up in litigation. The vast majority of our inquiries are much quicker than that. I can get you some details about the elapsed time on inquiries.

Chair: That would be very helpful. We know that there are tribunal issues across Government, not just in HMRC. We may come back to you in writing on some of those points, because we have had some quite interesting evidence, but I think we will have to leave it there for now.

I did not properly introduce Mr Harra, who has been the star turn for the last half hour, so let me introduce our witnesses, who are all from HMRC. From left to right, we have Karen Wheeler, director general for border co-ordination; Jim Harra, second permanent secretary; Sir Jonathan Thompson, chief executive and permanent secretary; and Kevin Franklin, director of customs transformation. You will all get a turn now.

Sir Geoffrey Clifton-Brown: Sir Jonathan, congratulations on your knighthood.

Sir Jonathan Thompson: Thank you.

Q49 **Sir Geoffrey Clifton-Brown:** When we leave—whenever that is—if it is without a deal, what are your main worries about border functioning?



Sir Jonathan Thompson: Our main worries are threefold, really: first, the readiness of traders for the changes under day one of no deal; secondly, the preparedness, specifically in Northern Ireland; and thirdly, what approach EU member states may take to checking. Those have been the three risks at the border for some considerable time, as we have set out in previous exchanges. Karen can dig through the detail of that if you want, but those are the top three.

Q50 **Sir Geoffrey Clifton-Brown:** Given that we cannot do much about the Northern Ireland situation until the Government makes up its mind, let's concentrate on the other two for a minute. Since we last discussed the matter in November, what progress have you made on informing traders of the systems that they will have to undergo?

Sir Jonathan Thompson: Shall I start, and then pass over to Karen? We have been pushing fairly hard on communications: we have issued three technical notices, we have written directly on three occasions to the 145,000 traders we are aware of—the VAT-registered traders—and we have issued four versions of a partnership pack targeted specifically at different sectors of the economy. More than 100,000 other businesses have registered with us to get information. We have been working through 90 trade bodies to get the message out, as far as we can, to the estimated 100,000 additional traders who are below the VAT threshold.

That is where we have been going with the customs and HMRC aspects of it. As for broader awareness, I will let Karen talk to you about the work that we have been doing across ports and airports.

Karen Wheeler: For nearly the last two years, we have had steering groups with what we call the border industry: the ports, the airports, the logistics, local authorities and other groups. They have been constantly engaged over the last period, but since we were last in front of the PAC, we have pushed particularly hard on trying to tackle the trader readiness issue because we saw that as our biggest risk.

In addition to everything else that we were doing, we have run a number of events in the UK and Europe—clearly, traders and road hauliers from Europe will use the border as much as those from the UK, and we need them to be ready to go in both directions. We have held events in Lille and Zeebrugge, and we have more to come—we are going to The Hague this week as well. In the UK, we have been trying to work across Government and co-ordinate with other Departments. We have had 33 other Government events of various sorts, and we have webinars as well.

We have made a big push on all this. In face-to-face events, we think we have covered at least 2,000 organisations so far and we expect to cover another 2,000 in the rest of the month. Our aim is to use those 2,000 big organisations and ask them to go back through their supply chains into the small organisations. Our biggest risk comes from the 95% of much smaller organisations. Clearly, they are not going to come to events, so we have been trying to go through trade rep organisations and to get the larger



organisations, which often work through smaller organisations, to try to direct them as well.

- Q51 **Sir Geoffrey Clifton-Brown:** All of that is admirable. You hinted at the problem right at the end of your answer: it's those small businesses that have not engaged with you. Of the 145,000 traders that you or Sir Jonathan mentioned, how many businesses do you think have really taken all this on board and are going to be ready for day one of no deal?

Sir Jonathan Thompson: I think we discussed this before. The lead indicator is the number of businesses applying for an economic operator registration and identification scheme number—the EORI scheme number. As at close of business last Friday week—on 22 February—we had had 46,616 new registrations, against a potential population of 240,000. Numbers have been rising fairly rapidly since the self-assessment deadline closed, so we are seeing the curve rise, but I think it's reasonable at this point to think we will not get all 240,000 through. We have actually built a facility whereby we could process 11,000 a day if that demand was there.

That is the lead indicator for us. You need that as the starting point to be able to do everything else, and it's the No. 1 thing we recommend a business to do—get that number. It's a unique identifier. It allows you, therefore, to start your customs processes, hire a customs agent and so on. That is the lead indicator that all three of us are using.

- Q52 **Sir Geoffrey Clifton-Brown:** We may leave without a deal in about a fortnight's time or just three weeks' time. It seems to me that it is still quite a small percentage that you have engaged with. How is this thing going to work if we leave in three weeks' time without a deal? A large number of businesses out there have not engaged with you.

Sir Jonathan Thompson: Jim might want to talk to you about how we might approach those businesses that have not been through that process.

- Q53 **Sir Geoffrey Clifton-Brown:** I suppose your phrase is that this might be sub-optimal. It sounds as though it is certainly going to be sub-optimal.

Sir Jonathan Thompson: That is indeed the word that we have been using for some considerable time. Sorry, but you are covering quite a lot of ground in this question, so I think it might be better if Jim explains to you what we would do with compliant businesses, those that are making an attempt and those that are not making an attempt. We would differentiate between those three groups.

Jim Harra: We have announced a major simplification, which will apply in particular at the ro-ro locations—Holyhead and the channel—to help the flow of traffic. The key thing that we want traders to do is register for the EORI number, as Jon said, and then register for that simplification if it will be beneficial to them. The simplification will enable them to move their goods into the UK with minimal customs processes to do before they reach the border, and then they will be able to complete their customs processes and make payment of any customs duties due sometime afterwards. So all our communications so far have been to encourage people to take that up.



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We have done some surveying, which shows us that about 55% of our target population believe that they will be ready in time, but about 40% have said that they have no plans to get ready, and the main reason for that is the continued uncertainty about whether that is a good use of their time and money.

Of course, with a lot of these small businesses, it is not the case that they move goods every day, so it is not the case that they may intend, on 30 March, to move their goods. Some, for example, might bring goods in only for the Christmas market, and they may think, "I've got time to do this." But what we really want to do is get those EORI applications and TSP—transitional simplified procedures—applications up.

In the event that traders bring their goods to the UK border and have not complied with any of that—have not registered for an EORI and have not signed up for the simplification—our process will be that if these are controlled goods they are trying to move, like excise goods or goods that require a licence, or if they are a high-risk trader, action will be taken straightaway. But otherwise, Border Force staff will be empowered to educate those people and say, "You can move your goods, but I have taken your details. You must catch up with HMRC, register for your EORI and trade on a more regular basis in the future." A combination of the simplification and that empowerment of staff we hope will keep trade fluid.

Q54 Sir Geoffrey Clifton-Brown: Presumably, the process involves the following: when this person turns up, not having engaged with you or got the unique registration number, you will stop them, get the details of what they are carrying, and tell them to get in touch with you and declare their duties subsequently. If there are very large numbers of these people, will it not cause huge congestion?

Jim Harra: Our priority is not to cause congestion. We will carry on the communication, but if they are stopped by Border Force and it is found that they have not complied with these basic obligations, Border Force will be empowered to keep trade fluid by saying, "You can leave the port with your goods, but you must get in touch with HMRC afterwards and sign up." We expect, over a period of time, to see that compliance rate grow.

Q55 Sir Geoffrey Clifton-Brown: Is there a danger that there will be so many of these people—I hope this is not the case—that you will just get into a situation where, in order to avoid a massive snarl-up at Holyhead, Dover or wherever, you just have to wave some of these people through, and therefore there is a risk to the Exchequer?

Karen Wheeler: Is it worth making it clear that we will not systematically stop all these trucks to check whether they have complied at the border? Otherwise, it would create the snarl-up that you are anticipating.

Chair: Okay, so in answer to Sir Geoffrey's question—

Q56 Sir Geoffrey Clifton-Brown: Surely there must be a risk to the Exchequer, if you are not going to stop them all. I am not being critical. Maybe it is a calculation that you have done in terms of risk—I don't



know.

Karen Wheeler: It is precisely that, because we have always taken the view that we wanted to prioritise flow. It is why we are trying to get everybody to comply. We think the vast majority of people will comply, but may not have been able to get ready. Border Force will be doing the same number of checks for security purposes as it currently does. If it stops a truck that demonstrates that it has not managed to comply, the process that Jim describes will apply then.

Q57 **Sir Geoffrey Clifton-Brown:** Let us move on. That is all in our control. The bit that is not in our control is that these businesses trying to get goods into the EU will be treated as third-country exporters. Therefore, going the other way, exporting from this country, the French or whoever might have double the number of checks, which could also cause a great snarl-up. What discussions have you been in with EU countries over this matter?

Karen Wheeler: You are absolutely right. I am confident that the EU member states will stop any trucks that have not complied. They certainly are intending to do that. There have been largely informal discussions, because most of the member states have not agreed to have conversations with us directly about their arrangements, but we know that the EU and member states all intend to provide proper customs controls and treat us a third country—so they do intend to stop traders.

We understand that in the case of the channel ports, they are working hard to try to keep flow going, and are keen that that happens. We understand that they would like us to try to facilitate stopping and checking trucks that are due to head towards Calais and Coquelles. Indeed, they are planning on doing some readiness checking on their side of the border before trucks arrive in the UK with the aim of doing that. We don't know exactly how that will work. We know that they have identified some locations where they are planning to carry out those checks, but we don't know what they would be able to do in respect of stopping trucks advancing to the port. We know that our own situation is that we would not have the powers to stop trucks.

Q58 **Sir Geoffrey Clifton-Brown:** Sir Jonathan, have you done any modelling on the worst-case scenario and is there a scenario where the whole thing just becomes so jammed up that you will have to start to prioritise which lorries are allowed through and which are not, in terms of immediate emergency for drugs or foodstuffs that are desperately wanted? Is there a scenario in which you are likely to have to start to prioritise what goes through and what does not?

Sir Jonathan Thompson: We have done some modelling on that basis, yes. The Government's report, which was published last week, says that flow could be very significantly restricted for several months. That was relatively clearly set out in the paper last week. We have done the modelling. Under the reasonable worst-case scenario, as it's termed by the planners of this, that "very significant" translates into potentially more than an 80% reduction in the flow for a short period. We think that risk is



reducing because of what Karen said about how we now understand the French may behave. Secondly, that risk will reduce as you test it and traders and hauliers learn; it would improve. So quite how dramatic it would be and for what period is, we think, a risk that is reducing, but nevertheless there would be a restriction and that is why the Government asked the Department for Transport to procure some dedicated capacity across the short straits. I understand that you are having a hearing on that on Wednesday.

- Q59 Sir Geoffrey Clifton-Brown:** In that very worst-case scenario, I don't want to spread any panic or anything, but are you confident you have the necessary legislation in place to be able to deal with any scenario that might arise, to make sure that goods that are vitally needed in this country—medicines, certain foodstuffs, chemicals and other really important goods—are going to be able to get in and out of this country?

Sir Jonathan Thompson: I believe we do. Again, just to be clear, there are probably three aspects to trying to address this reasonable worst-case scenario. One is to improve the capacity that is available to you and then prioritise the use of that capacity—for example, in relation to medicines or medical supplies. Secondly, how do you manage the traffic? Thirdly, what easements do you put in place to allow the traffic to flow? The first two of those are having additional capacity and managing the traffic with the Department for Transport, and then the easements or facilitations are as Jim set out in answer to your earlier question. Those would be the three ways in which you would approach it. Over time, what you should expect is that the level of compliance with the rules would increase and the flow would get back to some new normal, which is a phrase used in the Government's publication from last week.

- Q60 Sir Geoffrey Clifton-Brown:** Can you just outline what those easements have been in terms of preparing for this scenario? What easements have you made that you would otherwise not wish to make?

Jim Harra: First, one key simplification, which is standard, is that we have negotiated to re-accede to the common transit convention, because we believe there will be high demand for transit, particularly for UK exports, because that is one way of simplifying moving your goods into France if you can't cope with the new French customs rules. We have also negotiated and agreed with the convention secretariat sensible ways of managing the scanning of the documents, particularly for short straits transportation, where it's very short movement. So traders will be able to take advantage of transit, we think, particularly for exports, and that is a key simplification, but it's a standard one.

In terms of particular easements that we have introduced, we have got the simplified procedures that I mentioned. Any business registering for customs using a ro-ro port can sign up to those simplifications. It means that if they are not moving controlled goods, they will simply be able to keep the customs declaration in their own records. They won't have to submit anything to HMRC and wait for our clearance before they move their goods into the UK. Then, on the fourth day of the following month,



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they can make the supplementary declaration and any payment of duty that is due. And we are looking at whether there should be further easements for six to 12 months on that next-month requirement—whether to push it out.

On entry summary declarations, which the trade told us they would find impossible to do from day one, we have announced that there will be a six-month phasing-in. That has already been announced. In terms of some of the steps that people have to do to take advantage of simplifications, like getting financial guarantees and setting up deferment accounts, we have also postponed some of those requirements for a time to make it as easy as possible to get into those simplifications and use them.

The Government has also announced the postponement of the payment of import VAT. That means no cash-flow disadvantage for VAT-registered businesses and means, again, that there is no time-critical thing that they need to do at the border.

We continue to work on the simplifications as we learn more and more about the readiness, or otherwise, of traders to cope with our requirements. While I can do a lot for goods moving into the UK, the main constraint is for goods moving out of the UK. When I look at my French counterparts, can I see evidence that they are making similar contingency plans? No, I cannot. I suspect that one impact of that is that we will see quite a high level of demand for transit, because that is one simplification the French will allow at their border. We are preparing to ensure that we can cope physically.

Q61 Sir Geoffrey Clifton-Brown: On that subject, would you consider opening transitionally a simplified procedure for customs to responsible intermediaries, such as freight forwarders?

Jim Harra: Yes. One of the issues for us, in terms of trader readiness, is understanding whether these new traders will be able to access a freight forwarder or other agent, and whether they will be able to access the software that they need to comply. It is a bit of a chicken-and-egg question for the customs agents industry. They will not invest in expanding until they can see evidence of demand. The demand has not been stimulated because the traders think, "Well, I am not sure that we are going to have no deal." The Government did announce an £8 million investment in trying to expand the supply side of training, for example, for agents as well as the traders themselves. Since 4 December, we have been processing applications for grants under that fund.

Q62 Sir Geoffrey Clifton-Brown: Would you allow intermediaries, such as freight forwarders, to be authorised consignees, so that they could close out liabilities for financial guarantees that they gave authorities for clients under transit documents?

Jim Harra: Yes. We have been trying to encourage people to sign up as consignees and consignors for transit purposes. We have been encouraging the existing consignees and consignors to look at expanding their current capacity, as well as encouraging new people to come on



board. But, as a failsafe for that, the Government have also been ensuring that we stand up Government offices of departure and destination to manage the expected volume of demand for transit, even if consignor and consignee facilities are not there.

- Q63 **Sir Geoffrey Clifton-Brown:** That is really helpful. Would you go as far as underwriting the financial capacity for such guarantees to be given to responsible intermediaries, so that the transit system could be used extensively to get goods deep into Europe, without having to be cleared and checked at Calais?

Jim Harra: The Government are not committed to underwriting costs in that way. We have introduced a number of easements in terms of what financial guarantees you need to have and when you need to have them in place. The main financial support that the Government have announced so far is the fund that I mentioned, which is specifically earmarked for training and IT costs.

- Q64 **Sir Geoffrey Clifton-Brown:** And you think that will meet sufficient capacity? Given the earlier conversation I had with Sir Jonathan about the number of businesses that are yet engaged, do you think that that help that you have already announced will be sufficient to build the capacity of these intermediaries?

Jim Harra: If demand exceeded the £8 million fund, I would go cap in hand back to the Treasury and ask them if they wanted to invest more in it.

- Q65 **Sir Geoffrey Clifton-Brown:** Can I just come back, Sir Jonathan, to this priority? We had a hearing—you may have read the transcript—with the Department for Transport the other day on this vexed subject of being able to get key foodstuffs, drugs and chemicals into the country. They said that they had no powers to start prioritising which goods came in and out in the event of a complete blockage. But you rather seemed to imply today that you have got the legislation in place and that you will be able—in the event of a complete blockage in the short straits or elsewhere—to start directing certain key drugs, foodstuffs and chemicals, and prioritise them over others.

Karen Wheeler: If I am correct—I am not sure if I am—DfT were referring to the fact that they cannot direct traffic and traders at the border, and prioritise by saying, "That truck with those medicines can come in, but you cannot."

Chair: They were talking about lorry queues—if there were queues—on the motorway to Dover.

Karen Wheeler: Yes. That is correct. That is what they cannot do. Nobody can do that. We are not suggesting that we can do that either. The prioritisation process that DfT has been talking about, which is why we think that those goods can be protected, is effectively issuing tickets on other alternative routes, so that the industries that are importing those goods can use those tickets and come in. They are prioritising through



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that allocation of tickets on pre-reserved ferry capacity on alternative routes from the channel, so it avoids using the channel, which would be blocked under those circumstances.

Q66 **Sir Geoffrey Clifton-Brown:** If I was a vital importer of drugs, how would I know about that?

Karen Wheeler: If you were a vital importer, you would probably be on the list of organisations that the DHSC has already been talking to about contingency planning for its goods. They have already been asked about whether they would make use of the capacity that the DfT has procured.

Q67 **Sir Geoffrey Clifton-Brown:** I said I was not going to touch on the Irish situation, but I do now have a question about it. Will Irish goods be able to continue to use the land bridge? Have you discussed that with the Irish authorities?

Karen Wheeler: Certainly, Irish goods will continue to use the land bridge. There is absolutely no issue with that. They will come through the channel as they currently do and nobody needs to give them the permission, as it were—that will just happen. If they come through the land bridge, they will be like any other traffic coming through the channel. They will presumably go to Holyhead and then cross to Dublin. At that point, they would be subject to some control process, unless they had made use of the transit facilitation that Jim was describing. If they had made use of the transit facilitation, they would bypass controls at our border and would have to discharge their customs duties only once they arrived in Ireland.

Q68 **Sir Geoffrey Clifton-Brown:** I have one further small section to address, which is your resources and staff. Can you tell us where you are at in recruiting extra staff? How many more do you need to recruit?

Sir Jonathan Thompson: At the end of January, we were at just over 4,200. Jim and I are awaiting the end of February number, but we anticipate that being above 4,500 and en route to 5,500, which is the number we need for day one no deal. We can feather that in during the first few months of 2019-20.

Q69 **Sir Geoffrey Clifton-Brown:** So if I understand that answer correctly, you are still 1,000 short of what you need to be?

Sir Jonathan Thompson: Yes.

Q70 **Sir Geoffrey Clifton-Brown:** Where are you going to get them from?

Sir Jonathan Thompson: We are obviously going through the normal recruitment process. To be clear, we do not need all 5,500 on the very first day. There are key areas where you do need that capacity—for example, running the National Clearance Hub, which we talked about before, where we think the volume will be five times more and we need three times more staff who need to be able to do that from day one. In some of the compliance activities, however, that can have a slightly longer tail into the financial year.



Jim Harra: To be clear, we are not necessarily reliant on recruiting off the streets straight into those jobs. We are a large organisation and we can flex our resources. Indeed, I have been working with my colleague in customer services to make sure that existing staff are trained to carry out customs roles, for example, so that they can be switched on to that as and when the demand arrives. That gives us the flexibility in how we fill the posts and also means that if the work does not arrive in accordance with the profile that we have forecast—there is obviously considerable uncertainty around our volumetric projections for the work—those existing staff are trained to do other things and can be put to other uses.

Q71 **Sir Geoffrey Clifton-Brown:** You must be reading my script, because my next question is so obvious. If you are going to take some staff away from existing operations—we understand it is about 700-odd, who were presumably fully employed before—will that affect the effectiveness of those other operations?

Jim Harra: Overall, we are funded for those additional resources, but it adds to the complexity and scale of our workforce management challenge, so there will undoubtedly be an impact on other services.

Sir Jonathan Thompson: To bring that to life in a couple of different things, we have fully reprioritised our projects portfolio twice—I think we have talked about that before—we have stopped entirely or deferred a series of projects, and, in some of the customer services areas, we have decided to phase the work in a different way. You will have seen us announce the fact that we are going to defer levying self-assessment penalties until later in the year. So those are examples of what we can do.

Q72 **Sir Geoffrey Clifton-Brown:** This is my last question. Taking all this into account, and all the modelling you have done, what is the worst effect on UK revenues that no deal could have?

Sir Jonathan Thompson: We anticipated that you might ask this question, and I am afraid the answer is that we cannot give you an estimate of that. If we talk about the border, there are three revenue streams at the border: VAT, excise and duty. The quantum of revenue involved in VAT and excise is exactly as it is now. The variable may be on duty, but that depends very largely on what the Government's tariff policy is, and that is yet to be announced. It is quite difficult to give you a model, therefore, of what the revenue risk is.

On the other two income streams—VAT and excise—we can see how the risk may change, both ways. At this point, we haven't produced an estimate of what might be the additional tax gap, if one arises from these changes.

Q73 **Sir Geoffrey Clifton-Brown:** That sounds like a bit of a cop-out. Let us just assume that the tariff policy remains exactly as it is at the moment, and then answer the question.

Sir Jonathan Thompson: We can't make that assumption, I'm afraid.

Q74 **Sir Geoffrey Clifton-Brown:** Why not?



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Sir Jonathan Thompson: Because under the WTO rules, most-favoured-nation means you have to start with everyone having the same tariff. You can't have differentiated tariffs for ongoing relationships with the EU27 and different tariffs for everyone else.

Q75 **Sir Geoffrey Clifton-Brown:** All right. What is the modelling under that scenario then?

Sir Jonathan Thompson: What happens is that the Government's policy has to go all the way back to what tariffs you want across the 17,400—I think it is—tariffs, and Ministers have to make their own decision on the basis that it is now a sovereign UK decision. When they announce that, we will be able to try to run the model.

Q76 **Chair:** With different tariffs, potentially, for different sectors.

Sir Jonathan Thompson: The reason I am not being drawn into it is that if I give you any indication one way or the other, it may lead logically to some people trying to deduce what the Government's tariff policy might be.

Jim Harra: But if I can talk about the risk to—

Q77 **Chair:** Can I just ask what conversations you are having with Ministers? You will have to implement this, and you are not a ministerially-led Department. The policy decision will be made in different Departments. Is this coming to the broader group? Where are the conversations happening?

Sir Jonathan Thompson: To be transparent, the Cabinet Sub-Committee that is considering the preparations for leaving the European Union under no deal has allowed me to attend the vast majority of the meetings, representing the operationalisation of many of the policies.

Q78 **Chair:** So you can point out where it is operationally difficult.

Sir Jonathan Thompson: I do know, but it is clearly not my place to say. We need to be able to know in relation to tariff policy because, as I understand it, and Kevin may wish to confirm this, it takes roughly six weeks to build the necessary database and seven hours to load it up, so we needed to start that work at risk some time ago, to build the necessary database to be able to load it on CHIEF. Therefore, we were involved in that conversation, even though the Government has not announced that policy.

Q79 **Sir Geoffrey Clifton-Brown:** Even though it hasn't announced it, have you built it in, or what you think it is going to be?

Sir Jonathan Thompson: I will leave Kevin to tell you how he is getting on with that.

Kevin Franklin: In terms of the mechanism that we need to be able to build the tariff, it is there. In terms of the resources that we need to make available to be able to key the data in, they are available. We just need to have the content. Once we have that, we can do it.



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Q80 **Chair:** So how quickly can you do it? It is a six-week lead-in time.

Kevin Franklin: It takes six weeks to build it. We will have to introduce more people to help us to mitigate the risk of compression of time. We have made that provision. But in terms of loading it on to the system, it takes seven hours.

Q81 **Chair:** Right. So just to be clear, from the moment there is a decision about the levels of tariffs in different sectors, it takes seven hours, if you have everything else set up.

Kevin Franklin: In terms of loading it on to the system, it takes seven hours.

Q82 **Chair:** With the right number of people.

Kevin Franklin: Yes.

Chair: How many people will that be?

Kevin Franklin: I do not know the exact number, but we have—

Chair: Tens, hundreds?

Kevin Franklin: No, it's not hundreds. It's tens.

Jim Harra: I should be clear that we have two projects for loading a tariff on to our systems: we have CDS and CHIEF both live. The CDS tariff is an automated process with the Department for International Trade, and Kevin has a joint project with DIT, in which we have been testing that process and ensuring that we can ingest that tariff. For CHIEF, it is a much more manual process. We have been working at risk with a tariff file, getting ready to load it, based on our understanding of what the Government's policy is likely to be. We know that we have capacity to alter that in fairly short order if some of those lines don't turn out to be in accordance with Government policy. To some extent, because of that six-week timeframe, we have been working at risk already to build the—

Q83 **Sir Geoffrey Clifton-Brown:** Supposing, just to take the hypothetical situation, that we leave on 29 March with no deal. What is the timetable that the Government need to make these decisions by?

Sir Jonathan Thompson: We are working on the basis of the decision that went through the Sub-Committee, which is not—obviously—public. That has given us enough information for us to be able to do the work and build the necessary database at risk, and it is at risk because obviously it might change. Assuming that the Government's policy, if and when it is announced, is the same as what went through the Cabinet Sub-Committee, then we will have built it. I don't think there is a risk, unless the Government decide to change their tariffs policy late on.

Q84 **Sir Geoffrey Clifton-Brown:** When do you need to implement it?

Sir Jonathan Thompson: The day before, I assume.

Kevin Franklin: Yes.



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Q85 Sir Geoffrey Clifton-Brown: On 28 March?

Sir Jonathan Thompson: Yes. Which is why, if you wind back six weeks, we needed to start to build it in the middle of February, and that's what we've been doing.

Q86 Sir Geoffrey Clifton-Brown: You are confident, Mr Franklin, that you will be ready—I don't want to intrude on my colleagues' questions on CHIEF and CDS—to operate it on day one.

Kevin Franklin: Yes.

Sir Jonathan Thompson: I think the risk here is in relation to the laying of the statutory instrument. That requires the explanatory memorandum, which would have the tariffs in it. If that is laid after the meaningful vote, then we're in the hands of parliamentarians to process that through the House. That's the other risk, which is clearly—I think we just need to expose it to you.

Q87 Chair: We know there is a lot of legislation to get through, and that that is an area of risk.

I just want to move on to some of the issues around risk. The NAO has got a very helpful diagram of some of the issues that are being dealt with, and I know that some colleagues will be coming in on them. Ms Wheeler, what systems are most at risk of not being ready by 29 March? We have heard about that one. What keeps you awake at night? What are you worrying about now, given we are 25 days off a potential Brexit?

Karen Wheeler: I am less worried about systems now than I was, but there are—

Chair: Is it just too late now to worry?

Karen Wheeler: No, I am worrying about other things, rather than systems. I think that since we were last here, the critical systems have moved on. As you know—

Chair: There are some you are not reporting on now, because you have shelved—well, they are not going to be ready in time, so you have not shelved working on them, but you are—

Karen Wheeler: Some of them, for example, we have stopped reporting on, because we don't think they are absolutely critical for day one. We would still be making progress on them and they're still being reported—probably in HMRC or other areas—but, frankly, we would be able to operate the border if they're not ready. Some of them are making good progress in any case. The tariff application was one. There are tight timescales to get it all done, but we are confident it will be there.

The one that's probably been most visibly worrying, because it is a completely new system, is DEFRA's IPAFFS system. That's not keeping me awake at night, because there are two contingencies, so DEFRA is reasonably confident it would still be able to deliver IPAFFS and a decision



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is being made this week. A number of decisions have been made about whether it is okay to go.

Q88 **Chair:** There are manual workarounds.

Karen Wheeler: Exactly. There is a manual workaround and there is—

Q89 **Chair:** Fax machines are not banned at HMRC and Border Force, then, as they apparently are going to be in the NHS. *[Laughter.]* Seriously, have you got enough fax machines to deal with the fax workaround?

Karen Wheeler: There are enough people to deal with the manual workaround and the manual contingency—

Chair: All fax manufacturers should be beating a path to your door, clearly.

Karen Wheeler: I am not sure about that. That is not an ideal contingency, for the same obvious reasons, but there is another contingency as well, which could also operate. That is the PHILIS online system, which may also be a contingency that could be stood up in time—

Q90 **Chair:** We covered some of this when Clare Moriarty from DEFRA was here.

Karen Wheeler: So IPAFFS is one. ALVS, which is the other one, was probably dealt with as well by Clare Moriarty. That is the system that joins up, effectively, CHIEF and the IPAFFS system. There are some changes that need to be made there. Again, they're not particularly high risk, but they are critical. Those are probably the most high-risk systems.

Q91 **Chair:** You mentioned transit. In figure 1 here, IT is amber, but process is still red.

Karen Wheeler: There is a transit system and a scanning solution, so that is the IT piece, which is amber. The scanning solution is largely well defined and is just being agreed to be implemented, so again, that is not particularly high risk. The process area that we are obviously more concerned about is the locations where it will operate from, because in order for it to operate, there have to be offices of destination and departure in the UK where customs formalities can be discharged. Those have to be in place around the various ro-ro ports.

Q92 **Chair:** So you still haven't got them fixed up yet.

Karen Wheeler: Some have been identified, but given the quantities of people making use of transit, HMRC is looking for additional locations in addition to those.

Q93 **Chair:** With 25 days to go, you are still looking for sites. Is this farmers' fields? Is this car parks? I mean, what sort of sized sites do you need?

Jim Harra: We have already identified the primary sites that we will use for Dover, Eurotunnel and Holyhead, which are the key pressure points.

Chair: These are the inland ones we've discussed before. Holyhead would



be a bit constrained—

Jim Harra: These are close to the port. The way transit works is that the trader who wants to use transit must either enter transit at a consigner or a consignee's premises, or at a Government office of departure. We have to stand up an office of departure near the ports that the haulier can call into to say, "I want to move these goods through Dover and into Calais using transit." That infrastructure is in place for all the primary sites, but I mentioned earlier that there is considerable uncertainty around our volumetric projections, and in fact I expect the demand on the export side to be quite high, so we have been looking for additional sites.

Q94 **Chair:** Can I just take Holyhead as an example? I travel through it often, so I know that border with Ireland well. It is a constrained site; it is quite big, but it doesn't take long to fill it up with cars and transport. Then you come off, and there is a very small road that takes you—well, I'm not sure where from there. You would easily find big sites. Can you name any places where you have these sites?

Jim Harra: We have a site. We are just finalising the commercials with the operator of the site and doing end-to-end testing of that to make sure that it will all work, so I would prefer not to disclose, but it is on the way to Holyhead. There is a site that can cope with the volumes of transit to Ireland, for example, that we expect. The key thing that we do not yet have is the additional overflow sites, which we will perhaps need several months after day one. We have identified the overflow site for Dover, but we still have to identify the overflow site for Eurotunnel.

Q95 **Chair:** Are you buying these sites, or are you renting them?

Jim Harra: By and large, they are DfT-provided sites, but then we need to make sure that at that location, we have Border Force staff who are able to handle the transit requests that come in there.

Q96 **Chair:** Sir Geoffrey touched on the staffing: you are 1,000 short. You talked about open recruitment; are any of them coming from other Departments, from the hub of civil servants ready to put on their high-vis jackets, turn up at the border and direct lorries?

Jim Harra: The staffing at offices of destination and departure is for Border Force staff, not HMRC staff. We have obviously engaged closely with Border Force to make sure that they understand our requirements and that we understand their ability to stand those up, and in relation to the primary sites and the additional site that we have identified so far, we've got that clarity.

Q97 **Chair:** That would be HMRC.

Jim Harra: No, that is Border Force.

Chair: Sorry, at the overflow site.

Jim Harra: Yes, the overflow site would be Border Force.

Q98 **Chair:** Are they all going to be employees, or are any of them going to be



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transferred from other Departments on a temporary basis?

Jim Harra: They could be employees, or they could be contingent labour.

Q99 **Chair:** So there could be Department for Education officials out there with their high-vis jackets on, doing customs checks.

Jim Harra: I think that is unlikely. If it was not Border Force staff, it is more likely that it would be contractor staff.

Q100 **Sir Geoffrey Clifton-Brown:** What is an acceptable detour time for going to these sites? For example, I understand that Manston is about a 45-mile detour there and back, so what is an acceptable detour?

Jim Harra: We have worked closely with the DfT and with Kent County Council's resilience committee to make sure that these sites are suitable. We would not plan to use Manston as a primary site, but if Brock 3 or 4 is invoked so that traffic is directed to Manston in any event, we will be standing up transit arrangements there as an overflow facility. If any lorry drivers who have been directed there for traffic management reasons say, "I need to enter my goods into transit," we will have officers there who are able to do that.

Q101 **Sir Geoffrey Clifton-Brown:** So by and large, in relation to Operation Brock, your inspections will be coterminous with DfT arrangements.

Jim Harra: Yes. We have been working hand in glove through the cross-Whitehall forums that Karen has created to make sure that what we do dovetails with the traffic management plans.

Q102 **Chair:** We talked earlier about the land bridge from Ireland, Ms Wheeler. In Ireland, people are talking about Brexit more than we are—if that is possible—and there is a real fear that goods will not transit through easily. You have painted a very rosy picture, but can you talk me through how it would actually work for an Irish haulier trying to get from the Republic to Calais? Is the trans fac in place enough so that an Irish haulier would know exactly what to do to meet British requirements before crossing the Irish sea?

Karen Wheeler: Yes. They will not really have much in addition to any other trader or road haulier crossing the channel into the UK.

Q103 **Chair:** I am talking about crossing into Europe from Ireland, across the Irish sea.

Karen Wheeler: Likewise, really. As they come from Ireland into Holyhead, they would be expected to have customs declarations for their goods at that point, because they are leaving the EU and coming into the UK—unless they have done a transit document. Either they need a customs declaration or they need a transit document; if they have a transit document, they could go all the way across and land in France, or wherever, without—

Chair: Joining the queue.



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Jim Harra: May I explain how that works? In Ireland, their goods enter transit at a consignor's office or an office of departure.

Chair: In Ireland?

Jim Harra: In Ireland. They have to get that transit document scanned as they cross the border; we have arrangements in place with the ferry companies to make sure that that can happen. They then just flow through the roads down to Dover. Again, the document has to be scanned at the border, and we have arrangements in place with the ferry operators at Dover to make sure that that will happen. When they get to the French side, they have to discharge their goods from transit, so they will have to go to a French office of destination or consignment.

Q104 **Chair:** What conversations have you been having with the Irish Government to make sure that it all works smoothly? With whom in the Irish Government have you been having those conversations? If it does not work smoothly on the Irish side, it will also cause problems in the UK.

Karen Wheeler: As with the other member states, they are not in a position to have those conversations directly with us. What we have been doing, of course, is making sure we talk to the respective ports and to organisations that operate on both sides, such as road haulage organisations and ferry companies. We are trying to make sure that our arrangements will dovetail, but transit is an international and EU-wide system. Everyone recognises what that is, and it does work.

Q105 **Chair:** The other way that you could transit, of course, is through the Northern Ireland border. Clearly, as you were saying, there is no decision yet on the Northern Ireland border with 25 days to go, but is there anything practical that HMRC and Border Force can do now to be prepared if everything collapses and there is a hard border between Northern Ireland and the Republic?

Karen Wheeler: Nobody is anticipating a hard border. We are not anticipating doing anything to create a hard border, and our understanding is that neither is Ireland.

Q106 **Chair:** That drives me to the point: if you were transporting horses, say—let's make it live animals—to a meet in England, you could go through Northern Ireland, cross the Scottish route and enter that way. How would you track goods or livestock from Ireland that came that way? At that point, they could have changed haulier to one with a UK number plate.

Karen Wheeler: We don't track goods as they go across the border.

Chair: Exactly.

Karen Wheeler: We require people to make customs declarations appropriately, so exactly how it would work depends on what the arrangements are going to be in Northern Ireland.

Q107 **Chair:** My point is that there are 25 days to go and we do not know the arrangements in Northern Ireland. Those intra-UK routes are well used



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already. There is nothing really to stop people—as I am sure plenty do anyway—going through the Northern Ireland border, which is obviously virtual at the moment, through to the Scottish routes. There is nothing to stop people carrying on doing that. You would not be able to track anything coming through, would you?

Karen Wheeler: Clearly, because we are not anticipating a hard border, we are not anticipating physical checks in either direction being a constraint on goods trading. Of course, they will be impacted by whatever other arrangements there are. We are not sure what Ireland is planning on doing, and we have not communicated what—

Q108 **Chair:** So at the moment we really do not know what is going to happen?

Jim Harra: The Government have not announced what the arrangements are on the Northern Ireland border, but to take the example that you gave earlier, I think it would be quite unusual, but if someone wanted to move goods from Ireland to France via Northern Ireland and then down the roads from Scotland, for example, they would be able to enter transit and exit transit in the same way as I described. There is a process of scanning the document to say that it has left Ireland and entered the UK.

In the absence of offices of transit at the border, which neither Government is planning to put in place, we have to implement a solution to that particular aspect of the transit procedure. We have proposals for how we will do that, but they have not been announced.

Q109 **Chair:** So you do have proposals? I am aware that smuggling and crime already takes place across that border anyway. There were well-worn routes that took people from Victoria coach station through the Scottish routes, down through Northern Ireland to Dublin for all sorts of nefarious issues. That has been well known. I am sure it has gone up and down, and that you can tell me the latest, but if that is already happening when we have an arrangement with another EU country, doesn't it raise some real concerns about people who mean ill to either country using that route as a way to transport illegal goods, or to conduct criminal behaviour?

Sir Jonathan Thompson: Possibly. I hate to quote the Government's paper, but the Government will "publish further details on its immediate, temporary, arrangements for trade" between Northern Ireland and the Republic of Ireland.

Q110 **Chair:** I appreciate that that rather, in places, woolly document is the best position that we have from the Government at the moment. It is not your document, exactly; it is a policy position.

There are now 25 days to go. Ms Wheeler, practically how much can you do if the Government announces its decision tomorrow? What is the absolute deadline that really makes a difference to you about what you can do to prepare to mitigate criminality, smuggling and other nefarious matters that might take place across that border?



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Karen Wheeler: There is no doubt that with this amount of time left to communicate and plan for no deal, I do not think that we could say that we, or Northern Ireland traders, could be ready in time for 29 March, if there was no deal. I think we have been very clear about that for many months. Of course, we will be aiming to communicate and put in place whatever arrangements are agreed as soon as the Government is ready. We will have to, at that point, also communicate the fact that we will not be expecting, for example, to penalise businesses that cannot comply with the arrangements.

Jim Harra: Can I pick that up, because it would be my job to operationalise it? First of all, in relation to criminality around the movement of goods across the border, we already manage fiscal risks in relation to cross-border VAT and cross-border excise. We do that without a hard border and without any permanent physical infrastructure.

Q111 **Chair:** But we are both in the EU, so there is not a tariff border. There are certain edges on fuel prices, for example, but not cliff edges on tariffs.

Jim Harra: Yes, and I am not aware that on day one there will be significant cliff edges there either.

Chair: If we leave with no deal, there will be WTO rules on one side of the border and EU rules on the other.

Jim Harra: Yes, but the Government has yet to announce what its tariff policies are. VAT is already 20%; most tariffs are significantly less than that, and we manage that risk successfully. My main worry for day one is not some outburst of criminality, but that there is insufficient time for traders who wish to comply to get ready. Therefore the kinds of simplifications and the kind of approach that I mentioned in relation to ro-ro at the channel will apply with a magnitude of whatever in Northern Ireland, because clearly, even if we announced tomorrow what our processes are, software developers have not changed the systems that traders in Northern Ireland use and they have not had time to—

Q112 **Chair:** But the Comptroller and Auditor General from the Northern Ireland Audit Office, the equivalent of Sir Amyas Morse, is very concerned—he did a paper on this—because the dairy industry and some of the meat processing work cross the border several times in the process. With 25 days to go, what guidance are you giving to Northern Ireland businesses that might be affected by it? You cannot give any.

Jim Harra: At this stage, we have not been able to give any guidance. We have given guidance to Northern Ireland traders who trade internationally about the rules that will apply, but we have said in all our letters that we expect there to be different processes for movement across the land border and we will get in touch with them as soon as we can.

Chair: It could have a big impact on some of those sectors. If you have not read it already, I recommend the paper by the Comptroller and Auditor General.

Q113 **Nigel Mills:** What is the reason why you cannot give advice?



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Sir Jonathan Thompson: Ministers are not content for us to do that until they have announced the policy.

Q114 **Nigel Mills:** So technically, you could give some advice, but you are not allowed to.

Jim Harra: We have certainly been working on what processes we would put in place. We continually—

Q115 **Chair:** So you have been, but do they know that? I think that is what Mr Mills is driving at. You cannot tell them.

Jim Harra: No, we cannot tell traders.

Q116 **Anne Marie Morris:** Clearly, this is a totally off-the-wall project management situation where you do not know all the variables and, therefore, you can plan only on the basis of what you have. It sounds like you have managed remarkably well, given that scenario.

What I see is probably a two-stage plan. First, day one, and then after that at least you will know what some of the variables are, so when you get to day 30, you will know exactly where you are and the plans will be put in place. I am presuming that you are proceeding on both those fronts.

Jim Harra: We have three phases that we see in no deal. There is day one. There is then what I would call an interim state, because there are various things that we will have to do that will not be there on day one, and there are various easements that we will have to plan for how they will be removed over time. We have given certain commitments about how long that will take—for example, on the simplified procedures that I mentioned, we have promised that while we will review them within three to six months, we will give at least 12 months' notice of their withdrawal. Then there is a target-operating model, which would be in the much longer term.

Q117 **Anne Marie Morris:** Given that you are operating in an area where you do not necessarily have all the answers yet, would I be right in saying that having a number of amber-red readings, although not good, should not be a great surprise; and that, by day one, we will see some of those suddenly going to amber-green, because you will have a clearer direction as to where you are going and what the knowns and unknowns are? Would that be fair, Sir Jonathan?

Sir Jonathan Thompson: Some of figure 1 has changed since it was published. On safety and security declarations, we reached an agreement with the Home Secretary that we would phase them in over the first six months. So you are right, yes, that some of this will change. You then have to work through the practicality of it, and then you would move towards higher levels of compliance over time.

Q118 **Anne Marie Morris:** Got it. Mr Franklin, can we now move to the interesting issues around CHIEF and CDS? Clearly, that is one area for which you have agreed—sensibly, it seems to me—that rather than trying



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to pursue CDS and CHIEF, CHIEF will be the focus. Again, that is probably based on the fact that there will be some things you will know on day one, and other things that you will know at the midpoint or the endpoint that will change your progress. Am I right in concluding that CHIEF will be ready on day one?

Kevin Franklin: Yes. We can be very confident about that. We have already scaled the infrastructure for CHIEF to be able to accommodate the increase in volume. The live service has already been moved to that infrastructure; we did that last November. We have done extensive testing in a replica version of the CHIEF system.

We now run the CHIEF system at 90 messages per second. That enables us to scale up and cope with the 300 million over a 12-month period. If you compare that with what CHIEF currently has to deal with, it is 13 messages per second. It can really now cope with the stress testing that we have put it through, so we are very confident about that. We have tested that against a number of different data mixes, so we have really thrashed it in terms of performance to make sure it is robust and sufficiently ready.

We have also made some functional changes to CHIEF to accommodate a potential no deal on day one. We have built the changes that we need to accommodate roll-on/roll-off, for example, and postponed accounting of VAT. Those changes have not yet been deployed; they will be deployed on 17 March, but it is ready.

Q119 **Anne Marie Morris:** Okay. On day one, all things being equal, you will know where you are. You will then have some decisions to make about the long-term future of CHIEF and CDS. How are you shaping that decision-making question?

Kevin Franklin: It is worth reminding ourselves that the CDS programme was not initiated because of Brexit. It was initiated because we need to replace CHIEF. We will continue with the work we are doing on CDS. CHIEF is now 25 years of age. Although it is performing well, it is not sustainable in terms of our long-term strategic direction. We always plan. We will continue to run both CHIEF and CDS as dual-running systems until such time as the traders who need to migrate from CHIEF to CDS are ready. They are at different stages of their own business planning life cycles, so we will accommodate that.

Q120 **Anne Marie Morris:** How will that leave you with your contract with Fujitsu?

Kevin Franklin: Our contract currently extends to March 2020. We will need to make a decision on whether to extend that within the next three weeks—by the end of this month. I think it is highly likely that we will need to extend that. We are already talking to Fujitsu about the options for that. We can look at extending it for a year, or part of the offer is three years with a break clause after two years. We have not finalised that discussion yet—that is ongoing, but we will make that decision in the next three weeks.



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Q121 **Anne Marie Morris:** Okay. You will do your level best to try to ensure we enter into a contract that is best value for the taxpayer in that uncertainty.

Kevin Franklin: Yes.

Q122 **Chair:** With the contract with Fujitsu, do you have any idea of what the cost will be of that extension?

Kevin Franklin: The current cost is around £8 million a year. This, as you would imagine, is commercially sensitive.

Q123 **Chair:** That is the current cost.

Kevin Franklin: Yes. It will be at least around that sort of number. We have not decided on what we would be prepared to pay, and we are still having those discussions with Fujitsu as to what the new contract might look like.

Chair: They have got you over a barrel, really, but let's hope you can negotiate hard.

Q124 **Anne Marie Morris:** There are already four organisations that have migrated to CDS, are there not?

Kevin Franklin: Yes.

Q125 **Anne Marie Morris:** Given that your focus will be to continue to run CHIEF, how will you help them fit within your system, now they have become the exception, rather than the rule?

Kevin Franklin: They are at the beginning of the migration path, and you are quite right that there are only four, but CDS is effectively a live service, albeit with a very small number of declarants, although they have submitted 500 declarations to CDS and we have collected £3 million of duty through the system, so we know it does work. You will recall that when we have spoken before, we have looked at a controlled migration path for the top 135 traders, that cover off 80% of imports. We are still working towards that controlled migration path, but that has shifted because there are competing priorities for the traders who want to be on that path, but we will continue with that path. The four that are on there are already being supported as though this is a live service. We will continue to do that. As we complete the functionality and continue to build CDS, we will migrate the additional traders on to that service until the point when we no longer need to use CHIEF.

Q126 **Anne Marie Morris:** Have you come across any particular glitches that you have—hopefully—managed to fix with the four that have gone through on the system?

Kevin Franklin: We have had no significant problems with the four.

Q127 **Anne Marie Morris:** Okay. That is all very good. In terms of the future, while I appreciate that some of this is commercially sensitive, can you give us any sense of how long it will be until we get everyone on to the



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CDS system?

Kevin Franklin: If you recall, we are delivering CDS through three releases. Releases 1 and 2 cover imports, and the functionality under imports is now largely complete. There are just one or two edge cases that need to be finished. You can now do any type of customs declaration on to CDS when you are ready. For the 135, we would expect to complete that as soon as the trade is ready. We have shifted release 3, which is exports, to the end of March; we have informed the Committee of that. The exports functionality will not be ready until the end of March, so we cannot start the migration of exporters from CHIEF to CDS until April. Our current plans take us through to September, when we would expect to have that migration plan completed for the importers. We might need to go on a bit longer for the exporters; much will depend on when they are ready as well. But we would certainly still be looking to have that migration completed in this calendar year.

Q128 **Anne Marie Morris:** Is anybody stuck between the systems, with part of what they are doing—perhaps imports—on one system and the other part, exports, on the other?

Kevin Franklin: No, they are not. The traders who do imports and exports have deliberately chosen to wait until exports is ready. They are currently still using CHIEF for both imports and exports.

Q129 **Anne Marie Morris:** So those four are dealing only with imports, not exports.

Kevin Franklin: Yes.

Q130 **Anne Marie Morris:** Got it. Given that the very smallest of businesses have understandably not been your priority, how do you see bringing them on board in the fullness of time?

Kevin Franklin: In terms of the businesses that we deal with, it is those organisations that are classified as intermediaries. We deal with 60 software developers and 9,000 customs agents who currently submit their declarations through CHIEF. Of the 60 software developers, we looked at the traders who had the highest and lowest volumes and we mapped our controlled migration plan accordingly. Between now and September, we will be supporting all those software developers to enable them to get on to the system.

Q131 **Anne Marie Morris:** But in terms of these forms—day one, today or September—are you comfortable that the support is available through old systems or new systems?

Kevin Franklin: Yes, absolutely. Our live service support was already there for CHIEF, but it is now geared for CDS as well. We have diverted resources to ensure that that live support is in place.

Q132 **Lee Rowley:** Turning to the loan charge issue that has been raised in a number of areas, I have a couple of questions. I understand that some of the requests for coverage of payment go back to the 1999-2000 financial



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year, when I was still at school. Could you outline the rationale for seeking charges, whether legitimate or illegitimate, that are nearly 20 years old—or 20 years old, in some instances?

Sir Jonathan Thompson: I think Jim can answer that, because he has been in correspondence with the Chair of the Treasury Committee.

Jim Harra: The disguised remuneration schemes date back to the late '90s. We are talking about relatively small volumes, and perhaps as long ago as 20 years. Nevertheless, the Government took the decision to apply the loan charge to loans outstanding at 5 April this year that were made at any time during the last 20 years if they had not been repaid, or if the tax in relation to them had not been settled. The yield we expect from closing down that avoidance is about £3.2 billion, through a combination of settlements with employers—we expect them to account for 75% of the yield—and settlements with contractors, or, if they do not settle, through the loan charge.

Q133 **Lee Rowley:** To be clear, it is a direct instruction from the Government to go back to the 1999-2000 financial year? It is not your interpretation or your decision? It is the Government and the Treasury alone that have made the decision?

Jim Harra: It is not HMRC's decision, but we do advise Ministers and I would not want to suggest that what we have ended up with is anything other than what we advised. But Ministers obviously—

Q134 **Lee Rowley:** Why did you think it appropriate to go back 20 years?

Jim Harra: Because these schemes have been going on for a long time—there are about 250 of them. With attempts to close them down, what we see is that the market just moves. We need a measure that brings in the tax that has been avoided and brings an end to this form of avoidance, enabling us to clear the decks and go forward with the contractor industry on a less antagonistic basis, with everyone paying their tax and our being able to engage with the minority of contractors who have been involved in the schemes in the same way as we would with any other taxpayer.

Q135 **Lee Rowley:** On the basis of your less antagonistic approach, why have you landed the individuals who have been involved in this with a single tax bill that is payable in a single financial year?

Jim Harra: I would not say that we have landed them with the tax bill. These people have engaged with avoidance schemes, which we have been challenging. The loan charge says, "If you do not settle or repay your loans, you will end up with a one-year tax bill." It will be in most people's financial interests not to do that but to settle with us for all the years, because their liability—for example, their personal allowances and rate threshold—will be spread over those years. There are also more generous terms in the settlement opportunity that we have out there, in terms of the quantum of the income on which we will charge tax. The backstop—if that is a term I should use—is, "If you do not repay these loans or settle with us, the liability will crystallise, for the loans outstanding, on 5 April, and will then form part of your income for the tax year '18-'19."



Q136 Lee Rowley: Why, in the instances that you have outlined, were you not clearer with the individuals earlier that this may occur? In the *Financial Times* a few days ago, an individual said: "I was given poor advice by professionals...Why wasn't I told" by HMRC "as soon as possible in 2008 that I was under inquiry? They had my self-assessment tax return, they knew the payroll scheme was registered under Dotas. They had simply to inform all users of these schemes immediately, not wait over five years."

Jim Harra: We certainly have opened thousands of enquiries into these schemes. I think there are a variety of scenarios, in terms of disclosure, so there will some cases in which we know about it for some years and will have opened inquiries into those years, but we will not have known at the time that they were in those schemes for other years too. There will be some cases where there has been partial disclosure, because obviously there are a number of players in these schemes and it takes us time to pull all that data together and identify people. A lot of the schemes have been designed to prevent us from finding them.

The DOTAS scheme, which notifies us of tax avoidance schemes, came into force only in 2004, so it did not exist in the early years of this. Therefore, we have no way of knowing who was involved in those schemes, unless we could find them for those earlier years. There is a whole range of scenarios. The situation is that we have got thousands of unresolved cases, and this—I use the term again—backstop policy measure should enable us to bring them all to a conclusion once and for all.

Q137 Sir Geoffrey Clifton-Brown: Sir Jonathan, there used to be an old tax dictum that if you had not been notified of a tax irregularity in 12 years, it could not subsequently be collected. Has that now gone out the window?

Sir Jonathan Thompson: My understanding of the legislation—Jim will have to correct me—is that we can go back to the loans that were taken out as far as Mr Rowley set out. There is some question of voluntary restitution. Mr Harra, I'm sure, can go into that.

Jim Harra: There are a variety of time limits in standard tax legislation for the number of years that we can go back and the years for which we can discover unpaid liabilities and make assessments. They vary depending on the culpability of the behaviour of the taxpayer. In the most culpable cases, we can go back 20 years. There is a provision for that. The 12-year figure that you mentioned may relate to a new measure that was introduced last year for offshore evasion. We can go back up to that period.

Among the disguised remuneration users, there are undoubtedly people who have liabilities for years, where under the normal rules we do not now have assessing rights. In our settlement opportunity, we have asked those people to settle for all years, including the years for which we do not have those assessing rights. If they choose not to do that—I can't make them settle voluntarily for those years—they can settle on a formal, statutory



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basis for the years for which I do have assessing rights. Unless they repay the loans for the other years, they will still have loans outstanding at 5 April for which they have not settled the tax, and the loan charge will apply. Our settlement opportunity asks people to pay voluntarily so we can get everything cleared up and they don't have to suffer any loan charge.

Chair: We will leave it there. Sorry, Mr Mills.

Q138 **Nigel Mills:** I am right, aren't I, Mr Harra, that if the loan was ever waived, the tax would always have been triggered? So this is not in your view a retrospective charge? It is merely deeming that loan waiver to have taken place in the current tax year?

Jim Harra: Technically, the loan charge is not a retrospective charge because it applies to loan balances in place on 5 April 2019, and three years' notice was given of that charge coming into force. But, of course, as Mr Rowley mentioned, it relates to loans that were made as long ago as 1999, 20 years ago. But it is not technically retrospective.

Q139 **Nigel Mills:** Presumably the advice that you allege would have been provided to people who received these loans would have said that if this loan was ever waived or ceased to exist that would trigger a big tax bill, so the loan would presumably exist for ever was how the scheme was meant to work.

Jim Harra: To explain how these schemes worked, a worker would be engaged, they would be paid a relatively small salary, and the rest of their income would be paid to them in a non-recourse loan. It would have been made clear to them that there was no expectation that anyone was ever going to ask them to repay that loan. They would then declare to us the small amount of salary as their income and the rest they would take as tax-free money. I would suggest that that is not how people are normally remunerated and we have never believed that it was effective for tax purposes. Nevertheless, a very large number of people used them, probably about 100,000 at its peak. There are currently about 250 of these schemes, so they morph all the time. As a tax authority, I am keen to bring this saga to an end.

Q140 **Chair:** Okay, and we on this Committee think people should pay their full tax. May I touch briefly on an issue around VAT? If you remember, we had sessions with you about the lack of VAT compliance by some overseas sellers. When eBay appeared in front of us in September 2017, they categorically said that sellers can't operate multiple accounts if they are listing products in the same category, so eBay would have systems to pick that up. Obviously, that would mean they would be below the VAT threshold. In some cases where it was an aggregate they would have to pay VAT. We have been alerted to the fact that eBay is allowing thousands of sellers to sell exactly the same products on up to 32 accounts without taking any action against them. Are you aware of this? I don't know if you are or not. Is there anything that you can or should be doing to make sure there is not any VAT avoidance as a result of this?



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Jim Harra: Yes, we are aware of that kind of issue. First, if a seller is overseas—I believe I am right; I will write to you if I am wrong about this—there is no registration threshold. They have to register, so splitting their accounts does not get them under any threshold. If you are a UK business, there is a threshold, but fragmenting your business does not legally allow you to escape the threshold, although it does mean that you are an evasion target that we have to find. We are aware of all the different practices that we need to watch out for on the online platforms. In relation to that evasion on online sales, we have put measures in place since 2016. They are bearing fruit, but it is a work in progress.

Sir Jonathan Thompson: To give you some numbers, we have had more than 60,000 new VAT registrations and we have issued more than 4,800 joint several liability notes.

Q141 **Chair:** It was actually through some very plucky constituents of Chris Heaton-Harris, a former member of this Committee and now a Minister, that we discovered some of the issues around VAT. The NAO then very helpfully looked into it. You have obviously increased the amount of income coming in as a result of that. I understand that Mr Olivetti and Neven Juretic were given a special award as a result of the intelligence that they provided to HMRC. They were told at one point that they were going to get more than the £15,000 they were each awarded for this, because they were obviously losing out as businesses all the while that this was happening. Who authorised the payments and when did anyone decide that the first amount was the total award that they were going to get? They didn't get any more, even though they continue to supply intelligence, including through the website that they run.

Jim Harra: I'm afraid it is our policy that we do not discuss publicly the rewards that we pay to people for information or how we calculate them. I am happy to take it away and have a look at it for you.

Chair: Perhaps we can correspond privately and I will liaise with the relevant MPs of the individuals concerned as well, so that we have that as a discussion involving them.

Jim Harra: I am grateful for that.

Chair: Thank you very much for your time. We genuinely wish you the best of luck in the next 25 days. I hope it is more than luck. You have given us some assurances today, but we all recognise there is a big challenge, whatever happens in the next 25 days or so. We will endeavour to do our best next week to make sure things progress and you have decisions. Each one of us is only one of 650. It is the Government that have to deliver on this. Thank you for your time. The transcript will be up on the website uncorrected in the next day or so. We will make a judgment about how or when or if we produce a report, given the timescale. Thank you very much.