



House of Commons
Northern Ireland Affairs
Committee

**Fuel laundering
and smuggling
in Northern Ireland**

Third Report of Session 2010–12

*Report, together with formal minutes, oral and
written evidence*

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The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Mike Clark (Clerk), Duma Langton (Inquiry Manager), James Bowman (Senior Committee Assistant), Becky Crew (Committee Assistant), Ravi Abhayaratne (Committee Support Assistant) and Jessica Bridges-Palmer (Media Officer).

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Summary

Fuel fraud costs the UK taxpayer hundreds of millions of pounds in lost revenue every year. Northern Ireland alone is estimated to have lost £70 million in 2009-10. Only five years ago this figure was as high as £250 million, and while we welcome the downward trend, fuel fraud remains a particularly serious problem for Northern Ireland. While 4% of diesel sold in GB is thought to be illicit, in Northern Ireland the comparable figure is estimated to be 12%.

Other commodities are smuggled across the land border between Northern Ireland and the Republic of Ireland. Tobacco smuggling in Northern Ireland, for example, is estimated to cost the taxpayer £42 million in lost revenue, and is as high as £3 billion for the UK as a whole. The market share for illicit cigarettes in Northern Ireland is estimated at 12%, and as high as 46% for hand rolling tobacco.

Lost revenue means less money to spend on public services in Northern Ireland and across the rest of the UK. The loss to the public purse remains unacceptable. Fuel fraud is not just about loss of tax revenue and it is not a victimless crime. It is the men, women and children of Northern Ireland who are the victims, and often the primary ones. It is they:

- who have to live in an environment damaged by the fuel criminals,
- whose rates bills are higher, as district councils foot the bill for cleaning up the harmful wastes left by laundering - about £330,000 in the last five years,
- whose public services are reduced through loss of public revenue to finance them,
- whose jobs with legitimate fuel suppliers are put at risk,
- whose life and health are put at serious risk on roads and ferries, and
- whose motor cars are damaged by illicit fuel.

Fuel fraud is carried out by organised criminal gangs, some of which have paramilitary links and are engaged in other crime, notably tobacco fraud, bottled gas fraud, drugs, human trafficking and money laundering. Buying illicit fuel puts money in the pockets of organised criminals.

Her Majesty's Revenue and Customs, the Serious Organised Crime Agency and the Public Prosecution Service in Northern Ireland have had some success in recovering assets, but we are concerned at the apparent limited success of assets recovery as a deterrent. This lack of deterrence is exacerbated by the poor record for imposing custodial sentences in Northern Ireland. Between 2001 and 2009, only four people received custodial sentences for fuel fraud in Northern Ireland. This does not compare well with the sentencing record for comparable offences in Great Britain.

We share the widespread concern that such a sentencing record, if continued, would ever deter fuel fraudsters. We, therefore, welcome the announcement from the Lord Chief

Justice for Northern Ireland that he is including duty evasion and smuggling in his programme of action on sentencing, and look forward to sentencing guidelines being developed, which should be rigorous.

The lead agency for countering fuel fraud and tax evasion in Northern Ireland is HMRC, and we welcome the resources—finance, staff and skills—that it has invested in combating fuel fraud, but the scale of the problem still requires it being given an even higher priority.

We are bitterly disappointed with the continuing delay in HMRC's acquisition of a new marker. We urge HMRC to focus its efforts on acquiring the latest and best marker technology available as soon as possible, commence a pilot as soon as practicable, and report back to this Committee before the 2012 Summer Adjournment.

We recognise that, while it takes the lead on fuel crimes, HMRC does not act alone. It is a member of the Organised Crime Task Force in Northern Ireland, chaired by the NI Minister for Justice, which includes a range of bodies, from government and private sectors, all interested in fighting organised crime. The OCTF has greatly improved the co-ordination between agencies in Northern Ireland, and across the border with their counterparts in the Republic of Ireland, but it could do more.

Raising awareness of the damage done to the Northern Ireland public by fuel fraud and organised crime generally is an important strand of the OCTF's work, and we acknowledge HMRC's particular contribution to this. We want to see greater involvement by appropriate Ministers in the Northern Ireland Executive in presenting to the people of Northern Ireland the close connection between fuel fraud and the negative impact it has upon the provision of public services.

1 Introduction

Fuel crimes in Northern Ireland

1. Criminal activity involving fuel fraud is a major problem in Northern Ireland and is proportionately three times larger than similar fuel crime in Great Britain.¹ It deprives the Exchequer of millions of pounds in lost excise duty, it takes business away from legitimate organisations, and leaves environmental waste to pollute and scar the countryside. It funds organised crime in Northern Ireland. It also feeds the attitude that some crimes create no victims because ‘it’s only taking from the taxman’, but taking from the taxman reduces the amount of revenue raised by Her Majesty’s Revenue and Customs (HMRC) and, therefore, the money available to spend on public services not only in Northern Ireland, but also in Scotland, England and Wales.

2. While the primary focus of the inquiry has been on fuel fraud, we also received evidence on other forms of tax evasion that reduce the UK revenue: tobacco smuggling in Northern Ireland, which may be carried out or funded by the same criminal gangs, is estimated to cost around £42 million a year in lost revenue and between £1 billion–£3 billion for the UK as a whole.² Tobacco smugglers can make up to £1.5 million profit per container lorry coming into the UK.³ A similar level of crime also affects the Republic of Ireland.⁴

3. There are four different types of criminal activity associated with fuels:

- *smuggling* cheaper fuel from one side of the border to the other. Smuggling activity increases when there are high differentials in fuel prices between the UK and the Republic of Ireland. The gap in price has narrowed recently, but smuggling does continue;⁵
- *laundering*, where duty rebated diesel has the marker dye removed and then sold on at the same price as duty paid diesel;
- *mixing*, where duty rebated diesel is mixed in with a higher duty version of the same fuel; and
- *stretching*, where a cheaper fuel, such as kerosene or ethanol, is added to diesel or petrol, respectively.

4. Rebated diesel, called red diesel in Northern Ireland and green diesel in the Republic of Ireland, is identified by marker dyes, and is specifically intended for vehicles that do not use the public highway. (Regular diesel for road use is called white diesel.) The laundering

1 Q 493

2 See Q 69 and Q 76

3 Japan Tobacco International, Tobacco Smuggling: The UK Challenge, July 2010

4 Q 29

5 Ev 98 and Q 503. In January 2012 the price of diesel in the Republic of Ireland was 21p per litre lower than in Northern Ireland

process either filters out the marker using a filtration agent such as cat litter, or uses a corrosive acid to bleach out the marker. Both methods create a noxious residue.

5. The current price of red diesel is considerably lower than the road use price—red diesel in Northern Ireland is about 70–71 pence per litre compared to 140–144 pence per litre for road use diesel.⁶ HMRC told us that production and distribution costs for a laundering plant worked out around 30 pence per litre, so the fraudsters could expect a profit of at least 40 pence per litre.⁷ During 2010–11, HMRC and other agencies closed down and dismantled 15 large scale fuel laundering plants in Northern Ireland with the capacity to produce nearly 90 million litres of illicit fuel with a potential revenue loss of £60 million.⁸

6. The problem has existed in Northern Ireland for many years, partly because organised criminals in Northern Ireland have developed specific expertise and experience of how to launder fuel, and are able to do so on a significant scale.⁹

7. In addition, the land border with the Republic of Ireland provides a differential in prices between the two jurisdictions, and thus an opportunity for profit, and also the existence of different jurisdictions makes it easier to evade the law. The Police Service of Northern Ireland (PSNI) told us that the border can still create a real hurdle, but that co-operation between the police forces in both jurisdictions is continually improving.¹⁰ For example, Assistant Chief Constable Drew Harris, PSNI, told us earlier this year that liaison between the PSNI and An Garda Síochána¹¹ improved further following the investigation into the murder of Paul Quinn in 2007 in matters such as evidence exchange:

The international letter of request process is in effect a prosecutor and inter-judicial process. Only two weeks ago the PPS and the Director of Public Prosecutions in Dublin signed a memorandum of understanding to short-circuit that process. Similarly, we have shared memoranda of understanding with An Garda Síochána around that. We have been operating this in practice for the last 18 months to two years. It came out of the joint investigation we ran into the Quinn murder in South Armagh/North Louth five years ago. As a result of that, all those problems were made manifest in that murder investigation. We have moved on from that, and it has just been finalised.¹²

8. ACC Harris also referred to the improved political relationship following the devolution of policing and justice:

We had a very good and productive one-to-one relationship down through the years, and it has just moved on another notch with the appointment of Mr Ford [N.I.

6 Q 5. The duty on red diesel is 13p and the duty on road use diesel is 59p.

7 Ev 98

8 Ev 11

9 Q 519

10 Q 220

11 An Garda Síochána is the National Police Service in the Republic of Ireland

12 Q 219

Justice Minister]. Dublin-Belfast political co-operation now has further driven that relationship.¹³

9. The Northern Ireland Affairs Committee has taken an interest in fuel fraud and related crime for several years.¹⁴ In 2006 it conducted an inquiry into Organised Crime in Northern Ireland which included fuel fraud.¹⁵ That Report was followed by two reports prepared by the National Audit Office (NAO) and the Northern Ireland Audit Office (NIAO) in 2010, which assessed progress made by the Government, the Northern Ireland Executive and law enforcement agencies in implementing the recommendations made by the Committee.¹⁶ These reports again included examination of issues raised by fuel fraud and related offences. We announced our inquiry into fuel laundering and smuggling in Northern Ireland on 6 July 2011.¹⁷

10. As part of our inquiry we visited both Northern Ireland and the Republic of Ireland, where we met a range of interested parties including Her Majesty's Revenue and Customs and the Lord Chief Justice for Northern Ireland in Belfast, and An Garda Síochána, the Revenue Commissioners, and representatives from the Ministry of Justice, Equality and Law Reform in Dublin. We would like to thank all those who assisted us, and who submitted written evidence and gave oral evidence.¹⁸

11. We note that the Joint Committee on the Environment, Transport, Culture and the Gaeltacht in the Oireachtas in the Republic of Ireland has also taken oral evidence this year on the subject of fuel laundering.¹⁹

13 Q 236

14 Northern Ireland Affairs Committee, Third Report of Session 1998-99, *Impact in Northern Ireland of Cross-Border Road Fuel Price Differentials*, HC 334; and First Report of Session 2002-03, *Impact in Northern Ireland of Cross-Border Road Fuel Price Differentials: Three Years On*, HC 105; Committee of Public Accounts, Forty-fourth Report of Session 2001-02, *The Misuse and smuggling of Hydrocarbon Oils*, HC 649;

15 Northern Ireland Affairs Committee, Third report of Session 2005-06, *Organised Crime in Northern Ireland*, HC 886-I

16 Northern Ireland Audit Office, January 2010, *Memorandum to the Committee of Public Accounts from the Comptroller and Auditor General for Northern Ireland: Combating organised Crime; and Detailed Note accompanying the Memorandum: Organised Crime: developments since the Northern Ireland Affairs Committee Report 2006*

17 The full terms of reference for the inquiry can be found at www.parliament.uk/niacom

18 See Ev 31 for a full list

19 Joint Committee on the Environment, Transport, Culture and the Gaeltacht, *Fuel Laundering Discussion*, Wednesday 1 February 2012. See <http://debates.oireachtas.ie/committees/2012/TR.asp>

2 The scale of the problem

Estimates of revenue loss

12. HMRC is the lead agency for countering revenue fraud in Northern Ireland, as in the rest of the United Kingdom. It has estimated the revenue lost to fuel fraud in Northern Ireland to be about £250 million in 2005–06, declining to £210 million in 2008–09 and to £70 million in 2009–10.²⁰ Current fuel fraud is largely limited to diesel rather than petrol because the profit margin is greater.²¹ Comparable figures for Great Britain show a different pattern, losses fluctuating between £800 million in 2004–05 and £900 million in 2008–09; and £550 million in 2005–06 and £650 million in 2009–10.²²

13. These figures represent central estimates derived using complex methodology and including a range of assumptions. Importantly, the methodology cannot directly estimate the level of legal cross-border shopping, because of the porous nature of the land border with the Republic (whereas the rest of the UK’s external borders are maritime and so traffic and the propensity to buy fuel abroad can be more easily measured). It is not, therefore, currently possible to distinguish confidently the legitimate non-UK duty paid market from the illicit market in Northern Ireland.²³

14. The 2012 budget in the Republic of Ireland raised duty on petrol and diesel, and contributed to a narrowing in the diesel price differential across the border. As the gap narrows, cross-border purchases are reduced, and HMRC believes that the current figure of £70 million in lost revenue is “quite close” to that lost due to fraud.²⁴ It should be noted, however, that £70 million is its central estimate, and the upper and lower estimate range is between £100 million and £30 million.²⁵ The figures from HMRC suggest an encouraging trend, but HMRC themselves acknowledged that they should be regarded only as a broad guide. We remain healthily sceptical about these figures, but in any case losses to fuel fraud remain unacceptably high.

15. In terms of the respective market share of diesel, illicit sales in Great Britain are estimated to have represented 4–5% of the market since 2004–05, whereas the comparable figures for Northern Ireland were touching 40% between 2004 and 2007, reducing to 27% in 2008–09 and 12% in 2009–10.²⁶ Mr Bill Williamson, Acting Director of Excise, Customs, Stamps and Money within HMRC, described this as “a positive downward trend”, but at the same time said HMRC would not reduce its efforts.²⁷ The apparent favourable trend is

20 Early figures include diesel and petrol but by 2009-10 fraud was no longer believed to affect petrol sales materially, so this figure relates to diesel only. See Ev 98 and Ev 115

21 Q 503

22 Ev 115

23 HMRC, *Methodological Annex for Measuring Tax Gaps*, 2011, para E.28. Cross border shopping is the perfectly legal practice of driving to a petrol station in the Republic of Ireland to fill your tank at a cheaper price.

24 Q 298

25 Ev 115

26 See Q 44 and Q 500, and Ev 115. Note, HMRC told us that the figures for 2009-10 are provisional, as not all components of the total consumption estimate are available at this time, so the figure may be higher than 12%

27 Q 258

welcome, but owes much to underlying factors such as the respective duty rates across the border and changes in the sterling/euro exchange rate.²⁸

16. Overall, fuel fraud still represents a major and unacceptable loss of revenue, and even though it appears to be falling it is still, proportionately, three times larger in Northern Ireland than in Great Britain.

Other financial costs

17. Loss to the public revenue is not the only cost. HMRC currently spends nearly £27 million annually across the whole of the UK in protecting and collecting fuel duties. (This figure does not represent that spent solely combating fuel fraud.)²⁹ There are also accumulated financial costs in removing and cleaning up the harmful waste from the site of dismantled laundering plants or where waste is found dumped elsewhere, the costs of the former falling to HMRC but in the latter case to district councils. Newry and Mourne District Council, for example, has spent over £162,000 cleaning up 50 sites since 2007, costing £70,000 in 2011 alone.³⁰ Four other councils spent a further £169,000 in the same period. Fuel fraud thus casts a heavy, and unnecessary, burden in those areas, diverting local resources away from other useful council services and amenities. The NI Environment Agency has also spent £17,466 over the last 5 years in cleaning up water courses affected by fuel laundering waste.³¹

18. The private sector also bears a financial cost on account of fuel fraud. The RMI Independent Retailers Association noted that: “It is the single site operator that is suffering the most from the sale of illegal fuel and the unfair competition that this represents”.³² In 2002, the Public Accounts Committee noted that: “approximately half of all garages [in Northern Ireland] were selling only illicit fuel.”³³ The estimates of market share taken by fraudsters suggest that the damage borne by legitimate taxpaying traders is substantial.

Non financial costs

19. Mr Alex Attwood MLA, Minister for the Environment, Northern Ireland Executive, explained some of the risks caused by the unregulated processing, storage, transport and delivery of adulterated fuel and the unregulated storage and deposit of its waste:

[The damage] while by and large very localised, can be extremely corrosive. [...] Almost invariably this fuel and the associated wastes will be handled in entirely inadequate premises where no thought or care has been given to the containment of

28 See Q 45 and Q 559. There is an argument that harmonisation of duty rates in the UK and the Irish Republic would eliminate the problem. The Economic Secretary to the Treasury told us that such developments would be ‘at the harder end of that [i.e. British/Irish] discussion ... for the good principle that we would remain two sovereign nations that require flexibility in their tax codes for all sorts of reasons’. We do not believe that duty harmonisation would, in itself, necessarily offer a solution: both countries’ fiscal interests will inevitably vary over time and the impact of floating sterling/euro exchange rates could in any case undermine the effect of harmonisation.

29 Q 289

30 Ev 113

31 Ev 109

32 Ev 116. See also Q 76 [tobacco] and Q 93 [Calor gas]

33 Public Accounts Committee, 2001-02, *The Misuse and Smuggling of Hydrocarbon Oils*, HC 649 para 4.

spills, and where spills and therefore pollution readily occur. It is difficult to quantify the extent of environmental harm, but it is known that ‘solid waste residue (eg chicken/cat litter or fuller’s earth clay) tends to be moved from the laundering sites and dumped in multiple sites, usually in forests and along roadsides, in relatively small quantities (2–3 tonnes). Given the volume dumped, it can run off into and damage our water courses and seep into arable land. Acid and hydrocarbon waste in rivers will alter the quality of the water and kill its plant and animal life. In a number of instances fuel laundering was only detected through the serious pollution of nearby watercourses (including threats to drinking water reservoirs).³⁴

20. The same problem exists across the Irish border. Mr Kieron Duffy, Executive Engineer, Monaghan County Council, in the Republic of Ireland, told the Oireachtas Joint Committee on the Environment, Transport, Culture and the Gaeltacht, that his Council had dealt with 37 waste incidents in 2004 and 27 in 2005. The number had decreased to one in 2010 but then dramatically increased to 37 in 2011, and there had already been ten such incidents in 2012. Mr Duffy explained:

Our staff have been out there every day of the week [...] lifting diesel wash. The past two months have undoubtedly seen the most intense period of diesel wash dumping in the county.³⁵

He estimated the clean-up costs to Monaghan County Council since 2004 to be approximately €1.5 million.³⁶

21. HMRC told us that the Cross Border Fuel Fraud Enforcement Group had received presentations from the councils in Louth and Monaghan about the environmental and financial costs they were incurring, and anticipated similar meetings with Newry and Mourne District Council.³⁷

22. Transporting illicit fuel in sub-standard vehicles also creates risk of environmental damage and serious risk of major injury. The vehicles used do not usually have the safety features of designed fuel tankers, and so are unstable and unsafe. ACC Drew Harris, PSNI, told us that there have been: “a number of accidents involving lorries carrying illicit fuel crashing and shedding diesel, polluting water courses and contaminating land”³⁸ and that:

There is also a very real threat around curtain-sided lorries with the terrible plastic tanks in them carrying fuel on to civilian and public transport ferries to cross the north channel. [...] there is a huge risk to a ferry if one of these lorries caught fire. That does happen; these lorries do catch fire transporting fuel around Northern

34 Ev 109

35 The Oireachtas Joint Committee on the Environment, Transport, Culture and the Gaeltacht is conducting hearings on fuel laundering in the Republic.

36 Ibid.,

37 Q 263. The Cross Border Fuel Fraud Enforcement Group is a sub group of the Organised Crime Task Force. See paras 46-53

38 Q 196

Ireland. It has always been a major concern of ours that a curtain-sided lorry with plastic fuel tanks would ignite onboard a ferry.³⁹

Overall, there is a grave risk of a major tragedy and loss of life arising from the dangerous transportation of illicit fuel.

23. HMRC told us of illegal fuel stations selling pure kerosene as diesel.⁴⁰ Use of contaminated fuel will cause harm to the engine of vehicles using it, and we heard of instances where that had occurred to the cost of the individual car owner.

24. As explained below, those involved in fuel fraud may also be involved in other crime, and the profits raised contribute towards illegal activity such as tobacco fraud, bottled gas fraud, drugs and money laundering.⁴¹ In addition, the evidence received indicated that the smuggling routes utilised in this illegal activity are also used for other criminal purposes, including human trafficking, though different individuals may be involved in the commissioning of different criminal activity.

25. Fuel fraud is not a victimless crime. It reduces the amount of revenue available to spend on public services, damages the environment, and takes money from legitimate traders. It finances organised crime in Northern Ireland. We support all those agencies in Northern Ireland and in the Republic of Ireland which are working to apprehend, prosecute and punish those involved in fuel crime. We would encourage the public to support the work of such agencies in fighting fuel crime, for example by reporting it to Crimestoppers.

39 Q 196

40 Q 495

41 See Ev 103; Q 69 [JT], Q 86 [Calor], Q 158 [PSNI]

3 Involvement of organised crime gangs

Paramilitaries and former paramilitaries

26. Paramilitary groups, both republican and loyalist, have historically been involved in fuel fraud.⁴² The twenty-third report of the Independent Monitoring Commission (IMC), published in May 2010, observed that former paramilitary groups remained engaged in fuel fraud.⁴³ The same groups take part in a range of criminal activity, such as tobacco smuggling⁴⁴ and extortion rackets against both other criminal gangs and entirely legitimate businesses.⁴⁵

27. This highlights the point, raised with us more than once, that criminal gangs are flexible and cunning, and will diversify and exploit opportunities where they exist.⁴⁶ One gang may not be involved in fuel laundering today, but someone in their organisation may extort money from someone who does launder fuel, or indeed launder money acquired through smuggling fuel.⁴⁷

28. The involvement of former paramilitaries also distinguishes organised crime in Northern Ireland from that in Great Britain. Paramilitary groups have historically financed terrorist activities in part through crime and exploited the border to evade capture. The report by this Committee in 2006 underlined both the progress made towards a more peaceful society and the extent to which organised crime remained endemic. Since then, further progress has been recorded in a series of reports from the IMC, the Organised Crime Task Force and, in 2010, both the National and Northern Ireland Audit Offices, but these reports have also underlined the continuing threat from organised crime, whether linked to paramilitary groups or other crime gangs. The evidence we received in public, private and informal sessions made clear that, despite continued substantial progress towards a normal society, the overall problem of organised crime in Northern Ireland remains serious.

29. In relation to fuel fraud in particular, the Committee received evidence that residual paramilitary groups remain engaged in this illegal activity, partly as a means of funding their terrorist activities and partly for personal gain.⁴⁸ Both this and the incidence of fuel fraud in both jurisdictions underline the importance of cross-border co-operation between HMRC and PSNI in Northern Ireland, and the Revenue Commissioners and An Garda Síochána in the Republic of Ireland.⁴⁹

42 NIAO, January 2010, *Detailed Note accompanying the Memorandum to the Committee of Public Accounts from the Comptroller and Auditor General for Northern Ireland. Organised Crime: developments since the Northern Ireland Affairs Committee Report 2006*, para 1.6.1

43 Twenty-third Report of the Independent Monitoring Commission, HC 17, 26 May 2010, paras 2.14, 2.31, 2.47

44 Q 407. See also: *Convicted killer Seamus Mullan 'ran cigarette racket'*, 27 February 2012 www.bbc.co.uk/news/northern_ireland/

45 Q 158

46 Q 180

47 Q 31

48 Q 158

49 Q 433, and Qq 446-449

Related criminal activity

30. Those involved in fuel fraud, whether paramilitary or other gangs, are also frequently involved in other types of crime. The PSNI told us that there are at present between 160 and 180 identified organised crime gangs in Northern Ireland.⁵⁰ As well as indigenous crime groups, the last ten years have seen an influx of foreign criminal gangs, notably from Eastern Europe and Asia, often linked to human trafficking for sexual exploitation, cannabis cultivation, tobacco fraud and the importation of drugs.⁵¹ Clearly, organised crime may change its focus as law enforcement agencies bear down on it, and as opportunities change, with the latest example being involvement in human trafficking.

31. Tobacco fraud normally takes the form of smuggling into Northern Ireland counterfeit cigarettes, often from the Far East, landed at ports in the Republic of Ireland. We were told that the single biggest seizure anywhere in Europe occurred in late 2009 in Greenore, County Louth, when a shipment of about 120 million counterfeit or illicit white cigarettes was found in one vessel from the Philippines.⁵² Smuggled cigarettes are either intended for the island of Ireland, or to be transported further into Great Britain and mainland Europe.⁵³ HMRC estimated the revenue loss from tobacco smuggling at between £1 billion – £3 billion for the UK as a whole, compared to nearly £8.8 billion in tobacco duty paid in the UK.⁵⁴ The market share for illicit cigarettes is 12% and for hand-rolled tobacco 46%.⁵⁵ Japan Tobacco International estimated that in 2010 around 170 million counterfeit and ‘illicit white’ cigarettes were consumed in Northern Ireland, which resulted in lost revenue of around £42 million.⁵⁶ As well as the revenue lost, illegal cigarettes carry additional health risks as they are known to contain higher levels of toxins than those sold under the regulated regime.⁵⁷

32. The amount of revenue lost is high and growing.⁵⁸ As with diesel fuel, a price differential across the border provides an incentive to smuggle. However, the price differential between the UK/Republic of Ireland on one hand and countries in Eastern Europe or the Far East on the other, provides a huge incentive to the smugglers. The mid-price of a pack of twenty cigarettes in the UK is £6.50 of which £5 is tax. The smuggler can acquire the same packet of twenty cigarettes for £0.25 and sell it in the UK for around £3.50–£4.⁵⁹

50 Q 153

51 Qq 180-182

52 Q 73

53 For example, see Q 69

54 HMRC, April 2011, *Tackling Tobacco Smuggling – building on our success*, para 3.1 See also *One in three cigarettes in London ‘from black market’*, Metro newspaper, Friday 9 March 2012

55 Q 301. This is a reduction from a market share of 21% on cigarettes and 60%+ on hand-rolling tobacco in 2000

56 Historical figures can be found in the NIAO Report, January 2010, Detailed Note, para 1.6.10. Illicit whites are cigarettes manufactured abroad specifically to be smuggled into another market and sold illegally.

57 Northern Ireland Affairs Committee, Third report of Session 2005-06, *Organised Crime in Northern Ireland*, HC 886-I para 41.

58 Japan Tobacco International, *Tobacco Smuggling: The UK Challenge*, July 2010

59 Qq 107-113

33. We were also told of growing illegal activity in the bottled liquid petroleum gas market, where the cylinders are stolen, re-filled and re-sold illegally, feeding a potential £2 million a year illegal business.⁶⁰ Again, this undercuts legitimate suppliers but most worryingly, because the illegal filling of cylinders and tanks does not comply with prescribed safety standards, it exposes users and other members of the public to potentially fatal accidents. As with fuel and tobacco, the criminals show a complete disregard for the safety of those to whom the illegal product is sold.

34. All these criminal activities are inevitably then linked to money laundering, because the criminals need to find a way of making use of their profits, whether for the purposes of paramilitary activity or personal enrichment. The PSNI told us of important hubs of money laundering activity at Aughnacloy in County Tyrone, and Meigh in County Armagh: “where huge amounts of cash are moved through money service bureaux”.⁶¹

35. Criminal gangs do not confine their activities to Northern Ireland and the Republic of Ireland. We were told by the Minister for Justice in the Northern Ireland Executive, the PSNI, HMRC and the Serious Organised Crime Agency (SOCA) that fuel laundering plants have been found in the north of England and in Scotland, believed to be linked to criminals from Northern Ireland.⁶²

36. Northern Ireland has taken important steps towards becoming a more peaceful society than in the past. However, organised crime remains a threat to society and to legitimate business, as well as denying public services of the tax revenue they need to sustain themselves. The fight against organised crime, including against fuel fraud, must remain a high priority.

37. Organised crime in Northern Ireland exploits the border. This puts a premium on close cross-border co-operation between law enforcement agencies. There is evidence of crime gangs from Northern Ireland operating in Great Britain as well, and that also puts a similar premium on effective co-operation between law enforcement agencies across the UK.

60 Q 81 and Q 92

61 Q 194

62 Q 196, Q 466, and Q 476

4 Bodies involved in countering fuel laundering and smuggling

Her Majesty's Revenue and Customs

38. HMRC is the lead agency responsible for countering fuel and other revenue fraud throughout the United Kingdom, using powers conferred on it by the Customs and Excise Management Act 1979. Importantly for the task of countering fuel fraud and other forms of organised revenue crime in Northern Ireland, HMRC is a member of the Organised Crime Task Force.⁶³

39. HMRC has the powers of a law enforcement agency and, in countering revenue fraud, it brings to bear the powers, skills and techniques applied by police forces in preventing, investigating and detecting crime, and arresting and charging suspects. Its officers engaged in criminal investigation work are trained to the same standard as police officers. It is also responsible for preparing case files on the basis of which the Public Prosecution Service for Northern Ireland (PPSNI) considers prosecutions. We were reassured by the NI Director of Public Prosecutions (DPP) who said he was “very impressed” with the relationship and level of co-operation between HMRC and the PPSNI in preparing cases. Stephen Herron, Assistant Director of Fraud and Departmental Section, PPSNI, told us that:

The HMRC standard for investigations is very good. They employ the same techniques as the PSNI. The files are presented to the same evidential standard, and I do not have any difficulty with HMRC.⁶⁴

40. Despite having to find 25% savings from its overall budget, HMRC has been allocated an additional £917 million to bear down on tax avoidance and evasion across the UK:

Specifically, HMRC will increase staff tackling evasion and fraud and avoidance by around 2,500 FTEs [Full Time Equivalent] by 2014–15. Some 200 more criminal investigators and 40 intelligence officers will provide a significant increase in the criminal investigation of evasion cases.⁶⁵

41. The extra investigators will be available across the UK, but will increase those who can be called upon for investigations in Northern Ireland.⁶⁶ This is an impressive commitment of resources, which we hope will prove a sound investment in terms of reducing revenue loss and bringing successful prosecutions, and is evidence of the priority that HMRC attaches to combating revenue fraud.

42. HMRC has undoubtedly had some success (see Table 1 and Table 2 below). The downward trend in fuel fraud is the result of a number of factors, but it would be wrong to deny HMRC some credit.

63 See paras 46-53

64 Qq 336-338

65 HC Deb 9 September 2011 col 861W. See also Q 13 and Q 477

66 Q 477

Table 1. Number of arrests, prosecutions, fines, confiscations, and other sanctions, aimed at punishing and deterring those involved in fuel laundering and smuggling 2009–10			
Oils	Total 2009/10	Northern Ireland	
		GB	
Arrests	14	12	2
Confiscation Orders	£1,085,715	£0	£1,085,715
Convictions *	11	1	10
Custodial Sentences	3	0	3
Suspended Sentences	4	1	3
Non – Custodial Sentences	3	0	3
Seizures (Million Litres)	2.23	1.04	1.19
Laundering Plants	16	16	0

Table 2. Number of arrests, prosecutions, fines, confiscations, and other sanctions, aimed at punishing and deterring those involved in fuel laundering and smuggling 2010–11			
Oils	Total 2010/11	Northern Ireland	
		GB	
Arrests	18	18	0
Confiscation Orders	£503,788	£20,000	£483,788
Convictions	10	4	6
Custodial Sentences	2	0	2
Suspended Sentences	6	3	3
Non – Custodial Sentences	1	1	0
Seizures (Million Litres)	2.74	0.64	2.10
Laundering Plants	23	20	3

* Totals for convictions & sentences may differ where defendants were sentenced in a different year from their conviction.

43. A number of points emerge from these figures:

- the number of arrests in Northern Ireland is high relative to the UK as a whole
- the volume of seizures in Northern Ireland, although materially lower in 2010–11 than in the preceding year, remains high as a proportion of total UK seizures, and
- the number of laundering plants dismantled in Northern Ireland is overwhelmingly higher in Northern Ireland than in Great Britain, though this doubtless predominantly reflects differing patterns of fuel crime.

44. These statistics reflect a great deal of skilful effort against determined and resourceful criminals, and HMRC and its officers deserve considerable credit for undertaking an often thankless and dangerous task. We do not seek to detract from that but the scale of loss to the public revenue remains unacceptably high and the damage to Northern Ireland's people, economy and environment unacceptably great.

45. **We acknowledge the commitment and effort of individual Her Majesty's Revenue and Customs (HMRC) officers in the fight against fuel crime in Northern Ireland, but believe that the scale and impact of these crimes in Northern Ireland require a much higher priority and focus in fighting it. Given that, in 2010–11, HMRC was allocated an additional £917 million to bear down on tax avoidance and evasion across the UK, we**

would urge HMRC to make a more concerted effort to eradicate the problem of fuel crime in Northern Ireland, where it is most prevalent.

Organised Crime Task Force

46. The Organised Crime Task Force (OCTF) was set up by the Northern Ireland Office in 2000 and is now the responsibility of the Department of Justice within the Northern Ireland Executive. It brings together a range of bodies with an interest in countering organised crime including, and importantly for the purposes of this inquiry, the PSNI, HMRC and SOCA.⁶⁷ Each of the member bodies retains its operational independence and the OCTF itself sets the strategic framework and provides a means of promoting co-operation between them on the basis of shared information and prioritisation. It publishes an annual report and threat assessment, which provides an assessment of organised crime and some measure of the campaign against it.⁶⁸

47. The OCTF also provides for a number of specialist sub-groups on which appropriate agencies are represented and which draw up strategies for the matters within their field. One such group, the Cross Border Fuel Fraud Enforcement Group, chaired by HMRC and on which sit the PSNI, SOCA, the NI Environment Agency and, from the Republic of Ireland, the Revenue Commissioners and Criminal Assets Bureau, covers liaison across the border.⁶⁹ From the evidence we received in London and from our discussions in Dublin it is clear that cross-border co-operation of the closest kind is essential to the successful combating of fuel and tobacco fraud. This co-operation clearly works very well in practice, as shown by recent co-ordinated operations to dismantle major fuel laundering plants on both sides of the border,⁷⁰ and we would encourage efforts to maintain its effectiveness.

48. It is equally clear that co-operation between HMRC and the NI Environment Agency is close, sharing information and working both at the operational level and in the preparation of cases for prosecution.⁷¹ The first joint case for both revenue and environmental offences is being prepared to go before the courts.⁷² Given the nature of fuel fraud and associated environmental crime, this is to be greatly welcomed.

Communicating the fight against organised crime

49. One focus of the OCTF is to communicate the damage done by organised crime and the measures taken to counter such crime. The Cross Border Fuel Enforcement Group has tried to increase publicity around its successes,⁷³ and we welcome the OCTF's new

67 See Ev 104. The OCTF membership is: HMRC; Department of Justice; SOCA Home Office; Federation of Small Businesses; PSNI, The Northern Ireland Executive, Northern Ireland Environment Agency ; Department of Enterprise, Trade and Investment, Trading Standards Service ; Criminal Justice System Northern Ireland; Northern Ireland Chamber of Commerce and Industry; CBI; and the Northern Ireland Policing Board. See www.octf.gov.uk

68 www.octf.gov.uk

69 The full Cross Border Fuel Fraud Enforcement Group membership is: PSNI; SOCA; the Revenue Commissioners; Criminal Assets Bureau; An Garda Síochána; Department of Justice; Health and Safety Executive; Department of Environment; and the Northern Ireland Environment Agency. See www.octf.gov.uk

70 OCTF Press Notice, *Fuel fraud targeted in cross border raids*, 2 September 2011 www.octf.gov.uk

71 Q 46

72 Q 342

73 Q 46

initiative ‘Changing the Mindset’, as described to us in evidence from the Northern Ireland Minister for Justice, Mr David Ford MLA.⁷⁴ Every rise in the price of diesel provides extra temptation for drivers to take advantage of what is perceived as a bargain.⁷⁵ We were told that, in some cases, prices charged for illicit fuel are increasingly close to those for regulated fuel, making it very difficult for the driver to know what is being bought.⁷⁶ At the same time, those who buy fuel from huckster sites must know that the fuel they are buying is illicit, but seem nevertheless to be prepared to take risks for lower prices.

50. A good deal of effort has been invested in seeking to eliminate the apparently widespread belief that fuel fraud is ‘victimless’. HMRC is seen on this view solely as ‘the taxman’ and so as ‘fair game’.⁷⁷ It is not. It is the main means by which finance for public services—schools, hospitals, roads, social care—is provided, and the more tax that is evaded, the less is available for expenditure on public services. The public and legitimate businesses in Northern Ireland are the victims.

51. HMRC has sought to communicate the problem of fuel fraud, through the ‘Fuel fraud—it’s a Dirty Business’ campaign, and by televised accounts of fuel plants being dismantled⁷⁸ but, for the very harmful misconception of HMRC as simply ‘the taxman’ and ‘fair game’ to be confronted, it should not be expected to undertake this alone. **The Organised Crime Task Force should consider involving the appropriate Ministers in the Northern Ireland Executive to a greater extent in HMRC’s presentation of news stories about, for example, dismantled laundering plants to help bring home to people in Northern Ireland the close connection between fuel fraud and its negative impact upon the provision of public services. This could, for example, involve the Ministers for Justice, for Finance and for the Environment and, on some occasions, the First Minister and deputy First Minister.**

52. Both the PSNI and HMRC spoke positively of the OCTF as a means of promoting inter-agency co-operation at the strategic level, which is then fed down to joint operational work as necessary. The OCTF is also valued as a means of nurturing co-operation with Departments and agencies of the Northern Ireland Executive. It clearly makes sense for lead responsibility for combating particular types of crime to be allocated to the most appropriate agency—without which the lines of responsibility on the ground would become blurred and uncertain—and we would not seek to change that.

53. **The Organised Crime Task Force is a distinct improvement on the preceding arrangements under which law enforcement agencies operated largely independently. Experience of the public sector suggests that effective collaboration between departments and agencies requires constant attention if it is to be maintained. Given the scale and impact of fuel fraud and related crimes in Northern Ireland, we hope that the OCTF will seek to ensure that collaboration is at the highest possible level. This is**

74 Ev 106

75 The AA, 17 February 2012, *Diesel price sets new record, The average price of diesel in the UK has overtaken the record set in May last year*. See Q 76

76 Qq 204-207

77 Q 207

78 Panorama, *The Great Fuel Robbery*, Monday 17 October 2011

particularly important if criminals are to be successfully brought to justice—a matter of particular concern to the Committee.

Northern Ireland Executive

54. The multi-agency composition of the OCTF, going wider than law enforcement agencies, illustrates the widely accepted view that organised crime can best—indeed can only—be overcome if a wide range of interests, drawn from the public and private sectors, are brought to bear upon it. This underlines the importance of the role played by several departments and agencies of the Northern Ireland Executive.⁷⁹ With respect to fuel laundering, licensing regimes for petroleum licensing and road haulage are especially important.

55. Reports from previous Committees have recommended measures to license petroleum retailers, with sanctions for breaching licence conditions, including revocation of a licence.⁸⁰ The Minister for Enterprise, Trade and Investment in the NI Executive, Mrs Arlene Foster MLA, wrote to the Committee on 14 December 2011 explaining that diesel fuel could not, for technical reasons, be brought within the existing petrol licensing regime under the Petroleum (Consolidation) Act (NI) 1929. The Minister for Justice also accepted this reasoning.⁸¹ We are disappointed by this conclusion, as every feasible avenue for closing fuel fraud should be vigorously pursued. **We encourage the Organised Crime Task Force to explore ways of introducing a licensing regime for retail outlets selling diesel.**

56. Road haulage licensing also has a significant contribution to make in combating fuel fraud, as illicit fuel is very often transported to points of sale in wholly unsuitable vehicles, and most of the vehicles that might use illicit diesel are lorries, vans, taxis and other commercial vehicles, rather than private cars. The previous Committee's report in 2006 expressed concern that arrangements for licensing road hauliers, expected to limit the scope for dangerous transportation of illicit fuel, had not been introduced in Northern Ireland, whereas they had been in force in England and Wales since 2000.⁸² We were, therefore, reassured to learn from the Northern Ireland Environment Minister that, from July 2012, the licensing regime will require that:

vehicles will have permits and thereafter will have to apply for licences. The purpose is that we will reduce the number of operators acting without proper vehicles, operating to proper standards, not going about their business in a proper way.⁸³

57. We welcome the introduction of a regime for licensing road hauliers, and hope that it will help bear down further on dangerous transportation of illicit fuel. We hope that the legislation will have the desired effect.

79 Also acknowledged in the previous Committee's Report in 2006 and the Audit Offices' report in 2010

80 See also First Report of Session 2002-03, *Impact in Northern Ireland of Cross-Border Road Fuel Price Differentials: Three Years On*, HC 105, paras 71-3; Northern Ireland Affairs Committee, Third report of Session 2005-06, *Organised Crime in Northern Ireland*, HC 886-I, paras 193-7; IMC Report, Seventh Report, 2006, p38

81 Q 459

82 NIAC Report, Third Report of Session 2005-06, *Organised Crime in Northern Ireland*, HC 886-I, paras 211-212

83 Q 428

5 Enforcement

Investigations, prosecutions and sentencing

58. HMRC in Northern Ireland, and the authorities in the Republic of Ireland, close down and dismantle laundering plants wherever possible. The Minister for Justice, Mr David Ford MLA, provided details on operations in June and September 2011, which included raids on many addresses in Counties Armagh, Down, Louth, Monaghan, Offaly, Roscommon, Galway, Westmeath and Dublin.⁸⁴ The number and size of the dismantled plants show the problem has not gone away, and we noted the broad consensus in our evidence that the punishment handed down to those prosecuted for fuel laundering was not a sufficient deterrent to others.⁸⁵

59. We were told that the rate of successful prosecutions for fuel fraud offences was very high, over 90%,⁸⁶ but we are concerned at both the small number of prosecutions and the apparent leniency of the sentences. Performance statistics provided by HMRC and the Minister for Justice show that, between 2001 and 2009, there have been only 47 prosecutions for fuel fraud in Northern Ireland and, of those, only four cases of immediate custody.⁸⁷ Of the remainder:

- five were acquitted or dismissed;
- 25 received suspended sentences;
- six were fined;
- four were conditionally discharged;
- one received community service; and
- one a compensation order

Three serious crime prevention orders were also granted.⁸⁸ These prosecutions involved 24 cases of which 13 were prosecuted on indictment and 11 summarily.⁸⁹ In the period 2009–11, there were a further nine convictions, five resulting in a suspended sentence, one a non-custodial sentence, two a fine and one case remained pending (November 2011).⁹⁰

60. We welcome the additional resources available to HMRC for criminal investigation of tax evasion.⁹¹ It is important that these resources are deployed in a way designed to bring

84 Ev 106

85 Qq 246–251, Q309, Q326 and Q 444

86 Q 327 and Q 351

87 Ev 104. There have been four custodial sentences, two of which were suspended, for fuel laundering since 2006 in the Republic of Ireland.

88 Ev 106

89 Q 317. The cut-off for determining indictment as against summary prosecution being about £20,000, suggesting that a number of the cases brought were less serious

90 Ev 106

91 HC Deb 9 September 2011 col 861W. See paras 40–41

more successful prosecutions.. We understand that HMRC has a growing number of cases which are expected to be referred to the Public Prosecution Service for Northern Ireland (PPSNI).⁹² Given the importance of close co-operation between HMRC and the PPSNI in preparing a case for prosecution, we hope that both will be sufficiently resourced to ensure the highest prospect of success.

61. Our predecessor Committee's Report in 2006 noted "widespread concern at the leniency of sentences in Northern Ireland for offences connected to organised crime".⁹³ This issue was articulated again by many members of the Northern Ireland Assembly during a debate on 3 October 2011.⁹⁴ The maximum sentence for fuel fraud, under section 170 of the Customs and Excise Management Act 1979, is seven years imprisonment. There was no suggestion, in the evidence that we received, that the level of sentences made available in that Act is inadequate, but concern was expressed to us about the application of those provisions by the courts in comparison with sentences in Great Britain for the same offences.⁹⁵ Mr Alan Lee, Regional Director for Criminal Investigations, HMRC, said:

We believe that the legislation is robust enough and that the conduct of investigative activity and the quality of evidence we present is adequate and professional. For a variety of reasons [...] in Northern Ireland we do not get the scale of deterrent sentences that occurs here in Great Britain.⁹⁶

62. We share these concerns that the application of the relevant legislation by the courts in Northern Ireland does not match that of the courts in Great Britain for comparable offences.

63. David Ford MLA, Minister for Justice, told us that he recognised that "there is significant frustration on the part of the public" about sentencing for fuel crime in Northern Ireland, and that "it is clear that there is an issue that the public do not see significant deterrents."⁹⁷ We join the Minister for Justice,⁹⁸ and others, in welcoming the decision by the Lord Chief Justice for Northern Ireland to include duty evasion and smuggling as areas where sentencing guidelines will be developed. We believe that this will make a material contribution to bringing sentences for fuel fraud offences closer into line with the gravity and damage caused by them.

64. Sentences for offences under section 170 of the Customs and Excise Management Act 1979 cannot currently be made the subject of an appeal by the Attorney General to the Court of Appeal on grounds of undue leniency under sections 35 and 36 of the Criminal Justice Act 1988 as amended in 2007. As Barra McGrory QC, Director of Public Prosecutions for Northern Ireland, told us:

92 Q 257

93 Northern Ireland Affairs Committee Report, Third Report of Session 2005-06, *Organised Crime in Northern Ireland*, HC 886-I, paras 180-192

94 Northern Ireland Assembly, Session 2011-12, *Illegal Fuel Smuggling and Laundering*, 3 October 2011

95 Q 250. See Qq 320-331 for discussion on sentencing and the judgment from Mr Justice Hart in *R v Hunter* 2002

96 Q 32

97 Q 432

98 See Q 249 and Q 434

it would be fair to say that where the watching eye of the Attorney General is not present, it might be said there would be a risk or tendency perhaps to be more lenient. That is not in any way to be treated as a criticism of the bench; the judges are very careful about their sentencing, and understandably guard their independence.⁹⁹

65. We understand that the decision on whether to amend the legislation to make sentences referable to the Court of Appeal is for the Minister for Justice. We would encourage, and would support, him if he were to introduce legislation in Northern Ireland enabling unduly lenient sentences relating to fuel fraud and any relevant tax evasion, capable of being referred to the Court of Appeal. We appreciate that this might take the legislation in Northern Ireland out of line with that in the rest of United Kingdom. Consideration as to whether the legislation is applied across the UK, however, should not be permitted to delay the introduction of provisions in Northern Ireland, where the problem of fuel fraud is much more pressing. The UK Government may wish to monitor the impact of new provisions in Northern Ireland, before deciding on whether to extend these provisions.

66. We wholly acknowledge the importance of the independence of the judiciary, and recognise the hugely valuable role judges have played in Northern Ireland over the last 40 years. We do not seek to comment on, or be thought to seek to comment on, the outcome in individual cases. Nevertheless, we share the widespread concerns that current sentencing in fuel fraud cases does not have a deterrent effect. We believe it is of the highest importance in the successful fight against organised crime that sentences should match more closely the gravity of the offences. We therefore welcome the addition of duty evasion and smuggling as areas where sentencing guidelines will be developed.

Jury trial

67. The Criminal Justice Act 2003 permits offences to be tried without a jury where there is a real and present danger of jury tampering. This is defined as including intimidation of witnesses and we are aware of at least one case, being investigated by the NI Environment Agency, where we were given to understand that the possible use of this legislation is being discussed with the PPSNI.¹⁰⁰ We are not seeking a wholesale or routine return to non-jury trials in Northern Ireland. We did receive evidence of links between paramilitaries and fuel laundering, particularly in the border area, where obtaining evidence can be more difficult.¹⁰¹ **Given the evidence we received of the involvement of paramilitary groups in fuel fraud and offences linked to it (e.g. causing environmental damage) and the clear risk that they might seek to intimidate a jury, we believe that there may be important cases where, on the basis of the Criminal Justice Act 2003 tests being met, prosecution should be brought on the basis of that legislation.**

99 Q 320

100 Qq 423-424

101 Q 407, Q 427 and Q 464

Evidence exchange

68. HMRC told us of its concerns about the speed at which evidence is exchanged between the Northern Ireland and the Republic of Ireland jurisdictions. HMRC suggested that this issue was the major factor inhibiting further successful co-operation in the detection and prosecution of fuel fraudsters,¹⁰² and these concerns were recognised by David Ford MLA, Minister for Justice.¹⁰³ We understand that for their part the two police services have a memorandum of understanding and that the respective Directors of Public Prosecutions also recently signed a Memorandum of Understanding aimed at expediting the process.¹⁰⁴ We hope that the OCTF will keep the efficacy of the new arrangements under review and seek to put in place any improvements that may be necessary.

Civil recovery and other measures

69. Like most of those engaged in criminal activity, the fuel fraudster's aim is to make money. The proceeds can then be laundered or used to fund other criminal activities. HMRC's drive against money laundering, though not the subject of this report, must be maintained.

70. Asset recovery through confiscation is also important, and can be achieved by either criminal or civil means. The total value of assets recovered in Northern Ireland by both means and across all crime types was £78.3 million in 2008–09, £4.2 million in 2009–10 and £4.4 million in 2010–11.¹⁰⁵ We note that HMRC's statistics suggest only limited usage of confiscation orders in Northern Ireland.

71. The value of these recoveries is important, but can be no more than a fraction of the profits made by the fraudsters. There is a variety of possible sanctions, ranging from criminal prosecution with the prospect of a custodial sentence, through tax assessments and fines, to assets recovery. The whole range of sanctions should act as a deterrent. We hope there will be significant improvements relating to criminal prosecutions and sentencing.

72. Before the devolution of policing and justice to the NI Assembly in 2010, the value of all assets, civil and criminal, recovered in Northern Ireland was remitted to the Home Office. The Home Office retained half of the value and returned the other half to the agencies responsible for the recovery under the Assets Recovery Incentivisation Scheme. This totalled £1.4m in 2010–11, and was shared out to HMRC, the NI Courts Service, the NI Environment Agency, the Social Security Agency and the PPSNI.¹⁰⁶ Since June 2011, half still goes to the agencies responsible for recovering the assets as before, but the 50% that used to go to the Home Office is now returned to the Department of Justice to be spent fighting crime and reducing the fear of crime.¹⁰⁷ For example, the new Crimestoppers

102 Ev 98

103 Qq 450-452

104 Q 219

105 OCTF Annual Report & Threat Assessment 2011, page 36. Amounts recovered in any one year can be skewed by a single large recovery.

106 OCTF Annual Report & Threat Assessment 2011, page 36.

107 Department of Justice Press Notice, 14 February 2012, *Ford announces windfall for community projects*. See Q 48

joint campaign with the NI Environment Agency, asking people to report environmental crimes, including waste dumped by fuel launderers, is funded from recovered criminal assets.¹⁰⁸

73. The PPSNI has powers under the Serious Crime Act 2007 in relation to civil recovery, although it told us that it had not, so far, been asked by the law enforcement agencies to use them in a prosecution. SOCA has responsibility for civil recovery in Northern Ireland, and so, in comparison to criminal assets recovery, half of assets recovered by the civil process still go to the Home Office. (Half of that recovered in Northern Ireland does return to Northern Ireland.) The PPSNI told us that it might need more staff and training to develop its expertise should a request be made for it to carry out civil recovery. It also told us that, unlike the Crown Prosecution Service in England and Wales, it enjoys no indemnity against claims for costs in the event of a failed attempt to recover assets by this means.¹⁰⁹ We would strongly encourage the Minister for Justice to consider the advantages and disadvantages of empowering the PPSNI to undertake civil recovery in Northern Ireland, and any obstacles which may be preventing this from taking place.¹¹⁰

74. We recognise the success of those agencies involved in recovering assets, by criminal or civil means, but are concerned at the apparent limited success of assets recovery as a deterrent. We recommend that the case for intensification of powers and effort to recover assets be considered by the Organised Crime Task Force.

75. We welcome changes in arrangements for the distribution of monies recovered in Northern Ireland by both criminal and civil means to stay in Northern Ireland. We hope these will be used to maximise support for efforts against organised crime, including fuel fraud.

76. We recommend that the Minister for Justice consider the case for additional resources and indemnification for the Public Prosecution Service for Northern Ireland for civil recovery work.

108 *Crimestoppers joins battle to stem environmental offences*, Belfast Telegraph, 8 February 2012

109 Qq 377-379

110 Qq 438-440

6 Marker technology

77. As part of its detection programme, HMRC conducts random roadside testing of vehicles using mobile plant and technology developed in-house. It recognised that the effectiveness and deterrence value of this testing programme would be greater if the marker added to rebated fuel was much more difficult and expensive to remove. HMRC told us that, in the short term, it is seeking ways to strengthen both the current marker and the efficacy of its testing methods. Mr Mike Norgrove, Director of Excise, Customs, Stamps and Money, in HMRC, told the Committee he thought current marker technology improvements would “at least double the cost to launderers of removing it”.¹¹¹ The improved marker, using the same technology, should be in use by 31 March 2012.¹¹²

78. In its programme to identify a long term solution, HMRC issued an expression of interest to industry across the EU in 2009¹¹³ and is hosting a conference in Belfast in March 2012 with representatives from industry and relevant authorities from across Europe to try to increase interest.¹¹⁴

79. We have been extremely disappointed with the slow progress since the invitation to industry went out in 2009. HMRC told us the reason for the delay was due to the “very limited response” to the invitation and that none of the marker products evaluated by HMRC fully met HMRC’s requirements.¹¹⁵ HMRC explained that any new marker would have to be more difficult to launder than the current one and able to give a result to a quick and efficient roadside test. Those companies which had showed an initial interest had been invited to witness the requirements of roadside testing, but had not, according to HMRC, taken up the offer.¹¹⁶ This evidence is disputed. When asked about the time delay, Mr John Whiting, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, HMRC, said he had the same frustrations as the Committee about the introduction of a new marker and that he was: “particularly frustrated with the trade and its response to the Department’s invitation to come up with a solution.”¹¹⁷

80. We also took evidence in private—on account of commercial confidentiality—from a company which had responded to the request for expressions of interest, and which disputed some of the evidence put forward by HMRC. After the oral evidence sessions concluded, the Committee received clarification from HMRC, in relation to its oral evidence, stating:

111 Q 52

112 Q 271

113 Q 508

114 Q 490

115 Q 271

116 Q 509

117 Q 509

We are sorry that we may have inadvertently misled the Committee by omission due to a gap in our knowledge on the latest position on testing of markers in the Republic of Ireland.¹¹⁸

81. It continued:

It has come to HMRC's attention that their implication in Q 58 and assertion in Q 271 and Q 536 that the Republic of Ireland has successfully laundered out a specific marker was out of date. HMRC now accepts that a variation of the initial product produced promising results in the Irish tests after discussions about how the product would perform in various conditions.¹¹⁹

82. There was consensus among our witnesses that any new marker would need to be piloted, and that any pilot would need to operate on both sides of the Irish border. This raised further questions around collaboration between HMRC and the Revenue Commissioners; and between the State Laboratory in the Republic of Ireland and LGC in the UK.¹²⁰ We were initially told in January 2012 that:

The first main significant progress is that we have signed an MoU [Memorandum of Understanding] with the Republic of Ireland, with the Revenue Commissioners and the state laboratory, to work together. Rather than having a two-speed process between the jurisdictions, we have agreed to work together in effectively one tendering process.¹²¹

83. In subsequent correspondence, however, HMRC admitted that this was incorrect, and that:

An MoU is expected to be signed in the near future.¹²²

84. While there may be hurdles to surmount,¹²³ we still believe that an effective pilot must be expedited.

85. We are disappointed that it has taken three years to get to this point. We are bitterly disappointed that, even at this late stage, the move by authorities in both the UK and the Republic of Ireland to have a single tender procedure for a marker for rebated diesel is still no further forward. We strongly recommend that HMRC, in continued liaison with its counterparts in the Republic of Ireland, commences a pilot as soon as is practicable, and informs this Committee of the deadlines for the proposed new tender process.

118 Ev 113

119 Ev 113

120 LGC was founded in 1996 following the privatisation of the Laboratory of the Government Chemist. LGC retains its statutory role as Government Chemist

121 Q 508

122 Q 508

123 Q 58

86. We will invite HMRC and HM Treasury to appear before this Committee before the House rises for the Summer Adjournment on 17 July 2012 in order to update us on progress on a joint fuel marker pilot with the authorities in the Republic of Ireland.

Conclusions and recommendations

Fuel crimes in Northern Ireland

1. Fuel fraud is not a victimless crime. It reduces the amount of revenue available to spend on public services, damages the environment, and takes money from legitimate traders. It finances organised crime in Northern Ireland. We support all those agencies in Northern Ireland and in the Republic of Ireland which are working to apprehend, prosecute and punish those involved in fuel crime. We would encourage the public to support the work of such agencies in fighting fuel crime, for example by reporting it to Crimestoppers. (Paragraph 25)

Related criminal activity

2. Northern Ireland has taken important steps towards becoming a more peaceful society than in the past. However, organised crime remains a threat to society and to legitimate business, as well as denying public services of the tax revenue they need to sustain themselves. The fight against organised crime, including against fuel fraud, must remain a high priority. (Paragraph 36)
3. Organised crime in Northern Ireland exploits the border. This puts a premium on close cross-border co-operation between law enforcement agencies. There is evidence of crime gangs from Northern Ireland operating in Great Britain as well, and that also puts a similar premium on effective co-operation between law enforcement agencies across the UK. (Paragraph 37)

Her Majesty's Revenue and Customs

4. We acknowledge the commitment and effort of individual Her Majesty's Revenue and Customs (HMRC) officers in the fight against fuel crime in Northern Ireland, but believe that the scale and impact of these crimes in Northern Ireland require a much higher priority and focus in fighting it. Given that, in 2010–11, HMRC was allocated an additional £917 million to bear down on tax avoidance and evasion across the UK, we would urge HMRC to make a more concerted effort to eradicate the problem of fuel crime in Northern Ireland, where it is most prevalent. (Paragraph 45)

Organised Crime Task Force

5. The Organised Crime Task Force should consider involving the appropriate Ministers in the Northern Ireland Executive to a greater extent in HMRC's presentation of news stories about, for example, dismantled laundering plants to help bring home to people in Northern Ireland the close connection between fuel fraud and its negative impact upon the provision of public services. This could, for example, involve the Ministers for Justice, for Finance and for the Environment and, on some occasions, the First Minister and deputy First Minister. (Paragraph 51)

6. The Organised Crime Task Force is a distinct improvement on the preceding arrangements under which law enforcement agencies operated largely independently. Experience of the public sector suggests that effective collaboration between departments and agencies requires constant attention if it is to be maintained. Given the scale and impact of fuel fraud and related crimes in Northern Ireland, we hope that the OCTF will seek to ensure that collaboration is at the highest possible level. This is particularly important if criminals are to be successfully brought to justice—a matter of particular concern to the Committee. (Paragraph 53)

Northern Ireland Executive

7. We encourage the Organised Crime Task Force to explore ways of introducing a licensing regime for retail outlets selling diesel. (Paragraph 55)
8. We welcome the introduction of a regime for licensing road hauliers, and hope that it will help bear down further on dangerous transportation of illicit fuel. We hope that the legislation will have the desired effect. (Paragraph 57)

Investigations, prosecutions and sentencing

9. We understand that the decision on whether to amend the legislation to make sentences referable to the Court of Appeal is for the Minister for Justice. We would encourage, and would support, him if he were to introduce legislation in Northern Ireland enabling unduly lenient sentences relating to fuel fraud and any relevant tax evasion, capable of being referred to the Court of Appeal. We appreciate that this might take the legislation in Northern Ireland out of line with that in the rest of United Kingdom. Consideration as to whether the legislation is applied across the UK, however, should not be permitted to delay the introduction of provisions in Northern Ireland, where the problem of fuel fraud is much more pressing. The UK Government may wish to monitor the impact of new provisions in Northern Ireland, before deciding on whether to extend these provisions. (Paragraph 65)
10. We wholly acknowledge the importance of the independence of the judiciary, and recognise the hugely valuable role judges have played in Northern Ireland over the last 40 years. We do not seek to comment on, or be thought to seek to comment on, the outcome in individual cases. Nevertheless, we share the widespread concerns that current sentencing in fuel fraud cases does not have a deterrent effect. We believe it is of the highest importance in the successful fight against organised crime that sentences should match more closely the gravity of the offences. We therefore welcome the addition of duty evasion and smuggling as areas where sentencing guidelines will be developed. (Paragraph 66)

Jury trial

11. Given the evidence we received of the involvement of paramilitary groups in fuel fraud and offences linked to it (e.g. causing environmental damage) and the clear risk that they might seek to intimidate a jury, we believe that there may be important cases where, on the basis of the Criminal Justice Act 2003 tests being met, prosecution should be brought on the basis of that legislation. (Paragraph 67)

Civil recovery and other measures

12. We recognise the success of those agencies involved in recovering assets, by criminal or civil means, but are concerned at the apparent limited success of assets recovery as a deterrent. We recommend that the case for intensification of powers and effort to recover assets be considered by the Organised Crime Task Force. (Paragraph 74)
13. We welcome changes in arrangements for the distribution of monies recovered in Northern Ireland by both criminal and civil means to stay in Northern Ireland. We hope these will be used to maximise support for efforts against organised crime, including fuel fraud. (Paragraph 75)
14. We recommend that the Minister for Justice consider the case for additional resources and indemnification for the Public Prosecution Service for Northern Ireland for civil recovery work. (Paragraph 76)

Marker technology

15. We are disappointed that it has taken three years to get to this point. We are bitterly disappointed that, even at this late stage, the move by authorities in both the UK and the Republic of Ireland to have a single tender procedure for a marker for rebated diesel is still no further forward. We strongly recommend that HMRC, in continued liaison with its counterparts in the Republic of Ireland, commences a pilot as soon as is practicable, and informs this Committee of the deadlines for the proposed new tender process. (Paragraph 85)
16. We will invite HMRC and HM Treasury to appear before this Committee before the House rises for the Summer Adjournment on 17 July 2012 in order to update us on progress on a joint fuel marker pilot with the authorities in the Republic of Ireland. (Paragraph 86)

Formal Minutes

Tuesday 20 March 2012

Members present:

Mr Laurence Robertson, in the Chair

Oliver Colvile
Lady Hermon
Kate Hoey
Kris Hopkins

Naomi Long
Jack Lopresti
Nigel Mills
Ian Paisley

Draft Report (*Fuel laundering and smuggling in Northern Ireland*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 and 2 read and agreed to.

Paragraph 3 read, amended and agreed to.

Paragraphs 4 to 6 read and agreed to.

Paragraphs 7 to 10 read, amended and agreed to.

Paragraphs 11 and 12 read and agreed to.

Paragraph 13 read, amended and agreed to.

Paragraphs 14 to 17 read and agreed to.

Paragraph 18 read, amended and agreed to.

Paragraph 19 read and agreed to.

Paragraph 20 read, amended and agreed to.

Paragraphs 21 to 23 read and agreed to.

Paragraphs 24 to 27 read, amended and agreed to.

Paragraphs 28 to 30 read and agreed to.

Paragraphs 31 and 32 read, amended and agreed to.

Paragraphs 33 to 38 read and agreed to.

Paragraphs 39 read, amended and agreed to.

Paragraphs 40 to 43 read and agreed to.

Paragraphs 44 and 45 read, amended and agreed to.

Paragraphs 46 to 48 read and agreed to.

Paragraph 49 read, amended and agreed to.

Paragraph 50 read and agreed to.

Paragraph 51 read, amended and agreed to.

Paragraphs 52 to 55 read and agreed to.

Paragraph 56 read, amended and agreed to.

Paragraphs 57 and 58 read and agreed to.

Paragraphs 59 and 60 read, amended and agreed to.

Paragraphs 61 and 62 read and agreed to.

Paragraph 63 read, amended and agreed to.

Paragraphs 64 to 66 read and agreed to.

Paragraphs 67 and 68 read, amended and agreed to.

Paragraphs 69 and 70 read and agreed to.

Paragraph 71 read, amended and agreed to.

Paragraph 72 read and agreed to.

Paragraph 73 read, amended and agreed to.

Paragraphs 74 to 76 read and agreed to.

Paragraphs 77 to 79 read, amended and agreed to.

Paragraphs 80 to 82 read and agreed to.

Paragraphs 83 to 85 read, amended and agreed to.

Paragraph 86 read and agreed to.

Summary amended and agreed to.

Resolved, That the Report, as amended, be the Third Report of the Committee to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till tomorrow at 2.45 pm.]

Witnesses

Wednesday 14 September 2011

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Mike Norgrove CBE, Director of Excise, Customs, Stamps and Money, **John Whiting**, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, **Alan Lee**, Regional Director for HMRC Criminal Investigation, and **Pat Curtis**, Customs Specialist Investigations Manager, HM Revenue and Customs Ev 1

Wednesday 19 October 2011

Paul Williams, UK Head of Corporate Affairs, Japan Tobacco International, **Steve Payne**, Anti-Illicit Trade Government Relations Director, Japan Tobacco International, and **Tom O'Carroll**, Director of Corporate Affairs, Calor Gas NI Ltd Ev 13

Wednesday 7 December 2011

Assistant Chief Constable Drew Harris OBE, Crime Operations Department, and **Detective Chief Superintendent Roy McComb**, Head of Organised Crime Branch, Police Service of Northern Ireland, and **Bob Lauder, Deputy Director, Scotland and Northern Ireland Network**, Operational Delivery Group, Serious Organised Crime Agency Ev 25

Wednesday 14 December 2011

Bill Williamson, Acting Director of Excise, Customs, Stamps & Money, **John Whiting**, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, **Alan Lee**, Regional Director for Criminal Investigation, and **Pat Curtis**, Senior Officer, HM Revenue and Customs Ev 42

Wednesday 11 January 2012

Barra McGrory QC, Director of Public Prosecutions for Northern Ireland, Public Prosecution Service for Northern Ireland, and **Stephen Herron**, Assistant Director of Fraud and Departmental Section, Public Prosecution Service for Northern Ireland Ev 55

Wednesday 18 January 2012

Alex Attwood MLA, Minister of the Environment, and **Anne Blacker**, Head, Environmental Crime Unit, Northern Ireland Environment Agency Ev 68

David Ford MLA, Minister of Justice, and **Simon Rogers**, Deputy Director of Protection and Organised Crime Division Ev 76

Wednesday 25 January 2012

Chloe Smith MP, Economic Secretary, HM Treasury, **Bill Williamson**, Acting Director of Excise, Customs, Stamps & Money, and **John Whiting**, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, HM Revenue and Customs Ev 84

List of printed written evidence

1	Alex Attwood MLA, Minister of the Environment	Ev 109; 113
2	Consumer Council	Ev 117
3	David Ford MLA, Minister of Justice and Chair of the Organised Crime Task Force	Ev106
4	Arlene Foster MLA, Minister of Enterprise, Trade and Investment, and the Fuel Oils Liaison Forum	Ev 111
5	HM Revenue & Customs	Ev 98; 104; 113
6	Japan Tobacco International	Ev 102; 114
7	Police Service of Northern Ireland	Ev 103
8	Michael McEaney	Ev 115
9	RMI Independent Petrol Retailers Association	Ev 116
10	Miss Chloe Smith MP, Economic Secretary, HM Treasury	Ev 112

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–11

First Report	Corporation Tax in Northern Ireland	HC 558
Second Report	Air Passenger Duty: Implications for Northern Ireland	HC 1227

Oral evidence

Taken before the Northern Ireland Affairs Committee on Wednesday 14 September 2011

Members present:

Mr Laurence Robertson (Chair)

Mr Joe Benton

Oliver Colvile

Lady Sylvia Hermon

Dr Alasdair McDonnell

Ian Paisley

David Simpson

Mel Stride

Gavin Williamson

Examination of Witnesses

Witnesses: **Mike Norgrove CBE**, Director of Excise, Customs, Stamps and Money, **John Whiting**, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, **Alan Lee**, Regional Director for HMRC Criminal Investigation, and **Pat Curtis**, Customs Specialist Investigations Manager, HM Revenue and Customs, gave evidence.

Q1 Chair: Good afternoon. I welcome our witnesses. We met certainly three of you in Belfast recently, but it is good to have you here for this formal evidence session. I also welcome Members of the Northern Ireland Assembly and Business Trust, whom I had the pleasure of meeting earlier this morning. We have a fairly tight schedule. Perhaps I may start by asking: how big is the problem of fuel laundering in Northern Ireland? What scale are we talking about, just to give the Committee an idea of the size of the problem?

Mike Norgrove: Thank you, Chairman. If I may introduce my third colleague, Patrick Curtis, who is our national oils lead based in Belfast but covers the whole of the UK. As to my two other colleagues, Alan Lee is deputy director of criminal investigation for Wales, the west and Northern Ireland; and John Whiting, whom you know, is our assistant director in Belfast.

Ian Paisley: Before Mr Norgrove gives evidence, perhaps I may declare an interest. For two years I was a member of the Organised Crime Task Force and worked fairly closely with most of these gentlemen, particularly Mr Whiting. I think I need to put that on the record.

Oliver Colvile: Chairman, I should also declare that I was taken to the cricket by a Japanese tobacco company—the test match.

Q2 Chair: How big is the problem?

Mike Norgrove: As to the scale of it, it is a great start to mention the OCTF because the scale of the problem is such that we can begin to solve it only with bodies of that kind. We measure the tax gap, which is the most important thing we are trying to close, for diesel in Northern Ireland at about 28% for the last recorded year, 2008–09. That adds up to a loss of duty to the Exchequer of about £160 million. The most important difference between that tax gap and all others that we publish for cigarettes and alcohol is that it includes perfectly legitimate cross-border shopping, which in the North of Ireland we just cannot distinguish from the illicit. That is a bit of a handicap but because of the nature of the border it is not possible for us to

estimate the split between legitimate cross-border shopping and illicit use.

Q3 Chair: You have partly answered the next question. It is a problem because of the border, largely?

Mike Norgrove: It is not just the border; it is also to do with the nature of the differential in price in the North, because of duty, between red diesel and white diesel for road use. Even if there were no border—even if there were no other countries involved—there would still be an incentive to launder or smuggle fuel, taking advantage of the big duty differential between rebated fuel and fuel for road use. At the moment that differential is about 46p per litre. Even without the border there would be that incentive. Of course, the misuse of red diesel is also discernible in the rest of the UK. Great Britain has itself a considerable problem of red diesel misuse, so it is not just the border. But, as the Chairman will know, the border presents some unique challenges. Criminals use their operations on either side of the border to frustrate the efforts of law enforcement officers, which in turn requires us to work ever more collaboratively with our colleagues in the Republic.

Q4 Chair: Who are the baddies in this respect? Are they paramilitary organisations or gangs that may exist even in the rest of the UK? Who are the people we are really targeting?

Mike Norgrove: Both those sets. The profit margins are such that it will attract all kinds of criminals. Historically, there has been a link between this crime and terrorism.¹ It is a way in which paramilitary organisations have funded themselves in the past. Not all of those people have disappeared and the incentive to smuggle is still there. Nevertheless, it is not restricted exclusively to those; there are also organised criminals on both sides of the border and in Northern Ireland and GB who dabble or major in this but also operate tobacco crime, alcohol smuggling and so on. It is a wide range of criminal activity: large and small,

¹ *Witness note:* This link has been made in reports of the Independent Monitoring Commission.

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organised and less organised, paramilitary and non-paramilitary.

Q5 Chair: To understand the complexity of it and putting it in very simple terms—maybe your colleague at the end will answer—can you give us a very quick overview of red, white and green diesel? What is the problem with that?

Pat Curtis: In the oil sector we have basically three types of fuel. The range is a bit wider than that. We have fully duty-paid fuel, which is used mostly on the roads; we have rebated fuels, which means we have the duty and we discount it. That is mostly agricultural fuel. That also includes kerosene, which is the third sector we look at. Because of the nature of the use to which that is put the duty on kerosene is zero. In simple terms, kerosene is at zero rate of duty; red diesel—agricultural fuel—is approximately 13p, or slightly less, per litre; and petrol and diesel come in at about 59p. That is the spread. As already mentioned, the activity is to gain the advantage between the duty rates and fuel types.

Q6 Ian Paisley: Perhaps I may confirm the number of which you spoke. How much do you think the British Exchequer loses per annum on fuel laundering?

Mike Norgrove: For the UK as a whole it is almost £1 billion. On laundering only, it is difficult for us to split the duty we lose between laundering and mixing, which is another practice to which we will no doubt come, and straight smuggling. We do not have that breakdown.

Q7 Ian Paisley: Would it be accurate to say that it is about £300 million per annum? Are you able to give us even a guide? In response to a parliamentary question Parliament was told on 6 July 2011 that between £280 million and £300 million a year was lost because of fuel laundering in the UK. I want to get an idea of the extent of the fuel laundering aspect of it.

Mike Norgrove: I am afraid that is not a figure I have seen. We have not hazarded guesses or made estimates as between the laundered and smuggled or the mixed.

Q8 Ian Paisley: Would it be right to say that the loss is hundreds of millions of pounds?

Mike Norgrove: Yes, I think it would be fair to say that.

Q9 Mel Stride: On the issue of laundered fuel, do you have some measure of how much worse it is proportionally as an issue in Northern Ireland than in GB? Perhaps you could use as a measure the percentage of fuel that is used by people that is laundered. Is it markedly higher in Northern Ireland than in the rest of GB?

Mike Norgrove: Because we do not have estimates of the split between laundered and mixed in either the North or GB we do not have that.

Q10 Mel Stride: What would the position be across those two categories?

Mike Norgrove: The overall tax gap on diesel is about 4% in the UK as a whole. We think it is more like 28% including cross-border shopping in the North, but the danger of the comparison between 4% and 28% is that the latter will include a great deal of perfectly legitimate cross-border shopping by individuals and companies, so even that figure is not as tight and accurate as we would like.

Q11 Mel Stride: But you would be reasonably confident in saying that the problem would be several times worse in Northern Ireland than in GB across these two categories?

Mike Norgrove: I do not have any science on which to base that.

Q12 Mel Stride: The gentleman at the end looks as though he may have a comment.

Pat Curtis: If I may put a slightly different slant on it, we have had more detections of laundered fuel in Northern Ireland than the rest of the UK. One of the reasons for it may be that we have allocated time for the staff to test new trends and methods occurring in the fuel industry in Northern Ireland. We selected Northern Ireland as a place to try this out. Some of the new detection techniques have been very successful. Currently, these are being rolled out to the rest of the UK mainland, so it is early days for us to give you a current figure about the difference. Is it our expectation that we will have a balanced view of laundering on the UK mainland and Northern Ireland? Potentially, yes; we really do not know. But new detection techniques had to be developed in one location to start with and we picked Northern Ireland for that. So, they may give a false indication of the concentration of the problem in one geographical region.

Mike Norgrove: It would perhaps be worth adding that one factor unique to Northern Ireland is that there is a more readily accessible availability of green diesel to launder from the South than on the mainland just because of the intervening water. That is a particular circumstance in the North.

Q13 Mr Benton: I go back to the Chairman's initial question about the scale of the problem of smuggling, laundering etc. As a general point, do you feel hampered in any way by inadequacy of manpower in detecting these things? A general complaint I have heard certainly in England is about inadequate manpower in terms of the investigatory aspects of this. Is this a problem, or would you say that your particular branch of the service has adequate manpower?

Mike Norgrove: I don't think that any enforcement organisation or revenue authority would turn down extra staff, but I don't think the problem at the moment has at its heart a lack of resources or funding. In the last spending round HM Revenue and Customs were successful in obtaining additional funding. Once they had taken into account our efficiency savings, which like most departments were up to 25%, we were granted an extra £917 million to spend, not on oils alone, but on exactly this kind of enforcement work, which will generate another £7 billion. So we

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are now getting quite a big injection of funds to tackle crime, evasion, fraud and also avoidance. We are in the process of spending that money. As to Alan and John's resources over the coming years, they are in the unique position of recruiting and moving additional staff into their areas of work across criminal investigations, so at the moment resources are not our biggest problem.

Q14 Lady Hermon: To follow on from that point, have HMRC missed, as we in Northern Ireland have, the excellent work of the Assets Recovery Agency and its director, Alan McQuillan? Have you felt a difference—the loss of that—in your work in Northern Ireland in tackling smuggling?

Mike Norgrove: The work that that organisation did passed to the Serious Organised Crime Agency quite recently. This is not a big issue on my agenda at the moment. I do not know whether my colleagues want to add anything.

John Whiting: We have an excellent relationship with the Serious Organised Crime Agency. A team of people previously employed in the Assets Recovery Agency are currently employed in the Serious Organised Crime Agency. We have the same excellent relationship with them as we had with ARA. We have referred some of the work that we cannot do, either because it is particularly difficult for us to gather the evidence or there are cases where for some reason we have had a failed prosecution, to the Serious Organised Crime Agency. They are adopting that work and have had some spectacular successes.

Q15 Lady Hermon: Would you describe the merger between the Assets Recovery Agency and SOCA as a seamless change?

John Whiting: I would not necessarily say it is seamless; it would be difficult for me to comment, but I have not seen a change or a drop-off in terms of their acceptance of work from HMRC. I receive requests from them regularly for additional referrals, so they are looking for work from me and they have never turned anything down.

Q16 Lady Hermon: Would you be concerned that that very good working relationship which you have just described would perhaps be damaged by the new creation of yet another national crime agency?

John Whiting: I would hope that it is not harmed. Certainly, none of my colleagues in SOCA have yet complained that they anticipate any particular problems, but clearly I would be concerned if anything was going to happen that might harm that relationship.

Q17 Lady Hermon: Is it a fair summary that HMRC in Northern Ireland dealing with fuel smuggling would prefer to see SOCA continue its valuable contribution?

John Whiting: I would hope that the same level of service as currently exists continues.

Q18 David Simpson: Gentlemen, you are very welcome to the Committee. I am sure you will gather from the questions thus far that this is a thorny issue.

In Northern Ireland all forms of smuggling have been going on across the border right from partition, for many, many years. As Ian Paisley has said, laundering fuel, tobacco or whatever the case may be, is costing us hundreds of millions of pounds. There is a feeling among the business community and others within Northern Ireland, rightly or wrongly, that there is an acceptable level of such smuggling because it is virtually impossible to detect it 100%. Therefore, we live with a tolerable level of it. Mr Curtis mentioned detection. I want to ask about prosecutions. When it comes to roadside checkpoints and the new ultra-low sulphur test and all the rest of it carried out on diesel, how many successful prosecutions have HMRC managed to get to the courts?

Mike Norgrove: In Northern Ireland, I think the figures covering the last few years are in the memorandum that we provided to the Committee. Thank you for the welcome to the Committee. I was lucky enough to give evidence to this Committee when Peter Brooke chaired it at least 13 years ago. I think the memorandum sets out the correct statistics. Going back further, John can recall some of the cases over the last 10 years.

John Whiting: In the last 10 years we have achieved many prosecutions—I do not have the figures at my fingertips but my colleague has—but only four people have been put in custody.

Q19 Lady Hermon: Would you like to elaborate and explain why it is so many prosecutions fail?

John Whiting: That is not due necessarily to failed prosecution. We have had many successful prosecutions with the result that there is a suspended sentence. That is still described as a conviction, but these individuals have not gone to jail.

Q20 Lady Hermon: What was the average sentence for those who were successfully put behind bars?

John Whiting: I think three were in terms of months and one individual went to prison for two and a half years. That is the last custodial sentence for an oils fraud, which was two years six months.

Mike Norgrove: That was back in 2002.

Q21 Lady Hermon: Can I presume, hopefully, that in addition to a sentence of imprisonment, or a slap on the wrist, assets have been recovered from them, or at least HMRC have recovered a huge amount of money from these individuals? Therefore, is it money that HMRC wish to recover?

John Whiting: To be clear, HMRC conducts an investigation. As part of our investigation we apply a number of tools. We will seize the goods and assets that we find at the scene, whether it is vehicles or fuel; we will go through a process of restraint and confiscation in terms of assets that we identify, and ultimately the sentencing is decided by the courts. It is not the wishes of HMRC but those of the judiciary that are being carried out. There is a range of features, civil and criminal. Obviously, the bulk of the people that we have put through the courts have been dealt with by suspended sentences which have attached to them, where appropriate, confiscation of assets.

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Q22 Ian Paisley: I echo David's words of welcome. I understand the very difficult job that you have to do against probably some of the most horrible people operating in the community, who would not think twice about knifing and killing you on this issue. I understand that the circumstances are difficult, but there are issues here which go right to the heart of how our economy is supposed to function effectively and efficiently. You provide a guesstimate of hundreds of millions of pounds' worth of crime and unfortunately only four prosecutions in 10 years have succeeded.

John Whiting: To be clear, those are four custodial sentences. We have had many more successful prosecutions.

Q23 Ian Paisley: I am not blaming you for the failure of our courts.

John Whiting: But, to be clear, we have had dozens of successful prosecutions in that period.

Q24 Ian Paisley: John, there is no good spin on that. As someone said, you can't polish it. Those figures cannot be polished. I made a trawl through press releases on fuel laundering. It concerns me that we do not have an accurate figure. According to the press releases alone, which your organisation, the police and others put out, there have been 14 major seizures from or closures of fuel laundering plants and arrests over the last 12 months. These are multi-million-pound seizures involving companies with 2 million litres of illicit diesel plants on which £1.3 million of excise duty would have been paid. That is for the last 12 months alone. On the basis of those press releases the figures I come up with are well in excess of £300 million in Northern Ireland alone. We need to get from you, maybe in private if that is easier to do, a far better idea of the real extent of it. We must get to grips with this—the Nelson's eye that is being turned to it. You talk about the tools available to you to deal with it. I almost feel sorry for the agencies, because you seem to have 18th century tools to try to deal with a 21st century problem. That is not good enough. We have to try to change that. I want to see these so-and-sos stopped dead in their tracks by something that stops them from committing this crime and robbing people and the Exchequer of hundreds of millions of pounds.

Mike Norgrove: We feel equally strongly, Mr Paisley. You mentioned a figure of hundreds of millions. I want to make sure I have not misled you. That figure might be true for the UK as a whole but our published estimates of diesel fraud are up to £160 million but that includes cross-border shopping on diesel and maybe £30 million on petrol. It would not be right to say that we have evidence of hundreds of millions. Extrapolating the seizures we make and plants with the capability of laundering hundreds of thousands of litres, the figures we then quote are how much duty would have been avoided had they sold all that amount, so that is a fair interpretation.

As to 18th century tools, thank you for your kind words about the circumstances in which our people work. I was in Belfast a couple of weeks ago and in Dublin the week before last. It is not just the

dedication, and the work carried out in horrible circumstances and going into dangerous places, but the innovation of Patrick and his team and the road fuel testing unit to find new ways to tell whether red diesel has been laundered, whether there is kerosene as well as diesel in the fuel and whether solvents have been added to petrol. That innovation has come partly from the Laboratory of the Government Chemist, forensic scientists and so on but principally from our own staff like Pat. They are working innovatively right at the cutting edge of science and technology. I would like to pay tribute to the work they do, as well as the work of our criminal investigators.

Q25 Ian Paisley: But the material does not stand up in a court of law; there seem to be so many loopholes around it.

Mike Norgrove: I think it stands up in a court of law, but John's point is that even when people are convicted the sentence rarely involves custody.

Q26 Chair: Surely, by definition it must be very difficult for you to estimate the amount of money being lost.

Mike Norgrove: It is. As to oils, it is particularly difficult to calculate. The general principle in HMRC is that we do at least try to calculate the tax gap. We do not simply say, "It's big; let's try to do something about it." We calculate the difference between what we should collect and what we do collect on tobacco, alcohol and a range of excise duties and other taxes. On the 21st we shall be publishing our latest estimates. Oils are particularly difficult because you have to make an estimate of the total miles travelled, which comes from Department for Transport surveys, then look at the relative efficiency of the different sorts of vehicles involved, whether it is cars, lorries or vans, and whether it is petrol or diesel. That formula is incredibly complex and our scientists and analysts have to work on that with the statistical service. Mapped on to that is our own clearance data, which is factual. We know how much duty people are paying us. One interesting phenomenon is that if we thought diesel fraud was bigger than we had previously expected that would mean only that petrol fraud was less, or vice versa. We are pretty sure about the totality of what we are losing, because we know the duty receipts and other data about miles travelled and the efficiency of vehicles, but it is tough.

Q27 Oliver Colvile: Are you saying that if you had tougher laws and there was mandatory sentencing of people who had been nicked for playing around with contraband that would push up the numbers of people being sent to prison? Is that something you would want?

Mike Norgrove: Your first condition was about having tougher laws. I do not think the laws themselves are inadequate; it is the interpretation of the offence and the decisions by the judiciary.

Q28 Oliver Colvile: I have always rather taken the view that the judiciary interprets the law in the way in which it should, and it is our job as politicians to make sure we lessen the wriggle room for people to

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be able to do things. Do you also feel that if there were more cases of people going to prison for illegally laundering tobacco, petrol, oil or whatever, it would have a significant impact on deterring others from participating in this criminal activity?

Mike Norgrove: Yes, I do. Some of the £900 million-odd to which I referred earlier will go to what we call volume crime and extra resources for investigators in order not just to bring those people to book but to deter others. Therefore, I am with you entirely.

Oliver Colvile: My personal view—no doubt we will end up discussing it—is that we should be drawing this to the attention of the Home Secretary.

Chair: It will form part of the report.

Q29 Mel Stride: I want to turn quickly to the smuggling of other products. In terms of lost revenues, how does tobacco and alcohol smuggling compare with fuel smuggling in Northern Ireland?

Mike Norgrove: The markets are smaller, and for other products we think the illicit share is also smaller. Again, it is quite difficult to be precise. We shall be publishing some figures next week, but in each case it is certainly a smaller problem. Tobacco is a particularly interesting example at the moment, because the Republic of Ireland finds itself the target of smuggling both as a destination but also as a transit point through to us and other parts of western Europe. Ireland is being targeted. For example, as a new trend exports from Dubai's free zone and China come into Ireland and then into the UK and beyond. That is an emerging and increasing worry for us, but certainly oils are the biggest of the three by a long chalk.

Q30 Mel Stride: What would be the drivers of the fact that less of it is going on with cigarettes and alcohol? Is it the duty rates? Is there less money in it because the margins of avoiding duty are less than in the case of fuels? What makes that less attractive?

Mike Norgrove: It is probably a matter of history but, as you have said, the problem with oils has been with us for a long time. Other smuggling has always gone on as well, but the technology is available in the island of Ireland and the expertise and some of the funding of this sort of activity, which has been profitable in the past, has been used to regenerate it and so on. There has been a history of it, but there are signs of those same criminals now branching out into other products.

Q31 Mel Stride: Are these gangs tending to diversify into these other areas?

Mike Norgrove: The best organised ones are.

Alan Lee: We have examples of people in respect of whom we are pursuing intelligence in relation to tobacco and, by the time we reach the point where we can intercept the individuals with a view to prosecution, they have diversified. We go into premises and the commodity we expected is not what we find; it is another one altogether. For example, we may target an individual or gang in relation to cigarette smuggling that we know is taking place, but when we conduct our executive action we discover that they are also involved in alcohol distillation or

smuggling or fuel laundering. We have a particularly nimble and ingenious opponent in this area of crime.

Q32 Mel Stride: I want to return very quickly to the law and sentencing. What you are saying, I think, is that the law is there and is robust enough but the sentences being handed out tend to be too soft, and that may be for a variety of reasons. Is one of the potential reasons that the prosecution are not efficient and effective enough? I often hear from the police on other matters, "We take people before the courts but at the end of the day we are just not sufficiently prepared; the defence are much better, and that is why we do not get the result we feel we should get."

Alan Lee: I don't feel that is an issue in this particular case. One thing we are trying to do in Northern Ireland is send a strong deterrent message. If I may, Mr Simpson, I should like to give you an assurance that there is no tolerable level that we would accommodate in relation to fuel adulteration or fuel smuggling. Although I have a small presence of criminal investigators and other personnel in Northern Ireland, if the quantity of activity rises I have over 400 investigators here in GB whom I will move into Northern Ireland for any particular operation to face any particular risk. We believe that the legislation is robust enough and that the conduct of investigative activity and the quality of evidence we present is adequate and professional. For a variety of reasons—it is not for me to say here—in Northern Ireland we do not get the scale of deterrent sentences that occurs here in Great Britain. One of the things we are anxious to do is deter. The only way we can deter is through collaborative action by the Organised Crime Task Force to make sure our interventions are successful, but in order to send a truly deterrent message it is important that upon conviction—as Mike said, we do secure them—we get deterrent sentences and proceeds of crime and confiscation orders to send a message to those who are contemplating joining this particular area of criminality.

Chair: Maybe that is something we can pursue.

Q33 Mel Stride: You say that in GB generally we are getting the sentences required but not in Northern Ireland. You tantalised us by saying that perhaps this is not the place to discuss it. Why are we not getting the results in Northern Ireland?

Alan Lee: I really do not think it is a matter for public discussion.

Chair: We will look into it.

Q34 Lady Hermon: We had reference in an earlier question to the devolution of policing and justice to the Northern Ireland Assembly.

Chair: We are coming to that.

Lady Hermon: I was not going to eat into Gavin's question. In light of the devolution of police and justice to the Assembly, have HMRC made representations in the past 12 months to the Assembly and Justice Minister about improving or topping up sentences?

Alan Lee: Personally?

Lady Hermon: Yes.

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Alan Lee: I have spoken to David Ford and through the OCTF we have raised this matter with him.

Q35 Lady Hermon: Are you able to tell the Committee whether it was a positive and encouraging response, even at this early stage?

Alan Lee: Certainly Mr Ford was extremely sympathetic.

Q36 Lady Hermon: Extremely sympathetic in terms of toughening sentencing?

Alan Lee: In terms of following up the concerns we raised.

Chair: I think we will have to look into this.

John Whiting: To be quite clear, David Ford has no control over the judiciary. The judiciary is completely independent, and we respect that.

Chair: We understand that.

Q37 Gavin Williamson: In relation to fuel fraud it is often said that it is not just down to HMRC or PSNI; it is very much a collaborative approach, but in the past some Government agencies and departments have seen it very much as HMRC and PSNI having to sort it out. Has that approach changed recently?

Mike Norgrove: I think it has. In a moment I will bring in John as chair of the OCTF. There is now a genuine buy-in by other departments, from trading standards to the Department of Environment and so on, to tackle this problem collaboratively. There has been a real sea change in recent times. It is a multi-agency and cross-border approach. As to the cross-border aspects, Alan and I were in Dublin on 2 September to meet Josephine Feehily, Chairman of the Office of the Revenue Commissioners. That meeting, which was a whole-day meeting, could not have been more profitable. We were at one on all the issues. Occasionally, there were some interesting differences of perspective and we learned from each other there, but collaboration, which has always been good on the operational side, is also now excellent on the policy side. We are getting the HQ teams to talk about the way in which, for example, we control registered dealers in controlled oils. That sort of co-operation is working.

Q38 Lady Hermon: On cross-border co-operation, can you tell us a little more about the Cross-Border Fuel Fraud Enforcement Group, which is a short title? In particular, who takes the lead in those discussions, which were very fruitful in the early part of September? Who takes the leads within the Organised Crime Task Group, and to whom do you account and report?

Mike Norgrove: I will give you a simple answer and hand over to John. We take the lead.

Lady Hermon: Excellent.

Mike Norgrove: And John chairs that group.

Q39 Lady Hermon: We are going to hear from the horse's mouth. Tell us.

John Whiting: Clearly, David Ford is the chair of the Organised Crime Task Force. He chairs the stakeholder meeting, which we attend, and there is a strategy group. Below that, there are nine sub-groups,

one of which is the neatly-named Cross-Border Fuel Fraud Enforcement Group.

Q40 Lady Hermon: Give us an idea of its size and of what it consists.

John Whiting: We are meeting tomorrow in Dublin. Normally, there are about 20 attendees. There is a good gaggle of people from HMRC.

Lady Hermon: I am sure it is quieter without Mr Paisley being there.

Ian Paisley: But it's not as much fun, John.

John Whiting: I am afraid he has never attended that one. From Northern Ireland we have participants from the PSNI, including PSNI C1, which is the crime operations, but also their roads division, because there is a significant role to do with vehicles that move this product around the Province. Therefore, we want to use as many tactics as we can. We have representation from the Serious Organised Crime Agency, which represents both the former ARA side and the more operational side. We have representation from the Health and Safety Executive, who also join us in a Northern Ireland fuel forum, which is a forum made up of the 26 councils. We have representation on that particular group. We also have very active membership from the Northern Ireland Environment Agency, which more and more participates in our operations, especially in relation to laundering plants where there is toxic waste. Effectively, we replicate that with membership from the Revenue Commissioners in the Republic of Ireland, Criminal Assets Bureau and Garda Síochána, including their roads people, and the equivalent of the Environment Agency in the South.

Q41 Lady Hermon: Do you meet alternately in Northern Ireland and the Republic?

John Whiting: We meet every three months. We take it in turns to meet North and South. I chair every meeting. You probably accept that there is perhaps a sensitivity about the fact that a UK organisation chairs the meeting, but there was Irish ministerial approval for that to take place because it was recognised that it was a particular problem for us. As Mr Williamson mentioned earlier, there was a recognition that HMRC themselves could not try to deal with this problem. Some of our success in taking out laundering plants over the past 12 months, which Mr Paisley mentioned, and even before, is the result of the co-operation and collaboration that we have achieved through the cross-border group. It is an understanding, and it is both in terms of developing intelligence and taking that into operational delivery and arrests, and then, very practically, looking at what we have achieved following arrest and what is the best solution. The best solution might not be to prosecute the individual that we have dealt with.

To give you one example, in a joint operation the principal was just South of the border but the smuggling was first into the South and then back into the North. We have taken a very small aspect of that for a Northern Ireland prosecution. The principal was in the South. Therefore, rather than spend five to 10 years trying to extradite that individual from the South and bring him before the courts in Northern Ireland,

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we have adopted the pragmatic solution of saying to the Criminal Assets Bureau that it should target that individual. He also has assets in the UK, so we have made that particular referral to the Serious Organised Crime Agency, which would have been ARA. We are trying to move effectively and quickly to strip them of their assets.

Q42 Lady Hermon: As a matter of curiosity, how stiff are the sentences in the Republic of Ireland? Is it in your best interest to leave the individual South of the border?

John Whiting: The Criminal Assets Bureau will deal with them civilly. They operate a bit like the Assets Recovery Agency, so that will not be a criminal case there either. I am not certain of their recent successes in terms of custodial sentences. They may be similar to our own.

Q43 Lady Hermon: Is that information you can provide to the Committee? Over 10 years, six people have gone behind bars in Northern Ireland. I would like to see the equivalent figure over the same timespan in the Republic.

Mike Norgrove: We can also send you details of who is on the committees and groups we mentioned.

Q44 David Simpson: A very small point: whenever we listen to the structures of this, with the greatest respect, great organisation of HMRC and the assets recovery agencies in both Northern Ireland and the Republic of Ireland, is it a case of deterrent? With all the resources that you guys have at your disposal, why is it increasing? The figures I have received show that in Northern Ireland it is increasing, whether it be fuel or tobacco. The other day £3 million worth of cigarettes was caught the other day.

Ian Paisley: £8 million was recovered yesterday in Dublin Port.

David Simpson: Why is that? Is it the deterrent itself, whether it be a custodial sentence or whatever it may be? You talked about prosecutions. How many of the people who get a slap on the wrist with a suspended sentence or whatever reoffend and you bring them back again? Is the bottom line here the deterrent? Are you saying to us that you have almost all the resources that you need to do the job but somewhere along the line there is a stumbling block and something is going wrong? Ian Paisley and others have said that we are losing millions in revenue. Surely, something can be done about this to try to minimise what is happening.

Mike Norgrove: We do not think the problem is increasing. We have no evidence to suggest that it has got worse. Figures in the public domain show that the diesel tax gap in Northern Ireland has gone from 40% in 2004–05 to 28%.

Q45 David Simpson: I am sorry to cut across you, but a moment ago you said you did not have the figures for the approximate loss of revenue. If that is the case, then surely there is a possibility that you are not aware of all the laundering that is ongoing.

Mike Norgrove: It is always possible that laundering is happening. Cross-border shopping will fluctuate according to the duty and exchange rates at any one

time. At the moment the euro is quite weak. We have no evidence to suggest that the illicit side is increasing but we think our effectiveness is. These guys are taking out more laundering plants than ever before. They will always be attractive to criminals because the economics of the crime are such that they do not need big set-up costs. The equipment is available on eBay, as it were, and the transport costs are not huge. They are prepared completely to flout any health and safety or environmental restrictions. They dump acids, bleaching agents and so on into lakes and rivers, and recently by a school. They are prepared to go to any lengths to make these profits. Therefore, of course that will always be a difficult problem, but we do not believe it is getting worse and that our weapons are proving less effective than they ever have been.

That is not to say we cannot do better. We are determined to produce a more deterrent effect through our labours. I think we also need to change the mindset. The police have a campaign running called Changing the Mindset. In the past this has been seen as a victimless fiscal crime and not as heinous as some crime that can happen. We need to make much clearer the environmental damage that is being done to where we live, our schools and so on and that this is not a victimless crime. In that way we think the deterrent can help.

Q46 Gavin Williamson: What you said about it being regarded as a victimless crime is interesting. Are the public starting to understand the implications of it and are you getting more tip-offs, or are you finding that that is not quite the case yet?

Alan Lee: I think awareness of the harm involved in this crime has become more acute. We ran a campaign recently called Fuel Fraud—It's a Dirty Business with lots of media advertising. We have recently reconfigured the memorandum of understanding with the Environment Agency in Northern Ireland with a view to trying to standardise the frequency with which we prosecute jointly where we discover fuel laundering so that the prosecution team levies charges in relation not only to fiscal loss but also to environmental damage. That twin-track levying of charges is raising the mindset of everybody that this is not a victimless crime; there is significant harm. As Mike said, we have discovered toxic waste that has been abandoned within yards of a school. We have seen it seeping into rivers.

One benefit we want from devolution in Northern Ireland is closer working with MPs on a local basis to get people to understand that there is huge harm as a consequence of fuel laundering; it is not just about fiscal loss. The revenue and duty we lose is further exacerbated by the clean-up costs inflicted on the people of Northern Ireland to dispose of this waste safely. We are trying to leverage in the mind of the public the fact that there is significant harm attributable to this particular activity. We think that is starting to get through and, as I say, we are now in the middle of the renegotiation of an MOU with the Environment Agency to have twin-track charges laid.

John Whiting: As part of the Cross-Border Fuel Group we took the very deliberate step to increase publicity of our activity. If you go back five years,

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you would see very few inches of print relating to Customs and Excise, now HMRC, activity. We took the very deliberate step to increase the media coverage we were seeking. That started off by taking television crews with us as we went on operations, and we have managed to keep that. That is the reason Mr Paisley has access to all those successes. We had some of those successes previously, but we have a lot more of them because we have a lot more people doing it, and we have better intelligence because we are working with other agencies to develop that intelligence.

Lady Hermon: It is very warmly received by the public. It does increase their confidence in what HMRC is doing in Northern Ireland, so please keep that up, if not extend it.

Q47 Oliver Colvile: Bluntly speaking, my taxpayers in Plymouth Sutton and Devonport have to pay more money because these criminals are behaving in this way.

Mike Norgrove: Yes, exactly.

Q48 Oliver Colvile: How has the devolution of policing and justice affected your work?

Mike Norgrove: The biggest single point I would pick up is the one to which Mr Lee just made reference, which is that this gives us enormous opportunity to engage in local initiatives and to work closely with communities, local councils and so on to bring this home to people. It has been beneficial. For example, we are looking at extending to diesel the Petroleum Licensing Regulations. At the moment they are restricted to petrol, unlike in the South. We are working on that post-devolution to see whether we can extend it to diesel fuel to control garages across the piece.

Alan Lee: The other major advantage for Northern Ireland is the difference in the computation of the asset recovery incentivisation scheme. Whereas prior to devolution the computation of any funding that would come back to the agencies and the local courts would go via this particular location, now we will be able to work more closely because the moneys and assets we recover in Northern Ireland under the scheme will now be more applicable directly to Northern Ireland.

As to working more closely with local authorities under the petrol licensing regulations, if we can get round the semantics of the word “petrol” and can add the word “diesel” we can start to close down more and more places and revoke licences. Looking at the deterrent effect, it is not just about the deterrence of prosecution. We want to look at every aspect within our own agency’s powers but also within those of other bodies, so revocation of licences might even mean approaching other licensing authorities in terms of people who drive commercial vehicles. Can we do something in relation to revocation of licences if they are discovered with an unsafe vehicle transporting pots full of diesel? We are looking at every possible option we can think of, some of which I do not want to go into here, to deter, disrupt and dismantle the major groups behind this activity.

Q49 David Simpson: Alan, you mentioned that the process had changed somewhat and that revenue would go back into or stay in Northern Ireland. Through the old Assets Recovery Agency process, my constituency managed to avail itself of some funding from assets recovery and feed that back into community organisations. Is the point you are making a further elongation of that?

Alan Lee: Yes.

Q50 David Simpson: Money can be put into cross-community projects or whatever aimed at young people. I do not believe it was a large amount of money.

Alan Lee: It has not been in the past. You may find the figure goes up because it will be directly attributable to the Province. All of us have to accept that the scheme is designed primarily to further the law enforcement effort, so the actual use to which this funding can be put has certain markers and strictures upon it, but it will now be far more straightforward for us to understand how much money will be coming back into the Province, how the division of those moneys can be made and the uses to which it can be put.

Q51 David Simpson: Do you find all the agencies with which you work in Northern Ireland co-operative? Could they be more co-operative, or are you satisfied with the level of response and co-operation that you are getting?

Alan Lee: Yes, absolutely; 100%.

Q52 Ian Paisley: I want to ask about your relationship with the Republic of Ireland. I welcome the fact there is good cross-border co-operation in this. If we are losing hundreds of millions in tax revenue they must be losing something similar. Given that we have bailed them out to the tune of £7 billion, effectively they are losing our money. We want to make sure we clamp down and hold on to this money. I know that yesterday there was a seizure by the authorities of £8 million worth of cigarettes in Dublin Port. That is most welcome, given the impact that will have in my own constituency. In paragraph 6.2 of your submission you write that you work very closely with the Republic’s state lab and LGC Forensics “to improve the effectiveness of fuel testing, and we are securing support for a more robust European marker to be added to rebated fuel.” You go on to elaborate on that in 8.4 by saying you are looking to develop new and improved means of roadside lab testing. How far along is that? Are you at the point where you could do a pilot of some of that work, or are we in a long, protracted procurement process that could mean we are sitting here for another few years waiting for this advanced technology to come into your hands?

Mike Norgrove: We have with us a great expert in Mr Curtis, so I will defer to him in a moment. To give the broad position as to where we are, we are trying to operate at two levels at least: the immediate and medium term. For the immediate, we believe we are on the threshold of finding a strengthening of the current marker—we will not go into details here, but can do later—which we think will at least double the

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cost to launderers of removing it. That is an immediate benefit which we think we will have in place and are piloting with Pat right now. There are also enhancements of current techniques. For example, the solid phase extraction test invented by Pat and his team is proving particularly effective and is being shared with our colleagues elsewhere. There is some immediate work and there are immediate benefits that are not just jam tomorrow.

Nevertheless, in the slightly longer term we are working in two capacities: one is across the whole of Europe and the other is with the Republic of Ireland. We think the European marker is not effective enough and we desperately need a new one. Pat has started the initiative of sharing ideas. 14 other countries are already interested, and we are looking for an event to be held in Brussels next year under the Fiscalis initiative. I think that will start to gather pace with European minds coming together. The other day I was talking to my Hungarian opposite numbers for whom this is a big problem; it is all over Europe.

Independently, we are working particularly closely with the Republic on something which, if the European one failed or even succeeded, we would want to develop together. Therefore, on a separate twin track we have gone out with a request for information to providers out there to come up with new ideas about what is out there in the market that could really help us in the longer term. We have had some very interesting replies which we are discussing with them—nothing that has yet shot the lights out, but maybe we can come to that in a later session. It is promising. You are right. That is something we will probably have to wait a little while for before we go out to tender.

Q53 Ian Paisley: Can you define “little while” and “long term”? Are we looking at years, months?

Mike Norgrove: I would have thought we would want to go out to tender within a year. Pat?

Pat Curtis: We are pursuing three strategies. The first one, which we can fully control, is to try to improve the detection methods at the roadside. You have heard about the XRF machine. In Belfast we found out that we could test fuel at the roadside for sulphur content. That was to stop the smuggling of fuel because the UK had ultra-low sulphur diesel in the UK market but our colleagues in the South had not introduced it for two years after the fact. From that, we found out that agricultural fuel had a higher sulphur content than ultra-low sulphur diesel, so even though the launderers were attempting to remove the dyes and markers we could test the sulphur content and it would give us a result. The success of that was so great that not only did our colleagues in Dublin buy into it, but they actually changed the legislation and used sulphur as a marker. As of October, our colleagues in the Czech Republic, who have come over for training in Belfast, will have purchased their own machine for fraud detection in that country.

Our on-field detection techniques have a history of improvements. The most recent one, which Mike mentioned, is the solid phase extraction test, some of which you would have seen when you were in Belfast. I can explain that in more detail after the session, if

you wish. There are other things we have been looking at jointly with our colleagues in the South. We have jointly formulated a new roadside test to check solvents in petrol and even the mixing of kerosene and petrol. This is not limited to the diesel market; it is a wider concern and possibly is not recognised yet. Perhaps I may tell you, jokingly—forgive me—about a test we devised after months of working on the detection of diesel in petrol. Petrol is a more hazardous substance, as you appreciate, than diesel. I had concerns about the way staff handle it on the road etc and what sort of chemical test they can carry out on petrol. After a couple of months of trying every high tech method we could think of and asking scientists to come up with something, the test that was evolved by the staff, and—which we did not tell the trade at the time—involved photocopying paper. We told the trade when we carried out the test that the paper had been designed specially for the test. Basically, the test consisted of cutting photocopying paper into finger shapes and dipping it into the petrol. Petrol evaporates very quickly, as everybody knows, but there are warnings on retail sites that if you stand near diesel you will draw it into your car because it does not evaporate. If there is diesel content in petrol when it evaporates you think somebody has left a chip on the piece of paper; it leaves a greasy stain. It was as simple as that. Do not take that simplicity as meaning that somebody worked it out in an hour. A lot of background work went into it. It shows that we have been pursuing a lot of innovative ideas.

The other strand, which again I will explain further after the meeting—I will try to give a date to Mr Paisley—is that we are taking what we have currently and trying to make it better. All the markers consist of a recipe. We want to see whether we can tweak the recipe that fits in with the current legislation and has no impact on the trade, especially in cost. We think we have a result on that. We believe strongly that we can have this in place by March next year at the latest.

Q54 Ian Paisley: That would be fantastic.

Pat Curtis: I have to explain: this is a temporary matter; it is not the answer to all our problems.

Ian Paisley: It is a pilot.

Pat Curtis: The cost will be a fair bit higher than a doubling of the cost to customers out there but, more importantly, until they find out what it is we have done we will have a step ahead.

The third strand is that for years we have realised that the Euro marker has problems, which is why the UK decided to retain its existing marker and add it to the Euro marker. When Brussels said we must have the Euro marker everybody introduced it. Our colleagues in the South have it; every European country has it. But even back then we also retained our UK marker because it was recognised very early that the Euro marker was not as robust against professional launderers. But it did not seem to be an issue in Europe, so this marker was introduced. We want to see whether we can replace the Euro marker and improve it. That is a costly, costly event. We suggest that we must get backing from Europe and Brussels, so we have gone out to other Member States and asked them a range of questions. Have they got

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issues? Some Member States have come back and said that they do not have a problem. Our question is whether they have looked for it. They will ask, "Why should we look for it? We have not had a problem." We have to re-educate them.

We had a team from the Czech Republic over for a full week for training in Belfast. They went out live to laundering plants; they appeared in some of our television coverage. As I explained, they took our techniques back to their country. We have a request from the German customs for the same facility. More importantly, at the moment 14 countries have said they are very interested in joining up and doing a workshop. This workshop, for which we are currently requesting funding from Fiscalis, will be held in Belfast and led by us because we see ourselves as the lead. But the whole idea behind it is to see what is out there and also to raise the interest in Brussels so that the UK does not have to fund the Euro marker replacement and we do it as a European initiative.

Q55 Ian Paisley: We have not rigorously tested this yet in terms of questioning, but we have received written submissions that there are technologies out there that make fuel non-laundable and that they could be introduced almost immediately. We understand that one of these has been introduced successfully in Brazil and has reduced their cross-border smuggling by hundreds of millions, or whatever currency is used in that country. There appear to be products out there. Are you saying you may be prepared to test some of those products, or is it your own product that you will test in March?

Pat Curtis: No. Mike has already mentioned that formally we have put out an expression of interest European-wide to see what is out there.

Q56 Ian Paisley: That went out in 2009?

Pat Curtis: Yes.

Q57 Ian Paisley: It is now 2011.

Pat Curtis: Yes, 100%, and I am aware of the product that you are talking about. I cannot apologise but I do apologise at the same time for saying that it takes a long time to look at what is out there, because we have to get approval. It would be a very costly exercise if the Department made a decision to introduce whatever marker it was, it turned out to be effective but somebody defeated it in six months' time.

Q58 Ian Paisley: Is it possible to pilot this stuff?

Pat Curtis: This is currently being piloted. As to the marker you are talking about, we are in phase 9 after exchanging information back and forth, because we have found strange quirks in it.^{2,3} For example, for one marker that passed many of the known laundering techniques we suddenly found that it deteriorated if it was kept in plastic containers. If you put it in an IBC the plastic affected what I call a DNA dye marker.⁴ It takes a while for chemists to work that out. We also have a sub-group on markers from the cross-border

meeting, which I chair. We had our fourth joint meeting with the State Laboratory from Dublin, the LGC in Teddington, the Revenue Commissioners and myself. We do the package together; we share the whole decision; we divide up the research. They are carrying out some of the research into the markers that have been introduced to us. Our LGC also carries out some research. We have opened the facility for people to come out with our vehicles and see what it is we do and what equipment we have. We are looking very closely at it. I respectfully say that if you know some of the companies involved they will tell you that they are working with us on a weekly basis.

Q59 Ian Paisley: What could this Committee do by way of a recommendation that would help you make progress and get to the point you want to get to? Ultimately, we will have to make recommendations. What should we recommend? As to what you are doing, from a technological point of view, are there things we could recommend that would assist you and give you muscle to achieve the goals that you have outlined to us?

Pat Curtis: If I am being candid and honest at this stage, it is still an early stage for us. I know there is frustration that it may take a year or two years to come out, which is why we are actively looking at the development of detection techniques at the road as a stopgap and improving the existing marker. There will come a stage very soon, when we get in all the foreign expressions of interest and are coming to a solution, when we may come to the Committee and ask for support for this because we need all the help we can get to deliver this. That is one of the reasons why we went to the other Member States to see whether they had chemists so we could spread the technological research and we were not blinkered about what we thought was on the market in competition with us. There could be another item out there in the market that will work effectively. We want to be really, really sure that when we make a decision it will be effective for at least a reasonable period.

Q60 David Simpson: As a point of clarification, under the current process if you take a sample of diesel how quickly do you get the results?

Pat Curtis: We would have the results within three minutes.

Q61 Dr McDonnell: I raise a technical point. Mixing, stretching or laundering fuel generally require those who are doing them to have a certain amount of equipment and technical knowledge and to change their methods constantly to stay ahead of whatever counter-measures you may have. Do you believe you have enough technological resources to stay ahead, or are you struggling? Are they getting ahead in the technology race?

Pat Curtis: The big issue here is the fact that nobody knows what is in the market and how effective the different types of solvent are. Until we make the detection we are not in a position to look at the whole market globally and say, "All the product here is of interest to us." We will always be on the hind step of somebody who comes across something, on Google

² *Note by witness:* I should have said that we are currently in Phase 7.

³ See Ev 114

⁴ See Ev 114

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or whatever, and introduces it into the market until we make the detection. What we are doing now, which has been quite effective to date, is to look at the low-grade technical research. I classify myself as being at that level because I am not a scientist. At that level you ask the most mundane, simple question which, like the piece of paper I mentioned, sometimes produces more effective results than a high technological solution. At the same time, we recognised that we needed to move from the Local Government Chemist solely, which is why we have introduced the State Laboratory as a joint working group. If we could introduce more chemists from different Member States we would do it. I may not be as skilled as is needed to answer that question 100%.

Q62 Dr McDonnell: The next question is a corollary of that and may also be difficult to answer. To what extent do you feel you can win with technology? Do you feel that the expense of the technology of developing all the work you are talking about, is cost-effective? In other words, do you get enough revenue in to pay for it?

Mike Norgrove: Whatever strategy we follow has to be multi-faceted. There is no silver bullet in this. The criminal investigation, which generally is a relatively expensive technique, is one that has particular outputs and so on. That in itself is not sufficient. I need to have perhaps boys and girls to be out on the road testing fuel day in, day out, seeing what is going on and finding out what the criminality is day to day. Equally, my people who are making the legislation with you, setting the policies and so on, have got their own job to do to try to close as many loopholes as possible. Therefore, a strategy may have a dozen different facets. Each in itself is not sufficient but each is necessary. Therefore, the techniques we use are more than paying for themselves, especially some of the recent innovations that Pat has come up with, even selling some of the product that we have come across.

Pat Curtis: The techniques that we are currently using are extremely cost-effective. They also have to be cost-effective because they have to be effective on the roadside. We cannot set up a laboratory in a building and work there. We have to do some balancing. To give an example, in the solid extraction test we recognise that launderers can launder the product very efficiently. The teams created a miniature laundering plant that laundered the product even more efficiently than the launderers can, and what we launder out shows us what they have left behind, and we make the detection based on that. The question is: why can they not replicate that? While the test for us may cost £2 or £3, to do it in commercial quantities is not cost-effective for the launderer. That is one of the levels at which we pitch our detection techniques. That is a relatively recent innovation.

Q63 Dr McDonnell: It has been suggested to us that the problem with fuel laundering could be dramatically reduced or eliminated if there was no such thing as red diesel or green diesel, and farmers and others were allowed a rebate system, a bit like the VAT system where you claim back money. Would that

system work, and how effective do you estimate it would be?

Mike Norgrove: You can imagine that we have looked at every possible solution to this. We live in a crazy world where we mark petrol and diesel. It is not where we would ideally want to be. So of course we have looked at this from time to time. The Danes once introduced this; our Irish colleagues quite recently were interested in the idea; but every time we have gone into it in great depth we think it opens up more opportunities for fraud than it would close. You will know as well as I about VAT carousel fraud, which is essentially a repayment fraud. That is now happening on income tax self-assessment and tax credits. These are all repayment frauds where effectively we are giving money to people who are not entitled to it. This is one of the subjects that we discuss with our Irish colleagues south of the border. The current system seems like the worst of all systems except for all the alternatives, but we are always looking for better.

Chair: Like democracy.

Mike Norgrove: I can give you a longer answer. I gave my Irish opposite number, Josephine Feehily, the Chairman of the Office of the Revenue Commissioners, a four-page brief as to why we think this cannot work and why it would disadvantage small farmers, and why not only would it be open to abuse by fraud but it would be expensive to administer. I would love it to be a solution, but we do not believe it is one.

Q64 Mr Benton: What effect has the licensing of petrol stations had on the level of non-duty fuel sales?

John Whiting: Do you mean the petroleum licence?

Mr Benton: Yes.

John Whiting: This is the issue that we are trying to address with the Assembly, in that in the past we have referred to them filling stations where we have discovered laundered fuel being sold. There is not an issue with diesel in respect of the petroleum licence, so the councils have been reluctant to revoke the petroleum licence because it is a problem that relates to diesel. That is why at our request the Justice Minister, David Ford, has written to Arlene Foster, the Minister responsible for the Department of Enterprise, Trade and Industry, seeking a change in the legislation solely in Northern Ireland. This is a particular issue in Northern Ireland and therefore we seek a particular solution. Therefore, if we can get an extension of that legislation to include diesel, if a filling station is found to be selling laundered or smuggled diesel we can then refer it to the councils and seek revocation.

Another issue is that we would perhaps seek for the licence to relate to the premises rather than the individual, which would prevent a relation or friend taking on the licence and carrying on the business in the guise of a puppet. These are areas which we are trying to address. We have quoted some big figures relating to these problems. A lot of the problem now does not relate to smuggling; I bought petrol in the Republic of Ireland last week and it was almost as expensive as that which I buy in Tesco in Northern Ireland. Our problems now are mainly around laundering and mixing.

14 September 2011 Mike Norgrove CBE, John Whiting, Alan Lee and Pat Curtis

Q65 Dr McDonnell: Yet there is diesel advertised somewhere just South of the border at 1.20 a litre and North of the border it is 1.40 or 1.38.

Mike Norgrove: That is a suspiciously low figure. I would not want to cast aspersions on the retailer, but that is a very low figure.

Dr McDonnell: It is a reasonable figure in terms of the exchange rate, because £1.20 is roughly €1.40. Our diesel is roughly a quid pro quo.

Q66 Lady Hermon: Surely, there cannot be any good reason why Arlene Foster's Department would even hesitate to extend the legislation on petrol to include diesel. Are you hopeful? Are you smiling that you are not hopeful? Why is that?

John Whiting: I am smiling only because we have been through a process where that request was made and the Department said, "This would put us out of step with the rest of the UK."

Q67 Lady Hermon: What is devolution about if not to put us out of step with the rest of the UK?

John Whiting: That was precisely my point.

Q68 Lady Hermon: Are we able to see a copy of that letter from the Department? I am very disappointed.

John Whiting: I have not seen a copy of the letter; it is simply that the Department of Justice has advised me.

Lady Hermon: I am shocked.

John Whiting: But David Ford has recently gone back to them, so we are hopeful. I have asked that David Ford presses on that, because clearly it is an important issue for us.

Lady Hermon: We will all write to David Ford.

Chair: We may try to take evidence from certain Ministers in Northern Ireland. Thank you for the evidence so far. I also thank those in the public gallery for attending, but perhaps they would now vacate the room.

Wednesday 19 October 2011

Members present:

Mr Laurence Robertson (Chair)

Oliver Colvile
Lady Hermon
Naomi Long
Jack Lopresti
Dr Alasdair McDonnell

Ian Paisley
David Simpson
Mel Stride
Gavin Williamson

Examination of Witnesses

Witnesses: **Paul Williams**, UK Head of Corporate Affairs, Japan Tobacco International, **Steve Payne**, Anti-Illicit Trade Government Relations Director, Japan Tobacco International, and **Tom O'Carroll**, Director of Corporate Affairs, Calor Gas NI Ltd, gave evidence.

Chair: Just before we start, we have previously declared interests, but I would like to draw the Committee's attention to my registered interest in the register. Does anybody else want to re-refer to their interest?

Oliver Colvile: I would: I joined the Japanese Tobacco manufacturers at the Oval test match on the Friday, and a very good day it was too, for the cricket.

Chair: Did we win?

Oliver Colvile: We won the game eventually, yes.

Chair: Any others?

Ian Paisley: JTI is a major employer in my constituency and I am regularly briefed and updated by them. I want to put that on the record.

David Simpson: Can I put on the record that I have been briefed by them as well, as an MP for the Province in which they employ?

Q69 Chair: Gentlemen, thank you very much for joining us. As you know, we are carrying out an inquiry into fuel smuggling and laundering particularly, but we are also expanding it to tobacco and any other kind of smuggling and laundering. Your advice and evidence to us will be very useful indeed, so thank you very much for coming. Perhaps I can address this to the JTI representatives: could you briefly outline the problem of tobacco smuggling, the extent of the problem, as far as you see, and the impact it might be having on your business?

Paul Williams: Thank you, Mr Chairman. I wondered if I might, just for 30 seconds, address the terms of reference, which might help me lead into that particular question. My name is Paul Williams; I am Head of Corporate Affairs for the UK. I have worked for Gallaher and JTI for over 30 years, and I am accompanied today by Steve Payne, who is the Anti-Illicit Trade Director for JTI. We have, as Mr Paisley has said, a large manufacturing plant in Northern Ireland. We employ 950 people and obviously a large range of associated businesses rely on that manufacturing plant for employment. We would like to thank the Committee for inviting us to give oral evidence today.

We recognise that the terms of reference are very much focused on fuel smuggling and laundering but, included within that, there was other smuggling activity. We believe that the same organised crime gangs may—and we are saying may—be involved in

smuggling tobacco and cigarettes. In our view it is driven by high levels of taxation, differentials in duty between different countries, and the exploitation of borders by criminals. We would hope that we would be able to help you here with looking at the scale of non-UK duty paid consumption in Northern Ireland, the factors that encourage the criminal activity in that, the cost to government and business, particularly business in Northern Ireland, and how we can better work with the enforcement agencies and other industries blighted by the same issues as ourselves. We do welcome the opportunity.

Turning to your point, Mr Chairman, in terms of understanding what non-UK duty paid is, we see four components to it. Clearly there is counterfeit—manufactured fakes. There are illicit whites; the best definition that I have seen, in actual fact, was the one in the “Cross-Border Organised Crime Assessment”, produced by the PSNI and An Garda Síochána, which says that they are brands that have been produced independently of the international tobacco manufacturers, and are essentially manufactured for the black market. That is how we would define illicit whites. The other two elements are what we would regard as cross-border purchases. These are cross-border shopping, and that is made up of travellers who would go abroad and purchase product for their own personal consumption, and also cross-border smuggling, which is the same issue: travellers go abroad, purchase duty-paid product in other countries and bring it back to be sold on. That is our definition of how we regard the different components.

In Northern Ireland, Mr Chairman, smokers consume some 2 billion cigarettes per year. Of that, we believe that 17% or 350 million are non-UK duty paid. Of that breakdown, 170 million of those are counterfeit and illicit whites, with the remaining 50% being made up of 10% duty-free and 40% cross-border purchases.

Q70 Chair: As well as the obvious loss of revenue and the impact on your business—I will be careful about how I put this—I am not suggesting smoking is safe in itself, but is there a greater risk to health from smoking cigarettes that come through the black market?

Paul Williams: We do not actually conduct any tests on counterfeit products. What we do is clearly

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manufacture, in our Ballymena factory at Lisnafillan, product that is highly regulated. All of the ingredients that we use within our tobacco products are registered with the Government, so clearly we go through a very controlled manufacturing process. I noted that, in the PSNI's written evidence, it quoted the BBC documentary,¹ which, again, gave an explanation that it believed there was significantly more danger associated with counterfeit product, but we do not carry out research on counterfeit product ourselves.

Steve Payne: I would just add that what we are talking about here is examining the tobacco itself. We will examine the packaging and, from the packaging, we can tell whether the goods are counterfeit or genuine product, but we do not actually analyse the tobacco that is inside the cigarette. We just analyse the packaging. I am just clarifying Mr Williams's point.

Chair: Perhaps we could look at the details. Ian?

Q71 Ian Paisley: Thank you. You are very welcome to the Committee, all three gentlemen. In terms of the scale, Mr Williams, are the figures that you have quoted to us for Northern Ireland alone, or are they UK-wide figures? We have had some discussion with HMRC and we are not entirely clear on the scale of this crime.

Paul Williams: We look at three sets of statistics. We do the equivalent of the General Household Survey, which identifies what we believe is the true number of cigarettes that are smoked in the Province. We then look at retail sales data and that gives us a further estimate of what is purchased within Northern Ireland by retailers. We look at the gap, and we also conduct research in-market to identify the level of illicit trade and non-UK duty paid product that is being smoked in the Province. That comes out from our research at 17%; the UK is 13%, so it is higher than within the UK. From the analysis we have done, the biggest difference is the fact that a large proportion of it—some 47% of it—is either illicit or counterfeit, whereas in the UK it is around about 30%.

Q72 Ian Paisley: They are actually startling figures. Has HMRC ever challenged your figures?

Paul Williams: We work with HMRC in sharing as much information and intelligence as we possibly can. We give regular briefings based on the information that we research in-market, in trying to identify the size of the problem. There is a lot of interest shown in the data that we have and, indeed, we have on occasions analysed those data in more depth for HMRC, when requested.

Q73 Ian Paisley: So there is broad sharing and agreement on what those figures are. Could you maybe indicate to us—this might have to be reserved for the private session and, if it does, feel free to say so—what is the single biggest seizure of smuggled cigarettes that you are aware of in Northern Ireland and the Republic of Ireland?

Steve Payne: The single biggest seizure anywhere in Europe occurred in late '09 in Greenore, which was a shipment of about 120 million cigarettes on one

vessel. It came from the Philippines and was all counterfeit or illicit white cigarettes. I believe over 100 million of the 120 million were a counterfeit of one of our brands, Palace, which we do not actually sell in the UK or Ireland, but they were on that vessel. That was the largest single seizure anywhere in Europe, ever.

Q74 Ian Paisley: If that had got through, what would the criminal have made out of that, if they had sold it on the black market in Northern Ireland?

Steve Payne: The prices vary a lot. If you take an average price in Northern Ireland of between £2.50 and £3.50, you are probably looking at pretty close to £1 million in a 40-foot container, which is 10 million cigarettes. If you times that by 12 for that particular vessel, you would easily be looking at £12 million.

Q75 Ian Paisley: Do you think any other vessels may have slipped through? Was that the tip of the iceberg?

Steve Payne: That was a unique case, I believe. That was the only case I am aware of where someone has moved cigarettes in bulk in the hold of a ship. Generally speaking, they will move them in a container when they move large quantities.

Q76 Ian Paisley: It shows a considerable degree of nerve to be prepared to do that. Perhaps they had confidence that it would have got through, but we can only conjecture about that. Finally, Mr Williams, in your evidence you mentioned taxation briefly and taxation policy. There is the Government's policy of highly taxing this highly controlled product, and people can go overseas, fill their car with this product and bring it back to Northern Ireland or, indeed, the UK. Is it your contention that the policies that are allowing that to happen are actually encouraging people to bend and, in many instances, quite blatantly break the law with regards to this product?

Paul Williams: I think it is about sheer size, and about motivation. The revenue that should have been collected in Northern Ireland would have been £500 million in a normal financial year. The revenue that was actually collected was some £410 million, as we would see it, having worked on our best estimates. £85 million was therefore lost in revenue collection in Northern Ireland as a result of that 17% of the market not being UK duty paid. If we break it down a little bit further and take the 47% of that that is counterfeit and illicit, then that is £42 million that has been evaded as a result of what we regard as being organised crime activity in shipments of counterfeit and illicit whites. If you looked, as Mr Payne said, at the average price that we believe that would be sold for on the street, that is the equivalent of a £29-million profit in 12 months. I think you would agree that the figures are staggering.

Coming back to your point about taxation, it is about opportunity; it is a profit opportunity. The concern we might have is that prices continue to rise. If you take the first three months of 2011, cigarette prices went up by between 68p and 70p per pack,² which clearly will filter through to the criminal saying, "That is an

¹ Panorama: Smoking and the Bandits, BBC One, 7 March 2011

² *Witness correction:* In the first three months of 2011, cigarette prices went up by between 52p and 66p per pack.

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additional margin we can make.” Again, with the economy as it is—this was a comment in the programme on Monday night that I happened to pick up on—it challenges people’s moral compass as to whether or not they decide to buy in an illicit market, as opposed to buying in the legitimate market.³ Our concerns are that anything that affects our production, our factories and the legitimate businesses in Northern Ireland is of huge concern to us as a business.

Q77 Lady Hermon: I wonder if I might just come back to Mr Payne for one moment. In relation to the largest seizure of cigarettes, were there any prosecutions? Were there any arrests? Did anybody actually go to jail?

Steve Payne: I believe this seizure took place right on the border in the port of Greenore; it was technically in the Republic, so it would have been handled by the Republic. As for how many people they actually arrested and what happened with prosecutions, I am not aware of the details of that. The trouble you have with most of the shipments of illicit product is that, a lot of the time, the people are not available to prosecute. If you take not necessarily that particular example but the majority of times in which you have a container, the products come into the country, and often there will be false documents; the individuals and companies on the documents do not exist. When HMRC and other people come to prosecute someone, there is no one to prosecute. They seize the goods, so the seizure statistics are very high, but in terms of actual follow-up prosecutions of individuals, they are not tied together, because there is no one physically there to prosecute, as the goods are moving independently of people. Occasionally, you might have someone driving a vehicle with the goods, so you might prosecute the driver, but the driver will often just say, “I am sorry, but I did not know what was in the container. I am just doing a job, driving this container from A to B.” Again, the prosecution probably would not take place. The number of prosecutions in this area is quite limited, because there is nobody physically to prosecute.

Paul Williams: The statistics that we had from HMRC were that, in 2008/9, 191 people were sentenced for tobacco smuggling in the UK, with the average sentence being given as 21 months, but that is not broken down, I am afraid, by region, so it does not state what might have happened in Northern Ireland. In that year, 5,618 vehicles were seized. As Mr Payne has said, the assets can be seized; it is not always so simple to get to the individuals concerned.

Steve Payne: Especially with the larger seizures. The majority of the figures there, I suspect, are smaller vehicles—cars, vans—where they can seize the driver and the people. With the containers, which are the bigger criminal gangs, you are not going to identify people with this particular shipment.

Q78 Lady Hermon: At any stage, has your company actually lobbied or spoken to—lobbying is a very bad thing to do—the Police Service of Northern Ireland, for example, or the Justice Minister in Northern

Ireland about how this particular loophole could be closed? All right, you seize the goods and they are counterfeit, but I would like to think that the people who are running these networks, who are very sophisticated criminals, were actually taken off the scene. I would have thought that was in the interests of your company, since it was a large volume of your cigarettes that were counterfeited—it was your brands that are not sold in the UK. But no one seems to have been prosecuted for that. I would have thought you would be much more proactive in trying to bring about change in the legislation. I have not met anybody who has asked me to take this up with the Government. I am surprised; I am disappointed, actually.

Steve Payne: It is a common problem that we have in every country. It is not unique to Northern Ireland or to the UK. What I explained happens in every country; we cannot identify individuals very easily. What we have done in terms of lobbying, as you called it—

Lady Hermon: I was trying not to say that word, actually.

Steve Payne: As I think you are aware, we have an agreement with the EU that we have signed, with the member states, and we work with the anti-fraud office, OLAF, in Brussels on a number of these issues. They will then in turn work with law enforcement agencies in the various countries. There is very little we can do in most places about changing the law.

Q79 Lady Hermon: Have you actually tried? That is the point I am making. Mr Williams has been the representative for this company for a very long period of time. I am delighted to see you all here, but can I just ask: have you actually ever once asked for a meeting with the Chief Constable in Northern Ireland or the Justice Minister in Northern Ireland, David Ford, to see what more could be done? It is a really serious offence here. A huge amount of money has been lost to the Exchequer. People’s lives and their health are being damaged by smoking counterfeit cigarettes. I am just surprised and, as I say, disappointed that you have not actually been more proactive in trying to bring this up at Government level.

Paul Williams: Working with HMRC is our prime means of engagement. To understand, the tobacco industry has very limited access to Government in any Department. This is one of our difficulties. We work very well with HMRC. We have been instrumental in supporting them in a whole range of different areas. In fact, we are working on four working groups with them as we speak on intelligence-sharing, intelligence-gathering, communications and understanding consumer behaviour of people who purchase counterfeits. We are very active but, unfortunately, we cannot always get access to Government Departments, I am afraid.

Q80 Lady Hermon: Have you asked? Sorry to pursue this matter, but have you actually asked to meet with the Chief Constable and/or our very hardworking and very good Justice Minister, David

³ Panorama: The Great Fuel Robbery, BBC One, 17 October 2011

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Ford? I am not in his party, but I think he has done a sterling job as Justice Minister.

Paul Williams: No, I have not.

Gavin Williamson: Lady Hermon is offering to facilitate such a meeting.

Chair: We may come back to that later.

Q81 Jack Lopresti: Could you give me an overview of the problem of illegal activity with respect to LPG in Northern Ireland?

Tom O'Carroll: Yes, I could. Mr Chairman, thanks again for the opportunity to address you today. I feel humbled a little bit, because the scale of our problem is so small compared to that of the tobacco industry, but it is real none the less. Essentially, Calor has filled and sold LPG cylinders in Northern Ireland for about 75 years. For a number of years, the illegal filling of these cylinders has been a small problem associated particularly with border areas. We find the timing of this inquiry particularly relevant because the problem is clearly growing from our point of view, and has spread south of the border. The problem is not so much one of duty avoidance, because LPG does not incur excise duty, except for automotive purposes, but the problem arises from the point of view that there would still presumably be VAT avoidance and avoidance of taxes on labour and profits.

Also there is the fact that, uniquely I suppose, LPG cylinders are a returnable container, and they are fixed assets belonging to our company, because the company retains the ownership and the maintenance responsibility for those cylinders. The people who fill them illegally deprive us of the use of them but also make it difficult for us to fulfil our obligation to maintain them properly. The standards of safety to which they operate are dubious, to say the least. We see it as, first, a question of some loss of revenue to the Government; secondly, a deprivation to us of our fixed assets and our entitlement to those; and thirdly, potentially a public safety issue.

Q82 Jack Lopresti: Do you see the crime in legal terms as theft or fraud?

Tom O'Carroll: It is both. It is theft and it is trademark infringement. There are also all sorts of other issues. For instance, in the kind of place where these cylinders are filled, they do not have permission to carry out that kind of activity there. They are not meeting their health and safety obligations there, and God knows what else they are not doing.

Q83 Jack Lopresti: Just as an aside, has there been a big take-up on the automotive use of LPG in Northern Ireland?

Tom O'Carroll: No, it is a small market. It is not hugely significant. There are some indications that there is also illegal supply to that market, but particularly to immigrants from Eastern Europe, where there are far higher proportions of LPG-fuelled cars.

Q84 Oliver Colvile: On this issue, talking about stuff from Europe, do you perceive that the collapse in the eurozone going on at the moment is going to fuel more activity in this regard?

Tom O'Carroll: In relation to the automotive element? **Oliver Colvile:** Yes.

Tom O'Carroll: It is very difficult to say. I think the Eastern European workers have been attracted to Ireland and to Northern Ireland because of relative economic success. That attraction may diminish. In terms of the attraction to illegally filled cylinders, the longer the practice is tolerated or not reduced, the more attraction there will be for that to spread within Northern Ireland and indeed to other parts of the UK.

Q85 Oliver Colvile: You may both wish to do this in the private session rather than this session, but who do you think is behind the major organised crimes in Northern Ireland? Any ideas?

Tom O'Carroll: I think I would prefer to keep that for the private session.

Q86 Oliver Colvile: You may end up saying the same to this, but what are the differences or similarities between those involved in, for example, tobacco smuggling and fuel smuggling?

Tom O'Carroll: I suspect that they are connected, but I have no clear evidence to say that.

Q87 Jack Lopresti: What is the difference between a litre of, say, diesel price and LPG for automotive use in Northern Ireland? Is there a big gap between the two?

Tom O'Carroll: If you take a tax-paid situation, yes, there is.

Q88 Oliver Colvile: Do you think any such criminal activity is pronounced in Northern Ireland because of the former paramilitaries?

Tom O'Carroll: Again, I would prefer to keep that for the private session.

Q89 Mel Stride: Welcome to the Committee; thank you for coming. This is a question for JTI. We have been talking about the cost to the Exchequer in Northern Ireland of tobacco smuggling and an attempt to quantify that. What work have you carried out in terms of quantifying the effect on your business specifically, due to that activity? Do you have a figure that you could provide us with?

Paul Williams: In respect of the actual impact on JTI's business, that would be commercially sensitive, but I would be happy to provide further detail in writing to the Committee on the impact to our business, if that is okay.

Q90 Mel Stride: Okay, that is fine. The other question I had related to the impact on the retail sector. Is it as strong proportionally on the retail sector as it is upon you as the manufacturer, given that presumably some of these counterfeit products are being sold through the retail sector itself? Do you have a view on that?

Paul Williams: We do not have evidence of the product being sold through retail outlets. If we do find evidence of that at any point in time, then obviously we will share that information, as a business, with HMRC. In terms of the impact in cost terms, it is costing the average Northern Ireland business. On our

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database, there are around 1,775 outlets that sell cigarettes, and therefore the average cost to them would be in the region of £1,000 of turnover per week.

Q91 Mel Stride: Just to clarify, would you be saying that the notion that retailers are selling counterfeit product is just not happening? Effectively, that is an insignificant factor; it is all being sold through other routes.

Paul Williams: Certainly from the information we receive on outlets that are visited by trading standards, the number is quite small, yes.

Q92 Naomi Long: Good afternoon, gentlemen. I have a question, Tom, for you in relation to the situation with Calor. You have estimated that the lost revenue is around £2 million, and that the loss to HMRC is around £1 million. Could you outline how you calculate those figures, and can you quantify whether that is an increasing figure or a decreasing figure?

Tom O'Carroll: Just to clarify, we did not try to estimate the loss to HMRC. We did estimate that the revenue associated with this activity was about £2 million, but that is purely a guesstimate. We would certainly be of the opinion that the figure is on the increase.

Q93 Naomi Long: The harm that that causes to your business is one element of it, but is there harm also caused to retailers who only supply the legitimate product and is there damage done to them, as well as yourselves?

Tom O'Carroll: Inevitably, yes. We have a significant retail network in Northern Ireland. By its nature, the illegally filled product has to sell at a cheaper price, so they are undercutting the legitimate retailer and depriving them of business and profit. Then, of course, they are faced with the temptation of buying cheaper illegal product if it is offered to them, and working in the grey market themselves.

Q94 Naomi Long: You have mentioned the black market and the grey market. Is there evidence of coercion, in terms of those who actually sell the product? Are those who are actually providing the illegal product for sale coercing anyone to sell it? Or is it a kind of opt-in, where people are making that choice themselves because of the competitive environment?

Tom O'Carroll: I am not aware of any direct coercion. I have heard of instances of it by repute within the diesel industry, and I suppose it would be legitimate enough to believe that the same probably exists within our industry.

Q95 Dr McDonnell: Do either or both of you have much contact with the Organised Crime Task Force and are you satisfied that the multi-agency approach is working?

Tom O'Carroll: I have had some contact. I would say we have had a good reception but, by the nature of the work they do, we do not get feedback on what they do, so it is very difficult to assess whether it is effective or not.

Q96 Dr McDonnell: I am going to lead on with you and then maybe come back to tobacco. You have suggested that the problem is increasing in your pitch. Do you feel it is being taken seriously, or is it just taken as some form of collateral damage that has to be lived with?

Tom O'Carroll: I think that we are certainly being listened to. As I say, we are not clear on what the follow-up activity is and, in many ways, we do not expect to be given feedback on the follow-up activity.

Q97 Dr McDonnell: Aside from feedback, do you see any action being taken on the information that you pass?

Tom O'Carroll: No, nothing specific.

Q98 Dr McDonnell: That is very clear. Do you have any idea why it might be that there is no action taken?

Tom O'Carroll: I am not saying there is no action.

Dr McDonnell: No visible action.

Tom O'Carroll: The reality is that LPG is a very small part of the problem, if you take it as a subset of the fuel problem as a whole. Obviously, the authorities' main efforts are going to be focused on diesel. I think that they will pay attention to any connection between diesel and LPG as they see it, but we are certainly not aware of any specific actions that have been taken relative to LPG alone.

Q99 Dr McDonnell: Could I go back to Gallaher and tobacco? How do you feel the Organised Crime Task Force works?

Steve Payne: I would say that we feed in quite a bit of information to several law enforcement agencies. As Mr O'Carroll said, there is very little feedback because of the nature of what they are doing. We also have the problem that the laws at the moment are written such that they cannot discuss with anybody when they are involved in a criminal investigation, so we would not ask and they would not tell us. But there is certainly intelligence passed in, and we do see action taken in a number of different areas, not just with the Organised Crime Task Force but with HMRC and, as I said, on a broader scope within Europe, with OLAF as well. They are all very active in the tobacco smuggling areas.

Q100 Dr McDonnell: Chair, can I move to another aspect and back to Calor again? In some of the earlier evidence, you guys referred to the prosecution and fines of £300. You obviously think that is not an appropriate punishment. What do you think the punishment should be?

Tom O'Carroll: I was not involved with that particular case myself, but there are two elements: first enforcement, and then punishment. There is legislation that has been breached in various ways in the illegal filling of cylinders. The number of cases actually brought to court under any heading is relatively few. In the particular case you refer to, that came as a result of what was, at the time, one of the largest investigations ever carried out by the PSNI. To be honest, we would have thought £300 was a joke. We would have thought that probably a custodial sentence would have been appropriate.

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Q101 Dr McDonnell: Are you suggesting that the cylinders are not properly filled or only partly filled?

Tom O'Carroll: It is our strong belief—I use my words carefully—that they are certainly not filled to the same standard that we apply in our own business.

Q102 Dr McDonnell: When you say 'standard', is that quality or is it quantity?

Tom O'Carroll: It is both.

Q103 Gavin Williamson: Do you think there could ever be potentially a danger?

Tom O'Carroll: If you work on the premise that the codes of practice and the legislation that applies to our industry, and it is a highly regulated industry, are primarily there to protect the safety of the public—there is also the consumer legislation on weights and measures—then if people do not operate according to those standards, the logical conclusion is that, yes, people potentially can be put at risk. I would not like to overstate the potential, because we work with good factors of safety within the industry, but there are risks none the less. Also, within consumer legislation, it is our belief that people are not getting what they are paying for.

Q104 David Simpson: When HMRC was here—I am just referring to JTI at this stage—you made the comment that your working relationship with them is very good, or reasonably good. I put a question to them, because the perception among the general public whom I speak to is that there is an acceptable level within HMRC or other organisations in relation to what is smuggled, whether it be fuel, gas or cigarettes. There is a tolerable level. When we look at fuel, something like £200 million or £300 million is lost to the Exchequer. It is still happening 30 years on. There does not seem to be a lot done, as far as slowing it down; it seems to be moving as quickly as ever. You can comment on that, but you do not have to.

In April this year, in the research paper of 2011, HMRC announced a new strategy to target organised crime and those who smuggle. This was specifically targeted at tobacco. The then Economic Secretary to the Treasury said: "The Government believes that tobacco smuggling must be tackled head on." This new strategy that the Government introduced in April—what impact has it had, from April of this year until now, including in prosecutions, which is a subject that Sylvia raised? Can you see evidence on the ground that this new strategy is working?

Paul Williams: We have seen a reduction in the amount of non-UK duty paid in the UK. It has fallen, and it is currently sitting at circa 13% of the market. If you go back 10 years, it was in the low to mid-20s, so there has been a significant reduction. We understand there is an additional £900 million being invested.⁴ Clearly, that, we believe, will and should have a significant impact. Based on the information we have shared with you today regarding the size and proportion of counterfeit and illicit whites in Northern Ireland, clearly it is one of the areas where that would

need to be focused, because that is significantly out of kilter with the percentage in the UK.

Q105 David Simpson: You said it was in the mid-20s and is now sitting at 13%; has that happened since the new strategy came in?

Paul Williams: No, it was already in decline. There are clearly economic factors, such as the reduction in travel numbers as a result of the 2008 financial crisis. We are seeing less product—that is, EU duty paid product—moving across as a result of cross-border shopping, as we would put it. Certainly in terms of the volume of seizures that we are seeing as a result of the activities in Republic of Ireland, where there have been 18 seizures this year totalling 98 million cigarettes—large seizures—and obviously the cooperation that is going on currently between the revenue commissioners there, HMRC, An Garda Síochána and PSNI, we are certainly seeing a significant increase in the number of seizures from ships and inland. There are some positives definitely coming out of this.

Q106 David Simpson: Just to clarify the point that Sylvia raised as regards prosecutions, out of all of those, are you aware of any prosecutions?

Paul Williams: The issue for us is that we do not see the prosecutions broken down. It is the same comment that was made to you by HMRC. We do not see whether prosecutions actually take place as a result of this.

Q107 Mel Stride: I just want one quick question to JTI. If I am purchasing cigarettes in Northern Ireland and I buy an averagely priced packet of 20 cigarettes, what do I pay for that? What are your mid-price bands?

Paul Williams: Mid-price is £6.50 for 20.

Q108 Mel Stride: If I am approached in a pub by someone with an illicit pack of 20 cigarettes—a counterfeit of one of your brands, say—what would I pay for that?

Paul Williams: £3.50 to £4.

Q109 Mel Stride: What would the tax be on that legitimate pack of cigarettes?

Paul Williams: On the legitimate packet of cigarettes at £6.50, it would be just over £5.

Q110 Mel Stride: That is £5 in tax?

Paul Williams: £5 in tax, yes; £5.17.

Q111 Mel Stride: So £1.50 is going to you; £5 is going to the revenue; and I am able to buy it at about £3.50 to £4.

Steve Payne: It is not just going to us; there is also the retailer and the wholesaler, but about £5 is tax.

Q112 Mel Stride: Just out of interest—I think there is no question of us rolling back on tobacco tax, as far as I am aware—what sort of level of tax reduction do you think would start to take away this problem? It would have to be a very significant change, would

⁴ "£900 million to tackle non compliance in the tax system", HM Treasury News Release, 20 September 2010

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it not, to catch up with the incentive that is there to avoid the tax?

Paul Williams: The issue is that history would dictate that the Government in the 1990s had an escalator policy in place on taxation on tobacco products, of 3% and then 5%, running through from 1993 to the year 2000. In 1993, the level of non-UK duty paid was something like 6% and, by the time we got to 2000, it was sitting at 27%. It took off as a result of those differentials. We have had a period where we have had inflation-only increases in terms of duty. We have had a lot of activity from HMRC to try to suppress the volume of non-UK duty paid, and they have been successful.

We understand the financial issues that confront us all at the moment, but if we move back to an escalator policy when disposable income is under pressure, and move back to 2% above inflation, we are talking about, between January last year when VAT went up by 2.5% and the next budget, an increase of over £1.03 per pack for a smoker.⁵ That is an enormous incentive to look at alternatives, in our view. Clearly, it is not only lost revenue; it is also a huge profit opportunity for those who are involved in organised crime. You would see that as a huge additional win. It is another 15%; it is a bonus. If I were in a criminal organisation and I was looking at my strategy document, I would be saying, "What could I really look for?". I would certainly be saying, "Yes, increased levels of taxations give me the profit opportunity I am looking for."

Q113 Mel Stride: Just to round this out, based on the figures you have given, you would probably have to halve the tax to £2.50 to be able to price-match the kind of rate at which these illicit products are being sold in the pub—something of that order. It is a very significant drop in tax.

Paul Williams: As Mr Payne said, the average price of 20 cigarettes if you buy counterfeit would be around 25 pence. A criminal would be buying those at circa 25 pence for 20. They can adjust their profit margin accordingly.

Q114 Ian Paisley: Mel has made the point well there. You would think that, for the amount of tax the Government are able to levy on your product, they

would be a wee bit more careful about making sure that people cannot smuggle. If they are doing so well, making a fiver a packet on taxation, you would think that they would be able to make sure that 13 out of every 100 cigarettes are not smuggled, because it is a valuable taxation tool for them. It is a valuable revenue-gatherer for them. I am wondering if you feel short-changed—not just JTI, but the industry. The Government should be doing much more for you to protect your product, given what your product gives to the Government's coffers each year.

Paul Williams: Whatever HMRC can do is welcomed, and I think the additional money is welcomed. In addition to that, the Committee is already aware that we, JTI, have an OLAF agreement whereby, over 15 years, we will invest \$400 million in supporting the EU countries in fighting illicit trade. We take it very seriously. It is a key priority for our business. That can be drawn down, as we understand it, to support countries to fight illicit trade. Yes, Mr Paisley; I think the £11 billion that is currently collected in taxation could very easily be £14 billion, and that would protect jobs, particularly in Northern Ireland, which is important to all of us. Obviously, any further competitive pressure from organised crime does, at some point, put stresses on our production facilities.

Q115 Ian Paisley: To take that to its ultimate conclusion, are you saying that, if Government do not get on top of this and sort this out, those stresses on your commercial activities could lead to job losses?

Paul Williams: It currently sits at 17% in Northern Ireland. Interestingly, we were discussing earlier the fact that if a further £1 a packet in duty went on to 20 cigarettes, if you were sitting there thinking, as a criminal organisation, "What do I do? Do I take the extra margin, or try to increase the volume that I am selling?" It is an interesting dynamic for any business, and they are a business at the end of the day. Any further increase clearly does put pressure not just on our business, but on all the businesses associated with our product, and it is around 30% of the turnover of many retailers. It is significant, in terms of its contribution.

Chair: We would like to have a private session with you now, if you do not mind hanging back for a few minutes. Can I thank members of the press and the public for attending, and perhaps ask if you could leave the room now? Thank you very much.

⁵ *Witness correction:* The increase would be over £1.00 per pack for a smoker.

Wednesday 19 October 2011

Members present:

Mr Laurence Robertson (Chair)

Oliver Colvile

Lady Hermon

Naomi Long

Jack Lopresti

Dr Alasdair McDonnell

Ian Paisley

David Simpson

Mel Stride

Gavin Williamson

Examination of Witnesses

Witnesses: **Paul Williams**, UK Head of Corporate Affairs, Japan Tobacco International, **Steve Payne**, Anti-Illicit Trade Government Relations Director, Japan Tobacco International, and **Tom O'Carroll**, Director of Corporate Affairs, Calor Gas NI Ltd, gave evidence.

Q116 Oliver Colvile: There are a number of points I would like to talk about. The first one, which we had a chat about, was this: do you feel that there are any major organisations behind organised crime and all that? Do you remember that we talked about how you felt that there potentially could be some big organisations that are organising these crimes? You did not really want to answer the question, because you felt you did not want it out in public.

Tom O'Carroll: If I was to refer back to the case we mentioned, where the £300 fine arose in South Armagh—I think it was in 2006—that very clearly would have been considered paramilitary territory. From that area, the rest of the problem with our industry has grown.

Q117 Oliver Colvile: Do you think there are any similarities between Calor Gas smuggling and tobacco smuggling as well?

Tom O'Carroll: From the Calor Gas point of view, I suspect probably not. Ours is not so much a smuggling issue. The product is brought in from the refinery in Cork or a Scottish refinery to be filled in cylinders on either side of the border, and is then sold wherever it is going to be sold. It is not smuggling per se; it is not excise duty avoidance, whereas I think with the tobacco industry, it is manufactured outside the UK or outside the EU, and smuggled into the EU, so they are different from that point of view. There is an element of similarity with any of these industries; really, the distribution chain once it is within the country is where the trick of the business lies, and I think there are similarities in the distribution chains.

Q118 Oliver Colvile: I am not a great expert on Calor Gas, nor for that matter on tobacco, funnily enough, but is it possible to produce a replica kind of product to the one that you have at Calor Gas, and then to try to put it in the packaging, so that it looks as if it has come from Calor, but it has not?

Lady Hermon: It is easier than that: they just steal Calor Gas cylinders.

Tom O'Carroll: Essentially, the visual aspect of the product to the consumer is the packaging, which is the cylinder. All you have to do is put a product into that cylinder. Whether that is proper standard LPG or not is another issue. Once you have something that looks

and feels like a Calor Gas cylinder, and you put it in a retailer that looks like a gas outlet—

Q119 Oliver Colvile: I presume it is similar for tobacco. It is exactly the same thing: you get someone who is actually going to be manufacturing the cigarettes, which are certainly not your product. I just want to explore with both of you what level of health risk that is. If you end up actually having a counterfeit cigarette, could you find yourself doing even more damage to your health than you would do otherwise?

Steve Payne: It is a difficult one to answer.

Paul Williams: As I said, we do not test the product. We know that the Department of Health has carried out tests on products to identify the various components. Quoting almost from media from the North-West of England, where they carried out a test on product, it does contain significantly higher levels—

Q120 Oliver Colvile: Why do you not test it?

Paul Williams: Because it is not our product.

Q121 Oliver Colvile: Do you think that Government should be testing it?

Lady Hermon: They do.

Paul Williams: I think they are. The Department of Health, I believe, does carry out some tests, but it is really for the Department of Health to establish the risks associated with it. Certainly that would be our view.

Q122 Mel Stride: On that point, if I was a smoker and I smoke a cigarette that is one of your brands and then I smoke a counterfeit, do I notice a difference in the actual experience of smoking?

Paul Williams: Yes, you do. We have a consumer services department, and they are contacted by smokers who have purchased product and complain that it is not right. They send the pack back to us, and we then source it and find that it is a counterfeit product, and clearly that is the reason why the product tasted very different.

Q123 Chair: Again, I do not want this to sound the wrong way, but possibly in general, the type of people who might smoke counterfeit cigarettes are going to be more susceptible to health problems; it is a

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downward spiral for them. It is difficult to put that, but I think you know what I mean.

Paul Williams: Through the research that we conduct, we try to cover all the demographics within the UK. We have age, sex and social demographics to identify and try to classify the sorts of individuals who would be most prevalent in purchasing counterfeit or illicit product. Clearly we do that. In terms of the health issues and associated issues, I could not possibly give you a view on that.

Q124 Lady Hermon: I am going to come to our friends here from the tobacco industry. I was genuinely taken aback by your reaction to the questions, because in your submission to the Committee—I was going to ask a question about this, if there was time—you actually made reference to the courts being educated in “the serious consequences of the illicit trade and encouraging them to apply all available sanctions”. What evidence is there that the courts do not apply all the sanctions? I knew that was coming up, and that was the evidence that you gave me. I therefore expected you to have at the tip of your fingertips the details of how many prosecutions there were in Northern Ireland and what the sentences were. I was astonished that you also said you found it very difficult to have access to the Police Service of Northern Ireland. It is a crime; it is your industry. There are 750 employees in Northern Ireland who could lose jobs.

Ian Paisley: Before Mr Williams answers that, could I come in on that as well? I do not know if you were reluctant to share this with the Committee, Paul, but I know that since Secretary of State Mo Mowlam, I have attended representations with your company together with all those Secretaries of State, with the exception of Paul Murphy, raising the security issue. Maybe you did not want to reveal that to the Committee, but I know that with every single Secretary of State, I have attended to make that case about the security issue. As a result of it, on one occasion, Mo Mowlam put additional resource into HMRC to try to detract some of the crime that was going on. I was expecting that in the answer, it would come out that there had been representations. I also know from my time in the Organised Crime Task Force, which was chaired by Paul Goggins and then subsequently by David Ford, that HMRC directly made representations on behalf of JTI to that Committee.

Lady Hermon: Forgive me; that is quite irrelevant. The point that I was making is that this is a company. It is in business. It has almost 1,000 employees in your constituency, Ian. It is a crime against your company. I would have expected any business that has got a serious issue and problem in tackling the counterfeiting and smuggling of their products and health and safety issues to have been beating a track. That is what devolution is about.

Paul Williams: We do have a close relationship with PSNI in relation to the security of our product from the factory in transit. From the Northern Ireland factory, 80% of what we produce is for the UK market and the Republic of Ireland. I was in the Republic of

Ireland from 2003 to 2008, as the general manager there.

Q125 David Simpson: Ian hit on a point about meeting with the Secretaries of State, but Mo Mowlam, going back a number of years, put extra money in to try to resolve this. In April this year, the Economic Secretary to the Treasury announced £917 million to try to resolve this issue. That is going way back to Ian with Mo Mowlam right through to this present day of another £917 million—a lot of money. Do you honestly believe it is going to resolve the problem or, if you had a blank sheet of paper, what would you do to solve it?

Paul Williams: I think the difficulty is the huge levels of duty on tobacco products. We are talking about, on a premium brand, nearly 80%. On a value brand, it is now up to 90%. That is the size of the prize for anybody who wants to get involved in smuggling tobacco products. We have put in place significant controls. We have “Know Your Customer”, which we have put in place as part of our code of conduct. Every customer who buys over 24 million cigarettes from us, as a manufacturer worldwide, we go through a complete integrity programme with them. We have track-and-trace on product. We also have, on the pack, a further measure that enables trading standards to identify product if it manages to find its way into stores. In fact, we have an example of that here, so that we can show you how we do that. We have problems with illicit trade. We have significant problems with empty pouches—255,000 empty 50-gram pouches of Amber Leaf have been seized in the UK this year. That is just enormous, bearing in mind that a pouch would sell for £14. This is a recent initiative. We are now seeing significantly larger quantities of empty pouches.

Q126 Chair: Sorry, £14 for that pouch?

Paul Williams: Yes, 50 grams, £14 for a pouch.

Q127 Jack Lopresti: On the identification of product and all that stuff, I was going to ask you this a few minutes ago, but you have quite nicely led on to it. Of the people who buy illegal tobacco and cigarettes, roughly how many do you think do so unwittingly, having been duped, and how many do you think are actually willing accomplices in the crime?

Steve Payne: Unfortunately, it is impossible—

Q128 Jack Lopresti: Can you not even have a guess?

Steve Payne: I would be very surprised if there were too many who had been really duped, because the price is so different that they must know.

Q129 Jack Lopresti: You said they were being put into shops and hidden amongst—

Paul Williams: There are a few that find their way into retail outlets, but that is quite a small percentage. The issue is more that they are potentially duped by the fact that the product will have a foreign health warning on it, which makes it look as if it is a product purchased outside the UK. For example, this one has

got a Spanish health warning and, interestingly enough, a Belgian tax stamp. The other issue that was quite remarkable was that on 1 July 2009 in Dublin, when the display ban came into play, we had our first seizure of counterfeit Benson & Hedges, with Irish tax stamps—the very day that came into play. There was a view that they would be able to infiltrate the legitimate supply chain.

Q130 Jack Lopresti: Overwhelmingly, by far, people are pretty clued up to it.

Paul Williams: People are aware. They might think they are buying EU duty paid product as opposed to counterfeit, but clearly the counterfeiters play on that.

Q131 Naomi Long: That is quite interesting, in terms of the degree to which people can unwittingly purchase the product, and you talked about the kind of moral challenge that it is for people, if they are presented with something that is significantly lower cost. In terms of Calor, is the same dynamic true there, or is the unwitting purchaser more vulnerable? Is it more likely that someone could unwittingly be purchasing a Calor Gas cylinder, assuming that it is properly filled and that it is legitimate, and take it home unwittingly, having purchased something that has been illegally filled?

Tom O'Carroll: I would certainly say that it is more likely that they are unwittingly duped with Calor Gas. To what extent, it is impossible for us to say.

Q132 Naomi Long: On that, the issue around Cullaville was raised and the fact that there were very low penalties. There are two things I want to raise around that situation. My understanding is that that particular police operation was the result of gas being smelt by routine patrols in the area, because there was actually leaking gas from that site. If there is this unwitting element, for example, and if something catastrophic happens, either at the plant that is illegally filling or at the home of an individual who purchases the cylinder, what is the risk of reputational damage to Calor itself, given that the tanks look indistinguishable?

Tom O'Carroll: It would really come down to whether, after an incident, which could be a fire, an explosion or whatever, any evidence would remain to suggest that the cylinder had been filled by anybody but us.

Q133 Naomi Long: I think that is very significant, because there are huge swathes of Northern Ireland, particularly rural communities, where access to natural gas does not exist, and therefore LPG is really significant for them, in terms of an environmentally more friendly form of hydrocarbon fuel. It is quite a challenge. The other issue that arises from the situation where there was a £300 fine—and I would be interested maybe in perspectives from both industries in this—is there any evidence from either sector that the penalties actually applied in Northern Ireland are less robust than in other regions of the UK, or indeed than in other jurisdictions? If people, for example, were stopped with large quantities of

smuggled materials, cigarettes or whatever it might be, in other jurisdictions, would the penalties be higher than if it happened in the UK or Northern Ireland? In Northern Ireland, is a more lenient approach being taken in the courts than would be the case, for example, if something like Cullaville had been discovered somewhere else in GB?

Tom O'Carroll: I am not aware of any problem with illegal filling of cylinders in other parts of GB, and we do have sister companies in other parts of the jurisdiction, so I cannot comment. In the case of Northern Ireland, the penalty certainly did not match either the crime or the cost of investigating the crime.

Q134 Mel Stride: I just quickly want to come back to our earlier discussion in the public session about the unit economics of the illicit cigarette market. We have got the £6.50 a pack; we have £5 tax. We are agreed that, if we halve the tax to £2.50, we would be at about the same price at which the illicit is currently being sold in the pubs, etc. But of course, as you rightly pointed out, their cost of manufacture is, say, 25p a pack, so they can reduce their price further to continue to compete with you. At what point, or at what price, do you think their reduction in price beyond that makes it not worth them bothering?

Steve Payne: As long as the consumer does not purchase it, I guess. I do not know; it is an economic question.

Paul Williams: It is very hard to say how the consumer would be motivated. I really do not know. What would a consumer—

Q135 Mel Stride: Do you know roughly, if you think about their operation, what it costs them to get a packet of their counterfeit cigarettes to the consumer, for example?

Paul Williams: It is 25p.

Q136 Mel Stride: Even if they sell them at £1 a pack, they are probably—

Paul Williams: They are going to make 75 pence.

Q137 Mel Stride: Does that make it worth their while, in terms of the volumes involved potentially?

Paul Williams: The issue for them is the risk factor. Because of the multiplication factor, essentially they make circa 17 times the cost of the purchase of a container by selling it. If you reduce that, they can lose one—in fact, they can lose 11, 12, 13 or 14—out of every 17 and still make a very nice profit. The issue is whether or not they are prepared to take the risk that one would be seized and, therefore, all of a sudden, we are starting to get to a break-even point.

Q138 Mel Stride: The point I am leading to is that part of their competitive advantage is not just to do with tax, but the fact that they are manufacturing at a very cheap price or whatever. The bottom line is, it seems to me, you would have to remove all the tax, possibly, in order to start to eradicate this issue, so it is not just all about tax, is it? The driver here is about policing it, as much as it is about the taxation issue; the profit is always going to be there in that market.

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Paul Williams: We are aware that they merely have to copy a pack, and not what goes in there. It is like whether or not you are going to buy perfume off Oxford Street that somebody tells you is Chloé or whatever; it is not going to be that in the bottle. You have to ensure they look at it and think, "That's legitimate."

Mel Stride: A big component here is that it is like a Prada handbag; the taxation treatment for a fake and the real thing may be no different at all. It may be equal. Of course, there is still the incentive to have the fake product out there, because the cost base is lower, because of production, marketing and so on.

Q139 Chair: Lobbying is still legal. You must have discussions with Government Departments and put this to them—that the level of tax is encouraging smuggling—and you must also say to the Health Department, "People are at more risk from these cigarettes." Do you have those discussions with Government?

Paul Williams: Yes, indeed we do.

Q140 Chair: What is their response?

Paul Williams: The absolute level of tax is, as they always tell us, at their discretion. They have their own elasticity models that they talk to us about. They have quoted the Pissarides model to me on numerous occasions, which apparently says that there is a certain amount of elasticity that enables them to raise the prices. That will impact on consumption and basically protect their revenues. We have these conversations. We hope to have further conversations ahead of the next Budget, Mr Chairman, on the basis that they have stipulated that they are going for a duty escalator of 2% above inflation between 2011 and 2014, which is going to add another £1 a packet to the cost of a packet of 20 cigarettes for the consumer. That, to us, is the profit opportunity for the criminals.

Q141 Ian Paisley: Are you hamstrung by the fact that I do not know the last time a Health Minister dared meet a tobacco industry chief? He cannot, for PC reasons.

Paul Williams: The World Health Organization has recommended a guideline, which is something called the Framework Convention on Tobacco Control 5.3, which says that health ministries and Governments should avoid engaging with the tobacco industry, in the case that they would try to influence their policies. We have not had a meeting with the Department of Health for, I think—I may be wrong—around seven years.

Q142 Chair: Let me put it another way: are they in any way looking at how they can reduce the smoking of counterfeit cigarettes?

Paul Williams: I would not know. What I would know is that we submit to consultations wherever and whenever possible. Our belief is that the prevalence of smoking has moved downwards very, very slowly and, therefore, there must be other means that they would need to look at. We have submitted evidence on behavioural change, which is sitting there in the public domain as part of our consultations, from

global experts on behavioural change. Yes, we would enjoy having a dialogue and sharing. We have a lot of shared agendas. We all believe absolutely that children should not smoke, but children discount risk and therefore do a lot of things that are harmful to themselves. We have a lot of evidence on that.

Chair: I will bring in our resident doctor.

Q143 Dr McDonnell: I do not want to touch on the medical thing, because that would open a new can of worms, but I have a few little supplementary questions around the place, first of all on tobacco. You said there was roughly 13% smuggling in the UK and 17% in Northern Ireland. How does that compare with the Republic? What I am trying to establish is whether this is an all-Ireland question or a Northern Ireland issue.

Paul Williams: We brought with us, and will leave for members of the Committee, a very comprehensive document that gives you all sorts of details about seizures as well as the prevalence of illicit. It was as high as 27% in the Republic of Ireland, if you go to 2008. It has fallen to 24% in 2009, on the latest set of statistics.¹

Q144 Dr McDonnell: It is an even bigger operation in the Republic.

Paul Williams: It is an even bigger issue.

Steve Payne: You have to remember that, in the Republic, the prices are even higher, so there is even more incentive.

Q145 Dr McDonnell: So it is around 24% at the moment. I want to get back to the courts again. Can you give us information as to why you feel the courts are reluctant or hesitant? We touched on this already a bit, but I did not want to push it too hard earlier. Have you any impression, or would you have any evidence to offer us, as to why you feel the courts are hesitant to be more punitive?

Paul Williams: I think I would go back to what Mr Payne said. The difficulty is in establishing who is behind this. The sophistication of the activity, particularly with the organised criminals who are involved, is trying to identify exactly who they are, and trying to get a trail to follow through with a prosecution.

Q146 Dr McDonnell: Do you detect much difference in the retribution in southern Ireland, Northern Ireland and the UK?

Paul Williams: I can provide you with statistics on southern Ireland immediately afterwards.

Q147 Dr McDonnell: Fine, we will leave that. I want to come back to gas, if I might. Can you say quickly, in the seconds available to us, where the margin is in the gas? It is easy with cigarettes; we are looking at tax margins of 70%, 75%, 80%, whatever. Where do they get the margin in gas? How is it profitable?

¹ *Witness correction:* It was as high as 27% in the Republic of Ireland, if you go to 2009. It has fallen to 23% in 2010, on the latest set of statistics.

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Tom O'Carroll: It is basically because it is a very capital-intensive industry, and they are using our capital assets and not investing themselves.

Q148 Dr McDonnell: Where do they get supplies of gas from?

Tom O'Carroll: From the refinery in Whitegate, predominantly, but also from Scottish refineries.

Q149 Dr McDonnell: Can that not be stopped?

Tom O'Carroll: We would have thought so. In fact, we believe that control of the supply is one of the potential solutions.

Dr McDonnell: I would have thought that, too.

Tom O'Carroll: At the moment, there is no control over the supply.

Jack Lopresti: Going back to Naomi's point and mine earlier about the unwittingness or otherwise of the public, as long as there is the perception that the majority of people who buy either smuggled tobacco or illegal LPG are willing accomplices, then we are on a real hiding to nothing on this, because the profits are so high. If the public do not think it is a crime, or think that it is something where they are getting one over on the taxman, and they do not feel guilty or even any fear of prosecution, we are just going round in circles. The state has to really clamp down on it, if they are serious about it. It is not about reducing taxation or whatever else they are talking about doing. It almost needs to be an offence to be in possession of either illegal gas or tobacco; otherwise it is just going to go on and on.

Q150 Lady Hermon: I have asked Calor Gas's representative, Mr O'Carroll a question, and we had a very frank response to that. Could I ask the same

question to the others, because our inquiry is to do with smuggling and what the links are with paramilitaries? Is there evidence that you could share with us, privately, about the fact that you believe that cigarette or tobacco smuggling in Northern Ireland and the Republic of Ireland is organised by paramilitary connections, both loyalist and republican?

Paul Williams: We work, as I said, very closely with PSNI, An Garda Síochána, revenue commissioners in the Republic of Ireland and HMRC, so there is a very close liaison. You will see that in the report that I will leave you there are comments from the revenue commission in the Republic of Ireland, and from a gentleman whom you have met, and whom Mr Payne has met.

Steve Payne: The Commissioner of An Garda Síochána.

Paul Williams: There is a reference there as well from a senior member of PSNI. We can only go on the guidance. We try to provide as much information and support as we possibly can to help them to establish the—

Q151 Lady Hermon: Sorry, Mr Williams. When I asked the question, Mr Payne actually smiled. Can we just have a frank reply here? Do you, as a company, have evidence and believe that there are paramilitary connections with smuggling of tobacco and cigarettes in Northern Ireland?

Paul Williams: Not that I am aware of. I am not aware that we have any evidence.

Lady Hermon: 'Believe' is the word I used.

Chair: We are going to have to move on. It has been an extremely interesting session. Gentlemen, thank you very much for coming.

Wednesday 7 December 2011

Members present:

Mr Laurence Robertson (Chair)

Mr David Anderson	Naomi Long
Mr Joe Benton	Jack Lopresti
Oliver Colvile	Dr Alasdair McDonnell
Lady Sylvia Hermon	Nigel Mills
Kate Hoey	Ian Paisley
Kris Hopkins	David Simpson

Examination of Witnesses

Witnesses: **Assistant Chief Constable Drew Harris OBE**, Crime Operations Department, Police Service of Northern Ireland, **Detective Chief Superintendent Roy McComb**, Head of Organised Crime Branch, PSNI, and **Bob Lauder**, Deputy Director, Scotland and Northern Ireland Network, Operational Delivery Group, SOCA, gave evidence.

Q152 Chair: Before we start, I need to declare a sort of non-declarable interest, if that makes sense. Earlier today I was entertained by the Tobacco Manufacturers' Association, which hopefully will not impair my judgment too much.

Naomi Long: Or your lungs.

Oliver Colvile: Chairman, I also declare an interest, in that I went to the cricket with the Japanese tobacco manufacturers during the course of August.

Chair: I have been similarly entertained. I think we have declared those earlier, but I wanted to make today's clear.

Thank you very much for joining us. As you know, we are conducting an inquiry into the smuggling and laundering of fuel, tobacco and whatever else is smuggled and laundered. We are very grateful to you for coming to see us today. Perhaps I could ask you to introduce yourselves very briefly and tell us what you do.

Drew Harris: My name is Drew Harris; I am Assistant Chief Constable of the Police Service of Northern Ireland and I have responsibility for crime operations, which includes Organised Crime Branch, headed by Detective Chief Superintendent Roy McComb, who is to my right. I am also responsible for major crime investigation, intelligence surveillance and forensics.

Bob Lauder: I am Bob Lauder. I am the Deputy Director for Operational Delivery for SOCA, the Serious Organised Crime Agency, and my particular responsibilities are delivery of SOCA's services in operational delivery in both Scotland and Northern Ireland.

Roy McComb: I am Roy McComb. As Mr Harris said, I am a Detective Chief Superintendent. I am the Head of Organised Crime Branch, part of the Crime Operations Department that Mr Harris leads, and I have day-to-day responsibility for organised crime in Northern Ireland.

Q153 Chair: Thank you very much. It might be useful if you could explain the role of the Organised Crime Task Force, particularly with respect to laundering and smuggling. I think that would be very useful to the Committee.

Drew Harris: As you know, the Organised Crime Branch is a multi-agency group that brings together all the relevant parties that we feel have an input around organised crime. My major role has to do with an enforcement group relating to the law enforcement agencies, and the tasking process we have each month in respect of the organised crime gangs we are targeting. At any one time, there are between 160 and 180 identified organised crime groups within Northern Ireland, and we have a tasking process to prioritise the investigative work against them. Either ourselves, HMRC or SOCA would take the lead. It provides a vehicle to share specifically intelligence and information, but also evidence and investigative leads. That is our main gain from the OCTF, in terms of law enforcement activity. The second big gain is in relation to cross-border liaison. It gives a focal point for the Minister to take a lead and then provide a focal point for cross-border co-operation with Dublin. We have just had a very successful cross-border organised crime conference, which is an annual event in which we meet with our partners and work up action plans for the year ahead. I would point to those two elements as being very important for my specific role.

Q154 Oliver Colvile: The evidence from PSNI was that the OCTF meets to assess emerging trends in areas of activity that would benefit from a multi-agency tactical approach. Does the OCTF get the right level of support from all the relevant Government Departments in Northern Ireland—for example, from DETI on petrol retail licensing, and from DOE on regulation of road haulage and the illegal dumping of fuel residues—or does the perception remain that fuel fraud is solely the responsibility of a law enforcement agency such as yourselves or HMRC?

Drew Harris: Since justice has been devolved, and with our own Minister now in the Executive, there has been a real difference, in terms of liaison with the rest of the Executive Departments. I would say that the Executive and the Public Accounts Committee are also beating the drum around organised crime and have brought forward recommendations in respect of policies and practices by other Departments, being, in effect, looked at to make sure that they are fraud-proof going forward. On the organised crime that you would

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see to do with environmental crime, or where criminal gangs are, say, abstracting electricity, there is a growing recognition that you need expertise from other Departments. Regarding the mass-growing of herbal cannabis, where someone is abstracting electricity, you need other Departments to assist you—you would have trading standards to assist in the examination of shop-type premises—and we have been successful in respect of that. We have also had success with the Department of Environment around fly-tipping and illegal waste dumping. Through the Department of Justice, I think we do have greater access now to the rest of the Executive, in that we are now entirely lodged in there, in effect.

Q155 Oliver Colvile: Does anybody want to add to that?

Roy McComb: The structure of the Organised Crime Task Force includes the Stakeholder Group, which the Minister chairs, and the Strategy Group, which is chaired by the Department of Justice, of which we are all representatives. Then there are nine sub-groups that work on particular themes. Certainly, since justice has been devolved to Northern Ireland, the sub-committees, most of which are chaired by the PSNI, are seeing a greater involvement of local staff and representatives from local government departments. In the last 12 or 18 months, there certainly has been an increase in engagement with the devolved Administrations. As an example, there is a drugs expert working group. Clearly, drugs are not just about enforcement but prevention, and because of that relationship, we have been able to engage with representatives of the Department of Health. There is very much an engagement with the local administration on those sub-committees that do most of the ground work.

Q156 Oliver Colvile: Have you been able to draw enough in the way of resources from other Departments in order to be able to do this?

Roy McComb: It is developing. I am not sure we are quite there yet. There is greater engagement and throughput needed from the Administrations, but it is very much a positive trend at this point. The closer we can get to all the devolved Departments and the greater involvement we can get, the better response we will have in dealing with some of the crimes that we are dealing with. Are we yet at a completed stage? No, I suspect we are not. I think we would like to push on a little bit further.

Q157 Lady Hermon: You are all very welcome here this afternoon. I wonder if I could just take you back to clarify one small point. ACC Harris, you identified between 160 and 180 organised crime gangs operating in Northern Ireland at the present time. Are you able to tell the Committee what percentage of those organised crime gangs would have links with dissident republicans or loyalists and, of those, what percentage would be involved in fuel smuggling? Is it a particularly attractive industry for one paramilitary group as opposed to another?

Roy McComb: We keep those very much on a watching brief, because we recognise that paramilitaries have what you would loosely call a different skill base that they can bring to organised crime. They bring a level of secrecy and—again, I do not want to glamorise it—professionalism to their activities, which makes it all the more difficult to tackle them. We have said in evidence to the local Justice Committee that a very healthy minority of crimes are linked to paramilitary groups. For the most part, they are carrying out their business for personal as opposed to organisational gain, but we are not closing our eyes to the real likelihood that some money that is gathered by organised crime gangs is going to assist paramilitary groups in Northern Ireland on both sides.

Q158 Lady Hermon: In this Committee we are looking at fuel smuggling in particular; is there any paramilitary group that is particularly involved in fuel smuggling or laundering?

Drew Harris: You would look towards the Real IRA in particular in respect of fuel laundering and smuggling. This has evolved. Initially this developed as a means of making money for the organisation, and then costs were taken from it, and it now has moved from costs to salaries, and living style is now extracted from it. The terrorist campaigns that are waged are waged with a minimum of cash. Improvised explosive devices are cheap to make, and thousands of pounds are not required to sustain the present ongoing terrorist campaign. Undoubtedly, there is a connection particularly between the Real IRA—and some of the unaffiliated groups as well—and smuggling activity. Also, the Real IRA would take, in effect, a protection fee or tax from other criminal enterprises, such as drug dealing, and we have some initial reporting of them taking a protection fee from prostitution, particularly where there is human trafficking involved.

Roy McComb: In effect, it is criminal taxation by criminals; because it is criminals being taxed, we do not get reports of it. We uncover it by way of our own investigations or by intelligence, but there is a healthy activity in different parts of the country where criminals are taking significant sums of money from other criminals who are involved in other crimes. It is a bad-on-bad criminality.

Q159 Naomi Long: In your response, you referenced the issue of human trafficking. Obviously one of the concerns that we have in terms of the public perception is that laundering and evading of duty and so on is not a victimless crime. Is there evidence that the issue of human trafficking is heavily tied up with the criminal networks who are also involved in, for example, fuel laundering and smuggling? I think that it is quite important to be able to connect those two issues in the minds of the public as well, so they understand what they may be funding by purchasing, for example, petrol from a disreputable dealer.

Roy McComb: There is a very loose connection between people who are involved in human trafficking and other criminality. The one thing that is very

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obvious is that those people who are able to traffic victims into Northern Ireland have established a route, and they are confident enough that they can bring the people who are being trafficked into Northern Ireland. Like anything that is being smuggled, once you have established a route that you are confident you can use, in essence it does not much matter what the commodity is. Whether it is people, firearms, cigarettes or fuel, if the route is secure, then anything can be smuggled. Our assessment is that there is not necessarily a nexus between those involved in the organised crime of human trafficking and those involved in the organised crime of fuel smuggling. Those two, I think, are distinct, and there are different crime gangs involved in human trafficking.

Chair: We may come back to that subject a little later.

Q160 Mr Anderson: Mr Harris, in your evidence you said: “efforts have been made to increase the sharing of information between jurisdictions with the aim of frustrating, dismantling and disrupting” organised crime groups. Should the aim not be to arrest, prosecute and incarcerate people?

Drew Harris: Yes it is, absolutely. That is what we are about: a criminal justice response to this. We have had a lot of success. Every week we are having success against major crime gangs. We share information and intelligence with, for example, An Garda Síochána. I have seen, in other evidence, issues around cross-border jurisdiction; I have not come across those. We have a good relationship where we run parallel and joint investigations with our colleagues in the Guards, and then we are able to share evidence to allow for a successful prosecution in whichever jurisdiction facilitates the best approach, in terms of taking out the most of a crime gang. Often, we will have assisted the Guards in terms of surveillance or a covert operation, after which we have passed the bad guys over to them, for them to carry out the executive action of an arrest or strike. That is the type of operation that is consistently ongoing. Roy has some of the figures around arrests and charges.

Roy McComb: The language “frustrate, disrupt and dismantle” is simply how we would identify the success we have against crime gangs. Every part of it includes a criminal justice approach. We are in the business of locking up bad guys; it is as simple as that. “Frustrate, disrupt, dismantle” is simply the language we use to identify how we measure success where an identified crime gang is the subject of an investigation. I would not want there to be any confusion around it. It is nothing less than arresting and charging people. That is absolutely what we are about.

I will give you some figures. In the reporting year 2010, April to April, we arrested 215 members of organised crime gangs throughout Northern Ireland. For the same period up to the end of November, it was 140. That is just what my branch had responsibility for; it does not include the whole of Northern Ireland. For the year 2010, we either frustrated, disrupted or dismantled 73 crime gangs; for the year to date—2011—it is 43 crime gangs, so it is

very much on par for the same reporting period. When it comes to one crime gang being dismantled, as against another crime gang, it is very much a professional judgment as to which caused the most harm. My branch is in the business of tacking those organised crime gangs that are involved in the more serious end of the business, and other colleagues within the PSNI do other crime gangs.

Q161 Mr Anderson: What would be the figure for people who have been subsequently prosecuted?

Roy McComb: Of the people that we have arrested—we have 215 for year 2010—I do not have the figures for how many were charged, but it would be a very high percentage, because due to the nature of how we conduct our business, a large number of those people would be hands-on. Whatever criminality they are involved in, we are catching them with their hands in the cookie jar. I do not have the figures, and I am happy to come back to you.

Q162 Mr Anderson: Can you get them for us?

Roy McComb: Absolutely.

Q163 Mr Anderson: Also, what sort of terms are they getting?

Roy McComb: That is a different piece of work and, of course, it is not within our gift to identify who gets what.

Q164 Mr Anderson: Can anybody give us that?

Roy McComb: We can certainly provide you with something, but that might take a little bit longer to do. I can certainly quickly give you the figures for the people who have been charged out of that list.

Drew Harris: Some of the people in that overall group would get very significant terms of imprisonment, because there are a lot of crimes of violence in there around armed robbery and cash in transit. Last year, 25 people were charged with cash in transit/armed robbery type offences. We would expect them to get significant custodial sentences. A lot of them are carrying long records of violence. That is as opposed to sentencing in respect of laundering fuel, for instance.

Roy McComb: Another cautionary note is that a large number of cases from 2010 to date will not have gone through the court system.

Q165 Mr Anderson: The last time we reported on this was back in 2006, when we said that while we recognised there had been a lot of disruption and gangs being broken up, a lot remained to be done. Have you got any evidence to show that, since 2006, there has been improvement?

Drew Harris: I would point towards a couple of areas of criminality: tiger kidnap, where an individual is targeted because of their access to cash, and then their family is threatened; and cash-in-transit robberies. In 2002, we had about 140 to 150 incidents in that one year—almost three a week. This year, we are probably looking at 22 to 25 incidents. We have really smashed those gangs. They realise that it is a high-risk activity to undertake those sorts of crimes. It is similar with

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tiger kidnaps: it has moved some of the organised crime groups from that more high-risk violent behaviour into what is perceived as low-risk, high-yield behaviour, around trafficking, counterfeiting and laundering. Undoubtedly, there has been a change in the criminal careers that people are undertaking.

Q166 Mr Anderson: Is there actually a way to measure the success? Does the OCFT track trends? Do they keep records? I know the present Government do not like targets—some would say results—but some of us do. Is it getting better? I am not being critical, but when we discussed this five years ago, everyone was aware of how hard you were working—in particular, cross-border activity is second to none—but it is about whether things are improving. If they are not, are there reasons that we can act on to try and help you?

Roy McComb: I recently presented to Minister Ford at the OCTF's stakeholders' meeting, and I drew an analogy with the first year of the OCTF 10 or 11 years ago; by comparison, this year, there were 100 more crime gangs and more types of criminality. In the 10 years since the creation of the Organised Crime Task Force, the types of criminality have been added to. For instance, 10 years ago, internet-type crime would have been virtually non-existent. Clearly, as the world has moved on, the types of criminality have changed. However, the assessment by the Police Service and other law enforcement colleagues about what constitutes a crime gang has become far more professional. If you take the figures on a one-dimensional level, the estimate is that there are 100 more crime gangs. It would be dishonest of me to say that that means it is an unreliable figure. Those are the figures based on what the annual reports say between 2002 and 2011: there are 100 more crime gangs that we are working against. We have a greater sense of what the threat from organised crime in Northern Ireland is, and I think we have a very clear way of dealing with it. Those figures are there for your attention.

Q167 Ian Paisley: Can you be very specific, and would you be able to supply us with figures that will tell us how many of the 215 arrested during 2010, and the 140 arrested during 2011, were arrested specifically for fuel laundering or smuggling? Of the 73 crime gangs that you frustrated or disrupted in 2010, how many were specifically fuel laundering?

Roy McComb: The answer is zero, because the responsibility for that rests with HMRC. These are crime gangs that we are not leading on the responsibility for capturing. These are crime gangs outwith those involved in fuel smuggling, which is the principal responsibility of HMRC.

Q168 Ian Paisley: Of the 215 that were arrested, none were to do with fuel?

Drew Harris: No, the offences were around robbery, drugs, and human trafficking.

Roy McComb: The figures for fuel smuggling would be held principally by HMRC. The PSNI may have played a role.

Q169 Ian Paisley: Certainly the picture we got from HMRC in terms of their ability to disrupt, arrest, and successfully prosecute was not a happy one. That is the kindest thing I could say about it. While this is very helpful, it only adds to my concern that this fuel crime is more serious than a lot of people out there probably credit.

Roy McComb: All I can say is that the figures we have are for those crime gangs that we have primacy and responsibility for tackling. We do not have that responsibility for fuel frauds.

Q170 Kate Hoey: Who could give us those precise figures for fuel arrests?

Roy McComb: We couldn't. We would not necessarily have those figures. The organisation may have played a role in supporting HMRC, which has primacy in this matter, but in terms of being able to account for what arrests and seizures there have been, that is outwith the PSNI's responsibility.

Q171 Kate Hoey: I must be missing something; so it is not a criminal offence to be involved in fuel laundering and smuggling?

Roy McComb: That is not what I am saying. I am saying that the responsibility for tackling that sits with another law enforcement agency, which is HMRC. Any figures for the arrests and seizures arising from those investigations would be for HMRC to capture. Those figures are outwith that.

Q172 Ian Paisley: Mr Lauder from SOCA, are you able to give us those figures? I do not want to put you on the spot, but we have not been able, in my view, to get those figures from HMRC. There is this huge grey mist that appears when we start to try to drill down and talk about whom you are putting out of business and whom you are not.

Bob Lauder: My position is broadly the same as that of my colleagues from PSNI. We do lend operational and technical assistance to those investigations undertaken by HMRC. The holder of those statistics, by default, is HMRC, because it is a fiscal fraud, which is a reserved matter for HMRC, and therefore while we recognise that those organised crime gangs who engage in this are multifunctional and can move about and do other things—we recognise that it is serious organised crime, and we assist and will take referrals in terms of civil recovery processes and tax in some of those cases—actual arrests for the crimes of fuel laundering or smuggling will be prosecuted by HMRC.

Q173 Ian Paisley: Would you be surprised if they could not give us those figures? I am not trying to set you up here—that is a first, Alasdair, I know. Whenever we took evidence from HMRC, we tried to get down to numbers and to say, "How many hundreds of millions is this worth?" They could only talk about the holistic figure for fraud, and crime that included laundering, smuggling, whether of CDs or counterfeit clothing, and cross-border shopping, which they introduced into the equation as well. I am surprised that they cannot give us a figure. What you are telling

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me is that they should be able to get a figure; would I be right in taking that from what you are saying?

Bob Lauder: Every Department will have their own systems for recording their own statistics, and I would be disingenuous if I was to try and illuminate how the Treasury do that, because that is the Treasury's business. I certainly know that we have been involved in operational activity—

Nigel Mills: That is a politician's answer.

Ian Paisley: You should be over on this side; you are good.

Chair: We are re-interviewing HMRC next week. Whether the people coming could actually help on that, I am not quite sure.

Q174 Kate Hoey: I will tell you what I do not understand, Chairman: don't they go to court eventually, these people, and therefore aren't the police involved at some stage?

Bob Lauder: No.

Q175 Kate Hoey: Absolutely no involvement whatsoever?

Roy McComb: HMRC are a law enforcement agency.

Q176 Kate Hoey: There must be records in the courts of who has been convicted of fuel fraud?

Bob Lauder: Yes.

Q177 Chair: Do HMRC go to the DPP to get the prosecution?

Roy McComb: Yes.

Drew Harris: Yes.

Bob Lauder: Yes.

Q178 Chair: So the DPP would have an idea?

Bob Lauder: They will know how many cases they have referred to the DPP, and therefore they should be aware of the prosecutions.

Drew Harris: There was analysis of the results from prosecution, and I think it dates back about four years; it was after the last Committee's report. It sets out the prosecutions over a five-year period, so that takes you right back to 2002.

Chair: We will try to pursue that.

Drew Harris: That is the only thing I have seen.

Q179 Kris Hopkins: Thank you for coming today. Speaking as a citizen of the country, I am sure there are lots of other people out there frustrated. I talked to my local police about trying to get them to articulate how successful they have been at something. Public confidence in our police forces and judicial system is constantly undermined. I do appreciate that it is somebody else's job, but if I were head of serious crime, I would have a big chart on the wall that said "Drug dealers: 25 captured, down for 10 years each, total of 427 years. Fuel smuggling: such and such". We have actually only just found out that there was no fuel crime associated with the 215. That did not come out in the early questioning. I used to stack shelves at Sainsbury's, but I can grasp lots of different areas of life and collate those into an image and then be proud or disgusted of either my actions

or whatever is going on at the moment. Do you not think there is a deficit that ought to be addressed, if I am trying to articulate to the public, "Actually, it is not my job to understand how many years they went down for; that is somebody else's Department," when I am responsible for serious crime in a community? You are coming to speak to a Committee today. You need to be able to give the public absolute confidence that you are on top of your job and understand the different players in the game. I can tell you that if you say, "Mr X went down for 10 years," that is another criminal off the ground and you have just given confidence to the public who have been ripped off.

Drew Harris: I can go through my notorious criminals and list the sentences that they received. Some of them received very substantial sentences and unfortunately are back out again. In the last year in particular, the revolving door has been to our deficit, in terms of very serious criminals who have come back out on to the street again. I do appreciate the point you are making. Northern Ireland is a small place and, when you work at it as hard and as long as we have done, you do know all the various individuals and the crime groups. We believe that we are making definite progress in some areas. Other areas are undoubtedly growth areas in organised crime. The difference between, perhaps, 2005 and now is less paramilitary involvement and more international involvement. We can see that Ireland is an attractive place. It is seen as an affluent place to do crime business, and we are getting more and more crime imported into the island of Ireland. The whole cross-border debate has to move on a step. If we cannot actually manage information, intelligence and evidence across the border, we are just a really easy target for international crime groups. In some ways we may be viewed as that already. They have already recognised a porous land border, and that is a weakness that we in law enforcement have to eradicate. We have a huge challenge on the island of Ireland as a whole, particularly around organised crime and serious harm, be it drugs or human trafficking in all its guises.

Q180 Naomi Long: I want to row back slightly to the figures that you presented for the diversity in the range of crime and the number of criminal gangs operating. Do you have any read-out as to why that is happening? Is it a break-up of larger criminal empires? You referred to paramilitary organisations; is it a break-up of that into smaller groupings that are involved more for personal gain? You mentioned the international dimension; is it linked to the recession, for example? Are people now more likely to purchase counterfeit goods and so on? What is your read-out on the dynamic, the trend, and where those additional groups have come from? Are there things that you think would help to contain that growth?

Roy McComb: You have to bear in mind that in 2002 the environment in Northern Ireland, including the paramilitary influence, was perhaps stronger and greater. You now have crime gangs that are far more fluid, and willing and able to break up and form alliances that suit their tactical needs at certain times.

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We do have evidence that crime gangs break up and form new alliances whenever certain skills that they need are not within their existing crime gang. They form a new alliance with people who do have those skills; they carry out the level of criminality, and then they reform with their original group. The network of crime gangs is very much a fluid enterprise. They do not always get along. Sometimes they break up for their own reasons, and not just because of law enforcement.

There is also that international dimension. There is no doubt that in the last 10 years Northern Ireland has seen a greater influx of non-indigenous criminals. We have our own level of criminality, but in the last few years crime gangs have moved into Northern Ireland, and some of them have been involved in quite high-profile investigations, human trafficking and cannabis cultivation being just two of the areas. As well as dealing with our indigenous criminals, we are very much looking at crime gangs across Europe and Asia, which is a context we did not have in 2002. That is a development that, as law enforcement, we have to try to get ahead of. There is a language and culture barrier that we might be on the back foot on.

Q181 Lady Hermon: What are the nationalities of the international gangsters who come to Northern Ireland?

Roy McComb: Chinese, Eastern European, more broadly European—Hungarian, Czech, Lithuanian, Russian—and broadly Asian. Hong Kong would still be a large part of the Chinese influence. We are seeing the internationalisation of organised crime in Northern Ireland.

Q182 Lady Hermon: Which of those nationalities would rank top?

Roy McComb: We do not rank them in terms of which crime gang is top because of ethnicity; we rank them in terms of their criminality. If they are involved in those two examples—human trafficking and drugs importation—clearly human trafficking, or as we call it, human exploitation, would rank highest, because there is a victim at every step of the way. In terms of the more recent developments, we have seen Asian crime gangs be replaced by European crime gangs involved in the trafficking of people, mostly women, into Northern Ireland for the sex trade.

Q183 Nigel Mills: I am going to take you back to the impact of the devolution of policing and justice and how it has affected your work. You were broadly positive about links with the Northern Ireland Executive. Can I bring your attention to links with UK-wide bodies, and whether that devolution has helped those relations, or whether it has made it more difficult liaising with SOCA?

Drew Harris: I will speak first of all about our relationship to GB. We would rely on SOCA an awful lot for that. That is a continuing and deep relationship that we would have with SOCA. We share intelligence and our investigatory leads and decide on the most appropriate way. The good thing for us around SOCA is that SOCA has both a national and an international

reach. In the end, we are the Police Service of Northern Ireland, and we need that assistance and facilitation when we are taking forward an investigation. That works well. On the other hand, we have to keep on fighting for our place in the wider debate. We are connected mostly into the England and Wales scene. Sometimes one can be disappointed that Northern Ireland, or the Police Service of Northern Ireland, is not getting a look-in, in terms of Home Office material. For instance, we did not get a mention at all in the strategic review of policing that was recently published, and that is around the mutual aid arrangements. That was a bit disappointing, and it is being looked at to be rectified, because we are very deeply involved in mutual aid arrangements with the rest of our colleagues in the UK. Devolution particularly helped with north-south relationships. In the week of David Ford's appointment, in a very public show of support, Dublin's Justice Minister and the Garda Commissioner came north. The relationship has huge political support and impetus from both those Ministers. As we are a unitary service—we are not a Home Office service but are part of ACPO—we constantly have to make sure our voice is at the table.

Bob Lauder: From a UK organisation's perspective—from SOCA's perspective—we have from the very beginning of SOCA in 2006 built what the organisation believes to be a very strong relationship with the devolved administration in Scotland, the Scottish police forces and PSNI in Northern Ireland. We work alongside PSNI, whom we rely upon heavily. It is our intention to major on collaboration to achieve success. A reference was made earlier to why we had another 100-odd crime gangs identified. That is because there is a better understanding of how serious organised crime and crime gangs work, and better ability to identify them. As a result of the provisions for SOCA in sections 33 to 35, we have an amazing ability to exchange intelligence information with a whole range of partners. In terms of devolution and how that has affected the relationship between SOCA, the OCTF and the Department of Justice, I think it has done nothing to detract from it. I would hope that it lends support as we move forward to the National Crime Agency. Serious organised crime for me is a worldwide scourge, and it hits equally hard no matter where you are. I deal with the devolved Administration in Scotland as I do now with the Department of Justice in Northern Ireland, and I have had nothing but support from the Department of Justice. I make myself available to present before the Northern Ireland Policing Board, the Justice Committee and the OCTF at both stakeholder and strategic level. I feel it is a very important relationship.

Q184 Nigel Mills: For comparison purposes, how many organised crime gangs are there in Scotland?

Bob Lauder: 363.

Q185 Nigel Mills: That is many more. Do you find it is a sensible split to have your role cover Northern Ireland and Scotland, or would it be easier and more

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effective if you had someone in your organisation with sole responsibility?

Bob Lauder: It allows for a broad appreciation of how we are able to brigade together the analysis of serious organised crime in England, Wales, Scotland and Northern Ireland. Mr Harris made the point that there has to be greater unity, in terms of ACPOS figures, ACPO figures and strategies—how we deal with that and continue to disrupt right across the United Kingdom—because it is very important that that is held up. I do not think there is any demerit—possibly because I am Celtic—in travelling that journey, and I am able to apportion my time between both jurisdictions in a reasonable fashion.

Q186 Kris Hopkins: This is not meant to be a dig but a sensible question. When you have such good relationships in certain areas of activity across geographical areas like Northern Ireland and Scotland, do you not think there is a deficit there when you have not apparently got a sensible relationship with the Revenue in Northern Ireland, and are not able to understand their activities, though you are also based in Northern Ireland? Is it not ironic that you can have a really good relationship and understand the activities in Scotland and Northern Ireland, whereas the Revenue, which might be round the corner, and their activities, you have not quite sussed out yet?

Roy McComb: I do not agree with that. The relationship between HMRC and the PSNI is first rate.

Q187 Kris Hopkins: But you do not know what they have done.

Roy McComb: That is not my responsibility.

Q188 Kris Hopkins: That is what I am pointing out.

Roy McComb: Sorry, there is a disagreement here in terms of the figures that they can produce. I cannot produce figures for any other organisation; I can produce figures for what the PSNI has done in respect of organised crime, but the responsibility for holding certain figures on crime types that they lead on is clearly a matter for HMRC. That is not to say the relationship is poor; in fact, the relationship could not be better. We have joint operations and investigations in certain areas in respect of matters in which we have a vested interest. There are people who are involved in crimes for which they have primacy, but which are very heavily linked to particular republican crime gangs. Clearly, in terms of the financing of terrorism, we would have the primacy around that, but the principal criminal activity is the one led by HMRC. There is a joint relationship there that happens on a routine basis. Every month, HMRC sit at both my tactical meeting and Mr Harris's tactical meeting, and they go to the various meetings that the OCTF host. There is a very positive relationship, so I am afraid I cannot agree with you on the premise there.

Q189 Lady Hermon: I wonder if I might just carry on, Mr Lauder, with a few basic questions about SOCA. Could you let the Committee know how large the SOCA team is in Northern Ireland? How many do you actually have working with you?

Bob Lauder: In Northern Ireland probably about 85 people.

Q190 Lady Hermon: Is that a reduction on your predecessor, the Assets Recovery Agency?

Bob Lauder: No, it is not.

Q191 Lady Hermon: So it is still about 85. Do you think that, in the media in Northern Ireland, you get enough coverage for the work that you do—the outcomes and the achievements that you have at SOCA? Is the policy to keep a rather low profile?

Bob Lauder: In the early days of SOCA, which would cover the period just subsequent to the amalgamation of ARA's assets into SOCA, we had a very distinct media policy, where we were following the guidance given by the chair and the director general that we should not be seen to be standing on the steps of the High Court claiming justice or victory. That led to a lack of understanding by other organisations and the public of what SOCA did. That policy has changed, and we are now far more prepared to share the workings that we have engaged in with the media. I think that is a good thing. It is a good thing that people will be able to understand what we are about, and that we will probably be able to redress some of the lack of public confidence.

In Northern Ireland in particular, we know that ARA had a very high media profile, and it was not an area in which we thought we would best major if we pursued that, because we would prefer to be accurate in terms of how we dealt with assets that we recovered, so that we had an accurate figure and did not appear to be misleading anyone. If we seize or freeze certain assets, the residual value of those when it comes to the conclusion of any proceedings may appear to be much less than was initially broadcast. I can understand the public perception that the media were there and are no longer there. As for the feeling that we are not doing anything, it is quite the reverse. We are, in terms of that particular discipline within SOCA, pursuing the criminal assets identified in the referrals that are made to us.

Q192 Lady Hermon: Maybe I wrongly picked up what you hinted at earlier, but do you have any concerns about the impact of the National Crime Agency, this new organisation that the Home Secretary has invented? Do you have concerns about how that might impact on your work in Northern Ireland?

Bob Lauder: I am hugely optimistic about that, because the UK Human Trafficking Centre now sits within SOCA. It is a crime that has come very much to prominence across all of the UK recently. In terms of the building blocks of the NCA, the organised crime command really demands services that SOCA presently has stewardship of to make it worthwhile and meaningful. Therefore it should continue, but it should be able to aggregate much more readily different disciplines from the cyber unit, CEOP—online child protection—and the economic crime command. I believe all these things will lend to the value that we can bring to the fight against serious

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organised crime in Northern Ireland. The detail—you will be more aware of this than I am—is not clear at the moment, but I think that will become much more visible in the next few months.

Q193 Lady Hermon: Yes, but you are generally optimistic?

Bob Lauder: Yes indeed.

Q194 Lady Hermon: That is very good. May I turn now to ACC Harris? How do you actually measure how effective the Organised Crime Task Force is? Mr Anderson has an affinity with targets; does the Organised Crime Task Force say “Right, in fuel smuggling and human trafficking, do we have a target?” How do you measure your effectiveness?

Drew Harris: The targets that OCTF have primarily looked at are around seizures of cash and confiscation of assets. That is an amalgamation of the work of four or five separate agencies—SOCA, HMRC, the Court Service, the Public Prosecution Service in Northern Ireland and ourselves—so that is true collaborative work that we all do towards one end figure. The rest of the targets are then within each individual organisation’s business plans, so there was no desire to duplicate, for instance, the policing plan targets; our “frustrate, dismantle, disrupt” target is a Northern Ireland Policing Board policing plan target, which has now been with us for seven or eight years and gives an idea of activity that we have against criminal gangs. Then we would report separately on what each organisation has done, say, around seizures.

There are also the crime types. I have already pointed towards armed robbery and tiger kidnapping, but each six months we have what is known as a strategic threat assessment, written from information from all the agencies. OCTF funds an analyst for this purpose, full-time. That strategic threat assessment sets out the next six months of work, where we see the emerging threats, and where we have done poorly or well. That then gives us the focus for the next six months of operational activity. It is a very operational document, as opposed to a state-of-the-nation report as produced by OCTF. Organised crime keeps on evolving and moving in front of us. It is all about the money. I think it is correct that OCTF should focus upon the money. That has brought up several factors around each of the agencies, and has put the focus on what each of the five agencies has done or is doing in respect of seizing criminal assets. That has been very positive in itself. It has also brought a focus on things like the money service bureaux dotted along the border, and such hubs of activity as Aughnacloy and Meigh, where huge amounts of cash are moved through money service bureaux. A lot of combined work between ourselves, SOCA and the HMRC has been put into that, because that does seem to be a real route by which huge amounts of money are laundered. Certainly that is an area of development—legislative development as well.

Q195 Mr Benton: I want to go back, because the question I was going to pose earlier was referred to by my colleague, Kris Hopkins. I have to admit that I

am still confused. Without wanting to appear to be attacking the velocity of the OCTF, I want to pose a question. If I, as a dutiful citizen of Belfast or anywhere in Northern Ireland, pick up on what I consider to be a suspicion of fuel laundering or whatever, I take it my initial reaction to that would be to report it to the police authorities. Can you tell me—I do apologise for the confusion in my mind, because I am genuinely confused—how it is assimilated from there on? Where does it go? I make the complaint to the police. I realise that, at that stage, there is no outcome and we do not know who is responsible, but coming back to a point mentioned by another colleague, I am reporting to the police fundamentally because I think it is a crime. How, in effective co-operation, does the operation work from there?

Drew Harris: We have a regional intelligence unit on which each of the agencies is represented. That is a hub where all that sort of information would come in. It would depend on how that was received; for instance, if it was received in a confidential manner, we would deal with it appropriately as a piece of confidential information or intelligence and share it with the appropriate agency, which would be HMRC. In and around that, we would also provide what commentary we could in respect of that. If individuals were named, we might provide an antecedent history, an up-to-date intelligence picture, and what we think they have been up to. Similarly, we can also ask HMRC, or indeed SOCA, what their views of these people are. We each have different accesses to information. SOCA and HMRC have access to a wider group set of information than we do, so the purpose of aggregating this information is to give us far greater insight into criminal gangs and their methodology. That simple report can add to an overall picture of criminality. It could be something like a huckster diesel spot that is being used—a temporary facility in a yard somewhere. It is the specific responsibility of HMRC, but we would wish to add to that and ensure that enforcement action was rapid, and we would support HMRC in doing that. We are very much active in supporting HMRC, in terms of providing uniformed police officers and intelligence to support their operations.

Q196 Kris Hopkins: In previous evidence, before my time—I have only been on the Committee a couple of weeks—we have been told that laundering plants have been found in Great Britain. Can you tell me when you first found out about that, and if you have an assessment of how big the problem is across Great Britain in general?

Bob Lauder: I think that a number of years ago, there was discovery of a number of fuel laundering plants in the north-east of England. Some of the residual waste from that was discovered in Scotland. I am not sure of the detail, because I am not part of the Revenue, but I think it caused them to reconsider greatly what the activity was, and to examine that. The present profile—unless my colleagues from PSNI know differently—is very obscure. It certainly is a focus in Northern Ireland, but as for how much goes on in the rest of Great Britain, I am afraid that, from

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my perspective, I am not somebody who has that detail.

Roy McComb: There was one incident we are aware of in the Lanarkshire area of Scotland in November 2010, in which a laundering plant that was identical to the type that we would find in Northern Ireland was uncovered, and the assessment that we became aware of was that this is likely to be evidence of the skill type being crossed over. As to whether it was an indigenous Scottish crime gang or a Northern Irish crime gang operating in Scotland, I do not have that information, but certainly the ability to launder the fuel had been passed over to Scotland, proving that connectivity between countries.

Drew Harris: There is also a very real threat around curtain-sided lorries with the terrible plastic tanks in them carrying fuel on to civilian and public transport ferries to cross the north channel. We have put in place specific tactics to deal with that. If we could cover that in the private session, it might give you some reassurance about what we are doing specifically to make sure that does not happen, because there is a huge risk to a ferry if one of these lorries caught fire. That does happen; these lorries do catch fire transporting fuel around Northern Ireland. It has always been a major concern of ours that a curtain-sided lorry with plastic fuel tanks would ignite onboard a ferry.

Q197 Kris Hopkins: In very simplistic terms, if there was a link to an activity that was about Northern Irish terrorism of some form, I am sure somebody would pick up the phone and have a chat with people like you because of the geography and the history. On this issue of fuel laundering, bearing in mind all the work that has been undertaken previously, would West Yorkshire Police or Lincolnshire Police pick the phone up and have a conversation with you because of the previous lead you have had on this? Is there a clear knowledge across police forces that you are the people to talk to on this?

Roy McComb: If I were sitting in some of the locations you talked about and came across something that was a fuel laundering plant, I doubt that I would intuitively want to pick up the phone and speak to us. Their first point of call would probably be to HMRC and, because of the structures that HMRC has in terms of the geographical coverage, I would be reasonably confident that, if there was a Northern Irish connection, that call would come back to us. If it is crime gangs purely doing this type of crime, then HMRC are going to lead on that. If it is a crime gang using this type of crime to facilitate some other criminality, principally around terrorism, then very clearly we would be involved in that. Those conversations do happen because of the structures and the engagement we have in Northern Ireland.

Q198 David Simpson: I will come in on a subject that has been raised six times, I think, today. That shows one of two things: either there is a big interest in it, or I was too quick off the mark in mentioning it before anybody else did. I refer to human trafficking.

I want to widen this out a little bit. I sit on the all-party parliamentary group here, and I work with organisations in Northern Ireland in relation to human trafficking. We are having an event in February at which Peter Bone, the chair of the all-party parliamentary group, will be addressing four or five different organisations within the Province, and the PSNI will be involved as well. You may have answered one or two of the points; you mentioned to Sylvia different nationalities, in relation to who would be more prominent within the crime organisations, but as far as human trafficking is concerned, what nationality would be most prominent within that? Again, I think you touched on the issue that maybe the linkages there were more international. There is a concern from SOCA's point of view, if they are taking the senior role in relation to human trafficking, once trafficking is identified and there is a raid on a certain house or whatever.

I think we have to point out that this whole issue of human trafficking is gathering momentum. They tell us that across the globe it is as big, if not bigger, than the drugs trade. It is a major issue. I had a debate on child slavery recently in Westminster Hall. When we read press reports of children as young as 10 years of age being sold on the streets of the United Kingdom for as high as £16,000 a time, there is something wrong with society. We need to see some kind of clampdown on this. This has grown in Northern Ireland. 12 months ago when I spoke to the PSNI it was not really an issue; it was maybe tweeting at the edges. It seems to be an issue now. Whilst there is a lot in that, I am trying to get a handle on the routes that they are using coming in. You may not be able to give us that in an open session, but maybe in the private session you can.

Roy McComb: There is no doubt that the public understanding of what human trafficking or human exploitation looks like is greater, and that is principally because of the work that the PSNI has done to raise the profile. We welcome anybody's involvement in the conversation on eradicating this. Principally, what we are seeing at the moment is people being brought into Northern Ireland for the purposes of the sex trade. We are trying to change the mindset of people; I suspect there will always be that sex trade—that desire for prostitution—but the vast majority of people that we are seeing being brought in against their will are being trafficked to feed an appetite for the sex trade in Northern Ireland. That is not just in Belfast; it is across all six counties in Northern Ireland. I have to say, as a citizen of Northern Ireland, that I am appalled at it. This is slavery. There is no other way of putting it.

David Simpson: Absolutely.

Roy McComb: We are trying to get people who are going to buy sexual services from somebody in a brothel to look at this, and think, "This is highly unlikely to be somebody who is there because when they grew up, their career path mapped them out to be a prostitute." Whether they are there of their own volition, in the broader sense, because of social circumstances, or, more likely than not, because they have been trafficked, we need to get people to be

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realistic in Northern Ireland that they are going in, and they are part of the problem. In essence, what we are trying to do in changing the mindset is, instead of the police service or law enforcement attacking the supply side of the market, to address the demand side. That is about education and people getting to grips with the fact that, when they go into a brothel, they are effectively involved in criminal activities. Most of the time, if they go into a brothel or house where a girl has been trafficked, in effect they can be as guilty of rape as if it were somebody being grabbed off the street. We need to get people to be real that that is what they are involved in; they are not going into premises to be involved in any consensual activity. We have raised the profile of what trafficking looks like. There is more work to be done, because it is not just about the sex trade; it is about the labour exploitation market as well. It is about people involved in industries that we are all familiar with in Northern Ireland. Whether it is fishing, agriculture, working in restaurants, the service industries, or whatever, there are people being brought in to service those needs, and I think we need a greater sense of what that looks like.

In terms of routes, we do have an almost non-existent identifiable border crossing from the Republic of Ireland into Northern Ireland. It is very difficult. If you join the Westlink at York Street, the first time you hit traffic lights is Drumcondra Road in Dublin. If you can identify where the border is there, then fair play to you. Crime gangs are coming from the Czech Republic, from Hungary, and from China. The border does not exist. If they can get people into Northern Ireland through Irish ports, Northern Irish ports, or other British ports they will do so. Northern Ireland is both a destination and a transit route for people who are victims of trafficking.

Q199 David Simpson: Someone said that SOCA was maybe taking the lead in relation to the trafficking side. A question to all three: if the PSNI, SOCA or anyone raids premises and finds 15 or 20 ladies or even young men, what happens to those people?

Roy McComb: The PSNI leads on the investigation of human trafficking in Northern Ireland. SOCA identify people who may be the victims of trafficking. We put them through a screening process. The screening process requires almost a competent authority to make a decision as to whether they are in fact the victims of crime or not, and the competent authority is SOCA in respect of UK citizens and people who are victims from EU countries. Outside of those UK/EU areas, it is the UK Border Agency. Bob is the SOCA lead. SOCA will give a designation as to how long somebody would stay in the country for what we call a period of reflection. A victim of trafficking is allowed to stay in the United Kingdom for 45 days, in which time they will reflect on the circumstances, principally to get them through the initial trauma of being trafficked, but also to allow them to assess whether they want to be involved in a criminal justice investigation. Within Northern Ireland, the PSNI will lead on that, but this is very much a collaborative arrangement with SOCA, the UK Human Trafficking

Centre and other agencies in Northern Ireland, including those who help the welfare of the victims.

Q200 Naomi Long: I want very briefly to look at two issues in relation to trafficking. One is an experience that was brought to my attention around what happens to people when they are returned home after they have been trafficked. Some people will be familiar with the situation that emerged in Belfast a few years ago, when some very vulnerable people were actually under threat. When there was further police investigation, there was some evidence that trafficking may have been involved. Some of those people were returned to their home country by choice, but a number of them reappeared in Belfast again, having been re-trafficked. Is there some kind of further investigation that happens at that point? Some were able to return through legal means, because they had work visas and were able to come back for that reason; that was fine. But others clearly had been returned through the same route by which they had originally been brought to the city. They were incredibly vulnerable individuals, both in their home country and in Northern Ireland. Is there any protection or co-ordination internationally with Governments when people are repatriated to ensure that that re-trafficking situation does not emerge again with very vulnerable groups?

Bob Lauder: There is a fairly significant interaction with the authorities in Eastern European and wider European countries. Unfortunately, some of these people come from a very deprived background, and when they go back into that, they become vulnerable to these same gangs. Vulnerable people do end up re-trafficked. While Great Britain abolished slavery in 1807—we celebrated the 200th anniversary—I do not think anybody now could realistically expect that that is a reality, because this is slavery. We do have campaigns in conjunction with foreign countries to increase awareness in those countries of the vulnerabilities of human trafficking. Those are media campaigns and leafleting campaigns. We have already had two major campaigns in the UK, Pentameter 1 and 2, to raise awareness. While trafficking does come from Europe, Eastern Europe and the wider international community, those same offences take place domestically, because people are trafficked between Belfast and Manchester, London, Aberdeen and Glasgow for the same sexual deviants, and not only for the sex trade but for domestic servitude and a whole range of areas. There is an awakening that we need to be more collaborative in fighting this, because it is the awareness that will bring further intelligence allowing us hopefully to be more effective. It is a very unfortunate circumstance of which we are aware. We do engage with foreign Governments to raise awareness in other countries.

Roy McComb: The reach of organised crime gangs bringing victims into Northern Ireland is global. We do have some involvement, although limited at this point, from South America as well as Asia and the main parts of Europe, Eastern Europe especially. This is not a Northern Irish problem; it happens in Northern Ireland but it is a global problem, and it requires those

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global partnerships. The reach of the PSNI is only limited. I do want to emphasise that we, as a decent society, should get angry about this. If you could hear the stories that we hear from the victims of these traffickers—these are horror stories. We have a tendency to gloss over this, simply calling it “trafficking”, as if it is a box to put people in. The stories that you would hear, and the hurt they have gone through, would make you weep.

Q201 Naomi Long: I am aware, from those experiences that I have dealt with on a number of occasions, of the trauma that it causes people, and I am also aware of the various manipulations that people use to entrap people into allowing themselves to be trafficked. In some cases, they remove all their documentation, so that they have no alternatives. They are afraid of criminal investigation into themselves, so they do not feel they can speak out. It is an abuse.

You mentioned the permeability of the border, and obviously there is a free travel area and so on within the island of Ireland, but I wanted to flag one thing up. A number of constituents have raised with me recently the fact that when they have travelled by bus to the Republic of Ireland, the bus has been pulled in at the Irish Republic side of the border by the Garda, and people’s travel documents and so on have been inspected to make sure that everybody is who they say they are, and that they have the correct documentation. That does not happen on the reverse journey back to Northern Ireland. Now, I am not suggesting that everybody is being trafficked by Ulsterbus, just in case people are getting the wrong idea, but are there checks that can be made without jeopardising the valuable cross-border movement between Northern Ireland and the Republic? Are there checks that can be made that would make the border more secure, protecting people from trafficking and tackling issues around smuggling?

Drew Harris: Our partner, the UK Border Agency, does operations on the trains and the buses coming north. The Guards also have responsibility for immigration. It is a Garda operation, but that is under their complete envelope of responsibilities. The UK Border Agency would take the lead for us. We assist them in terms of checkpoints and stops, and that does happen. I know the frequency would be different. Certainly I have heard the anecdote about people going south being stopped, but “You are never stopped coming north”; however, UKBA have significantly increased their resources in Northern Ireland. There is not that much international flight traffic into Northern Ireland, so they do expend a lot of their effort on either the ports or the major arterial routes.

Naomi Long: That is actually very useful, because it helps me to respond to those constituents who have been concerned about it. It has also maybe put in perspective the kind of different approaches being taken. That is very helpful. Thank you.

Q202 Lady Hermon: I have a very quick point. I suppose we ought to know, but what is the maximum penalty at the present time in Northern Ireland for

human trafficking? Is there an effort being made to increase it?

Drew Harris: 15 years’ imprisonment is the maximum penalty. It is viewed as a very serious offence. In Northern Ireland, we are yet to have a prosecution right through to fruition. We have a number of investigations and files with the Public Prosecution Service. We have been involved in two prosecutions, one in Wales and one in Scotland. I have to say that we were not particularly content with the penalties that were imposed there. A lot of the financial penalties, in terms of stripping away criminal assets, were good, but I do not think that the custodial sentences, which were in the line of two years, really reflected the depth of the criminality that had been involved in what you would recognise as the complete exploitation of people in the sex trade.

Q203 Lady Hermon: So have we had any successful prosecutions in Northern Ireland?

Drew Harris: No, we have not as yet. They are in the process of going through the PPS onwards towards prosecution. As Mr Simpson commented, three or four years ago we did not have this as an issue. It has now started to appear. Over the last two years we have recovered 71 individuals whom we suspect have been trafficked. We had a very significant crime gang broken up in September for trafficking from Eastern Europe, but we expect it could be 18 months from now—it could be next year—before we would actually have them through the door of the court.

Q204 Jack Lopresti: Welcome. Thank you for coming. Going back to fuel smuggling, given the sheer scale of it, it is quite clear that the general public are willing, consciously or unconsciously, to buy illicit fuel. Do you think there is a real perception of the seriousness of the crime, as far as funding organised crime and paramilitary groups, and depriving the Estate of income and Revenue tax, is concerned?

Drew Harris: Actually, I think most customers are being deceived, and are in effect paying the full mark-up for laundered fuel. There are risks with using laundered fuel, in terms of damage to your engines. Obviously, if you use a huckster site you are not paying the full price for the fuel, and you know that you are engaging in using illegal fuel. By and large, with fuel, I think people are concerned that they are buying an inferior product. That would be the anecdote. But they are being deceived in terms of what they are getting.

Q205 Jack Lopresti: So you are saying that the majority of people are doing it by default—by deception—rather than making the decision to buy illicit fuel?

Drew Harris: Yes.

Q206 Jack Lopresti: Do you have any idea of the breakdown between deception and people who are willingly buying it? There must be a reasonable proportion of people who are buying it willingly. Do they tend to be businesses or individuals?

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Roy McComb: A lot of the illegal fuel being laundered in Northern Ireland is being brought into those huckster sites, so when you are buying, it is pretty obvious from the location at times, even if the price is close to top whack.

Q207 Jack Lopresti: So that would suggest that there is complicity, rather than ignorance.

Roy McComb: Each of us likes to have a bargain, and if you are paying for quite an expensive commodity such as fuel and getting that a couple of pence per litre cheaper, it is incredibly tempting to buy that. What I would like to see, if I had responsibility for this, is a change in the way we approach some of the public appeals. I just do not think the idea of saying “The Revenue has lost x millions” works. I do not think the people who are willing to take money out of somebody else’s pockets care about the Revenue, and I think there are some people in Northern Ireland who would have a particular bent really to not care about the Treasury.

Q208 Jack Lopresti: There is almost something old-school romantic about smuggling.

Roy McComb: There is a sort of Irish principle of smuggling anything that you can. A good approach might be to say, “When the Treasury loses money, do not be a bit concerned when your local GP’s practice closes. Do not be worried when the road that you are driving on is not fixed next time, or when there is no salt when winter comes; the money that the local Executive should have is no longer there because you are buying fuel.” That connection between what people are doing and the impact on the local community has yet to be made.

Q209 Jack Lopresti: I would say that it is more powerful to say where the revenue is going—to funding these pretty despicable individuals. The Government’s money is one thing, but if it is funding some pretty disgusting acts and terrorism and all the rest of it, I think that would be more powerful.

Roy McComb: That is true, but I still think there is complacency in some areas where people are willing to buy some commodity. Bearing in mind that the “commodities” we are talking about here are fuel on the one hand and trafficked women on the other, there is still that laxity about the rights and wrongs in buying a commodity, and that is where we are keen to change the mindset in the Northern Irish community, so that you realise that you are now part of the problem, whether it is fuel, a DVD or a girl you are buying.

Q210 Jack Lopresti: Or tobacco.

Roy McComb: Or tobacco. You are part of the problem. We need to get people to the other side of that equation.

Q211 Jack Lopresti: You need to get it in their mind that they are accomplices to the end result, rather than getting a good bargain.

Roy McComb: Indeed.

Q212 Jack Lopresti: So what are you doing to close down these illicit fuel stations, and how much success are you having?

Roy McComb: Again, probably we would try to make it clear that while we have a buy-in because of the involvement with other crimes, the lead agency would be HMRC. There are some areas of Northern Ireland where HMRC will close down the site, and in effect they can do it without there being any PSNI involvement. I would be simply guessing the number or figures that there might be. There are other areas of Northern Ireland where the PSNI would provide a physical presence to support the closure of those sites.

Drew Harris: We would support HMRC in areas such as South Armagh. Indeed, last year we had an officer critically injured when he was run over by a fuel lorry trying to escape the site; he was only saved from being completely crushed by his body armour. Whenever you tackle these sites, HMRC do require our support, because there is a degree of risk and violence involved. They will resort to very serious violence if needs be.

Q213 Ian Paisley: I agree with you, Roy, that there is this element of complacency—“So what?”—and it is perceived to be a victimless crime. Is there not an element of complacency as well in thinking that if we change the advert and pull on people’s heartstrings, we will reduce the crime? Would we and the police not be far better really pushing HMRC to deploy some of the new technologies, even on a trial basis? Should we not push them and say, “Try this”? If there is an effective marker out there—and if we can get our hands on it—that not only marks the fuel, but identifies and has sufficient evidence attached to it to allow you to take a person to court and jail them, that would be a far better effort made. I sympathise with HMRC on the fact that people are in the field and they are under pressure, but I get this nag that at the end of the day these people are ultimately being complacent, because they are using old methods when there is something more effective out there that they should be pushed to use.

Roy McComb: I suppose the very real, practical and tactical benefit of the Organised Crime Task Force is that we do have that ability to pick up the phone and say, “Look, I think there are things we can do to help you”. I had a conversation just this morning with a senior member of HMRC about some of the matters that we have a mutual interest in, and there are certain crime tactics that we can bring to the table, but actually, because of the relationships that we have and through the auspices of the Organised Crime Task Force, they can access those. Surveillance is one of them. I can talk in very general terms. The use of surveillance within Northern Ireland is a very expensive but very, very fruitful tactic. They do call upon the PSNI to provide surveillance in certain areas where their own capability is diminished or non-existent, so they do have access to tools that we have access to, where the case merits it.

Drew Harris: We have invested in new technologies, and maybe I will cover some of them in the private session. Those technologies are available to them, and

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they are of very specific and tactical use to them around this problem. I can go into some of the detail.

Q214 Ian Paisley: That is about identifying and snooping on certain individuals.

Drew Harris: Yes.

Q215 Ian Paisley: What I am talking about, because I do not want to take you down an avenue that would be wrong, is a marker in fuel that cannot be adulterated or removed. That apparently exists; it has apparently been tested in Brazil and is available. HMRC have been pushed since 2009, I think we heard in evidence, to use it and there appears to be, for want of a better word, thumb-twiddling when it comes to deploying that new technology.

Drew Harris: The only comment I will make about that is that we do have discussions around markers, making markers more “sticky”—that is the expression that they have used to me—and the addition of a further compound to make them more difficult again.

Q216 Ian Paisley: That is what they call Orange II.

Drew Harris: That might be it.

Q217 Ian Paisley: It is completely useless; that is what we have been told in evidence.

Drew Harris: Right. The other thing to point out about this is that whereas this started very crudely with fuller’s earth, it has moved on, and proper chemical engineers have got involved in these processes to try to defeat the dyeing and marking process, because there is so much money in it. I think we will constantly be in a technological race, but we are all in a technological race around crime, and we recognise that.

Q218 Naomi Long: On that specific point, you have said that, because it is worth so much money to the criminal gangs, they are willing to invest in the chemical engineers to make sure that they can continue to launder the fuel. It must therefore also be worth the same amount to HMRC, in terms of being able to get the revenue in, and therefore there should be at least comparable investment in new technology, because otherwise it does not make sense. There have to be engineering and chemical-based solutions to some of these problems and investment in that technology. It will always be a race of technology, but you want to feel that the state is ahead, with all its resources, rather than the organised crime gangs. I suppose that is the concern the Committee would have, having listened to some of the evidence: we are still adding dye to fuel as a method of tagging it when everybody knows how to remove it. Why are we still doing that, and not finding other ways that we can fingerprint not just the fuel itself, but batches of fuel, and identify different sources of fuel so that the routes can be traced? All of that is scientifically possible; it is about whether or not people are willing to invest the resources in it. It is possibly not a question for you, but it may be something that you can raise to press the issue, because it would certainly help your

evidence chain and identify how further to break up and frustrate some of the gangs.

Roy McComb: There is certainly a parallel in the world of new drugs that are coming on to the market—legal highs, as they are euphemistically called. Historically, something could be a legal high for 12 or 18 months before it was deemed to be a controlled drug. The Government have taken a different view, which is to put in temporary banning orders on new drugs to allow them to be legally classified. That is a change of approach that may be, in the world of fuel smuggling, a way of looking at that, in terms of legislation.

Q219 Naomi Long: I have a couple of other questions leading on again from evidence that HMRC have given us. They had mentioned that there are very good relationships in terms of the Republic of Ireland and Northern Ireland and the general work that is done in this area, but one thing they did highlight was that there can be delays in prosecuting offenders. I know there have been some issues raised as to how many offenders are prosecuted, but they did raise that there were delays in that when it required evidence to be passed from the Republic and so on, in terms of having to go through a mandatory process to request that. What other impediments are you aware of that would get in the way of really effective cross-border co-operation? Are there other things that you feel stand in your way in terms of being able to deliver?

Drew Harris: The international letter of request process is in effect a prosecutor and inter-judicial process. Only two weeks ago the PPS and the Director of Public Prosecutions in Dublin signed a memorandum of understanding to short-circuit that process. Similarly, we have shared memoranda of understanding with An Garda Síochána around that. We have been operating this in practice for the last 18 months to two years. It came out of the joint investigation we ran into the Quinn murder in South Armagh/North Louth five years ago. As a result of that, all those problems were made manifest in that murder investigation. We have moved on that, and it has just been finalised. We have managed that relationship, and we and AGS have taken it forward. It would be for HMRC to take that issue forward with the Revenue Commissioners, because it can fit under a treaty agreement that is signed by both Governments to improve cross-border law enforcement activity. There is a legislative vehicle to tag it to. The hard work has really been done, in terms of the prosecution authorities. Their agreement is in place, and it is easy for the law enforcement agencies to come in behind that. That really should short-circuit those processes. Our concern is this: if there is a serious sexual assault in Dundalk, but the perpetrator and his car turn up in Newry, how do you fast-track that? Under an international letter of request process that could take seven or eight months. We want to get that down to days, as opposed to weeks and months.

Roy McComb: In very practical terms, there is a police-to-police relationship, so in a cross-border matter those conversations happen as quickly as they can be managed. A phone call to an opposite number

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in the Garda or to us makes things happen, but in terms of having things on a legal footing to be able to present to court, it does require that longer chain to take place.

Q220 Naomi Long: Operations in the border areas are still obviously one of the areas of focus when it comes to fuel laundering; do you and your counterparts in the Garda have the resources necessary to pursue effectively all the operations that you would wish to in those locations?

Drew Harris: Yes, I would say that we are well resourced, and we have received additional specific resources to help us there. On top of that, we have also received additional security funding. The Commissioner of the Guards has made clear his commitment to policing the border, in terms of managing not just the terrorist threat but the threat from organised crime. The border can create a real hurdle for us in terms of law enforcement activity, and both organisations are very anxious to make sure that does not happen. We are very aware of the fear of crime that there is if people wonder, in effect, whether we can raid across the border, in either direction. Both organisations are very anxious about that.

Q221 Naomi Long: I have one final question. Obviously there were proposals announced recently around reducing the number of police stations across Northern Ireland. Would you see that having any impact on the work that you do tackling organised crime?

Drew Harris: We would hope that it would not. We want to put things in place to ensure that we have the resources out on the ground. The closure of police stations is linked to the £135 million-worth of cuts we have to make, but over the last two years we have also brought an additional 700 officers out of back-room bureaucratic functions and on to the ground. The Chief Constable is very committed to driving that forward. In terms of organised crime, we do depend a lot on information from the public and district officers, so we are very committed to the "Policing with the Community" strategy that we have, and to making sure that we have as positive a relationship with all the communities in Northern Ireland as we can manage.

Q222 Naomi Long: One of the concerns is that in more rural areas people may become more car-based, rather than there being the foot patrols that maintain that link with people in the community, and they will therefore not be able to pick up the casual intelligence that police officers can do when they are on foot. Is that something that the police are looking at, in collaboration with the consideration that they are giving to the reduction in the number of stations, to ensure that foot patrols and so on continue, and that those relationships and conversations are therefore still able to happen?

Drew Harris: To put it very simply, it is more effective for us to close a station and to have an officer out on the ground than to keep a station at the cost of an officer, or two or three officers, and keep somebody in that station.

Q223 Naomi Long: I understand, but the issue is if the officer is out on the ground talking to people, that is building relationships, gathering intelligence. If he is behind the wheel of a vehicle simply driving around, there is a disconnect that does not necessarily feel the full benefit of the planned changes. I suppose it is that specific issue: ensuring the people who would normally report to their local station and then go out on the beat, or whatever it might be, are still on foot in those communities, building those relationships and being able to gather that sort of intelligence about what is going on in the community and know what is happening.

Drew Harris: That is down to the policing style that we would wish to adopt in our neighbourhood policing teams, which are specifically the group who have had the increase in numbers so that we can manage those day-to-day interactions, and be visible out on the ground to the public.

Q224 Ian Paisley: The paedophile and sex offender, Mr Adams, appeared to use the extradition process to his advantage and string it out for as long as possible. Did you receive all the co-operation there that you would have expected, or was that paedophile assisted by lackadaisicalness on the other side of the border?

Drew Harris: No, extradition is a judicial process and goes through a judicial route in whichever country it involves. It involves the Public Prosecution Service for ourselves and, in that case, obviously the DPP in Dublin. That one ran its course in a time scale that one would have anticipated, particularly where the individual was so bitterly fighting their extradition. It is a legal judicial process.

Q225 Ian Paisley: A minefield for lawyers, I suppose, and for you.

Drew Harris: On an extradition, we have to be ready for the prosecution. In presenting a file to the PPS we must be certain of our case and that the case is court-ready, in effect. It is not as straightforward as: "We want to extradite that person". We need to present a case that matches the prosecution test.

Q226 Ian Paisley: Regarding the issue of sentencing, could you give voice to any frustration you might have with regard to how sentencing for some of the serious and organised crime we have spoken about today, in all its forms, is carried out in Northern Ireland vis-à-vis sentencing in the rest of the UK? Do you see it as similar? Are there major flaws, and how can we improve on those?

Drew Harris: There was work done that showed that custodial sentences were by and large the norm in England and Wales, as opposed to suspended sentences being by and large the norm in Northern Ireland. That was about four years ago.

Q227 Ian Paisley: That means you are more likely to get a suspended sentence for serious and organised crime in Northern Ireland.

Drew Harris: For fuel laundering, yes. Our frustration there is that we do not think that reflects the amount of harm that is done and the amount of money that is

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made, and what then happens to that money. It undermines lawful business activity and robs people of amenities through lost taxation. It creates fertile ground for other criminality to flourish.

Q228 Ian Paisley: You will know that a really nasty Spanish criminal tried to murder one of your officers in Northern Ireland about a year or so ago by dropping a breeze-block on her head. The perception was that the sentence that nasty and horrible individual got was not really sufficient. Yet we have seen rioting situations here on the mainland where individuals who probably never threw a stone but tapped some letters and words into a keyboard ended up getting a sentence of similar length to that particular individual. As a citizen of this country, that disgusts me. Does it anger you that there appears to be double-sentencing, or a lack of joined-up sentencing, across the whole of the UK on these issues?

Drew Harris: You can see some very stark differences, particularly around public order, but that goes back to the different legislation there is in England and Wales in comparison with Northern Ireland on public order and the disposals that are available to the courts. This issue was raised in 2002 and 2003 in terms of rioting in Belfast compared to the Bradford riots of 2002. In Northern Ireland the maximum sentences were doubled, but they still remain far removed from the maximum sentences available here.

Q229 Ian Paisley: Is there anything you would suggest to us that we in turn could suggest? We will try and change that, in terms of sentencing.

Drew Harris: One area of frustration I would flag up is around human trafficking. It is just the one area in terms of organised crime. Roy talked about rape, and then there is also an absolute offence of buying sexual services from an individual who is being exploited. That is a summary offence, with a maximum fine of £1,000, and there is nothing in between.

Q230 Naomi Long: Is that not technically rape?

Roy McComb: If you have a victim of trafficking, they are not there because they want to be there. It would follow, in my logic—maybe I am alone in this—that if they are involved in something that they do not want to be involved in, then they have not given their consent; and sex without consent is rape.

Q231 Ian Paisley: What would they get here?

Drew Harris: It is the same legislation. We mirror each other, England, Wales and Northern Ireland. I do think there is a gap between such a serious offence as rape, and therefore the criminal standards of proof and the prosecution test you have to meet, and an absolute offence. We will pursue men for those prosecutions; that is part of the operation around individuals who have been subject to human exploitation in the sex trade. We will report them to the Public Prosecution Service, but there is a bit of frustration at the level of the offences.

Q232 Ian Paisley: Would you be able to provide us with a paper setting out areas where you would like to see sentencing addressed, and where you think there is an anomaly, even if it is just headlines, so that we in turn could consider whether there is an area on which we could go back to the judiciary? The Lord Chief Justice has a consultation ongoing about sentencing and guidance on sentencing.

Chair: If that was with particular reference to the inquiry we are carrying out, it would be useful.

Roy McComb: Might we broaden that? Without being overtly critical, I think what frustrates us even more is the process before somebody gets sentenced. The frustration we have is that we have not been able to get people sentenced for human trafficking, and that is not because we have not tried. We have a case that is over three years old and, in that time period, one of our investigations has been completed. It has been an investigation within Northern Ireland and into Scotland. It has been transferred to Scotland for very proper legal reasons and it has been through the courts, flash to bang, in 12 months. We have one very similar case that is over three years and will not see a court this side of 2011. The process is as frustrating as the sentencing. We cannot give you any figures in respect of sentencing for human trafficking because it has not happened, but we can talk to you about the frustration of getting people broadly into the justice system.

Q233 Ian Paisley: If there are headline acts or issues, please send them to us. We could probably be here all day talking about this one, but if you could give us headlines, it may be something that we as a Committee—again if it relevant, Chairman, as a basis to this report—could actually put in the report, and perhaps we could help address what is a really frustrating set of circumstances. Finally, you will have noted yesterday in the Republic of Ireland's budget that they have put up VAT and the price of fuel. I know from what you have said that HMRC takes primacy on this stuff, but could I urge you to tell HMRC to steel themselves for a fuel smugglers' bonanza when that kicks in, if they are not already alerted to the fact?

Drew Harris: We did specifically cover that two weeks ago at the cross-border conference, because the budget was heavily trailed, so we had an expectation of this coming down the line. It applies also to cigarettes and alcohol, where there is also a lot of money to be made and there is real risk of personal harm through the products people are using.

Q234 Kris Hopkins: As somebody who attended—on behalf of the Government, by the way, not as a rioter—a few riots in Belfast in the late '80s—

Jack Lopresti: Attended; that is an interesting turn of phrase.

Roy McComb: Do I need to caution you at this point?

Q235 Kris Hopkins: For the record perhaps I should explain a little bit; I did say "on behalf of the Government". As a former leader of Bradford Council, strangely enough, I witnessed the violence

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that the rioters smashing up our city caused: there was £25 million of damage and over 300 police officers seriously injured. Rightly, the justice system applied very stern sentences, which individuals tried to appeal. Those were rejected, and they went to prison. I did follow what happened and made the comparison between colleagues I knew who were there and injured in the late '80s and some of the pathetic sentences that went with, and still does go with, that activity. There is a double standard that needs to be addressed. I have two questions: what effect do you think it has on public confidence when you have such pathetic sentencing, and what effect does it have on police morale when, for all their actions trying to protect public order and property, such sentencing is passed down?

Drew Harris: In the first place, it is very hard on police morale and it does sap our morale that year in and year out we find ourselves in pretty much the same places, with some little variation, in serious public disorder, but because of our ability to cope with that, protect ourselves and act in full accordance with the law and ECHR, whilst minimising risk to our officers and to those participating, it is somehow seen as okay and manageable. There is almost a societal acceptance that we will have this type of serious disorder—because it is very serious. It is only because we are so professional and well equipped in dealing with it that we do not have people either killed or very seriously injured. We constantly have officers who are injured and, in effect, whose police careers are finished. That is a regular feature of every summer for us, and it does sap people. We do not get a lot of community support, in terms of what has happened to our officers. Nor do we get a lot of support through the criminal justice system, it has to be said. We do find that very discouraging, but at the same time, officers will always step forward and do their best.

Q236 Dr McDonnell: Regarding you giving us a note on various things, we do have contact from time to time with the Garda Commissioner; is there anything about north-south co-operation that is flawed or could be better in a strategic sense? I am not talking of a detailed sense.

Drew Harris: The comment I would make there, Sir, is that we had a very good and productive one-to-one relationship down through the years, and it has just moved on another notch with the appointment of Mr Ford. Dublin-Belfast political co-operation now has further driven that relationship, and so there is no particular area I would point to. We have a cross-border policing strategy that we will report on in April of next year to both Ministers.

Q237 Dr McDonnell: Thank you. We have talked about a lot today, and I do not want to delay proceedings unduly. The criminal proceedings are the most desirable outcome, but you have other sanctions available to you, such as confiscation of assets and of property. That can be effective. Have you tried that much—either SOCA or the police? What options do you have there? For instance, if you find a diesel

laundering plant in a farmyard, are you at liberty to confiscate the farm or the farmyard?

Roy McComb: The short answer is that the Organised Crime Branch takes a very universal approach. Every investigation we have has embedded within it a financial investigation. Every time we tackle an organised crime gang we are looking at their money, because organised crime is about making money. We therefore are able to draw upon all of the tactics and the powers available to us through legislation, principally the Proceeds of Crime Act. We actively pursue both restraint and confiscation in respect of any crime gangs that we are able to bring to justice. Where we have insufficient evidence, we do have the option to go for a civil recovery of proceedings. That is led by SOCA, but through our relationship we are able seamlessly to transfer our information to SOCA in Belfast, and then they pick up the civil recovery.

A couple of years ago, I think the Audit Office reflected the fact that the PSNI had provided the majority of investigations to the Assets Recovery Agency—it was far in excess of what any other law enforcement throughout the United Kingdom had been able to do—and that had led to the highest number of recoveries throughout the United Kingdom. We are very much alive to the fact that the tools available to us through the Proceeds of Crime Act, especially, are being used regularly. This year alone, I think 25 civil recovery referrals have been made to the local SOCA office. We pursue criminally: that is always our default position. When we are not able to succeed criminally we pursue civilly, and that relationship, with SOCA being embedded in Northern Ireland, I think works very well.

Q238 Dr McDonnell: Can you understand in the public's mind the comparison between some poor farmer having half a tank of red diesel in a vehicle that is seized by HMRC, and some so-and-so who has a major industry going somewhere, and who seems not to be getting the same intensity of punishment? That is really the point I am getting at. If you were to seize more assets from time to time—maybe it is more HMRC that I am talking about than yourselves—it might win some public support.

Bob Lauder: We do pursue to the nth degree those recoveries that we can achieve. As I discussed earlier with Lady Hermon, perhaps the media coverage of what we are doing has not been as strong, and that is maybe an area that SOCA should look at. About a third of all cases dealt with by SOCA for civil recovery sit within that office in Northern Ireland, and that is because we do not have high limits; we are flexible. If there is a legal opportunity to pursue recovery of assets, then we will do that, and we will take very seriously all those referrals that come through the door. As with everything else, we have to assess the viability of that, but where it is at all possible, SOCA will pursue through civil recovery or tax assessment any assets held by those people who are engaged in criminal activity.

Q239 Dr McDonnell: Thank you. How do you feel SOCA is doing compared to its predecessor, the

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Assets Recovery Agency? We talked many months ago about the local affection there was for the Assets Recovery Agency; do you feel you have upped the ante on the criminal?

Bob Lauder: I think we are doing as well, if not better. We have taken steps to rationalise the process. We no longer engage in the practice of appointing interim receivers. We have brought the cost down, and we have been more effective. Some people had the perception that, because it was serious organised crime, we would have a high de minimis level. We have not applied that. We have tried very hard to make sure there is no diminution of effort put in.

Dr McDonnell: Just very quickly, do you expect your operations to be modified much with the creation of

the National Crime Agency, or do you see that being a strengthening? *[Interruption.]*

Q240 Chair: Just before you answer, are you able to stay for a few minutes for a private session if we come back? There will be a fifteen-minute delay; that is the only thing. Is that running it too close?

Drew Harris: It leaves me a little bit tight.

Chair: I think we had better finish, then. Can I thank you very much for your very helpful advice and evidence? Thank you for coming.

Wednesday 14 December 2011

Members present:

Mr Laurence Robertson (Chair)

Mr David Anderson
Oliver Colvile
Lady Sylvia Hermon
Kate Hoey
Kris Hopkins

Naomi Long
Nigel Mills
Ian Paisley
David Simpson

Examination of Witnesses

Witnesses: **Bill Williamson**, Acting Director of Excise, Customs, Stamps & Money, **John Whiting**, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, **Alan Lee**, Regional Director for Criminal Investigation, and **Pat Curtis**, Senior Officer, HM Revenue and Customs, gave evidence.

Q241 Chair: Good afternoon gentlemen. Thank you very much for joining us. I think we have met most of you before, but could I ask you just briefly to introduce yourselves, and I believe you would like to make an opening statement? Please do.

Bill Williamson: Thank you, Chairman, and good afternoon to you too, and to the Committee. Can I start by introducing the colleagues with me, attending as witnesses today? To my left is Alan Lee, Deputy Director in HMRC Criminal Investigation, based in Belfast. To the right of me is John Whiting, who is our Assistant Director in Criminal Investigation, also based in Belfast, and at the end there is Mr Patrick Curtis, who is our HMRC national oils lead.¹

Thank you for the opportunity to say a few words at the beginning. The Committee will recall in our last session that Mr Mike Norgrove, who led the witnesses then, told the Committee that we were about to publish some new figures on the tax gap. They were published towards the end of September, and I wanted to start the session today by providing the Committee with those new tax gap figures.

Starting with the figure for the tax gap in diesel in NI, the tax gap is 12% of the market for 2009–10, and that is calculated in terms of loss of revenue to the Exchequer of £70 million. It is quite a significant reduction in the tax gap figure for 2008–09. The main reason for that, we believe, is a difference in behaviour in cross-border shopping. The Committee will recall that we are unable to separate with the data the illicit activity from cross-border shopping. During 2009, the differential was extraordinarily small through the year compared to previous years, so much so that when we look at petrol, we have not been able to calculate the tax gap figure in 2009–10. Indeed the differential between the North and the South reversed itself and we saw what we call reverse cross-border shopping for quite a length of time in 2009–10.

For diesel, on the mainland—Great Britain—we have a tax gap figure of 4%, and revenue loss is calculated at £650 million. I just say to the Committee again, these figures are indicators of long-term trends. The tax gap is not a precise instrument, but over time it continues to show that in terms of lost revenue through this activity—lost duty on fuel—this is a declining figure. That does not mean, of course, that there is any tolerable figure in terms of fuel fraud, so

obviously we continue to press ahead with all of the activities that we do to press down on this business. Thank you, Mr Chairman.

Chair: Thank you very much for that update; it is very useful.

Q242 Lady Hermon: It is very nice to see you all here this afternoon. Would you mind, Mr Williamson, if I directed my question to Mr Whiting, because it was Mr Whiting who gave us evidence last time on sentencing?

Bill Williamson: Not at all.

Q243 Lady Hermon: I do think, in fact, the public in Northern Ireland would be rightly entitled to be shocked and very angry, as I think Committee Members were, to discover that in the past 10 years there have been 47 prosecutions for fuel fraud and related tax evasion issues, and of those 47 prosecutions only four individuals—only four gangsters—have actually gone to prison. The others appear to have suspended sentences, and some of them have had their prosecutions dropped. In 10 years, four people have gone to prison for what is a very serious crime, as Mr Williamson has just described. Fuel fraud is a very serious crime. Something obviously has gone horribly wrong somewhere along the line. Is it the fault of HMRC? Is it the fault of the Public Prosecution Service in Northern Ireland? Is it the fault of the courts? In Mr Whiting's evidence to us the last time, in September, and I am just quoting back, Mr Whiting, "It is not the wishes of HMRC but those of the judiciary that are being carried out." I am sure you really do not want to go on the record as being critical of the judiciary in Northern Ireland, but would you like to explain what has gone so terribly wrong, when in fact the sentence could be up to seven years' imprisonment? Why is it there have been so few that have actually ended up in prison, where we wish them to be?

John Whiting: It is a very difficult question to answer. The fact of the matter is that HMRC puts together cases in respect of fuel fraud. Those figures do simply relate to fuel fraud, I think.

Lady Hermon: Yes.

John Whiting: Rather than other tax regimes—for example, cigarette smuggling and/or VAT tax frauds?

Lady Hermon: It is just for fuel fraud, yes.

¹ *Note by witness:* Alan Lee is based in Salford.

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John Whiting: HMRC puts together cases with the same process. Our officers are trained in the same way as officers in England, Wales and Scotland, to carry out the same processes, to gather evidence in exactly the same manner, and to put our cases together in exactly the same way as we do elsewhere in the country.

Q244 Lady Hermon: Do you have a legal team of advisers there? Do you also have people who are trained to take forensic evidence? How specialised and sophisticated is the HMRC team when they are putting together an investigation?

John Whiting: The team is highly trained. There is a very sophisticated process in terms of training officers. Our officers are trained to conduct every aspect of an investigation as would a police officer.

Q245 Lady Hermon: So that includes forensics?

John Whiting: Some items would be lifted in a way in which the officers are trained to be forensics-aware. There are other occasions where we would not enter a crime scene until we had employed a forensics officer. In fact, we are exploring the possibility of seconding a forensics officer from PSNI to assist us, and to be available to us effectively full-time, on our operations, so we are looking to become even more sophisticated than we are. But we are forensics-aware in terms of our crime scenes, and looking to gather all of the available evidence, so that the cases that we put together are, in any way that you might imagine the police would put a case together, as professional and sophisticated as they can be.

Q246 Lady Hermon: So how come we have ended up with only four people—out of 47 prosecutions—going to prison in 10 years for fuel fraud in Northern Ireland?

John Whiting: However much I may wish, as a deterrent effect, for those cases to be before the courts and for individuals to be placed into custody, imprisoned, of course the decision in respect of the outcome of those cases does lie with the judiciary. If you are asking me to explain why, in each of those 47 cases, was there perhaps some fault with the evidence that HMRC put together, the first point I would make is that if there was something missing in the case then my own senior investigation officers would actually decline to put the case forward to the Public Prosecution Service.

My second point is if there was an occasion where there was something missing in the evidential case, then I am certain that the Public Prosecution Service would send the case back to me and say that they would decline to prosecute that case.

Q247 Lady Hermon: Right, so the finger of blame is I think being pointed—correct me if I am wrong—at the judiciary in Northern Ireland. Are the sentences too lenient in HMRC's view?

John Whiting: My view is that they do not have a deterrent effect.

Q248 Lady Hermon: Mr Williamson, you are nodding your head; would you like to add?

Bill Williamson: Yes, I wanted to add to what Mr Whiting has just said only that we believe the criminal investigation work we do is of very, very high quality, as it is in any of our investigations in any of the tax frauds, because we are expert at investigation of tax fraud. I think it is worth mentioning to the Committee that we do believe we have successful prosecutions. They are not unsuccessful if they do not end in a custodial sentence because part of what we do and what is part of our armoury is the ability to dismantle networks wherever we can, and to use every opportunity to do so. But I think we do feel that we would like to see some stiffer and sterner sentences in alignment with what we are seeing in Great Britain for these types of offences.

Q249 Lady Hermon: Bearing in mind what you have just said, has HMRC already made representations to the Justice Minister, David Ford, to the effect that you want stiffer sentences?

John Whiting: This has been an ongoing process for probably the last four or five years, whereby we have submitted papers and schedules that show comparative sentencing—so all the cases that have been presented to the PPS and the courts in Northern Ireland and the outcomes, compared to all the cases presented to the courts in England and Wales and the outcomes. Those papers have been put forward—it was not David Ford initially—it was Paul Goggins, who was a Security Minister at the time at the Northern Ireland Office. In fact, that was submitted to the Lord Chief Justice and the Judicial Studies Board, probably about two years ago. Of course I welcomed the opportunity to give evidence before the Committee in September. In fact, reporting the information that we provided to the Committee actually caused some media interest. I then welcomed the fact that the Lord Chief Justice indicated that he would be looking at sentencing guidelines with particular emphasis on excise fraud, including fuel fraud.

Q250 Naomi Long: There are two aspects. You have touched on the fact that you do not believe that the current sentencing in Northern Ireland has a deterrent effect. Do you believe that the current sentencing in the rest of the UK does have a deterrent effect? That is the first question. The second question is, again, in relation to sentencing. One of the challenges that we have been looking at over the last number of months is the challenge of actually convincing the public that this is a serious crime, and not simply victim-free. Do you believe that sentencing structure has a role to play in reinforcing that message in the minds of the public as well as those who are engaged actually in the criminal activity itself?

Chair: Perhaps I could ask you to concentrate on the second question. We will be coming back to the GB situation in a minute, if that is okay.

John Whiting: There was a period of time where we saw a number of individuals really start to flout the law in respect of fuel fraud in England. They were caught and they received very stiff sentences. We quite quickly saw that these individuals retrenched back into Northern Ireland. That is not to say that we have entirely stopped fuel fraud as such on the

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mainland, but it was quite interesting to see that harsh sentences caused these individuals, or their associates, to return back to Northern Ireland. So that is a very quick answer to the first question.

The second issue around whether it has a role to play: I believe that it is part of the role. HMRC has a very wide range of tools, and Mr Curtis's teams are involved daily in seizing fuel, as are some of my teams—seizing fuel on the road from filling stations, huckster sites, bunkering sites, stopping and seizing vehicles, and seizing the equipment used in this kind of fraud. So that is the very basic level of our intervention. But we look beyond that and we actually look to assess some of the people who are involved in this fraud. So we actually calculate what kind of money they are evading.

For example, we visited a filling station recently, questioned the actual pump readings, questioned the takings, and we were actually handed a little black book. That was the true record of the takings. We are now going to prosecute these people for VAT fraud. The filling station has been shut down. They are not being prosecuted for oils fraud; they are being prosecuted for VAT fraud. We also have the ultimate sanction, which I suppose is the criminal investigation and reporting to the Prosecution Service, which may lead, in addition, to fines and/or alternative non-custodial sentences. Of course there is also the confiscation. So there are a number of outcomes in addition to a prison sentence, which might have a deterrent effect, but ultimately prison is potentially the most impactful outcome.

Q251 Naomi Long: Do you think those alternatives have an impact on the public perception of how serious a crime this is? I suppose that is the issue: if the public see those other alternatives as in some way less stringent than a custodial sentence, is there a risk that they would therefore see the crime as being less serious?

John Whiting: I suppose there is the potential that if the public see nobody going to prison, then at the end of the day they think it is not that serious.

Q252 Ian Paisley: To follow on from the question from Lady Sylvia Hermon, if you were able to link the accused to the crime with a scientifically tamper-proof evidence base, would that make successful prosecutions leading to custodial sentences more likely, because the science proves, "It was him what done it, guv"?

John Whiting: You would have to be a bit more specific in how you envisage that happening.

Q253 Ian Paisley: One of the problems that you and your agents have is that whenever you do make arrests that person is able to make all manner of excuses as to how they came across this fuel and how the fuel happens to be with them. They can distance themselves from it.

John Whiting: There are issues around the fact that fuel cannot be contained, by its very nature. We have individuals who have 10,000 litres of fuel. How did that arrive there? Did it arrive in 10,000 one-litre

containers, or one container of 10,000 litres? So it is in an underground tank.

Q254 Ian Paisley: If the fuel is marked at source, and is then broken up, you are able to trace the source. You know what I am getting at.

John Whiting: If you want to be specific and talk about the issue of what people described as DNA tagging of fuel, if that is the question you are asking—

Q255 Ian Paisley: I am asking if you were able to successfully link the accused to the crime by way of a scientifically tamper-proof piece of evidence, would that make successful prosecutions more likely? I was very specific in the question I asked.

John Whiting: What I have to say is I do not think what you are suggesting would make any difference in terms of the presentation of a case to the Public Prosecution Service. I do not think that would make any difference. I have not got a problem in linking individuals to a crime. I have to say that we have upped the game in the past three or four years since the introduction of the Cross Border Fuel Fraud Enforcement Group, and we have a big number of cases that are currently sitting with the Public Prosecution Service, waiting for directions, waiting to go to trial. We have other cases that we are ready to take forward.

So whilst historically you might look at the results and say that has been disappointing and I might say that has been disappointing, we have upped the game. But when I started the Cross Border Fuel Fraud Group, we started from a certain point. That does not mean that we are going to get prosecutions into the courts immediately. In fact, there is a time lag, and some of those cases that are very well evidenced—much bigger cases that involve some of the people that you might call the Dons or the actual people at the top of the organisation—these people have been arrested in very well organised and sophisticated interventions that we have made, and they are now under investigation and they're cases that are either prepared or under preparation for offence reports to the Public Prosecution Service.

Q256 Ian Paisley: You have upped the game over the last three years, you say. Are you then able to give me the statistics for the number of people you have arrested for laundering and fuel fraud over those last three years, year-on-year? Also can you give me the number of seizures you have made, which is probably quite well advertised, but specifically the number of arrests and how many of those arrests have led or are leading to prosecutions.

John Whiting: In 2009–10, there were 12; in 2010–11 there were 18 arrests; in 2011–12 to date there are 30. In terms of seizures, I think you probably have that information anyway, but my understanding is we are looking at 1 million litres in Northern Ireland in 2009–10; 640,000 litres in 2010–11; and about 600,000 litres in Northern Ireland already this year.

Q257 Ian Paisley: How does that tie into the—

John Whiting: Sorry, can I answer the third question, which related to the cases in hand? I have 11 cases

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that are post the arrest situation, where I am waiting for charges and formal directions from the PPS, 11 cases with 24 individuals on those reports. I have three cases that are pre-trial involving six individuals; I have one case, which is sitting at trial with three individuals. Eight of those cases involve laundering plants, involving 22 people, which are set to go before the courts.

Q258 Ian Paisley: That level of very impressive and indeed astonishing work seems to suggest this is a very serious crime. It does not seem to tie up with the figures that you, Mr Williamson, have just read out to us about the tax gap, that it's pretty insignificant. I was getting the impression I was being fed something when you were making your statement. I felt I was being fed that, "Yes, it's a problem, but it's not that big a problem. It's only 70 million quid."

Bill Williamson: That was certainly not my intention, and I think we very much see this as a serious crime. So much so that, as you will know, HMRC is going through its own spending review and having to reduce its resources by 25% over the spending review period. We are recycling, and able to recycle, some money back into serious criminal activity. For oils, there is going to be no reduction in the effort or resources that we are putting into that capability. Indeed, we are increasing the resources of criminal investigation staff in Northern Ireland, so we do see it as a very, very serious activity, and our top priority with tobacco in Northern Ireland. As I said, the tax gap figures are essentially a measure of potential fiscal losses to us. I think what it shows from 2004–05, where the tax gap was around 37% of the market in Northern Ireland, we are now talking about 12%, and of course we are talking about cross-border shopping as well. There is a positive downward trend, but there is absolutely no let up in our efforts.

Q259 Ian Paisley: I welcome downward trends, do not get me wrong. But 2.5 million litres almost three years ago, 1 million litres in 2009–10, over half a million litres in 2010–11, and 600,000 litres to date is suggesting more than £70 million worth of loss. It is quite a substantial amount of loss. I just feel that there is an effort by you, sir, to play this down. Maybe our Committee has been pushing a little too hard in trying to say that work has to be done here and that there are solutions that could be tried, and today I felt that you were trying to push our Committee to a position that this is not as big a problem, "Don't worry, guys, cool it, you don't need to get worried about this." We are worried about it, seriously worried about it, and I think HMRC has to do much more. I believe the materials are available to you to do much more, and that is what worries me

Bill Williamson: It is certainly not my intention at all to give that view to the Committee, only to provide the Committee with the latest tax gap figures that we have available to us. As I have said, there is absolutely no let up in the effort in HMRC to press down on this fraud. We are a fiscal organisation. The fiscal crime side is very important, but also we recognise with fuel fraud it has other consequences environmentally and

to society, so we see it as a top priority and that will remain the case.

John Whiting: Can I add one point, Chairman? In answer to Mr Paisley's question, there have been some difficulties around the fact that we sometimes cannot identify where fuel has come from. But one of the teams I have got is involved with visiting filling stations on a regular basis, so regular that perhaps they might view it as harassment. They turn up so regularly that they are testing fuel then looking for the paperwork. They are making these people honest by invigilating, literally spending all day outside and counting the customers and then checking the takings. They have seen the declared takings triple, and actually it forces these people to close down filling stations because they cannot operate legitimately when they can only make a profit.

Ian Paisley: Mr Whiting, I do not for one moment doubt the bravery and the expertise of your people on the ground. They are brave men and women who do a valuable service for the community, and they put their necks on the line every day when they go into someone's filling station. I accept that. They are doing an excellent job in that regard. But I think there is something missing here. You know that we have taken evidence from a number of groups who said that you could do something else to mark fuel. We have probably actually saved you a lot of manpower and expense. Mark it properly so that it cannot be stretched or removed, and therefore you can stop this from actually occurring and you could save millions and millions and millions of pounds.

Chair: I think we are in danger of getting into a third subject area at the moment, so can we come back to that in a minute? We will come back to that.

Q260 Oliver Colvile: Are you very frustrated with the fact that you are not getting more convictions?

John Whiting: I am not frustrated about the lack of convictions.

Q261 Oliver Colvile: Well, we are.

John Whiting: I think we have put a number of cases through and we have achieved convictions. Actually, our conviction rate is very high. People plead guilty.

Lady Hermon: But they get suspended sentences.

John Whiting: But they get a suspended sentence.

Q262 Lady Hermon: That is the problem.

John Whiting: The "c" word is custodial. I am frustrated about the lack of custodial sentences.

Q263 Oliver Colvile: The frustration you have is actually making sure the sentences are good enough, and that potentially is down to us because we are the politicians, and we set the parameters. So if I was the person who got involved in this activity but there was another thing that I could be convicted for—have you started looking at alternative ways of closing the whole business down, such as looking at a second area that you could go into and prosecute people on?

John Whiting: Absolutely. We are looking at the environmental damage that can be done from the waste from laundering plants. Just two weeks ago I signed an MOU with the Northern Ireland

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Environment Agency. We share intelligence and we conduct operations together. The Environment Agency sits on the Cross Border Fuel Fraud Enforcement Group, as do the Department of the Environment, who do that job in Dublin. Just last week we had presentations from the county councils in Louth and Monaghan about the environmental damage and the cost to those councils. We are looking to have similar presentations or invite Newry and Mourne to the next Cross Border Fuel Group meeting. We would actually like to use their costs and effectively the damage to their communities as an opportunity to engage the media to advertise the fact that this is an additional cost and issue, and try to persuade the public not to purchase this fuel.

Q264 Oliver Colvile: If you were to go down that route, is that a higher sentence that you would ultimately get if you were doing that, or what?

John Whiting: I do not think the sentences are any greater. The maximum sentence for an offence under the Customs and Excise Management Act is seven years, so the actual sentencing tariff is quite severe.

Q265 Oliver Colvile: Mr Whiting, forgive me, maybe I am being particularly stupid about this, but it seems to my mind that what actually happens is you successfully do your job of actually getting people into court. The Crown Prosecution Service may or may not end up doing a good job. The judge then ends up having a look at it and does not actually deliver the full strength of the sentence that he could end up delivering. So there must be a way in which we can try and send, from the state, a message out that we will find ways that we can make sure that those people who are going to get involved in this kind of criminal activity will receive the full sentence, which we want them to actually have. I am just wondering, rather than going down the route that you have gone down, whether you could look at an alternative sentence or an alternative conviction or criminal conviction to try and prosecute as well, as far as that is concerned.

John Whiting: In engaging with the Northern Ireland Environment Agency, we have one case already where as part of the surveillance evidence, we watched the criminals disposing illegally of toxic waste. We alerted the Environment Agency, which protected the environment by removing that from the location, and they were invited to take part in the interviews, and they will actually prepare a case, and it will effectively be one offence report to the Public Prosecution Service, which will include charges in respect of illegal disposal of that waste. When that case is presented to court, it will be joined up with illegal waste offences.

Q266 Oliver Colvile: So what do you think we should be doing in this place to actually try and make sure that we can toughen the law so that sentencing can be better?

John Whiting: I think part of it has already been done, because we have already had the response from the Lord Chief Justice. Having aired the issue here on our previous visit, he has responded and said he is going to look at this, and hopefully we will see some

response. We do not expect this in every case because we have a range of cases, which go from the very small offence of removing a small amount of fuel to the complete organised crime case. I do not want the organised crimes to be dealt with, in terms of sentencing, on the tariff that is applied to the lower end of the market.

Oliver Colvile: Okay.

Q267 Kris Hopkins: The figures you gave in evidence suggest that in recent years you have seized about £3 million worth of fuel, at street value. What happens to it, how do you audit it, and are you confident it does not re-enter the economy as illicit fuel again? Because that is a lot of fuel to have in your back pocket or your garage or wherever you have got it stashed.

Pat Curtis: We have specialist contractors that we appointed a number of years ago. These contractors are managed by our internal audit teams. They dismantle the laundering plants, and also on occasion, as has happened this morning, remove the fuel tanks and pumps on the retail site, and of course they uplift the fuel. Most of these companies are in the business of recycling the fuel. There is a market out there for recycling, such as cement factories or kilns. Some of them have to go for disposal to Germany because they are particularly hazardous, and we do a full check on the whole way through from the time of our seizure to the time of disposal, and we get a certificate to sign it off.

Q268 Kris Hopkins: Just very briefly, so of the £3 million worth of fuel, how much of the actual value comes back into our pockets? That is a lot of money, bearing in mind the gap you pointed out earlier on. That could plug a lot of the gap if you can actually recycle that back into the economy.

Pat Curtis: You are 100% right. As I say, every product in this market has got a value. No matter how hazardous it is, it has got a value, especially in the recycling market. We do have a system, which I will explain to you later if you bear with me, of the amount of money that we do get back in a return for this. Again, it is audited through our checks and balances, which underlies the value of our work.

Q269 David Simpson: The word “frustration” was used, I think. One of the Members used it, and I remember it was some of yourselves, John, in relation to it. This whole smuggling issue has been ongoing now for as long as I can remember. In the old days in Northern Ireland it was referred to as the “free state”, you could jump everything and smuggle everything. Is it not the case that, unless the proper technology is brought in, whatever that technology may be, that you are really on a beaten docket here? Yes, you may get convictions or prosecutions or whatever the case may be, but there is so much money to be made out of this. I think Pat mentioned that there is a space for everything and a market for everything. Some of it has to go to Germany, and all the rest of it. Because there is so much money to be made at this—it is like the drugs trade—people will take the risk, no matter what the penalty is.

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Do you ever envisage a time where you will really get this under control, or is just working or plodding away at it? I am using those words—you may not like what I am saying—but plodding away at it, “Well, we will do our best, we will try and get as many prosecutions or convictions, but really we are not going to stop this because it is the nature of it.” Or is it a case that you are completely hamstrung by the system? I have listened to what you were saying from where I have come in, and it just seems to be one process after another after another after another, and eventually getting nowhere. You have so many processes to go through, and jurisdictions or whatever, it has to be frustrating. My question is, are we on a beaten docket and is it the case that we are going to have to live with it for X number of years if we continue in the systems we are in?

Bill Williamson: Perhaps I could start, and then one of my colleagues could talk a little bit more about the technology side. Obviously criminality will grow where there is an opportunity, and in Northern Ireland, as you absolutely rightly say, there is a history of fuel fraud. Will we ever defeat it completely? It goes back again to looking at what has happened over the last five to 10 years on the pressure that we have placed, and the economic pressure we are placing, on pressing down on the fraud. As I say, we have measured that by the tax gap and our investment in that. So I think it is not necessarily a question of whether we would get on top of it, because I think you see fraudsters displace their activities clearly into other areas. We have to be constantly vigilant in our investment and attack on it.

I think you are also quite right that we need to invest continually in new methods and technologies. Our strategy for tackling fuel fraud, as it is for tobacco, is multifaceted and multiagency to be able to do that. Regarding the technology side of it, we have a fuel testing programme under way at the moment, which is looking at three different strands of activity: it is looking at improving our existing capability, roadside capability, looking at the equipment and the tools that we have; we have a programme of work looking at the current marker and strengthening the current marker; and of course we have a programme of work looking at the potential for a new marker. So the technology side is very important, and we have an important and serious piece of work that we are moving forward on all of those fronts.

Q270 David Simpson: In relation to the programme and the roadside testing, how long has that programme been ongoing?

Pat Curtis: If I can use this opportunity, I do need to express the fact that we feel we have our foot to the board on some of our projects.

Q271 David Simpson: That’s a good Ulsterism.

Pat Curtis: It is, thank you for that. I will mention the fact that over the last number of years—maybe four or five years—when we have taken on board improvements in detection tools, some of the things we have introduced were incredibly innovative. I have touched on some of this in a previous session. We would see the teams to be the leaders, to be quite

honest with you, anywhere in the world, and I have made contact with, and we have a meeting with, the World Customs Organization in Brussels to explain exactly what it is we’re up to. We do realise that there are different things happening out there too.

Some of the technology we are using at the moment is quite impressive. I think there is a slight confusion here that the launderers have had us beat. They have well improved, they have become far more professional, but we are making a lot of detections of laundered fuel. There is this perception that we’re a beaten docket, to use another Ulsterism, but on the roadside and on the retail sites—never mind the laundering plants, excluding them—we are in excess of 350 detections over the last number of months, purely detecting laundered fuel. So our detection tools are working.

Is there room for improvement? Of course. Is room for improvement in the marker? We recognise this. I did make a statement to you, and I was at our forensics chemist yesterday just to be sure we are still on track, that we will have an enhanced marker out by March. That is still on track. I have seen some of the laboratory tests that we have carried out, and they impressed me. As I mentioned before, I am not a chemist, but I am a practitioner, and I have got teams to organise and manage. I do know whether something is going to work or not practically, out on the road. This new enhanced marker will be a big improvement on what we have. Is it a silver bullet to answer all our problems? No, and I would not be naïve enough to say that. But we do have to give it a chance. On the flow chart, which I will show you later on in the private session, the improvements in the detection capability of this marker could possibly be the answer to all our problems, but may not. Besides that, we are looking at the markers as well.

I know there is some frustration, and sometimes at our end too. It was roughly December 2009 when we went out for expressions of interest. I have to say, we sat on a sift team for six months, and we got a very limited response. None of the markers that were laid on the table or proposed to us passed the first sift.² And we have been working at this here for two years, and we have not gone to a formal expression because we are trying to explain to the trade not to waste anybody’s time, to make sure that they are going to deliver to us a product that will pass not only the trade, but meet all our requirements. There is a difficulty. There is not a massive trade function out there that is ready to deliver this. This may sound patronising, but I really do not mean it to be. The profile that this Select Committee has raised has actually generated some more interest from the trade and from worldwide groups that have come to us and presented new markers to us. Did that happen because of the Committee? I have to say that is the only difference between this quarter and the previous quarters.

There was a mention of the Brazilian marker, and I really have to explain this.³ The suppliers of the Brazilian marker have presented it to us, and we have a joint initiative to make sure of the best use of our resources with our colleagues in the South, and we

² Ev 114

³ Ev 114

work together with the state labs. We briefly mentioned last time that we are on phase 7 of this marker, and it has not passed—we have laundered it.⁴ That does not mean that they will not, or somebody else will not, get to a level where it makes it incredibly difficult, but the marker, as presented to us, we have laundered it and we have gone back in official reports and explained and made suggestions. We have also made suggestions to these other tender bidders to come out and visit the road fuel teams to see what it is, because there is a complete misunderstanding of our capability out on the roadside. I have to say, to date, some of the tenders were interested, but none of them has taken up my offer, which is slightly disappointing because that could maybe short-circuit some of the items.

In Brazil, if I can touch on that: Brazil suffered very badly in the 1970s because of the oil problems. They did not have the North Sea oil, which we had, and they did not have the Texan oilfields that the Americans had. So they set up a programme, because of their land mass, to introduce bioethanol into their fuel so they would not be caught out so badly again. Their system is that at least 25% of all their fuel product is mixed with bioethanol. Of course the distributors, not the launderers, found out about this bioethanol. Solvent, paint thinners, it is all the same product—alcohol—was being taxed. If they could introduce something else into the stream they could save the tax and make themselves more competitive against their competitors. As I say, it was a fraud and it wasn't right.

The Brazilian Government rightly went out to tender bid worldwide, and they got this Brazilian marker in. I have to emphasise that this marker, which is really good as a tag marker, is added into solvents that the tax is due on. The fraud is to add more marker in, because the aim behind this is not to launder it out because the test is to test to see if the marker is there. If the marker is diluted the Brazilians say you are fraudulent. So what the fraudsters have to do is get a product and add the marker in. There is no accreditation for the Brazilian marker for anti-laundering techniques. I really need to emphasise this. There is no accreditation for this Brazilian marker to pass laundering techniques because that is not what it is geared up to do.

Chair: Okay, thank you. Again, we will perhaps come back to that, as you suggest, a little later.

Q272 Kate Hoey: That was very interesting, Mr Curtis, thank you. Just so I am clear, are you the lead agency, then, that keeps the statistics for all the aspects of criminality around fuel crime?

Bill Williamson: We are, yes. I think the way to see us at Revenue and Customs is we are the Chancellor's fiscal investigation enforcement organisation. All fraud is an assigned matter to Revenue and Customs, so we would have all the statistics around that particular fraud.

Q273 Kate Hoey: So when the PSNI tell us that they have had something like 140 criminal gangs, of whom

none of them were involved with fuel fraud, that is because you have got all the statistics?

John Whiting: I think the answer, where they said there is none, was to the number of cases that they had made arrests, or some of the criminal gangs they had brought down. But how many of their cases involved fuel fraud? The answer, of course, would be none, as it would be none if you said, "How many people have you prosecuted for tax evasion?" So the police do not have any ownership of that particular crime. It is all laid to HMRC.

Q274 Kate Hoey: So it is not a question of any kind of buck-passing; it is just simply the mechanism of it.

John Whiting: If I go back to the issue of the crime gangs, I think the police said it was between 160 and 180 crime gangs. I have looked at their matrix of gangs, and we would have an interest in about 10% of those.

Q275 Kate Hoey: So most of these gangs, or 10% of them, will have had some involvement in fuel fraud.

John Whiting: Of course, you are saying fuel. My interest is much wider, and I would have to say that the vast majority of the crime gangs that I am interested in, and that are on the PSNI's matrix, are actually involved in tobacco fraud. There are some who have an interest in fuel fraud, but for the vast majority it is tobacco. Four of those gangs are only there because of HMRC's interest, so the PSNI own that matrix, but it includes crime gangs that are under investigation by HMRC, because some of that crime is very serious indeed

Q276 Kate Hoey: So who is responsible in Northern Ireland for the statistics overall for organised crime specifically?

John Whiting: There is no one that owns the organised crime statistics.

Q277 Kate Hoey: Should there be?

John Whiting: I am not sure that anybody is going to do anything with them, but the Organised Crime Task Force would summarise the successes and challenges that all of the agencies in Northern Ireland face. SOCA, PSNI, and the UK Border Agency have certain responsibilities, and so do HMRC. We each have our independent tasking and co-ordination process. In other words, as individual departments we have aims and objectives. The aims and objectives set to HMRC are trying to reduce the tax gap, and one of the ways we do that is through our law enforcement activity in respect of criminal gangs. The police would have other aims and objectives that would not entirely match with that, so it would be wrong to have somebody sitting above us saying, "Well, actually, you have got to stop investigating that tax crime because I want you to go and deal with something else."

So we each have our own resources, we are individually tasked, but we co-ordinate our effort, not necessarily through the Organised Crime Task Force. That is perhaps a misapprehension. We meet at various groups; we meet under a strategy group and we meet under David Ford's stakeholder group. There is an oversight and a governance of the overall effort,

⁴ Ev 114

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but the Organised Crime Task Force brings fantastic understanding and it brings a collaboration, which I think is envied by every other part of the UK.

Q278 Kate Hoey: It is just that sometimes it seems a little difficult to get to the real nitty-gritty of exactly what is happening in terms of the public understanding things. Can I just ask you about this wonderful press release that came out yesterday about “Customs officers dismantle County Armagh fuel laundering plant”? Could you just take us through that? So you have found this, you have got this amount of fuel. What happens now, and how long will it be before the people involved in this are likely to appear in court? What is the average time scale from when you discover something?

John Whiting: The difficulty around a fuel laundering plant—and in fact what I have to tell you about this particular laundering plant is that the police stumbled upon it.

Q279 Kate Hoey: It said they “dismantled” it; they did not say they stumbled on it in County Armagh.

John Whiting: HMRC has dismantled it. But if we just take one step back. The police were present in that area to deal with another issue entirely. They placed a cordon around the activity that was taking place. This laundering plant was within that cordon, and they actually stumbled upon it. They then made a reference to Pat’s team. Pat’s team went in, but there was nobody there, so there wasn’t anybody to arrest. Historically that has been a problem for us. There have been some parliamentary questions in the past that said, “How many people have you prosecuted for running laundering plants?” and it was an embarrassingly low figure.

Q280 Kate Hoey: So probably nobody will end up in court for that.

John Whiting: For that one it is unlikely. Although, for example, if we have taken a forensic view of that, and I am not sure that we have with the opportunities there, we would perhaps pick up cigarette stubs, that kind of thing, which might give us an opportunity. But there may not be anybody prosecuted. In our proactive work, we are trying to actually evidence people at laundering plants so that we can prosecute them.

Q281 Kate Hoey: And just finally, going back to statistics, will this go down as a ticked box for the police or for the HMRC, or when it is a success, do you both take credit?

John Whiting: We would say it is the 18th laundering plant that we have dismantled in Northern Ireland this year.

Kate Hoey: Okay.

Q282 Lady Hermon: Can I just take you back a little bit in your evidence, Mr Whiting, just to clarify one particularly interesting phrase that you used, and it follows on from the point that Kate Hoey has just raised with you. You mentioned “surveillance evidence” in relation to the environmental pollution. Good, you are nodding your head, because I picked up on the phrase as well. Could you just explain, with

the surveillance evidence that HMRC is able to retrieve in that situation, do you present that to the Public Prosecution Service in Northern Ireland, and would you like that surveillance evidence to be available in court?

John Whiting: Absolutely we do. It is the evidence of officers who have witnessed this personally. We have conducted surveillance. Perhaps I did not make this clear, but HMRC officers have all the powers of arrest and interview, and everything that you might imagine a police officer does. All of the techniques that a police officer has available to them are available to officers of HMRC, including conducting surveillance. So as part of our operations we regularly conduct surveillance on suspects in their activities.

Q283 Lady Hermon: Just to clarify, surveillance and the same powers that police officers would have—that includes video-recording the culprits in action. Is video-recording the surveillance we are talking about?

John Whiting: If we have the opportunity to conduct video-recording we will do that. But in this instance it would be mobile surveillance, following the individuals as they move the toxic waste from the location of the laundering plant to—effectively it is fly-tipping. So they dump the waste and we have evidenced that as it has taken place. We did not want to expose our hand.

Lady Hermon: Obviously not, yes.

John Whiting: Because we were not ready to make arrests. When we actually came to the point where we made the arrests of those individuals involved in the dumping of that waste, they were offered up to the Northern Ireland Environment Agency to interview for their own purposes.

Q284 Lady Hermon: Yes, and the evidence that you have retrieved about that particular gang will go to the Prosecution Service and will form part of your prosecution case.

John Whiting: Absolutely. In any case where we have conducted surveillance, and we have video or photographic evidence, that is submitted as part of our case where it adds to the evidential package.

Q285 Lady Hermon: May I just push you a little bit further? You do not have to reply to this, but can I also ascertain whether in fact surveillance of an organised gang—we are talking about very sophisticated gangsters here, who are dealing with this—includes the interception of mobile telephone calls? Can that evidence also be made available to strengthen your hand in the prosecution case?

John Whiting: I think it would be fair to say that actually no lawful interception evidence is used, but I think that is a separate debate that has been around for a long time. Interception is not used in evidence in any case.

Lady Hermon: No, I know that.

John Whiting: Even police cases.

Q286 Lady Hermon: I know that, but is the technique used by HMRC?

John Whiting: The technique is available to HRMC.

Q287 Lady Hermon: Yes, but obviously cannot be used at the moment in trials. Would HMRC be supportive of that evidence being made available in court?

Alan Lee: Lady Hermon, I think it is safe to say there is a considerable debate amongst all the lawful-intercept-capable agencies in the UK, and it has been the subject of review now for some considerable time. There are mixed feelings about the wisdom and the benefits or the disadvantages of using intercept evidence as evidence rather than intelligence. We are conscious that other countries do use intercept capability as evidence. There are other countries like ours that do not. It is an extremely difficult subject to give a single view on, and I do not think there is a single HMRC view that I am aware of today. We are presenting all the options to the Committee that is looking into this.

Lady Hermon: Yes.

Chair: It is a much wider debate, I think.

Q288 Lady Hermon: Yes, but it is very interesting to hear. You do not have a fixed view at the moment, but you will come to a fixed view is what you are saying.

Alan Lee: I think that is fair to say, Lady Hermon. It is one of those issues that it is not possible to just say that it is so obvious that we should use it as evidence. There are actually disadvantages to it as well.

Lady Hermon: Yes, thank you. That is really helpful.

Q289 Mr Anderson: Mr Williamson, you said before effectively that you have got overall control in terms of the Treasury. Has anybody ever done any work on what this whole operation has actually cost in terms of time, effort, financial resources and everything else? Coming back to what Mr Simpson was saying, is there almost a reality that we are never, ever going to beat this? I am not saying we should give in, but somewhere down the line we have got to have some sort of cost-benefit analysis. The resources you are putting are huge. Is there a ball park figure or could you get us one?

Bill Williamson: There is a ball park figure, but it is not necessarily based on the work we do in tackling the criminal elements of fraud. In terms of our role in controlling oils revenue, as part of the excise regime that encompasses that, the figure is around £27 million, in that sort of order. That is all the activities that we do to collect around £45 billion worth of excise duty every year, but it not broken down to any lower level than that.⁵

Q290 Mr Anderson: That would be for the whole of the United Kingdom?

Bill Williamson: That is the whole of the United Kingdom, and would encompass everything through our legislative and policy work through compliance, through to the enforcement activities that we perform as well. So it is an overall end-to-end figure. It would incorporate also the various IT accommodation costs that go towards that, so it would be for the business

of managing the oils duty collection in the United Kingdom.

Q291 Mr Anderson: That would be for HMRC?

Bill Williamson: That would be for HMRC, yes.

Q292 Mr Anderson: Does anybody have, or can you get us, something for the police, yourselves, the Organised Crime Task Force, SOCA, who really work together to try and resolve this problem that you have all identified for a long, long time. Is there anybody who can give us some sort of idea, "Between us we spent this". And I know, somebody said before, "The police stumbled on this," and we understand all that. But dedicated time, effort and money must be huge in this, and it has to be an issue, so is it worth doing?

Bill Williamson: I am personally not aware if those costs are broken down in that way, and that we could aggregate them back up.

Alan Lee: If it helps, Mr Anderson, we do not get charged by the other agencies. We do not get billed for their services, so if they provide—

Q293 Mr Anderson: The tax bill does, somewhere along the line.

Alan Lee: Yes, they will keep a record of the hours that they commit to us, if they are in support, but in the same way for other agencies that we support, we do not cross-bill them. We might make a record of the time that we do that and note the operations that we supported, but we do not actually quantify it in terms of pounds, shillings and pence.

Q294 Kate Hoey: Dare I suggest that if there was less tax on some of the fuel there might be less smuggling?

Pat Curtis: I will just make the point that on one occasion our colleagues in the Republic of Ireland were selling fuel at a third discount to what we were selling in the UK, but they were suffering quite a large laundering issue down there too. It boils down to the fact that if there is money to be made, that really—the value obviously has an impact on it, but it is interesting. I have thought about that scenario too. If we applied that then there should not really have the same issue in the South of Ireland that we have in the UK, and that has not been the evidence.

If I can also just add a wee bit to what you said, in 2002 or thereabouts, it was estimated, and I'll mention that they were only indicated values, that the illicit oils market UK-wide was round about 12%, which is why we introduced the updated strategy as it is. We are now seeing it is 4% in all the figures that we have in. If the 4% is the £650 million, in very simple terms each 1% is £150 million, if we keep it simple. That means the reduction from our activities has saved £1.2 billion. That is in the public domain, and that is us doing our activities and getting it down. Would we still lose that £1.2 billion if we were not carrying out our functions as they are? Yes, it would be fair to say that is possible. Is our aim to improve it and reduce that 4%? Yes, definitely.

Q295 Oliver Colville: I am not sure whether you have answered this, because it has obviously been a

⁵ *Note by witness:* I should have said that those are all the activities that we do to collect around £27 billion worth of oils duty every year.

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very intense meeting during the course of today, and thank you very much indeed for your very candid replies. Do you have an up-to-date figure on the amount of fuel fraud in Northern Ireland?

Bill Williamson: No. As I said earlier on, we do not have the data because of the way the data are compiled. We like to separate the figure that would be fuel fraud and quite legitimate cross-border shopping. We do not have a means of separating that for Northern Ireland as we do for the rest of Great Britain. So the figure that I said at the beginning of our session, a £70 million loss to the Exchequer was the 2009–10 estimate. One could make some assumptions around the fact that the reason that there has been such a reduction over 2008 and 2009 is because of the differential figure between the South and the North, so I think we are probably getting closer to a potential figure there for the illicit market.

Q296 Oliver Colvile: What could make it easier for you to actually come up with that figure? What action?

Bill Williamson: I think I am reliably informed that it is simply not going to be possible because of the nature of Northern Ireland and the border and the cross-border traffic whereas in Great Britain we can do that. We have canalised points of entry and exit, which of course we do not have with the border. I am told that it simply will not be possible to get a breakdown of that figure.

Q297 Oliver Colvile: That is fine, because otherwise we will carry on pressing you on the issue of coming up with this figure and all that. Has there been an assessment on how big the problem is across the whole of the UK? If you were to take the whole of the United Kingdom—Scotland, Wales, England, and Northern Ireland?

Bill Williamson: If you exclude Northern Ireland, the size of the fraud, as Mr Curtis was saying, for 2009–10 was £650 million, and that is the illicit figure that we have estimated. The tax gap is around about 4% of the total market share.

Q298 Oliver Colvile: The Republic of Ireland has on occasions reduced its level of taxation on various things. Do you think that has had any impact upon Northern Ireland as well, on things like fuel and tobacco? It is really coming back to what was asked earlier by Ms Hoey: is it the case that, if you end up reducing it, it actually discourages people from trying to—

John Whiting: Can I just come in, because some of this is actually happening in front of our eyes. It is very difficult to quantify it. If you ask for a number, which is going to be in millions, we cannot answer it. But what we can say is the Irish have recently increased their duty rates. Also what has happened is—we have all seen because when we go on holidays it costs us more money to go into the eurozone.

Oliver Colvile: Very expensive.

John Whiting: Sterling has weakened against the euro, although obviously very recently it has reversed slightly. That has actually taken the profit away from cross-border shopping, so you would not make a

specific journey into the Republic of Ireland to buy fuel, certainly not petrol. That is why the answer in the respect of petrol is there is no discernible figure in terms of fraud there, because there is no laundering of petrol. We do see an element of stretching. We can add kerosene to petrol, and other solvents, which is a fraud—it is mixing—but it is not a massive figure.

If we get back to diesel, there is probably a difference in the cost of about 16p, I think, at the moment. So if you were in the South you might buy your fuel there because it would be cheaper, but would you make that special journey from the North to do that? Also, if the smugglers are intercepted and we make a seizure, the profit element is not so great that they can afford to absorb those costs, so we are seeing a huge reduction in the amount of smuggling. So in terms of the term “smuggling” and whether there is a sheer scale of it, the answer is no, and that is why we have seen the figure in respect of our duty loss around diesel reduced to £70 million, which is quite close to what we think might be—there is still an element of cross border shopping—the fraud element.

We have lower duty rates on kerosene for home heating oil. In fact, it is zero, as it is in the South, but their VAT rate is higher than ours. They are now 23%, and we are 20%, so actually our heating oil is cheaper than the South’s, so we actually see smuggling of home heating oil into the South.

Q299 Oliver Colvile: Right. I would be interested to know the price of a litre of petrol in Northern Ireland.

John Whiting: It is about £1.32. What is really interesting is that because the potential gains from smuggling for the fraudster have disappeared, we have seen this upsurge in laundering. We are absolutely not complacent. Yes, the number of laundering plants discovered has gone up, but it is probably quite a cheap exercise to put the thing together again. So while we dismantle a laundering plant, the guys who lost a lot of profit yesterday, it is probably pretty easy for them to build another one up, so we are realistic about this. We are not trying to flannel you.

Q300 Ian Paisley: Are stretching fuels not likely to do more damage to an engine?

John Whiting: Stretching petrol will cause problems. We have had some huckster sites in Belfast selling pure kerosene, and the customers do not know that they are putting pure kerosene in their cars. That is going to cause them damage. We do have a message to get out to the public that they might think they are buying some cheap fuel that is not doing any damage to your car because the launderers have got better and they are not using acid, but actually there are some other risks, and these people do not care. Once they have sold you the fuel, you have got a full tank. That is it, and there is no trading standards comeback.

Q301 Chair: Thank you. Can I just slightly widen that? How does the lost revenue compare between fuel, tobacco and alcohol? Have you got the comparison?

Bill Williamson: We have got the comparisons. Tobacco is another top priority for us in Northern Ireland. On tobacco, we do not have a separate figure

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for Northern Ireland, and indeed we don't on alcohol. We have UK-wide figures, and of course, it is a global problem. On tobacco at the moment we estimate the revenue loss as somewhere between a spectrum of £1.1 billion to £3 billion. On cigarettes we have an illicit market share, the latest figures of around 12%. Hand-rolling tobacco, the illicit market share is around 46%. Again, we have upper, lower and spectrums of potential revenue loss. If you look over a period of time, because again there are long-term trend measures, if you go back to the start of our tobacco strategy in 2000, we had an illicit market of 21% on cigarettes and rising, and over 60% on hand-rolling tobacco and rising. So again, we have a similar approach as we have got to oils of tackling this problem all the way along the supply chain and bearing down on that pressure.

Q302 Nigel Mills: I think we touched on this earlier, but you previously told the Committee that sentences in Northern Ireland remain out of line with those in Great Britain. The evidence we had from the Minister of Justice was that HMRC had no complaint at the level of sentences available under current legislation. Are you satisfied that criminals in Northern Ireland get treated the same way by the courts as they would do in Great Britain?

Bill Williamson: I think the Justice Minister is absolutely right. As Mr Whiting said, we believe the sanctions available to us are perfectly adequate. We have already had quite a detailed discussion about the nature of sentencing. We do not believe it is an issue of actually changing the sanctions and changing the penalties. There may be something around the guidance on sentencing that we need to be looking at.

Alan Lee: We do not have a problem with the range of sentencing. Indeed, since the advent of the Fraud Act there are certain fuel frauds in which we can actually involve offences under the Fraud Act that would carry 10-year sentences. We are actively considering options for using the Fraud Act in the right circumstances. To the question of whether the range of sentencing available to us is a disappointment, the answer is unequivocally no. Whether the imposition within that range of sentences is a disappointment to us, the answer is yes, because of the absence of a deterrent effect.

Q303 Nigel Mills: Why is that? Is it because the court sees a prosecution from HMRC as not the same as a fraud coming for prosecution by the police or the CPS and thinks it therefore merits a lower sanction?

Alan Lee: It is difficult to give you a precise answer, a politically correct answer or an answer that would retain my job. It is very, very difficult for us to understand why sentences applied in Great Britain for like-for-like offences do not merit like-for-like sentences in Northern Ireland. We understand the political history in Northern Ireland. We understand unequivocally some of the difficulties that the people of Northern Ireland have had to face over the years, but the fact remains that unless we start to see some deterrent sentences then all the money that we do invest, and Mr Anderson is obviously keen to point this out—the money that we invest in expensive

investigations, surveillance operations, evidence-gathering, preparing bundles, putting them to the PPS, and for the PPS then to engage counsel to prosecute on our behalf and secure convictions—is undermined by the lack of a deterrent effect.

Q304 Kate Hoey: But do you have your own view of why it is happening?

Alan Lee: I really could not give you an answer.

Q305 Kate Hoey: Do you think there are too many people getting backhanders throughout the system?

Alan Lee: I do not believe that for a moment.

Q306 Kate Hoey: So it must be another reason.

Alan Lee: I think there are a range of other reasons.

Q307 Kate Hoey: Political?

Alan Lee: Some political, and some to do with fear, intimidation, levels of negotiation and legal deal-making that takes place in Northern Ireland.

Q308 Chair: Who do we ask for clarification? Is there one person that could give us an answer?

Alan Lee: I do not think there is one person that could give you an answer. You could ask John and I in private, and we could probably spend the best part of an hour.

Chair: We will do that then, okay.

Q309 Ian Paisley: Just for the record, you are saying, Alan, that as of today, in the jaws of 2012, the authorities—which means the Government and the courts, the forces of the state—are not prosecuting people enough because of politics? That it politically suits a cause not to prosecute some people. That is what you have just said to us.

Alan Lee: No, I am not saying that at all. What I am saying is we will continue with all vigour to investigate and prosecute. What I am saying is we do not secure the deterrent effect through the convictions that our colleagues in PPS secure for us.

When we train our investigators, and the training is extremely lengthy, and the number of specialist organisations within HMRC, Lady Hermon, that involve things like forensics, professional photography, covert surveillance techniques, all those are available to us. The training and the investment is extremely lengthy, and the measure of success of an investigator leading a case is to secure a conviction. Whatever happens after that conviction is in the lap of the gods. But his or her primary aim is to secure a conviction for the efforts of his or her team.

Chair: Okay, perhaps we will come back to that then.

Kris Hopkins: I think we have just about done this subject to death, to be quite honest. If you are happy, that is fine. Can I ask another question?

Chair: By all means.

Q310 Kris Hopkins: I have only been on this Committee a few weeks, but it does seem that one department does tend to pass the buck to the other departments, that it might be somebody else's fault. So far it is not the police, but it might be SOCA. It might not be SOCA, it might be the Revenue. Now it

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appears to be the justice systems. The frustration I got last week was that, but also the fact that—and I will ask you politely—how can we join up the services? They certainly do not appear to be as siloed as they are. We are looking for outcomes. There does seem to be a self-serving response from each of the people we have listened to, who are protecting their bit of territory. Can we create a space where you and the Revenue and SOCA and everybody else can sit in a room and say, “Actually this is the game that we should be playing,” because to be honest with you, I do not get the feeling that you are?

Alan Lee: Can I answer that, John? Could I answer that with a question, Mr Hopkins, which is, to what degree do you think it is in the public interest for us to reveal the extent of our collaboration?

Q311 Kris Hopkins: The fundamental thing is this is a Committee of Parliament that is trying to increase prosecutions and undermine the activity of laundering. Lots of this I find in politics is about public confidence. To be honest with you, I am not very confident at the moment that the evidence that I have heard demonstrates that all the players who are going in pursuit—even though their intentions as individuals and individual organisations may be in the right direction—are all actually pointing in the same direction.

John Whiting: I think then it seems to me that we have failed miserably to explain to the Committee the level of collaboration, co-operation, drive and enthusiasm that we have been bringing to this effort for the past 10 years. If we looked at the level of market penetration in terms of fuel fraud 10 years ago, it was considerably higher than it is now. In fact, the level of £70 million, and we are by no means complacent at all, but the level of £70 million is significantly less than it was 10 years ago.

10 years ago, the Organised Crime Task Force was quite a twee idea, where once in a while individuals got together and said, “Hey, look, that is somebody that was involved in setting it up,” but it was not what it is nowadays. It is reasonably sophisticated without being an official tasking and co-ordination process. But if I tell you that the collaboration and the co-operation between the agencies—the police and SOCA will sit here and say to you, “That is the responsibility of Revenue and Customs,” and absolutely we are responsible for this issue. It is an assigned matter, and we are responsible for it. We are not in any way being disingenuous or trying to deflect you from saying we are responsible.

We are responsible for the bit of this for which we are responsible. We are dealing with it in respect of our officers who are out of the group dealing with local compliance, conducting VAT visits and excise visits. We deal with it with respect to our road fuel teams and with respect to our criminal teams. We put the cases before the courts. If I tell you that in respect of civil cases, where we have made significant seizures from filling stations, and that has been appealed, it is called condemnation proceedings. We have gone before the courts 15 times this year—we are a bit like Manchester City until last night—played 15, won 15, okay? Every time we have won. We have persuaded

the civil courts that we were right to seize that fuel. We present our cases to the Public Prosecution Service, but after that we can do no further because the Public Prosecution Service have the responsibility to prepare the case for court, and they hand it to counsel who presents the case. We give evidence, and it is up to the courts—it is up to a jury to make a decision, and it is up to the judiciary to actually impose a sentence.

Q312 Kris Hopkins: My question was, how do we join this up? Each time we get a defensive answer about, “This is what we do, and it is somebody else.” Perhaps you cannot give us an answer now; perhaps you want to go and have a think about it. But how do we actually join up so that we actually gain some confidence? Perhaps you have a joined note all about, “These are the outcomes; these are the bits where we overlap; these are things that we are trying to pursue all together,” to give us some confidence over that.

Bill Williamson: Could I just say, Mr Hopkins, that I can quite understand how the Committee, when it is taking evidence from the individual agencies involved, get frustrated around how those organisations may work together. We do have very clear assigned responsibilities, and it is very important that we do because we need to be very clear about who is doing what, and what our objectives are. That does not mean that there isn’t very close co-operation between us, and indeed the collaboration, the agencies in Northern Ireland, and indeed with the law enforcement agencies in the South is superb. I just wonder if we might be able to expand a little bit more on the detail of that collaboration perhaps in the session that would follow this one, to give you maybe more of an assurance than you currently have.

Chair: We will give that a try then.

Q313 Kate Hoey: This is just an idea, Mr Chairman, but I just wondered if you think there is anyone in particular that you think we should have before us that we have not planned to see in our investigation?

Chair: We are seeing the DPP in January.

Kate Hoey: And we are seeing the Justice Minister.

Chair: And the Justice Minister as well.

Kate Hoey: Is there anybody else that you think could help and make this—

Bill Williamson: I think you’ve got a full pack there.

Lady Hermon: Asking the Lord Chief Justice to be interviewed would be wonderful, but the independence of the judiciary will prevail.

Chair: We will see what we can do with them.

Q314 Lady Hermon: Thank you very much indeed. It was Mr Williamson who mentioned the spending around HMRC. This year the Department was cut by about, I think you said, 25% like all of the other Departments. However, I would have liked you to go on and mention that in fact after the spending cut HMRC was granted a huge amount of additional funding, somewhere in the region of £917 million. In his evidence before us in September, Mr Whiting did say, and I am quoting here again that, HMRC are “in the unique position of recruiting and moving additional staff into their areas of work across criminal

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investigations". So can I just ask you, how many have been recruited? We knew about a forensic scientist or a forensics person who is going to be seconded from the PSNI, but out of that huge amount of additional funding for HMRC, how much is actually going to be invested in Northern Ireland in terms of more sophisticated equipment, and specifically people and perhaps your PR as well?

Alan Lee: The £917 million is an investment into HMRC to largely combat avoidance and fraud, so it is not just into criminal investigations. It is into a range of divisions within HMRC. Within the criminal arena we are recruiting an extra 312, I think it is, criminal investigation personnel nationwide. We have also subsumed over 200 of the people involved in various excise disruption tactics, so overall criminal investigation has grown by over 500 in the last 12 months. Now, within that I have probably grown my region by in excess of 130. Where I place those resources, Lady Hermon, depends upon a range of issues, but does not constrain me to using them on a site-by-site basis. So although I may increase John Whiting's area by what you might consider to be a nominal figure, and John will know the exact figure that we have negotiated, there are still over 470 personnel in my region that I can and do fly in and ship in if John's people identify a case that requires additional investment. So we operate flexibly across regions and overall we have grown by in excess of 500 personnel that are directly involved in criminal investigation.

Q315 Lady Hermon: In your region, and your region is Northern Ireland?

Alan Lee: No, nationally.

Q316 Lady Hermon: So Mr Whiting, are you content with the resources, the additional resources that you have been given?

John Whiting: I am, and I have to say that whilst on the one hand being offered extra people is immediately attractive, what is not so attractive is to have to train them. It is actually a real challenge. I would not be prepared to publicly reveal the numbers, but I am prepared to reveal the numbers privately. I am happy to say that the change in the past 10 years is considerable and I would hope that you would be impressed by the resources that we have managed to move into the criminal investigation arena over the past decade. But that is all I am prepared to say publicly.

Lady Hermon: Absolutely, that is fine. Thank you so much.

Chair: Thank you very much for that. I think we will call an end to the public session. Can I thank everybody for attending, and ask them to vacate the room. If the witnesses would not mind taking a break for five minutes as well, that would be useful. Thank you.

Wednesday 11 January 2012

Members present:

Mr Laurence Robertson (Chair)

Mr David Anderson
Mr Joe Benton
Oliver Colvile
Mr Stephen Hepburn
Kate Hoey
Kris Hopkins

Naomi Long
Jack Lopresti
Dr Alasdair McDonnell
Nigel Mills
Ian Paisley
David Simpson

Examination of Witnesses

Witnesses: **Barra McGrory QC**, Director of Public Prosecutions for Northern Ireland, Public Prosecution Service for Northern Ireland, and **Stephen Herron**, Assistant Director of Fraud and Departmental Section, Public Prosecution Service for Northern Ireland, gave evidence.

Q317 Chair: May I welcome you to the Committee? A reminder to Members: we are being televised. Could I ask our witnesses to introduce themselves and make a brief opening statement?

Barra McGrory QC: My name is Barra McGrory. I am the current Director of Public Prosecutions for Northern Ireland, and I attend with my colleague Stephen Herron, who is Assistant Director for the Fraud and Departmental Prosecutions Section of the Public Prosecution Service. First, could I thank the Committee for the opportunity to address you and give a perspective of the Public Prosecution Service on these important issues? I have only been in post for eight weeks, but I have had the opportunity to read through the previous submissions and to examine some of the issues that you are addressing during the conduct of this inquiry. I am looking forward to the opportunity to tell it as it is from our perspective.

The first thing I would address is the issue of the loss of revenue, commonly known as the tax gap. That is very much a priority for the Public Prosecution Service, and it is something that we can do something about. Obviously, in the context of prosecutions, the principal purpose of a prosecution is to bring to justice someone who is perceived to be an offender in any area. In areas where there is a significant revenue loss to the state, the Public Prosecution Service is charged with the duty of recouping some of that revenue. We seek to do that by way of confiscation orders, in the context of the proceeds of crime legislation.

When we take a prosecution for fuel smuggling, as in the context of the smuggling of cigarettes or other goods, it is taken under the Customs and Excise Management Act, section 170, which is specifically concerned with the evasion of duty. It is also the legislation that is used in the context of drugs. The point at which we would take a proceeds of crime application seeking a confiscation order is following conviction. That is the role of the PPS in the criminal sense. There are, of course, other avenues, which we may talk about later. Where it is necessary to prevent the dissipation of assets, which may go to the satisfaction of the confiscation order, we can also take a restraint order, and do so to prevent the disposal of such assets.

By way of illustration of the work involved in this area, you may be interested to hear about some of the

sums of money during the three periods up to now. We have taken £5 million a year in financial years 2008–09 and 2009–10. This year—2010–11—we are just short of £3 million to date, but we think that some of the orders may not have come through yet. The courts give people time to pay these confiscation orders. To date, a total of £7 million has been recouped in real money.

While the statistics are not presently available for the amount of confiscation obtained in relation to fuel laundering specifically, the figures I am referring to are the cases generally taken under the Customs and Excise Management Act. I can say that in oil cases, for example, in 2008 there was a single recoupment of £1.2 million. That gives you an example of a single recoupment directly related to an oil case. The estimated total value of assets restrained through orders sought by the Public Prosecution Service in calendar year 2011 is £3.5 million.

Since devolution, the full value of confiscation recovered in Northern Ireland is returned to the Northern Ireland Consolidated Fund. The Department of Justice retains 50% of that, and the other 50% is distributed between the investigating agency, which is the HMRC, and the PPS and the Courts and Tribunal Service.

While confiscation of criminal proceeds is an important part of the strategy for dealing with excise fraud, it is recognised that close collaboration with other criminal justice agencies is essential. The Committee has heard in some detail already about the work of the Organised Crime Task Force. The Public Prosecution Service is an active participant in the Organised Crime Task Force and is represented on the Strategy Group. We also participate in some of the sub-groups—for example, the Criminal Finance Sub-Group and the Illegal Immigration and Human Trafficking Sub-Group. The Public Prosecution Service has led an initiative to set up a specific sub-group within the OCTF to deal with the proceeds of crime specifically. This has not only further established relationships between the PPS and the investigating authorities, but focused the potential for interaction between investigators in terms of joint investigation and the submission of files for prosecution.

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The next topic I would like to address is the perceived absence of a deterrent, due to the limited number of prosecutions that result in immediate custodial sentences. I am aware that this is a subject of some concern to this Committee. The statistics referred to by the Minister for Justice in his written submissions address this as well. The Committee has been informed that there have been 47 prosecutions of 46 individuals. These relate to some 24 cases, because, of course, in many of these cases there are multiple defendants. Some of the defendants were prosecuted in the same proceedings; 13 of these were prosecuted on indictment and 11 summarily, which would suggest that a considerable number of the cases are less serious. Our cut-off point for determining whether a case is prosecuted summarily or by indictment is the value of about £20,000.

The Committee has already heard that the most common charge is under Section 170 of the Customs and Excise Management Act. The maximum sentence under that Act is seven years in prison.

Q318 Ian Paisley: I welcome you to the Committee. You obviously had a long and distinguished career as a defence counsel before you became Director.

Barra McGrory QC: Yes, thank you very much.

Q319 Ian Paisley: If you do not mind me saying, it is poacher turned gamekeeper to a degree.

Barra McGrory QC: Yes.

Q320 Ian Paisley: If you were still in defence counsel mode, which laws would you fight to the nth degree to keep in place, so that you could defend your clients' interests best, and which laws, now that you are the gamekeeper, do you know need to be tightened up? Where is the gap in the law?

Barra McGrory QC: Any lawyer, whether defence or prosecution, would tell you that where a case before a court is not of a category in respect of which the sentence would be subject to a referral to the Court of Appeal, the dynamic in the courtroom would perhaps change in terms of the sentencing. These offences do not come into that category. The Criminal Justice Act 1988 established the right of the Attorney General to refer a case to the Court of Appeal if the Attorney General felt that the sentence was manifestly too low.¹

The range of offences that would be referable was extended in 2007, but still does not cover the offences that we are talking about. It would be fair to say that where the watching eye of the Attorney General is not present, it might be said there would be a risk or tendency perhaps to be more lenient. That is not in any way to be treated as a criticism of the bench; the judges are very careful about their sentencing, and understandably guard their independence.

¹ *Note by witness:* The Director was referring in the abstract to the fact that the Attorney General has historically not been able to refer the section 170 CEMA offence sentences as being unduly lenient and it remains the case that this offence is not referable. For clarification the power to refer cases to the Court of Appeal under the Criminal Justice Act 1988 now rests with the Director of Public Prosecutions following changes introduced on the devolution of policing and justice powers.

Q321 Ian Paisley: If I understand you correctly, it is not the law; it is the sentencing that is the problem.

Barra McGrory QC: I did not say that. You asked me, if I was a defence lawyer, what I would be concerned either to keep in place or put in place to protect my client in one of these cases. The fact that there is no power to refer is something that a defence lawyer would want to maintain.

Q322 Chair: We will come back to these issues in questions. Is there anything else that you would like to say as an opening statement?

Barra McGrory QC: Yes, thank you very much. What I would like to say, Mr Chairman, generally is that the conviction rate is very high. I know the observation has been made that the sentences are low, and that where one might have expected a custodial sentence in Northern Ireland, we do not seem to be getting them, but certainly we are getting the convictions. There were a few other issues I wanted to touch upon, if you do not mind, in the opening statement.

Q323 Chair: If we could be fairly brief, because we have a number of questions we want to ask.

Barra McGrory QC: Moving on from sentencing, there are a number of ancillary orders that we can seek under the Serious Crime Act 2007, in terms of prevention orders. We can take action to restrict offenders even though they may not have been given a custodial sentence, in terms of who they associate with, how they deal with their financial matters, where they live, and to where they would travel. That is something we would bear in mind. We are working very closely with HMRC to develop strategies together, to perhaps make the prosecutions broader. For example, we would be looking for areas where we could bring on an indictment, specifically for fuel smuggling, proceeds of crime offences on the same indictment, and environmental offences. In a current investigation, we are looking at having an indictment that would have offences from both HMRC and the Environment Agency. That is a significant development on our part.

Chair: We probably will come to these issues though questions, if that is okay. Thank you for that statement.

Q324 David Simpson: You are very welcome, gentlemen. Before I get into the question, Mr McGrory, you mentioned some figures for 2011 and this year thus far. Was 2011 somewhere in the region of £5 million?

Barra McGrory QC: The total for 2011 is £3.5 million.²

Q325 David Simpson: Of recovery?

Barra McGrory QC: Yes.

Q326 David Simpson: If we take into consideration layman's terms, we lose, we are told, possibly

² *Note by witness:* For clarification the Director referred earlier to £3.5 million being the amount restrained in 2011. On the amount of Confiscation Orders made for 2011 the Director had previously stated that it was "just short of £3 million to date, but we think that some of the orders may not have come through yet".

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hundreds of millions in revenue that should be going to HMRC. Would you think the figure that has been recovered relatively small, when there are those who are getting away with ten, twenty, or hundreds of millions? For the layman, it is peanuts—and I do not mean any disrespect to you—compared to what we are losing. Some figures are £150 million; some are close on £300 million. We have not got an exact figure, but it is in that region. That is one point, and you can come back on that in a minute. On what specific offence do you bring charges when prosecuting for fraud relating to oils, and what are the maximum penalties available? You mentioned seven years—could we get clarification on that?—but on what specific offence? I am not trying to be aggressive when I say this, but a lot of people have given evidence to this Committee since I have come on to it, and the general public are frustrated by this. I am sure that Members of the Committee are frustrated, because we hear one set of evidence, and then we hear somebody else giving evidence that contradicts the previous evidence. At the end of the day, there is a lot of money here that has been lost to the Treasury, and the taxpayer is picking up the tab somewhere.

Barra McGrory QC: If you do not mind, Mr Simpson, I will deal with the second issue first, and then my colleague would like to speak to you in relation to the figures. The specific offence is section 170 of the Customs and Excise Management Act 1979, in that it is concerned with the evasion of duty. That has a very broad scope. It can cover the activities of the loader of a lorry, or the driver of a lorry, right up to someone who we would say in legal terms is a principal offender—the brains and power behind an operation. The maximum sentence in law for an indictable offence taken under that provision is seven years. Obviously the court will look at the level of culpability of the offender in determining the appropriate sentence. There is one very clear judgment from Mr Justice Hart in 2002 called *R v Hunter*, which sets out the way in which a court should view this. Mr Justice Hart says that the nature and scale of the problem of evasion of duty in Northern Ireland, due to the smuggling of dutiable goods, and particularly fuel, means that a deterrent sentencing policy involving more serious sentences is necessary. That judgment was dated February 2002. He said, for example, that the mastermind behind a significant fuel smuggling operation ought to get the full penalty of seven years. That is on a contested case without any mitigating factors. The person involved in that case was called Hunter. He was the principal salesman—for want of a better word—of the laundered fuel. He said the starting point for him ought to be five years; because of the mitigating circumstances in that case, he brought it down to two.³

Q327 David Simpson: Sorry to interrupt, but in your experience, how many cases in your period of time received the maximum sentence?

Barra McGrory QC: None that we know of. This is the only example I have to put before you of an actual

custodial sentence, but at least Mr Justice Hart sets out the formal view of the High Court in relation to these cases.

Stephen Herron: If I could just follow on from the Director's comments on the offence, you have heard that the offence has been in place since 1979. I have had discussions with my colleagues in the Central Fraud Group in the CPS who use exactly the same offence. It is UK-wide. It has been in for a long time, and it works. The conviction rate in both the Magistrates Court and the Crown Court is well over 90%. As the Director has explained, it is a very broad offence, so it covers a multitude of sins within fuel fraud. Initially, the maximum sentence on indictment was two years, and in 1988 it was increased to seven years because of concerns at that time. So the concerns have been ongoing for a considerable period. As the Director has explained, the case of Hunter would have been the leading Northern Ireland case. If you go on to the Judicial Studies Board website, it is on there as a guiding sentencing case for the judiciary in Northern Ireland. There are a couple of cases that have been guideline cases in England, one in 1999 called *Dosanjh*, and another in 2004 called *Czyzewski*. I could perhaps spell that for the Committee, if it would be of some benefit.

David Simpson: We are happy enough to say it.

Stephen Herron: *Dosanjh* is D-O-S-A-N-J-H AND *Czyzewski* is C-Z-Y-Z-E-W-S-K-I. Although the Director refers to an oil case, Hunter, in 2002, there was a cigarette duty evasion case that came to trial in 2010, involving an individual called Paul Meehan. When I talk about that case I will exercise some care, because there were also drugs and firearms offences involved in that case, but the sentencing judge took account of the sentencing guidelines in *Czyzewski* and applied them in that case. The duty evaded in that case was over £1 million. Meehan received a maximum band of five to seven years. Obviously that gives us some cause for hope with regard to the Lord Chief Justice's announcement that excise fraud is in the programme of action for sentencing.

Coming back to the money aspect, or the proceeds of crime, as the Director has explained, we have been engaging with the investigating agencies as much as we can to try and maximise the Proceeds of Crime Act. I have it with me. It is quite a substantial piece of legislation, and it is one that we feel should be used to the maximum. Part of the engagement with investigating agencies is to ensure that we are all doing that, and that has been successful. I appreciate the figures may seem small compared to the tax gap—the loss of revenue—but if I may, I will illustrate with one example. We had summary prosecutions in the Magistrates Court of two drivers of two lorries that contained laundered fuel, and the owner of the lorries. The principal, the man who was organising the whole distribution, lived in the South. While there was a relatively small prosecution in the North of the two drivers and the owner, the HMRC, through co-operation with the Revenue Commissioners and SOCA, and CAB in the Republic of Ireland, were able to take substantial moneys off this principal civilly, because they were able to link him through civil evidence to this organisation. When looking at the

³ *Note by witness:* By way of clarification the sentence passed in *R-v-Hunter* was 2 and a half years.

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amount of money that is taken out of the system, the Proceeds of Crime Act, which deals with criminal conviction, has to be looked at in conjunction with the seizures that the HMRC does, and also the civil recovery that the HMRC does through the Serious Organised Crime Agency.

David Simpson: Thank you.

Q328 Oliver Colvile: There is a general view that the smuggling of fuel and cigarettes is a “Bad Thing”, as they say in *1066 and All That*. What do you think could happen by way of legislation, or any other measures, to try to discourage people from getting involved? Hearing the evidence so far, some of us have become slightly exasperated that we have not been able to make some kind of impact, or get an understanding of whereabouts all this is going. What do you think can actually happen in order to try and stop people from smuggling and robbing the Exchequer of money?

Barra McGrory QC: As Mr Justice Hart said in the judgment I referred to, if sentences are sufficiently robust they will have a deterrent effect. The construction of the legislation in terms of the criminal offences is quite sufficient in my view. The offence I referred to, in section 170, has a very broad application; it can capture all levels of participation in the business of smuggling. I do not think there would be any complaint there.

We are able to cope with the volume of cases that we are receiving from HMRC currently. We have learned from them—and I have consulted John Whiting, who has already given evidence—that they are significantly upgrading their resources, and that we can expect a greater number of files from them. We need to prepare ourselves similarly to resource the prosecution of those cases when we get them. It would be twofold. First, if the issue of sentencing is visited, that would have a deterrent effect. Secondly, knowledge on the part of the criminals involved in this that the agencies tasked with the investigation and prosecution of these offences are well resourced would have a deterrent effect.

Q329 Naomi Long: We will come back to wider issues around sentencing. When we took evidence from HMRC, they said that they were not disappointed so much at the range of sentences that were available, but at the sentences that were handed down. They felt that there was a reasonable range, but that they were always at the lower end of the scale when they were handed out. If I understand correctly, in response to David Simpson’s question, you mentioned that there have been no maximum sentences handed out. I am not sure if that is at all, or during a particular period. How does that compare with England and Wales?

Barra McGrory QC: I have to say that the figures show that there is a more robust sentencing regime in England and Wales. The figures speak for themselves. It is rare in respect of any criminal offence for a maximum sentence to be handed down. For a maximum sentence to be handed down, somebody has to have contested the case, and then there have to have been no mitigating circumstances. It would be a rare

case indeed where the maximum penalty would apply to any case. If the guidelines set out by Mr Justice Hart were followed, one would certainly expect that a mastermind behind a smuggling operation would get in the region of five to seven, and that a senior participant would get in the region of two to five.

Q330 Naomi Long: In terms of the robustness of sentences both in Northern Ireland and in England and Wales, we know what people’s perceptions are, but do we have qualitative information that compares the sentencing? Is it possible to do that?

Stephen Herron: I have asked the CPS whether they could provide me with figures. The individual I met with was from the Central Fraud Office in London, and they also have offices in Manchester and York. It is not so much a problem here, more so in the Manchester and York areas, so he did not have any figures available for me. You have to exercise some caution when comparing the different jurisdictions, because even if a case involves the same amount of evaded duty—say, £100,000—the individual circumstances of the case mean that it may be sentenced differently. The Lord Chief Justice puts it well in his programme of actions on sentencing, when he says that the court has to look at the action of this particular offender, for this offence, in these particular circumstances.

One of the factors that the Director alludes to is that the five to seven years is the maximum starting point. A lot of the cases here, because they have been well investigated by HMRC and robustly prosecuted by ourselves, result in guilty pleas at some stage. The court then has to look at a reduction in that maximum sentence to give some credit for that plea of guilt. That is also why on some occasions that maximum sentence would not be reached.

Q331 Naomi Long: I appreciate that a case-by-case comparator may not be appropriate, but would that sort of evidence not provide the opportunity to predict whether there are patterns that emerge in terms of sentencing? I understand that if you just look case by case you might miss some of the detail around the circumstances of the case and how it was handled, but my concern is that if that information or that comparison is never made, we lose out on the general trend of the fact that sentences are higher here. Are sentences in England and Wales generally higher, or is this a perception? There must be a reason why that is the case, and there must also be some argument for wanting to address it, either here or in Northern Ireland, depending on which regime you think is most effective. If there is a disparity you would want, surely, to identify and address it.

Stephen Herron: I totally agree, and HMRC have said to the Director that they do not have any difficulty with the sentences that have been passed in England and Wales, and seem to have difficulty in this jurisdiction. They did not have any statistics from the CPS to give to the Committee today. Generally speaking, they did not have a preponderance of suspended sentences. The most frequently occurring outcome in Crown Court prosecutions in this jurisdiction would certainly be a suspended sentence.

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Naomi Long: Thank you.

Q332 Jack Lopresti: I want to talk about sentencing, etc. What are the main alternatives to custodial sentences? Do you think they provide a sufficient deterrent?

Barra McGrory QC: You can have a custodial sentence that is suspended, which appears to be attractive to the Northern Ireland courts. If you look at those cases where there have been very substantial amounts of revenue lost, there is a substantial confiscation order associated with the sentence. This suggests that some of the courts might be taking a view that if we are significantly recouping the amount of money that is lost in revenue, they might take a more lenient view in respect of the sentence. That would be outwith the guidelines. The guideline in the case that I read to you from Mr Justice Hart states that there is a range of sentences open to the courts. You could have a substantial fine that would also have the effect of recouping some money from the Exchequer, but in the larger cases, the law is constructed in such a way that you would expect custody in a serious case.

Q333 Jack Lopresti: There are two issues: there is recovering the money and there is punishment—justice being seen to be done.

Barra McGrory QC: Yes.

Q334 Jack Lopresti: Do you think non-custodial sentences and fines in themselves provide a sufficient deterrent? Would it be your view always to go for a custodial sentence and get the money back?

Barra McGrory QC: I need to be careful, because the role of the prosecutor constitutionally is not one that suggests we should get terribly involved in what the appropriate sentence should be and whether or not a sentence is a sufficient deterrent. That is a matter for society to determine.

Q335 Jack Lopresti: You are allowed to have a personal view.

Barra McGrory QC: I do not think I should stray beyond the confines of how I would present such a situation in a courtroom, for example. It would be the duty of the prosecutor to inform the court of the maximum sentence and of the range of sentences that one would expect, to provide the court with the authorities, and take it no further than that. It is not within our code of practice as prosecutors to be suggestive of sentences or to express a view one way or the other.

Jack Lopresti: I was just seeing how far I could push you. I do appreciate that, but thank you.

Q336 Kate Hoey: I want to explore your relationship with Her Majesty's Revenue and Customs. How would you sum it up in a short sentence?

Barra McGrory QC: Very good. I have been very impressed. I have only been in this post for two months, but I had the pleasure of meeting John Whiting of HMRC. I have had a lengthy meeting with him. I am very impressed by the way that Mr Herron's department works with HMRC. They are clearly working together in a growing area in prosecutorial

terms in Northern Ireland, which is that of pre-prosecutorial advice.

Q337 Kate Hoey: In terms of numbers of recommendations that they are making to you to prosecute—Mr Herron perhaps knows more, because he has been there longer—are they going up? Are they bringing you more now?

Stephen Herron: We only prosecute what HMRC bring to us to prosecute, in terms of recommendations for prosecution.

Q338 Kate Hoey: Is that increasing in the last year?

Stephen Herron: It is. I know there are a number of larger cases in the pipeline. It is one of the advantages of the good relationship that I have with HMRC that we engage, at a very early stage of potential proceedings, to give prosecutorial advice. That is a steer to the investigator at HMRC, in this case about which lines of inquiry may produce the best evidence for a particular charge that we are considering, or whether they should seek restraint on a matter.

The cases that are in the pipeline give me cause for optimism that there should be some bigger results on the way. HMRC have a range of disposals for cases at their fingertips, not just reporting for prosecution. The Organised Crime Task Force has stated that one of their key objectives was to get people before the courts. Also, where the evidence would not be sufficient, they can go to SOCA for civil recovery.

From working with HMRC, I receive files from about 15 different departments, including the police—these are bigger files, the complex fraud files. The HMRC standard of investigations is very good. They employ the same techniques as the PSNI. The files are presented to the same evidential standard, and I do not have any difficulty with HMRC. There are very few cases where there would be a “no prosecution”, or a difference of opinion between myself and John Whiting or his team.

Investigators, if they are unhappy with the decision that the PPS has taken, can seek a review of that decision. In the 10 years or so that Mr Whiting has been here, he informs me that he has asked for that once, and it was a review that I conducted myself. That is testament to the good relationship there, and the fact that there is a very low no-prosecution decision rate in relation to these HMRC cases. Most of them are investigated—and most, indeed, result in convictions.

Q339 Kate Hoey: Are you saying that in most cases that are put forward to you, recommending, you tend to go ahead and prosecute, and in those where you do not, there would be a shared agreement?

Stephen Herron: By and large, yes. There is always going to be the potential for tension, because the PPS is an independent prosecuting authority. The legislation provides for us to be separate from the investigator for a reason—so that we can bring that objectivity to the decision-making process.

Q340 Kate Hoey: Do you go back to them and say, “Sorry, we are not going to prosecute this, but if you had done it this way we might have been able to”?

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Stephen Herron: We would do. It is called a no-prosecution direction as a decision, and we would give details of the reason, but because of the good relationship we have, the first that HMRC hear of that would not be a letter arriving through the door; it would be a phone call, perhaps a meeting. On some occasions, on the initial perusal of papers, you think it is not up to the evidential standard, but on some occasions you can have consultations with the HMRC and they can advise you of further evidence that may be available that would strengthen the case and enable you to bring a prosecution. We always consult before we have that final decision.

Q341 Kate Hoey: That sounds very positive. So there is no reason why the HMRC should ever be blaming you for not prosecuting enough, or you blaming them, saying, "They are not bringing us enough and are not doing it in the right way"?

Stephen Herron: No. The engagement with the OCTF means that I have the same relationship with the police. I have no difficulty with the police, although they do not have any responsibilities regarding the fiscal offences that we are talking about. I certainly have a good working relationship with the HMRC, and that applies to the rest of the team I have in the fraud and departmental section.

Q342 Oliver Colvile: When you prosecute and bring a charge against somebody—you nick them for doing something—to what extent do you find that that is just one of the issues of smuggling? Can you find other things that are related? Is there a cocktail of charges you can bring against people?

Stephen Herron: The Customs, Excise and Management Act offence is very specific towards excise duty evasion. That is why it was created. It is the offence you are usually expected to go with. As the Director explained, a lot of the work of the Organised Crime Task Force, and the Proceeds of Crime Working Group set up under that, is to see if we can get more money laundering charges on to the indictment. That involves not only a criminal investigation by HMRC, but a parallel but separate financial investigation. It is sometimes a better way to get at the principal behind a particular fuel laundering racket, because usually whenever HMRC "do the knock", as they call it—they go to a plant to make arrests—very often you are only going to find the people whom they pay to attend the fuel pumps, or maybe load lorries, depending on what it is. The principal behind it is not going to be there; he is going to be removed.

Through financial analysis and a fairly painstaking financial investigation, it is sometimes possible to link those individuals, and they would bring it on the same indictment—the same set of charges that we are putting before the court. As the Director explained, one of the benefits of my department having a relationship with a number of different departments, including the Northern Ireland Environment Agency, is that we are expecting the first file to come in shortly where there was a joint NIEA and HMRC investigation. Whenever we have a fuel laundering case that has resulted in environmental damage, the

prosecutor would flag that up to the court. That is one of the aggravating features in the case. Whenever we have an indictment that contains not only the customary CEMA offences, but also money laundering offences and environmental crime offences, it flags up to the court more starkly the range of behaviour involved in a case of this type.

Q343 Oliver Colvile: How many cases do you finally do environmental—

Stephen Herron: This will be the first one coming in. For a period of time, the cases have been mostly summary prosecution, because the amount of duty evaded was at a lower level. That does not mean to say that we will always prosecute in the Magistrates Court, because sometimes, even though it is only a small amount of evaded duty, there may be aggravating factors in the case. If we have caught the principal for a small amount, and we know he is the main man, we could prosecute that case on indictment. There have not been any to date. The first one is due to come in soon.

Q344 Oliver Colvile: This is a groundbreaking piece of activity, would you say?

Stephen Herron: I hope so.

Q345 Oliver Colvile: Excellent, wonderful. Do you expect to do many more after this?

Stephen Herron: Yes.

Q346 Oliver Colvile: If this one works, I presume you will think, "We will end up having a go at this".

Stephen Herron: Yes, that is one of the challenges to all of us in the PPS and the OCTF. Crime does not stand still, and criminals do not; you have to try not to rest on your laurels too much when you are tackling this particular issue.

Oliver Colvile: Excellent. Well done.

Q347 Dr McDonnell: I welcome you both. May I congratulate you, Director, on your appointment? That may be slightly belated, after two months, but it is still valid. You will have gathered, both from previous information and from the tone of our discussion here, that there is concern about sentencing. There is a sense that these guys get off lightly. Have you had any discussions on sentencing guidance or priority areas with the Lord Chief Justice, in terms of his recent consultation?

Barra McGrory QC: Yes, there is a mechanism of communication on the issue of sentencing between the PPS and the Office of the Lord Chief Justice that respects the independence of that office, and the independence of the judiciary generally. There is a survey carried out every year on issues of concern to the general public. We have added to the list of issues, in the context of the survey, the issue of smuggling for 2011. The fruits of that survey should be forthcoming fairly soon.

Towards the end of 2010, we communicated to the Chief Justice that we would be adding this issue to the range of offences on which we were seeking public views. The Chief Justice has already said that he is taking an interest in the fuel smuggling issue,

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and it would be one of those issues in respect of which there might be a guideline judgment issuing from the Court of Appeal. The problem is that there is no mechanism for these issues to get to the Court of Appeal. If someone is dissatisfied with their sentence, they might take it to the Court of Appeal, but that is highly unlikely at the moment. As we have already discussed, this is not one of those offences that is referable by the Attorney General.

Q348 Dr McDonnell: There is a reasonably good challenge.

Barra McGrory QC: In any event, the range of sentences discussed by Mr Justice Hart in the case I referred to back in 2002 would appear to be appropriate and in line with the English decision.

Q349 Dr McDonnell: The other worrying aspect of it is that HMRC told us that most of the custodial sentences that were sent down were in fact then suspended.

Barra McGrory QC: Yes.

Q350 Dr McDonnell: Do the courts give you any reason for this level? I know about taking into account the mitigating circumstances and all the rest, but they cannot all, or nearly all, be entitled to suspension?

Barra McGrory QC: Far be it from me to criticise the courts for particular sentences, but if one attempts to analyse it, as I have said before, those suspended sentences appear to be associated with very significant confiscation orders. That may be a factor. There may also be certain cultural differences in attitudes towards suspended sentences in the Northern Irish courts and the English courts, perhaps. I keep coming back to this: it is not a matter for the prosecution to complain about the level of sentences, or necessarily to comment on individual sentences. If there is a public interest issue—and I do not necessarily disagree with you, Dr McDonnell—there is a mechanism to address that, in terms of the parliamentary ability to revisit the issue of the range of sentences that are referable.

Dr McDonnell: Thank you.

Q351 Naomi Long: Most of what I was intending to ask you flowed on from another question, and has been addressed. There was one comment you made that I want to pursue slightly. You talked about the fact that there was a high success rate with the prosecutions that were taken for fuel duty and laundering. What percentage of cases is successful? I think you said around 70%.

Barra McGrory QC: Over 90%.

Q352 Naomi Long: As for the cases that are not successful, obviously there would be a host of reasons, including perhaps that the person is innocent—we should never discard that as an option; we need to bear that in mind—but do you get any feedback from the courts as to the reasons why the prosecution was not successful? Do you do any analysis of that? Is it a lack of evidence? Is it the way the case was handled? What are the reasons in those cases where they are not successful?

Stephen Herron: Whenever you look at the Crown Court prosecutions, there has been one unsuccessful case. It was a five-barrelled case—that is to say there were five individuals prosecuted together. The reasons why it was not successful are long and many, but it was a learning exercise for ourselves, the PPS, and the HMRC as regards to what went wrong on that particular case. With hindsight, one of the things that went wrong with that case was that it was prosecuted together with two other cases, which made the prosecution too large. In my discussions with the CPS, this is something they have also encountered as a reason why trials are not successful.

That is the only case we have to look back on. One of the benefits of the earlier co-operation and collaboration with HMRC in these cases is that we can try to avoid that. We can try to case-build from an early stage, and avoid the pitfalls that we know are there from our experience of previous cases.

Q353 Naomi Long: You refer to the scale; the cases were being prosecuted in conjunction with each other. Is that because there is more room for doubt to be cast over the entire case due to the scope of it, or is it due to the complications of actually prosecuting the case when it gets large and unwieldy? Or is it simply that there is more room to create doubt, and space for people to have that doubt?

Stephen Herron: I am not so sure it is that there is a higher threshold of trying to convince the court about the evidence, but disclosure is a particular exercise in those bigger cases. Disclosure is material that we give the defence that the prosecution is not using, but that may assist them. It becomes difficult to manage whenever you have a very large case, and the defence can take advantage of that, seeking to put pressure on the prosecution through their disclosure requests. In the particular case I was referring to, that was an aspect of it. There were CEMA offences prosecuted with other offences. Although we are trying to do it with money laundering and waste charges, the particular offences it was grouped with at that time is perhaps a combination we would not do again, because it caused particular difficulties. Generally speaking, we do not find a problem with the evidence that is provided to us, or that we put up before the court, in terms of securing a conviction.

Naomi Long: Thank you.

Q354 Nigel Mills: When we had the PSNI in here, they told us they were frustrated by the time it can take to get certain cases—certainly human trafficking ones—to court in Northern Ireland. In Scotland it took 12 months, but in Northern Ireland a similar case had gone past three years. Is that a concern that you share?

Barra McGrory QC: I noted that comment by Mr McComb of the PSNI. I have made enquiries about it, and I am not quite sure where he is coming from. There is a human trafficking case coming to court very shortly, and it is a 2010 investigation. They are complex cases, and they need to be carefully prepared, but we are not aware of any significant delay. I would like him to be more specific and come to me about it if he has a problem, and I will look at it. In the absence of any specifics, my inquiries in the office

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have not revealed any cases where there have been any delays.

Q355 Nigel Mills: Are you happy that you have the necessary resources to handle those cases?

Barra McGrory QC: We only have two currently. Insofar as we have them, yes. If there was to be a significant increase in the volume, then we would have to look at that.

Q356 Kris Hopkins: The question that I was going to ask you I will park. We have reiterated the same questions over and over. Bluntly, the fundamental question would be: how do we do this better? We keep on nudging the same questions, and you give another answer. I have said before that this is about public confidence. One thing we could do is increase the tariff to 14 years, which would give the judicial system something higher to pitch itself at. That would give people confidence, because we would get a conviction. The bureaucracy just seems to want to pitch itself within that spectrum, and unfortunately where it is pitching itself is unacceptable, certainly to people around the table, and I am sure to the people in the country who are seeing people getting away with not paying taxes and preventing that revenue coming in. How do we do this better? You make an observation on the other services, and they all seem to blame each other. Even when we get down to your testimony, I do understand your professional response, which is that it is not your responsibility to talk about sentencing, but we are trying to get to the bottom of this. We keep inviting experts to give us a clue, and we keep getting knocked around. This is my third or fourth one, and I have yet to see any worth from all our conversations and dialogues.

Barra McGrory QC: There are two issues in terms of how we might do it better. There is the extent to which the investigative agency is sufficiently resourced to conduct a greater number of investigations. My understanding from HMRC is that they are about to significantly increase the number of files they are going to be sending to us. We are co-operating closely with them in respect of pre-prosecutorial advice. That would make the efficacy of these investigations significantly greater, in my view. That is already happening, perhaps as a consequence of parliamentary pressure; I do not know.

Certainly, we are bringing home the prosecutions in nearly every file that is submitted to us within a reasonable period of time. I do not think we can do the cases we are doing any better. It may be that there need to be more cases coming to us, and the indication is that that is going to happen. That is one issue. The second issue is sentencing. I have said all I can say about that. Parliament may take a view about that, but that is the process through which it should be done.

Q357 Kate Hoey: Do you think that because of Northern Ireland's history—the difficulties, the involvement of paramilitaries and dissidents on all sides—there is a feeling amongst the establishment that this is something that we have to live with?

Barra McGrory QC: Smuggling has been a tradition in Ireland, because of the land border, since 1922.

Where there is a land border, it creates a potential for smuggling. In certain areas around the border, there will have been a view that depriving Her Majesty of her lawful funds was not necessarily a serious crime. That view is changing to a significant degree in the current political climate.

The other problem to which you might be alluding is the paramilitary structures that have existed for so long, that have lent themselves to smuggling activity as a way of fundraising, and the fact that that might have continued. That would be the view of the investigative agencies, but in the modern political set-up in Northern Ireland, the climate for smugglers is becoming increasingly difficult.

Q358 Oliver Colvile: Do you think that smuggling is perceived to be a romantic activity? When I was a child I was brought up on a series of books written by Russell Thorndike, who was Sybil Thorndike's brother. It was about a vicar in Dymchurch who ran a smuggling outfit, and that was a wonderful activity. I wonder whether there is a perception that it is really all right—nobody is too worried about it. It is actually a very serious thing, because it stops us building hospitals and schools, and doing a whole series of things that the Revenue needs to be doing. I wonder whether or not it is a cultural issue.

Barra McGrory QC: There is no doubt about that. It is because there is no obvious or apparent victim, in the sense that there is in a case of serious violence or in the case of sexual offences. The dynamic that is created by a victim complaining about how they were treated is missing from this type of case. The general public are changing their view now, particularly in these stringent times, but there is no doubt there needs to be a process of education.

Q359 Oliver Colvile: Can I encourage you to encourage your prosecutors, when they stand up in court and they are making the case, to point out that the activity of these people who are defrauding the Exchequer of money is cutting back on the amount of hospitals, schools, and nurses, so that we raise that profile? I am not sure the Crown Prosecution Service is necessarily making the case that this is a moral issue.

Barra McGrory QC: I agree entirely, but I noted with some satisfaction that our prosecuting advocate in the case that I referred to openly stated to the court that there was a considerable increase in smuggling and set out the figures. There was an estimated 200 million litres smuggled, at an estimated loss, then, of £380 million—that was in 2002. The sentencing court on this occasion must have been affected by that information, which was given to it by the prosecutor. That is the sort of information that the prosecutor can give to a court without necessarily stating what it feels the sentence should be. I agree entirely with you, and all prosecutors will be encouraged to do likewise when it comes to the sentencing exercises.

Q360 Chair: It is not a victimless crime; it is just difficult to identify the victim, because the victim is the anonymous taxpayer.

Barra McGrory QC: That is right.

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Q361 Chair: It is not stopping money going to Her Majesty; it is taking more money from the hard-working taxpayer.

Barra McGrory QC: We are all victims.

Jack Lopresti: It is a despicable activity, as well, in the process.

Q362 Dr McDonnell: Every ratepayer is a victim when the local authority has to go and clean up the stodge.

Barra McGrory QC: Absolutely.

Oliver Colvile: It is every patient who is not getting an operation they want. It is every schoolchild who is not getting their education—who is not able to read and write. Why? It is because these people are nicking revenue. You need to be encouraging your Crown prosecution barristers to quantify it in that kind of way. I am sure that will then hit a few headlines as well. Schools in Alasdair's constituency are not being built because of this happening.

Q363 Mr Anderson: One of the issues that we have discussed regularly is fuel laundering. There is a debate about whether the use of marker technology would help to improve conviction rates. What is your view on that?

Barra McGrory QC: I will pass you over to Stephen on that one.

Stephen Herron: I had a look at the evidence from HMRC from the last Committee hearing before Christmas, from Mr Whiting and Mr Curtis in particular. As we have already stated, there is not a particular evidential difficulty in these cases. There is a Government scientist who provides us with a report whenever we get laundered fuel, be it stretched or purely laundered, and who can tell us that that has taken place. That evidence is what we base the prosecution on.

I know that HMRC are looking at fuel markers and will continue to do so for their own reasons. As regards a prosecution, I am not so sure that we would consider it necessary, because we already have the proofs before the court in these cases; hence, generally speaking, we get a prosecution and conviction.

Q364 Mr Anderson: Is there any way that they can improve on what is already being done?

Stephen Herron: From my point of view, I can only talk about whether it is a necessary proof for the prosecution. From my conversations with HMRC, I can see why they are looking at that area, and why it would be an area of interest to the Committee, but as regards the PPS and its role, if there was something that came in that did make it easier, potentially it could be used in a prosecution. Certainly, at present it is not a barrier to prosecutions, if I could put it that way.

Q365 Mr Hepburn: How does your success rate for convictions for oil fraud compare with those for other sorts of smuggling, like cigarettes?

Stephen Herron: The figures we looked at from earlier were the oils cases, but from looking at the cigarettes cases I am aware of, it is pretty much the same picture, in terms of the conviction rate and the

types of sentences being handed down. In essence, the Customs and Excise Management Act offence covers both fuel and cigarettes, and these sentencing guidelines purely refer to the evasion of duty. It does not matter whether it is oils, cigarettes, or alcohol; it is the loss to the Revenue that is the deciding factor. There is no marked difference, in my opinion.

Q366 Mr Benton: Could I go back to human trafficking for a moment? I know there have been a few references throughout, but we are all concerned about the level of it. We understand from the PSNI that there is something like 71 cases in process at the moment, in terms of human trafficking. Are you in any position at all to update us as to where they are going? I would also be interested in the progress generally on human trafficking in comparison with England and Wales, and so on. If I may briefly come back to a point that my colleague, Mr Kris Hopkins, raised before, it is very difficult to try to get a grasp of how successful we have been, and what is required to remedy this situation; other Members have made references to it. Perhaps you can answer this: why should I be thinking all the time that there is an absence of something generally? It is not just in your particular agency, but there seems to be an absence of comparability with other jurisdictions. There seems to be what you might call tardiness. That is the way it appears to me, anyway. I would like some comments on that. To me, in terms of its heinousness, human trafficking far outweighs the other matters, which rightfully are of concern to us. Could you comment generally on that position?

Barra McGrory QC: I am aware that the PPS has recently formed a human trafficking policy, which states that we take it extremely seriously, and it outlines the various types of human trafficking. I am surprised to learn that there is that number of investigations, because of the small number of human trafficking cases that are currently with the Prosecution Service.

Q367 Mr Benton: Sorry, may I interrupt? I might have misled you; I did not mean prosecutions. The fact is that 71 individuals have been rescued. I might have misled you there.

Barra McGrory QC: No, that is okay.

Q368 Mr Benton: Whether they are all individual cases or not, I do not know.

Barra McGrory QC: There are evidential problems with human trafficking that we are actively looking at. It may be that we end up prosecuting people for offences arising out of human trafficking investigations that are not strictly human trafficking offences, but perhaps offences associated with facilitating prostitution, for example. The evidential test is difficult to satisfy when it comes to human trafficking, but we are certainly very alive to the issues, and will be happy to work closely with the PSNI in forming a policy to bring prosecutions for what is a most heinous offence.

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Q369 Mr Benton: Do you not have any information about comparability with what has gone on outside Northern Ireland?

Barra McGrory QC: No, I do not. We do not have that material available.

Q370 Naomi Long: We have talked a lot about the record with regard to securing successful prosecutions in general terms, but how do the different categories of fraud compare? We are focused on fuel laundering, smuggling, and so on, but what about other tax evasion where prosecutions would be taken, or smuggling different goods—for example, tobacco? What would the comparators be between those different categories of offence, in terms of the success of prosecution?

Stephen Herron: Certainly, between all these cases—fuel fraud and cigarettes—it is very similar. There are not a large number of other tax or VAT cases presently in the system, or sent to the PPS in the last while. As the Director has explained, the HMRC have secured additional funds to increase their investigative capacity, and in my discussions with HMRC I have been told to expect an increased number of these types of cases. One of the things we will have to be wary of is having the resources to cope with an increase in that number. I do not have much in the way of figures, other than to say that in some of the VAT security cases I have seen, the conviction rate is usually quite good. I do not have figures for you, but I have not noticed any evidential difficulties in those cases. We were told to expect an increase in those types of cases in the not-too-distant future.

Q371 Naomi Long: Your expectation would be that the chances of a successful prosecution in the case of fuel laundering or tobacco smuggling, or whatever it might be, would be roughly the same across the board.

Stephen Herron: I think it would be roughly the same. We also prosecute on behalf of the Department for Social Development, the social security agency, and that would be for benefit fraud offences. They would have a similar conviction rate. There is one particular category of offence—living together cases—which are particularly evidentially difficult to prove, but that aside, in the other cases there is a very high success rate. It is down to the quality of the investigative material, and the fact that we work hard to try and get the evidence in the best shape possible to put before the court.

Q372 Kate Hoey: There has been an increase in the stealing of tractors and smuggling across the border. Have you seen any sign of organised fraud on that score, with tractors ending up in Eastern European countries?

Stephen Herron: I am not aware of any of those cases. I am aware, from conversations with NIEA, that they are working with PSNI in relation to stolen vehicles that end up in scrap metal yards, where there may be theft offences.

Q373 Kate Hoey: No, I am talking about hundreds of thousands of pounds-worth of tractors.

Stephen Herron: As regards PSNI cases, I would only see the serious and complex fraud cases. It is possible that those have gone to other regions and I am not aware of them.

Q374 Oliver Colvile: In 2010, the Northern Ireland Audit Office suggested that the Crown Prosecution Service was under-resourced and did not have the necessary skills to do the work. Would you like to comment on that?

Barra McGrory QC: We probably need to look at a new capacity review within the Public Prosecution Service to take account of what we expect will be a significant development in the number of cases that we are going to receive in relation to these fuel laundering and smuggling cases. The high conviction record would suggest that we have the expertise, and we certainly have the capacity to deal with the number of files that are currently submitted to us, which is only three or four a year in this area. Nobody has suggested we are under-resourced to deal with what we have got, but if there was to be a significant increase, that would be a different matter altogether.

Q375 Oliver Colvile: I am told by friends who are barristers that one thing that has been happening in England with the Crown Prosecution Service is that, because Crown Prosecution staff are employed from nine till five, they go home at 5 o'clock and do not necessarily end up reading the papers particularly well. They then turn up in court and say, "I am sorry, judge; we have not had an opportunity to read it, because we were too busy doing other things". That has been happening here in the UK. It is much better in very complicated cases, where they seem to do it. Things therefore get disbursed and have to go back again. To what extent does that happen in Northern Ireland?

Barra McGrory QC: I really do not think it happens at all.

Stephen Herron: I certainly would not be aware of it.

Q376 Oliver Colvile: All of your guys turn up? You do not ever have the adjournment of a case, or anything like that?

Barra McGrory QC: I do not believe it is a problem.

Q377 Oliver Colvile: We need to find ways of ensuring we up your game. I am just trying to find a way to do that.

Stephen Herron: If I could come back to Mr Colvile on the comment about the 2010 Northern Ireland Audit Office report, that refers to civil recovery. The Proceeds of Crime Act has a criminal confiscation section and a civil recovery section. Under the Serious Crime Act 2007, the PPS, as a prosecuting authority, was given certain powers in relation to civil recovery. To date, we have not had any of the investigating agencies coming to us asking us to exercise that power, and that is principally because SOCA are the principal agency for dealing with civil recovery. In relation to HMRC, they feel that they work well with SOCA in relation to that. When it was talking about resources, it was that particular issue. If we were going to do civil recovery actions, we might need

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more staff and training in that particular area. We do not have the expertise at this present time.

Barra McGrory QC: I maybe misunderstood you. If it is on the issue of civil recovery, that was a power opened to the PPS only relatively recently, but no resources came with it. The other aspect of it is that in Northern Ireland we do not enjoy the indemnity that the CPS would enjoy in Great Britain in the context of a failed attempt to obtain assets by civil recovery.

Q378 Oliver Colvile: Why not?

Barra McGrory QC: It was not given to us. We do not have it. That could be a significant factor, because, as you know, in a civil case, costs would be awarded against the applicant if it is unsuccessful. That is not necessarily why we have not taken it; we have not been asked to take it.

Q379 Oliver Colvile: Why is there a difference? After all, you are part of the United Kingdom, and you have devolved responsibility—a devolved Administration. Most certainly it should be a level playing field, I would have thought.

Barra McGrory QC: It is something we need to look at.

Q380 Oliver Colvile: Yes, it would be very helpful if you could have a look at it. We need to mention it, if I might suggest, to the Secretary of State.

Q381 Mr Benton: Can I go on to cross-border co-operation and your comments on smuggling? HMRC said that one of the obstacles—that was the word they used—is the lengthy time involved in trying to proceed with a prosecution. Do you have any problems in this regard, in terms of cross-border? If so, what are they? How can they be rectified?

Barra McGrory QC: The co-operation between the investigative agencies is excellent, as is the co-operation between the prosecutorial agencies. There is a bureaucracy surrounding the mechanism for the transfer of evidence by way of the international letters of request, which could do with a re-examination. I understand that is under way, and there is a new procedure being devised of a European-wide transfer of evidence between the jurisdictions that would significantly simplify that procedure, but it is a problem.

Q382 Mr Benton: The Prosecution Service does not experience any problems?

Stephen Herron: In relation to fuel cases it is not generally a problem, because the evidence is not usually required from outside the jurisdiction. If, for example, we are doing a money laundering investigation, where perhaps the person under investigation has bank accounts in the South, and we have to do an international letter of request to obtain those accounts, there can be some delay there. We would get a request from police that we have to work on before we send it to the Department of Justice. There then has to be a court order for the banks to produce this material to the court, and there can be a delay in that.

Whenever we get these letters from HMRC, the police, or whoever the investigator is, we try to identify where the priority inquiry should be, because we know it can take a certain amount of time. We try to focus the requests, so that we are not asking another jurisdiction to go to great lengths to take material that perhaps is not needed. Part of the closer co-operation and working together with these agencies is to try to improve a lot of areas, and that would be one in particular.

Q383 Naomi Long: One of the other issues on which we have touched to a degree already, but on which there are a couple of specifics, is the multi-agency nature of the approach taken. You have talked about your relationship with HMRC already. I want to talk about the Organised Crime Task Force and how much that has helped, in terms of being able to secure prosecutions and convictions in this particular area, and how you find that that relationship has worked—or not.

Stephen Herron: It is a very positive body that we have here. We are certainly glad the PPS is quite well represented on it. I can try to think of a few practical examples. I know one of the measures the Director alluded to earlier was a serious crime prevention order. In cases where we have obtained those, I have asked the HMRC how they are finding them of use. In one case in particular there was a restriction imposed on the defendant, or a condition that they allow HMRC to inspect their premises whenever they want. Those types of orders can be very useful.

With the Organised Crime Task Force, the usefulness of these orders, which can be obtained upon conviction or can be obtained separately as a civil order, has been fed through to the other organisations. Whenever we get together to discuss how best to tackle these cases, whenever we find that something has worked well in an HMRC or NIEA case, the next time they bring a case, we will be looking at bringing similar cases. There are benefits.

In terms of helping us to get prosecutions, a lot of what the OCTF is about is sharing intelligence, for agencies to decide how they are going to tackle a particular problem. That side of it we do not really see, because we only deal with the evidence, but certainly it does have some evidential advantages.

Q384 Naomi Long: You mentioned dealing with the Department of Environment with respect to the environmental aspects of crime, and obviously there will be a degree of flexibility; sometimes it will be the Department of Agriculture and Rural Development, if it is river pollution. Is it mainly that interface, through the Northern Ireland Environment Agency, or is that through the local government branch in the Department of Environment?

Stephen Herron: It is the Northern Ireland Environment Agency. They send offences to us where people have been keeping, treating or depositing waste, and the offences are under the Waste and Contaminated Land Order 1997. There is a Water Management Unit within NIEA who deal with water pollution offences. That is under their Water Order 1999. They are all within NIEA.

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Q385 Naomi Long: Do you have any interface with local councils who would be dealing with some of the clean-up operations? Would you have any contact with them in the line of your work, in terms of collection of evidence from the work that they would do with respect to the clean-up afterwards?

Stephen Herron: The local councils have a power to try and recover the costs of those clean-up operations. I know that NIEA prosecutions have a similar power, which they exercise themselves. Whenever local councils had more of a responsibility in those areas, we probably would have had more interaction with them. My experience at present is that we get evidence from NIEA, but they obviously can include evidence about the extent of the damage that was caused in a particular case, and how much it cost to clean it up. Those are some of the things we are trying to put before the courts in these other HMRC cases. I have seen a recent draft statement we asked HMRC for in such a case. We asked HMRC to describe what is involved in dismantling a fuel laundering plant. They went along and set out what they found, what they observed, and the consequences of having to remove that. Obviously there is an environmental as well as a financial burden.

Q386 Naomi Long: That is very useful. We talked about the perception that this is a victimless crime, and one of the areas where it becomes acutely clear to everyone that it is not a victimless crime is the threat to public safety from some of the operations themselves. This is not some nebulous operation that goes on and produces cheap fuel. They are dealing with high-pressure, volatile chemicals that could endanger local communities. In terms of the Health and Safety Executive, how engaged are they with you on the evidence around issues of the risk to public health and safety, to life, and so on? One example brought to us was the gas-laundering plant—I think it was in Cullaville—and the relatively small fine that was handed out. Yet that was discovered because someone smelled gas; the plant was leaking at the time, and was clearly an imminent threat to life and limb, but that does not seem to be factored into sentencing for whatever reason. Can the Health and Safety Executive assist with that? Do you engage with them? To what degree is that useful?

Stephen Herron: In that particular case you are referring to—the Crossmaglen/Cullaville case—I know that the representative from Calor Gas expressed concern or disappointment with the sentence that was imposed.

Q387 Naomi Long: He described it as “laughable”.

Stephen Herron: I have not been able to view the case papers; it was prosecuted back in 2008. While it was a large investigation, and involved a large number of these gas cylinders, my understanding was a lot of them were empty. What we ended up prosecuting for was relatively small, compared to the potential for a real public safety concern. There were trademark offences brought in that case, and health and safety offences. The £300 fine was in relation to a health and safety offence. The Health and Safety Executive were involved in that case, and I believe they were with

police at the time when they went to raid the premises. There were health and safety prosecutions brought there, and I imagine that if we had a similar case in the future they would have that same level of involvement.

Barra McGrory QC: There is a developing relationship between the various agencies and the Public Prosecution Service, which is very important. There is a very significant investigation in which a number of agencies are working together, and it looks as if there will be a mixed indictment. That is a significant development.

Q388 David Simpson: I share the Committee’s frustration whenever we listen to the evidence—this is no reflection on you, gentlemen; you are curtailed by the legislation and what is in front of you—and I can sometimes understand the statement, not referring to present company, that the law is an ass at times. It seems to be compounded with so much bureaucracy, between health and safety people and whatever. It just seems to pile up and there is no light at the end of the tunnel. The general public perception is, “There is an acceptable level of this. We do what we can and we will achieve what we can”, and that is it. That is not your fault; that is the system. It is frustrating for a Committee like us and the general public. It really is frustrating to see that. As an elected representative for the Upper Bann area, I want to see prosecutions; I want to see people brought to book for this. Maybe things could have been different years ago, but today we are so compounded with bureaucracy, we cannot move right or left. It is very frustrating.

Q389 Kate Hoey: It is always the little person that gets prosecuted. I am not saying that they are not guilty, but it is the people who have got drawn into it. The big guys who are running it and organising it, making lots of money, tend to be over the border and are never touched. That is the impression we get.

Barra McGrory QC: The investigative authorities would agree with you there—that there are evidential difficulties in respect of the masterminds behind these crimes.

Kate Hoey: Yes.

David Simpson: Absolutely.

Q390 Nigel Mills: I asked the HMRC this when they were here: given the links between fuel laundering and other criminal activity, do you think this would be better tackled if it was moved to being a police responsibility, rather than being an HMRC one? Might that result in more investigations, more charging, and more prosecutions, or are you happy that HMRC are doing as good a job as can be done with this?

Stephen Herron: Having seen quite a few HMRC cases and PSNI cases, the level of co-operation between those two agencies means I cannot see any real difference that it would make, whether it was police who investigate these matters or HMRC. For example, there is a case currently in my section that has resulted in money laundering charges. HMRC provided PSNI with the intelligence that led to a number of arrests and convictions in relation to drugs offences. Those convictions can now be used as part

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of my case by way of something that is called “bad character”. PSNI would probably say that they do not see any difference between what they would be doing in a case and HMRC. As far as I can see, the investigative techniques, and the standard and quality of the files produced, are similar between the two agencies.

Q391 Nigel Mills: From the breadth of your work so far, Mr McGrory, how high up the priority scale do you see improving outcomes on fuel laundering, compared to other areas you prosecute? Is this one of the biggest problems you think you need to tackle, or is it way down the list?

Barra McGrory QC: No, I think it is quite high. The fact that it is an area of criminal investigation that comes into one of our smaller, lower-volume sections is an advantage, because it gets the attention it deserves. Stephen’s section is a smaller section. The volume of cases that comes through it is very small, but that section is geared up for doing more complex cases in a lower volume, so they get attention. My

impression is that it is an area that is already given a fairly high priority within the departmental work that we do.

Police fraud investigations come to the same department, but they are complex fraud, and are smaller in number. If you were to switch the fuel laundering into ordinary run-of-the-mill police work, it would go into areas where there is a huge volume of files coming into our organisation, and it would be more difficult to prioritise it. It is in a good place currently.

Q392 Oliver Colvile: On a scale of one to 10, how do you think you are doing?

Barra McGrory QC: Here, today?

Oliver Colvile: On a scale of one to 10, how do you think you are doing?

Barra McGrory QC: Never be a judge in your own cause.

Chair: It is still a public session. This has been a very useful session. Thank you for coming over.

Wednesday 18 January 2012

Members present:

Mr Laurence Robertson (Chair)

Mr David Anderson
Mr Joe Benton
Oliver Colvile
Lady Sylvia Hermon
Kate Hoey
Kris Hopkins

Naomi Long
Jack Lopresti
Dr Alasdair McDonnell
Nigel Mills
Ian Paisley
David Simpson

Examination of Witnesses

Witnesses: **Alex Attwood MLA**, Minister of the Environment, and **Anne Blacker**, Head, Environmental Crime Unit, Northern Ireland Environment Agency, gave evidence.

Q393 Chair: Can I apologise to our witnesses for keeping you waiting? We did have a vote earlier, which delayed things a little bit, and then we had more on the private agenda than we anticipated. Apologies, but you are very welcome; thank you very much for joining us. I think you know we are conducting an inquiry into smuggling and counterfeiting of fuel, tobacco and whatever else we come across. You are very welcome; thank you for joining us. Can I ask you perhaps just to make very brief opening statements as to the areas of responsibility that your respective Departments have?

Alex Attwood: Thank you, Chair, and hello to familiar faces and to new faces. My role, as Minister of the Environment since May of last year, clearly has been on the environmental side of addressing issues around fuel laundering. As you know, HMRC leads in that regard; the PSNI is a senior partner; and we are a partner as well with other agencies on the island of Ireland. Our role, historically, has been on the environmental side—the environmental enforcement and prosecution side—although, as I will indicate later, Chair, in some of my answers, our role more recently has escalated. That is to the benefit of dealing with this issue of fuel laundering on the island of Ireland.

Anne Blacker: I am Anne Blacker; I work in the Northern Ireland Environment Agency, which is part of the Minister's Department, and I head the environmental crime unit. The role of the Agency is one of implementing and enforcing a great deal of environmental legislation, most of which stems from Europe. That is really where we come in terms of fuel laundering, because the by-products of that can be harmful to the environment and can be classified as waste. Some of the criminal investigations that we are involved in are to do with fuel laundering issues.

Q394 Mr Anderson: Good afternoon. Can I ask you about the scale of the problem? We have a list from our civil servants about some of the things that can happen in terms of waste—whether it is threatening drinking water reservoirs or whether it is being transported safely—but can you give us some detail, please, about exactly what is happening on the ground? Exactly how many sites do you get reports from that it is happening? How many councils are involved? How often are you asked to deal with the

waste? Is there evidence from different parts of Northern Ireland that it is worse in the west or the south or wherever?

Alex Attwood: Thank you for that question. Can I make a general point to begin with? I believe that we are now entering a new phase of politics on the island of Ireland. We are on the far side of stability. We have devolution. Ireland stands against terror. The legacy of conflict, in respect of organised crime, criminals, gangs and those who are now beginning to engage in organised crime, means that for the character of the island going forward and to shape our politics in an even better image than that which we have achieved to date, which has been significant, we need to fundamentally deal with the issue of organised crime. That includes the legacy of our conflict and those who were involved in organised crime during the conflict, and new expressions of those who are gathering illegal assets. When you think about it, given the image of the island of Ireland and Northern Ireland as green and clean, given the scale of our built, natural and archaeological heritage, it sends out a very incongruous message to the world: on the one hand, we have such wonderful natural and built assets; on the other hand, we have issues around organised crime, including fuel laundering and the residue of all that.

To answer your questions in the particular, there are different experiences across Northern Ireland when it comes to the issue of fuel laundering. It is concentrated in certain counties and areas. It is, and this is proven by the evidence, mostly concentrated in the council area of Newry and Mourne, where the council rightly complains that, under the law as it is currently drafted, it must clean up the consequence of fuel laundering in terms of the residue that is left—it does not have to remove laundered fuel, if that is located by HMRC, PSNI and other agencies. It has the responsibility to clean up that issue. That issue is beginning to be addressed in that there will be pilot programmes in the near future, whereby DoE may assume responsibility in terms of clean-up and costs incurred in that regard. Yes, it is located in particular areas and it has, historically and currently, been most concentrated in the Newry and Mourne council area, which is, in terms of county boundaries, South Armagh, Armagh and South Down. What was the second part of that question?

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Q395 Mr Anderson: It was basically that you mentioned Newry and Mourne. Does that mean every day, every week or every month? I am trying to get some idea about how many people are involved in dealing with the waste.

Alex Attwood: Anne will give you some details about, historically, the number of sites that have been located in terms of fuel laundering, or the number of occasions when the relevant agencies have been called to where the residue of fuel laundering has been dumped. Historically that is what has happened; those who have been involved in fuel laundering, when they have made as much as they think they are going to make, will then move off the site where they are laundering fuel and then abandon the fuel waste on some highway or byway. The evidence is beginning to indicate that even those involved in fuel laundering are more just abandoning sites, and bringing that to the attention of the authorities in one way or the other. In which case, the authorities then move in. Anne, do you want to give the particular details?

Anne Blacker: Yes. There is no straightforward answer to that question. It is by no means a daily occurrence that there is a report, and also the incidents themselves range from very small deposits of maybe one or two tonnes of material, which has obviously been the result of somebody laundering not very professionally, right the way through to very large-scale commercial deposits. There was one recent one in Crossmaglen, where there were about 90,000 litres of waste material dumped, but that is a rarity. We do not normally see so large-scale an issue. That makes it quite difficult to actually classify the severity of what is going on.

The issue that we usually have with these, in terms of enforcement, is that whenever all you have is a pile of fuel laundering waste, there is very rarely any evidence with it to indicate who put it there or who gave them permission. What we are also starting to find now is that we are also getting fuel laundering waste turning up on sites that already hold waste management licences and authorisations from the Department. That is obviously much easier to deal with, because there is a responsible party. The other issue, as the Minister has referred to, is we are now starting to find the waste materials actually left in the laundering plants whenever the laundering plant has been abandoned or whenever HMRC detects the plant and deals with it. Again that is much more controllable, because it is contained. On most of those occasions, that material gets removed and taken away by HMRC as part of their investigation.

Q396 Mr Anderson: You might want to give us a note on the geographical spread. You are saying that it is particularly South Armagh, Armagh. Is there evidence all across Northern Ireland that this is being carried out?

Alex Attwood: We will provide evidence to the Committee working through each council area, and the scale of costs that they incur in terms of clean-up costs arising from fuel laundering. You will then see that, in many council areas—we have 26 councils currently in the North—there are no costs for many councils, and there are increased costs for a small

number of councils, with Newry and Mourne being the big one. With that said, on a year-to-year basis, the costs might not look that excessive but, when you escalate those costs over the years of fuel laundering, there is a drain upon public funds on council areas, especially Newry and Mourne.

Q397 Ian Paisley: Minister, in terms of the issue of costs, if we could just drill down a little bit further into that, I understand Newry and Mourne District Council spent £70,000 last year to clean up toxic waste as a result of fuel deposits. In the previous four years, about £135,000, which is obviously a ratcheting-up in costs. What are the other costs? What is the total ballpark figure that these councils and your Department have to spend in cleaning up after these gangsters?

Alex Attwood: Currently my Department does not incur costs in that regard, not in terms of clean up costs.

Q398 Ian Paisley: Do any other burdens fall to you that have a cost?

Alex Attwood: In terms of actual clean-up costs, given that the councils, in the absence of others taking responsibility, will come in and clean up the residue, that does not fall to the Department. Under legislation that was passed by the Assembly last year, in respect of fly-tipping generally, in order to, in part, recognise the burden that is being imposed upon certain council areas, the DoE will have the legal power in order to assume responsibility for clean-up costs. As I indicated, we are currently in conversation with councils in order to run pilot schemes so that, in the event that an issue does arise around fly-tipping or, in this case, around fuel laundering waste, the DoE might step into the breach. In respect of other issues, clearly there are circumstances where the waste residue that is left may come into the watercourses. In that regard, the NIEA Water Management Unit will then get involved in respect of responsible clean-up.

Q399 Ian Paisley: Is there evidence of that occurring and the cost that falls to you?

Alex Attwood: This might surprise you, Mr Paisley, but the cost over the last five years to the Water Management Unit, in respect of costs where there has been damage caused to the watercourse, is only £17,500.

Q400 Ian Paisley: There is no damage to the water table?

Alex Attwood: In terms of clean-up costs, that is the cost to date. In terms of the damage to the water table?

Anne Blacker: In practice, it is quite inconvenient for a launderer to actually dump something so close to a river that it is an immediate risk of causing pollution. Quite often, material is dumped on roads and lay-bys, so that the risk to the water table is not as big as you might assume.

Q401 Ian Paisley: Are you saying there is honour amongst these thieves then?

Anne Blacker: Yes.

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Q402 Oliver Colvile: First of all, thank you very much for coming. When they do actually dump it that can get into the water table, can it not? It can go into the water that way round.

Anne Blacker: It would be completely possible, if it was sitting on a surface that was permeable that would actually let the oil go through the ground and into the ground water. Yes, it is perfectly possible.

Q403 Oliver Colvile: In a previous life, I also did a little bit of work on waste management and how things can get into the water table and things like that. One of the questions I would quite like to know: how many incidents would you say there are of this kind of activity?

Anne Blacker: Because of the way the Agency records incidents of potential criminal activity, there is not an actual figure for that. We would receive about 1,000 reports a year of illegal dumping of waste, and I would not even think 5% of those would be related to fuel laundering. The fuel laundering deposits tend to get a lot of media attention and local interest, and you tend to hear a lot about them but, in actual numbers, they are not that numerous compared to some of the other issues that we are dealing with.

Alex Attwood: Just to confirm, Oliver, the Northern Ireland Environment Agency is very attentive in respect of improper materials getting into the watercourse system. For example, in the course of the last six or seven months, I have run a series of beach summits because of the risk of discharges getting into the watercourse or getting into the water system generally. Therefore, the NIEA, in terms of the Water Management Unit, is very attentive. But, in terms of the scale of substances getting into the watercourse, this is a smaller issue for government of the North, but that in no way is to diminish the scale of the issue for the governments of the island.

Q404 Oliver Colvile: Do you talk to your counterparts here in England, Wales and Scotland? Do you think you have more examples of this than they do?

Alex Attwood: In terms of fuel laundering?

Q405 Oliver Colvile: In some of the incidents to do with environmental issues.

Alex Attwood: Anne can answer in terms of the liaison with the authorities in Britain. In terms of the island of Ireland, the issues around the environment lend themselves most easily to management on an all-island basis. That is why, arising from the Good Friday Agreement and the Strand Two structures that were created, part of that was the environmental sector of the North South Ministerial Council. It is arguable that the environmental sector of the North South Ministerial Council has been the most vibrant and vigorous area of life of politics, on an all-island basis, since 1998. The working relationship between myself and the Minister for the Environment of the South, now Phil Hogan, across a wide range of watercourse matters, water basin matters, even fracking in Fermanagh, the disposal of waste targets, the disposal of plastics on the island of Ireland. There is a scale of opportunity in terms of all-island management of

those issues and economic opportunities arising from those issues, which we are exploiting but we have yet to exploit fully.

Q406 Dr McDonnell: Alex, you are very welcome, and Anne. Thank you for your evidence so far. There is a sense that there is a bit of, to some extent, passing of the parcel in terms of waste. Are you now saying that, while the Department had few resources to deal with it in the past, going forward, the Department will take over the full responsibility? When it comes to landowners, will the Department pursue the landowner rather than pursue the council to pursue the landowner?

As well as that, in the broader sense of the thing, have you the power, will you have the power or will you have to go through the councils to pass on or attempt to pass on costs to landowners? How do you differentiate between landowners who are compliant with the generators of the waste and landowners who are totally innocent? In other words, you go to that waste plant or you discover this stuff in a waste plant; do you, therefore, in conjunction with HMRC, make the landowner there who obviously—you cannot have a waste plant on a property without the landowner having some knowledge of it. Perhaps he has been coerced, but could you take us through some of that? The sense that we have had up until now is that the retribution, punishment or accountability, while in theory there is a lot of stuff there, in practice it does not work, right down even to the courts, because the courts in the end produce fairly derisory fines.

Alex Attwood: Thank you for that question, Alasdair. Anne may want to come back latterly to the second part of Oliver's question about the relationships with the authorities in Britain. There are a number of answers to what Alasdair has been asking. The first is that I do think that there is need for and there is a gear-shift now ongoing, in relation to the role of the DoE and NIEA, when it comes to its responsibilities and its working relationships with other relevant agencies. If you were to examine, as I am sure you have or will, the number of convictions and the amount of penalties being imposed by courts, in Northern Ireland for environmental crime over the last eight or nine years, you will see a decline in a) the number of prosecutions and convictions, and b) a decline in the amount of penalties being imposed by the courts. That could in one way look worrying, but in another way it is reassuring, because the ongoing strategic shift, in terms of the work of the Department, the police and HMRC, is toward targeting the big serious organised criminals and crime gangs, which are involved in fuel laundering on the island of Ireland. There has been a strategic shift.

Without going into any particular detail, there are four very serious ongoing investigations in respect of the upper end of the hierarchy of criminality, in respect of fuel laundering on the island of Ireland. That is very important. Rather than going after the lesser players, we are now targeting, in co-operation with the other agencies, led by HMRC, the much more serious criminal gangs.

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Q407 Lady Hermon: Minister, could I just interrupt? It is very nice to see you here, Alex. Could I ask you to confirm, if you are able to, whether any of the four major corporates and gangsters here have paramilitary links?

Alex Attwood: I am not going to inform the Committee about the background to any one or other. It is quite clear, and there has been evidence even in the last couple of days, that those who are fuel smuggling and tobacco smuggling can have and have relationships with Republican dissident organisations. There are definitely relationships, but I am not going to betray whether, in respect of the four ongoing investigations, that is the character of those who HMRC, ourselves and others are interested in.

In respect of Alasdair's point about the landowner, I have a number of comments. The first is that there is an urgent responsibility upon members of the community to report this type of crime, and all crime, to the relevant authorities. Heretofore, for reasons that the members of this Committee, and in particular the Northern Ireland members of the Committee, will understand that the shadow of fear or the potential of threat militates against people reporting certain or all crime. I am glad to say that there is evidence beginning to emerge, including in respect of fuel laundering, that individual citizens are now beginning to pass on information. Mindful of that development, in the near future, Crimestoppers, an independent charity with whom you will be familiar, will be running a campaign in particular to encourage people, on an anonymous basis, to provide information to Crimestoppers in respect of fuel laundering. I do think there is a changed pattern of behaviour, but it is still the case, and I know this from recent experience, from information that has come across the desk of my office, that the shadow of fear still endures. It is also the case, Alasdair, that in many instances individuals simply are not aware, or it is not possible to demonstrate that they were aware, that there was fuel laundering going on in respect of property that they might have ownership of. In the absence of knowledge or in the absence of proof of knowledge, it is very difficult to pursue a prosecution.

Q408 Oliver Colvile: Just coming back to the question that I asked you earlier, you were going to give your—

Anne Blacker: Yes, the links to agencies and DoE. The environmental crime unit and NIEA have good ongoing relationships. There are similar crime units now in both SEPA in Scotland and the Environment Agency in England and Wales. We would be in regular contact to discuss ongoing developments. Anecdotally, fuel laundering does not seem to be the issue across the water that it is in Northern Ireland. We would have similar waste crime issues between Northern Ireland and the mainland, in that there is a lot of construction and demolition waste that would be illegally managed in all those areas. We are all using similar techniques to deal with that, in terms of better criminal investigation, proceeds of crime investigations and working between all the areas so that we are all in contact.

Q409 Oliver Colvile: Would you tip off the HMRC once you have found those cases?

Anne Blacker: Any intelligence that we arrive with, in the Agency, that is relevant to fuel laundering, we share with HMRC and other relevant agencies as well. That goes for all environmental offending, not just fuel laundering; and that is part of the key to us all working better together and, as the Minister referred to, being able to target the serious operations in these areas and the people who are involved.

Alex Attwood: Chair, can I just follow that up? As I indicated earlier, I do think there is a gear change underway, certainly from my perspective, in terms of the importance of pursuing environmental crime. The unit in my Department that Anne leads up is currently recruiting 11 new specialist posts in order to demonstrate and deploy resources against those on the serious end of environmental crime. In my view, and I made this clear to the Department, there is more to come, in terms of more staff being deployed, through the environmental crime unit, to pursue those at the serious end of environmental crime. The model of the environmental crime unit should be deployed with respect of planning crime as well.

With that said, the relationships between the relevant agencies that are part of the Organised Crime Task Force fuel group, in my view, are embedding and more deeply embedding a wanted knowledge. The work that Anne and her colleagues do is very difficult work. They are essentially environmental police officers, trained to policing standards, recognised by the police as having been trained and having that capacity. It is Anne and her staff who now work with HMRC and the police in real time, going to the sites of alleged fuel laundering operations, so that the environmental interest is there at the time that offences are being detected and being pursued, rather than coming down the track later on.

I can also just, Chair, respond to a further comment that Alasdair McDonnell made. It is simply this: he touched upon the issue of courts, and about whether it is the case that, having pursued individuals or gangs for prosecution, having gone through the prosecutorial process, they end up with inadequate fines in the view or the perception of people outside. There are two points I would make about that. The first is that I do not have any particular issue with the legislative weapons that are available to the police, HMRC or the DoE in respect of offences that might be committed. If you look at the capacity of courts to impose serious crime prevention orders, the possibilities of POCA and the general waste legislation, whether it is in the magistrates' court or the Crown Court, the scale of opportunity to impose severe penalties on those who offend against the law exists, but there are issues around how the courts then process that.

That is why I was encouraged, in the summer of last year, when there was an exchange of correspondence between myself, as Minister, and Sir Declan Morgan, who is the Lord Chief Justice of the High Court in the North. Arising from that and his other thinking, the Lord Chief Justice, in his address at the beginning of session in September, named environmental crime as a priority, in terms of the courts going forward. I know that the Lord Chief Justice and the judiciary generally

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have been taking some advice, and working with the Judicial Studies Board and information provided to them from the Department, in terms of the profile of all convictions, in all courts, for all environmental crime going back a number of years, in order to try to better inform judges about the capacity they have to impose penalties that fit the crime. I think, as Alasdair indicated, there is some sense that there are occasions, and may be too many occasions, when there is a view, as a view that I concur with, that the penalty does not fit the crime.

Q410 Oliver Colvile: It was really to you: civil confiscation orders, have you had very much use of them? Do you use those with SOCA?

Anne Blacker: We do use two things. The first thing now that we do is we have financial investigators, accredited by the National Policing Improvement Agency, to use proceeds of crime powers for criminal confiscation and for money laundering. The criminal confiscation, once we have someone convicted in the Crown Court, we can then carry out a financial investigation and ask the court to make a confiscation order for the benefit that, we believe, they have made from their criminality. That is working quite well for us.

Q411 Oliver Colvile: That is quite successful, is it?

Anne Blacker: It is quite successful. We view it as a very useful tool that we are seeking to develop. We are still to develop; we are currently doing our first money laundering investigation, which is a first for the Agency, money laundering being a set of criminal offending by itself, never mind the environmental offences. The other thing that we do is we will refer cases to SOCA for civil recovery, in the event that we perhaps fail in a prosecution or, for some reason, we cannot prosecute or we feel we have information that we cannot proceed with, but that SOCA may be able to look at civil recovery. We do those two processes in parallel, and we very much feel that depriving the offenders of benefit is a key tool in dealing with this. That is why they are offending: to make money. If we can stop them making money and take that away, that should assist with deterring the offending.

Q412 Oliver Colvile: Do you do that prosecution through the equivalent of the Prosecution Service?

Anne Blacker: The Public Prosecution Service takes our environmental cases, which are our criminal offences, themselves, and there is another section of the Public Prosecution Service, called High Court and International section, which looks after all things to do with proceeds of crime. Those two parts of the Public Prosecution Service also work together, once those cases arrive.

Q413 Oliver Colvile: We have had some discussions here about how effective the Prosecution Service is.

Alex Attwood: As you know, there is a new Director of the Prosecution Service in the North. That is the PPS. An Assistant Director in the PPS is our point of reference when it comes to environmental crime. I will attempt to meet with the new Director—he has only been in place a number of months—in order to

hopefully create greater mutual practice between what we are doing on our side and whether a dedicated team within the Public Prosecution Service, beyond the Assistant Director, should have responsibility for environmental crime. It does seem to me that the Lord Chief Justice is rightly making an issue about environmental crime. If we have escalated what we are doing in the DoE in terms of environmental crime and in the ECU with staffing, is there an argument that the PPS should similarly have dedicated people, not just the Assistant Director, who are a point of reference in respect of all these matters?

Anne Blacker: On an operational basis I would meet regularly with my colleagues and my equivalent in the Public Prosecution Service to discuss both specific cases and general developments in our work. We have also had staff from the Public Prosecution Service come and give presentations to the environmental crime unit, about case preparation and how to put cases together. Certainly over the last year, we are getting many more cases being directed for prosecution in the Crown Court, where there is the potential for unlimited penalties and prison sentences, than the magistrates' courts, where traditionally environmental offences would have been heard. That is moving in a positive direction.

Q414 Oliver Colvile: On a scale of one to 10, how successful do you think you are?

Anne Blacker: I think, at the minute, it is probably about an eight. That is not due to the fault of the Public Prosecution Service or ourselves. It is moving along.

Chair: Eight seems quite good.

Q415 Nigel Mills: Just going on from that point, can you just run us through what the range of penalties are for environmental crime? It clearly just starts with a small fine and goes up to quite a serious prison sentence.

Anne Blacker: All the possible penalties? There is the possibility, first of all, of a mere warning letter for something that does not merit a criminal prosecution. Then there are the offences to do with depositing waste without a licence or keeping waste in a manner likely to cause environmental pollution. They are criminal offences, and they can either be heard in the magistrates' court, where there is one set of penalties, or in the Crown Court, where there is a higher set of penalties. Depending on the scale of the case and all the individual factors, the Public Prosecution Service will direct whether a prosecution is appropriate and to which level of court it goes. There are also several notices in the legislation that can be served, requiring waste to be removed. That will come back to Dr McDonnell's question about landowners and how they are dealt with. There are separate powers at the moment that the Department holds and that councils hold that soon will become unified between the two bodies. Those are available. Building on from that, after conviction, there is also the potential use of the proceeds of crime. There is also the potential to use money laundering legislation and to ask the court to consider serious crime prevention orders, after

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conviction, to impose conditions to deter or prevent further offending.

Q416 Nigel Mills: The most serious punishment I could get in terms of a custodial sentence would be—

Anne Blacker: I think the longest custodial sentence that has been awarded, not for fuel laundering but for waste crime, was a gentleman who got nine months' imprisonment. His wife received a suspended sentence. They actually were landowners who had permitted waste to be buried on their land.

Alex Attwood: The maximum penalty is five years in the Crown Court and two in the magistrates' court. There is an unlimited fine in the Crown Court and £50,000 in the magistrates' court.

Q417 Nigel Mills: One thing the HMRC seems to say to us is they are a bit concerned that the penalties handed down in Northern Ireland were less than on the mainland. Is that something you find for environmental crime generally or is more comparable?

Anne Blacker: It is quite hard to generalise, because the individual circumstances between cases vary so much. You see some surprising results for the Environment Agency cases, as much as you do for Northern Ireland cases. I do not have any statistical basis, at the minute, to actually say whether it is lower or not.

Alex Attwood: As I indicated earlier, we shared with the authorities, courts and the Judicial Studies Board a record of all convictions for all environmental crime, going back a number of years, including some details around the nature of the offences, and the magistrate or judge who was sitting, in order to give intelligence to the relevant authorities on the judicial side about what the practice was, if there was any differential practice, inconsistency of practice, inadequacy of practice, or, on the other hand, adequacy and consistency. I think that work has been taken forward by the relevant authorities on the judicial side. I get a very strong sense from the Lord Chief Justice that he has a professional and personal interest in this matter, and I would like to think that that will work itself through, where appropriate, to more appropriate penalties and fines being imposed.

Q418 David Simpson: Chairman, I apologise for being late; I had another meeting to go to. You are very welcome to the Committee. In relation to the whole issue around penalties, is it not the case that, no matter what your Department, Minister, hands out, it is not a real enough deterrent, because there is so much money to be made out of this? Whether it be materials being dumped, obviously it is to do with fuel laundering, cat litter, acid, whatever the case may be, there is just so much money to be made out of this. If there is somebody put away for nine months, there is somebody coming in behind to take their place, because there is so much revenue. Is it an impossible task for your Department to minimise this or have you evidence to the contrary? Maybe it is working.

Alex Attwood: Coming across in the plane, Anne said to me that there was a sense among those who are

involved in these sorts of activities that the penalties that might be imposed by the courts are by way of a business cost, as opposed to a deterrent. Whether that is completely the case or not, nonetheless, if there are people involved in this activity who see what they end up having to pay for this activity as a business cost, rather than something that fundamentally deters them, then that is something that all of us need to deal with. If it is an impossible task then it is an impossible task for HMRC, the police, DoE and all of those involved in the Organised Crime Task Force fuel laundering group and for the authorities in the South as well.

My sense is that, as we escalate the resources, the manpower and the specialisms in the ECU, as we begin to target, pursue and hopefully take out some of the masterminds behind all of this activity, as the authorities, North and South, more and more integrate—that is why I welcome this sort of hearing, because it advertises, in my view, that the circumstances in the North are different, because we share a land border, and then consequently there are many issues, including this, that led to South-to-North-side co-operation and implementation. As those relationships embed themselves further and further, and they are already in a very strong, good state, I do think you will be able to pick away at the activities of organised crime gangs, including those involved in fuel laundering.

Do I think that we can turn this around in a short space of time? Far from it; I think this is a 20-year commitment of governments across these islands, because these practices have developed over a long period of time. They conclude a legacy of the years of conflict and the years of terror. Unless there is a will at the highest levels of government and in the relevant agencies to single-mindedly pursue those historically and currently involved, then it will be part of the legacy of conflict and part of an unfortunate future.

Q419 Lady Hermon: You have actually, Minister, given this Committee some encouragement this afternoon, in that you have provided evidence to us that, I am using your words, there is a gear-change towards environmental crime within your own Department. I am quoting here, because this is not something I would say of the Lord Chief Justice, but you said the Lord Chief Justice is making an issue of environmental crime, both to be welcomed.

I was very taken by a phrase that you used earlier in evidence to the Committee, which was that the shadow of fear of retribution hangs over many people who are aware of fuel laundering, and none of us should underestimate the thuggery of those involved in this, particularly with the crime. In those circumstances, where the Lord Chief Justice has given a priority to the environmental crime unit and your Department has given a significant priority to it, could I just ask if any thought has been given to actually using the Criminal Justice Act of 2003? As a well-taught lawyer, you will know the provision, I am sure, that I am talking about, which is Section 44, where we can have a non-jury trial—and nothing to do with the Diplock courts—where there is a real and present danger of jury tampering. That includes intimidation

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or attempted intimidation of witnesses. Is this not precisely the sort of crime where we could make maximum use of this provision, without the connotations of Diplock courts?

Alex Attwood: I hope the Lord Chief Justice considers that I have faithfully reflected his views. I think I have. Unfortunately, the Criminal Justice Act (2003) was passed after my time at Queen's, so you did not teach me it.

Q420 Lady Hermon: That is no excuse.

Alex Attwood: It is only my excuse today, because I am not quite sure what you are asking me.

Q421 Lady Hermon: It is about the use of non-jury trials where there is intimidation.

Alex Attwood: That is my problem, not yours. I do not favour a return to Diplock trials.

Q422 Lady Hermon: It is not a Diplock trial.

Alex Attwood: Even the appearance or the reflection of a non-jury court is something, in principle, that I do not think would best serve our community and is best practice when it comes to—

Q423 Lady Hermon: Even if there is intimidation of witnesses? We have had this provision on the statue for over eight years. Could I just ask Ms Blacker, who was nodding her head in a completely different direction from you, Minister, what she feels about that proposal?

Anne Blacker: At the risk of embarrassing the Minister, it is not what I feel about it. I just wanted to let you know we actually do have one case at the moment, which we are investigating, where we have been in discussions with the Public Prosecution Service, where that very issue may arise. It is being taken very seriously and the justification for having to go down that line would also have to be considered very seriously. It is not something that is not in the thinking about how some environmental crime cases progress, but I will not name the case or any of the circumstances.

Q424 Lady Hermon: I would not expect you to do that. Having given the evidence that he has today, about how seriously his Department is taking this issue, the fact that we have had evidence of how weak the prosecution cases have become, and the fact that he himself identified clearly to the Committee that the air of intimidation is what is preventing people giving information about this particularly wicked crime, I would like to ask the Minister to commit to raising it when he meets, as he has told the Committee he is going to meet, the new DPP very soon? Would he please have it on his agenda, so at least this issue is discussed openly?

Alex Attwood: A number of comments. The first is that, as you will appreciate, Lady Hermon, the North is in a period of transition from the view it had on police and justice issues before to where we have travelled. It is very important that, in travelling that path, as fully as possible, we, at all times, apply the best practice and the rule of law and proper process. That will have much wider benefits. It is simply this:

there will be people who will say that, if you routinely use a non-jury court to pursue an environmental crime matter, that actually is a reason why you should not be giving information to the state, because that is a throwback to the past. That is how, in some communities, these sorts of issues will get mangled and distorted. What I would rather do in the general approach to things is to ensure that we create opportunities for people to give information, anonymously if necessary, through Crimestoppers' campaign and other interventions. Anne has been given information anonymously.

I would like to send out the message that, if Mr Big round the corner thinks that he can get away with a breach of the law, the state is going to bear down on him in a way that gives people to think that those Mr Bigs are not going to exist anymore. I would like to think that there are other ways of creating an environment whereby people would be inclined to give information. There may be very rare exceptions, as Anne has indicated, but I do not want to send a message to the Committee that I think, on a routine basis, an option of a non-jury court is the right approach. It may be, in extreme circumstances, that that option may be interrogated, as Anne has indicated, in a particular circumstance at the moment, but I do not think that, in the broad political justice world, in the North and where we have come from, that that is something that I would actively or routinely entertain.

Lady Hermon: Unfortunately, Minister, what you have said, if I summarise you correctly, is that the big fish can go ahead and intimidate witnesses, knowing very well that the actual letter of the law—this is on the statue book and has been available to the courts of Northern Ireland since 2003, but you as a Minister in the Executive would not make use of the provision. It is the rule of law.

Q425 Chair: Can I clarify this? I do not want to get too deep into a philosophical argument about the rights or wrongs of jury trials. Is it your responsibility to make that recommendation? Is it the Minister's responsibility for justice at the DPP? Whose responsibility it is to recommend for a non-jury trial order?

Alex Attwood: It is a recommendation of the Public Prosecution Service.

Anne Blacker: Based on the circumstance.

Q426 Chair: That option is open to them? Because there is a great deal of frustration in this Committee about people not being prosecuted.

Lady Hermon: Yes, it is.

Anne Blacker: To maybe alleviate some of your concern also, it actually would be the exception in environmental crime cases that we would use evidence provided by independent witnesses. Usually in environmental crime cases, the evidence is still there, usually in a large pile. It is not really contradictable, so the need for us to use members of the public as witnesses in court is quite a rarity. That issue of witnesses being intimidated actually has not come up for us so far, to my knowledge.

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Q427 Lady Hermon: I am sorry; I thought the Minister gave evidence to the Committee, earlier today, about the shadow of retribution.

Anne Blacker: We obviously depend on getting information from the public to assist us in our investigations. That information we treat as intelligence, and we handle it totally confidentially. That information does not feed its way back into court.

Alex Attwood: There are clearly, Lady Hermon, circumstances where people may know but do not have the confidence to tell. That can happen with a fuel laundering case or a repatriation of waste case. People may have seen activity and might have seen individuals known to them but, at that point in time, do not have the confidence to say, "I am going to tell." In a rural community, for example, where there are not many houses about, others might make a calculation about who the likely suspects were. In those circumstances, people inevitably develop a sense of fear and anxiety. That has to be the case because, given the scale of fuel laundering or of issues around the legal waste coming North, which is likely to be repatriated to the South, there must be people who are aware of things that are going on. The shadow of people militates against them telling.

Q428 Mr Benton: Minister, I want to refer for a moment to the road haulage and taxi businesses. I pose my question against the background of various reports going back to 2006, including one from this Committee. I would like to ask, in terms of the licensing aspect, precisely what your responsibilities are in terms of licensing the road haulage and taxi industry, and if you have made any assessment of the effectiveness of the impact of these licensing regimes in countering fuel smuggling and laundering.

Alex Attwood: I can confirm, Joe, that I am responsible for both the licensing of road haulage and taxis. In respect of licensing of road haulage, legislation was passed by the Assembly, and commencement orders in respect of that legislation created a new licensing regime. That means that the legislation will come into effect in March or April, and there will be a short transition, up to July of this year, before the life of that legislation is fully enforced. The consequence of that new licensing regime, when it comes through, to haulage is that, in the first instance, vehicles will have permits and thereafter will have to apply for licences. The purpose is that we will reduce the number of operators acting without proper vehicles, operating to proper standards, not going about their business in a proper way.

In that way, over a period of time as we move from permits to licences, there will be an opportunity to identify rogue operators, whatever they might be involved in, including if there are rogue operators who may, in one way or another, be facilitating smuggling or fuel laundering. It will be another part of the weaponry that we have to deploy, because we will be in a situation where we may be able to identify—and I think this will be on the smaller operator—those who are not on the right side of the licensing regime and, consequently, are not entitled to conduct trade. Consequently, if that is brought to the attention of the

enforcement authorities, action can be taken. As a consequence of that, that might impact upon people who are involved in fuel smuggling and laundering.

Q429 Mr Benton: This Committee's report on organised crime from 2006, together with concerns expressed by the Independent Monitoring Commission, made reference in a concerned way about paramilitaries using legitimate businesses, such as taxi firms, and forcing taxi drivers to undertake tasks for the benefit of the paramilitaries. Of course, it is with that particular reference in mind that is the point of my questioning. I wonder whether, in addition to what you have answered in terms of the first question, there had been any other measures taken to reduce the scopes for taxis and road haulage first to be exploited by fuel fraudsters.

Alex Attwood: First of all, it is a long time since 2006, and there have been uncertainties around devolution, in the first instance, and then the quality of devolution, since 2007. With that said, part of the legislative achievement of the last Assembly, the 2007 to 2011 Assembly, was to pass legislation that created new regimes, both in respect of taxiing and haulage. The advice of the Committee, back in 2006, has worked its way through in terms of new legislation on both issues, in order to create new regimes. The purpose of the new regimes is to regulate and regularise both sides, the taxi industry and the haulage business. Out of that will come, we would like to think, that those who are on the wrong side of the new regimes, be they individuals, companies or people in one way or another associated with illegal organisations, because of the new regime, if the new regime is then enforced, that will have a payback in terms of driving out business and closing down those operators that have caused most offence and violence to the law.

The legislation in respect of the haulage side, in terms of its commencement and enforcement, is more advanced than the taxi side, where there are some remaining issues that I have to decide in terms of the precise detail around the architecture for taxi licensing. The direction of travel—just this week, I met representatives of the haulage industry in the North, and there are issues now, no longer the content and character of the legislation, or the timing of when it might be commenced. It was: will it be adequately enforced? In that regard, I have to ensure that the vehicle licensing end of the North is adequate, and that concerns me.

This morning, I met with Mike Penning in the Department of Transport in order to try to keep in place the vehicle licensing regime and staffing in Northern Ireland, not least because, as Ms Hoey has been nodding, here in Britain the Government has made a decision that will see centralisation of the vehicle licensing function, with the loss of more than 1,000 jobs across the island of Britain. If that were to be duplicated, as the British Government might be minded, that would have economic and job impacts for people in Northern Ireland, but it will also remove from us the opportunity to do what we need to do in respect of vehicle licensing, whether in road haulage, taxis or in respect of new proposals for road haulage and foreign contractors. If we do not have the capacity

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to do all that we need to do on an enforcement side, as a consequence of this government decision in respect of vehicle licensing generally, I think we are cutting off our nose to spite our face.

Mr Benton: I take your point. Thank you, Chair.

Q430 Jack Lopresti: What are your Department and district councils doing specifically to educate the public about the link between environmental damage and illegal cheap fuel? Are you working in conjunction with the Organised Crime Task Force on this matter?

Alex Attwood: Anne can also come in on that. As Anne indicated, there is a lot of profile in the North around illegal fuel laundering, even a disproportionate profile compared to the range of other environmental crime. That in itself educates people. Because the media are regularly reporting on the latest dumping of fuel waste or the latest closure of a fuel laundering plant, that in itself is getting through. As I indicated, because of a slight change in people beginning to report information to the relevant authorities, in the near future we will run this Crimestoppers campaign, through that independent charity, in order to encourage people to become aware of the issue.

Let me make this point clearly, Chair. Anne said that she would give everybody a mark of eight out of 10. I, being more political and ruthless, would not actually go that far. I might go as far as six going towards seven, because I can see the scale of how people, in all the relevant agencies across the island, are beginning to tie themselves closer together in terms of tackling environmental crime. It is quite clear that, because of the cost of laundered fuel, people who

drive see the benefit of the cost saving without appreciating the deeper damage they are causing to the mechanics of the car and the higher costs that they will have to incur as a consequence of that. Consequently, given that this is in part demand-led, people are not recognising the damage that they are causing to their own property and to the wider environment. Therefore, there is much more that we need to attend to in that regard, in terms of the wider education function.

Anne Blacker: HMRC obviously is the lead in fuel laundering. I am aware that they ran a Crimestoppers campaign not that long ago. The campaign the Minister has referred to, which we are planning to run, will cover waste crime. That will obviously include fuel laundering, because it is a waste. Their campaign was to try to educate the public that it is not a victimless crime. That perception that fuel laundering and environmental crimes are victimless is a widely held thing, because there is an education job to be done there. We are using Crimestoppers as a basis to try to use that to get a lot more media coverage about things environmental generally, and the damage that is done—the indirect costs that the public basically has to fund. As well as that, we are engaged in working with the other agencies and also trying to build up trust with the public, communities and people in industry, who are able to give us valuable information. That is very much an ongoing, evolving process.

Chair: I am afraid we are going to have to draw this session to a close. It was very interesting. Thank you very much for joining us.

Examination of Witnesses

Witnesses: **David Ford MLA**, Minister of Justice, and **Simon Rogers**, Deputy Director of Protection and Organised Crime Division, gave evidence.

Q431 Chair: Thank you very much for joining us. Sorry to keep you; we were delayed by a vote earlier on, and then we had a few things we had to go through in private session. Apologies for that, but you are extremely welcome. Thank you for being with us. Perhaps I might ask you just to give your general assessment of the level of the problem of fuel laundering in Northern Ireland. Is it getting worse? It is receding? What is your take on it?

David Ford: Thank you very much, Chair, for your welcome. Perhaps I will just do the formal introduction, although I think I have probably met most members of the Committee. I am David Ford, Minister of Justice and, therefore in that capacity, also Chair of the Organised Crime Task Force. With me, I would like to introduce Simon Rogers, who is the Deputy Director of the Protection and Organised Crime Division within the Department. Can I thank you for the opportunity to discuss the issue of fuel fraud and some of the issues about it?

Members will have seen the memorandum that we submitted, but I will just go through some brief points on it. Clearly assessing the extent of fuel fraud is difficult at this time. I believe that the best guidance

we have is that developed by HMRC, which estimates that fuel fraud losses to the Exchequer are down from roughly £150 million in 2008–09 to £70 million in 2009–10. That may be something to do with the effect of enforcement, for which obviously OCTF and its agencies would claim a share of credit. It may also be to do with economic conditions, because the aspects of it that relate to legitimate cross-border trade, nonetheless being a loss to the Treasury, have diminished somewhat because of the changes in pricing between the North and the South. Still, £70 million is a very significant loss to the Exchequer. It is also the unquantified loss to legitimate trade, the damage to the environment and the unpalatable recycling of criminal profits into other enterprises.

I believe that the OCTF is representing a significant step in dealing with that, in the way that agencies, both UK-based and locally based in Northern Ireland, are able to come together, both in regular quarterly meetings that I chair and in a number of sub-groups looking at different aspects of organised crime. The agencies most directly involved include HMRC, SOCA and UKBA at one level, and PSNI, the Public Prosecution Service and DoJ officials from the

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regional level. The attempt is to get together to share the necessary details that we have to commission analysis by an OCTF-funded officer within the PSNI to agree the strategies, whether they are across the agencies or single-agency, that have the most effect. Also, we are seeking at this stage to develop a degree of a pilot project on changing the mindset to deal with the issues of those who provide the market of this kind of trade. It is certainly relevant, given the evidence that you have just had, that the Northern Ireland Environment Agency is involved in two of the sub-groups on criminal finance and cross-border fuel fraud. I believe that the OCTF has to continue to facilitate those links to make some moves to better coordinate the agencies. I would be happy to talk about some of the issues that appear to be before the Committee, around issues like sentencing, cross-border working and the mindset issues that I have just highlighted. Perhaps, Chair, I should leave it there, and leave it to members to ask.

Lady Hermon: We had some mention of non-jury trials as well.

Q432 David Simpson: You are very welcome, Minister, and your colleague as well, to the Committee. I know you are very busy, but maybe you have been following some of the evidence sessions and research papers that we have been having over the past number of weeks. I am sure you would have gathered from that the frustration, I suppose from Committee members, and also frustration from members of the general public, who see leniency, in their opinion, of sentencing—the inadequacy of sentencing—for crimes such as fuel laundering, and from the aspect of the huge amount of money there is. HMRC gave us some evidence previously, and the figure they told us was something around £3 million last year or something in that realm. I cannot remember the exact figure. When we take the tens of millions that are taken out of the Exchequer because of revenue not being paid, it seems a very minute amount of money. There is a frustration, and I said this to Barra McGrory last week, that in the public's opinion—and I speak to a lot of the public and I am sure other members do—the law sometimes is an ass when it comes to the sentencing of crimes. Do you share, as Justice Minister, the frustration that is held by the general public when they see certain sentences being handed down for these crimes?

David Ford: I think you correctly summarise that there is a significant frustration on the part of the public. The Committee will be well familiar with the statistics that, since 2001, we have only seen four cases of immediate imprisonment out of 47 prosecutions. It should however be noted that there have been 32 suspended or immediate custodial sentences, so it has not been treated as lightly as the 4-out-of-47 figure would suggest. Nonetheless, it is clear that there is an issue that the public do not see significant deterrents. That is why I welcome the fact that the Chief Justice has highlighted, as one of the areas where he is developing guidance, this point. It is an issue that I have discussed with him as part of his programme of work with his colleagues. I need to be very careful, as Minister, that I do not interfere in

the sentencing issues in individual cases. I believe that we do have adequate sentences where cases are prosecuted through the Crown Court, but there is a further difficulty of the relatively low sentences that are given when cases are taken in the magistrates' court. The fact that aspects of these crimes can be prosecuted in the magistrates' court makes it not possible, at this stage, for the PPS to refer cases as being too lenient. There are issues there that we are seeking to address in discussions with the Chief Justice and with the PPS.

Q433 Naomi Long: It is nice to have you with us here, David. Can I just pursue that slightly with you, because the issue that has been raised with us is less about the adequacy of the range of sentencing available, but about the disparity in the sentences that are actually handed down in comparison with similar crimes in England and Wales? As the range of sentencing options are the same or similar, and are deemed to be adequate by anyone we have asked, their frustration is that the penalties tend to be at the lower end of the scale. Now, when Barra McGrory was here last week, he had set out the fact that the maximum sentence being handed out was quite rare; because of all the other factors, you would have to contest the case and so on for that to happen. Those considerations will also apply in England and Wales in terms of how sentencing policy develops.

The issue seems to be that this is not treated seriously or that there is a higher threshold that people have to cross, in terms of criminality, before sentencing becomes quite severe. The other issue that would feed into that, and on which we would be seeking your comments, is the perception that this is, in some way, a victimless crime and that that is perpetuated by light sentencing. Despite the fact that it does environmental damage, it can put lives at risk in many cases, and it is also feeding into other crime, apart from the fact that it is actually taking money away from the public purse. There is a perception that the punishment does not fit the crime, although the range of punishments available possibly could. Is there anything, in terms of the sentencing guidelines, that will address that specific issue?

David Ford: The difficulty around that point is that, when we develop a sentencing practice, that tends to inform the decisions taken by other judges in the future. Therefore, if light sentences have been given, there may be threats of appeal if sentences are made tougher in individual cases. That is where the importance of sentencing guidelines from the Chief Justice comes in: to ensure that we can up the norm, if you want to put it like that, rather than remaining at a relatively low level. This is not the only area in law in which Northern Ireland would end up differently from England and Wales because of that sort of practice. The ability of the PPS to refer cases as being too lenient would be a significant option for a step forward, which I believe would then ensure that, at higher levels of the judiciary, action was really taken.

Q434 Kris Hopkins: I think you have answered the question. You have certainly commented on it,

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because I was going to talk about your evidence, paragraph 22, in which you talk about you welcoming the decision by the Lord Chief Justice to include duty evasion and smuggling in environmental crime, etc. You have seen the different agencies that have been in front of us and offered evidence. There seem to be two really similar messages that come out of those. One, they have a really good relationship with each other, but it is usually the other agency's fault that it is not being pursued. They seem to be the common messages that come out. I am just wondering, the issue of sentencing obviously is the frustration for the public on this. How do we or how would you think that we could try to give a common message from this group, from individual agencies, to the Lord Chief Justice that the bottom-end tariff ratings that keep on coming out of this are the issue relating to public confidence? How do we get some parity with sentencing on the mainland? What is your message to the Lord Chief Justice on that issue?

David Ford: I suppose I need to comment, first of all, on your suggestion of good relationships but it is their fault. I must say, as Chair of the OCTF, I have not seen that attitude around the table. All I have seen as full co-operation. As a devolved minister, quite generally, it would be difficult to know from which agencies and whether they were Northern Ireland or UK-wide agencies in terms of their relationships. You may have picked up elements of that; I certainly have not.

How we present the issue to the Lord Chief Justice in terms of sentencing guidelines is extremely fraught for all of us as legislators. At this stage, my role is to welcome his commitment to treat it seriously, to make clear that that is in line with public thinking and to see how that development goes. It may be that we will need to legislate for stiffer sentences in the future to show that there is a need for higher sentences on average, if we do not see movement from that, but I do believe that the Chief Justice is well aware of the issues and is seeking the opportunity to get that addressed.

Q435 Oliver Colvile: You do not think that you have a role to play at present in actually trying to increase sentencing as well, or do you want to wait until the Lord Chief Justice? How long is he going to take?

David Ford: One of the great advantages of the kind of approach that we have, as opposed to a formal sentencing guidelines council, but the currently relatively informal ways in which he is developing sentencing guidelines, is that that is speedier than would perhaps be the case in a jurisdiction with a formal mechanism. We will have to see exactly how that goes. It is one of those issues where we need to be careful not to overstep the mark. While we can, as individuals, express concerns about individual sentences, as Minister, I would need to be extremely careful in getting into the second-guessing area.

Q436 Oliver Colvile: Do you have any idea as to when you might be in a position? How long will you let this run for—a year, two years, three years?

David Ford: Given some of the work that has already been done by the Chief Justice's group, I would suspect we are talking about a year or so.

Q437 Oliver Colvile: In a year's time, we can ask you to come back and we can have another conversation about this.

David Ford: I have no doubt, Chair, that if the Committee wants me back, they will ask anyway.

Q438 Oliver Colvile: During the course of last week, the DPP told us that one of the impediments to civil recovery, for which SOCA is apparently the lead agency, is that, unlike the CPS and PPS, there is no statutory indemnity against crime costs. We were very concerned about that, as you may have read in the transcription what happened. Why does the PPS in Northern Ireland not have any indemnity and what do you think can actually be done to try to tidy that up and make sure that we can get that right?

David Ford: This is the point, Chair, where I am going to duck this one slightly, because certainly I was unaware of that position until it was expressed to this Committee last week by the DPP. Simon maybe has a bit more information on that for us.

Oliver Colvile: Thank you, by the way, for coming as well. We are very grateful.

Simon Rogers: The position on that is that, at the minute, SOCA pursues civil assets recovery, and therefore it is not really an issue for the PPS. They are highlighting that, were they to take on this area of work or, indeed, other things that SOCA is asking them to look at, there is a concern because, unlike in England and Wales, there is no parachute fund for them. As Barra McGrory said last week, that is something that needs to be looked at. As things stand at the moment, the PPS does not pursue that area of work. It is in the preserve of SOCA, and therefore it is perhaps not a major difficulty as we stand, at the minute.

Q439 Oliver Colvile: What we were concerned about was that, while you are almost certainly an assembly with devolved responsibility and all of that, what we also felt was that there should be a level playing field as well, within it. We would urge you to actually have a look at that.

David Ford: The Committee can be assured that we are following that up, given that we have only had notice of it for a week.

Q440 Oliver Colvile: Once you have followed it up, do you think you might write to us?

David Ford: Yes, certainly.

Chair: That would be useful.

Q441 Lady Hermon: I am delighted, Minister of Justice, to have you here this afternoon, and also Mr Rogers, who I know from your previous incarnation as the private secretary to the Lord Chief Justice. Both gentlemen were very effective in their jobs indeed. Could I just ask you as Justice Minister, David, to clarify for the record your attitude towards the use of non-jury trials by the prosecution, where there is evidence of a real and present danger of jury

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tampering, including the intimidation of witnesses, in cases of fuel fraud and very dangerous similar crimes?

David Ford: Chair, I am not going to rehearse the argument that my ministerial colleague has just had with Sylvia. First of all, there are, as I understand it, better provisions in the Justice and Security Act, as apply to Northern Ireland, than those in the Criminal Justice Act, but, not being a lawyer, I would be cautious in simply saying I understand that to be the case. We certainly have a range of measures to protect victims and witnesses, including issues like giving evidence by video-link and so on, which I believe can go some way to protect the vulnerable in those circumstances. Fundamentally, it is an option that is open to the DPP to make recommendations on, and it is one of those issues where the DPP would expect me to say it is his responsibility. I would expect him to use his responsibility wisely to ensure that justice is done and seen to be done.

Q442 Lady Hermon: Absolutely, that is what I would expect you to say. Were you therefore surprised, as a Minister in the Executive, to find a colleague of yours in the Executive, a Minister with responsibility for the environment, wheeling it out in evidence in front of this Committee, this afternoon?

David Ford: I am not sure that I am qualified, as a Minister in the Executive, to comment on a colleague in the Executive's view on that. If you were asking me to comment as a member of political party, as to where Alex Attwood comes from as a member of another political party, then I would not be surprised, but I fear that we are getting off my formal role there.

Q443 Nigel Mills: Heading back to deterrents, what do you think of the use of civil recovery or other such powers, like serious crime prevention orders and financial reporting orders? Are they an effective deterrent or really is just a custodial sentence the trick there?

David Ford: It is one of those issues where there can be a package of matters that constitute deterrents in total. There is no doubt that the successful seizure of criminally gained assets can be quite significant, but it is not always that easy to achieve the significant seizure that would be needed to do that. We need to look at both the civil and the criminal sanctions.

Q444 Nigel Mills: They would not be an alternative to a criminal sanction; they would be a supplement or used if there could not be a criminal prosecution or something.

Simon Rogers: What happens in practice is that the crime takes precedence. If there is a possibility of criminal prosecution that goes first, as part of that there is a very thorough consideration given to whether any criminal recovery can be done. The orders you mentioned might form part of that package. Indeed, there have been such orders in Northern Ireland. Civil recovery is then considered as a next stage after the prosecution is out of the way, and again I know from the agencies that they would look at that in individual cases. Obviously the burden of proof is lower and, therefore, there are possibly more options available to them there. It is in the menu,

if you like, but they go down the menu before they come to civil recovery.

Q445 Nigel Mills: When you go through the menu, do you look to make sure or should they look to make sure that all possible offences, like environmental ones, proceeds of crime, have all been considered?

David Ford: It is my understanding that that is generally the case. The whole range of potential offences is taken into account, including those that have a higher penalty, where possible.

Q446 Kate Hoey: Minister, welcome. I hope you are keeping up your running. You attended recently a cross-border seminar on organised crime for your counterparts. Was fuel crime specifically discussed at that? Was there a general agreement and mutual co-operation on that issue?

David Ford: I may have to leave Simon to talk about the details of that, because I am afraid what tends to happen at those seminars is that the two Ministers open, and then leave those most directly involved to carry out the work. It is certainly my understanding that there has been fairly solid engagement around the Cross Border Fuel Fraud Enforcement group, which I think featured at that seminar and certainly has been shown in a number of successful joint cross-border operations. Perhaps Simon can give you a bit more detail on that.

Simon Rogers: The conference is partly about specifically identified issues in advance and, indeed, cross-border smuggling was one of those, but it also provides the opportunity for the agencies from both sides of the border to get together, sit down and talk about strategies and tactics. Beyond the formal agenda, which would have included that, there were informal discussions and tactical discussions about particular groups, etc. Yes, it was one of a number of elements.

Q447 Kate Hoey: Are you happy enough with the general co-operation between agencies so that, if someone is arrested for a fuel fraud charge or an allegation, they can also be charged with other things that are linked? Is there a lot of co-operation to try to make the penalty and the charges as strong as possible?

David Ford: There is co-operation in terms of operational activity on the ground. There is then co-operation in terms of how measures are proceeded through. The last significant operation in September, if I remember correctly, covered something like eight or nine sites across the island. There were two counties in Northern Ireland covered and about six in the South, so there are clearly positive signs of intelligence being shared and activities carried out in a coordinated way.

Q448 Kate Hoey: Forgetting the cross-border aspect, if someone is arrested for fuel fraud, is there then a lot of co-operation to try to see if that person can also be linked in, as very often they are, with other kinds of money laundering or other issues?

David Ford: That is the operational task then for HMRC generally, as the lead on fuel, to liaise with

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the PSNI, because we do certainly see all kinds of other fraudulent activity, including things like human trafficking tied into those same gangs.

Q449 Dr McDonnell: As an appendage to that—Minister, you are very welcome and I am very glad to see you here—in situations where a criminal gang is based in the South, in the Republic, but is selling fuel in the North, the Revenue and Customs suggested to us that it is sometimes easier to have the taxman, the revenue commissioners and the Criminal Assets Bureau pursue an individual rather than investigate the thing through the normal legal or policing channels. Would you be satisfied with that?

David Ford: In the interests of cross-border co-operation, I want to see the maximum penalty applied against criminals, in whichever jurisdiction that is easier done. I have no hang-ups on how we pursue them. We have the cross-border co-operation, and that then may result in action on one side of the border or the other.

Q450 Mr Anderson: Notwithstanding what you have just said, Minister, your long experience of at least 10 years has been a really great improvement and a lot of good things done cross-border. We were concerned here last week that, in terms of sharing information, you can wait up to seven or eight months for a request to exchange evidence. Have you raised with counterparts in the Republic how to speed that up?

David Ford: I have not personally raised that. Certainly my understanding is that, at the operational and investigative level, there is extremely good co-operation, which does not require the formalities to be carried through. Obviously, if you get to the point of talking about things like extradition activity or whatever, it then becomes a significant national issue, but all the evidence I see from my day-to-day contact with my agencies and with the agencies that operate in the Republic is of solid practical day-to-day co-operation.

Q451 Mr Anderson: That is what we have been told continuously in this Committee for many years. It is why I was so concerned last week. In a sense, what we were trying to avoid was having to go down the route of extradition, if we can get evidence exchanged on a quicker basis. We were told by the PSNI that, at the moment, it could take up to seven or eight months. We want to get that down to days, as opposed to weeks and months. It is whether there is any way you can pursue that to try to make that work more quickly.

David Ford: In a sense this is Alasdair's point about taking action wherever it is easiest to take the most effective action.

Q452 Mr Anderson: Still there are things that you could do to help them, as well as help you. If the letters go the other way, will they go more quickly than they are now?

David Ford: Clearly the issues of speeding up justice, in whatever way you do it, are very significant for me and for Alan Shatter in Dublin. The problem is you, to some extent, view it from a devolved position. The

practical day-to-day quick co-operation sometimes gets caught up in international bureaucracy, when you get to things like extradition, but that does not stop the good proactive work together on the ground.

Simon Rogers: If I may come in there too, I think Barra McGrory raised this issue in respect of the international letters of request, which might be for information around a bank account or something like that. That has been reviewed by those who need to be looking at it. Secondly, the Minister raised this with HMRC earlier in the week, and their view of it is that it has improved somewhat. The arrangement is not perfect, but that might be the area you are asking about.

Q453 Mr Anderson: It was actually Drew Harris from the PSNI who raised it with us. It is something that we in Westminster need to raise.

David Ford: The more speedily any of the cross-border bureaucracy is carried through, the better it is, yes.

Q454 Ian Paisley: I, too, welcome you here, Minister. You chair the Organised Crime Task Force. I should declare that once I was a member of that Task Force for a few years when I was on the Policing Board. Are you happy with the resources and technology that HMRC put into counterfeiting fuel fraud?

David Ford: I suppose it is not up to me to second-guess the work being done by HMRC, with its responsibilities here. It certainly seems to me, from the evidence that I have been given by HMRC, that there is very significant work ongoing at the moment looking at the chemistry or technology, whatever it is, that is also being done in co-operation with the science service in Dublin. It is proceeding in a way that, I believe, is as positive as can be at the moment, but clearly there is a huge issue about trying to get ahead of those who are engaging in laundering fuel.

Q455 Ian Paisley: We have heard evidence from a number of parties, including HMRC and indeed from the authorities in the Republic of Ireland. They have told us that they have been working on this since about 2009. The OCTF also launched a tender for a new marker type technology. Do you not think, whenever you have evidence in front of you where major companies tell you that this technology exists, that something seems to be seriously wrong in connectivity, when a Department is not able, or the HMRC division of government is not able, to link that ability to have the technology and put it in the field? Do you not think that more effort needs to be made by HMRC to really drive this, as it would seem to be sitting with us from about 2009 to the present date?

David Ford: My problem, Ian, is that you are saying companies are saying that technology exists, and the view that I have got is that it is not yet certain that we have the necessary requirements. Indeed, I was told of one substance that was supposed to be an excellent marker, which HMRC's laboratory, in tests, was able to launder out relatively easily. There clearly is not a consensus around the science. I would certainly hope that, as soon as there is a consensus around the

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science, it would be put into place in both the UK and the Republic.

Q456 Ian Paisley: Finally, the prospect of a pilot programme came up at a recent cross-border organised crime seminar. Would you welcome, if the technologies were found to be there or could be there, a pilot programme in Northern Ireland or, indeed, across Ireland, to try out those new technologies to see if we can get ahead, as you quite rightly put out, of the criminal?

David Ford: As a devolved Minister, I would have no problem whatsoever with Northern Ireland being the pilot region for the UK. Whether that is a view that would necessarily be taken by Ministers in this place might not necessarily be the same thing.

Ian Paisley: It will be a testing ground for other matters.

Q457 Mr Benton: I think, Minister, that you have answered part of my question in reply to Ian, but I would like to ask, in the absence of a long-term technological solution, is the current strategy of the HMRC, in your opinion, working?

David Ford: I highlighted at the beginning the estimate of the significant reduction in fuel fraud recently, so perhaps one might suggest that it is, to some extent, working, but clearly it remains at a high level. Therefore, it is not working as well as we would hope it would. I am not sure whether that answers the question. Clearly there is a lot of work that needs to continue to be done to bear down on the criminals who carry out this activity.

Q458 Mr Benton: It does answer it, because it is an opinion I am seeking, basically. You covered, as I said before, elements of the other concerns I was about to express when you answered Ian Paisley. At this stage now, I am merely asking for an opinion and I think you have answered that.

David Ford: My opinion is that progress is being made, but we are certainly not at the point where we could say that success has been achieved.

Q459 Oliver Colvile: We have taken some evidence from the DETINI. They say that they do not foresee progress being made on amending the Petroleum Consolidation Act, as a vehicle to incorporate diesel for licensing purposes. Do you agree with that?

David Ford: I did raise the issue of the Petroleum (Consolidation) Act with Arlene Foster, the Minister at DETI. My understanding of what was put as the official view is that the Petroleum (Consolidation) Act is largely to do with the chemistry of petrol and the health and safety aspects of that, in a way that would mean that diesel would not sit easily with it. Therefore, attempting to address concerns about the laundering of diesel would not sit within that Act. It was a means that I had hoped would have had some options of success, but the advice is that it is not the right means to use.

Q460 Oliver Colvile: Do you have a view then as to how we might eliminate the loophole, which has been identified by the HMRC?

David Ford: It is difficult to see anything other than the current efforts to get proper markers. I know, for example, that there were questions asked in the Dáil not that long ago about the issue as to whether it would not be better to remove the green-marking, in their case, and to allow farmers to buy and then reclaim the tax. That was seen to be not workable and equally liable to lead to fraud and possibly greater fraud, as well as a large amount of bureaucracy. That would be seen as the similar view to the UK as well. It is simplistic from the point of view of those of us who want to address the issue, as it currently hits us in Northern Ireland, but it does not seem to be a good idea in the longer run.

Q461 Oliver Colvile: You do not think it might be something that the Health and Safety Executive might take up.

David Ford: I cannot see the specific issue of the Petroleum (Consolidation) Act, on the simple basis of the chemistry of diesel as opposed to petrol.

Q462 Dr McDonnell: Thank you again, Minister, for the evidence so far. One of the things that I want to ask you is: are all the Departments across the Northern Ireland Executive cooperating fully with the Organised Crime Task Force? Could something more be done on this particular issue? Are they giving all the necessary support to counter fuel fraud or do some of them feel that it has got nothing to do with them?

David Ford: I suppose the simple answer is some Departments would feel it is nothing to do with them because it is nothing to do with them. The key partners we would have on this would be the two Ministers who previously addressed you—Arlene Foster at the Department of Enterprise and Alex Attwood at the Department of the Environment. We have full co-operation with them in their areas of responsibility.

Q463 Dr McDonnell: Do you still feel that there might be more done? You heard the discussion earlier about road haulage licensing with Alex Attwood. Do you think that more could be done to tighten up the haulage licensing to make it harder for fraudsters to transport illegal fuel?

David Ford: I need to speak cautiously as Minister of Justice and a former member of the Environment Committee in the Assembly. It seems to me that the DoE is doing its best to tighten up licensing of road haulage. There is clearly an issue in the way that road haulage, from both parts of Ireland, is seen within GB, in terms of its adherence to the same level of standards as are expected as the norm on this side of the water. I am not sure, as Minister of Justice, I should go much further than that.

Q464 Naomi Long: The issue that I was wanting to raise specifically, Chair, was in connection to the issue of links between fuel smuggling and laundering and paramilitarism within Northern Ireland. Clearly there are those connections; we have received evidence in that regard. I would just be interested to know what your assessment of those connections is and whether you believe that that is something that inhibits the

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collection of information from the public. Lady Hermon has already referred to intimidation, witness tampering and so on, but does it actually inhibit people from getting that information?

David Ford: Without wishing to be specific about any individual case, there is evidence of strong links between paramilitary activity and a range of organised crime, not just fuel laundering. That applies in different parts of Northern Ireland and different organisations. The fuel laundering and smuggling issues are particularly issues for some border areas, where it has been linked to paramilitary activity. Indeed, I have heard people been described as full-time criminals and part-time terrorists. There are issues there that need to be addressed, and there is absolutely no doubt that, in those circumstances, obtaining evidence can be more difficult, which is where the counterpoints that I was discussing with Sylvia earlier very much come into play.

This is not an issue that is unique to this particular problem. It is an issue that is part of the ongoing work of the Department of Justice to help build confidence. It is a key part of the personal policing agenda of the Chief Constable to ensure that police officers are going to be out, in contact with the local community, in every part of Northern Ireland. It is an area in which, I believe, the police have seen significant success, but it clearly is an area that is a major task for the police and for my Department, as we look into the future and seek to normalise society.

Q465 Naomi Long: On that issue, to what degree is this a case of former paramilitaries having moved into criminal activity as their primary motivator, as opposed to current paramilitaries funding their campaigns through fuel laundering and other crime?

David Ford: Chair, I take entirely my colleague's point. I am not sure that I could answer it at the level of detail for which she's asking me, but I think the answer is probably both.

Q466 Oliver Colvile: Moving on to that, just so I can actually understand it, there is some suggestion, is there not, that there is some activity that takes place here on the mainland as well, around Manchester and places like that. Do you get any feeling that there is any connection on this kind of issue between some of the more criminal people in Northern Ireland and the Manchester people?

David Ford: My understanding is that, of a reasonably significant number of organised crime gangs that operate in part in Northern Ireland, a number of them would also operate in GB; a number would also operate in the Republic; a number would also operate in mainland Europe. That applies in different directions.

Q467 Oliver Colvile: In 2010, the Northern Ireland Audit Office suggested there should be sharing of data. How is that getting on now?

David Ford: Data on specifically—

Oliver Colvile: Just generally data, information, was going to be shared across this one issue to do with fuel laundering and the whole business of cigarettes

as well. To what extent do you end up sharing information with other agencies?

David Ford: My understanding is, because largely the DOJ is not directly involved, that there is a very high level of sharing between the agencies within Northern Ireland and the UK agencies, and with the agencies in the Republic as well.

Q468 Lady Hermon: I am starting to repeat myself here but, I have to say on a personal basis, I have considered you as the Justice Minister as being a very effective Minister indeed. On a slight tangent here, how confident are you that we can look forward to having you continue as the Justice Minister in Northern Ireland to see through what we have been talking about this afternoon? There has to be some continuity here.

Ian Paisley: BBC News is on in five minutes.

Lady Hermon: Why? Are you going to make some announcement?

Q469 Chair: This question may also be beyond your necessary control.

David Ford: I am sure you want me to give some kind of response to this question.

Q470 Lady Hermon: Yes, please.

David Ford: I will try not to engage in it completely. The position that is currently being put forward by the First Minister and deputy First Minister is that they would formally wish to extend the election of a Justice Minister by cross-community vote, after the 1 May deadline this year, I think I can say without breaking any great confidences. There are private hints that they would see the incumbent staying in post. There are, however, issues of concern to my party dealing with, frankly, my party's entitlement to one of the seats in the Executive, which they are currently proposing to remove, which means that there is a certain amount of negotiation that, I believe, may require legislation in this place. Those issues are to be explored in the coming weeks.

Lady Hermon: Thank you. We wish you well.

Q471 Ian Paisley: You do not want to tell us who you would prefer to remove. No, obviously not. Going back to the subject that is in front of us, data exploitation, the Northern Ireland Audit Office, in 2010, recommended the bringing together of all the various IT networks in Northern Ireland that hold data, which would involve a wide range of public bodies including HMRC, social security, grant claims, etc. What developments have there been in the sharing of data between the different Departments, as proposed by that report in 2010?

David Ford: I am afraid the answer to that, Chair, is I do not know. Certainly through the Causeway IT system there has been significant linkage of the justice agencies, but I appreciate that Ian's question goes beyond the justice agencies.

Q472 Ian Paisley: Minister, I will tell you what it goes back to. I have significant doubts that crimes are actually being properly measured. I come from a view that, if it is not measured, it is not done. I think we

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have faced, over the last number of months during our inquiry, frankly, waffle—waffle from Government agencies that they are doing a good job. “We are doing really well. Don’t worry about it.” But when you ask for specific breakdown of statistics, when you ask are they following up on any of the recommendations from previous Select Committee reports, you actually find that it has not been done and that the measurements are not being done. Therefore, we have no idea of how serious the crimes that we are investigating are in terms of their numbers, and more importantly if there has actually been a serious in-road taken. That is why I have serious doubts, going back to the tracer material, that HMRC actually knows what they are talking about. If they are not measuring

these things properly, as they are being told to by the Audit Office, how do we know any of this is being done? It is really trying to cut through all of the waffle.

David Ford: I do not think I am in a position to “cut through the waffle”, in your terms, if it comes specifically from HMRC. If the issue is whether the DOJ has any locus on the joining-up of information, then I will write to the Committee with the information we get.

Chair: Are there any more questions? Thank you very much for an extremely interesting session. You have been very helpful. Thank you very much. I do not know if I am entitled to say it, but good luck in the issue we have just discussed in May.

Wednesday 25 January 2012

Members present:

Mr Laurence Robertson (Chair)

Oliver Colvile

Mr Stephen Hepburn

Lady Sylvia Hermon

Kate Hoey

Kris Hopkins

Naomi Long

Jack Lopresti

Dr Alasdair McDonnell

Nigel Mills

Examination of Witnesses

Witnesses: **Chloe Smith MP**, Economic Secretary, HM Treasury, **Bill Williamson**, Acting Director of Excise, Customs, Stamps & Money, and **John Whiting**, Assistant Director Criminal Investigation, Wales, West and Northern Ireland, HM Revenue and Customs, gave evidence.

Q473 Chair: Good afternoon, and welcome to the Committee. As you are aware, we are looking at smuggling and counterfeiting of fuel, tobacco and whatever else. We are very pleased to have you to this session, which is most probably going to be the final evidence session. Can I ask you to make a brief opening statement about your role, particularly in respect of HMRC?

Miss Smith: I certainly will, Mr Robertson, and thank you for inviting us to be part of this hearing about oils fraud and crime. I know you have had plenty of evidence up to this point, so I hope we will be able to contribute to that. To set out a few points to begin with, as you say HMRC is the lead Department in the fight against fuel smuggling and laundering. I am sure we will go into the detail of what comprises those elements. I know you have already had sessions with the officials with me today. We are more than happy to go further into operational matters, policy matters, or indeed whatever else we can cover.

I also note at the beginning that I think the Committee is aware that the Department's spending review plans include approval to recycle £900 million back into the front line in this area to tackle avoidance, evasion and criminal attack, which is very positive. We hope to be able to tell you some other positive events that have taken place in the fight against oil fraud.

Chair: Thank you very much, most welcome. Perhaps we could start questions then.

Q474 Kris Hopkins: I have just realised I have not brought my glasses with me; fortunately I have long arms. The estimate for the amount of duty lost due to oil fraud in Northern Ireland is questionable, because by HMRC's own admission they do not know the actual amount of legitimate cross-border shopping. As a result, the margin of error is quite broad. As the Minister responsible for HMRC and protecting tax revenues, are you content with the accuracy of these estimates of how much duty is lost? I want to put a couple of other questions you might want to think about as well. Are there implications for the block grant to the Executive as a consequence of these losses? There is a second question about UK losses, but perhaps we will do those two first.

Miss Smith: Certainly.

Kris Hopkins: What I did not say was: welcome, Minister; it is good to see you again.

Miss Smith: Why, thank you very much. If I may, I beg your pardon, just add to my opening statement—sorry, Mr Robertson—I did not mention of course that I am here in my capacity as Minister responsible for environmental taxation and, indeed, transport taxes. My colleague David Gauke, the Exchequer Secretary, would technically be the Minister with departmental oversight of HMRC, although HMRC is itself non-ministerial, which I suspect the Committee already well knows.

In that case, if I may start on the question of the tax gap, and then go on to implications for the block grant. To answer the first point at a political level, whether I am content that we are able to keep good track of money going in and out is, I suppose, at the root of that question. We have it to the best of our ability. As you have already acknowledged, it is difficult to split out the difference between cross-border shopping and—the non-duty paid label, I should say, includes cross-border shopping as well as the illicit trade and it is hard to split those out beneath that label. As you say, that data does have confidence intervals associated with it, but it means we have a long-term estimate, a trend, if you like, of what is happening. It gives us enough to be able to say we have made some progress over time. For example, the illicit market share in Northern Ireland diesel—combined with cross-border shopping—has come down from 39% in 2006–07 to 12% in 2009–10. That is on a central estimate of that data. That gives us an indication of what is happening, which is helpful; it gives us an indication that it is going in the right direction, which is helpful. But it does ensure we stay on our toes to keep on it.

Is there anything you would like to add on the confidence we have in the data?

Bill Williamson: You are absolutely right, Minister. The methodologies for the data are extremely complex; the Committee has had access to some of those documents. We have been using tax gap methodologies for a number of years, and we have them for all of our indirect and major direct taxes, but we do use them as an estimate of long-term trend. It gives us a comparative picture on how we are progressing in closing the tax gap. It particularly gives us a comparative picture on oil fraud in Northern Ireland and Great Britain. We can tell by the current tax gap figure that it is still around three times more

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prevalent in Northern Ireland than in Great Britain, which affects the way we deal with Northern Ireland as a major priority for us. It gives us comparative information and a long-term trend, but as the Committee has previously heard, it is not an exact science because of the amount of data sources and the complexity of the analysis that goes into it.

Q475 Kris Hopkins: What about the implications for the block grant and the loss in legitimate trade as well? If someone is using illicit materials, presumably somebody else is losing out of the business.

Miss Smith: It certainly is a concern. Clearly, the non-duty paid sector has a relationship to the sector where duty is paid. I am not able to tell the Committee about the block grant completely; that would perhaps be a matter for other Ministers to come here and discuss with you. But we are certainly aware of concerns on the legitimate side of trade from these figures.

Would you like to add anything on the criminal side of this?

John Whiting: What I would add in that respect is that we are very conscious of the impact illicit trade has upon legitimate trade. I am aware that one of the questions later might be, "Is this a victimless crime?" Very much part of the message we have been trying to get out into the public arena is that this is definitely not a victimless crime. Apart from anything else, the legitimate trade is a victim.

Q476 Kris Hopkins: I have one final point on the scale. You said three times the level in Northern Ireland compared with the UK. Is the criminal activity from Northern Ireland being carried out on the mainland? Are criminals from Northern Ireland carrying out some of that smaller amount of activity?

John Whiting: Criminals from Northern Ireland are definitely involved in the illicit trade in GB.

Q477 Nigel Mills: Minister, you said in your opening remarks that you were recycling £900 million into tackling evasion, avoidance and criminal fraud, including illicit trading in tobacco; that is what your predecessor set it out to be. Can you update us on how that £900 million is being spent and perhaps how much of it is being spent in Northern Ireland?

Miss Smith: Yes I certainly will, and I will also ask Bill to come in and go into slightly more detail. As I say, the £900 million is earmarked at a broad level for additional work against avoidance, evasion—with your background, Mr Mills, I am sure you will be perfectly aware of the difference between those two—and criminal attack. It is also important to see that £900 million—£917 million specifically—in the context of the HMRC spending settlement. That does mean that it goes alongside HMRC making savings of 25%, in the context of the whole of the Government having to do such things. But what it means is that you have reinvestment in the front line and you have not only maintenance of our existing activities in this area, but you are also increasing capacity to deliver. My colleagues will be able to tell you a bit more about how that is being put towards personnel, for example.

Bill Williamson: Of the £917 million, some of that money is going towards tackling organised crime. That is not necessarily organised crime focused on any specific fraud in any of our tax regimes, but tackling organised crime across the tax regimes. That will benefit Northern Ireland as well as the rest of the UK. More specifically when it comes to tobacco, some of that investment is going to go into our fiscal crime liaison officers, who operate overseas, working with overseas partners, seeking to identify illicit cigarettes and hand rolling tobacco being targeted on the UK. In 2009–10, through the work of the FCLO network, HMRC seized over 1 billion cigarettes with our overseas partners, which was over 50% of the total cigarettes seized by HMRC and UKBA in that year. They play a tremendous role in terms of combating the illicit trade in cigarettes. Again, we do not know whether, when those cigarettes are intercepted upstream, they are coming into Belfast, London or Liverpool. Again, that is an overall benefit to the UK. At one of our other evidence sessions, we talked about how HMRC would be increasing its criminal investigation capacity. Over 300 additional new posts will be coming in, and that again provides additional capacity. John was saying that he can call on those criminal investigation assets—although they will not specifically be based in Northern Ireland—to be able to tackle fraud here. We have that flexibility built into the way we do our planning and prioritisation. Finally, on Northern Ireland specifically, we have increased the level of criminal investigation capability within Northern Ireland quite recently. As the Minister said, over the Spending Review period we will continue on that level of increased resource in Northern Ireland, whilst other areas of HMRC have to make a 25% overall reduction over the period of the Spending Review.

Q478 Nigel Mills: Thank you. Has any of this money been prioritised on capturing fuel fraud, or has tobacco fraud been much higher in the priority scale?

Miss Smith: They are joint top priorities for the Northern Ireland branch, both fuel and tobacco.

John Whiting: Perhaps it would reassure the Committee to say I am receiving a significant extra resource in Northern Ireland. I promised Lady Hermon that I would give her the numbers in a private session, and we forgot to do that last time. I am prepared to give the numbers in a private session, or inform the Committee privately in some way. But it is a substantial increase: the officers are in the process of being recruited. Some of them are being trained and are in training in London now. There will be something of a lead-in time for those people to become operationally effective. But set against the fact that we already have a downward trend, you can be reassured that we are not going to use those officers on another tax regime. We still maintain the fact that we have to address oils and tobacco as our top priorities.

Q479 Chair: Could you perhaps write to the Committee with those figures?

John Whiting: Certainly.

Chair: Thank you.

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Q480 Oliver Colvile: Can I just talk about the block grant, because I want to understand it. If they are successful in finding more monies, does that come off the block grant or not?

Miss Smith: I am afraid I do not have that analysis here today. I would be happy to follow up with that information if I can.¹

Q481 Oliver Colvile: That would be very helpful. It seems to my mind that, if there is not a way in which the Northern Ireland Executive can get some more money out of it, there is no incentive for them to necessarily push on for it. If they are going to carry on getting the block grant in the first place, it does not really matter one way or the other. That just seems a little odd to me.

Miss Smith: As I said, I would be happy to try to come back to you with further information. I do not have it here today. But I would note that since 2001 the oil strategy HMRC has been pursuing on this matter has shown a high degree of cooperation, not only in terms of Great Britain and Northern Ireland, but of course with the Republic as well, which is perhaps not as bleak a picture as that might suggest.

Oliver Colvile: I suppose I have been speaking from an English Member of Parliament's point of view. I am quite interested to see how I can get more money for my constituents.

Chair: Okay, thank you very much; Sylvia.

Q482 Lady Hermon: Thank you very much indeed, Mr Chairman. It is very nice to see Mr Williams, it is very nice to see Mr Whiting, and it is delightful to welcome the Minister giving evidence to the Northern Ireland Affairs Committee for the first time. Minister, as a matter of curiosity, have you ever had the opportunity to visit Northern Ireland?

Miss Smith: I have, in my former employment, yes.

Q483 Lady Hermon: Excellent. Were you able, on that occasion or those occasions, to travel along the border with the Republic of Ireland?

Miss Smith: No, I have never done that, although I have also visited the Republic extensively with friends and family.

Q484 Lady Hermon: Yes; well, of course Northern Ireland is the only part of the United Kingdom that shares a land frontier with another EU member state, another sovereign nation, the Republic of Ireland. Evidence given to us has shown that international criminals are exploiting the border. We were delighted with the injection of additional funds to fighting fraud, including fuel fraud, but when your Department is prioritising resources what priority is given to combating fraud that is available to international criminals because of the border?

Miss Smith: My colleagues will perhaps try to set out what the priorities are within their work. I hope that might give a starter here. If I may, I just offer a general comment on the way the border in particular poses this problem—clearly you and others have great practical experience of this—it is partly almost too obvious to say: you can drive across it with stuff in

your boot, or in your tank. But I would just note at this point that one of the clear priorities within this is laundering, and another is smuggling. They are separate things. I am sure we can go into more detail on ways to tackle both of those.

But I would also just note that one of the main drivers of fraud in total is the duty differential between road diesel and rebated diesel. It is not only that there are two different jurisdictions with different taxation regimes but also the difference between tax and less tax, or rebated, which goes as high as 46.8p per litre on diesel. We suggest that is one of the drivers. Of course, that does occur in other parts of the UK as well, between red diesel and road diesel.

Lady Hermon: Mr Whiting is anxious to add to that, Minister. I just know by the look on his face.

John Whiting: I am not sure that I am anxious to answer it.

Lady Hermon: Yes, but you are now.

John Whiting: But I can perhaps provide some help. Internationally, you would look around and see there are borders; borders provide opportunities for smugglers. Despite Mr Colvile's assertions last time that it is perhaps romantic—

Oliver Colvile: I merely remembered my childhood of Russell Thorndike books.

John Whiting: We know about your father's book.

Chair: We are not going too deeply into Oliver's childhood, thank you.

John Whiting: But borders and differentials in duty rates provide opportunities for criminals. Different jurisdictions obviously have different laws: something is legal in one jurisdiction; it is illegal in another jurisdiction. We have this Europe wide. I am sure it is a wider issue. We are part of Europe, and therefore we do not have border controls. There is an issue around the fact we have a border; I am not sure that the border between Northern Ireland and the Republic of Ireland is any more of an issue than the border between Germany and any of its neighbours.

Q485 Lady Hermon: No, but within the UK it is significant.

John Whiting: I am looking at this as a global issue around the phrase "a border and smuggling". Does it provide an opportunity for criminals? Yes it does. How do we respond to that? I suppose we have two options. The absurd option is we put a line of men along the border and we stop everybody from crossing. We are not going to do that. I do not think it is within our abilities to even have a border crossing now. We do not put an officer at the roadside anymore. We used to: there were border patrols and crossings 30 years ago. We do not do that.

How do we respond now? We respond by developing our intelligence against those criminals who are engaged in this activity. We are targeting those who we believe are most active in all types of crime. I am sure that PSNI would tell you that they are involved in developing their intelligence and operations against those individuals for the issues they are responsible for, whether it is drugs or waste, where they would work with the Environment Agency. Where it clearly involved cigarette smuggling, we would work with the PSNI assisting us in that, as well as fuel fraud.

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Q486 Lady Hermon: Can I take it on a little bit? The UK Border Agency is obviously the responsibility of the Home Office. Are you able to explain to us in practical terms how the UK Border Agency and HMRC overlap? How do they work together in a practical fashion in dealing with smuggling and fuel laundering, etc, between Northern Ireland and the Republic of Ireland?

Miss Smith: If I may add a brief statement, I will then hand over to the operational experts.

Lady Hermon: Yes, please. As long as we receive the evidence, we do not mind, Minister, thank you.

Miss Smith: Very briefly, just to furnish you with the detail, I am meeting the head of the UKBA tomorrow for the first time in my tenure in this post. It is a relationship that occurs ministerially, in the sense that I shall meet the Minister for Immigration at the same time, but clearly then I think at all levels operationally there is close cooperation.

John Whiting: Firstly, the UK Border Agency deploys at the frontier, but at the moment generally speaking deploys at our ports and airports in Northern Ireland. It does not operate along the land boundary, but it will provide assistance if we have specific operations. They are very keen to be involved. But it does not provide or deploy officers to the land boundary to intercept anybody who may be moving contraband.

I would explain something that I am sure the Northern Ireland Members are aware of, but maybe not. There is a thing called the Prescribed Area, which is an imaginary line about 20 miles within the border. Effectively, anything between the border and the imaginary line—which is set out on maps—is the Prescribed Area. As far as HMRC is concerned, anyone moving goods within that area can be stopped by an officer of HMRC, as if they were at the border. Effectively the border is much wider than the imaginary line on the map—the red line between the UK and the Republic of Ireland.

Q487 Lady Hermon: Can you just clarify then that the UK Border Agency, based at ports and airports—which happen to be away from the border in Northern Ireland—does not have the powers or responsibilities to move into the Prescribed Area? If HMRC were to notify the UK Border Agency, and you said that the UK Border Agency is very keen to be of assistance to you, they are not able to move from their ports and their airport bases into the Prescribed Area to help you and assist you, are they?

John Whiting: I do not think there is anything in law that prevents them from doing that. I am not sure it is part of their operational plans at the moment. I know that there are discussions and perhaps aspirations in respect of the National Crime Agency, who will be subsuming the UK Border Agency in time.

Lady Hermon: I am just keen that Northern Ireland does not become the soft underbelly, if you like, that international criminals can easily come through en route to the rest of the UK. Thank you.

Q488 Kris Hopkins: I understand from a staffing point of view where you have your staff at this moment in time. You get a top tip; there is something

coming through; how quickly can you respond? I sometimes have trouble getting a police officer to come out to my village within a few days. How quickly can you get the Border Agency to respond to intelligence like that?

John Whiting: Firstly, if I had a top tip and it was coming across the border, I would not be calling the Border Agency, because I can send my own troops. I have roughly 10 officers on call at any given time, so if we have a top tip at midnight, we can respond by sending in those officers. We would engage with the Police Service of Northern Ireland to support us. We can have probably 10 officers there within 45 minutes if we have a top tip.

Q489 Kris Hopkins: You have a response unit.

John Whiting: Absolutely.

Q490 Naomi Long: You are very welcome. As predicted by Mr Whiting earlier, we are about to move on to the issue of victimless crime, and the perception that fraud, and fuel fraud in particular, is a victimless crime. It has even been suggested in some of the evidence we have received that some people may derive some perverse pleasure from outwitting the tax system. That is something that would be of concern to us. Could you tell us what you are able to do as a Department in terms of changing people's mindsets and creating direct linkage between the tax and revenue that are raised from fuel duties and services that are provided to people in their local communities, and also in terms of linking the criminal behaviour, the intimidation and many of the other things that go along with these kinds of crimes, to the purchase of cheaper fuel, so that link is live in people's minds at the time they make their purchase?

Miss Smith: I begin with a couple of examples of what is taking place. Within the partnerships I was beginning to outline earlier, which we can lay out in far greater detail, there is a very strong focus on public awareness to address exactly what you have just described there. That is starting to show some results—we understand that perhaps you can track those results over the last three years or so—which is to say that you have a Crimestoppers campaign functioning there, and documentaries by Panorama and others highlighting the problem, explaining what it is and the impacts of it.

Another thing you can do to raise this up the agenda is talk about the environmental damage from fuel fraud and laundering. I have to say, I was told a slightly hair-raising anecdote. I might be about to go off script here; I am not sure it was the officials who told me this—it may be unauthorised information—but I understand there is a way to launder fuel using cat litter in a stream, I am told. Perhaps these gentlemen will correct me if that is not the case, but it is clearly something you would not want to have happen at the back of your village: not pleasant for anyone involved. There are many ways to draw out the public impact of this: some are financial, others are environmental, and then others are cultural. In terms of how we are doing it, would you furnish more detail?

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John Whiting: We have articulated some of the work we have done, mainly through the Cross Border Fuel Fraud Enforcement Group, since July 2008, which was firstly to launch that group with a media campaign including the then Security Minister, Paul Goggins, and HMRC's Minister at that time, Jane Kennedy. That was followed up with a very proactive campaign, involving taking broadcasters to laundering plants and on operations, which hitherto they had never had any kind of access to. Part of that led to national TV appearances—including for yours truly. The message we were trying to get across was not necessarily for the UK public; it was for the Northern Ireland public. These are issues that are happening in your backyard—we know the Nimby phrase, not in my backyard, but people are sitting with huge piles of cat litter and other toxic waste in South Armagh. We are trying to persuade those people to provide information to HMRC that will lead us to finding those laundering plants. As you say, we do have a challenge to make the public more acutely aware of the impact on their lives, whether it is waste in their forests and woods or rivers, or whether there is an illicit huckster site and there is a queue of cars trying to get into that. We need that information. I suppose we decided to relax our interest with the broadcasters, as they can get a little bit bored of us. We moved into the newspapers and the internet. We are almost certainly going to go back to the broadcasters and see if we can get further interest through news releases. Last time we were here we indicated that we were hoping to have an international workshop. We have now secured some money from Brussels under the Fiscalis Programme. That workshop will be taking place in March. I am very pleased that David Ford is going to open that workshop, and we will be seeking as much media interest as we can get, because part of what we are saying at that workshop is that we are very much in the lead in the UK with some of the work around this. Some of our European partners are behind us, and only now realising that they have a problem like we do.

Q491 Lady Hermon: Sorry, where exactly are we going to have that conference?

John Whiting: The Hilton hotel.

Lady Hermon: The Hilton, okay. Wrong constituency, that is fine; it is Northern Ireland—it is Belfast.

Q492 Naomi Long: I have a follow-up. You have mentioned the efforts you are making to try to create that more immediate link in people's minds. How do you measure the effectiveness of that work? Have you seen a reduction in demand for illicit fuel, for example, or is there another measure by which you can judge whether that message is getting through to the public, particularly in the current economic climate, where people may opt for cheaper regardless? That is a challenge that we face at this point in time.

John Whiting: What you have said there is true. Firstly, we had that Crimestoppers campaign several years ago. We spent £100,000 of criminally confiscated money on that campaign, but I had a budget for that. It would have cost an enormous

amount of money to do a post-Crimestoppers campaign review to see how well the public had received it, whether it had influenced them. Some work has been done around the counterfeit trade, and I am aware—the PSNI may have told you this—that, in respect of their campaigns, they do receive feedback that the public become aware, and the target audience are aware of and understand the campaign and the messages sought to be sent across. They still choose to buy counterfeit products for the very reasons that the economy is in difficult times and people want the deal. We have not done that work; we have not spent thousands of pounds doing that sort of analysis.

There is a piece of work, which again is being done under the Organised Crime Task Force, around changing the mindset, and there will be some surveys attached to that. That is due to happen. Linked to that—I know, because I am part of this—there is to be a four programme series about the Organised Crime Task Force. Filming is about to start, and that will include the work of HMRC. Each of the organisations involved will be seeking to make some of those linkages around organised crime to try to get the message to the public that what you do with your counterfeit product—with your illicit cigarettes and your fuel—has an impact: it is funding organised crime, causing environmental damage, impacting on cheap labour in the Far East, etc.

Miss Smith: If I may add one element to that, perhaps we should talk about the registered controlled dealers scheme. On the good side of life, as it were, we have a way of measuring what is legit fuel going through. Through that, we have been able to track volumes and register suppliers within that. You can have a fairly clear idea of what is happening on that side of the equation. We think that has had quite some success over time.

John Whiting: Over the past 10 years, that has been a very positive influence in squeezing the illicit trade. Of course, that only applies in the UK at the moment. This causes some displacement, and that is why we get considerable amounts of green diesel being used in the laundering process.

Q493 Nigel Mills: Do you think this is particularly a matter for tobacco and fuel duty avoiding, or do you think there is a general issue that people do not appreciate how much tax they pay and how that is spent? Do you think there would be a role here for letting all taxpayers have more information about exactly how much they are paying and what it is used on, so the general appreciation that paying taxes leads to public services?

Miss Smith: I suspect Nigel may have been in the Chamber for the Ten Minute Rule Bill that proceeded today, where the Member for Ipswich was laying out an idea that would help with that. Yes, of course, is the answer: there is always a call for that. Tax transparency is one of the key things the Treasury is working hard on over this Parliament and through HMRC, not just for the areas these gentlemen here are responsible for but, of course, within personal tax and, where it is relevant, business tax as well.

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There is work that every part of Government must do to be absolutely clear about what it spends, what it costs, what choices are there within how we spend public money. My personal view would be that it is always helpful to get hard figures out there into the public domain. For example in this case we think there is an estimate—as we have discussed already—of £70 million uncollected in relation to diesel in Northern Ireland, which correlates to the 12% I mentioned earlier on. I am personally a great believer in the hard facts, and I am certainly a believer in having tax be as transparent as possible so that public spending can be held to account.

Would you add anything in general about how we do that in HMRC?

Bill Williamson: These things are difficult to measure in terms of demand and the impact you can have on public perception and behaviour. As John described, we had similar campaigns on illicit tobacco as well. The real measure we have is how we impact on the overall crime over a period of time. We have to say that is partly the enforcement action and partly the amount of influence we have over public demand for cheaper fuel and cigarettes. I do not want it to sound too sycophantic, but the role this Committee is playing in these hearings is very important as well. As we said at the beginning, the fuel crime in Northern Ireland is proportionately three times larger than fuel crime in Great Britain. It is a UK problem, but that means that some of the key victims of the crime are legitimate businesses in Northern Ireland, who are proportionally impacted more than the businesses in Great Britain overall. We have to keep getting that message across at every available opportunity. These hearings will help that process as well.

Miss Smith: Never lose an opportunity to compliment a Committee.

Chair: Thank you very much, thank you. I take it the Government is supporting the Ten Minute Rule Bill then.

Nigel Mills: It is very churlish to ask that.

Q494 Jack Lopresti: Going back to the education of people that fuel smuggling is not a victimless crime, I hear what you said about what you are doing from your level, coordinating and putting in resources, but what is happening on the ground with local initiatives, from local community groups and local councils, that sort of thing, coming from the bottom up across communities?

John Whiting: Certainly, if we are talking about the Assembly, the Assembly would take an active interest. Clearly, we have the Policing Board, who are heavily involved in advertising issues of the day. I have to say, more than any other part of the country I have lived in or sat and watched local television in, crime in all its forms seems to be the subject that the media likes to focus on. There are lots of different crimes, but it does seem to form a greater part of the news than any other part of the country. You mentioned the councils: the councils, certainly in Newry and Mourne and Armagh have an issue with the costs of cleanup. I know that they are trying to get that out into the public mind—that their cleanup costs mean that something else is not being delivered. We need to

work harder with the councils as well as a partnership. We sit on a fuel oil forum with all of the councils, representatives from the councils, looking at various initiatives that we can introduce and have them involved in, as well as working with the trade. We have a six-monthly meeting with the trade, where we invite their comments as to what they think we can do and report back to them on what we have achieved.

Chair: We were on the so-called victimless crime.

Q495 Dr McDonnell: Chair, just very quickly: surely education is very difficult, because the consumer of laundered or smuggled fuel in most cases does not know, whereas, with tobacco, in most cases they do know. I have no doubt I have used smuggled fuel. Most of the fuel stations—or a large percentage of them, from evidence we have heard earlier—are somehow or other compromised. I have innocently driven into a petrol station and filled up a tank of diesel. A number of my friends were totally oblivious to the fact that they were doing this until the car engine or the injectors blew up, and they found the bleach has an effect on this. On the education thing: is there much point? Quite frankly, nobody wants to buy diesel—as most of them are buying it—at full market value that is adulterated in some way. Is your education project not hitting your head against a brick wall, so to speak?

John Whiting: I would have to accept that there are some filling stations that are selling laundered fuel. We are actively involved in a project in respect of filling stations where we believe that is happening. We are trying to bring them to boot by a regular and systematic approach, where we are challenging both the fuel in their large tanks and their business records as well. There is a policeman that I deal with on a regular basis, and I told him we had visited and taken the fuel, and it was illicit. He said, “That is the filling station that I use.” That is the example. We are trying to squeeze that particular outlet for fuel.

What we are seeing as a result is a preponderance of the huckster site, described by Panorama as a pop-up site. This is a different problem entirely because they are very cheap to establish; we dismantle them; they pop up again. We removed three from Belfast completely last week or the week before. I am not sure whether they have reappeared. The point about these premises is that they are very clearly illicit. We are aware that there are queues of cars trying to get into these places. I have been to one of these premises when it was working before: it was selling pure kerosene as diesel. The public were buying what they thought was diesel but it was kerosene. That was very definitely going to damage the engine. These are some of the messages we have to get out to the public; we have to make those associations. Yes, you are getting a cheap deal today; you have a big bill with your garage tomorrow. We are trying to squeeze the illicit trade into or away from the filling stations, which appear to be legitimate to the public.

Miss Smith: If I may add a brief political point on that, there is a general role for Government to play in protecting consumers, through various ways. This is one of them. There are others, of course, that you would hope would help in those instances.

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Dr McDonnell: My problem is I regularly buy fuel from what I think is a reliable source, but inevitably you are travelling at some point or another, and you buy fuel or fill up a tank, or whatever, and you are not quite sure. You become a little bit neurotic about it after a while, if you are paying any attention. I have been, and I am beginning to hear knocks in my car engine; I hear all sorts of things. All I am saying is that in the majority of those cases the people are the victims—the people who use the diesel—rather than being complicit in it, and no amount of education will help them. I am sorry, Chairman.

Q496 Mr Hepburn: These garages that use and buy this fuel are not just going to buy one load of it; they are going to be serial offenders, and they are going to do it over a period of time if it is going to pay off for them. Surely, if they are buying that, they are not going to be paying tax. It must be fairly simple to look at a garage and do a comparison with something in the UK, and assess and say, “How come they are in business? How on Earth do they make a living because they are not paying any tax?” It must be fairly easy at the end of the year; they must stand out like a beacon.

John Whiting: We have a holistic view in respect of our fuel trade. On the one hand I have criminal investigators and intelligence officers seeking opportunities to target filling situations. This is an end-to-end process, so if we catch somebody moving a certain amount of fuel in the back of a van, let us say, that is potentially a case we will take on for investigation and prosecution. From the bottom end to the top end—the godfather behind all this—we would look for opportunities for prosecutions, but we are also looking for opportunities whereby we can apply all of the tax regimes.

Just as you indicated, an individual running a filling station might stand out like a sore thumb, but it is not quite that simple. What they tend to do is take two legitimate loads and one illicit load. That does not quite stand out like a sore thumb. There is a challenge for us there. But we will look at these individuals from their VAT perspective, and at their personal tax and business tax, and some of these people are very often claiming their tax credits as well. We will look at them holistically, and whichever way we can assess money and take it off them, we will do that. Sometimes it is a civil response; sometimes it is a criminal case.

Q497 Oliver Colvile: One of the issues we feel concerned about—and no doubt others will comment otherwise—is the inability to get as many convictions as possible and to have them as high profile as they possibly can be. It seems to my mind that, if there were regular stories in the local newspapers, or for that matter on the Northern Ireland news, with people being nicked and put into prison with high levels of imprisonment sentences—which is something that most certainly needs to be looked at—do you think that would have a significant impact on deterring people from getting more involved in this and the whole of this crime as well?

Miss Smith: I certainly think it would myself. There is a slightly more complex debate or Committee

session to be had there about some aspects of sentencing and how the whole justice picture works there. But from the point of view of these cases, whether it is civil or criminal, there is a public service aspect to publicising some of what happens, and the penalties.

Q498 Oliver Colvile: You talked about £70 million being lost to the Exchequer, whether it is in Northern Ireland or here. If we quantified the number of schools, hospitals or nurses not being employed, that would be a very useful way of making sure that people understood what was happening. That may encourage more people to shop those people who are doing this criminal activity as well. On top of that, we need to ensure that more Northern Ireland Ministers—not necessarily here, but in the Executive—are seen to be campaigning in a bigger way and having a higher profile. Do you agree?

Miss Smith: I would not be in a position to comment specifically on the way the Ministers conduct themselves, but as I say there is certainly a public service point there for the protection of consumers and revenue, and for the more broad political service of how we spend our money as a country. I genuinely think that is right.

Q499 Oliver Colvile: How much support do you have from the main people, like BP, Shell and people like that, who have stations in Northern Ireland as well? They are obviously quite keen to be supportive of a campaign to do that.

John Whiting: I do not think BP are in Northern Ireland, but BP are part of the trade that meet with us on a six-monthly basis. We are meeting with the representatives of these major players. They are generally very supportive. That is a good news story, as they were not supportive three or four years ago; they were quite critical of HMRC’s activities and frustrated with what they felt was probably inertia. We now have their support. We look for suggestions from them. I have to say, again, probably using Bill’s line, the Committee and its hearings have been very successful in raising this issue around sentencing. I am not sure how much good you realise you have already done around the Lord Chief Justice’s promises. But before the Director of the Public Prosecution service met with the Committee, we had a discussion around what are called referable cases, which are cases where we think the sentence is unduly lenient. That has progressed beyond those initial discussions. We are aware it may now be possible for the Assembly to introduce some legislation in Northern Ireland.

Q500 Oliver Colvile: Are you saying that we have shone a spotlight at an area that needed to have a spotlight shone at it?

John Whiting: Absolutely. We do have to defer to Westminster, but I do not think there would be any objections at Westminster if there were some new legislation that would enable excise cases to be included in the list of referable cases in the particular legislation under which we prosecute. That would be very, very good news.

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Q501 Kate Hoey: Minister, you mentioned earlier the difficult issue of the tax differentials between the Republic of Ireland and Northern Ireland. Clearly a sovereign country like the Republic of Ireland has the right to make its duties whatever it wishes them to be. Has Her Majesty's Government at any time in any meetings with Republic of Ireland Ministers—your appropriate opposite number—ever raised the particular issue of the differentials in terms of fuel, tobacco and one or two other areas?

Miss Smith: The Committee may have to forgive me; I have not done so in my time as Minister. I can ascertain historically what has taken place.

Q502 Kate Hoey: Do either of you discuss it with your counterparts in the Republic?

Bill Williamson: We do now meet at senior official level with the Revenue Commissioners and the Revenue Commissioner in the Republic of Ireland. We have an annual meeting and discussion, and have quite a lot of meetings outside of that. We do not get into the conversation around duty rates between the two countries; we respect the fact that is an area of sovereignty for the Republic.

It is worth reflecting a little bit on duty rates and how they affect behaviour. We have found over the last year, when we have been tracking the tax gap figures, that the duty rates have equalised.² At one point we saw reverse cross-border shopping. I said in our last evidence session that the calculation for 2009–10—although we cannot separate cross-border shopping—is probably as close as we can get to a figure of illicit fraud within our calculations, simply because cross-border shopping would simply not have been worthwhile. Since July last year, we have seen the differential start to grow again.³

Q503 Kate Hoey: Is this just fuel, or are you talking about tobacco as well?

Bill Williamson: Diesel specifically. The differential remains quite small on petrol. We have a much bigger problem, of course, on diesel. I am reliably informed by Mr Curtis—who gave evidence at our last session, and I believe lives on the border and is an avid cross-border shopper—that we are talking about a 21p per litre differential now. It has moved quite significantly. That requires John and his people to be very alert to those changes and those indications.

The differential between rebated and un-rebated, as the Minister said, is much greater: 46p per litre. The profits are much greater there for the criminals. We need to be able to respond: as the pound strengthens against the euro, it will become more profitable again to have straight smuggling from the South to the North. We have had some recent operational examples of that. In terms of the operational activity, again, John has the flexibility with his resources to be able to deploy them and respond to those threats when they come through changes in rates in that respect.

Q504 Kate Hoey: I saw the figure for tobacco loss: a £3.8 billion loss in 2008–09. Is that a correct figure?

² *Note by witness:* I should have said that pump prices have equalised.

³ Ev 112

Was the loss in revenue to the UK Treasury due to tobacco fraud around £3.8 billion in 2008–09?

Bill Williamson: We use a system with tobacco across HRT and cigarette markets. It gives a spectrum. You are absolutely right: the spectrum is somewhere between a lower band of £1.1 billion and an upper band of £3 billion.

Q505 Kate Hoey: Would it ever be possible for Government to decide, “Look, we are losing so much in Northern Ireland; let us take the tax off a bit and make Northern Ireland a special case because we have a land border with another country”?

Miss Smith: That would be a slightly challenging decision to have to make. Of course, I am duty bound to say the Chancellor keeps all taxes under review and their rates for Budget. I am not necessarily sure that would be the particular tool to tackle this with, because there would still be plenty of other ways to operate and plenty of other things for criminals to do. I am sure that HMRC has years of experience in that sense.

If I may briefly note at this point that there is the point, if that is in the Committee's minds, about air passenger duty, where the importance of the land border has been acknowledged, but I do not think that sets a precedent across all taxation, especially when there are such extensive criminal elements involved in this case.

John Whiting: The only thing I would add is that where a pound is to be made, the criminal will attempt to do that. Clearly, if you did seek some kind of harmonisation with the Republic of Ireland, the first difficulty is the euro/pound exchange is changing constantly, so how do you maintain that harmonisation? We have probably seen a 10% appreciation in sterling over about six weeks. We would then move the opportunity for making money to the ferry journeys across into the mainland.

Q506 Kate Hoey: But you cannot really blame a heavy smoker who lives near the border driving across—you cannot stop them doing that.

John Whiting: I have to say, it is dearer to buy cigarettes in the Republic.

Q507 Kate Hoey: So we do not really mind if it is the other way round?

John Whiting: The issue with tobacco is not smuggling between Northern Ireland and the Republic; there is an issue in the fact that many cigarettes are smuggled into the Republic, which then come north into Northern Ireland, but that is just around the fact that there may be a perception that it is easier to bring the cigarettes through there than the UK port of Belfast. There is not really a cross-jurisdictional issue, because there are brands. A popular brand that is sold at the moment is called Palace; you would not have many people from the Republic of Ireland wanting to smoke a brand of cigarettes called Palace.

Q508 Mr Hepburn: On the issue of a marker, it strikes me as strange we can put a man on the moon but we cannot come up with some form of technology

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to get a satisfactory marker that cannot be diluted in any way. What progress is being made on the marker?

Miss Smith: I am told there is a significant programme going on at the moment, which I am sure John will be able to tell you all about.

John Whiting: Firstly, as we told you, there is a short-term answer around the current marker. We are still on track to introduce that improvement by 31 March. We would not want to reveal too much about that, as that would be giving a heads-up to any of the criminal gangs engaged in this crime who may be watching today. There is an ongoing, longer term programme, as you know, that involves the procurement process, which relates to a completely new marker.

The first main significant progress is that we have signed an MoU with the Republic of Ireland, with the Revenue Commissioners and the state laboratory, to work together.⁴ Rather than having a two-speed process between the jurisdictions, we have agreed to work together in effectively one tendering process, and where a number of potential suppliers of a marker engage in that process.

Q509 Mr Hepburn: Are you satisfied with the progress that has been made so far?

Miss Smith: I certainly am at a political level. My colleague David Gauke obviously has ministerial oversight as well. Clearly, considering what we have said about the prime position of laundering within this criminal area, specifically of rebated to non-rebated, this is one of the key areas to be focusing on. I am certainly reassured by what I have been told is occurring under that programme.

John Whiting: If you ask me, as somebody who wants to reduce this as much as possible, whether I am satisfied, in some senses I am not disagreeing with the Minister at all. But I would rather we had the answer now. If we have five companies who are interested, I wish they had come forward and given us the silver bullet, but Mr Curtis's evidence last time around was that none of them have yet provided the answer.

There is a process that we are going to go through, which has to be transparent, so there can be no suggestion of favour in respect of any of the interested firms. Apart from that, they have to give us something that is better than we already have. They also have to give us something for which we are able to conduct a quick and efficient roadside test. Mr Curtis said that the four companies that had previously shown an interest had all been invited to come and see how we operated on the roadside, so that they had some idea of what the problems were that they had to overcome. So far none of them have taken us up on the offer. I have to say, I am particularly frustrated with the trade and its response to the Department's invitation to come up with a solution.

Q510 Mr Hepburn: Is it still your view that there is possibly a foolproof marker?

John Whiting: I am aware that there is a particular company that believes it has a foolproof marker. I am aware that the state laboratory in Dublin has tested

that marker and on seven occasions has gone back to them and said, "No, we have laundered it out."⁵

Q511 Mr Hepburn: And the delays are nothing to do with a lack of resources?

John Whiting: This is private industry. We are using the laboratory of the Government Chemist; the Revenue Commissioners used a state laboratory. Those organisations are equally as involved in this process as the Revenue Commissioners and HMRC. We have four partners seeking to get the foolproof answer that you allude to, the silver bullet. We are not the chemists, and we are asking industry to come up and help us. They have not provided that answer yet, but we do have to go through a process. At the stage we are, I probably have the same frustrations as you: I wish somebody would come up with something that is better than we have, because I know the launderers have become highly efficient in what they are doing.

Q512 Mr Hepburn: I find it remarkable that there is not a company out there that would see an opportunity to make a lot of money and grasp it. That is remarkable. Do you agree with that?

John Whiting: Yes.

Bill Williamson: Your point is well made, Mr Hepburn. In fact at the moment legal teams in both the UK and the Republic are looking at revisions to put forward proposals—they have to go to our Minister, of course—for a joint tender for a new marker. We really need to encourage industry to come forward. As John has said, when we looked for expressions of interest previously, we had four or five companies come to us. They have not been out on the ground with John's people to look at what they do, and see whether their products could be adapted and work with that. The products that have come forward and claims that have been made about the indelible marker have not stood the test of the technical testing that has gone on and the Republic has carried out in their labs.

The conference being held in Belfast, which John mentioned earlier and is bringing together a number of EU member states, is also partly about reaching out into industry to see what is out there, because when we do go for a joint tender, it is critical that we get as many companies as possible coming forward to give us options. We have not had that at the moment, and this is something I would like to encourage more and more. Hopefully, the hearing here will encourage industry to come forward.

Q513 Kris Hopkins: You might already be doing this, but bearing in mind the scale of loss here as a consequence of this, what about going to universities, going out to PhD chemists—the Government offering a competition to do this: the patents and the whole range of different things there? Securing those losses could be beneficial. If it is difficult, then rather than just rely on a commercial company, perhaps we need to get some of our great brains thinking about it as well.

Miss Smith: There is something in that, and I wonder if there is then a further aspect to bring to light about

⁴ An MoU is expected to be signed in the near future.

⁵ Ev 114

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how you could link that with the need to make this a known crime against the community and against individuals and, as I think you are alluding to, recycle any gains made from that against losses. I am conscious, in some of the cases of sentencing that have occurred, there has been an opportunity to recycle funds back round from that. There could be a very interesting opportunity to do that now.

Q514 Kris Hopkins: Just to follow on that, I am sure if you wrote to our universities across the country and said we have this drama—I used to lecture, and you get people coming up with a great idea, and you put it to students; you'd be amazed—they might find a solution to it.

Oliver Colville: I am sure Plymouth University would love to do it.

John Whiting: When the original advert went out, it was in a gazette that would go out to academic institutions as well. I am aware of a piece of research that is being done by a university on our behalf in respect of something that relates to the problems we have. We do have some of our best minds working on some initiatives. Of course, I am not sure that everyone who might have been interested would have read the initial advert.

Miss Smith: Britain, as far as I know, Chair, remains a nation of garden shed inventors, so maybe there is one out there listening to this.

Q515 Oliver Colville: A curious question: are we the only country in the world that suffers from this problem? What happens elsewhere? What have they been doing, and have you been speaking to them to try to get some understanding from them as to how they have been dealing with this?

John Whiting: That is why we have 17 countries coming to this workshop, because we have been speaking to them. Some of them have different regimes and different problems, or not quite the same problem. I am aware that there is a problem around fuel laundering in Japan; there is a similar problem in California.

Q516 Oliver Colville: Have they cracked it?

John Whiting: No, they have not. I would be very encouraged to travel there and find out.

Miss Smith: May I just add a detail that might be of interest to the Committee on international matters? There is the EU Energy Products Directive, which does have an effect here in the sense that—in answer to Ms Hoey's question—you cannot just slash the duty off fuel products. Partly for that reason, there is an international obligation on us to work within that directive. That plays into your question there, in the sense that you cannot go around levelling everything to zero across the world, and, even if you did, there would still be criminal elements. That is just a bit of extra detail for the Committee.

Q517 Kate Hoey: Minister, am I right that the estimates for lost revenue from fraud with fuel are showing a downward trend?

Miss Smith: Yes.

Q518 Kate Hoey: In that case, given that criminals would then be looking for something else, are we one step ahead in thinking where they might be going to next?

John Whiting: It was interesting that, in the last evidence we gave, Bill provided the new information on the reduced estimate in terms of our tax gap. I followed up by saying that we had increased our operational activity and we had a significantly higher number of cases with the Public Prosecution Service ready for court. Mr Paisley's response to that was, I think, "Mr Williamson, you have been trying to lead us up the garden path. You have said this is a downward trend, this is not a very serious problem, and then Mr Whiting is telling us that it is a serious problem." What we are doing is recognising that there is a problem; we have put additional resources against it, and we are putting even further resources against this problem to maintain the downward trend. What we are working on is making sure that we are alive to what is happening. That is why we look at the exchange rates and we say, "Right, it is now more profitable to smuggle than it was six months ago." We have to be alive to the fact that smuggling may start happening, which could mean there is less laundering, or it might not, because there is still a lot of money to be made from laundering. What I am saying is we are not complacent.

Q519 Kate Hoey: No; we should not put a lot of emphasis on the downward trend.

John Whiting: We are not taking a lot of glory from it, I have to say that.

Bill Williamson: If we go back 10 years, before we had a strategy on oils, we know from the analysis that over 50% of diesel in Northern Ireland in vehicles was illicit product. We know we have had an effective impact over that period of time, and so we do have the downward trend. But we also know that one of the nuances with Northern Ireland, which is not necessarily prevalent in Great Britain, is, over that period of time and before, we have had organised criminals who have developed specific ingenuity and expertise, deep experience, of how to perpetrate this crime. In our last evidence session we gave some examples of their global reach as well. We are reaching out for new products and technology to help us; they will reach out as well for new products and technology to be able to launder fuel. I am not answering your question about whether there are new crimes; I am really saying there is a crime that has been in Northern Ireland for a long time now. I think we have made some quite deep inroads into it, but it is still highly profitable and there are still people with unique skills that are able to perpetrate this crime on a significant scale.

Q520 Kate Hoey: Are we making any inroads into the idea that it is somehow acceptable in Northern Ireland, because of its history in terms of paramilitary involvement in crime and all of this? Are we getting across the message that we are taking criminal activity of any kind very seriously? There is no doubt that for certain periods things like this would not have been treated very seriously, because it was seen as

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something that went on, on all sides of the community, to help fund paramilitaries.

Miss Smith: It is clear that we must take that approach. There are no two ways about that, in my view.

Q521 Kate Hoey: Do you think Northern Ireland itself is doing as much as they can about that?

John Whiting: I have to say that 10 years ago we would fly into South Armagh to conduct some operations like this, and we would perhaps get half an hour to do our business and then we would fly out again. It was really quite unsatisfactory in terms of what we could achieve. That is not the case now. We are able to be on the ground for considerable amounts of time and we are able to make the seizures we feel we need to make and have the time to collect our evidence. That said, we would not go without police support.

Q522 Lady Hermon: Following on from that, I am sure you are aware that last week, in his evidence to us, Alex Attwood, the Environment Minister in the Executive in Northern Ireland, explained to the Committee that there was the spectre of intimidation for those who would contact, for example, Crimestoppers in relation to fuel fraud. You have told the Committee just now that you still have police protection when you are in South Armagh in particular, but you are able to spend more time there than you could have in the past. How would you quantify the threat of intimidation, even in South Armagh, in these better times?

John Whiting: The fact of the matter is that it is still difficult to collect what I would describe as third-party evidence. There would not necessarily be intimidation of my officers. The police would attend with us, and not just in South Armagh; if we have an operation in Belfast, even in areas where you imagine that there would not be trouble, we would generally still seek police support, just in case of public order offences. In respect of gathering evidence from third parties, we would still find that an issue. For example, very often bank staff would be reluctant to provide statements in respect of the customers who are coming in and dealing with the bank, because the bank staff very often live in the same communities as the people who are the accused in our cases. The banks have a policy that they will not give us statements. That is very much still a real issue. We have to, generally speaking, collect the evidence ourselves by other methods.

Q523 Lady Hermon: Again, an issue was raised and discussed by both the Justice and the Environment Ministers before the Committee last week, and that was in relation to non-jury trials, if in fact there was intimidation of witnesses or a fear of jury tampering. Can I just take it that HMRC would have absolutely no objection to cooperating with the Prosecution Service in Northern Ireland, if they were to choose to use non-jury trials—nothing, I repeat, to do with Diplock courts—in combating what is a very serious crime? It is perpetrated by very dangerous individuals.

John Whiting: I am fully aware of the legislation that allows us to have non-jury trials. We have, in fact,

made an approach to the Public Prosecution Service in respect of two of our current cases where we would seek to use those particular powers. So yes: no objections whatsoever.

Q524 Lady Hermon: Yes, and can we also have a view from the Minister, just for the record?

Miss Smith: Yes, I am certainly in agreement with that.

Q525 Kris Hopkins: One of HM Treasury's priorities is to recover as much as possible from those who defraud UK Revenue. How would this affect the amount of money you could recover through civil recovery if you were pursuing an investigation into an individual who is arrested and charged in the Republic of Ireland?

Miss Smith: I beg your pardon? Just so I understand the question, would you mind—

Q526 Kris Hopkins: Basically, it is the Government's job to go in pursuit of as much money as possible from somebody, and use civil recovery to make that work. What happens if the person you are pursuing is charged and prosecuted in the Republic of Ireland? Can you get your money back?

Miss Smith: You perhaps have an example of the way in which we make that work through the partnerships we have.

John Whiting: I am aware of an example—this is very historic, and I think this has only happened once—where a fuel smuggler was dealt with in a joint operation, and when the settlement was secured by the Criminal Assets Bureau, they delivered a sum of money to HMRC as part of that settlement. That has only happened once. There is an ongoing case that we referred to the Criminal Assets Bureau and the Serious Organised Crime Agency of such an individual; I referred to that particular case in the last evidence session. Some of the assets acquired by this individual are in GB; some of them are in the Republic of Ireland. I am not sure that there is an official route to say, "This money was lost to the UK Exchequer, therefore the Republic of Ireland should hand over any proceeds that they secure." You may say to me that it would have been better had we not decided to have the criminal case against this individual. I would have to say, in answer to that, it is an operational decision, and in these circumstances it was deemed to be the best option.

We have just recently had a case that we have been pursuing for 12 years against such an individual, who resides just south of the border. We attempted to arrest him, and 12 years later, having extradited him, discovered that he was unfit to stand trial, and in that period he had dissipated his entire asset portfolio. That was hugely frustrating and disappointing: to not have him standing trial, and also for there to be no assets, although we have referred the case to SOCA to see if they can find any. It is a case of looking for the best option on a case-by-case basis: can we secure money? Can we secure a conviction? Can we look at other agencies, who are our partners in this, in an all-Ireland cooperation? Can we secure some kind of result that

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is going to stop this individual from causing even further loss, continuing loss, to the UK Treasury?

Q527 Kris Hopkins: You have two priorities: one is to pursue the criminal and prosecute, and whether the operational demands may be in conflict with your ability to retrieve money as a consequence of that. You might want to achieve the same aims—receive a positive response on both. I note you have talked already about the financial pressures on local authorities on both sides of the border to clean up waste. Obviously some of that money is used to address some of that as well. Depending on where the money is recovered, if it is on the opposite side of the border to where the waste problem is, we are talking about treaties here—about some form of negotiation: where recovered monies come back to; which crown, or to which authority; and then its use. Do we need to establish some formal processes? You said it has occurred only once, but it could possibly occur again. Do we need to establish something more formal to be able to negotiate these things?

Miss Smith: May I just ask, would you be able to set out any existing rules that apply in addition to the example given?

John Whiting: If there is a perception that the problem is only on our side of the border, i.e. the laundering is taking place in Northern Ireland and the waste product is appearing in the Republic of Ireland—

Q528 Kris Hopkins: I am sure it is the other way around.

John Whiting: It is both, in fact. If I go back 12 months, the councils in the Republic of Ireland sought an appearance from us, and one of my team did go down and explain that there was no provision for us giving them money for their clean-up costs. Since then, they have discovered numerous laundering plants in County Louth and County Monaghan. What we are seeing in Northern Ireland is replicated in the Republic of Ireland. In fact, probably the biggest laundering plant discovered anywhere on the whole island was discovered south of the border in a joint operation, with searches both north and south of the border.

Q529 Kris Hopkins: I know there are other questions coming, but would it be sensible to establish some form of formal protocol to enable the transfer of some of these funds?

Miss Smith: That is a sensible strand of discussion that takes place within the partnership. My personal view is I wonder if that is the most pressing amongst all the strands of the work that needs to take place at that point.

John Whiting: My view is just as it is impossible to establish the cost to the UK Treasury of cross-border shopping, it is impossible to distinguish the origin of the waste, and therefore if you had any of these discussions, whether the laundering plant was north or south of the border, you would never be able to tell.

Chair: I know the Minister's time is getting short now.

Q530 Nigel Mills: We have had some discussion about the cooperation between you and your counterparts south of the border. Your initial evidence at the start referred to the fact that one of the problems is the amount of time it would take to get certain evidence shared between the two jurisdictions. If relations are so good on a day-to-day basis, why is this problem still there? Is there any way you could follow the shortcut arrangement that the various directors of prosecution have managed to produce so you can get that evidence in the right place much quicker, and avoid the 12-year delay you were talking about?

John Whiting: The 12-year delay was around extradition, rather than moving evidence. I have to say that, on a day-to-day basis, if I need to seek the assistance of the Revenue Commissioners or Criminal Assets Bureau in terms of going out and acquiring evidence, that can be done very, very quickly. I ask for it, and they can probably deliver that day or the day following, or as required. I can secure copies of that evidence very quickly. But there is a legal process under the Commission Rogatoire, or the international letter of request, which is a legal process. I have to say that the problems that we might have with the Republic of Ireland are nothing compared with some of our other EU partners. Looking much further afield, you sometimes do not get any response, let alone the informal response. Generally speaking, it is a process. What we are looking at as agencies—that is HMRC, the PSNI, and SOCA—working to the Public Prosecution Service and with our counterparts in the South, is to minimise the delay at each stage of the process, so that we reduce the time by being much more efficient and joined up. On some of the issues we have had in particular cases about which I have been quite concerned in the past, we have been able to make an informal arrangement with the Public Prosecution Service. Where we indicate a case is urgent and we need it quicker than others, there is a prioritisation process that they can apply to that to jump the queue. We are looking at making things quicker. It is not as big a problem as it has been hitherto.

Q531 Nigel Mills: Is there any role for either the Northern Ireland Executive or the UK Government to try to speed up and smooth out those discussions?

John Whiting: The only issue is that we have to remember we are asking another state to conduct inquiries on our behalf. They have their own priorities. If they are doing work for us, they are not doing work for themselves. There is a challenge here. Of course it works in reverse: other countries ask us to do things, for which I have to stop my operational activity to help them out. If I cannot provide my side of the deal, it can be embarrassing if I am pressing too hard.

Q532 Dr McDonnell: Minister, thank you for all the evidence you have provided, but just leading on from where we are at there, have you or the Treasury ever considered raising this or having this as an agenda item either at a British-Irish Council, at an intergovernmental level, or even at a North-South

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level within the island of Ireland between Stormont and the Irish Government? Surely if this problem is as big as we are dealing with, and it appears to be, then perhaps—and I come back to Kris's point—instead of working at a functional or process level, there needs to be some formal or informal or semi-formal political discussion at an intergovernmental level to come to terms. Is there space, or would it just be too much to ask, for a little bit of sympathy perhaps in each direction in terms of Mr Whiting's point that you do not go over on someone else's patch; you do not intrude on somebody else's patch and vice versa? What strikes me is that those who are up to criminal activity and fraudulent activity are able to create a space where they are able to invade and exploit diplomacy and intergovernmental niceties. Is there a case that there should perhaps be formal discussions?

Miss Smith: I am sure the answer in broad principle is yes; of course it is the kind of thing that should be discussed between two nations, as much as what we have said this afternoon has, I hope, shown. Again you will have to forgive me: during my time in this role, I am not aware of it having been formally placed on, but we can ascertain that on a point of fact for you. But my view is that it is of course the kind of thing that should be discussed between the two nations for the protection of citizens on both sides. We have given many examples under every strand today of how the problem is closely intertwined for people and businesses on both sides.

Q533 Dr McDonnell: It is way beyond my remit and authority, but is there a possibility of synergising tax regimes or revenue regimes—taxation regimes on oil or whatever—so that there will not be a big differential that encourages smuggling?

Miss Smith: That would be the harder end of that discussion, I dare say, and for the good principle that we would remain two sovereign nations that require flexibility in their tax codes for all sorts of reasons. I would not like to stake out that particular ambition for that conversation, but I do think the policing, justice, enforcement and intelligence aspects must be done on a collaborative basis as far as they can be.

Q534 Naomi Long: Minister, the estimate we were given for annual revenue lost to diesel fraud is about £70 million, and the amount recovered through civil recovery is about £3 million, if those facts are correct. We recognise it is a very difficult and dangerous job that HMRC have to do in terms of pursuing this particular form of crime, and we are obviously grateful for every penny that is recovered, but are you satisfied that this is a reasonable return in terms of being able to recover that money?

Miss Smith: As I say, and as John has said several times, the complexity of it is such that I do not think you could say, "We are going to get every penny back." I simply do not think it is that kind of situation. It is a case of ascertaining trend in data, and we have spoken about the quality of the data available to us. It is a case of setting up strong working relationships, which has been done. It is then a case of never letting up within that project, but I do think it would be hard

to quantify that for you to an aim of X for Y or for Z because of the nature of the problem.

Q535 Naomi Long: In terms of the amount of recovery, is that something that is used as any of the performance measures for HMRC in this or not, or do you simply judge that it would not be a good index of how effective HMRC are being in terms of disrupting the work of people who are involved in this particular criminal enterprise?

Miss Smith: Technically speaking, the money would lie in the budget of SOCA, the Serious Organised Crime Agency. It would be hard to include that within HMRC's performance or reward, if that is what you are aiming at there. Clearly, we have spoken this afternoon about what the staff's priorities are, and how their time is dedicated to these things. Clearly, every single one of those members of staff will be aware of what they can try to retrieve from these situations, albeit that they need to work with other agencies to make the hard money come in where that can be done.

Q536 Naomi Long: In terms of the evidence we have received, this is clearly a multi-agency approach, and that does make lines of accountability and so on slightly more complex. We would also accept that it is a very complex area in which to work. But on a number of issues, for example on the work that is done around trying to deal with public perceptions of a victimless crime, and also on this, it seems to be very difficult to find measurable indices by which you can judge success of the programmes in which you are engaged. I suppose one of the fundamental questions the Committee is going to have is, are the things we are doing, albeit they are very worthy and you are very active in those things, the most effective things you could be doing, and how do you measure that? That comes at the very crux of the issue of whether you are going to be able to get to the core of the problem.

Miss Smith: To take the question about measurement initially, and then go on from there, to an extent—and perhaps Bill may say this is across much of what HMRC does—whatever you try to measure about a black or grey market is very often going to be estimated, for obvious reasons. That is certainly one of the things we have here. You then have that compounded by the distinction we have spoken about with cross-border shopping. However, parts of that formula are extremely measurable: you can look at the number of units used and work out where those parts differ. Half the formula is measurable and half of it is not.

Are we ever going to get away from that? I am not so sure. Does that diminish the work that anybody is doing? Absolutely not. I suspect we are all in quite vocal agreement here this afternoon that this is an appalling criminal activity that has its effects, and in my view that is enough to motivate the work that is done by HMRC. It would be the cherry on top if we could put an absolute price to it, but because of the nature of a black or grey market, I suspect we will always have to live with a certain amount of estimation.

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Bill Williamson: I remember most of the questions from the last Committee hearing, but there was one question around whether this is a busted flush in Northern Ireland as a fraud. It is rather like, I guess, asking whether we are ever going to completely stop burglary. It is very difficult. When you have an opportunity to make money, criminals will always seek to make money.

In terms of the current strategy, we are tackling this in a number of different ways. We tackle it through regulation: the RDCO scheme the Minister mentioned, which regulates the control of oils, has been extremely successful in providing us with risk and intelligence information. It has demonstrated that we are serious about this to the industry, and it has limited the availability of red diesel. We can see that: we are seeing it in the amount of green diesel we are seeing and John's people are seeing when they are tackling and dismantling laundering sites. We can see that has an effect. We are tackling it from the law enforcement end, criminal investigations; we are tackling it through the confiscation of assets and civil sanctions on that as well.

We are tackling it in multi-agency; that is the key thing. We have heard through the OCTF and the Cross Border Fuel Enforcement Group that John chairs that we are collaborating across the agencies very effectively. As I say, it is that journey of where we came from over the last number of years to where we are now. We can see that we have made progress; we have to continue to make that progress.

I do not think we are a busted flush, but is there ever going to be a time when there is not fuel fraud in Northern Ireland, or indeed in the UK? Whether there will ever be no illicit cigarette smuggling is a very difficult question to answer.

Naomi Long: I do appreciate that. Chairman, I suppose my point really is how we establish that we are doing the best and most effective things if many of the indicators of levels of activity are so vague and difficult to measure. It could well be that there is very worthy activity, but it is dealing with the fundamentals of the problem in the most productive way; I suppose that is really where my concern lies, but I do accept it is a complex area.

Chair: Final question now, Sylvia.

Q537 Lady Hermon: That is very nice of you, Chairman. It was a detailed point, but a very interesting point, that was highlighted by the newly appointed Director of Public Prosecutions in Northern Ireland. In his evidence to us he pointed out that the

Serious Crime Act of 2007 does give the DPP, and indeed his office, the Public Prosecution Service in Northern Ireland, the power to make civil recovery of assets, although investigating agencies have never asked the PPSNI—not to be confused with the PSNI in Northern Ireland—to use those powers. The complicating factor highlighted is that it is unlike the Crown Prosecution Service here in England and Wales, which has a statutory indemnity for a claim of costs against it if it happened to lose a case seeking civil recovery of assets. The Public Prosecution Service in Northern Ireland does not have a similar or equivalent statutory indemnity if they were to lose the case. Interestingly, the Justice Minister, David Ford, indicated that it was an issue he would look at. Could we just in your final few moments confirm that HMRC would, of course, support a change in the legislation? It is a devolved issue, but it would be lovely for HMRC and for the Minister to write to David Ford and just indicate support for a change in the legislation to enable there to be statutory indemnity for the PPSNI if they were to lose a case of civil recovery. It is an interesting point, isn't it?

Miss Smith: It is a fascinating point, and what a wonderful one on which to finish the session. My understanding of this is that it first of all is a specific issue around civil cases, as you have said, and, as you have also said, such cases in NI have been conducted by SOCA, who would be the experts on that. My understanding is it has not had a negative impact on HMRC's casework to date. With regard to the question you posed to me—whether I can say that HMRC would support such changes to the legislation—I am afraid I shall have to take that away for you, the point being I am not the Minister with responsibility for HMRC, but I would be happy to put that point to my colleague. Perhaps he would be able to write to you with further detail.

Q538 Lady Hermon: Yes, but there is obviously a willingness from Her Majesty's Government to support such a move in Northern Ireland.

Miss Smith: As we have probably answered today, there is clearly a willingness to support moves that increase the efficacy of what we are doing in this area. But on that specific note, with the devolved complexity to it, you would have to allow me to come back on that for the Committee.⁶

Chair: It has been a very useful session. Minister, gentlemen, thank you very much for coming.

⁶ Ev 112

Written evidence

Written evidence from HM Revenue & Customs

This covers the specific issues the Committee have asked HMRC to address in their evidence.

1. The amount and extent of fuel laundering and smuggling in Northern Ireland

1.1 HMRC has published estimates of the indirect tax gap (the shortfall in revenue between the tax collected and the tax which should theoretically be collected) since 2001.

1.2 For Northern Ireland (NI), revenue losses arise both through illicit activity and legitimate cross-border shopping. Estimates for the tax gap in NI therefore relate to total non-UK duty paid activity, rather than the illicit market, since it is not possible to disaggregate revenue losses between illicit and legitimate activity.

1.3 In 2008–09, the estimated non-UK duty paid market share was 28% for diesel, and 9% for petrol. The associated revenue not collected was £160 million for diesel and £30 million for petrol. The estimated non-UK duty paid market share for NI diesel has shown a downward trend in recent years, falling from 40% in 2004–05 to 28% in 2008–09. There has been no clear trend in the NI petrol non-UK duty paid market share. Full details of the tax gap estimates can be found in Annex A.

1.4 The tax gap methodology is very sensitive to a series of assumptions and is, therefore, best viewed as a general indicator of long term trends in the illicit market share rather than an exact estimate of the tax gap.

2. The impact of the border with the Republic of Ireland on this illicit trade, including the impact of devolution of justice and policing on cross border liaison to counter fuel laundering and smuggling

2.1 The border between NI and the Irish Republic provides two distinct opportunities for fuel fraudsters. First, differentials in both duty rates and exchange rates make smuggling of fuel from one side of the border to the other more or less attractive at various times, and so the traffic is not one way. Currently, the comparative prices north and south have lessened the profitability of outright smuggling of finished fuel products to the north. Launderers also have the option of using Irish green diesel as their base fuel, rather than red diesel, which is controlled under our Registered Dealers in Controlled Oils scheme. This scheme is designed to control the supply of duty rebated fuels, such as red diesel for agricultural use and kerosene for heating. Suppliers dealing in rebated oils have to register with HMRC and provide regular information on quantities of product and who they are supplying. There is still a market for Northern Irish heating oil in the Republic and this is smuggled south. Higher Irish fuel duty rates have created a larger market for laundered fuel in the Republic than in previous years. However, duty rate differentials between the Republic and NI are not the sole driver for fuel fraud. The Republic also has a history of laundering and mixing even though their duty rates were historically very low.

2.2 The second opportunity presented by the border is its use by the criminal gangs to conceal their activities and disrupt law enforcement action. Certain areas of the border remain difficult to police and the continuing security situation is deliberately exploited to hinder law enforcement efforts. Any worsening of NI security is likely to affect the operation of HMRC adversely in certain areas.

2.3 On the other hand, the devolution of policing and justice has great potential to assist in the battle against fuel fraud. Our co-operation with the Police Service of Northern Ireland, both at a local level and through the Organised Crime Task Force, remains strong. An initiative led by the Justice Minister provides opportunities for all agencies and political parties to press ahead with efforts to change the public mind-set around fuel fraud along with other forms of organised crime. It is hoped that the involvement of local politicians will begin to highlight the link between revenue collection and the provision of public services in all sectors of society. Furthermore we are working together to amend the Petroleum Licensing Regulations to include diesel (via devolved legislation) which should incentivise retailers into better behaviour or provide further justification for the removal of licences by local Councils.

2.4 Liaison with our partner agencies in the Republic of Ireland is healthy. This is conducted informally on a day to day basis with our colleagues in the Revenue Commissioners and formally through the Cross Border Fuel Fraud Enforcement Group (an Organised Crime Task Force sub-group). In addition, HMRC has a Fiscal Crime Liaison Officer permanently stationed in Dublin to act as a conduit for information and intelligence sharing.

3. The role and effectiveness of the Organised Crime Task Force, and other ways to ease coordination between organisations involved in the fight against organised crime

3.1 The Organised Crime Task Force has been hugely successful in acting as a platform upon which inter-agency work can be built. The Cross Border Fuel Fraud Enforcement Group was the first Organised Crime Task Force sub-group to include representatives from the Republic's agencies. A number of planned cross-jurisdiction investigations have been carried out under the auspices of this group.

3.2 Together with enhanced cooperation from police, customs and revenue agencies North and South of the border, the Cross Border Fuel Fraud Enforcement Group has harnessed other Government Departments in the continuing campaign to reduce harm to the public and the environment. The Northern Ireland Environment Agency and the Department of Environment in the Republic sit on the group and are key partners, attending laundering sites and dealing with the associated waste and pollution issues. This is an area where the Cross Border Fuel Fraud Enforcement Group is seeking to maximise publicity and focus public attention on the detrimental environmental impacts of this fraud. The Northern Ireland Environment Agency and HMRC are submitting a single file to the Public Prosecution Service this month reporting a joint operation into a fuel laundering operation, a move which has been agreed by the Public Prosecution Service and which acts upon the Judicial Studies Review Board advice that harm reduction as well as any revenue loss/evasion charges should be made clear to the judge at an early stage in any legal proceedings.

3.3 The Health and Safety Executive also sit on the Cross Border Fuel Fraud Enforcement Group. In that arena and through the Fuel Oils Forum (chaired by the Chief Environmental Officer NI and attended by HMRC and Health and Safety Executive) a manual of standards has been developed and implemented to ensure the Petroleum Licensing Officers from the 26 Councils in NI adopt the same procedures, background checks and safety measures before granting petroleum licences. This important development has also encouraged sharing information about prospective petroleum licence holders to ensure public safety comes first.

3.4 Police Service of Northern Ireland and the Garda are represented on the Cross Border Fuel Fraud Enforcement Group from a perspective of both roads policing and organised crime. Intelligence on vehicles believed to be involved in transporting or distributing illegal fuel is shared by all agencies. This enables challenges to be made by the relevant police force; this not only assists with the interception of non duty paid or laundered fuel, but it also protects the public by removing dangerous vehicles with concealed loads and concealed tanks from the public highway. Joint Police Service of Northern Ireland and HMRC operations targeting road users have enabled us to identify a number of HMRC and Police Service of Northern Ireland offences, and such operations will be repeated throughout the year. (For example, a recent HMRC operation resulted in the arrest of a man who was driving a tanker without either a driving licence or the prerequisite authorities for driving a tanker.)

3.5 The main factor that inhibits further successful co-operation is the very slow speed at which evidence may be exchanged between the two jurisdictions. The mandatory procedure requires a Letter of Request which is issued by the Public Prosecution Service to the Irish prosecutor. This is an inhibitor to all law enforcement partners and regularly causes serious delays in the prosecution of offenders.

3.6 The level of sentencing in Northern Ireland remains out of line with that in Great Britain. It may be that, historically the Courts have taken a view that there is no victim in fiscal fraud. However, by linking waste/environmental damage to fuel fraud and, where possible, including charges for those offences, we aim to bring sterner sentencing to bear. We hope that focusing the courts on harm reduction in addition to revenue loss will improve the sentencing results; and we are increasingly targeting the proceeds of offenders' crimes.

4. The extent to which organised crime gangs profit from this loss to HM Revenue & Customs

4.1 The levels of profit generated by cross border fuel fraud are high. In Northern Ireland, the most recent estimate was that the loss to the Exchequer from cross border shopping and fuel fraud was in the region of £190 million. Since this estimate includes legitimate cross-border shopping, this is not the level of profit available to the fraudsters, but it gives a good idea of the potential.

4.2 In recent years, we have seen a general decline in the number of sites selling fuel below the market price, and an increase in sites selling fraudulent fuel at prices similar to supermarkets. This makes it harder for HMRC to identify illegal vendors and for the public to distinguish between legitimate and illicit fuel. Lastly, it substantially increases the profit margins for the fraudsters.

4.3 Production costs for fraudsters are relatively low. There would be an initial outlay of a few thousand pounds to buy storage and filtration tanks and to rent premises. The process then requires relatively cheap cat-litter, bleaching agent and/or acid. For laundered diesel, fraudsters can expect a profit of at least 40 pence per litre (allowing around 30 pence per litre for production and distribution costs), with the current price of red diesel being approximately half of the typical road fuel price.

4.4 Last year, HMRC dismantled laundering plants with the capacity to produce 90 million litres of illicit fuel. Using this figure as a basis to form a rough and ready estimate of profit would give a minimum of £36 million per year.

4.5 Increasingly, organised crime gangs are tackling the entire process of the fraud from production through distribution to retail sales. This again increases their profit margins by avoiding a middle man. In a recent investigation resulting in arrests, substantial fuel seizures and searches, an organised crime gang was dismantled that controlled red diesel supply, fuel laundering, distribution and at least one retail site. Close to £300,000 cash was seized.

5. Other smuggling activity that the same organised crime gangs might be involved in

5.1 HMRC has intelligence that several organised crime gangs are involved in other forms of crime as well as fuel fraud (for example tobacco fraud). The laundering of fuel is a specialist activity: fuel launderers are often specialists within an organised crime gang that may be involved in other criminal activities.

5.2 The market for illegal fuel in Ireland is limited compared with the UK mainland because of the size of population. A recent case, due for trial in the autumn, identified a transport company mis-describing laundered/smuggled fuel as lamb and water. This cargo was intercepted as it was landed from the Larne/Cairnryan ferry. Liaison with the Maritime & Coastguard Agency enabled charges of endangering the public to be laid.

5.3 Reports by the Independent Monitoring Commission indicate that some organised crime gangs have links to paramilitary groups; it is therefore also likely that fuel laundering and smuggling helps to fund other serious criminal activity, including terrorism and drugs.

6. The effectiveness of measures to counter fuel laundering and smuggling

6.1 The best way to tackle fuel fraud is via multi-agency, cross border approaches, applying pressure through criminal prosecutions and confiscation of assets, together with civil proceedings involving confiscation and seizure of goods, vehicles and suspect fuel.

6.2 Our approach combines the expertise of law enforcement agencies and government departments: this has led to the examination and tightening of controls around, for example, the issue of licences; the Registered Dealers in Controlled Oils scheme; and approval by the Health and Safety Executive and local councils for premises to retail petrol. We also act at a more strategic level: for example, we are working with the Republic's State Laboratory and with LGC Forensics to improve the effectiveness of fuel testing; and we are securing support for a more robust European marker to be added to rebated fuel.

6.3 In addition to a multi-agency approach, we have also built strong partnership links with the legitimate trade organisations in Northern Ireland through the annual Joint HMRC—Northern Ireland Oils Industry Oils Intelligence & Security Forum.

6.4 Where cheap fuel is sold below the market price, we regard this as an indicator of crime. This tactic has helped to drive the illicit sellers to charge higher retail prices. Unfortunately, this is part of the economics of the fraud and it makes it harder for the public to tell the illicit retailers from the legitimate. It also increases the profit margins for the fraudsters. We have tried to educate the public about the signs of illicit fuel are—eg “if it looks too good to be true it probably is”. Furthermore we ran a high profile Crimestoppers Campaign called “Fuel Fraud—it’s a dirty business” outlining the detrimental effects of fuel fraud. The fraudsters are now acquiring “end-to-end” control by taking over filling stations. To mask their fraud from the public and HMRC they are only under-cutting legitimate stations by a small margin.

6.5 Improvements in laundering techniques make it likely that some laundered fuel will fail to be detected. Often illicit fuel detected in NI can only be identified by the most sensitive roadside test or by further chemical analysis. In one criminal investigation, the organised crime gang paid an independent laboratory to test its laundered fuel in order better to withstand scrutiny from HMRC.

6.6 We are satisfied with the quantity and quality of our criminal interventions. However, unless these interventions are backed by a strong deterrent message from the judiciary, it is difficult to see how we can reverse the tide significantly in this highly profitable, low risk area of crime.

7. The number of arrests, prosecutions, fines, confiscations, and other sanctions, aimed at punishing and deterring those involved in fuel laundering and smuggling

2009–10

Oils	Total	Of which:	
	2009–10	Northern Ireland	GB
Arrests	14	12	2
Confiscation Orders	£1,085,715	£0	£1,085,715
Convictions	11	1	10
Custodial Sentences	3	0	3
Suspended Sentences	4	1	3
Non-Custodial Sentences	3	0	3
Seizures (Million Litres)	2.23	1.04	1.19
Laundering Plants	16	16	0

2010–11

<i>Oils</i>	<i>Total 2010–11</i>	<i>Northern Ireland</i>	<i>Of which: GB</i>
Arrests	18	18	0
Confiscation Orders	£503,788	£20,000	£483,788
Convictions	10	4	6
Custodial Sentences	2	0	2
Suspended Sentences	6	3	3
Non-Custodial Sentences	1	1	0
Seizures (Million Litres)	2.74	0.64	2.10
Laundering Plants	23	20	3

NB—totals for convictions and sentences may differ where defendants are sentenced in a different year from their conviction

8. *The technologies that are currently available, or being examined, by HMRC and other to address this problem*

8.1 HMRC is running a Fuel Testing Project the objective of which is to improve roadside and laboratory testing. Work has so far included:

- Enhancement of our roadside testing capability by introduction of the solid phase extraction test (SET).
- Using funds from the Asset Recovery Incentive Scheme (ARIS) to purchase equipment for Road Fuel Testing Unit vehicles and to fund research into strengthening the current marker.
- Sharing information and collaborating with Republic of Ireland Revenue Commissioners and the State Laboratories in Dublin.
- Seeking information from industry about what new fuel marking products are being developed or are available.

8.2 As a short/medium term improvement HMRC has commissioned LGC Forensics to develop a more resistant version of the current marker. We are hopeful that this change could double the cost of laundering the marker out of fuel.

8.3 We have undertaken some work to develop a new marker. We have received information from four companies, one of which is working with the Irish Revenue. We have agreed with the Irish Revenue that we should work together to develop a new marker.

8.4 Finally we are also looking to develop new/improved means of roadside and laboratory detection. We have commissioned LGC Forensics to develop new versions of the Solid Extraction Test to deal with distortions caused by the presence of biofuel in the sample; and a way of detecting and testing the residue from various laundering agents. These developments could improve significantly our ability to detect laundered fuel and LGC Forensics is currently working on prototypes.

9. *The damage to the environment as a result of the fuel laundering process*

9.1 The Northern Ireland Environment Agency, the Health and Safety Executive NI, and the Department of Environment in the Republic sit on the group Cross Border Fuel Fraud Enforcement Group and are key partners (for example, attending laundering sites and dealing with the associated waste and pollution issues). This is an area where the Cross Border Fuel Fraud Enforcement Group is seeking to maximise publicity and focus public attention on the detrimental environmental impacts of this fraud.

9.2 The picture attached at Annex B illustrates some of the environmental issues associated with this type of fraud.¹

31 August 2011

Annex A

NI DIESEL NON-UK-DUTY PAID MARKET SHARE AND ASSOCIATED REVENUE NOT COLLECTED^{1,2,3,4}

	2004–05	2005–06	2006–07	2007–08	2008–09
NUKDP Market Shares:					
Upper Confidence Interval	45%	47%	45%	37%	32%
Central Estimate	40%	43%	41%	34%	28%
Lower Confidence Interval	36%	38%	37%	30%	25%

¹ Not printed

	2004–05	2005–06	2006–07	2007–08	2008–09
Associated Revenue Losses					
(£million):					
Upper Confidence Interval	200	220	230	210	180
Central Estimate	180	200	210	190	160
Lower Confidence Interval	160	180	190	170	140

1 Figures are rounded to the nearest £10 million or 1%.

2 Estimates include duty and VAT.

3 Figures for previous years have been revised due to new input data.

4 Figures for 2008–09 are provisional, as not all components of the total consumption estimate are available at this time.

NI PETROL NON-UK-DUTY PAID MARKET SHARE AND ASSOCIATED REVENUE NOT COLLECTED^{1,2,3,4}

	2004–05	2005–06	2006–07	2007–08	2008–09
NUKDP Market Shares:					
Upper Confidence Interval	19%	21%	19%	22%	18%
Central Estimate	13%	12%	10%	13%	9%
Lower Confidence Interval	7%	3%	1%	4%	–
Associated Revenue Losses					
(£million):					
Upper Confidence Interval	70	70	60	70	60
Central Estimate	50	40	30	40	30
Lower Confidence Interval	30	10	–	10	–

- Indicates figures are negligible. Negative numbers have been truncated at zero.

¹ Figures are rounded to the nearest £10 million or 1%.

² Estimates include duty and VAT.

³ Figures for previous years have been revised due to new input data.

⁴ Figures for 2008–09 are provisional, as not all components of the total consumption estimate are available at this time.

NI: BREAKDOWN OF VOLUMES WITHIN DIESEL AND PETROL (MILLION LITRES)^{1,2,3}

	2004–05	2005–06	2006–07	2007–08	2008–09
Diesel:					
Total Consumption	740	785	825	860	840
UK Tax Paid Consumption	440	450	485	570	605
NUKDP Market Share	295	335	340	290	235
Petrol:					
Total Consumption	575	550	545	530	505
UK Tax Paid Consumption	500	480	485	460	460
NUKDP Market Share	75	70	55	65	45

¹ Figures are rounded to the nearest 5m litres.

² Figures for previous years have been revised due to new input data.

³ Figures for 2008–09 are provisional, as not all components of the total consumption estimate are available at this time.

Written evidence from Japan Tobacco International

1. Japan Tobacco International (JTI) was interested to read the announcement on 6 July 2011 of your Committee's inquiry into fuel laundering and smuggling in Northern Ireland.

2. For the Committee's information, JTI is one of the largest manufacturing companies in Northern Ireland and the illicit trade potentially threatens employment opportunities at our facility in Lisnafillan.

3. While we understand that this inquiry is focused on fuel, we note that the remit of the inquiry includes a question on "*other smuggling activity that the same organised crime gangs might be involved in.*"

4. The same issues affecting fuel—the high level of taxation, the differential in duty rates between neighbouring countries, the impact of the land border on illicit trade and the role of criminal organisations—are also significant factors in encouraging the trade in illicit tobacco products.

5. Naturally, we are concerned by the high level of illicit trade in tobacco products in Northern Ireland. The region has some of the highest levels of non-UK duty paid (NUKDP)² consumption in the UK, with around 17% of cigarettes and 59% of hand-rolling tobacco avoiding UK taxes. 20% of these cigarettes are counterfeit with a further 27% being illicit whites.³

6. NUKDP consumption across the whole of the UK leads to a massive loss of revenue to the Government, as much as £4.2 billion in 2008–09 and £3.6 billion in 2009–10 according to HM Revenue & Customs (HMRC). It increases illegality and the problem of major organised crime gangs and, in turn, undermines legitimate and controlled sale through the 1,775 retail outlets that sell tobacco products in Northern Ireland.⁴

7. The illegal activity also undermines efforts to prevent sales of tobacco products to the underage, and initiatives such as the *No ID No Sale* campaign designed to reinforce this. Evidence from another part of the UK strongly indicates that the illicit market is a major source of tobacco products for the underage. A recent survey conducted in the North West of England found that 50% of underage smokers had bought cigarettes with foreign language health warnings.⁵

8. We continue to support the efforts of HMRC and other enforcement agencies in combating the problem of illicit tobacco but this is made more difficult by the Government's policy to increase tobacco duties, above the rate of inflation, in each Budget through to 2014. This will simply increase the profit opportunities for the criminals who seek to meet the demand for cheap product by the region's smokers.

9. Instead of tax increases, the Government should consider:

- greater resources for enforcement activity by HMRC, UK Border Agency, Police Service of Northern Ireland and Trading Standards;
- educating courts of the serious consequences of the illicit trade and encouraging them to apply all available sanctions; and
- publicity campaigns to warn consumers about illicit trade.

10. We are also concerned by the announcement⁶ from the Northern Ireland Health Minister, Edwin Poots MLA, which states that he intends to proceed with a display ban next year. We believe this is likely to lead to an increase in unregulated sales of tobacco products as the distinction between formal and informal sales channels become blurred.

11. In short, we believe that there are many parallels with the trade in illicit fuel and tobacco in Northern Ireland and we hope that the Committee will note our very real concerns about this problem during the course of its inquiry.

31 August 2011

Written evidence from the Police Service of Northern Ireland

Whilst the Police Service of Northern Ireland does not have lead responsibility in the investigation of fuel laundering and smuggling, we are a partner agency which participates in the Organised Crime Taskforce (OCTF) Cross Border Fuel Fraud sub-group. The amount and extent of fuel smuggling are details which would be within the purview of Her Majesty's Revenue and Customs who have primacy in countering the threat from this crime type. The PSNI are however interested in the cross over of individuals and groups engaged in this and other types of criminality.

The benefits of the OCTF are that agencies concerned in law enforcement and other interested parties meet on a regular basis to assess emerging trends and areas of activity that would benefit from a multi-agency tactical approach. An appropriate response can then be planned outside of the main group. The group is particularly beneficial because of the transference of crime groups from one type of commodity to another and the cross border element with the existence of a land border connecting to another EU area. This undoubtedly affords Organised Crime Groups (OCGs) greater opportunities to move commodities with greater ease. The relationships that are established in the North are reciprocated in the Republic of Ireland and efforts have been made to increase the sharing of information between jurisdictions with the aim of frustrating, dismantling and disrupting OCGs.

Whilst there is a significant loss to the Exchequer through fuel laundering and smuggling, the connection is yet to be made that this loss must be recouped through the tax payer. What the public may also not always be aware of is the substantial safety hazard involved in the production of laundered fuel; and in the transportation of such fuel to the various outlets where it is sold. This is on top of the damage that can be caused to motor vehicles which have had laundered fuel put into their engines.

² JTI estimate for 2010. The figures include smuggling and legitimate crossborder purchases.

³ Illicit Whites, sometimes referred to as cheap whites, are; "Brands produced by smaller, overseas manufacturers that make no legitimate supplies of any tobacco products to the UK. There is often little or no legitimate market for these brands anywhere in the world." Tackling Tobacco Smuggling Together. HMRC / UKBA, November 2008.

⁴ Nielsen MarketTrack, July 2011

⁵ Trading Standards North West. Young Persons Alcohol and Tobacco Survey 2011. Ci Research, June 2011

⁶ Northern Ireland Executive Press Release. Health Minister announces next steps to introduce tobacco controls. 23 August 2011

There is also a very real danger to the public from other smuggled goods, especially from items such as counterfeit tobacco. A television documentary from BBC Scotland at the beginning of this year highlighted how, "Counterfeit tobacco sold in a Scottish market has been found to contain more than 30 times the lead levels of genuine tobacco... High levels of toxins, including arsenic and cadmium, were also found in the products being sold by tobacco gangs".⁷ There was significant media coverage in Northern Ireland towards the start of the summer in relation to the scale of counterfeit tobacco and alcohol and the inherent dangers these products pose to the general public. Unfortunately, due to the decline in the economic markets, people are susceptible to bargains, regardless of the risks or the fact that they are contributing to the illegal economy.

The Northern Ireland Affairs Committee inquiry into fuel laundering and smuggling may assist in bringing renewed attention to this area in general, and it should be regarded as an opportunity to reinforce to the public the very real danger that exists to them from laundered fuels and the wider issue of smuggled goods.

The PSNI are aware that there are a number of OCGs who are involved in fuel laundering within Northern Ireland, and the main areas where fuel laundering plants are located include Co Armagh (especially South Armagh), Co Down and Co Tyrone. However this does not mean that laundered fuel is solely available in those areas, and indeed recently there are indications that it is being supplied more widely, including across Greater Belfast.

The OCGs involved are not limiting their criminal activities just to fuel laundering, they are often also involved in other criminal activities such as drugs cultivation and supply, importation of drugs into Northern Ireland, smuggling (particularly in relation to cigarettes and tobacco), and money laundering, as money is the common denominator for most crime groups. Large amounts of money are involved in trafficking all commodities and therefore it is important to try and understand the business model. Agencies will therefore be involved in money laundering investigations to establish the facilitators and to deny the criminals the assets which they need to continue their illegal business.

The areas that are highlighted as being of high risk in terms of fuel smuggling are also those which have seen an increase in the threat posed by residual terrorist groups. Information suggests that the money from organised crime is being used to fund other activity and the 23rd IMC report commented on the involvement of paramilitary groups in organised crime (including fuel smuggling).

In the last year a number of fuel laundering plants have been discovered in Great Britain. It is very likely that Northern Ireland OCGs have been involved in either setting these plants up, or else have been sharing their expertise with mainland organised criminal gangs. This is a new development and one which will be carefully monitored.

The PSNI and HMRC work closely together to counter the threat from Organised Crime Groups in general. PSNI provide support to HMRC led investigations and information sharing channels have been established in order to share the information efficiently and effectively. Activity is reflected in the OCTF Annual Report and Threat Assessment.

5 October 2011

Further written evidence from HM Revenue & Customs

At our evidence session on 14 September 2011, I agreed to provide you with some additional information.

In Q43 Lady Hermon asks about convictions in Republic of Ireland. We have been advised that there have been four custodial sentences, two of which were suspended, for fuel laundering since 2006. I also offered to provide details of the committees and groups who form the Organised Crime Task Force. These are in the Annex to this letter.

I hope the Committee finds this information helpful.

Yours sincerely

Mike Norgrove
Director

Annex

ORGANISED CRIME TASK FORCE*

Who are they?

The Organised Crime Task Force (OCTF) was established in Northern Ireland in 2000 and as from 12 April 2010 comes under the auspices of the Department of Justice. The Task Force, chaired by the Minister of Justice, is a forum which brings government, law enforcement and a range of agencies together to set priorities for tackling organised crime in Northern Ireland. The OCTF does not assume an operational responsibility, which remains the focus of the law enforcement agencies operating in Northern Ireland.

⁷ <http://news.stv.tv/scotland/west-central/221538-investigation-reveals-true-dangers-of-counterfeit-tobacco/> (19/01/11)

The OCTF was established to provide a multi- agency partnership approach to tackling organised crime in Northern Ireland. The partner agencies of the OCTF work in partnership to set priorities, develop strategies and agree actions to confront organised crime in Northern Ireland, from extortion to fuel smuggling.

How they are organised?

STAKEHOLDER GROUP:

Chaired by David Ford MLA (Justice Minister)—meets quarterly.

STRATEGY GROUP:

Chaired by the Director of Policing & Community Safety (Department of Justice).

Meets bi-monthly.

SUBGROUPS:

Legal
Armed Robbery
Publicity
Intellectual Property Crime
Criminal Finance
Drugs
Immigration and Human Trafficking
Cross Border Fuel Fraud

Agencies represented on the Organised Crime Taskforce are:

- HMRC.
- Department of Justice.
- SOCA (Serious Organised Crime Agency).
- Home Office.
- Federation of Small Businesses.
- Police Service of Northern Ireland (PSNI).
- The Northern Ireland Executive.
- Northern Ireland Environment Agency (which is an Agency within the Departments of the Environment).
- Department of Enterprise, Trade and Investment.
- Trading Standards Service.
- Criminal Justice System Northern Ireland.
- Northern Ireland Chamber of Commerce and Industry.
- CBI.
- Northern Ireland Policing Board.

Cross Border Fuel Fraud Enforcement Group

This is a sub group of OCTF and develops strategies to tackle fuel fraud across jurisdictions. It is chaired by HMRC and includes representatives from:

- PSNI,
- SOCA,
- the Revenue Commissioners,
- Criminal Assets Bureau,
- The Garda Síochána,
- Department of Justice,
- Health and Safety Executive,
- Department of Environment,
- Northern Ireland Environment Agency.

* OCTF Website was used as the source of much of this information

7 October 2011

Written evidence from David Ford MLA, Minister of Justice and Chair of the Organised Crime Task Force

I agreed in my letter of 27 September to provide a memorandum to the Northern Ireland Affairs Committee inquiry into fuel laundering and smuggling in Northern Ireland.

The memorandum is attached and I would of course be happy to respond to any questions that committee members may have when I give evidence in January.

David Ford MLA
Minister of Justice

Annex

INTRODUCTION

1. I am pleased to provide this memorandum of evidence to the Northern Ireland Affairs Committee (NIAC) inquiry into fuel fraud and fuel laundering in Northern Ireland. I do so in my capacity as Minister of Justice for Northern Ireland and Chair of the Organised Crime Task Force (OCTF).

2. Fuel fraud is primarily an excise offence and, therefore, a reserved matter that falls to HMRC. I know that the Committee has already received oral evidence from HMRC officials that covered enforcement activity and policy initiatives such as the development of a new “marker”. I understand also that the NIAC has written to other ministers in the Northern Ireland Executive in relation to environmental damage and petroleum licensing. I will, therefore, focus my comments on areas that are devolved to the Department of Justice in Northern Ireland and, in particular, the role of the OCTF in tackling fuel fraud.

3. Fuel fraud is obviously an issue of real concern. It is organised criminal activity and those involved in fuel fraud, through laundering, smuggling or stretching fuel or knowingly selling or purchasing the illegal products, are likely to be involved also in other types of criminality. I support all those agencies that are working to tackle fuel fraud and actively facilitate a partnership approach through the work of the OCTF, and am determined to use the OCTF structures to bear down on fuel fraud and all of the criminality that surrounds it, including money laundering, fraud and environmental damage, and to protect the interests of the legitimate oils trade.

4. It is clear that HMRC is committed to tackling this issue seriously and I am pleased that HMRC has increased its enforcement staff in Northern Ireland at a time when it is reducing its staffing in other areas. HMRC participates fully in the work of the OCTF.

EXTENT OF THE PROBLEM

5. Assessing the extent of fuel fraud is difficult, but HMRC has developed a methodology to give a best estimate. The figures produced relate to duty lost and necessarily include legitimate cross border trade—that is excise lost to HMT when drivers from Northern Ireland cross the border to purchase oils products to take advantage of the differential in excise duty or the exchange rate. The most recent data would indicate that the duty lost from diesel sales is declining—down from £150 million in 2008–09 to £70 million in 2009–10. These data are the latest available and may be revised.

6. While the trend of these data is welcome, fuel fraud is still a problem. The current emphasis is on the laundering of diesel due to the profits that may be made by removing the red marker from rebated fuel (or green from rebated fuel in the Republic of Ireland). There is little or no profit to be made in fuel smuggling at this time due to the current exchange and excise duty rates; this could of course change and we need to remain vigilant. The key threat at the moment is therefore from laundering diesel. The two methods used are filtration and acid laundering, both of which produce toxic waste.

OCTF THREAT ASSESSMENT

7. The most recent assessment of the threats from organised crime in Northern Ireland was published in the OCTF Annual Report and Threat Assessment in June 2011. A copy may be found at www.octf.gov.uk. This indicates that the land border and the tax differentials with the Republic of Ireland are key drivers in this crime. The illegal product is not always for use north or south of the border. Laundered fuel is moved between jurisdictions by road throughout Ireland and by sea to Great Britain often concealed in unmarked and makeshift containers. This presents a potential health and safety hazard. The waste product of the laundering process is often dumped in the countryside or in waterways with serious environmental consequences and clean up costs for HMRC and district councils. The impact on the legitimate fuel supply and distribution network is also significant.

THE WORK OF THE OCTF

8. The OCTF provides a multi-agency partnership approach to tackling organised crime in Northern Ireland. As Chair of the OCTF I meet regularly with senior representatives from the agencies responsible for tackling organised crime, other Government Departments, the Policing Board and the business community. I also receive

regular briefings on specific operations or incidents. The best way to tackle all types of organised crime is clearly to work in partnership with the relevant agencies, and we are fortunate in Northern Ireland to have this mechanism by which agencies can pool information and resources to maximise the efforts and impact of all interested parties.

9. Membership of the OCTF includes representatives from agencies that operate on a UK wide basis such as HMRC, SOCA and UKBA and local agencies such as the PSNI, NI Environment Agency, DHSSPS and DETI together with the business community. There is also representation from agencies in the Republic of Ireland. The breadth of membership and the structure makes the OCTF model unique within the UK and Ireland.

10. The OCTF has a series of eight sub groups which specialise in particular crime types or cross cutting issues. These groups share information and resources and may also initiate joint operations.

11. One of the expert sub groups is the Cross Border Fuel Fraud Enforcement Group. Membership comprises representatives from law enforcement and other agencies in Northern Ireland and the Republic of Ireland. This group is chaired by HMRC and meets quarterly. Meetings alternate between Belfast and Dublin. The group actively shares information and has initiated a number of joint cross border operations against fuel fraudsters. Cross border cooperation in the fight against organised crime is excellent and the Cross Border Fuel Fraud Enforcement Group is an exemplar of this.

12. My Department and the Department of Justice and Equality, jointly fund and organise an annual cross border seminar on organised crime which seeks to further enhance cross border cooperation. I will open the next seminar to be held in County Meath later this month with Alan Shatter TD, my southern counterpart. The seminar provides a further opportunity for key staff from both jurisdictions to meet and share information and tactics.

RECENT SUCCESSES

13. During 2010–11, HMRC, supported by other agencies, closed down and dismantled 15 large scale fuel laundering plants in Northern Ireland. These plants had the capacity to produce nearly 90 million litres of illicit fuel with a potential loss of £60 million to the tax payer. Over 113,000 litres of illegal fuel was seized and over 240 tonnes of toxic waste removed. Representatives from the Northern Ireland Environment Agency, who have particular expertise and powers in relation to illegal waste, now participate in joint operations. Since April 2011, 17 laundering plants have been detected in Northern Ireland.

14. Some recent operations, including activity by the cross border fuel fraud enforcement group are;

- June 2011—HMRC and PSNI raided commercial premises in Crossmaglen and discovered a laundering plant capable of producing over seven million litres of illicit fuel each year with a potential loss of £4.7 million of duty. Officers also found a concrete pen containing thousands of litres of toxic waste. Four HGVs, all of which had been adapted to transport the laundered fuel, tanks, pumps and equipment were removed.
- June 2011—A laundering plant capable of producing nearly 11 million litres of illicit fuel a year at a cost of around £7 million in lost revenue was dismantled in the Derrynoose area of Co Armagh. Two HGV vehicles and 21,000 litres of illicit fuel and associated equipment were removed. HMRC also seized a trailer containing two 15,000 litre tanks adapted as a mobile laundering plant.
- August 2011—HMRC and PSNI raided commercial premises in Banbridge and seized 6,000 litres of fuel and a commercial vehicle. A laundering plant capable of over two million litres of fuel a year was dismantled.
- August 2011—Officers from HMRC, supported by PSNI executed search warrants at five addresses in Counties Tyrone and Armagh. In coordinated activity by enforcement agencies from the Republic of Ireland searches also took place in Counties Galway, Monaghan, Offaly, Roscommon, Westmeath and Dublin. A laundering plant capable of producing 18 million litres of illicit fuel was dismantled in Co Monaghan as part of this joint operation.
- September 2011—following an arrest at a large laundering plant just across the border, simultaneous planned searches took place on both sides of the border. With PSNI support, HMRC executed five warrants on premises in Co Armagh. 14 search warrants were executed in Counties Louth and Monaghan. The plant was again capable of producing up to 18 million litres of laundered fuel per year.

15. In addition, there have been many smaller operations which have contributed to the response by OCTF partners against organised criminals who engage in fuel fraud.

16. Between 2001–09 there were 47 prosecutions for fuel fraud in Northern Ireland, five of which were acquitted or dismissed. Of the remaining cases, 24 received a suspended sentence, six received a fine, four were imprisoned, four were conditionally discharged, one received community service and one received a Compensation Order. Three Serious Crime Prevention Orders were granted.

17. Between 2009–11 there were a further nine convictions in Northern Ireland, five of which resulted in a suspended sentence, one received a non—custodial sentence, two received a fine and one case is pending.

18. Eleven oils fraud cases are currently pending. Three cases are at pre trial stage, four are waiting PPS direction and a further four are being reported with a view to referring them to the PPS.

DEBATE IN THE NORTHERN IRELAND ASSEMBLY

19. The Northern Ireland Assembly debated fuel fraud on 3 October. The motion noted with concern that only four custodial sentences had been handed down for fuel smuggling in the last ten years and called for tougher sentences and penalties. It also urged me to examine opportunities for further cross-border and inter-agency cooperation to tackle fuel fraud.

20. Custodial sentences are an important deterrent. Other penalties available to the Courts include suspended sentences, fines, Serious Crime Prevention Orders, Financial Reporting Orders, Criminal Confiscation Orders and Civil Recovery Orders.

21. HMRC has no complaint about the level of sentences available under the current legislation. This allows for a maximum of seven years imprisonment for excise evasion and 14 years for money laundering. Many offenders are charged with both offences.

22. I welcome the decision by the Lord Chief Justice, following consultation, to include duty evasion and smuggling as areas where sentencing guidance will be developed. These offences, and indeed environmental crime in Crown Court consideration, have been included in his recently announced Programme of Action on Sentencing, which sets out a number of measures to enhance the structures by which the Judiciary ensure consistency in sentencing.

23. Alongside this work, I have been considering potential mechanisms by which greater transparency and community engagement in sentencing issues might be achieved. I hope to announce proposals soon on how best these might be delivered in a way that will promote public confidence.

CHANGING PUBLIC ATTITUDES

24. Legislation and enforcement are important to address the supply side of the fuel fraud problem. We must also continue to tackle the demand side in terms of the support given by the public, knowingly or otherwise, that allows fuel fraud to operate. Put simply, if there was no demand for illicit fuel there would be no need for crime gangs to launder, smuggle or stretch fuel. The business community and the public have a duty to support law enforcement action to eradicate fuel fraud.

25. The OCTF features fuel fraud as part of its general awareness raising of organised crime issues. This includes countering any ideas that this is in some way a victimless crime highlighting the potential damage to cars and lorries using illicit fuel, the dangers of toxic waste and the clean up costs and the loss to the Exchequer. HMRC also ran an extensive media campaign last year.

26. The OCTF is embarking on a major initiative entitled “Changing the Mindset” which will seek to engage better with the public to inform individuals about the impact of all types of organised crime and seek their support to reduce the demand for the products and services provided by organised crime. I want our efforts in this area to be better targeted using messages that will resonate with different sections of the public. To this end we have commissioned research to look at what has been done nationally and internationally to engage the public to help fight organised crime and also to establish which messages work best. Included within this will be what we can do to gain the support of the public to fight fuel fraud. This is a long term project but I think it is essential if we are to better inform the wider civic society to gain its support.

CONCLUSION

27. Fuel fraud continues to be a problem in Northern Ireland. I commend the work of the agencies from both sides of the Irish border that work in partnership under the auspices of the OCTF to tackle fuel fraud. This can be dangerous work and I pay tribute to the staff involved. I welcome recent data which would indicate that enforcement action is having success against the organised crime gangs involved. I want to see no let up in these efforts and will give my support to further initiatives that see the fraudsters put before the courts and their criminal assets recovered. I also want to ensure that the public are better informed about the impact of organised crime, including fuel fraud, to help reduce the demand for the products of fuel fraud. The public partnership approach combined with robust enforcement is, I believe, the best approach.

28. I welcome the NIAC Inquiry and will consider any recommendations that apply to my department or to the OCTF.

10 November 2011

Written evidence from Alex Atwood MLA, Minister of the Environment

Thank you for your letter dated 14 September 2011, inviting the Department of the Environment in Northern Ireland to submit this written memorandum to the Northern Ireland Affairs Committee's inquiry into Fuel Laundering and Smuggling in Northern Ireland.

I would be happy to give formal oral evidence to the Committee in public if required. In the interim, please find attached a memorandum covering this Department's involvement in combating fuel laundering.

I note that my Executive colleague David Ford MLA has been invited to both give evidence and provide you with a memorandum. As such, I will not duplicate what he will no doubt provide to you with regard to the financial driver behind fuel laundering and smuggling, and the serious economic impacts it can have, depriving the Treasury of millions of pounds in revenue and undermining the livelihood of legitimate fuel retailers.

Sincerely

Alex Atwood MLA
Minister of the Environment

Annex

INTRODUCTION

This paper sets out the Department of the Environment (NI)'s involvement in combating fuel laundering and smuggling in Northern Ireland.

BACKGROUND

Fuel laundering is an illegal process to remove marker dyes from red (UK) or green (Republic of Ireland) diesel. Red and green diesel is available legitimately for agricultural purposes and is significantly cheaper than road-use diesel, due to reduced excise duty. A variety of methods (cat litter, acid, or clay) are used in fuel laundering plants to extract the dyes, filter and decolorise the fuel and pass it off as legitimate for sale, at discounted rates, to unsuspecting motorists and/or fuel retailers and for inspections by regulators.

Those responsible for producing fuel laundering waste are criminals who have no intention of incurring costs, or risking apprehension, by disposing of the waste lawfully. They have no regard for the environmental consequences of their actions and it is left to others to clean up their mess.

Profits are considerable and the proceeds, measured in millions of pounds annually, are used to fund further criminality, in some cases paramilitary. As an illustration, provided by Her Majesty's Revenue & Customs (HMRC), one small plant incurred £800 set-up costs and then made £52,000 profit in the first 10 days.

Aside from the environmental damage of waste illegally disposed of on land or in water, the practice deprives both the legitimate fuel industry and Treasury of considerable revenue, and imposes substantial costs on District Councils for clean up and on vehicle owners whose vehicles are damaged by the fuel. It can also present Health & safety risks for the public from unregulated illicit fuel sites, abandoned waste products and vehicles (fire; sub-standard vehicles unfit for purpose; noxious gases and liquids).

ENVIRONMENTAL DAMAGE CAUSED BY FUEL LAUNDERING

The unregulated processing, storage, transport and delivery of the adulterated fuel and the unregulated storage and deposit of the waste produced can contaminate and pollute both land and waterways.

Parts of Northern Ireland have been subjected to serious environmental damage from the waste products generated by illegal fuel laundering plants. This damage, while by and large very localised, can be extremely corrosive.

Substantial quantities of liquid waste residue (often acidic), are generated during the fuel laundering process, while huge throughputs of fuel are handled by fuel laundering sites. Almost invariably this fuel and the associated wastes will be handled in entirely inadequate premises where no thought or care has been given to the containment of spills, and where spills and pollution therefore readily occur.

It is difficult to quantify the extent of environmental harm caused by this practice as it is clandestine in nature, but what we do know is that solid waste residue (eg chicken/cat litter or fullers' earth clay) tends to be moved from the laundering plants and dumped in multiple sites, usually in forests and along roadsides, in relatively small quantities (2–3 tonnes). Given the volume dumped, it can run off into and damage our water courses and seep into arable land. Acid and hydrocarbon waste in rivers will alter the quality of the water and kill its plant and animal life. In a number of instances fuel laundering was only detected through the serious pollution of nearby watercourses (including instances of threats to drinking water reservoirs). An example of such an incident was the contaminated cat litter discovered at the Education & Library Board depot in Coleraine in 2009.

Environmental damage can also arise from the unsatisfactory storage, transport and delivery of the impure fuel to retailers and customers. Lorries used for transporting illegal fuel are often adapted and can be unstable and unsafe. There have been a number of accidents involving illegal fuel lorries crashing and shedding diesel, polluting watercourses and contaminating land. Very often in such accidents the driver will abandon the crashed vehicle, leaving emergency services and the public to face unknown risks.

Where the dumping of fuel laundering waste has polluted watercourses, NIEA Water Management Unit (WMU) will coordinate a cleanup of the affected watercourse. There have also been instances where fuel laundering waste has been dumped close to reservoirs and threatened the public drinking water supply. In these instances Northern Ireland Water has generally carried out a cleanup of the waste and affected watercourses.

THE DEPARTMENT OF THE ENVIRONMENT'S (DOE) ROLE IN TACKLING FUEL LAUNDERING

Regulation and enforcement of the fuel industry and the associated illegal fuel smuggling and laundering is discharged by a number of agencies including PSNI, HMRC, Health & Safety Executive (HSE) and District Councils. Due to the cross-border nature of the illegal trade the Garda Síochána and the Revenue Commissioners in the Republic are key allies.

HMRC has primacy over fuel laundering investigations and has had a number of recent successes dismantling and closing down laundering plants and illegal filling stations.

The role of the Northern Ireland Environment Agency (NIEA), the regulatory "arm" of DOE, concerns waste and pollution associated with the trade. It will investigate and prosecute those identified as responsible for producing laundering waste where sufficient evidence exists. NIEA investigates and prosecutes serious waste crime under the Waste & Contaminated Land Order 1997.

This includes waste licensing and regulation of the legitimate industry as well as dealing with reports of illegal deposits of waste including fuel laundering waste unlawfully deposited. Reports about fuel laundering waste usually originate from local Councils and the public.

CLEAN UP OF FUEL LAUNDERING WASTE

The Department of the Environment does not currently clean up illegally deposited waste. HMRC generally removes waste from the fuel laundering plants themselves when they are being dismantled as part of an enforcement operation. The Department also has powers under Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997 ("the 1997 Order") to require illegally deposited waste to be removed to a licensed facility for treatment and/or disposal and to require that the waste be accepted.

The burden therefore rests largely with District Councils (DCs). Fuel laundering waste would not constitute part of a Council's routine waste management functions. However, under Articles 28 and 28A of the 1997 Order, DCs have powers to require the occupier, or in certain circumstances, the owner of land on which waste (including fuel laundering waste) has been illegally deposited to remove the waste. DCs also have powers to remove such waste themselves and to attempt to recover the costs of doing so from the occupier or owner of the land or the person who deposited the waste if they can be traced.

The Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011, has extended this power to the Department of the Environment (the legislation has not yet commenced these particular powers). However, the Department has neither the staffing resource nor the necessary infrastructure to clean up and dispose of any waste. There is no current budget stream to absorb the significant costs of removing such waste either by contract or by developing in-house expertise and capability. DOE is currently developing a flytipping protocol with the District Councils which should establish the roles and remit of both organisations in dealing with all controlled waste.

NIEA's Water Management Unit has been involved in clean-up where incidents of fuel laundering have impacted on a waterway. The cost over the past five years is £17,466, which includes analytical and salary costs.

The majority of the clean up burden has fallen on a few District Councils by virtue of their location along the border with the Republic of Ireland. Newry and Mourne alone has spent £70,000 in the last year, and £135,000 over the last four years.

Legal responsibility for the disposal of controlled waste, such as fuel laundering residue, lies with the occupier of the land or the landowner, or "keeper", in the first instance. NIEA has, on occasion, taken enforcement action requiring the landowner to dispose of the waste. However, it does not routinely prosecute landowners who are victims themselves of the unscrupulous fuel launderers.

PARTNERSHIPS IN TACKLING FUEL LAUNDERING

NIEA's Environmental Crime Unit (ECU) is represented on the Organised Crime Task Force Cross Border Fuel Group, comprising representatives from the Garda Síochána, PSNI and HMRC. The group targets those involved in fuel laundering. Membership of this group has enabled NIEA to participate in planned operations and to include environmental criminality in cases being prepared by HMRC. This represents a very efficient use of limited resources.

Further to the group referred to above, ECU has recently met with the HMRC's Criminal Investigation Department to discuss means of co-operating closer during PSNI/HMRC raids of fuel laundering plants so that those directly responsible for producing the illegal waste can be held to account by the NIEA under waste legislation. ECU will therefore be able to target efforts with HMRC benefiting from shared intelligence to deter and disrupt those involved in fuel laundering at the source of the criminality. This is a better use of resource with more potential deterrent effect than responding to incidents of dumping of the waste.

NIEA investigates and prosecutes incidents where pollutants are discharged or deposited into waterways, as described in the Water (Northern Ireland) Order 1999. WMU has a longstanding working relationship with the lead agency HMRC, whereby information on suspected fuel laundering and the resulting pollution is exchanged, assistance provided and oil pollution cases investigated and prosecuted.

WMU will respond to all reports of water pollution and take whatever steps are required to identify the source of the pollution, stop the pollution at source and undertake clean up if required. In addition to this, where appropriate, enforcement action will be undertaken.

For fuel laundering, if waste is deposited in a watercourse and is causing pollution NIEA will have it removed using specialist contractors. If waste has been deposited beside a watercourse then we will seek to have the landowner or responsible authority remove this waste. WMU will take steps to stop any run off from making its way into a waterway.

WMU have undertaken clean up operations where rivers or lakes have become polluted with oil associated with fuel laundering operations.

Based on intelligence, NIEA and HMRC are on an ongoing basis participating in joint operations targeting significant figures in the illegal fuel trade.

Tackling the hierarchy of the fuel laundering business in this manner appears to me to be more important and effective than focusing efforts on cleaning up fuel laundering waste which could be viewed as actually assisting criminality by removing its waste.

In addition, I am concerned that the public of Northern Ireland need to be made aware of the extensive problems caused by fuel laundering including the issue of its waste—and not as a technical offence that provides a benefit of cheap fuel.

14 November 2011

Written evidence from Arlene Foster MLA, Minister of Enterprise, Trade and Investment, and the Fuel Oils Liaison Forum

Thank you for your invitation to attend the Committee's Inquiry into Fuel Laundering and Smuggling in Northern Ireland on the 11 or 18 January 2012.

I regret that I am unable to attend the Committee, but I understand my Executive colleague, David Ford MLA, Justice Minister, will give evidence to the Inquiry on 18 January. I understand that you have also received written evidence from David, and from the Executive's Environment Minister, Alex Attwood MLA.

I am fully committed to finding ways to tackle fuel fraud in Northern Ireland, and my Department's Fuel Oil Liaison Forum has worked to encourage co-operation between local enforcement agencies on this issue. The Committee wrote to my Department on 11 October, seeking an update on the work of the Forum. This is provided in the attached response.

As the Forum's response explains, my Department will continue to co-operate with HMRC and other enforcement agencies in the drive to tackle fuel laundering and smuggling. However, my Department does not have the powers to address this issue directly, and other legislative possibilities to address fuel fraud must be investigated, including through future legislation.

Yours sincerely

Arlene Foster MLA
Minister of Enterprise, Trade and Investment

Annex

THE INCLUSION OF DIESEL WITHIN THE LICENSING REQUIREMENTS OF THE PETROLEUM (CONSOLIDATION) ACT (NI) 1929

To assist in the wider cross government effort to tackle fuel fraud and to encourage improved cooperation between the various agencies and bodies involved, DETI has chaired a Fuel Oils Liaison Forum since its establishment in 2009. This Forum includes officials from DETI, HSENI, HMRC and District Councils and has made considerable progress on a number of fronts, including the training and development of council licensing officers, the development and deployment of updated guidance to secure a consistent approach to

licensing across all 26 District Councils and increasing the sharing of relevant information and intelligence with colleagues in HRMC.

To date the Forum has focussed on, and already improved, information sharing between health and safety enforcers (including local council officials and HSENI officers) and those directly tackling fuel fraud (including HMRC and PSNI officers). and we plan to invite HMRC and DOJ officials to join its subgroup to examine the scope to update the current Petroleum Licensing Regime.

DETI has also considered the scope for amending the Petroleum (Consolidation) Act (NI) 1929 (PCA) to include diesel and concluded that it would not be appropriate to use the PCA as a vehicle to incorporate diesel for licensing purposes.

The PCA was predicated on controlling the keeping and dispensing of petroleum spirit through a licensing regime so as to minimise the fire and explosion hazard posed to the general public. Essentially the PCA extends only to substances which present a hazard of a broadly similar nature to petroleum. Consequently diesel with its high flash point (fp>60°C) cannot be classed in the same hazard category as petroleum (fp ~40°C) and, as such, cannot come under the remit of the Act. In essence, under normal ambient conditions petroleum spirits release a flammable vapour which is easily ignited causing fire and explosion, diesel does not.

In addition, even if the Act could somehow be amended to embrace diesel it would be ineffective since if laundered was being stored safely (which would not be difficult) Councils would have no relevant grounds for revoking a licence. It would also have the potential to create a significant difficulty as diesel's flashpoint, and therefore hazards associated with its storage and use, is common with a range of other substances. Including diesel would very likely mean we would have to include other similar combustible liquids such as home heating oils, kerosene, paraffin and some aviation fuels. A direct consequence of bringing these fuels within scope of such legislation would be that any new licensing requirements would also be applied to those who sell and distribute such fuels—with the associated costs etc which would go with them and the financial impact on their businesses and customers.

CONCLUSION

The Forum's view is that it is not appropriate to seek to rely on amending Health and Safety Legislation to tackle fuel fraud.

The Forum believes that other more suitable legislative vehicles, including any suitable future legislation, should be considered for tackling fraud.

14 December 2011

Written evidence from Miss Chloe Smith MP, Economic Secretary, HM Treasury

At our evidence session on 25 January 2012, I agreed to provide you and your colleagues on the Committee with some additional information on issues relating to fuel laundering and smuggling, which I am pleased to be able to provide below.

In question 506, Oliver Colville asked about the possible impact on the block grant from recovering monies. Changes to the budgetary provision of all the devolved administrations are linked to changes in planned spending on comparable public services by Government Departments. As HMRC operate on a UK-wide basis, the Barnett Formula is not applied to changes in the HMRC budget. There would therefore be no changes to the Northern Ireland block grant in the event of changes to the HMRC budget.

In questions 527 and 528, Kate Hoey and Dr McDonnell respectively asked about Government level dialogue with the Republic of Ireland, including what has been said in the past about this issue, and duty differentials, and if there would be merit in discussing it in the future. While Treasury ministers have not had specific discussions about this issue with Irish counterparts, I can confirm that both political and operational matters are discussed in the bilateral dialogue between the UK and the Republic of Ireland Governments as and when it is appropriate.

In questions 563 and 564, Lady Hermon asked about support for statutory indemnity for the Public Prosecution Service in Northern Ireland. Prosecutions and the criminal justice system are devolved matters in Northern Ireland and it is therefore for the Northern Ireland Minister of Justice to determine policy and legislation in this area. The current policy has not impacted on HMRC case work.

In addition, I understand HMRC has agreed to write to the Committee with some further information. I hope the Committee finds this helpful.

Miss Chloe Smith MP
Economic Secretary, HM Treasury

10 February 2012

Written evidence from Alex Attwood MLA, Northern Ireland Minister of the Environment

During my attendance at the NI Affairs Committee's hearing into Fuel Laundering and Smuggling in Northern Ireland, I undertook to provide you with details of the costs incurred by all District Councils in Northern Ireland for cleaning up fuel laundering waste.

The attached table illustrates the disproportionate burden being faced by particular District Councils, largely because of their border with the Republic of Ireland. In separate correspondence, Newry and Mourne District Council has advised me that, over the past five years, it has dealt with 50 sites containing 305,000 litres of fuel laundering waste, costing it £162,319 to remove and dispose of (half of that cost incurred in 2011 alone).

As I indicated at the hearing, the Department of the Environment is currently in discussion with District Councils on a fly-tipping framework. This should help establish the respective responsibilities of local and central government, and in doing so reduce the costs being faced by individual Councils.

Alex Attwood MLA
Minister of the Environment

15 February 2012

APPENDIX

CLEAN UP COSTS INCURRED BY DISTRICT COUNCILS IN NORTHERN IRELAND 2007–11

<i>District Council</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Antrim	0	0	0	0	0
Ards	–	–	–	–	–
Armagh	2,928	6,631	1,282	46,163	42,314
Ballymena	0	0	0	0	0
Ballymoney	0	0	0	0	0
Banbridge	0	1,397	0	0	11,365
Belfast	0	0	0	0	0
Carrickfergus	0	0	0	0	0
Castlereagh	–	–	–	–	–
Coleraine	0	0	0	0	0
Cookstown	0	0	11,250	1,225	0
Craigavon	10,269	0	0	1,281	32,694
Derry	0	0	0	0	0
Down	–	–	–	–	–
Dungannon	0	0	0	0	0
Fermanagh	0	0	0	0	0
Larne	0	0	0	0	0
Limavady	0	0	0	0	0
Lisburn	–	–	–	–	–
Magherafelt	0	0	0	0	0
Moyle	0	0	0	0	0
Newtonabbey	0	0	0	0	0
North Down	–	–	–	–	–
Newry and Mourne	26,251	39,149	20,443	5,561	70,167
Omagh	–	–	–	–	–
Strabane	–	–	–	–	–
Total	39,448	47,177	32,975	54,230	156,540

– = did not reply

Written evidence from HM Revenue and Customs

HMRC would like to thank the Committee for sharing information in its possession relating to fuel marking technologies, which has allowed us to clarify our evidence.

We attach transcripts of the Hearings dated 14 September, 14 December and 25 January with added footnotes to clarify points [brief footnotes have been added in the oral evidence; longer footnotes are printed below]. We are sorry that we may have inadvertently misled the Committee by omission due to a gap in our knowledge on the latest position on testing of markers in the Republic of Ireland.

The Committee may also wish to know that we will be issuing a formal invitation to all the companies engaged in development work to visit our field operations to assist their understanding of our requirements. We also wish to emphasise our very clear commitment to working with companies to find a resilient marker, and that we continue to work collaboratively with the Republic of Ireland in that process.

FOOTNOTE RELATING TO Q58, Q271 AND Q510

Note by witness: It has come to HMRC's attention that their implication in Q58 and assertion in Q271 and Q510 that the Republic of Ireland has successfully laundered out a specific marker was out of date. HMRC now accepts that a variation of the initial product produced promising results in the Irish tests after discussions about how the product would perform in various conditions. The Irish State Laboratory has made no comparison with the performance of the UK marker. The Committee may wish to note that the UK currently applies a more restricted policy towards contamination levels than the Republic of Ireland. This is because of the differences between the current markers used in the two countries. The UK and the Republic of Ireland will have to address this in taking forward the work on a common marker.

FOOTNOTE RELATING TO Q58

Note by witness: HMRC would like to clarify a point about the DNA marker referred to above. As part of the Request for Information process, HMRC were given a paper outlining a DNA type marker which was later withdrawn. The marker in question which Mr Paisley stated had been successfully introduced in Brazil is not a DNA type marker.

FOOTNOTE RELATING TO Q271

Note by witness: It has come to HMRC's attention that the Committee would benefit from a fuller explanation of their evidence. HMRC published a Request for Information (RFI) which contained a specific list of their requirements, including the ability to test at the roadside. The products were then evaluated by HMRC in December 2010 and at the time, none of the products fully met HMRC's requirements. However, HMRC recognised that there was the potential to meet their requirements and they have initiated further work to take forward the development and procurement of a new marker.

FOOTNOTE RELATING TO Q271

Note by witness: HMRC gave the Committee what they believed to be factual information on a marker being used in Brazil (which would not meet the needs of the UK). However, HMRC misunderstood which of the marker products being used in Brazil was being referred to. HMRC are concerned that they may have inadvertently misled the Committee by referring to the ethanol marker rather than other products designed to prevent gasoline adulteration. HMRC has not evaluated the potential of other markers used in Brazil.

16 February 2012

Written evidence from Japan Tobacco International

Following the final evidence session of the Committee's inquiry into fuel laundering and smuggling on 25 January 2012, JTI would like to provide some additional observations on the issue and to supply information requested by the Committee during our appearance on 19 October 2011.

LOSS TO JTI AS A RESULT OF ILLICIT TRADE IN NORTHERN IRELAND

We told the Committee that we estimated that around 170 million counterfeit and illicit white cigarettes were consumed in Northern Ireland in 2010, resulting in a revenue loss to the Treasury of around £42 million. The sale of these products through illicit rather than lawful channels deprived legitimate manufacturers and their partners in the wholesale, distribution and retail network, of potential revenue of up to £12.4 million. JTI, with a 49% share of Northern Ireland's legitimate cigarette market in 2010,ⁱ would therefore have been more adversely affected than other manufacturers by this criminal activity.

OBSERVATIONS ON INQUIRY SESSIONS

Testimony provided in the oral evidence sessions by, among others, HMRC, the PSNI and Ministers, will have left the Committee in no doubt that the illicit trade in tobacco products continues to be a high priority and one that is treated very seriously.

Of course, there are parts of the UK where levels of tobacco smuggling are higher than others, and in 2010 Northern Ireland was, unfortunately, one of them. However, I am pleased to inform the Committee that our provisional estimates of consumption of non-UK duty paid (NUKDP)ⁱⁱ tobacco products in Northern Ireland in 2011 show a reduction from 2010. The level of cigarette NUKDP consumption has fallen from 17% to 13%, and in the case of roll-your-own (RYO) tobacco it is down from 59% to 53%. Whilst these reductions are welcome, this remains a significant issue.

It is apparent from the evidence provided to the Committee that criminal organisations are ready to supply and many smokers, experiencing considerable pressure on their incomes, are willing to buy. Therefore, it is vital that law enforcement bodies in Northern Ireland have the necessary resource to tackle the problem. I was very pleased to hear Mr Whiting of HMRC say in the session on 25 January that he was receiving a "substantial extra resource in Northern Ireland" which can only help to make further inroads.

However, it is our view that members of the Committee should be aware that the job of law enforcement will be made more difficult by the commitment of HM Treasury to increase tobacco duties ahead of inflation in each Budget until 2014, and the ban on the display of tobacco products in Northern Ireland's retailers due to take effect from 1 October 2012.

RECOMMENDATIONS

Further to our original submission we hope the Committee will recommend to the Westminster Government that:

- resources for law enforcement in Northern Ireland should be commensurate with the scale of the problem in the region;
- Courts are encouraged to fully utilise the available sanctions and penalties to serve as an effective punishment and deterrent;
- HMRC continues to work with JTI and other tobacco product manufacturers;
- the tobacco duty escalator policy should be abandoned; and
- the UK Department of Health's forthcoming consultation on measures to "reduce the promotional impact of tobacco packaging" considers extremely carefully the impact on the illicit tobacco trade.

Also, JTI requests that the Committee should recommend to the Northern Ireland Assembly that:

- it presses the Westminster Government to provide resources for law enforcement in Northern Ireland that are commensurate with the scale of the problem in the region;
- it continues to support the efforts of the partners in the Organised Crime Task Force to work together to tackle tobacco smuggling;
- it continues to support the cross-Border work between HMRC and Revenue Commissioners, and the PSNI and An Garda Síochána;
- it supports the efforts of the Justice Minister, David Ford MLA, in developing guidance so that prosecutions have the maximum deterrent effect;
- it should be alert to the risk of increases in illicit trade caused by future tobacco control measures, such as the forthcoming display ban; and
- its input into the UK Department of Health's forthcoming consultation on measures to "reduce the promotional impact of tobacco packaging" considers extremely carefully the impact on the illicit tobacco trade.

REFERENCES

ⁱ Nielsen Market Track

ⁱⁱ NUKDP refers to volumes that are counterfeit, illicit white, smuggled and crossborder purchased.

20 February 2012

Written evidence from Michael McEneaney

I have been an Irish Civil Servant for 37 years and took early retirement in November 2009 having worked in Customs, The Prices Commission, The Office of Consumer Affairs and finally the National Consumer Agency. Another important element of my experience to put forward a view on this issue is that I was brought up on the Border and I understand the thinking behind the traders on the border.

If I was asked to offer a solution to the problem of Fuel laundering and the resulting waste I would remove the coloured fuel, Red in Northern Ireland and Green in Southern Ireland, from the market place. This action would immediately remove the waste issue.

I would introduce a fuel rebate system for the farmers and businesses that currently use the marked fuel. I would require them to submit accounts for the purchase and use of fuel and I believe this would benefit both exchequers by having more control on the use of the fuel by those entitled to use the rebated fuel. This action would also reduce the work load of the customs on patrol duties.

I have also noted many occasions when private car drivers filled up with Marked Gas Oil in Filling Stations without any concern from the site owner, this issue would be eliminated.

6 July 2011

Written evidence from RMI Independent Petrol Retailers Association

This brief report is provided by the RMI Independent Petrol Retailers Association (RMIP) and is supplementary to previous evidence provided by the Petrol Retailers Association (PRA) in 2002.

RMIP represents the interests of the 5,000 or more independent petrol retailers across the United Kingdom of which around 500 of them are situated in Northern Ireland. It has in membership a good cross section of the industry including Motorway Service Areas, small Supermarkets, Group Operators and very many small Single Site Operators. It is the independent retail sector that provides refuelling facilities for local communities in which it would be uneconomical for supermarkets to operate. It is however the independent single site operator that is suffering the most from the sale of illegal fuel and the unfair competition that this represents.

RMIP has continued to provide support to HMRC by giving maximum publicity to the matters of laundering and published each success extensively. We are however concerned at the limited impact this is having on reducing the problem. As far as our members are aware, regular offenders are well known, but in spite of that, members of the public continue to make purchases and there seems to be no penal action forthcoming.

Although the Petrol Retailers Association, in its former guise, PRA, held meetings periodically in Northern Ireland during the nineties, the continuing problems and political instability deterred retailers from attending to the extent that we discontinued holding meetings there. Notwithstanding that, we have continued to support HMRC in tackling this problem. It is quite clear that matters will only improve if the industry and regulators work together to find a solution that will enable legitimate traders to continue to trade, unhindered by the unfair competition posed by illegal sales.

On 28 September 2011, RMIP held its first meeting in Belfast at which HMRC gave a presentation to retailers on the current situation. We were encouraged to see that retailers were confident enough to meet in a public forum and discussion afterwards, indicated a willingness to work together with RMIP and HMRC to tackle this problem.

A number of options have been proposed in earlier reports and we comment on them here.

The 2002 PRA report recommended the provision of compensation for those legitimate companies that have lost their business as a result of cross border smuggling and fuel laundering, comparing it to that of foot and mouth disease and payments that were made. It also recommends an aid package for legitimate businesses that were losing income to illegitimate sales. The continuing closures of such legitimate businesses as a result of the unfair situation, further increases the loss to the treasury as the illegitimate businesses thrive. We continue to hold the view that existing legitimate businesses need financial support to survive, based on the necessary evidence of integrity.

The 2002 report suggested the setting up of a licensing scheme for sale of motor fuel. We do not however, support such a proposal. Licensing will not provide any additional controls than already exist and if these existing controls are not being enforced, it is unlikely that new ones will be either. The industry is already over regulated since the introduction of the Dangerous Substances and Explosive Atmospheres Regulations (DSEAR) were introduced in December 2002. At that time it was proposed by HSE to modernise the safety regime in the UK by amending or repealing the 1928 Petroleum Consolidation Act (PCA), once DSEAR was in force. Lack of resources and limited time available, however, led HSE to abandon this proposal, leaving the industry with duplicated controls through DSEAR and licence conditions, made under PCA. Additional licensing on top of the current regime would place an unacceptable burden on the industry in Northern Ireland. We do however; recommend a closer liaison between HMRC, HSE and Industry.

At a meeting in October 2010 where Industry met with HMRC in Belfast, one suggestion was made that new conditions should be included in the petroleum storage licence that would enable petroleum licensing authorities to take action if smuggled fuel was being suspected. We pointed out that PCA relates specifically to petroleum spirit with a flash point less than 21 degrees and could therefore not include diesel. We further pointed out that licence conditions under PCA can only relate to safe storage of petroleum spirit in terms of fire and explosion risk and cannot therefore include fuel quality or tax regimes. It was then suggested that action should be taken to remove the storage licence from sites which were found to be trading illegally. As we pointed out at the meeting there are no powers of revocation granted to Local Authorities under the Act. It was further suggested that renewal applications be refused, but as the licence only relates to the suitability of the site and not the operator, an appeal against that refusal would be upheld on the basis that it had previously been licensed as satisfactory in that condition.

We do however, believe that a number of options remain open for consideration.

OPTION 1

Change the current petroleum licensing regime so that this is done centrally through HSE as opposed to local authorities. (This was proposed about four years ago, but subsequently abandoned for what was thought to be, political reasons) This would introduce consistency of enforcement and allow HSE to work closely with HMRC, in identifying where sales of illegal fuel were suspected. Inspectors have powers to inspect wet-stock reconciliation records for leak detection purposes but which can also readily indicate discrepancies in fuel purchases. Close liaison between the two national bodies could have a significant impact on reducing the problem.

OPTION 2

Using the current licensing regime, seek to achieve the same as option 1, but less likely to be successful across twenty four local authorities with differing personnel. We would not expect the same outcomes as option 1.

OPTION 3

Introduce a registration scheme, requiring petrol station owners to register with HMRC for sales of motor fuel, which provides site details, tank capacities, fuel grades etc. A requirement to keep site records of fuel purchase invoices and sales and for these to be readily available for inspection. Liaison between HMRC and HSE/PLA comparing invoices with stock reconciliation records should identify where discrepancies exist. Industry Associations would have a large part to play in setting up such a scheme.

RECOMMENDATIONS

We believe that a task force should be set up to consider the options above, as well as any others put forward by the group, which should be made up of HMRC, HSE, as well as Stakeholder groups such as RMIP and FPS (Federation of Petroleum Suppliers) The remit for the group should include the setting up of a scheme to identify offenders, provide publicity for the Government and Industry efforts to clean up the sector and produce advisory notes to Motorists of the damaging consequences of purchasing illegal fuel.

GENERAL

RMIP remain committed to working with Government and HMRC, through publicity, joint meetings with retailers or other feasible means to maximise efforts to eliminate this problem. Our renewed efforts with members in Northern Ireland have provided an opportunity to further explore ways in which we can help them to overcome the difficulties in this market and are currently putting together our programme of support for next year.

10 October 2011

Written evidence from the Consumer Council

As you will be aware, on 15 November 2011 a motion was brought forward to urge the Government to stem fuel price rises. This has support from more than 100 MPs and was tabled in response to an e-petition signed by more than 100,000 people.

This is an issue that continues to be of major importance locally. Northern Ireland consumers bear the brunt of volatile petrol and diesel prices—three-quarters of people in Northern Ireland travel by car at least three times a week⁸ and the latest Travel Survey for Northern Ireland⁹ shows that 81% of the average distance travelled annually by consumers here is either as a car driver or passenger. Fuel prices have been steadily increasing since January 2009. In October 2011 it cost £67.45¹⁰ to fill a car with petrol and £70.10 to fill with diesel. It is now £8.32 more expensive to fill with petrol and £9.21 for diesel compared to a year previously. From January to October of 2011, Northern Ireland has had the most expensive prices for petrol, diesel or both across the UK regions.¹¹

The Consumer Council continues to track the costs and monitor trends for petrol and diesel.¹² The purpose of this is to empower consumers with the knowledge of what prices are available. We update the information on our website weekly (www.consumerCouncil.org.uk) and encourage consumers to shop around for the best price.

The Consumer Council has also called on supermarkets in Northern Ireland to do right by their customers and end their practice of charging different prices depending on location. Fuel price monitoring carried out by the Consumer Council over a six month period shows that supermarkets in Northern Ireland have charged up to five pence more per litre for petrol depending on which of their forecourts consumers visited.

The Consumer Council recognises that the cost of travel is impacting on many consumers ability to access employment, education, health services and leisure activities. We believe there are a number of actions that could be taken to provide short term relief for consumers and influence long terms issues which are impacting on people's ability to travel.

1. We ask that you support the call for the planned increase of three pence per litre in fuel duty planned to come into effect in January 2012 to be scrapped. Whilst this move will have a positive impact on

⁸ Public Transport—On the right track? A Consumer Council summary report into attitudes to public transport in Northern Ireland. June 2009.

⁹ Travel Survey for Northern Ireland Headline Report 2008–2010, Department for Regional Development.

¹⁰ Based on Consumer Council Monitoring figures for an average 50 litre tank.

¹¹ AA Monthly Fuel price reports.

¹² The Consumer Council undertakes a weekly "price watch" of petrol and diesel prices at a sample of 77 sites across Northern Ireland. The sites have been selected to provide a geographic spread, represent the market share and provide a mix of supermarket and independent retailers.

the price consumers pay in the short term it will not address the long term increases in the price of oil. This was demonstrated in March 2011 when the one pence reduction in the rate of fuel duty implemented was wiped out within days by rising oil prices, and a long term approach to reduce our dependency on oil is required.

2. The British Petrol Retailers' Association has also raised their concerns with the UK Energy Minister and asked the Office of Fair Trading to look at the issue of transparent pricing. The Consumer Council asks that you support these calls for an investigation at EU level into the price of fuel. Consumers need transparency on fuel costs and clarity on where the revenue from fuel duty is spent.
3. The Consumer Council asks that you support our call for supermarkets to end their practice of regional pricing and offer their lowest price for petrol and diesel at all their outlets in Northern Ireland.
4. The Consumer Council continues to call for improved investment in public transport to provide a viable alternative to car use for more people and we request that you support this call. While Northern Ireland consumers pay the same level of fuel duty as other UK regions, they have seen a much lower level of government investment in public transport per capita. This has further heightened our reliance on car use and increased social exclusion, with some of the most vulnerable in society suffering the double blow of being unable to afford the cost of running a car while also having little access to public transport as an alternative way to travel. The Consumer Council asks that you support our calls for a rebalancing of the Department for Regional Development's spending plans towards funding public transport services to provide a long term viable alternative to the car for consumers.

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