



House of Commons
Committee of Public Accounts

Gift Aid and other tax reliefs on charitable donations

Forty-first Report of Session 2013–14

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

*Ordered by the House of Commons
to be printed 29 January 2014*

HC 835
Published on 5 February 2014
by authority of the House of Commons
London: The Stationery Office Limited
£10.00

Committee of Public Accounts

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Committee staff

The current staff of the Committee is Sarah Petit (Clerk), Claire Cozens (Committee Specialist), James McQuade (Senior Committee Assistant), Ian Blair (Committee Assistant) and Janet Coull Trisic (Media Officer).

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Summary

Gift aid is a valuable source of income for charities and there is general support for measures that will increase charitable giving. However, it is deeply concerning that HMRC has not collected data to evaluate whether the generous incentives on offer to individuals and companies are encouraging more people to donate more, as was intended, especially as Gift Aid currently costs £2 billion with £1 billion going to charities and £1 billion to individuals and companies. One of the unintended consequences of the current system of reliefs has been the scope for individuals and companies to try to exploit loopholes in it and Gift Aid is vulnerable in this respect. This type of abuse can give those reliefs and the charity sector a bad name if HMRC is not seen to be doing more to address the problem. Tackling abuse provides good value for money, with £44 saved in revenue for every £1 spent. Yet HMRC assesses £170 million was lost in 2011/12 through avoidance, fraud and error, with much larger sums at risk from marketed avoidance schemes. Whilst HMRC claims there is evidence that charitable donations by individuals has grown there is also evidence that despite the generous tax reliefs charitable support by corporations has gone down.

Conclusions and recommendations

1. Successive governments have legislated to exclude charities from income tax, including income from donations, and there is cross party support for measures that will simplify and increase charitable giving. Gift Aid allows charities to reclaim the basic rate of tax paid on donations. Other reliefs allow the donor, rather than the charity, to receive all of the tax benefit on donations. These reliefs on donations provide a tax incentive to donors by allowing them to reduce their tax liability. In 2012-13, charities received just over £1 billion in tax repayments through Gift Aid donations; and individuals and companies also received a tax benefit on their donations worth almost £1 billion.
2. **HMRC has not collected data to enable it to evaluate if Gift Aid is working as Parliament intended.** When reliefs on donations were reformed in 2000, HMRC's predecessor, the Inland Revenue, undertook to fully monitor and evaluate the impact of the new measures once the changes were up and running. HMRC has failed to plan for how to achieve this or to collect relevant data, and as a consequence it has not fully evaluated the effectiveness of these reliefs. HMRC does not know if these reliefs have encouraged more people to give more to charity as was intended, and the evidence for increased charitable giving is at best inconclusive. In particular HMRC does not have enough information about the impact of changes to Corporate Gift Aid, with some evidence suggesting the change may have reduced the income charities receive from donations by businesses.

Recommendation: *HMRC should work with the charity sector to gather better evidence of the impact of the reliefs on donor behaviour. In future HMRC must ensure that when it commits to evaluating the impact of a new tax relief, or a change to an existing relief, it collects the data it needs to undertake a robust assessment.*

3. **The abuse of reliefs on charitable donations by individuals and companies has lost tax revenue and risks giving the charity sector a bad name.** HMRC estimates that £170 million was lost in 2012-13 through avoidance, fraud and error resulting from the misuse of these reliefs. HMRC has publicised the success it has had in prosecuting fraudsters and challenging the promoters of some marketed tax avoidance schemes, but accepts its deterrents could be stronger. In particular, dealing with the flagrant abuse of these reliefs has been an incredibly slow process. Since 2004 HMRC has identified, investigated and challenged eight marketed avoidance schemes, and it has concluded that these have misused reliefs on donations, but 1,800 cases (90% of the original subscribers to these schemes) with £217 million of tax at risk remain open as the users are willing to test HMRC's assessment at tribunal.

Recommendation: *HMRC must promptly investigate schemes which appear to use reliefs on charitable donations in ways unintended by Parliament, and ensure it both penalises and maximises publicity of those who have been proved to have misused reliefs in such a way, to deter potential promoters and users of such schemes.*

4. **The sharing of information within HMRC and with other bodies, such as the Charity Commission, has been inadequate.** HMRC's charities team is responsible for dealing with the tax affairs of charities, but it has little visibility of the work carried out by other parts of HMRC's business which process claims for relief on donations by individuals and businesses. HMRC recognises that it has not done enough to join-up relevant information about donors and charities from across its business, and it has committed to improve this. HMRC acknowledges its relationship with charity regulators is important in tackling abuse, so we were surprised that the sharing of information has been poor and that there has been a failure on both sides to work together effectively. HMRC only took legal advice to clarify what information it can share with the Charity Commission after the publicity surrounding abuse of tax reliefs by the Cup Trust. Prior to this HMRC would not tell the Commission if a known promoter of tax avoidance schemes was involved in the running of a charity.

Recommendation: *HMRC must set out a plan to improve how it shares its information internally. It must also set out more clearly how it will work better and more closely with the regulators of charities.*

5. **HMRC has not adequately simplified the tax rules for reliefs on donations.** HMRC told us that an underlying objective of the changes to Gift Aid in 2000 was to simplify the tax system. Deeds of covenant, the previous method of tax efficient giving, were undoubtedly complex. However, government has had to introduce five pieces of legislation to tackle abuse of Gift Aid and the reliefs on donations that replaced covenants. For example, Self-Assessment Donate was introduced to encourage charitable giving, but was then abolished, because HMRC identified it was too susceptible to fraud. These changes to legislation have complicated, not simplified, the tax code.

Recommendation: *HMRC should examine ways in which the rules can be simplified to both reduce abuse and make the system easier and simpler for charities to claim the reliefs.*

6. **HMRC has still not committed enough resources to administering Gift Aid.** HMRC has made good progress in tackling the abuse of reliefs on donations. It has doubled the number of compliance staff working in this area since 2009-10 and gets a good return from its investment. In 2012-13 HMRC saved £44 in tax revenue for every £1 spent on compliance staff, compared to £21 for every £1 in 2009-10. This increased yield suggests that there is still some way to go in stopping losses through the misuse of these reliefs, but HMRC has not identified what resources it should invest in this area.

Recommendation: *HMRC should establish what the right staff profile is for administering reliefs on donations and implement it, taking into account its cost effectiveness in relation to other compliance work.*

7. **HMRC recognised that this Committee has contributed to a debate which has led people to be less content about artificial and contrived tax minimisation schemes.** HMRC could go further in providing information to this Committee as part of its

work to preserve public confidence in the tax system. HMRC should provide this Committee with information that would enable appropriate parliamentary scrutiny and thereby improve public confidence in its administration of the tax system. This would be consistent with the welcome assurance HMRC gave us that it would put as much information as it can in the public domain and continue to improve HMRC's transparency.

Recommendation: HMRC must in the future be more willing to share information with us, in confidence where necessary, to help us scrutinise its actions and provide the assurance needed to improve public confidence in the tax system.

1 HMRC's evaluation of the objectives of Gift Aid and other reliefs on donations

1. On the basis of a report from the Comptroller and Auditor General, we took evidence from HM Revenue & Customs (HMRC) on its administration of Gift Aid and other tax reliefs on charitable donations.¹ Successive governments have legislated to exclude charities from tax on their income, including from donations, and there is universal support for measures that will increase charitable giving.² The current system of reliefs comprises Gift Aid, which charities can claim on cash donations made by UK taxpayers, and reliefs to individuals and companies when they donate cash or certain shares and other qualifying investments to a charity.³

2. In 2000, the government made a number of changes to the tax reliefs available to charities and donors, which were intended to encourage more people to give more and to simplify the tax system for donors and charities.⁴ These changes made Gift Aid more accessible to donors by allowing relief on donations of any size. As a consequence Gift Aid largely replaced deeds of covenant, which had allowed tax relief for regular, fixed donations to charity over a period of at least three years. Reliefs on donations for Gift of Shares and Securities were also introduced in 2000, and Corporate Gift Aid was reformed to provide a tax benefit for the donor rather than the charity.⁵

3. Since 2000, the cost to the Exchequer of tax reliefs on donations has increased to around £2 billion, largely as a consequence of the changes having made a higher proportion of donations eligible for relief. Charities received around £1 billion in tax repayments through Gift Aid in 2012-13. The cost of tax relief paid to individuals and companies on their donations to charity was also around £1 billion.⁶

4. When the government reformed reliefs on donations in 2000, HMRC's predecessor, the Inland Revenue, undertook to fully monitor and evaluate the impact of the changes.⁷ It did not, however, put in place a plan to undertake a proper evaluation of whether the changes were working as Parliament had intended. When HMRC did undertake an evaluation in 2005, it found that it did not have the data it needed to make a complete assessment of the impact or to draw conclusions.⁸

5. HMRC told us that it had undertaken some research since 2005 to better understand the impact of the changes on the behaviour of donors. However, while it had commissioned research in 2009 to examine the potential effect of changes that could be made to Higher

1 C&AG's Report, *Gift Aid and reliefs on donations*, HC 733 Session 2013-14, 21 November 2013, paragraphs 1, 1.4-1.6; Q37

2 Q 15

3 C&AG's Report, Figure 2

4 Q 11

5 C&AG's Report, paragraphs 1.4-1.6

6 Qq 27, 32

7 Q 38; C&AG's Report, paragraph 1.11

8 Qq 41-42; C&AG's Report, paragraph 1.14

Rate Relief, HMRC acknowledged that this did not evaluate the changes that had been made in 2000. HMRC's research and evaluation was inconclusive about whether the reliefs have encouraged more people to give more to charity, and HMRC was unable to demonstrate whether this key objective of the reliefs had been achieved.⁹

6. HMRC's evaluation in 2005 indicated that the impact of changes to Corporate Gift Aid may actually have had a negative effect on the income that charities have received from businesses. Since 2000 companies have received the tax benefit on their donations, whereas beforehand charities had received a repayment of tax on these donations. HMRC found evidence to suggest that following this change some companies were not increasing the amount they donated in response to this incentive, resulting in charities receiving less income from these donations.¹⁰

7. Another objective for the changes to Gift Aid in 2000 was to simplify the tax system, but HMRC was unable to provide clear evidence that this had happened.¹¹ Deeds of covenant, the previous method of tax efficient giving, were undoubtedly complex. However, government has had to introduce at least five separate pieces of legislation since 2004 to close loopholes and tackle the misuse of reliefs on donations.¹² While HMRC assesses that these changes to legislation to stop abuse have prevented people from using marketed avoidance schemes, it accepted that they have complicated, not simplified, the tax code.¹³

8. In one instance, the tax code was complicated through the introduction and then removal of a measure to encourage giving because it was being abused. In 2005 government introduced Self-Assessment Donate, which had allowed people to direct any repayments of tax they were due to receive from HMRC to a nominated charity. However, the measure was subject to abuse by fraudsters, who created false repayments, with the money going to charities they controlled. HMRC admitted it had not fully assessed the potential for this abuse; only after it identified fraudulent claims did it advise ministers that it should withdraw the measure, which was abolished in April 2012.¹⁴

9. During the hearing HMRC argued with the data in Figure 8 of the National Audit Office's report, despite having agreed the factual accuracy of the report before its publication. HMRC acknowledged that the data used in that figure was its own, but at the hearing it presented us with another more detailed breakdown of this figure.¹⁵ HMRC's evidence at the hearing regarding this figure was also confusing and contradictory and did not aid our understanding of the issues in the report.¹⁶ For example, at one point HMRC told us that tax relief on donations had gone up from a figure of £700 million before changes were made in 2000, whereas it told us in answer to another question that this

9 Qq 41, 44; C&AG's Report, paragraph 1.16.

10 Q 42; C&AG's Report, paragraph 1.14

11 Q 11; C&AG's Report Figure 5

12 Q 137; C&AG's Report Figure 20

13 Q 139; C&AG's Report, paragraph 2.32

14 Qq 140-141; C&AG's Report, paragraph 2.29 & Figure 19

15 Qq 23, 32

16 Qq 20, 50

figure was £500 million or £600 million.¹⁷ HMRC also tried to argue that Figure 8 showed that there had been an increase in the overall value of donations, when in fact the figure only shows the value of tax repayments made to charities.¹⁸ HMRC's description of what the figure demonstrates was not clear and demonstrated to us that it lacks a firm grip of its own data.¹⁹

17 Qq 32, 46

18 Qq 19-23, 25, 50

19 Q 51

2 Tackling the abuse of Gift Aid and other reliefs on donations

10. In recent years HMRC has made good progress in tackling the exploitation of loopholes in the current system of reliefs.²⁰ In 2009 HMRC changed its approach to tackling the risks of abuse, which has led to it increasing the amount of potential losses stopped from £16 million in 2009-10 to £63 million in 2012-13. HMRC has increased the number of staff working in this area, and in 2012-13 it saved £44 in tax revenue for every £1 it spent on staff checking Gift Aid claims and charities' tax affairs for compliance. This is more than double its return in 2009-10, where it saved £21 for every £1 spent. HMRC agreed that this rapid increase in yield suggests there is still further scope for tackling the abuse of reliefs on donations.²¹

11. HMRC has estimated that £170 million was lost in 2012-13 through avoidance, fraud and error resulting from the misuse of Gift Aid and other reliefs on charitable donations. However, it admitted that this working estimate could be improved. HMRC told us that it has committed to undertake further work to improve the accuracy of the estimate and that it accepts the C&AG's recommendation that regular assessments of these losses should be undertaken.²²

12. HMRC agreed that challenging marketed avoidance schemes is a very slow process.²³ Since 2004, it has identified and investigated eight marketed avoidance schemes that use reliefs on charitable donations. It has challenged all of the claims made by individual taxpayers who have subscribed to these eight schemes, but by December 2013 only 10% of these users had withdrawn their claims. There remained 1,800 open cases, which put £217 million in tax at risk.²⁴ HMRC has not repaid charities or donors any money in relation to the claims made through these marketed avoidance schemes. However, for those individuals in Self-Assessment the relief they claim will reduce their self-assessed tax liability. HMRC explained that while it was challenging such claims the users of schemes retain their money, so the users will often use tactics of delay and procrastination. As a consequence the people making these claims are willing to wait until HMRC's assessment that their claims are not eligible for relief has been tested at tribunal.²⁵

13. At the time of the hearing the government was running a public consultation on the introduction of financial penalties for the users of marketed avoidance schemes who do not settle with HMRC after similar claims are found not to be eligible for relief when tested in court.²⁶ HMRC has also publicised its recent success in prosecuting fraudsters and there are examples of people going to jail because of their involvement in fraud and tax evasion

20 Q 1

21 Qq 94-95; C&AG's Report, paragraphs 2.44-2.45 and Figure 21

22 Qq 120-123; C&AG's Report, paragraph 16 and recommendation c.

23 Q 118

24 Qq 73, 84; C&AG's Report, paragraph 18

25 Qq 75, 87, 116

26 Q 119

using reliefs on donations.²⁷ However, it accepted that it has not always done enough to make people aware of its concerns about specific avoidance schemes.²⁸

14. HMRC acknowledged that its charities' team, which is responsible for risks relating to the tax affairs of charities, has little visibility of the work that is carried out by other parts of HMRC which are relevant to charities. For example, other parts of HMRC process claims for reliefs on donations made by higher rate taxpayers and companies.²⁹ HMRC recognised that the different areas of its business need to be better joined up as they can reinforce each other's efforts. HMRC agreed that it should manage its internal flows of information better to address this area of weakness.³⁰

15. In particular, HMRC accepted that it has limited information about the tax relief claimed by companies on donations.³¹ However, there has been a significant growth in the amount of tax relief received by companies from donations, which does not correspond with trends in corporate giving reported by the charity sector.³² The changes in 2000 meant that companies did not need to tell HMRC about the donations they made. HMRC tried to get data on this by surveying companies on their donations, but the response rate was low.³³ HMRC accepted that it needs to look at company donations more closely and told us that it plans to undertake a project to examine this issue.³⁴

16. HMRC acknowledged that its relationship with charity regulators is important in tackling the abuse of reliefs. However, it accepted that the sharing of information with the Charity Commission had been poor, and that both it and the Charity Commission had failed to work together effectively, which hindered investigations undertaken by both bodies.³⁵ In particular, HMRC recognised that both it and the Charity Commission have not shared enough information about the risks of bogus charities. HMRC said that it and the Charity Commission has a memorandum of understanding which they have used to aid the sharing of information, but that they could have shared more information through this agreement than they actually did. Indeed, HMRC only took legal advice in 2013 to confirm that it could tell the Charity Commission if the trustee of a charity is a known promoter of tax avoidance schemes, information it had not shared previously.³⁶

17. HMRC recently briefed journalists from *The Times*, in an off-the record discussion, about tax avoidance schemes that sought to use film tax relief. Those journalists subsequently published information related to the tax avoidance schemes and the promoter. HMRC's disclosure to the journalists was challenged by the schemes' promoter through a judicial review in the High Court, which found in HMRC's favour and that the

27 Q 75

28 Qq 92-93

29 C&AG's Report, paragraph 1.28, Figure 17

30 Qq 64, 94

31 Qq 60-62

32 Q 17; C&AG's Report, paragraph 2.37

33 Qq 42, 44

34 Qq 36-37

35 Q 130; C&AG's Report, paragraph 2.22

36 Qq 131-132, 144

disclosure to journalists was lawful and relevant to HMRC's functions. The High Court ruling stated that it is "relevant to the exercise of their [HMRC's] functions to provide proper and accurate information to correct misapprehensions or captious criticism regarding the exercise of their functions (such as any misplaced suggestion that they had engaged in unduly lenient 'cosy deals' with certain taxpayers), in order to maintain public confidence in the tax system".³⁷

18. We have asked HMRC to provide information to address our concerns in regard to areas such as tax settlements. However, it continues to refuse to help us as it does not provide information to correct what it may regard as misapprehensions regarding the exercise of its functions.³⁸

19. At the hearing, HMRC's accounting officer told us that there was a valid distinction between what HMRC could disclose in its function as tax commissioner, and what she could tell us in her function as an accounting officer.³⁹ Even if there is such a distinction, we do not believe it constrains what information HMRC can share with us. Anything that HMRC considers it can share with journalists in relation to its functions as a tax commissioner, it must also be prepared to share with this Committee.

20. In a note to the Committee following the hearing, HMRC told us that its application of its legal powers allowed it to disclose certain information to journalists but, because the circumstances were different, it could not disclose to this Committee information relating to the tax affairs of large corporate taxpayers. We did not find the explanation in this note sufficiently clear. Moreover, while HMRC has told us the circumstances in which it will not share information with this Committee, it has missed an opportunity to help us by describing the circumstances in which it would be able to provide fuller information than it has done in the past.⁴⁰ Limited or confidential disclosure, as was given to *The Times* journalists, could provide us with the assurance we need to conclude more positively on the actions HMRC has taken and help improve public confidence in the tax system.⁴¹

37 Qq 1-2

38 Qq 1-10

39 Q 1

40 Ev. 19 – Public Accounts Committee Hearing: Gift Aid – supplementary notes for the Committee

41 Qq 1-10

Formal Minutes

Wednesday 29 January 2014

Members present:

Mrs Margaret Hodge, in the Chair

Richard Bacon	Stewart Jackson
Stephen Barclay	Fiona Mactaggart
Guto Bebb	Austin Mitchell
Chris Heaton-Harris	Nick Smith
Meg Hillier	Ian Swales
	Justin Tomlinson

Draft Report (*Gift Aid and other tax reliefs on charitable donations*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 20 read and agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Forty-first Report of the Committee to the House.

Ordered, That the Chair make the Report 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 Monday 3 February at 3.00 pm]

Witnesses

Monday 2 December 2013

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Lin Homer, Chief Executive and Permanent Secretary and **David Richardson**,
Director, Counter Avoidance, HM Revenue and Customs

Ev 1

List of printed written evidence

1 HM Revenue and Customs

Ev 19

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 2013–14

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Second Report	Early Action: landscape review	HC 133
Third Report	Department for Communities and Local Government: Financial sustainability of local authorities	HC 134
Fourth Report	HM Revenue & Customs: tax credits error and fraud	HC 135
Fifth Report	Department for Work and Pensions: Responding to change in jobcentres	HC 136
Sixth Report	Cabinet Office: Improving government procurement and the impact of government's ICT savings initiative	HC 137
Seventh Report	Charity Commission: the Cup Trust and tax avoidance	HC 138
Eighth Report	Regulating Consumer Credit	HC 165
Ninth Report	Tax Avoidance – Google	HC 112
Tenth Report	Serious Fraud Office – redundancy and severance arrangements	HC 360
Eleventh Report	Department of Health: managing hospital consultants	HC 358
Twelfth Report	Department for Education: Capital funding for new school places	HC 359
Thirteenth Report	Civil Service Reform	HC 473
Fourteenth Report	Integration across government and Whole-Place Community Budgets	HC 472
Fifteenth Report	The provision of the out-of-hours GP service in Cornwall	HC 471
Sixteenth Report	FiRe Control	HC 110
Seventeenth Report	Administering the Equitable Life Payment Scheme	HC 111
Eighteenth Report	Carrier Strike: the 2012 reversion decision	HC 113
Nineteenth Report	The dismantled National Programme for IT in the NHS	HC 294
Twentieth Report	The BBC's move to Salford	HC 293
Twenty-first Report	Police Procurement	HC 115
Twenty-second Report	High Speed 2: a review of early programme preparation	HC 478
Twenty-third Report	HM Revenue & Customs: Progress in tackling tobacco smuggling	HC 297
Twenty-fourth Report	The rural broadband programme	HC 474
Twenty-fifth Report	The Duchy of Cornwall	HC 475
Twenty-sixth Report	Progress in delivering the Thameslink programme	HC 296
Twenty-seventh Report	Charges for customer telephone lines	HC 617
Twenty-eighth Report	The fight against Malaria	HC 618

Twenty-ninth Report	The New Homes Bonus	HC 114
Thirtieth Report	Universal Credit: early progress	HC 619
Thirty-first Report	The Border Force: securing the border	HC 663
Thirty-second Report	Whole of Government Accounts 2011-12	HC 667
Thirty-third Report	BBC severance packages	HC 476
Thirty-fourth Report	HMRC Tax Collection: Annual Report & Accounts 2012-13	HC 666
Thirty-fifth Report	Access to clinical trial information and the Stockpiling of Tamiflu	HC 295
Thirty-sixth Report	Confidentiality clauses and special severance payments	HC 477
Thirty-seventh Report	Supporting UK exporters overseas	HC 709
Thirty-eighth Report	Improving access to finance from small and medium-sized enterprises	HC 775
Thirty-ninth Report	The Sovereign Grant	HC 665
Fortieth Report	Maternity services in England	HC 776

Oral evidence

Taken before the Committee of Public Accounts on Monday 2 December 2013

Members present:

Margaret Hodge (Chair)

Guto Bebb	Fiona Mactaggart
Chris Heaton-Harris	Austin Mitchell
Meg Hillier	Ian Swales
Mr Stewart Jackson	Justin Tomlinson

Amyas Morse, Comptroller and Auditor General, **Ashley McDougall**, Director, National Audit Office, **Rob Prideaux**, Director, National Audit Office, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, were in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

Gift Aid and reliefs on donations (HC 733)

Examination of Witnesses

Witnesses: **Lin Homer**, Chief Executive and Permanent Secretary, HM Revenue & Customs, and **David Richardson**, Director, Counter Avoidance, HM Revenue & Customs, gave evidence.

Q1 Chair: This is a very civilised afternoon—where are the masses?

Welcome. I think the Report demonstrates that real progress is being made in HMRC, so we want to undertake the hearing in that context. You are beginning to get to grips with this, and we are pleased to see that.

Lin, I want to start the hearing on a slightly different issue. I want to refer to the judgment of Mr Justice Sales in the High Court case against HMRC by Patrick McKenna involving Dave Hartnett. As I understand it, Dave Hartnett talked to two journalists on *The Times* about Patrick McKenna's exploitation of film tax relief. He claimed that McKenna had made a fortune out of such schemes. I think we agree with that. He also said, "you won't find anybody here at all, even the most pro-wealthy people"—I assume he is talking about HMRC—"who thinks film schemes are anything other than scams for scumbags." I think we probably agree with that on this Committee.

HMRC claimed at the hearing—this is the point that interests us as a Committee—that laws allow it to reveal taxpayer information as part of its official functions, extending to off-the-record media briefings. You claimed the right to give information about individuals. My understanding is that the judge concurred that you can give information about individuals to journalists. One could quote all sorts of things, but he said in his ruling that you could do it "relevant to the exercise of HMRC's functions to provide proper and accurate information to correct mis-apprehensions...such as any misplaced suggestion that they had engaged in unduly lenient 'cosy deals' with certain taxpayers". That brings us to this Committee, because all we ever ask you to do is to provide proper, accurate information to address our concerns that you are engaging in cosy deals. If it is now legitimate for you to brief a couple of journalists,

surely it is more important that you brief MPs properly.

Lin Homer: Chair, I have not brought the judgment along with me. First, we are pleased that we won. It is important that when we exercise our functions as tax administrators we are seen to be doing so in a proper way. The judge was clear that we had not disclosed information about individual taxpayers. He also summarised our position as having a proper, lawful reason for disclosure for the purposes of our function as a commissioner. I'm afraid that I cannot remember the date when I came before you, but we had quite a long debate. I think I brought the Act along—from memory, it is section 18 of the Act. There is a valid distinction between what we can do in our function as tax administrators and what I can do in my function as an accounting officer.

I am absolutely with you that we should disclose as much information as we can. Over the past year and a half we have sought to put more into the public domain, including information about schemes that we regard as unacceptable. However, we still hold to the view that we have to exercise our functions as tax administrators. That is what the judge believed Dave to be doing, and that is why his finding was as it was.

Q2 Chair: I know I've taken you slightly by surprise with this, but what I find completely baffling is that it is appropriate to talk about Patrick McKenna's scheme—from which he benefitted to the tune of many millions of pounds, so it was in his interest as a taxpayer as well as the promoter of the scheme—with a couple of journalists off the record, but it is inappropriate to talk to us. We are still of the view that cosy deals may be taking place with big businesses, and you have not provided us with relevant data, particularly on some of the more controversial deals such as Vodafone. That would also

enable you to carry out your functions. The judge actually said that. I will read it to you again: "It is also relevant to the exercise of HMRC's functions to provide proper and accurate information to correct mis-apprehensions or captious criticism regarding the exercise of their functions (such as any misplaced suggestion that they had engaged in unduly lenient 'cosy deals' with certain taxpayers), in order to maintain public confidence in the tax system." I am completely bewildered by the fact that you can chat to a couple of journalists off the record, but you cannot talk openly to a Committee of parliamentarians who are trying to assure themselves that you are doing your best to serve the taxpayer.

Lin Homer: As I say, I understand the frustration.

Q3 Chair: It is not the frustration; it is the consistency.

Lin Homer: Well, I am happy to refer you back to the points I made when I was before you well over a year ago. I am happy to get that transcript out and repeat those points. Under the Act we have to be—

Q4 Chair: I know what you said to us. What I am saying to you is you have acted inconsistently.

Lin Homer: No, no.

Q5 Chair: Dave Hartnett talked to two *Times* journalists about Patrick McKenna and his tax affairs.

Lin Homer: No. The judge did not regard Dave as having talked about the individual's tax affairs.

Chair: He made money out of it. He solved it, but he made money out of it.

Lin Homer: My view is that it is very consistent. I am very happy to set that out again. The difference is that we are exercising our functions as the tax administration and/or I am being held to account by you. Remember that I talked about our powers under our Act but also the Acts that bind me as accounting officer. I think they are different. The germ of the point you are making, that we should put as much information as we can into the public domain, I totally accept. I believe we have been improving our transparency and you have my assurance that we will continue to do so.

Q6 Chair: I hear that. What I am asserting is that you are being inconsistent—your Department is. I would like a note on that judgment, looking at the judgment and why on earth that leaves you unwilling to support this Committee when it asks for details—and we have asked in private, not even in public, in the same way as you give an off-the-record briefing to journalists in private. It is not right that you tell journalists but you don't tell parliamentarians. It is just not right.

Lin Homer: I understand the frustration. I am very happy to give you a note but I assure you that I believe I am applying the law as Parliament intended it. On the other hand, I totally accept your—

Q7 Chair: Are you saying that Dave Hartnett did wrong?

Lin Homer: No. The judge is very clear. His view is that he had proper and lawful reasons for disclosure

in furtherance of his functions as a tax administration commissioner.

Q8 Chair: The judgment said "to correct mis-apprehensions...such as any misplaced suggestion that they had engaged in unduly lenient 'cosy deals' with certain taxpayers".

Lin Homer: I don't have the judgment in front of me.

Chair: I am quoting from it.

Lin Homer: I am sure you are, but you know as well as I do, Chair, that you need to take the context of the whole judgment. I strongly believe that it is consistent with what we have said and done in front of you. You have my assurance that we are continuing to seek to make as much information available as we can. For instance, you know we have offered and have now undertaken a couple of sessions with you where we have talked about types of case, without identifying the case. I am sure that today, when we get on to it, we will talk about some types of scheme that we think are unacceptable, where we are increasingly trying to say—not just to you, but to the general public—that these kind of schemes should not be undertaken because we don't think they work. That seems to me to be entirely appropriate.

Q9 Chair: The reason I raised this at the beginning of the hearing is that later in the hearing I want to talk about individual cases that are in the public domain, and I hope you will not use taxpayer confidentiality to prevent us properly interrogating how HMRC acted in those instances. That's why I raised it at the beginning.

Lin Homer: I am afraid I am likely to, but let's see where we get to.

Q10 Chair: Well, it seems to me that that inconsistency is just unacceptable, Lin. It is really unacceptable. We need a note from you that this Committee can consider, in the context of the judgment.

Lin Homer: I am happy to do that.

Q11 Chair: Okay. Let's turn now to what, again, I would say seemed to me like a not bad report—a report that is moving in the right direction.

Lin Homer: All credit to David and the team.

Chair: Let's start with looking at the objectives. The objective of the tax relief was to increase charitable giving. Would you agree with that?

Lin Homer: I think you are talking about the 2000 changes.

Chair: Yes.

Lin Homer: Our view is that there was an underlying objective of simplifying the tax system, which I think we feel was very important and has also been achieved. Added to that, there was definitely interest from the Government in encouraging people to give more, but I think both were important.

Q12 Chair: Why do you say both were important? When you look at what the Government at the time—it was a Labour Government—said about it, the objective was to increase charitable tax giving.

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Lin Homer: No, the consultation was very clear that the objective was to simplify and to encourage more—

Q13 Chair: Let's have a look to what they said, because you actually have the quotes in here, haven't you? Where are the quotes?

Rob Prideaux: They are in figure 5 on page 16 of the Report.

Lin Homer: I think both were important. Just to put that into context, one of the commitments we made was to ensure that it was easier for both small and large charities to—

Q14 Chair: You've said that. You've said that you want to make it easier.

Lin Homer: Yes.

Q15 Chair: I think you are being slightly naive. There isn't a partisan view on this, but across the parties we want to increase charitable tax giving—not charitable tax, charitable giving. We want to increase charitable giving.

Lin Homer: And make the system simpler.

Q16 Chair: You are saying that you want to simplify it. I accept that simplification is always a good thing, but with five changes to the legislation, I wonder how much you added to the tax code. We will come back to that. The purpose was to increase charitable giving.

Lin Homer: I entirely accept it was both.

Q17 Chair: Thank you. All the evidence in the Report shows that, at best, that is unproven and, at worst, income to charities has declined. I refer you to three. Paragraph 9 on page 14 looks at the money that went to charities. One assumes that anyone who took advantage of the new charitable tax relief for individuals would tick both boxes, so they tick the box that gives the money to charity as well as accepting the money that came to them as higher tax relief.

Lin Homer: I thought you said page 14.

Q18 Chair: Page 9, paragraph 14. Page 21, paragraph 1.14 says the changes relating to companies may have a negative impact. You knew about that in 2005 and did nothing about it. Page 38, paragraph 2.37 says that significant growth in tax relief "does not correspond with trends in corporate donations reported by the charity sector." Page 19, figure 8 suggests that money to charity has not increased, and that indeed tax relief income has yet to return to 1998–99 levels. I have drawn your attention to four elements in the Report, all of which suggest that despite the purpose being to increase charitable giving, that has not been achieved, or has to be proven.

Lin Homer: Thank you for those references. I am not sure I got them all, but perhaps I could start with figure 8 because—

Q19 Chair: We know you have an argument with figure 8, so let's skip that one. We don't want to argue about it.

Lin Homer: Let me use figures then.

Chair: I haven't used figure 8, I think.

Lin Homer: Well, you did.

Chair: Oh yes, I did at the end.

Lin Homer: I am very happy to take the generality of what you are saying. We would be concerned about measuring like for like. In very simple terms—David will be able to put more complexity on it than this—the introduction of the changes in 2000 moved away from the need to have a deed of covenant for an individual to get charitable relief to a Gift Aid approach. If you take what individuals did—I will come back to what companies did—and look at 1999, in addition to Gift Aid contributions of about £170 million, there were deeds of covenant of about £420 million, so our view is that what you need to compare the £1.04 billion to is a contribution of about £590 million in 1999. That shows that the donations from individuals have gone up by about 75% in that period.

Q20 Chair: I don't understand a word of that. Sorry, you have completely lost me.

Lin Homer: If you look at figure 8—I know you would prefer not to—the red bars show two different things, and I am afraid I think that converging them into one graph has given a misleading picture.

Q21 Chair: Can you take me back? Your assertion is that—

Lin Homer: Donations from individuals have gone up by about 75%—

Q22 Chair: Since 2000.

Lin Homer: Yes.

Q23 Chair: Where is that shown anywhere in your Report, Rob?

Lin Homer: It is shown in figure 8, if you understand what the red bars mean, but I'm afraid it is not shown very clearly.

Rob Prideaux: On figure 8, we have reproduced the Department's data, which were presented just like this, as tax repayments on donations. I recognise what Lin is saying—that that is not entirely accurate—but we reproduced its data. The second point is that this is not about the value of donations; it simply shows the tax repayments to charities from charitable income in fact—all the relief in respect of charitable income, not just that in respect of donations. There is no evidence that donations have increased to that extent.

Lin Homer: But it doesn't show all the payments to charities, and that is the problem.

Q24 Chair: Let me ask Rob: does it show all the tax repayments to charities?

Rob Prideaux: It does. That is exclusively what it shows—tax repayments to charities on their income.

Lin Homer: Yes, but it does not show all the sums that were there before 2000.

Q25 Chair: No, but does it show tax repayments to charities?

Lin Homer: If I could give you an example, in the period before 2000, if a company gave money to a charity, the charity could claim back the tax. One of

the changes made in 2000 was that, in the period post-2000, the company held on to the money and the charity did not have to claim it back. That may seem a diminution for the charities, but more than 50% of those company-to-charity transactions involve the trading company of a charity handing over profits to the charity. That still happens, but it is within the charity and does not go through the tax system anymore. If you are comparing what went on before with what went on after—

Chair: But—

Lin Homer: No, it is really important, because we and the charitable sector are very clear that donations have gone up. I am not suggesting that it was deliberate, but I think we have not shown that information very clearly. Both we and the charitable sector are very clear that Gift Aid has had a very positive effect on individual donations. There are other changes, but they are not shown in the post-2000 period, so it is not like for like. I feel very strongly about that, and I raised it with Amyas.

Amyas Morse: After you had agreed the Report.

Lin Homer: No, before. My agreement was subject to that. We entirely accept that there is more to be done, but we do not accept the basic premise that donations have not moved, and nor does the charitable sector. That was one of the reasons why I wanted some of their views to be reflected in the Report too.

Rob Prideaux: Could I just say that their views are very clearly reflected in the Report? We have consulted the charity sector, which says that there is no clear evidence that donations in the round are increasing. They are increasing in absolute terms, but that, in part, might reflect demographic and population changes, which is the point in paragraph 1.17. I reiterate that figure 8 does not talk about donations; it is only about tax repayments to charities, which are a different thing. We have not said in the Report that donations are not increasing, but there is no clear evidence—and the charity sector would back this up—that donations are increasing.

Q26 Ian Swales: The Chair specifically mentioned paragraph 2.37, on corporate donations. The paragraph states that the reduction in corporation tax liability has gone from £107 million in 2000 to “around £400 million” last year. That is a factor of four, but charities are not seeing such an increase in corporate donations. How would you account for that?

Lin Homer: I am going to ask David to explain that one, which is a different point.

Q27 Chair: I do not accept that it is not the same point. Let us be clear about what we are looking at. We all want to see an increase in charitable giving. There was a big change in 2000, which put a lot of incentive into the hands of rich donors. The idea was that if we gave them back a lot of money, they would give more. The assertion in this Report is that the charitable sector itself has caught up with what it was getting from tax reliefs. It has taken the sector some time, but it has caught up—it has not grown. The assertion is that you have yet to prove that the radical change in 2000 is value for money for the £1 billion that has gone to corporations and high-worth

individuals as a bribe to encourage them to do more. Ian is referring to your point, Lin. The NAO asked the charitable sector, and the NAO says, “It does, however, suggest a significant growth in corporate giving, which does not correspond with trends in corporate donations reported by the charity sector.” That goes to the heart of the point that you are making.

Lin Homer: We would accept that corporate donations may not have increased, but what Rob said is that charities are saying that donations generally have increased. That is not our view. The Charity Finance Group has said in terms that it agrees with me that the figures used by the NAO compare before 2000 with post-2000.

Q28 Chair: We can’t take evidence that we don’t have before us. Sorry, it is bad enough not having an agreed report, but we are not taking evidence outside this Report.

Lin Homer: I was clear about that.

Q29 Ian Swales: Going back to my question, you have just repeated that the charities say that they do not see corporate giving as having grown to a huge extent, yet the amount of tax relief claimed by corporations has gone up from £100 million to £400 million, which is a substantial sum of money. I guess it begs the question: if the charities are not seeing that, to what extent does HMRC follow up when a company claims a large amount of tax relief on charitable donations? How do you know where it has gone and who has received it?

David Richardson: Can I just clarify the previous discussion and then answer your point on corporate donations? What we do know, and we publish every year, is this. We know that donations to charities on which charities get tax relief have gone up over the period from 2000 to 2013, and they have gone up from £3 billion to £5 billion.

Q30 Chair: They do not. Sorry to get you on that, but it does not show that in the charitable tax relief that charities get; it does not show that in the evidence. But answer the—

David Richardson: Our published data shows that donations on which tax relief goes to charities have gone up from £3 billion to £5 billion, and I think the NAO will accept that.

Q31 Ian Swales: Is that your data or—

David Richardson: That is our data from tax returns.

Q32 Ian Swales: So you’re saying tax relief has gone from £3 billion to £5 billion in total?

David Richardson: And tax payments to charities in relation to donations, on Gift Aid and deeds of covenant—the money that charities get from HMRC in relation to donations—has gone up from £700 million to £1.04 billion. The reason why the Report does not show that is the point that Lin was making about the red bar in figure 8. Unfortunately, figure 8—I accept that it comes from HMRC data—includes tax repayments to charities from their investments, and it includes, therefore, the repayments they were getting

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when repayable tax credits on dividends used to be in place, before they were abolished back in the late 1990s. If you take those out of the red bars, you see the very clear trend that repayments of tax on donations—

Chair: Can you answer the question that Ian Swales asked on corporate donations? It is clear that they have got—

Q33 Ian Swales: The Report says that you stopped bothering to measure this in the year 2000, and since then tax relief has gone up by a factor of four without, it sounds like, any particular control over how that—

David Richardson: What happened in 2000 was that the Government made a decision to switch round the way Gift Aid worked in relation to companies. In the past, companies would every quarter have to account to HMRC for tax in relation to donations and then the charity would claim that back. Charities that have trading subsidiaries—the big charities that have charity shops and so on—put the charity shops in a subsidiary in order to protect the charity assets from trading risks. What happens is that the charity shop then gift aids the profits to the top-level charity and gets Gift Aid on that.

What was happening before 2000 was therefore a very cumbersome process, whereby the trading subsidiary had to account to HMRC and pay over money to HMRC. The charity then had to reclaim from HMRC the tax, and we had to process that. That in itself was therefore not a terribly VFM sort of arrangement. The reason why the change was made in 2000 to switch the relief, so that the trading subsidiary would simply pay the profits up gross to the charity, was in order to simplify it.

Q34 Ian Swales: Are you trying to tell us that a lot of this change in corporate taxation is to do with the corporations of the charities? Is that what you are saying?

David Richardson: Indeed.

Q35 Ian Swales: Really?

David Richardson: The NAO Report suggests that about half of it—

Ian Swales: £300 million.

Lin Homer: About half.

David Richardson: The NAO Report suggests that about half of it relates to that. Our problem, which you referred to, is that since the change, companies do not, in their annual returns, have to account for how much they are paying to charities, because that was part of the simplification. As a result, our data is imperfect. What we did in 2005, to try to understand what was going on and to check that abuse was not going on, was that we carried out a survey of companies, but unfortunately the response rate to that was quite low and a number of companies had imperfect data themselves. That is why the Report says that it is unclear exactly what has happened over that period, but we do know it would be completely perverse if the trading subsidiaries of charities were not continuing to pay up their profits to the charity, because it would just be a perverse thing not to do that.

Q36 Ian Swales: Are you saying that, apart from that, the other half could be anything? It could be firms of accountants saying, “Oh, put £10,000 down. It’ll never get checked.” It could be anything.

David Richardson: It will be companies giving donations to any form of charity. In our forward look at compliance work, we have a particular project looking at precisely what is going on to make sure there is not avoidance, but on the face of it, the growth of the tax relief would suggest an increase in donations, which is a good thing.

Q37 Ian Swales: Have you thought about doing a deep dive into a few companies? If I was not whiter than white and if I had a survey asking me questions, I would not send it back, but if you came knocking on my door, I would have to tell you the answers.

David Richardson: The compliance work on companies is risk-based, and this is one of the things in risky areas that people look at. We do not have any evidence to suggest there is a problem with companies donating to charities and abuse. At least half of it should be about trading subsidiaries of charities. The other half is something that we do feel we need to look at more closely, but our risk-based work to date has not suggested that there is a serious underlying problem.

Lin Homer: Your recommendation e, which suggests we should liaise better internally, is one we would accept.

Chair: I want to come back on your knowledge in a minute. Amyas or Rob, you wanted to come in.

Rob Prideaux: We accept that the data on corporate donations is incomplete, and it is difficult to draw any clear messages from that, although the two points that Members have referred to suggest that you have some negative evidence about whether that has provided the incentive it was intended to. On the question of figure 8, I want to be clear. While it is clear in figure 8 that charities are getting more in the way of tax repayments from Gift Aid claims than they were in 2000, that is really just an inevitable consequence of opening up, after the changes in 2000, a wider range of claims to qualify for Gift Aid. If you look at figure 9, which shows how much more individuals receive in the way of tax relief, that would not necessarily be reflected in greater repayments to charities, because where the individual has ticked the claim for higher rate relief, the charity is entitled to claim relief. Figure 8 does not say anything about the overall level of donations and how that might be changing; it simply means that a higher proportion of donations qualify for Gift Aid.

Amyas Morse: That is all we were trying to say. We understand the point you are making; we just do not think that the point supports the assumption that there are actually more charitable donations taking place.

Q38 Chair: What is really irritating about this conversation is that when this was introduced in 2000, the Treasury at that point—this is on page 19, paragraph 1.11—promised a proper evaluation. Had you done that at that time, we would not be having this argument this afternoon. This new system gives taxpayers’ money back into the hands of high-worth

individuals and companies. That is what it does. You are trying to say there is a bit of evidence, but if you had done a proper evaluation, you would not end up with the conclusion that the NAO came to in its Report—which you signed off, Lin—that there is insufficient evidence to conclude that reliefs on donations in their current form and in the way they are implemented provide value for money. That is the conclusion it came to, so perhaps you can answer the question. I do not know whether you have been around that long, Mr Richardson, but why did you not put in place a proper evaluation of what is an extremely expensive scheme?

Lin Homer: I will ask David to talk you through the research we have undertaken. I want to be clear about a couple of points. The 2000 legislation did not fundamentally change the nature of the tax system around charitable giving. It had been a long held right that donations to charities are susceptible to tax relief. What we have increasingly been doing is making it simpler for people to utilise that and, generally speaking, within our system it is regarded as a good thing that if people give to a charity, they get relief.

Q39 Chair: Nobody is quarrelling with that. You have misunderstood what I said. The fundamental change is not that there should not be a tax relief to the charity when people give; the fundamental change in 2000 was that the relief went back to the individuals rather than to the charities, so the purpose of the tax relief was to encourage greater giving, which we all want. The question that the Report poses is whether that is prudent. Nobody is arguing about how important it is to give to charity and to use the tax system to increase charitable giving. We all believe in that; the question is whether the regime introduced in 2000 actually achieved that. What you then promised—Mr Richardson, were you in post at that time?

David Richardson: No, I wasn't then.

Q40 Chair: Oh, bloody hell! What we were then promised was an evaluation, and you have not delivered it.

Lin Homer: What Mr Richardson could tell you is what research we have done.

Q41 Chair: Why did you not do a proper evaluation? The Report tells me about the research you have done—I have read the Report. Why did you not do a proper evaluation?

David Richardson: What changed in 2000? You are absolutely right that the position in relation to corporate donations changed fundamentally, because it switched the relief from the charity to the donor. There was no such change in relation to individual donations. Deeds of covenant worked in exactly the same way as Gift Aid, in that the basic rate went to the charity.

Chair: No, if you're a higher rate taxpayer—

David Richardson: The higher rate went to the individual with deeds of covenant—

Lin Homer: There was no change, and that is why we think figure 8 is misleading.

David Richardson: There was no change at all in relation to the distribution of tax relief with individuals.

Lin Homer: Chair, I know I risk your wrath, and I did try to have this conversation before, but in very simple terms, the red bars you will be able to see—we can provide you with this—are the previous deeds of covenant, and the yellow bars are Gift Aid. Essentially, what you see is deed of covenant changing into Gift Aid and growing and, throughout that, the application of both the basic rate of relief going to charity and the higher rate going to the individual remains unchanged. That is growth in that form of donation, and that is our position and it has been. We did not make that as clear, and I wholly accept our joint responsibility for that, but it is important that we are clear about that point in front of you.

As to the general evaluation, the question of how much you evaluate is one of those “How long is a piece of string?” questions. On the basis of the evidence we have, we think there is evidence to support that the major changes in 2000 worked as they were intended in relation to individual donations, and we have done quite a lot of research that backs that up.

David Richardson: We have done several phases of evaluation. What we know absolutely clearly is that donations carrying tax reliefs to the charities have gone up over that period. We know that is a fact. We also know that the repayments to charities have gone up over that period, and we know that is a fact. What we do not know categorically is whether donations as a whole have gone up. The very difficult thing to tell is whether or not the donations that would have been made previously without tax relief are now being made with tax relief. That is the difficulty, and it is quite a subtle and complex point to unpick.

We have had several goes at trying to do that, but the problem then is that you run into data issues, because the data we collect are on tax relief donations, so we know what higher rate taxpayers were claiming before 2000 and what they were claiming afterwards, and we can compare that, but we do not have data about donations that were previously made without tax relief, or that are now made without tax relief, and we only have partial information around basic rate taxpayers, because basic rate taxpayers do not need to tell us about donations. So it is quite difficult to produce a firm and conclusive view, but this is against a background of knowing, actually, that there has been very considerable growth in relation to donations that carry tax relief and the tax relief going to charities. So it is against a background of there not appearing to be a problem, but with us not being able to conclusively demonstrate cause and effect.

What we have done to test out the proposition is some academic research—which we commissioned in 2009 from the universities of Bristol and Warwick—to have a look at what effect Gift Aid in principle has on donations. That academic research, which is published, demonstrates that there are positive impacts from Gift Aid. That evidence is not an evaluation of the 2000 changes, as the NAO points out, but it is, again, an important bit of data that suggests—

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Q42 Chair: I am sorry I am so muddled, but this is getting to be a really worrying thing. Let me quote from the Report—I read the Report; I did not have any other research. Paragraph 1.14 on page 21 in the Report says, on some research you undertook in 2005: “It found evidence to suggest that changes relating to companies may have had a negative effect on charities’ incomes and companies did not alter their donations in response to the changes in tax relief. HMRC identified at this time that it did not have data on which it could conclude a full evaluation.” So, it is saying absolutely the opposite thing from what you are now asserting. Answer that, then I am going to shut up and let Guto, then Fiona, come in.

David Richardson: I think the company position is very difficult, but our data essentially stopped after 2000 since companies did not need to tell us. Going forwards—

Q43 Chair: This is 2005.

David Richardson: Well, it stopped in 2000. Going forwards, we will have this data, because the way that the company tax return works means that we will have that data to carry out reviews.

Q44 Chair: This is an internal evaluation from 2005.

David Richardson: In 2005, the internal evaluation was inconclusive in relation to companies. This is the survey that I talked about that had a very low response rate, which made it difficult to understand precisely what was going on. There was some evidence to suggest that corporate donations had at that point gone down. They have clearly gone up since then, because the amount of relief has gone up. One thing that we do know is that corporate donations are closely related to profit growth. During the early 2000s, there was a decline in profit growth, which is one thing that makes it more complicated to comprehend what was going on.

Chair: I am going to bring Amyas back in.

Amyas Morse: We have very kindly been furnished with all this research and, although you may not think it from tonight, co-operation has been very good in this and I do not want to suggest anything to the contrary. The upshot of most of the research was pretty conclusive. In other words, there were positive elements that you could mention, but you would also have to mention some of the negative elements. To be quite honest and if you will forgive my summarising a great deal of work in a few words, we did not conclude that it was really enough to found much on very strongly.

Rob Prideaux: I would add that paragraph 1.16 is the one that talks about the more recent evaluation and states: “The scope of this work did not include the full range of areas a complete evaluation would address. It indicated that increasing the up front tax relief that charities can reclaim directly is a more effective way of increasing the total amount of money going to charity than changing the Higher Rate relief.” There were, as David said, some positive effects, but it was not, by any means, conclusive or positive overall.

Amyas Morse: To be honest, I find it a bit surprising. HMRC circulated it to corporate taxpayers, who normally pay pretty close attention to what you do. I

am surprised that you could not get them to give you any better responses. If you went after them and said, “Excuse me—tap,tap—perhaps you did not receive our first circular. Could we have your reply?” They are not normally defiant. If you will pardon me being so direct, I am surprised that you could not get any better information.

Lin Homer: My position is that there is much in this Report that recommends itself to us. We would absolutely take the opportunities that we can in the future for improving our database. What we have been trying to say is that there are differences and we are much less well-informed on companies, so we would accept that. What I am trying to say is that there was perhaps an over-simplification in the general messages of the press release when comparing £130 million to £940 million and suggesting that donations through individuals had not gone up. We just think that if you chunk this into the areas, there is significant evidence that the changes have been useful, but that does not mean that there is not more to do. That would be the area on which we would want to focus.

Q45 Chair: Are they value for money?

Lin Homer: They have proven to be for the charities, and the charities would say that.

Q46 Chair: £1 billion.

Lin Homer: That is the like-for-like comparison. If you do the like-for-like comparison that we have shown you on the graph, you are seeing—we think—repayments on donations going from some £500 million or £600 million to about £1 billion. The tax relief for higher rate taxpayers on those increased from £130 million to £470 million.

Q47 Chair: To be absolutely honest, you have given us a graph that does not even tell me what it measures. It is a bit useless.

Lin Homer: It is a better version of figure 8 than is in—

Q48 Chair: What does it measure? What is the heading for this graph?

Lin Homer: “Tax repayments on donations to charities over time have fluctuated.”

Q49 Chair: Tax relief payments? It does not measure tax contributions to charities.

Lin Homer: Tax repayments.

Q50 Chair: It does not measure charitable giving. It measures tax repayments.

Lin Homer: Which is what figure 8 did.

Ian Swales: It is a breakdown of the red bars in figure 8.

Chair: I am getting very frustrated.

Q51 Guto Bebb: Just to clarify, does this show that there has been a significant increase in the number of tax repayments that are related to individuals who are making donations through Gift Aid?

Lin Homer: No, it shows that there has been a significant transfer from deed of covenant to Gift Aid. That was one of the significant purposes of the 2000

change. What is shown in the bars we have shaded out at the top is that at the same time a relief that charities got up until 1999, where they got tax relief on their investments, was stopped by the previous Government. If you add that to the equation, it looks as if tax reliefs have gone up for a similar rate, but you are not comparing like with like. I know it is very technical, and I think if we had taken slightly longer, we could have presented the information more properly to you, but it is an important point.

Q52 Guto Bebb: Even the figures you have given us show quite clearly that Gift Aid, in terms of repayments from donations, has actually gone up.

Lin Homer: Yes, but you would want that to. Before, deeds of covenant were so complex—

Guto Bebb: Absolutely. I am not arguing with you—

Lin Homer: That would be our other point—that it is okay for taxpayers to give—

Chair: I have decided to suspend the sitting for five minutes and to go into a private session.

4 pm

The Committee deliberated in private.

4.11 pm

On resuming—

Chair: Right, we are going to resume questioning, but we forgot to take declarations of interest at the beginning.

Chris Heaton-Harris: I am chairman of the board of trustees at the Royal and Derngate, or Northampton Theatres Trust, as it is called.

Fiona Mactaggart: I am the chair of Commonweal Housing. I also personally benefit from Gift Aid receipts.

Chair: I think we probably all benefit from Gift Aid in some way.

Fiona Mactaggart: I have also fundraised for Battersea Arts Centre and various other things.

Chair: Not personally benefited.

Fiona Mactaggart: I personally benefit because I get higher rate Gift Aid.

Chair: I don't do that. We will now move on to questions. Guto.

Q53 Guto Bebb: I want to clarify figure 9. At first reading it can look as if it is implying that the tax advantages of Gift Aid are going up significantly. Has HMRC done any work to identify to what extent the figures are going up because people are more inclined to tick the box, because more people are falling into the 40% higher rate taxpayer category?

Lin Homer: Some of it is. David?

David Richardson: The growth in higher rate relief, which is slightly higher than the growth in the overall relief, clearly comes about due to the fact that there are now more higher rate taxpayers, and a greater percentage of the population are higher rate taxpayers. Also, the difference between the higher rate and the basic rate has got wider because the basic rate has gone down. The higher rate relief is therefore worth slightly more.

What we know is that most higher rate taxpayers do not actually claim the higher rate relief on donations. But in terms of the value of donations, higher rate relief is claimed on about 80% of the value. So on

small donations higher rate taxpayers tend not to bother to claim the higher rate relief, but they do when the donation is a large amount.

Q54 Guto Bebb: Figure 10 shows quite clearly that the higher the donation the more likely the taxpayers claim it.

Lin Homer: Yes.

Q55 Guto Bebb: Is there any correlation? Are higher rate taxpayers more likely to make larger donations?

Lin Homer: Certainly wealthier individuals have the capacity to give more.

Chair: Do you know? Evidence is what we are after.

Q56 Guto Bebb: Is there evidence of that relief?

Lin Homer: I am not sure we know. We know the number overall who give. We do some work. Within our high net worth unit, we look at those very rich individuals who are giving and we do an appropriate degree of scrutiny into theirs. We tend to look at those.

Q57 Chair: Will you answer the question?

David Richardson: The data that we publish every year break down Gift Aid by higher rate taxpayers by characteristics. That shows that older taxpayers tend to give more, and that people on higher incomes tend to give more. There is a correlation between the two, yes.

Chair: Can you answer the question? Do you want to ask the questions again, Guto, and see if they can answer it this time?

Q58 Guto Bebb: The point I am trying to get at is whether there is any correlation that higher rate taxpayers tend to make larger gifts? That's the only issue.

David Richardson: Yes. Table 10.6 of our annual statistics shows that.

Q59 Guto Bebb: Finally, on that issue, is it the case that the issue of fiscal drive has resulted in more people being brought into Gift Aid? Secondly, are some of the more interesting tax changes over the past year coming through in terms of people making more Gift Aid provisions in their tax returns, or is it too soon to say? For example, some people are facing marginal tax rates of 70% and 80% due to changes in child benefit.

Lin Homer: It is quite early to say that. As you know from our discussions with you, the high-income child benefit effects are on income after certain deductions, and pension and charitable giving are two examples. I would think it more likely that the majority of the shift, if it occurs, will be towards pension, but we are only just getting the first SA returns, so it is early days.

Q60 Fiona Mactaggart: One thing that we are concerned about is that we do not have sufficient information about the tax relief claimed by companies. If you look, for example, at figure 9, we have a detailed pattern over time of tax reliefs to individuals. We do not have the same thing for companies. One thing that concerns me is that this

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Report identifies a risk in individual Gift Aid of individuals who do not themselves pay tax ticking the Gift Aid box, often completely by accident, without realising. Do you have information that shows that companies not paying corporation tax are claiming tax relief on charitable donations?

David Richardson: A company that was not paying corporation tax would not benefit from Gift Aid, because the Gift Aid relief is effectively a deduction in computing whether to pay tax or not. If it is not a—

Q61 Fiona Mactaggart: I am just wondering whether we have companies that do the jiggle which means they end up not paying any.

David Richardson: I do not think it works in the same way as for individuals. If a non-tax-paying individual ticks the Gift Aid box, the repayment goes to the charity, whereas for a company that is not a taxpayer, there is no benefit in it claiming Gift Aid, because it has no profits to reduce.

Q62 Chair: Why can we not have a chart about companies in the same way as the one about individuals?

David Richardson: We cannot do that because we do not have the data. We do not have information currently on how much in donations companies are giving and claiming tax relief on, because it is not separated out in the tax returns. It will be going forward, as I alluded to earlier, which means that we will have better data going forward. When the system was simplified in 2000, the obligation to indicate payments to charities was dropped. That is therefore one of the reasons why we cannot be conclusive about what has happened between 2000 and now.

Q63 Fiona Mactaggart: What I am asking—I am only suspecting it might happen—is whether a company which has a corporation tax liability could engineer that liability down to zero by claiming tax reliefs. That is effectively what I am asking you. Do you know whether that could happen?

David Richardson: Yes, that could happen. It is exactly what charity shops and charities' trading subsidiaries do.

Q64 Fiona Mactaggart: I mind it much less when charity shops do it.

David Richardson: You are quite right that Gift Aid to companies gives that facility, as it were. We do not have data on the extent to which that is going on outside the charity sector, except that it will be one of the issues looked at when we investigate companies in the normal course of events. As I said earlier, we have not got any evidence, from the risk-based reviews that we do of companies, that that is a problem, but we have not had a specific exercise focused on looking at that across the corporate sector. That is one of the things that we plan to do in our compliance programme going forward.

Lin Homer: Hence, as I said earlier, I think recommendation E is fair. We should be made to manage our internal flows of information better. It may well be that we should work out when and how we could show you something about the proportion of

companies paying that, drawing from our large business service and our local compliance. There is much in the Report that we accept rightly keeps our feet to the fire, and that is a particularly good example.

Q65 Fiona Mactaggart: On my anxiety about this whole episode, I am an absolute fan of Gift Aid; I think it is a very sensible strategy for promoting a more generous society, and I think that we want to do that. However, I worry that poor information and data within HMRC and, indeed, this hearing, risks creating a bad reputation for Gift Aid that would be extremely damaging. We already saw the Chancellor try to get rid of it without any consultation and then say, "Whoops, I didn't mean it really." I think we are in a bad place here and I want to know your strategy for getting into a good place.

Lin Homer: I think you make a valid point, and one of the reasons I was at some pains to clarify the earlier point is that I think it is really important that we do not leave charities generally suffering from a bad press. There are a few circumstances—you have had cases before you—of people purporting to be charities where they deserve all our opprobrium, but generally speaking we think Gift Aid is a good technique and works well. We would accept that if we were able to pull together more information across our business, we ought to be able to show a more holistic picture. I want to say that we do believe, in the areas where we look at compliance—local compliance for the small and medium businesses, large business service for the large businesses—we can see no evidence of major suggestions of risk. That is not to say that we should not keep looking. What we have not tended to do is bring that together with the picture David and his people have to give us a joined up view. That is a fair criticism and we would accept that. We should do more in that space and seek to bring you back better information in future.

Q66 Chair: Ian is going to ask about the exploitation of Gift Aid by the few, but may I just ask: which are the top 10 charities that benefit most from Gift Aid?

David Richardson: I am afraid I don't have that information with me, but I think it would probably be covered by confidentiality anyway.

Q67 Chair: Why?

David Richardson: What we do know is that there are 100 charities—

Q68 Fiona Mactaggart: Now that you have this web portal, can you not do that?

David Richardson: Sorry?

Fiona Mactaggart: I thought your web-based claiming should mean that you could just print that out.

David Richardson: We will certainly have the data, but that is data in relation to a particular individual taxpayer, as it were. We know that donations of more £1 million go to 100 charities, so 100 charities—

Q69 Chair: Why would charities object? It goes back to why I asked the question at the beginning. It seems to be an innocuous bit of information that might help

us to better understand the operation of Gift Aid, which is what we are here to do, and you should provide it to us.

Lin Homer: It may well be that the charities would be happy for that information to be released, but it would be their decision to release it to you, not ours.

Q70 Chair: Well, they will not know whether they are in the top 10. You know who the top 10 are.

Lin Homer: We can have that discussion with them.

Q71 Ian Swales: They are tax receivers, not taxpayers, anyway, which might help.

Lin Homer: No, they are both.

Q72 Chris Heaton-Harris: Would you mind having that discussion with them?

Lin Homer: No, I think it would be a perfectly reasonable request.

Chris Heaton-Harris: It would be quite useful to see who is benefiting and to what extent.

Q73 Ian Swales: It raises an interesting point that leads on to my concern, which was that one of the biggest receivers was a completely bogus charity. It was well known in the press. I think they received more money over a couple of years than the top 4 best known charities put together. It would be quite important as part of your management information to see who the big receivers are and to look for the rogue ones. I cannot remember the name of the one I am talking about—

Chris Heaton-Harris: Do you mean the Cup Trust?

Ian Swales: Exactly, the Cup Trust. If that appeared in your top 10, you would have to be asking what such a charity actually does. In that case, the answer was tax avoidance.

Lin Homer: Just to be clear, I think we have said before that there are eight schemes that we believe do not work. We have not paid on any of those schemes, so my personal view is that most of the people who give to charity would not know that those existed, or know them as charities. We continue to believe that we will not pay out on any of them.

Q74 Ian Swales: That leads on to my point. I am looking at figures 13 to 15, which are all examples of tax avoidance schemes. I am going to wheel out of the stable two of my traditional hobby horses. The first one is that they are labelled tax avoidance schemes, but if anyone came up to me and asked me whether I was interested in doing any one of them, I would assume I was breaking the law—wouldn't you?

Lin Homer: I would like to think people would assume that if something looked too good to be true, it was too good to be true. Seven of the eight schemes that we are looking at are in this kind of shares space.

Q75 Ian Swales: But they are tax evasion, aren't they? If you buy and sell something at difference prices and so on, you are evading tax, aren't you?

Lin Homer: We do have examples of evasion where people fraudulently put documents in front of us, and when that happens, people go to prison. We have sent a number of people to prison for Gift Aid donations

and schemes that are evasion. One of the challenges for us is at that point before it is determined. The Chair has had various market avoidance promoters in front of her. The promoters will often confidently assert something, people will join and will wait for a tribunal to conclude. When something is being hard sold to people and they are paying a fee up front, they are being asked to contribute to a fighting fund and when we have still not accepted that that is a scheme four years later—some 85% of the schemes we are looking at are more than four years old—my view is that an awful lot of those people holding on should concede and pay the tax that they owe. Whether many or any of them move into evasion will always be a matter for debate, but the difference between the two is a deliberate attempt to lie or to mislead versus something contrived and artificial.

Q76 Ian Swales: Clearly the promoters of the schemes in the Report are very knowingly doing it, but do you not believe that the people who say things like, "Okay, I will do this and then I will get this great big piece of tax relief, because the gilts have gone via an offshore trust", are equally culpable? They should not be seen as people who owe tax, but as people who have evaded tax.

Lin Homer: I am afraid that I do not think that that line can be walked in the way you have described. With all the debates about tax avoidance, including the one promoted by you, I would be surprised if anyone could be a member of these schemes without knowing that they are schemes that we strongly contest. There are many people who should know that we intend to contest these cases.

Q77 Ian Swales: So the main risk involved for someone who partakes in one of these schemes is that ultimately they might have to pay the tax, perhaps after a few years.

Lin Homer: No, they might also have to pay a penalty and, increasingly, if we litigate, they will face publicity. Those are all—

Q78 Ian Swales: I am talking about subscribers, not promoters.

Lin Homer: They are subscribers.

Q79 Chair: So there are 1,800 outstanding cases. Is that figure right?

David Richardson: There are eight marketed schemes that—

Q80 Chair: And how many individual cases?

David Richardson: There are 1,800.

Chair: So why are they not settled? If everything that Lin is saying is right, what are they hanging around for?

Q81 Ian Swales: Are all the eight schemes of the type listed in figures 13 to 15? Are they essentially of that type?

Lin Homer: Many of them are in figure 13.

David Richardson: The three examples here are examples of those eight. Picking up on the point that you were making, one of those schemes is one where

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we have not treated it as avoidance. We have treated it as fraud and we have prosecuted the two promoters and they are now behind bars. That is the one where they artificially inflated the price of shares—

Q82 Chair: The 1,800 are all in these eight schemes.
David Richardson: And about half of them are in one scheme.

Q83 Chair: Okay, so why have they not settled?
Lin Homer: Some of them have.

Q84 Chair: No, they have not. It is only 10%.
David Richardson: We have made it clear that we are litigating, and collecting the evidence to take that to litigation takes a while. We are very actively pursuing that.

Q85 Chair: “A while” is years.
David Richardson: There is one case from the eight schemes before the tribunals this week. Several of the others are almost ready to take to that point as well.

Q86 Ian Swales: And if the schemes are of these types, it must be an open and shut case, must it not? These are clearly designed to avoid tax.
David Richardson: They are clearly designed to avoid tax, but as you can see from the extremely simplified description—if I can say that—of them, they are very complex by nature. To be confident of success at tribunal, it is important to get all the documentation and information. You will not be surprised to know that promoters and users will drag out every particular stage. We have to use information notices and so on to collect that information.

Q87 Ian Swales: Are you confident, looking at figure 16, that you will get virtually all of that £240 million?
David Richardson: We do not believe that any of those eight schemes work. We have been very clear about that and we can refuse to pay any money.¹
Lin Homer: It is not met; we have not paid it.

Q88 Ian Swales: So that £240 million is still in your hands.
David Richardson: Yes.
Ian Swales: That is good news.

Q89 Chair: Can I just ask about this, because I have not really got an answer to it? So, the 1,800 are in the eight, are they?
David Richardson: Yes, those 1,800 users are those eight schemes.

Q90 Chair: And what are they doing? They are all claiming Gift Aid tax relief, which you have not paid.
David Richardson: Yes—a total of £217 million.

Q91 Chair: So you do not have to do anything. You just do not pay it.

Lin Homer: We resist in the tribunals.

Ian Swales: They have got to win the cases, because some of the individuals need to go to jail, presumably.
Fiona Mactaggart: Actually, we need more than just fighting; we need to find these cheating people.

Q92 Ian Swales: How much publicity do you give such cases? I know on the front page of *The Times* there was one of these schemes where somebody went to jail. Do you routinely make sure that there is maximum publicity when you win cases like this, to encourage the others, so to speak, so that people actually know? Do you name any high-profile individuals who have been involved? How do you go about making sure that the deterrent is there?

Lin Homer: Yes, we have named a number of the individuals who have been subject to prosecution. I am afraid I am not sure who are the two people recently prosecuted in the charity.
David Richardson: They are Mr Faichney and Mr Perrin, from Vantis Tax.

Lin Homer: So, four years and 18 months each.

Q93 Chair: Which was that? Odyssey Tendercare?
David Richardson: Vantis Tax Ltd.

Lin Homer: But we have also mentioned, here and elsewhere, those big companies that are involved in broader market avoidance. This is a comment I was trying to make to the Chair more recently. We accept that we were slightly on the shy side of talking about projects that we were concerned about, but we are now regularly using “Spotlight”, which is our to-the-market information. We are naming schemes, and when we successfully litigate, we are naming individuals. We think that that is appropriate.

Q94 Ian Swales: My other point is paragraph 21, which says that for every pound you spend on staff, you reckon you prevent £44 of tax loss.

Chair: It is a no-brainer.

Ian Swales: Exactly. It is a no-brainer. You have heard me, Lin, many times on this. How do we know how much is the right amount to spend, given the clear benefit for the amount you do spend?

Lin Homer: That is a very fair challenge to us. As I have tried to describe before, my personal view is that we have to have a forward business plan that looks not only to maximise return—the biggest rates of return—but to create cover of the territory, because otherwise we create spaces where people think we are not going to go. We will tend to try to have a compliance plan that will ensure that we do not have any of those no-go areas—usually, lines below which people think we are not going to go—but when we identify areas where we can do more, we make the case within our own internal business planning to do that.

This is an area where we have approximately doubled the numbers of people. We have more than justified that in terms of the return, and we are looking at whether there is more we can do, particularly across the business. As I said earlier, we would accept the point about making sure what we do in local compliance, large business and charities is better

¹ Witness note: HMRC’s policy is not to replay tax charities or donors in respect of the 8 schemes. For some donors in Self Assessment the relieve claimed will reduce the tax liability they self-assess rather than create a repayment claim. In those cases, HMRC are challenging the self-assessment.

joined up, because then they can reinforce each other's efforts.

Q95 Ian Swales: The Report suggests it is a sort of magic doubling, because you double the staff and then double the return per staff. That suggests that there is a way to go, potentially.

Lin Homer: Yes. I think that is probably right.

Ian Swales: So that is another business case you are making, is it?

Q96 Guto Bebb: Before we jump in and say that there is a business case, is it not also the case that, as you highlighted, something like 5% of all avoidance cases that you have identified are within Gift Aid, but they only amount to 2% of the value of tax avoided? Before we say that there is a case to be made for more money, we have to be aware of the actual tax being recovered.

Lin Homer: Yes, and that is the balance. There is a rate of return and there is an overall volume, but there is also a spread and a coverage. What we are trying to do is to ensure that we stay one step ahead of the people who will cheat the system. If Jenny Grainger were here I think she would say that you never get to declare success in the business she runs because they are always coming up with something else creative. That is one of the reasons why you have to be adaptable.

Q97 Ian Swales: Can I ask about the extent to which you rely on the Charity Commission to decide what is a correct charity? For example, the Cup Trust case had even been looked at by the Charity Commission and was deemed to be okay, which is quite staggering when you look at the details. To what extent are you relying on the Charity Commission?

David Richardson: The Charity Commission plays an important role in this because charities in England and Wales have to register with the Charity Commission. That is the first stage of them getting tax relief, but it is only the first stage. We carry out a whole set of checks ourselves to satisfy ourselves that a charity is entitled to tax relief. Most importantly, in 2010, we introduced a "fit and proper person" test, which is not present in the legislation that the Charity Commission has to weed out charities which are being run by fraudsters—

Q98 Ian Swales: But they have very few people, don't they? Do you feel they have enough resources? Is it four people they've got checking whether charities are real?

Chair: We are about to look at that.

Ian Swales: I just wondered what the comment from HMRC was about that.

Lin Homer: What I would say from our last appearance in front of you with the Charity Commission was that we would accept that there is a duty on us to work well with them. We have just signed a new memo of understanding. We are looking at a quite a lot bigger organisation and whether there are elements of what we collect and what we do that can be beneficial. We take the view that we should be proactive in that partnership.

Q99 Chair: Can I just ask some questions around this? William Shawcross told us last time when we talked about the Cup Trust issue that, "this is a tax avoidance issue, not a charitable issue." It is obviously the Charity Commission's view that the abuse of Gift Aid is a matter for HMRC. Do you agree with that?

Lin Homer: It is a decision for us as to whether we pay back any charitable—

Q100 Chair: Should the Charity Commission be concerned?

Lin Homer: That narrow decision is ours, but we have to work with them. We would obviously prefer not to be in a position where someone can register when the only reason to exist is to avoid tax. It will always be our decision whether to pay back sums. We are quite happy with that.

Q101 Chair: But is it a matter for them?

David Richardson: You may know in relation to the Cup Trust that the Charity Commission put in place an interim manager.

Q102 Chair: Now?

David Richardson: Now.

Q103 Chair: But originally they said they waited for you to come to a decision.

David Richardson: Yes, and there has been an appeal against that at the Charity Tribunal and the judge in that case made it clear that he thought the Charity Commission needed to take tax avoidance into account when they determined—

Q104 Chair: Is that your view?

Lin Homer: Yes.

Chair: Thank you.

Q105 Ian Swales: That is important. Finally from me, the Charity Commission do not cover offshore charities. Do you know how much Gift Aid you give in respect of donations to offshore charities?

David Richardson: We have given no relief in relation to offshore charities at the moment. The rules for charities changed in 2010 because of a European case which required us to extend Gift Aid relief to European charities and to Iceland and Norway as being in the European Economic area. We have had 103 applications so far from that wider group of charities, nine of which we have accepted. The rest we have rejected as not meeting the criteria. So far none of them has made a Gift Aid claim, but we have them under close observation.

Q106 Ian Swales: You accepted nine out of 103. Would they be the sort of charities we would recognise—like Médecins Sans Frontières, as opposed to some obscure family trust in Liechtenstein?

David Richardson: You have to ask whether they would qualify as a charity if they were in England or Wales so we can impose the same standards on them. They then have to submit returns to a regulator in their own home country if there is such a regulator and they have to pass our "fit and proper person" test. One of the key reasons we introduced that was to ensure we

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had some leverage over this. We have tight controls to ensure that money going abroad would be properly protected.

Q107 Ian Swales: Would you let through a family-controlled charity or trust if it was registered in the proper way as it could be here?

David Richardson: It would in theory be possible; because of course you can have a family-controlled charity in the UK.

Q108 Chair: I will pick up on that point, and then I will come to Austin. There is a real problem clearly, where individuals own both a business and a charity. That seems to be one of the ways in which problems arise. Looking at the whole sector, what are you doing about that particular issue? Do you look at it? So you have an individual owning a business and a charity. We had—I cannot remember which one it was. Vantis did it, though. Anyway, some of the cases you have taken to court are in that regard.

David Richardson: We are very conscious of that. The charity sector is enormously wide-ranging: there are the big household name charities; there are lots and lots of scout groups, Churches and so on; and then you have, sitting somewhere in between those, the family-owned charities and trusts and so on, many of which do a fantastic job giving huge amounts of money to extremely good causes. However, a small minority of those family-owned charities and trusts are the section where we are vulnerable to avoidance, because of people trying to give donations at values greater than the real valuation is, or benefits coming back to them. That is an area that we police—

Q109 Ian Swales: Are family trusts allowed to employ a family member, for example? That is one of the examples mentioned in the Report. We know that there was a peer who had lunch on his own family trust—a well-known peer who was reported in the press—but what about employing a family member? Are family trusts allowed to?

David Richardson: There is an example in the NAO Report of a charity that spent its time providing entertainment to people. That scheme does not work in our view and we have not accepted that as working.

Chair: Okay. Austin, and then I will come in with a few things at the end.

Q110 Austin Mitchell: Who is marketing these schemes? Who is inventing and marketing them?

Lin Homer: Well, some of the people who you have seen and cross-examined here, so I think—

Q111 Austin Mitchell: Can you name names?

Lin Homer: We have mentioned before—I think we have just won our third case against NT Advisors—and we have recently introduced some new arrangements whereby high-risk promoters will potentially have to be subject to different gateways, and indeed to higher penalties. So, yes, we try through “Spotlight”—

Q112 Austin Mitchell: Can you supply us with a list of names?

Lin Homer: I think we already have but, yes, we can regularly share with you the information we put into the public domain. And I think it would be very helpful if—I think that it was in answer to a question you asked yourself, Chair, that one of the promoters, and I am afraid that I cannot remember which one it was, said that none of the schemes that he could remember promoting had ever worked. And so, one of the questions was—

Q113 Chair: That wasn’t charitable tax relief. That was—

Lin Homer: No, but some of the same people will operate in both.

Q114 Chair: What is interesting about this question is this: have you ever taken action against an accountant or a lawyer responsible for designing a charitable tax relief scam?

Lin Homer: Yes. I think that the one we mentioned was a charitable relief. We have taken action against lawyers. Malcolm Grant,² who is a solicitor, is now serving two years; I am afraid I can’t remember whether that was charitable or general marketed avoidance. I think Mark Lewis is serving four years for a Gift Aid donation fraud. So, yes, we are very happy to take action—on evasion if we can—and when we win those cases, we publicise them.

Q115 Austin Mitchell: Good; but at the end of the day, lots of people inventing and marketing the schemes just are not punished, are they? The people who have used the schemes have to pay back, but the inventors get away scot-free and just go happily off to invent more schemes.

Lin Homer: I think this is the point that Mr Swales was making—that in a sense it is surprising people don’t ask questions. I would just say again that if a scheme is marketed to you, and you have to pay up front, and you have to pay for a fighting fund, it might be a good idea to ask what the success rate of that promoter’s schemes are. It is not really for me to give that advice to people, but it doesn’t seem far off common sense. I think there are issues about whether, by naming schemes, we can make it clearer to people that there are certain schemes that we have already taken a view on and regarded as not working. We are seeking to do that more thoroughly.

Q116 Austin Mitchell: Why are you so slow to deal with them? Paragraph 2.40 says—

Lin Homer: I do not think we are.

Austin Mitchell: As you have told us, in paragraph 2.40, there are “1,800 open cases of people using marketed avoidance schemes which seek to exploit reliefs on donations. This is around 5%”—only 5%—“of all marketed avoidance” schemes. Why is it such a small proportion? What is happening to the rest?

Lin Homer: Generally, in relation to marketed avoidance, I think when I was not here, Mr Mitchell, you used a David and Goliath example, suggesting that Goliath had given us a ping-pong ball. I do not agree with that. I think we have some rocks that we

² Witness note: Q114 Malcolm Grant’s prison sentence was a two year suspended sentence.

shoot, but delay is one of the things that benefits these schemes, because even if you do not eventually win, you can, in general marketed avoidance, hold on to your money until we eventually win. Therefore, procrastination is an aspect of such schemes, which is something we are giving thought to.

Q117 Austin Mitchell: I read somewhere else—I have forgotten where—that only 200 people in those 1,800 have coughed. The rest have just carried on, presumably.

Lin Homer: They have not coughed, because we have not paid them anything.

David Richardson: Some of the people have withdrawn their claims. The rest of them we will have to litigate unless they withdraw. That is the process that we are actively going down at the moment.

Q118 Austin Mitchell: It says in paragraph 2.40 that you “identified the earliest scheme under investigation in 2004 and the latest in 2011”—of course there will have been others since. This is an incredibly slow process of dealing with what is a flagrant abuse.

Lin Homer: Yes, I agree.

Q119 Fiona Mactaggart: Just following up that point, if someone pays their tax late, there is a chance of putting penalties on them. Would you want to have some civil penalty power that could—in these sorts of cases, where you are investigating a case—create fines or a civil penalty beginning to rack up, so that there is a financial penalty on the person who is trying it on?

David Richardson: There are various consultations around in this sort of area at the moment, and one of them relates to what is described as “follower penalties”.

Fiona Mactaggart: Sorry, I can’t hear you.

David Richardson: One of the consultation issues that the Government have at the moment relates to what is described as follower penalties. One of the problems that we have is that you litigate a lead case. We settle that, and then you would expect all the other people in the scheme to settle, and they all say, “Oh, but we are slightly different”—in some format or another—even though in reality I do not think we would regard them as being that. That is a problem.

The consultation on follower penalties is designed to tackle that by allowing us, when there has been a decision in a lead case, to say to people, “If you do not now settle, and you insist on taking it all the way through and we win”—we know that we win in 80% of cases—“then you will get a penalty.” That is a way of trying to encourage people not to simply drag things out, but recognise that when a case like theirs has been settled, time’s up and they need to settle themselves.

Q120 Chair: Why do avoidance and fraud in Gift Aid not count in the tax gap?

Lin Homer: Generally, this is an issue of how avoidance counts in the gap—

Chair: The tax gap is avoidance. Why is this bit not counted?

David Richardson: Sorry, which bit?

Chair: Avoidance and fraud in relation to Gift Aid tax relief does not count in the tax gap, according to the Report.

David Richardson: No, it is included in our tax gap figure.

Chair: You say that it is not, Rob, somewhere. I picked this up from you.

Rob Prideaux: It is not part of the same calculation. The tax gap calculation in the Report is sort of bottom-down—

Chair: It is not there. The Report says it is not.

Rob Prideaux: As I said, it is not part of the same calculation. They do not use these data directly in their calculation of the tax gap. I think that the wider methodology for determining the tax gap could include—

David Richardson: The wider methodology that is used incorporates Gift Aid abuse and so on, so it is included, but the particular, precise—or imprecise—figures that the Report has, which allocate between error, fraud and avoidance, are not figures in the tax gap itself.

Q121 Chair: Good; I am glad to hear that. I got a bit misled by the Report.

Can I just say that everybody, including the Charity Finance Group, thinks your £170 million of losses is an underestimate? What is your comment on that?

Lin Homer: I think we accept it is an estimate.

Q122 Chair: An underestimate?

Lin Homer: No, I think we accept it is an estimate. I think we had already committed to doing some more work to try to make it more accurate, and I think that is, again, a fair recommendation.

Q123 Chair: You don’t accept it is an underestimate?

Lin Homer: It is difficult to tell at the moment, but there is no reason to suppose that the avoidance in this area is going to be less than in other areas, so the amount does not seem to me unreasonable; but I am not sure there is huge value in guessing whether it is under or over until we do the work. No doubt you will expect us to come back and share the work with you once we have done it and will then challenge us as to whether we are doing enough to reduce it.

Q124 Chair: Can I ask, then, about—I accept these are old cases—the Odyssey Tendercare case? We have had a lot of representations from Dave Orbison—it’s in the public domain—because I think these guys got done for £100,000. What Dave Orbison raises is that the charity got two amounts of Gift Aid—one for £100,000 and the other for £1 million—and you got back the £100,000, but failed to get the £1 million or even pursue the £1 million. He alleges: “When they were given evidence of this scam the first million had already been paid to the charity. When my colleagues pointed out”—this is a guy who worked for the Charity Commission—“there had been no charitable activity, the HMRC contact burst out laughing but said he would not take it up, as it had been sanctioned by his boss and it would be too embarrassing to HMRC.” Do you want to comment on that?

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Lin Homer: This is where we will go through our normal routine: we will not discuss individual cases with you. What I am prepared to say is that we do take any information received in that fashion very seriously. I would be extremely disappointed if we did end up with anybody—any boss, at any level—putting their personal embarrassment ahead of doing the right thing, so I would not accept that as—

Q125 Chair: Well, will you accept this? In a sense, I have now put it in the public domain that there is £1 million that appears from the evidence—Dave Orbison has sent me a long document; I have absolutely no doubt that he has communicated with you as well. Given that you proved that the £100,000 was wrongly provided, will you go away and investigate whether the £1 million was wrongly provided?

Lin Homer: Well, I can assure you we always look at the information that is presented. I am not going to comment on an individual case—

Q126 Chair: No, but I am asking you to go away and look at the information given to you.

Lin Homer: And I can assure you we will and do regard any information we get from any source with great care and follow through where we can.

Q127 Chair: Can you assure me that you have changed from when you dealt with the De Lage case? You were given information on a further tax scam—I cannot find it, but again, this has been in the public domain. Does this ring a bell with you guys?

Lin Homer: I think this is a case that the NAO has looked at and, as I understand it, believes the way the inquiries were conducted was properly undertaken; but again, it does remain our position that we will not come in front of the Committee and discuss individual taxpayers. I am perfectly happy to confirm that we do look at information that is given to us and that we do work closely with the Charity Commission. As I said earlier, we are trying to improve that, and if, between us, we come up with information we can follow up, we would do that.

Q128 Ian Swales: Do you have a routine flow of information, so that if the Charity Commission withdraws status, for example, you are automatically told?

Lin Homer: Yes, we have 20 regular information exchanges a month, so there is a constant flow between—

Q129 Chair: On this one—it's a Dave Orbison one again—you were reluctant to act; it was too large and too resource-intensive. That was the allegation, and it is obviously of concern that you turned a blind eye because you lacked the resources and it was too large and too resource-intensive. Those are pretty serious allegations.

Lin Homer: I have not seen evidence, since I joined HMRC, of our being reticent about large and complex cases. You have my assurance that that would not be the approach that I would expect us to take. Again, it is difficult for me to comment on individual cases. I

have tried to explain on a number of occasions to individual members of the Committee that the perspective that an individual has of a case will not always be the full one, so it is difficult for me to comment on individual ones, but the scale of a case would not be a deterrent to us.

Q130 Chair: Can I ask you then about working together with the Charity Commission, which Ian touched on? Paragraph 2.22, on page 34, is full of assertions about the failure of both sides to work together effectively. One thing that really surprised me was the sharing of information.

Lin Homer: Yes.

Q131 Chair: You had to take legal advice to find out what information you could share. What took me aback was that you were interpreting a law that you yourselves had devised and enacted, and then you paid lawyers an arm and a leg to interpret your own law.

Lin Homer: David is happy to talk about this one; I think it was during his time.

David Richardson: Indeed. We regularly share information with the Charity Commission. We recognise that the memorandum of understanding that we had would have allowed both sides to share more than we have done, and we have just introduced and signed a new memorandum of understanding, which covers more areas so that we can exchange more data. The legal point mentioned in the Report relates to what information we can share in relation to trustees of charities. We have always been clear that we can exchange information about the actual charity, but the question was about whether it would be appropriate to share information about the people running the charity and the information that we know about their own tax position.

Q132 Chair: The individuals?

David Richardson: Yes, and that is where we have taken legal advice, which has confirmed that we can go that extra step. The new memorandum of understanding covers that point, so if you have a charity being run by a known promoter of tax avoidance schemes, for instance, it would be appropriate for us to tell the Charity Commission, and that is the point on which we have taken legal advice. We are allowed to push the boundary that bit further.

Q133 Chair: Looking at paragraph 2.22, I end up thinking, “Why does not HMRC simply regulate charities?” Why do we need the Charity Commission?

Lin Homer: I didn't come here expecting to—

Chair: The 2006 Lord Hodgson review was probably in your time, Fiona. Was that your review?

Fiona Mactaggart: No. I did the new Bill in 2003.

Chair: It just looked as though we could put a little quango on the bonfire.

Lin Homer: I don't think HMRC's aspiration in life is to take over everything that we—

Q134 Chair: No, but we want value for the taxpayer.

Lin Homer: As I said earlier, the Charity Commission does a variety of things. It registers, regulates and gives guidance. That is wider than the work that we

do with charities. It is a perfectly reasonable question to ask. I think we have asked ourselves whether we as a bigger organisation are doing everything we can to present data and opportunities to the Charity Commission to make their job easier. That would be my preference. It feels as though it is a reasonably large job already, Chairman.

Q135 Guto Bebb: On that specific point, I was slightly concerned, because we have talked a lot about avoidance and bad behaviour, but figure 22 clearly shows that 50% of the yield from identifying problems has come from errors. In relation to the points made about providing information for charities, what sort of errors are we talking about? Is it a case of educating people about how to work the Gift Aid system? What sort of errors are we talking about?

Lin Homer: There are some of those—I shall get David to give some examples. We have done some direct work with really well known, really good charities that simply do not get their processes into good shape. I recently had a letter from one of you about a constituent who has given to a charity and who gets written to every time they claim the Gift Aid. That is to do with the way the charity organises itself; it is not an absolute requirement of ours. Where we can help reputable charities work in a good way that does not contort things so that they are in dangerous difficulties, we will always try to be proactive and work with them. That is the kind of example that we would not want to end up regarding in the same way as a deliberate fraud—for instance, a charity set up just to avoid tax.

Q136 Guto Bebb: Just quickly, what typical examples are there of errors?

David Richardson: It is really quite simple things, such as arithmetic errors and people making claims more than once for exactly the same set of donations. You have to recognise that many charities are run by volunteers, who are not tax experts, so they do make some fairly basic administrative mistakes. We introduced Gift Aid online this year, so that people can claim online. The technology behind it has a set of things built in to stop some of these errors happening, so it can stop people getting the arithmetic wrong and will immediately identify whether someone is filing a claim for something they have already claimed. That will drive down the loss through error going forwards.

Q137 Chair: I have got three more points and then we can draw the sitting to an end. The first is about figure 20 on page 37, which shows that for this one tax relief—you, Lin, will know that we are looking at tax relief across the piece—you have had to introduce five different bits of legislation to stop loopholes being exploited. That looks pretty daft to me.

Lin Homer: Well, at the least hearing, you debated the number of reliefs, which I think is more than 1,000 overall. There are not many options. You can either have a very vanilla tax system, with no subtlety at all—

Q138 Chair: You could do something on this one, such as saying that everybody has 20%. At the 20% level, you could just say, “Tick your box, give it to the charity and that’s the end of it.” That would lead to much less tax avoidance.

Lin Homer: There is much debate about tax simplification. At the end of the day, it does not necessarily much alter the complexity of our system.

Q139 Chair: I wonder how much you added to the tax code on these five things.

Lin Homer: The yellow and orange books got a little bit thicker.

Ian Swales: Figure 9 shows £500 million at higher rate. Do you remember the uproar when there was a proposal to remove that?

Q140 Chair: This is absurd. This is one out of what the Office of Tax Simplification tells me are over 1,000 such things. It is crazy that you have had to amend it five times.

On the previous point, why did you not do the work before you introduced it—this is under “Timeline of Self-Assessment Donate”—to look at the potential? Why on earth did you not look at that and see that it would be a wheeze that people would exploit?

David Richardson: It was before my time, so I cannot provide personal knowledge on it. It is wrong to say that we did not consider it at all at the time, but it is also fair to say that we underestimated the potential for its abuse. It is a measure that looks really quite sensible—

Q141 Chair: The Report actually says, “HMRC did not fully assess the potential for abuse at launch.”

David Richardson: That is the point I was trying to get across—“fully assess”. It is not that people did not think about it, but they did underestimate the extent to which—

Chair: Bit daft.

David Richardson: It is a perfectly sensible measure that says that if people are due an overpayment from their tax, they could indicate on the form that they would like it to go to a charity. It is a very sensible-sounding measure. What happened is that criminals got into the system and started to create false taxpayers with the repayment going to themselves. I am afraid that we did not identify the full extent to which that would be a risk. Once we saw it happening, we obviously advised Ministers so that they could stop it.

Q142 Chair: Okay. In paragraph 2.15 on page 32, you have identified 200 cases under the fit-and-proper person legislation where you think the people not fit and proper.

Lin Homer: Yes.

Q143 Chair: This intrigued me. The Report simply states that charities have not answered the questions that you have sent them. What does that mean? What are the implications?

David Richardson: What it is saying is that when we have said to people that we do not think they are fit-and-proper persons, they have simply gone away.

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Q144 Chair: They disappear. Do you share that information with the Charity Commission?

David Richardson: Yes, that is one thing that is covered in our new memorandum of understanding.

Q145 Chair: Okay, those are my questions on that. I just have to raise the Greene King issue. I am really pleased that you got a result on this one.

Lin Homer: We are trying.

Q146 Chair: It is what we like to see. For goodness' sake, do not say that you cannot tell me because it is an individual case, but what is clear from the report into the case that I have seen is that Ernst and Young devised that scheme. In fact, I think we raised it when we had the four accountancy firms in front of us. The press reports say that they wanted 10% of the tax avoided and ended up on 8% and that Ernst and Young signed off the scheme for Greene King as their auditors. Do you want to comment on that?

Lin Homer: There has been some press coverage of the fact that we are in front of the Appeal Court, and I believe that in the discussion on Friday we were putting our case that this was a contrived scheme designed to avoid tax. Richard Bacon asked me questions about this on earlier occasions.

Q147 Chair: We all did, I think.

Lin Homer: Yes, I think we ended up having a discussion about beer as it is local to his and my patch. We do think this is an example of a scheme that should be challenged. We have told you before that our view is that we are now seeing a much lower level of marketed avoidance cases and a much, much lower level of cases involving the big four. I think they were involved in schemes like this at an earlier stage, and those are the ones that are coming through, but we think they now understand that we will be very challenging and will seek to win these cases.

Q148 Chair: The action was against Greene King—this is the issue I am raising with you—but it took the decision on Project Sussex, which was marketed by one of the big four, Ernst and Young, which also signed off the accounts, presumably using this as a tax avoidance “true and fair” or whatever it has to do. Ernst and Young marketed the scheme, demanded 10% and signed it off. I am delighted you took the action and that you were successful, but I don't think Ernst and Young should get away with it. I am interested, back to what we asked earlier, in what action you are taking against auditors, accountants and advisers who promote such schemes?

Q149 Ian Swales: To emphasise that, what is the difference between that and some of the things we were speaking about earlier when you were talking about people going to jail for schemes that are clearly marketed avoidance schemes? As I understand it, you said the promoters were going to jail, not the—

Lin Homer: No. Users and—

Q150 Ian Swales: But some of the promoters, yes?

Lin Homer: There will have been, yes.

Q151 Ian Swales: Yes, quite.

Lin Homer: The difference remains between avoidance and evasion, and it is a challenging one. If we can show more than artificiality and contrivance, and, for example, documents being fabricated or criminal acts being undertaken, we can and always will pursue a criminal approach, but when it is avoidance, the argument that is put forward and the reason why this is in a civil court and not a criminal court is that the law is being tested.

We win most of our cases. Every now and again, we lose one and when we lose one in a big way, we sometimes consider changes in legislation. This Chancellor has included changes that have been retrospective, but when there is an argument that it took a court of law in a civil sense, not a criminal sense, to determine where the law lay, people can properly say they were testing the law. The question for us is whether we can get more rapidly to outcomes in those cases, can we ensure that any loopholes are closed down, and can we shift the balance and make it less acceptable for people to be in that space.

Q152 Chair: Lin, we are all for that, but you haven't really answered my question. I will let you come back in on yours, if you want, Ian, but I want an answer. In this particular case, Ernst and Young devised the scheme. It asked Greene King for 10% of its tax saving, settled at 8%, and signed off the accounts as auditors to Greene King. Are you going to take action against the advisers and accountants in this instance?

Lin Homer: Well, I am not able to discuss Ernst and Young's position in relation to this. In avoidance, we pursue and in this case we are pursuing Greene King through a tribunal in relation to tax it owes us. It is a different issue whether the advice it was given is something we can pursue. We have talked about some of the changes we are making to be able to require high-risk promoters to be kept more to heel. There is little evidence that the big four are operating in this space any longer.

Q153 Chair: No, but I am not interested. It's like I'm going to stop nicking stuff from Boots. I was doing it in the past, so you are not going to get me for nicking the stuff in the past because I have told you I've stopped.

Lin Homer: But that's criminal.

Q154 Chair: What is so gratifying to me in this instance is that we have raised an issue in Committee and the courts have ended up agreeing with us. In this instance, these guys signed off the accounts as auditors. They devised the scheme and they took a cut. I think in that case, go after Greene King, which is the appropriate thing to do, and you won. Well done on doing that. But it is outrageous that the advisers and the accountants should be let off the hook. Just saying that they are going to behave well in the future does not excuse misbehaviour in the past. I want Lin to answer that.

Lin Homer: In any case where we believe that there is something we can do, civil or criminal, where we think there is a pattern or an approach that we should take, we will do it. I don't myself know what action

we could have taken previously—there will be changes going forwards—in a situation where an adviser is giving advice, other than what we have done. That was to signal, through DOTAS, through the changes in law that we have brought in, that such schemes do not work. I do not think, from what you have described, that I can see an action that we could have taken in relation to an adviser in that type of case.

Q155 Chair: Signed off the accounts.

Lin Homer: But I do not think that is an issue for me.

Amyas Morse: If I may say, the people who have an action against the auditor for signing off the accounts are the shareholders of the company, not HMRC. If they have signed off the accounts improperly, or should not have given whatever opinion they expressed that is a matter for them. Good heavens, plenty of people sue their auditors. If there is any basis for that I am sure we will hear about it.

Q156 Ian Swales: Can I ask if you have ever done a criminal prosecution against the big four for tax avoidance?

Lin Homer: You can't do a criminal prosecution for tax avoidance.

Q157 Ian Swales: You used the words "artificiality" and "contrivance".

Lin Homer: You cannot turn that into a criminal matter.

Q158 Ian Swales: An evasion matter.

Lin Homer: Evasion? To my knowledge, no, we have not taken an evasion case against one of the big four. If I am wrong about that I will correct it. We can't use our criminal powers in the avoidance space. I realise that is frustrating for you but that is my limitation.

Q159 Ian Swales: So you have taken criminal prosecution action against other marketers of tax avoidance schemes, including the examples in this Report.

Lin Homer: No.

Q160 Chair: NT Advisers?

Lin Homer: We have taken criminal proceedings where the proposition has moved into tax evasion.

Q161 Ian Swales: Marketers of tax evasion schemes.

Lin Homer: They are often marketed as avoidance but the activities have turned criminal.

Q162 Ian Swales: But you have never deemed that one of the big four has marketed a tax avoidance scheme that you have deemed to be evasion, ever?

Lin Homer: No, and the reputation and standing of bigger companies—not just the accountancy companies—will tend to make them prepared to test anything testable but to stay significantly the right side of that criminal line. Whereas we believe that some of the smaller and boutique promoters have crossed that line. We know it, because we have succeeded.

Q163 Austin Mitchell: Can I just ask a question? That's like the Mafia wearing black suits and therefore having a high reputation. The fact is that is not illegal for an auditor to audit the fiddles and schemes sold by his own firm, is it?

Lin Homer: It depends on your definition.

Q164 Austin Mitchell: Therefore, it is a matter for the regulator.

Lin Homer: If something is a fiddle that turns it into a criminal offence, that would be illegal. If something is testing the current law to a point that a judge eventually says does not work and is artificial and contrived, that is not illegal—it is chancing your arm. You have witnessed and been part of the debate that is beginning to change the level of contentment to be in that space. Part of what our large business service does is spend time with big firms ensuring that tax as an issue sits at their board and that they are thinking about the consequences of their approach, not just in terms of legal or illegal, but in terms of whether it is the right way to go.

Q165 Austin Mitchell: But you have the power to refer it to the regulator, the Institute of Chartered Accountants in England and Wales, which is manned by people from Ernst and Young and PricewaterhouseCoopers, who are given paid leave to man the regulator. Since there is a regulator in this area, isn't it your responsibility to refer those cases to the regulator?

Lin Homer: We certainly work with all the associations; there is not only one, unfortunately. This is not a regulated industry. The associations you refer to are membership associations. Many of them have guidance and codes of conduct. We do refer, and there are occasions when behaviour falls below criminality, where the associations take action themselves. We work closely with them, yes.

Austin Mitchell: I wish MPs had as sympathetic a regulator as the big accountancy houses.

Lin Homer: They are not regulators.

Q166 Austin Mitchell: That was just a casual remark. Since they ask for 8% of the gains to the company from the tax avoidance scheme that they sold them, are they required to pay that back too?

Lin Homer: The issue of—

Q167 Austin Mitchell: Are they?

Lin Homer: I'm sorry, I don't know what you are referring to. If you are referring back to a case where an auditor, big or small, has given advice on a marketed avoidance scheme that failed, that would not necessarily breach any rules, so it would depend on the circumstances.

Q168 Chair: We find that very unsatisfactory. Can I ask you a final question about Ernst and Young? Have you consulted them on any of the proposals that might be in the Chancellor's mind when he rises to his feet on Thursday for the autumn statement?

Lin Homer: I haven't, no.

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Q169 Chair: Well, not you personally. Have they been consulted? Has HMRC, in the discussion of proposals that may be in the Chancellor's mind for him to announce on Thursday? Has the Government—either you, or Treasury, or anybody working for you or the Treasury—consulted Ernst and Young?

Lin Homer: I could not answer that question for the entirety of the list you gave. What I am clear about is that our method of consulting will generally be to put a consultation out into the public domain, whereupon everybody comes back—

Q170 Chair: No, this is when ideas are developed.

Lin Homer: I have not—

Q171 Chair: Has anybody in your Department consulted with Ernst and Young?

Lin Homer: I have not got anybody working on any of the major schemes that we have put up in those circumstances. I think Jim talked to you about the

number of secondments we have. It is incredibly low. We will—

Q172 Chair: I am just asking about the consultation. I know that when you are working up to an autumn statement, you have a whole load of ideas that you talk to your stakeholders about. That is how the best of business is done. I am asking whether Ernst and Young were consulted.

Lin Homer: I'm sorry, your question is too wide for me to be able to answer.

Q173 Chair: Within your Department?

Lin Homer: We have not had Ernst and Young working on any of the specifics that we are looking at, and we would not, traditionally. We would go out to a wide consultation and ask everybody's views, as we did on the promoters scheme that we referred to. Of course they all give us their views, but that would be as part of a wider consultation.

Chair: Thank you.

Written evidence from HM Revenue and Customs

Q3 Chair—*Disclosure of Information*

The Commissioners for Revenue and Customs Act (CRCA) prohibits HMRC from disclosing information held by it in connection with its functions except in circumstances provided for in statute.

As there is no specific statutory provision covering disclosures to PAC, HMRC can disclose such information to the Committee only for the purposes of its functions (Section 18 CRCA 2005). Similarly Dave Hartnett could disclose information to journalists only for the purposes of HMRC's functions.

Applying this test, Dave Hartnett concluded that he was able to disclose the information he did to two journalists during the briefing, for example, that HMRC regarded Mr McKenna's film schemes as tax avoidance and that Mr McKenna was therefore perceived as a risk to the Department. When Mr McKenna and Ingenious challenged the disclosures by bringing a judicial review in the High Court the judge ruled that Dave Hartnett's decision "to make the limited revelations he did was based on a judgment which fell well within the statutory parameters". However he said he would have regarded it as a matter for "grave concern and close scrutiny by the court" if the disclosures had involved giving the journalists access to the claimants' tax files and the private information the taxpayers had provided about themselves to HMRC.

HMRC discloses non-identifying information to PAC on the basis that it supports the Department's function of being held to account by the PAC. This includes information about its administration of the tax system which PAC needs to assure itself that HMRC is applying processes and resources appropriately. HMRC does not disclose details of the settlement of tax liabilities with specific taxpayers as it judges that disclosing such information would be detrimental to its function of collecting tax.

The same legislation has been applied in both situations but HMRC's judgement was that the very limited disclosures made in the briefing were made for the purposes of its functions, whereas disclosure to PAC of the information relating to the tax liability of certain large corporate taxpayers would not be. There is no inconsistency in the HMRC's approach; the application of the functions test simply produces different answers in different circumstances.

Q72 Chris Heaton-Harris—*The top ten charities that benefit most from Gift Aid*

The department has now written to each of the ten charities that claimed the largest amount of repayments in 2012–13, to ask them whether they are content for their details to be passed to the Committee. A response has been requested by 24 January and I will write to you again shortly after that date.

Q112 Austin Mitchell—*Promoters of Gift Aid Schemes*

We name those who have marketed avoidance schemes in our news releases and in Spotlights published on our website once a scheme has been found not to work by a tribunal or court. This helps us to correct any misleading impression which may have been given to their clients that their schemes are never or rarely successfully challenged. For example, in May 2013 we issued a news release highlighting a number of schemes promoted by NT Advisors. The three cases concerned were *Price & Ors v Revenue & Customs* [2013] UKFTT

297 (TC), *Nicholas Barnes v Revenue & Customs* [2012] UKUT 273 (TCC) and *Andrew Chappell v Revenue & Customs* [2013] UKFTT 98 (TC).

After we won the Upper Tribunal in March 2013, we issued a news release about a scheme which Morgan Stanley had sold to Land Securities. Following our win against a Stamp Duty Land Tax (SDLT) in July 2013, our news release scheme used by Project Blue noted that the scheme had been disclosed by Clifford Chance and we also issued a news release in July about a corporation tax avoidance scheme which PwC sold to Vocalspruce. In November 2013 we published a Spotlight about a scheme which had been marketed by Powrie Appleby.

We also publicise the names of promoters who have been prosecuted when they have crossed the line into criminal activity. The Public Accounts Committee is aware that Roy Faichney and David Perrin, who devised a tax avoidance scheme to exploit gift aid when they were senior executives with Vantis, were sent to jail for cheating the Revenue. In addition a former solicitor, Malcolm Graham, who promoted an SDLT avoidance scheme using altered legal documents to make the scheme appear legitimate, pleaded guilty to seven counts of fraud by false representation at Newcastle Crown Court on 30 October 2013. Seven other individuals involved in the promotion of schemes have been charged with offences but the cases have not yet come to trial.

Q122 Chair—Estimation of losses

The department is undertaking work to develop a more accurate estimate of tax losses in charitable reliefs as a result of fraud, error and avoidance. This work is currently underway and the Committee will be updated on the latest estimates once the next stage is complete.

10 December 2013

ISBN 978-0-215-06799-9

